

JANET T. MILLS GOVERNOR

 STATE OF MAINE

 DEPARTMENT OF AGRICULTURE, CONSERVATION & FORESTRY

 LAND USE PLANNING COMMISSION

 22 STATE HOUSE STATION

 Augusta, Maine 04333-0022

Amanda E. Beal Commissioner

JUDY C. EAST EXECUTIVE DIRECTOR

Memorandum

To: LUPC Commissioners
From: Bill Hinkel, Regional Supervisor
Date: September 9, 2020
Re: Niboban on Rangeley Lake, LLC – request for hearing

This memorandum provides a staff recommendation, background information, and summarizes requests for a hearing regarding a pending application to renew subdivision permit SP 4097.

Relevant administrative history

On December 16, 2014, the Commission issued subdivision permit 4097 ("the 2014 permit") to Rangeley Plantation Irrevocable Trust ("RPIT") for a five-year term. The 2014 permit approved the conversion of an existing permitted sporting camp complex in Rangeley Plantation to a residential condominium subdivision consisting of existing dwellings and 18 proposed new dwellings ("the Niboban subdivision"). The recorded plat and a Google Earth map of the Niboban subdivision are included as Attachment A of this memorandum.

Although RPIT transferred ownership of the Niboban subdivision to Petrov, LLC on October 9, 2018, and then Petrov, LLC transferred ownership of the Niboban subdivision to Niboban on Rangeley Lake, LLC ("NORL") on November 30, 2019, the Commission did not receive a complete application to transfer the 2014 permit until December 9, 2019. On January 16, 2020, following receipt of additional information submitted by NORL on December 31, 2019, the Commission determined that the application for transfer of the 2014 permit was complete for processing.

Between January 2–7, 2020, five members of the public, all owners of condominium units within the Niboban subdivision, requested a hearing on the transfer application. At its meeting on February 12, 2020, the Commission voted and decided not to hold a hearing in the matter of NORL's application to transfer the 2014 permit. On March 13, 2020, the Commission staff issued a decision ("SP 4097-C") approving, subject to conditions, the transfer of the 2014 permit to NORL for the existing development. Condition of approval #1 of SP 4097-C stipulated that "[f]urther development of condominium units requires a new subdivision permit from the [Commission]."



On July 20, 2020, NORL applied to renew approval to develop the remaining 17 condominium units initially approved in the 2014 permit, but not constructed prior to lapse of the 2014 permit on December 16, 2019. The Commission staff accepted the application as complete for processing on July 27, 2020 ("application SP 4097-D").

Hearing requests and relevant review criteria

On August 12, 2020, a group of 12 people timely submitted a joint request for a hearing on application SP 4097-D. The initial request for hearing was amended on August 24, 2020, to include the names of 15 additional people, bringing the total number of people requesting a hearing to 27. The amended hearing request is included as Attachment B of this memorandum.

The bases and assertions made by those persons requesting a hearing are summarized below. The relevant permitting criteria that the Commission must apply in its review of the application are provided for each claim made in the hearing request.

1. The applicant has failed to demonstrate adequate technical and financial capacity. The applicant, in its capacity as the current permittee, is not in compliance with the 2014 permit and a building permit issued for the one condominium constructed under the 2014 permit.

<u>Relevant criteria</u>: Chapter 10, section 10.24, A sets forth general criteria for approval that requires an applicant to demonstrate adequate technical and financial capacity. Additionally, Chapter 10, section 10.25, C sets forth land use standards for technical and financial capacity that must be met for all subdivisions and commercial, industrial, and other nonresidential development. In determining the applicant's technical capacity, the Commission considers, among other factors, the existence of violations.

2. The proposed subdivision will cause congestion and unsafe conditions.

<u>Relevant criteria</u>: Chapter 10, section 10.24,B sets forth general criteria for approval that requires an applicant to demonstrate that adequate provision has been made for loading, parking and circulation of traffic, in, on and from the site, and for assurance that the proposal will not cause congestion or unsafe conditions with respect to existing or proposed transportation arteries or methods. Additionally, Chapter 10, section 10.25,D sets forth land use standards for vehicular circulation, access, and parking, and Chapter 10, section 10.25,Q sets forth land use standards for subdivisions that must be met to obtain a permit.

3. The proposed subdivision will have an adverse effect on existing uses, scenic character, and natural and historic resources.

<u>*Relevant criteria:*</u> Chapter 10, section 10.24,C sets forth general criteria for approval that requires an applicant to demonstrate that adequate provision has been made for fitting the proposal harmoniously into the existing natural environment in order to ensure there will be no undue adverse effect on

existing uses, scenic character, and natural and historic resources in the area likely to be affected by the proposal. Additionally, Chapter 10, section 10.25,E sets forth land use standards for natural character and cultural resources that must be met to obtain a permit.

4. The proposed subdivision plan will impede the ability of the land to absorb and hold water.

<u>Relevant criteria</u>: Chapter 10, section 10.24,D sets forth general criteria for approval that requires an applicant to demonstrate that the proposal will not cause unreasonable soil erosion or reduction in the capacity of the land to absorb and hold water and suitable soils are available for a sewage disposal system if sewage is to be disposed on-site. Additionally, Chapter 10, section 10.25,I sets forth land use standards for subsurface wastewater disposal, and Chapter 10, section 10.25,M sets forth land use standards for erosion and sedimentation control that must be met to obtain a permit.

Regarding Niboban Camps Condominium Association

The 2014 permit required the permittee to establish a condominium declaration. The Declaration of Niboban Camps incorporates bylaws of the Niboban Camps Condominium Association ("Association"). Article II(F) of the Association's bylaws provides that the purpose of the Association is to "[r]egulate the use, maintenance, repair, replacement and modification of the Property under common use and/or control, including without limitation the roads, pathways, ponds, recreational area, view and conservation easements, drainage and sewer systems etc. but always subject to the Declaration." All existing condominium units are incorporated into the Association and each owner is a member with rights, including the right to enforce the bylaws prescribed therein.

Staff recommendation

Hearings on an application are at the discretion of the Commission unless otherwise required by the Constitution of Maine or statute. In this instance, neither the Maine Constitution nor Maine statute require a hearing. In determining whether a hearing is advisable, the Commission considers the degree of public interest and the likelihood that information presented at the hearing will be of assistance to the Commission in reaching its decision. A hearing on a permit application is not required because five or more interested persons requested in writing that the Commission hold a hearing.¹

The applicant does not propose to enlarge the Niboban subdivision beyond that approved in the 2014 permit; rather, NORL – as the new owner of the Niboban subdivision – seeks reauthorization to construct the remaining 17 condominium units that were not constructed prior to lapse of the 2014

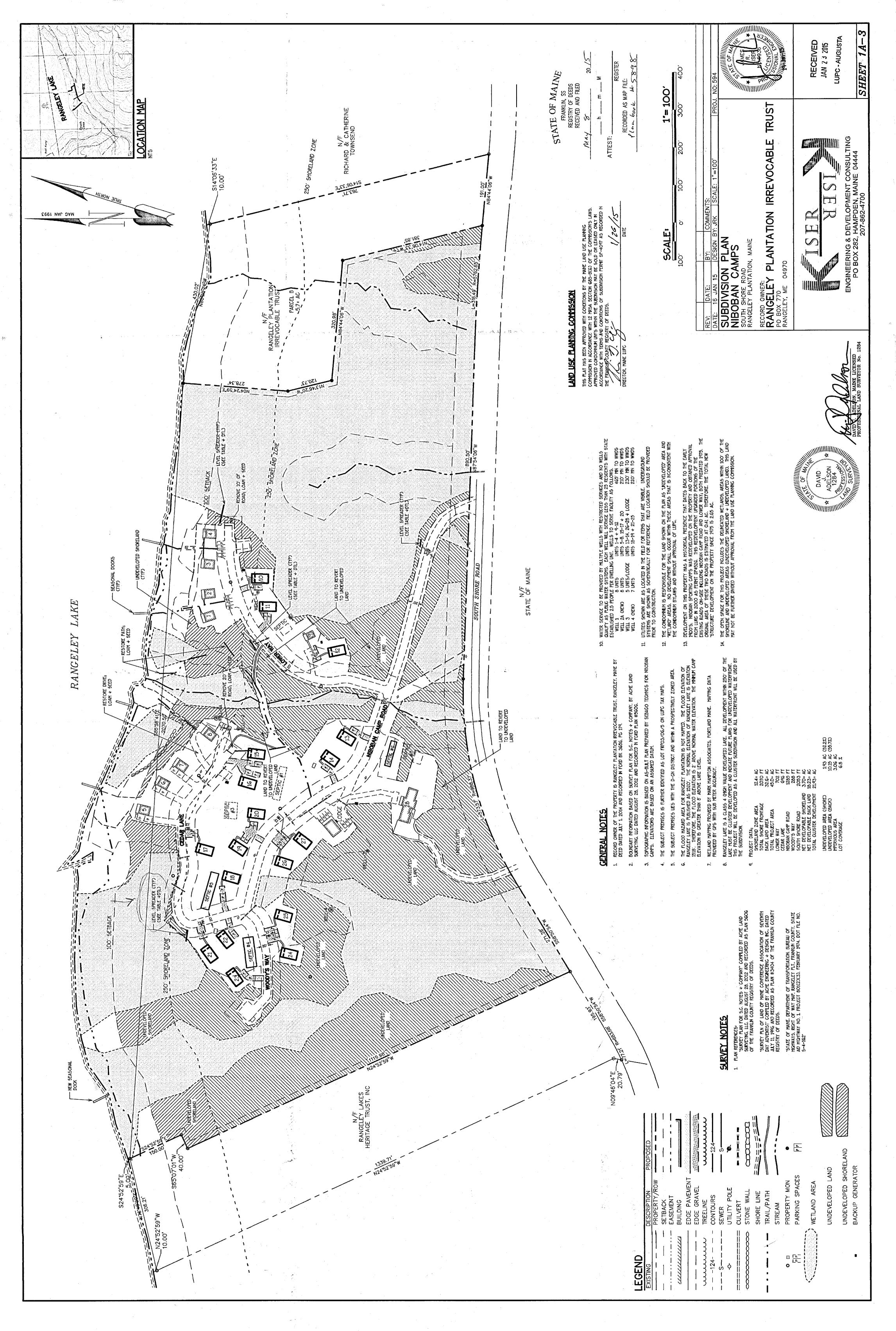
¹ The requirement to hold a hearing is different for permit applications than it is for rulemaking, such as zoning petitions. If five or more interested persons request in writing that the Commission hold a hearing in the matter of a zoning petition, for example, a hearing must be held. Such is not the case for requests for hearing on a permit application.

permit. Although NORL was successful in demonstrating that it met the limited review criteria applicable to transfer the 2014 permit, the hearing request pending before the Commission is for a new subdivision permit application, which involves considerably more review criteria than does an application to transfer an existing permit. The bases and assertions made by those persons requesting a hearing are tied to the applicable review criteria for a subdivision permit. There is merit to the hearing request.

Given the permitting and compliance history related to the Niboban subdivision and the level of interest regarding on-going and future development by NORL, Commission staff recommend that the Commission grant a hearing, perhaps limiting the scope of hearing topics to certain specified review criteria. As a reminder, the Commission does not have authority to enforce the Association bylaws. Arguments regarding compliance with the bylaws should be excluded from consideration as hearing topics unless relevant to an applicable Commission review criterion.

In the alternative to granting a hearing, the Commission staff seek guidance from the Commission on whether to process and decide the permit application pursuant to Commission rule Chapter 3, *Delegation of Authority to Staff*, or to forward the application to the Commission for decision, as provided by Chapter 3, section 3.02(C).

ATTACHMENT A





ATTACHMENT B

Land Use Planning Commission Attention: Mr. Bill Hinkel 22 State House Station Augusta, ME 04333

August 12, 2020

Dear Mr. Hinkel:

We, the undersigned abutters, are writing to express our strong opposition to the reapproval of Niboban Camps, subdivision renewal application for SP4097 submitted on behalf of Shawn Lyden and Niboban on Rangeley Lake, LLC.

We respectfully request a public hearing so that the property owners and abutters can participate in the discussion regarding this subdivision.

As submitted, the application fails to meet the Commission's general criteria for approval for the below reasons:

 Failure to show adequate technical capacity: The application materials state "This information was addressed in the ownership transfer approval for the project's permit, SP4097C "Per Section 10.25C of the Commission's Land Use Districts and Standards, the Commission "shall consider the existence of violations or previous approvals granted to the applicant when considering technical capacity." The applicant has previous and existing violations relating to SP4097 and related BP15715. The applicant has an active Enforcement Case EC 19-02 with the most recent letter of warning concerning the multiple, unauthorized transfers of Unit 11 being sent on June 10, 2020 with a deadline of July 15, 2020 to comply. To date, he has not complied with all deadlines and criteria and continues to advertise for sale with Noyes Realty, advertise for rent on VRBO and Air BB, occupy, and rent Unit 11 without a Certificate of Compliance. https://noyesrealty.com/homes-for-sale-details/747-SOUTH-SHORE-DRIVE-DRIVE-11-RANGELEY-PLT-ME-04970/1456495/69/

https://www.airbnb.com/rooms/43866880?source_impression_id=p3_1597255773_GuTWLLHa 9vF19i4e

https://www.vrbo.com/2001573

Failure to show adequate financial capacity: The applicant has failed to show a breakdown of estimated costs nor evidence of adequate financial commitment or sufficient resources to finance the proposed subdivision development of 17 units and infrastructure. Once again, Mr. Kiser refers to the documentation provided in the Transfer Application when addressing financial capacity. The transfer permit application

provided flawed, expired, and incorrect information pertaining to the applicant's financial capacity.

- The financial documentation in the transfer application contained a selffinancing letter dated August 23, 2019 as proof of financing stating that the lender is Coastal Realty Capital LLC DBA as Maine Capital Group will be loaning Vladimir Investments, LLC "\$825,000 for pay off and infrastructure." Per ME Secretary of State, the applicant, Shawn Lyden, is manager of each of these entities. No documentation showing a financial commitment to Niboban on Rangeley Lakes LLC was provided for the total amount of the subdivision.
- This letter of commitment further mentions that" unit 11 and 16 lots are to be used as collateral to secure this loan." LUPC cautioned Mr. Lyden on more than one occasion that he could not further subdivide into lots. Therefore, lots should not be used as collateral. In addition, on Jan 6, 2020, NORL, LLC transferred Unit 11 to Petrov, LLC (4155/96) and on May 19, 2020, Petrov LLC transferred Unit 11 to Shawn Lyden (4189/48); therefore, unit 11 should not be used as financing collateral where it is not currently owned by NORL, LLC.
- This commitment letter submitted expired on November 15, 2019.
- As submitted in the current application, the required Corporate Good Standing requirement is not met as both the applicant and the associated condominium association are "Not in Good Standing" per the Maine Secretary of State reports included in the application.
- There is a documented history of late payments of real estate taxes, late payments to vendors, federal tax liens, corporations not in good standing, and the applicant is a defendant in several active lawsuits most recently a Federal Lawsuit against the former Declarant, Scott Lalumiere and current Declarant, Shawn Lyden and their associated LLC's (stated in the application as providing financing) alleging violations of Racketeer Influenced and Corrupt Organization Act 18 U.S.C.§ 1961, *et seq*.

2. The proposed subdivision will cause congestion and unsafe conditions:

- Adding an additional 17 units (for a total of 28 units) to the subject property will essentially create a high-density subdivision creating bulk and congestion for the adjacent properties. Most of these units will not be used as residential dwellings but rather short-term rental units with the potential for increased occupancy and traffic both on the roadways and waterfront.
- Adequate provisions have not been laid out for drainage from water runoff from parking areas and access roads. Existing culverts and buffers are filled with debris

and have not been maintained since 2018 per the permit directives. Roadway thickness and width have not been consistently maintained. Erosion and sedimentation caused by surface runoff frequently occurs.

- Deviation from the original design to include a garage/vehicle storage beneath each unit creates additional impervious areas and eliminates the possibility of shared drives thus increasing the lot coverage calculations and total footprint of the individual units. The plans should be recalculated the approved unit development should be reduced to account for this design modification.
- 28 units in close proximity with reduced set back requirements, reduced roadway widths of less than 14 feet in some areas, only one emergency egress onto the public roadway, no hydrant on site, and a great distance to emergency services increasing emergency response times, will create an unsafe condition to all units on the property as well as neighboring properties.

3. The Cluster Subdivision as proposed will have adverse effect on existing uses, scenic character, and natural and historic resources:

- By reducing the Commission's standards for minimum dimensional requirements, reduced lot size, reduced shore frontage, reduced road frontage, and reduced set back requirements, allowing for 28 total dwellings in the proposed cluster development, the proposed cluster subdivision will adversely effect the existing use, property values, and scenic character of the current property and that of its neighbors. The proposed development does not meet the current requirements and should not be approved for an additional 17 units.
- This proposal does not fit harmoniously into the existing natural sloping hillside environment where a high-density subdivision is neighboring a state park and wildlife habitat on one side and single-family dwellings on the other with lot sizes starting at 5 acres. The proposed development includes lower level garages increasing the height of buildings; therefore, the bulk and height of the new development will dwarf original development. The drastic color difference in the new proposed development visually detracts from the overall development and fails to blend in with the natural surroundings.
- This property was originally a farm, then various sporting camps with several different historic buildings located throughout the property. Most of the buildings were razed around 2000 when the current waterfront units were built by Jean Noyes. Some elements of these original structures were buried on the property. The property has one historic structure remaining from its original development, currently a 12'x 8'x12' structure with an 8'x4' porch omitted from the original plans. This building was previously referred to as "the church" according to old

photographs. The former owner, David Lower, is buried on the property. Allowing the construction of 17 additional units will disturb the soil and possibly destroy an area of historical significance.

4. As proposed, the Subdivision plan will impede the land's ability to absorb and hold water:

- As previously approved, the plans fail to depict certain areas of flowing water. Many of the previously approved units (20-23) are located on top of areas that contain flowing water or immediately adjacent to such areas. A site visit to review each staked unit should be conducted prior to issuing any further approvals. In addition, the connector snowmobiling trail to ITS 84 is located immediately adjacent to or within the boundaries of proposed units.
- Deviation from the original design to include a garage/vehicle storage beneath each unit creates additional impervious areas and eliminates the possibility of shared drives thus increasing the lot coverage calculations and total footprint of the individual units. The increased impervious areas are not accounted for in the original plans for that address phosphorus exports and control measures. The plans should be updated to account for this design modification.
- The landscape has changed significantly in the last five years and updated studies and site visits to inspect and address erosion, changing water tables, water runoff, phosphorus control measures and the impact of adding a significant development to these lands should be performed.
- An updated wastewater disposal design and plan has not been addressed. Unit 11 is still non-compliant as the applicant has failed to produce a certificate of inspection ensuring that the unit is connected to the proper septic system and well as specified in the original permit SP4097.
- 5. **Right Title and Interest**: The narrative submitted in application states "The applicant is filing this application due to complication that occurred with the former owner's failure to renew the permit prior to expiration." Rangeley Plantation Irrevocable Trust transferred the parcel and associated development rights on March 5, 2018 (4036/226) to Petrov LLC, Shawn Lyden. The applicant, Shawn Lyden, and his associated LLC's obtained the property almost 22 months prior to the expiration of SP4097 in December of 2019. The applicant had sufficient time and multiple reminders by LUPC to submit a transfer application and complete construction prior to the expiration date. The below table illustrates the transfers recorded in the Franklin Registry of Deeds since the applicant acquired the property. There are also several mortgages recorded with the below transfers.

Date Signed	Date Recorded in Franklin County Reg. of Deeds	Grantor	Grantee		Deed Type	Book/Page
11/30/2018	12/28/2018	Petrov LLC	Niboban on Rangeley Lake LLC	Units 10-27 together w/ Declarant Rights & Rights of Control	Warranty Deed	4056/278
1/11/2019	2/4/2019	Niboban on Rangeley Lake LLC	Vladimir Investments LLC	" a certain lot or parcel of land", Unit 11 & Development, Declarant & Special Declarant Rights	Warranty Deed	4064/65
2/15/2019	2/25/2019	Petrov LLC	Niboban on Rangeley Lake LLC	Units 10-27 together w/ Declarant Rights & Rights of Control	Corrective Deed	4067/308
6/3/2019	6/19/2019	Vladimir Investments LLC	Niboban on Rangeley Lake LLC	LUPC Deed Reversal Mandated - a certain lot or parcel of land, Unit 11	Warranty Deed	4095/156
1/6/2020	1/6/2020	Niboban on Rangeley Lake LLC	Petrov LLC	" a certain lot or parcel of land", Unit 11 & Development, Declarant & Special Declarant Rights pertaining to unit 11	Warranty Deed	4155/96
5/19/2020	5/22/2020	Petrov LLC	Shawn Patrick Lyden	" a certain lot or parcel of land", Unit 11 & Development, Declarant & Special Declarant Rights pertaining to unit 11	Warranty Deed	4189/48

When this permit was originally granted, the property, a recreational sporting camp facility, consisted of 9 vacant rental cabins, a 5-acre parcel of land on one side, and a State Park on the other side. There was no comment, opposition or questioning of the permit despite the original owner's wishes to not further divide the property or the last comment by LUPC on the prior permit that no further development was to take place. The cabin owners, who collectively have a significant investment of over \$2,700,000, purchased their units knowing there was to be construction, but relied on the legal documents and permits with the assurance that LUPC and the permitee would do as stated in our declaration, by-laws, and deeds and require the Declarant to uphold and maintain the Commission's standard and rules. With this most recent permit, only abutters located on the Niboban property have been properly noticed. Neighbors within 1,000 feet were unaware of the most recent application submission to LUPC.

Since the current Declarant/Permitee obtained the property in March 2018, we have all lived with uncertainty at Niboban. We have lost confidence that the rules and laws we thought were in place to protect us will be upheld by the applicant and enforced by LUPC as Mr. Lyden has a documented history of saying one thing yet doing what he wants, when he wants, and meaningful LUPC enforcement is ignored or addressed on his own timeline.

According to Chapter 10 of the Commission's Rules and Standards "a "subdivision" means a division of an existing parcel of land into 3 or more parcels or lots within any five-year period, whether this division is accomplished by platting of the land for immediate or future sale, by sale of land or by leasing. The term "subdivision" also includes the division, placement or construction of a structure or structures on a tract or parcel of land resulting in 3 or more dwelling units within a five-year period. 12 M.R.S. §682(2-A)

Although we can find nothing in the previous SP4097 stating this, we understand that individual building permits are required for the additional 17 units permitted. These permits would be valid from 2-7 years each. Although specifically told not to, Mr. Lyden advertised individual lots for sale last year on MLS and on a website. Currently, a local realtor is listing unit 11 on the MLS, despite no Certificate of Compliance. At the instruction of Mr. Lyden, she is communicating to prospective buyers of Unit 11, that Mr. Lyden is taking individual reservations on lots and that lot 10 is already reserved. If individual building permits are issued and there is no expiration, the current owners could all be dealing with this for an additional 34-119 years – potentially the rest of our lifetime. Based on LUPC Rules and Standards, this is a far greater time frame than the originally intended 5 years of a subdivision. If any additional building is approved with this permit, we respectfully request that the 5-year permit expiration is adhered to.

It is for the reasons set forth in this letter that LUPC should deny the SP 4097 as proposed and at the very least allow the concerned abutters and neighbors a chance to briefly voice their concerns to the Commission during its deliberation on this matter.

Sincerely,

Becca & Don Campbell, Owners of Niboban Unit #8

Linda & Hank Herdt, Owners of Niboban Unit #5

Sandy & Pascal Laguerra, Owners of Niboban Unit #6

William Childress, Owner of Niboban Unit #4

Scott & Katie Graff, Owner of Niboban Unit #28

Joe & Cheryl DeLuca, Owners of Niboban Unit # 7 Continued... Laura Taylor, Owner of Niboban Unit #2

Richard and Catherine W. Townsend, 687 South Shore Drive, Rangeley Plantation David Miller, Executive Director, Rangeley Heritage Trust, Niboban property abutter Susan & Chris DeMuth, 585 South Shore Drive, Rangeley Plantation Joan Dunlap, 650 South Shore Road, Rangeley Plantation Annette J. Sanders & Center D. Sanders, 659 South Shore Drive, Rangeley Plantation Wes Miller, PO Box 317 Oquossoc, ME 04964 David Burgess, Burgess Construction, PO Box 426, Rangeley, ME 04970 Mary Angela & William B. Toms, 593 South Shore Drive, Rangeley, ME 04970 Kevin & Doreen Sinnett, 274 Shore Road, Oquossoc, ME 04964 Larry Koob, PO Box 750, Oquossoc, ME

Name	Property Address	Mailing Address if different	Email address
	747 S Shore Drive. Unit 8	5 King Street Ct.	
Becca & Don Campbell	Rangley Plantation, ME	Rockport, MA 01966	
	04970		8rangeley@gmail.com
	747 S Shore Drive. Unit 7	33 Stratton Farms Rd	
Cheryl & Joe DeLuca	Rangley Plantation, ME	W. Suffield, CT 06093	
	04970		cherjoed@sbcglobal.net
	747 S Shore Drive. Unit 6	83 Bush Hill Road	
Sandy & Pasqual Laguerra	Rangley Plantation, ME	Hudson, NH 03051	
	04970		sandy@countrysidek-9.com
	747 S Shore Drive. Unit 5	1 Sparhawk Way York,	
Linda & Hank Herdt	Rangley Plantation, ME	ME 03909	
	04970		birchchase5@gmail.com
	747 S Shore Drive. Unit 28	Concord, NH	
Katie & Scott Graff	Rangley Plantation, ME		
	04970		sgraffnh@comcast.net
	747 S Shore Drive. Unit 2	7387 Kindler Road	
Laura Taylor	Rangley Plantation, ME	Columbia, MD 21046	
	04970		ltaylor@relevanttechnologies.com
	747 S Shore Drive. Unit 4	192 North Cove Road,	
William Childress	Rangley Plantation, ME	Old Saybrook, CT	
	04970	06475	william.childress@snet.net
	687 South Shore Drive,	90 White Oak Shade	
Richard Townsend	Rangely Plantation, ME	Road, New Canaan, CT	
	04970	06940	rich@monoclepartnersllc.com
David Miller, Executive	Direct Abutter to Niboban	PO Box 249	
Director, Rangeley Lakes		Rangley, ME 04970	
Heritage Trust			
			dmiller@rlht.org
	585 South Shore Drive,		
Susan & Chris De Muth	Rangley Plantation, ME		adamuth 25 Parmail as real
	04970		cdemuth85@gmail.com;
			drsdemuth@gmail.com

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	650 South Shore Road,	PO Box 946	
Joan Dunlap	Rangeley Plantation, ME	Rangeley, ME 04970	
	04970		jfmccd@gwi.net
Annette J & Center D.	659 South Shore Drive,	PO Box 1079	
	Rangeley Plantation, ME	Rangeley, ME 04970	
Sanders	04970		<u>cenjud@gwi.net</u>
Wes Miller	PO Box 317 Oquossoc,		
	ME 04964		no email
Dichard & Cathoring W		90 White Oak Shade	
Richard & Catherine W	687 South Shore Drive,	Road, New Canaan, CT	
Townsend	Rangeley, ME	06940	rich@monoclepartnersllc.com
David Burgess, Owner	15 South Shore Drive,	PO Box 426, Rangeley	
Burgess Construction Rangeley, ME 04970		ME 04970	david.burgessllc@gmail.com
Many Angola & Dill Tanga	593 South Shore Drive,		william.b.toms@gmail.com;
Mary Angela & Bill Toms	Rangeley ME 04970		MaryAngela.toms@gmail.com
Kaula & Dansan Cinnatt	274 Shore Road, Oquossoc,		
Kevin & Doreen Sinnett	ME		rangeleycruises@gmail.com
Larry Koob	PO Box 750		
	Oquossoc, ME 04964		larry@oquossocmarine.com_

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EXTERNAL: This email originated from outside of the State of Maine Mail System. Do not click links or open attachments unless you recognize the sender and know the content is safe.

Good afternoon again,

We have had a last minute entry on our letter. I'm so sorry. This is really, really it this time I promise.

I hope you have a great afternoon. I promise no more emails until I hear from you.

Thanks for all of your patience, Becca Campbell