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STATE OF MAINE  
DEPARTMENT OF AGRICULTURE, CONSERVATION & FORESTRY  
LAND USE PLANNING COMMISSION  
106 HOGAN ROAD, SUITE 8  
BANGOR, MAINE 04401

WALTER E. WHITCOMB  
COMMISSIONER

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EXECUTIVE DIRECTOR

## PERMIT

### AMENDMENT G TO DEVELOPMENT PERMIT DP 4254

The Maine Land Use Planning Commission (LUPC or Commission), through its staff, after reviewing the application and supporting documents submitted by David and Luisa Surprenant and Chesuncook, LLC (collectively the Applicants or the Permittee) for Amendment G to Development Permit DP 4254, and the related record materials, finds the following facts:

- Applicant:* David and Luisa Surprenant  
HC 76 Box 656  
Greenville, ME 04441
- Applicant:* Chesuncook, LLC  
PO Box 385  
Millinocket, Maine 04462
- Agent:* Falla Consulting  
Attn: Roderick J. Falla  
795 Lily Bay Road, Unit #704  
Beaver Cove, Maine 04441  
(agent for David and Luisa Surprenant)
- Date of Completed Application:* September 10, 2018
- Location:* Chesuncook Township (T5 R13 WELS), Piscataquis County, Maine  
Maine Revenue Service Map PI054, Plan 02, Lot 20  
Piscataquis County Registry of Deeds Book 1179, Page 256
- Parcel Size:* 3.5 acres (owned)
- Site Zoning:* Accessible Lake Protection Subdistrict (P-AL)  
Great Pond Protection Subdistrict (P-GP)  
Unusual Area Protection Subdistrict (P-UA)
- Development:* Burned Chesuncook Lake House (30 ft. by 40 ft.) with  
2-Two Story Additions (20 ft. by 40 ft. each),  
Wrap-Around Porch (6 ft. by 40 ft., 8 ft. by 20 ft., 12 ft. by 12 ft.,

and 8 ft. by 22 ft.), and  
Patio(s) (10 ft. by 37 ft. and 10 ft. by 25 ft.)

**Total Floor Area (which does not include patios) – 7,520 square feet**

Proposed Chesuncook Lake House (48 ft. by 42 ft. by 29 ft.) with  
Second Floor (16 ft. by 30 ft.)  
Rear Extension (26 ft. by 34 ft.) with  
Second Floor (16 ft. by 26 ft.)  
Side Bump-out (8 ft. by 26 ft.)  
U-shaped Covered Porches with two bump-outs (8 ft. by 26 ft.), (8 ft. by 20  
ft.), (8 ft. by 48 ft.), (8 ft. by 50 ft.), and (6 ft. by 18 ft.)

**Total Floor Area – 5,264 square feet**

Existing 2 Story Caucomgomoc Rental Cabin #1 (18 ft. by 22 ft.) with  
Proposed Enclosure of Existing Porch (18 ft. by 8 ft.) and  
Proposed Entrance Porch (6 ft. by 8 ft.)

**Total Floor Area – 936 square feet**

Existing 2 Story Pine Stream Rental Cabin #2 (18 ft. by 22 ft.) with  
Proposed Covered Enclosed Porch (18 ft. by 8 ft.) and  
Proposed Entrance Porch (6 ft. by 8 ft.)

**Total Floor Area – 936 square feet**

Existing 2 Story West Branch Rental Cabin #3 (18 ft. by 22 ft.) with  
Proposed Covered Enclosed Porch (18 ft. by 8 ft.) and  
Proposed Entrance Porch (6 ft. by 8 ft.)

**Total Floor Area – 936 square feet**

Existing Storage Building #1 (50 ft. by 24 ft.) with  
Existing Addition #1 (24 ft. by 34 ft.)

Existing Workshop (12.5 ft. by 14.5 ft.) with  
Existing Covered Screened Porch (11.5 ft. by 10.5 ft.) and  
Existing Attached Fuel Storage Shed (8 ft. by 5 ft.)

Existing Generator Shed (8 ft. by 10 ft.)  
Existing Chicken Coop (9 ft. by 9 ft.)  
Existing Pole Barn (30.5 ft. by 18.5 ft.)  
Existing Woodshed with Included Overhang (15.5 ft. by 19 ft.)  
Existing Greenhouse (7 ft. by 10 ft.)

9. *Soils*: 7-C per the Maine State Plumbing Code

10. *Affected Waterbody*: Chesuncook Lake

The Commission has identified Chesuncook Lake as a management class 2, resource class 1A, accessible, undeveloped lake with the following resource ratings: outstanding fisheries resources, outstanding wildlife resources, outstanding cultural resources, outstanding physical resources.

## **Administrative History**

11. The administrative history of Development Permit DP 4254 is attached as Appendix A to this permit amendment, and is incorporated herein by reference.

## **Title, Right, or Interest**

12. David and Luisa Surprenant own Lot 20, the lot where the activity authorized in this permit is located. Chesuncook, LLC initially filed the application for DP 4254, Amendment G.<sup>1</sup> Subsequently, David and Luisa Surprenant retained Rod Falla to act as their agent in their individual capacities; Mr. Falla is not an authorized agent for Chesuncook, LLC. As the Surprenants' agent, Mr. Falla provided information in support of their application. In speaking with staff prior to retaining Mr. Falla, Mr. Surprenant stated that Chesuncook, LLC is a corporation he controls. Chesuncook, LLC did not provide any documentation that it has title, right, or interest to engage in development activity on Lot 20. David and Luisa Surprenant, as owners of the property and co-applicants satisfy the title, right, or interest requirement. 12 M.R.S. § 685-B(2)(D); Ch. 4, sec. 4.03(3).

## **Proposal Summary**

13. The Applicants seeks amendment approval for reconstruction of the Chesuncook Lake House (also referred to as the Lake House), for enclosure of the existing porches on the three existing rental cabins, and for construction of a new porch onto each rental cabin. The barn, originally proposed to be reconstructed, and the additional rental cabin with attached breezeway and garage are no longer proposed to be constructed as part of this application.
  - A. *Chesuncook Lake House.* The proposed Chesuncook Lake House would be 48 feet by 42 feet in size with a 26-foot by 34-foot rear extension and an 8-foot by 26-foot side bump-out. The Lake House would include a U-shaped, covered porch with two bump-outs (8-foot by 26-foot, 8-foot by 20-foot, 8-foot by 48-foot, 8-foot by 50-foot, and 6-foot by 18-foot). The Lake House would also include a 16-foot by 30-foot second floor over the main section of the building and a 16-foot by 26-foot second floor over the rear extension. The height of the Lake House would be 29 feet. The Lake House would be set back at least 150 feet from the normal high water mark of Chesuncook Lake, at least 75 feet from Lake Street, and at least 25 feet from the nearest property boundary line. The total footprint of the Lake House would be 4,368 square feet. The total floor area of the Lake House would be 5,264 square feet.

The proposed Chesuncook Lake House would have between zero and four bedrooms for overnight guests or staff, and dining room that could seat up to 30 people. The Chesuncook Lake House would serve as a lodge for overnight guests at the Lake House and at the three existing cabins on the property. One meal per day would be served at the Lake House; lunch during the snowmobile season and dinner during the warmer months. The Lake House would be a four-season facility, with the exact months of operation based on market demands. In addition

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<sup>1</sup> Lake Street Trust, the owner of the abutting Lot 20.1, was a co-applicant on the initial application. David Surprenant is a trustee. The initial proposal to develop Lot 20.1 was withdrawn and not pursued.

to serving meals to overnight guests, meals also would be sold to the general public. Gas also would be sold to the general public at the Lake House.

- B. *Rental Cabins*. The existing 8-foot by 18-foot lake side porch on each of the three existing, two story, 18-foot by 22-foot cabins would be enclosed and winterized. A new 6-foot by 8-foot entrance porch would be constructed onto each cabin. The porches would be set back at least 150 feet from the normal high water mark of Chesuncook Lake, at least 75 feet from Lake Street, and at least 25 feet from the nearest property boundary line.

All of the cabins are capable of providing four season accommodations and are plumbed accordingly.

- C. *Barn and Additional Cabin*. The application originally included a proposal to construct a 40-foot by 50-foot barn to replace a previously existing barn, as well as a proposal to construct a new, approximately 3,227 square foot cabin with attached breezeway and garage, to be located on abutting lot 20.1. The application was revised the proposal to reconstruct the barn and construct a new cabin on the abutting lot was removed from the application.

### **Relevant Review Criteria**

14. According to section 10.23,A,3,f, section 10.23,E,3,f and section 10.23,M,3,f of *Land Use Districts and Standards*, 01-672 C.M.R. ch. 10 (last revised March 05, 2018) (Chapter 10), all uses not expressly allowed, with or without a permit or by special exception, shall be prohibited in P-AL, P-GP and P-UA subdistricts, respectively.
15. According to Chapter 10, section 10.11,B,1, permits are required for all expansions, reconstructions, relocations, changes of use, or other development of nonconforming structures, uses and lots, except where specifically provided in Section 10.11. In order to obtain a permit, the applicant must meet the approval criteria in 12 M.R.S.A. §685-B(4) and demonstrate that:
- a. the project will not adversely affect surrounding uses and resources; and
  - b. there is no increase in the extent of nonconformance, except as provided in Section 10.11,B,9 or in instances where a road setback is waived by the Commission in order to increase the extent of conformance with water body setback.
16. According to Chapter 10, section 10.11,C,2, a legally existing, nonconforming structure may be reconstructed or replaced with a permit, provided that the permit application is completed and filed within two years of the date of damage, destruction or removal; the structure was in regular active use within a two year period immediately preceding the damage, destruction, or removal; and if the reconstruction or replacement involves expansion, the structure meets the requirements of Section 10.11,C,1.
17. According to Chapter 10, section 10.11,C,2,a, reconstruction or replacement must comply with current minimum setback requirements to the maximum possible extent. In determining whether the proposed reconstruction or replacement meets the setback to the maximum possible extent, the Commission may consider the following factors: size of lot; slope of the land; potential for soil erosion and phosphorus export to a water body; location of other legally existing structures on the property at the time of the damage; destruction or removal; location of the septic system and other on-site soils suitable for septic systems at the time of the damage, destruction or removal; type and

amount of vegetation to be removed to accomplish the relocation; and physical condition and type of existing foundation, if any.

18. According to Chapter 10, section 10.26, the minimum lot size for commercial uses involving one or more buildings is 40,000 square feet, the minimum road frontage is 200 feet, and the maximum setbacks include: 150 feet from the nearest shoreline of a body of standing water 10 acres or greater in size; 75 feet from the traveled portion of the nearest roadway; and 25 feet from other property boundary lines. Structures within 500 feet of the normal high water mark of a body of standing water 10 acres or greater shall be no higher than 30 feet.
19. According to Chapter 10, section 10.11,D,1, extension, enlargement or expansion of nonconforming uses requires a permit.

## **Findings of Fact and Conclusions**

### *1. Reconstruction of Nonconforming Structure*

The Chesuncook Lake House was a two and one-half story structure located less than 150 feet from the shoreline of Chesuncook Lake. The original structure was built prior to establishment of the Commission and subsequently expanded. (See Appendix A.) The Lake House was destroyed by fire in March 2018. The exact height of the building prior to the fire is unknown, but the Applicants estimate it was approximately 32 feet. The original structure was nonconforming because it did not meet the shoreline setback of 150 feet. (Ch. 10, sec. 10.26,D,2,b.) It also may have exceeded the maximum structure height of 30 feet. (Ch. 10, sec. 10.26,F,2.)

The location of the reconstructed Lake House, 150 feet from the shoreline, will comply with the required setback from Chesuncook Lake. The new building also will meet the required setbacks from roads and property lines. (Ch. 10, sec. 10.26,D,2,c and f.) The height of the reconstructed building will be 29 feet. This height is less than the 30-foot maximum. Additionally, provided the height of the reconstructed Lake House is comparable to that of the building destroyed by fire it would not increase the extent of nonconformance.

Overall, the proposed reconstruction of the Chesuncook Lake House satisfies the Commission's standards for the reconstruction of nonconforming structures. Ch. 10, sec. 10.11,B,1 and sec. 10.11,C,2.

### *2. Continuation of a Nonconforming Use*

#### *a. Traditional operation of the Chesuncook Lake House*

The Chesuncook Lake House has a long history of providing overnight lodging to guests that pre-dates the establishment of the Commission.

In 1972, Chesuncook Village was added to the National Register of Historic Places as a historic district. The approved nomination form discusses both the village and the Chesuncook Lake House: "By 1950 there were only sixteen people left [in the village], and today [1972] there are only two year-round residents. The village is far from being a ghost town, however. Mr. and Mrs. Burt McBurnie own and manage the Chesuncook House as a hotel for sportsman." This same document

explains the Chesuncook Lake House was used only between May and November and closed in the winter because it was not insulated. The document states that as of the early 1970s the McBurnies could accommodate up to 15 overnight guests.

The McBurnies continued seasonal operation of the Chesuncook Lake House for decades. More recent, but undated, promotional materials prepared by the McBurnies stated: “The Inn [i.e., the Lake House] can accommodate 11 guests comfortably with large sunny rooms, overlooking the lake.” (R. Falla Letter, Sept. 3, 2018, Attachment 3.) In 1994, the McBurnies obtained the first permit (DP 4254) for activity on the property, the construction of a barn. In the application they described the Lake House as serving six to ten people per day seasonally.

In 1999, the Surprenants purchased the Chesuncook Lake House from Mrs. McBurnie. In their first application filed in March of 2000 (DP 4254-A), the Surprenants continued to describe the Chesuncook Lake House in similar terms. They identified the Lake House as seasonal lodging operation serving approximately eight people per day.

*b. The Chesuncook Lake House is a legally existing, nonconforming (i.e., grandfathered) lodging facility that serves overnight guests*

The longstanding operation of the Chesuncook Lake House as a lodging facility is well established. So too is that these overnight guests were served meals in the facility’s dining room. For example, the McBurnie’s “rate sheet,” submitted by the Surprenants, indicate lodging, three meals a day, and amenities were included in a single, per-day rate. No rates for lodging at the Lake House without meals is shown on the rate sheet. (R. Falla Letter, Sept. 3, 2018, Attachment 6.) A 2000 promotional brochure prepared by the Surprenants and included with their application for DP 4254-B states: “The Lake House can accommodate 8-10 guests comfortably with 4 large sunny rooms overlooking the lake. . . . Our guests enjoy three hearty meals in our tinned ceiling dining room, all served family style.”

This longstanding use of the Chesuncook Lake House as a lodging facility that serves its overnight guests is a grandfathered activity. The Lake House property is located within three overlapping protection subdistricts: (a) the Great Pond Protection (P-GP) subdistrict, which extends 250 feet from lakes and ponds that are 10 acres in size or greater; (b) the Unusual Area Protection (P-UA) subdistrict, which includes Chesuncook Village, in recognition of its historical significance, and (c) the Accessible Lake Protection (P-AL) subdistrict, which extends 500 feet from Management Class 2 lakes, such as Chesuncook Lake. P-GP zoning has been in place since the initial adoption of official zoning by the Commission in the 1970s. The Lake House property was zoned P-UA in 1979 and P-AL in 1990.

Lodging facilities like the Chesuncook Lake House are not an allowed use within all of these zoning subdistricts. As a result, the operation of the Lake House as such a facility is a nonconforming (i.e.,

grandfathered) use. This is true whether the Lake House is called a hotel, inn, commercial sporting camp,<sup>2</sup> or recreational lodging facility.<sup>3</sup> 12 M.R.S. § 682(10); Ch. 10, sec. 102(138).

Nonconforming uses are legal and are allowed to continue under the Commission's standards. The extension, enlargement, or expansion of a nonconforming use requires a permit. (Ch. 10, sec. 10.11,D,1; see also sec. 10.11,B,1.) The Commission concludes the Chesuncook Lake House is a legally existing, nonconforming lodging facility that serves overnight guests.

*c. Continued operation of the Chesuncook Lake House as part of a facility that provides overnight lodging and serves overnight guests is consistent with the grandfathered use of the Lake House and the property*

The Surprenants propose to reconstruct the Lake House, but they have not determined whether any lodging will be provided in the new building. They state the new building will have between zero and four bedrooms. (R. Falla Letter, Sept. 13, 2018.) The approved septic system provides for no more than two bedrooms. (HHE-200, July 7, 2018.) Even if no lodging is available in the new Lake House, lodging will continue to be offered on the property in the three cabins previously constructed by the Surprenants in 2003 and proposed for expansion as part of the present proposal. The Surprenants state the new Lake House would function like a lodge. They would continue to offer meals in the lodge dining room to overnight guests. (R. Falla Letters, Sept. 12 and 13, 2018.) The septic design for the new building limits the Applicants to offering one meal a day in the reconstructed Lake House/lodge (HHE-200, July 7, 2018; R. Falla Letter, Sept. 13, 2018), as opposed to the three meals a day that were traditionally offered to overnight guests. Guests in the cabins will be able to prepare their other meals in the individual cabin kitchens. Presently, the cabins are advertised as having running water during the months of May through November. ([www.greatnorthernvacations.com/Lodging-.html](http://www.greatnorthernvacations.com/Lodging-.html), viewed Sept. 14, 2018.) However, the Surprenants state the cabins are plumbed to provide four season accommodations (R. Falla Letter, Sept. 13, 2018), as opposed to the three season plumbing accommodations presently offered.

The Surprenants' proposal to continue to use the reconstructed Chesuncook Lake House to serve overnight guests, including through the provision of meals, is a continuation of a legally existing, nonconforming use of the Lake House and the property. Even if the new Lake House itself does not provide lodging, its operation as part of a facility that provides lodging and meals to overnight guests is consistent with the grandfathered use of the property.

As explained in Findings of Fact and Conclusions #3 below, the proposal to sell meals and fuel to the general public is not a continuation of a legally existing, nonconforming use of the Lake House or the property. As a result, the Commission concludes the proposed use of the reconstructed Lake

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<sup>2</sup> A "commercial sporting camp" is defined in statute as "a building or group of buildings devoted primarily to the offering of primitive lodging facilities for a fee to persons primarily in pursuit of primitive recreation or snowmobiling." 12 M.R.S. § 682(14); see also Ch. 10, sec. 10.02(34) (defining commercial sporting camp).

<sup>33</sup> A "recreational lodging facility" is defined in the Commissions standards as: "Site improvements, a building or group of buildings, or any part thereof, used, maintained advertised or held out to the public as a place where sleeping accommodations are furnished to the public for commercial purposes. Recreational lodging facilities primarily cater to recreational users who engage in recreation activities that are primarily natural resource-based. . . ." These facilities are further defined to include, among a range of development, commercial sporting camps, rental cabins, lodges, hotels, motels, and inns. Ch. 10, sec. 10.02(174).

House satisfies the standards governing nonconforming uses, subject to compliance with Conditions 10 and 11.

3. *Expansion or Extension of a Nonconforming Use*

In addition to serving overnight guests, the Surprenants propose to serve meals to members of the general public who are not overnight guests and sell fuel to members of the general public as well. The Surprenants state similar services were provided to the public at the Chesuncook Lake House prior to the fire. The Facebook page for the Lake House notes that over 100 lunches were served per day to customers during the busier times of the snowmobile season and advertises the sale of gas to all snowmobilers and any other member of the public.

The sale of meals and gas to the public was not part of the traditional operation of the Chesuncook Lake House and, as a result, is not a legally existing, nonconforming use (i.e., is not a grandfathered use). Additionally, the Surprenants never sought or obtained a permit to extend or expand the operations of the Lake House to include these activities as required by Ch. 10, sec. 10.11,D,1. These land use activities were not legally existing and are not allowed land activities within all of the existing zoning subdistricts in which the Lake House is located.

For the sale of meals or fuel to the public to continue at the reconstructed Lake House, the Applicants must comply with the applicable legal requirements. To do so, the property must be rezoned to a subdistrict that allows the sale of meals and fuel to the public from a lodging facility like the Lake House. This has been discussed with the Applicants since April 2018. A recreational lodging facility that sells meals and fuel to the public may be allowed by special exception in the Recreation Facility Development (D-RF) subdistrict. (Ch. 10, sec. 10.21,J,3,d,1.)

Further discussion and analysis follows.

a. *Operation of the Chesuncook Lake House at the time of the fire was not consistent with its traditional, grandfathered operation*

The Surprenants state the operation of the Chesuncook Lake House at the time of the fire “is the same operation they purchased from Bert and Marguerite McBurnie.” (R. Falla letter, Sept. 12, 2018 at 2.) Review of the record does not support this statement.

i. *Sale of fuel to public*

The Commission staff have review the application and record materials to find evidence that the sale of fuel at the Chesuncook Lake House to the public, as opposed to overnight guests, was a part of the traditional, grandfathered use of the Lake House or the Lake House property.

(a) *Possible snowmobile fuel sales*

The McBurnies closed the Chesuncook Lake House during the winter. As a result, they were not selling fuel to snowmobilers from the Lake House.

The Surprenants included an undated brochure prepared by the McBurnies with their application titled, “Snowmobiling and Ice Fishing: The Chesuncook Lake Area.” (R. Falla Letter, Sept. 3, 2018,



Attachment 2.) The brochure reflects the early evolution of snowmobiling in the area. In it, the McBurnies provide directions to cabins they own in Chesuncook Village. These cabins were not located on the Lake House property. The McBurnies instructed guests to bring their own gas, but noted they could provide fuel if prior arrangements were made with them. The brochure contains no mention of the Lake House. This brochure is evidence that the Lake House was closed during the winter and not the site of fuel sales to snowmobilers. It also is evidence that the McBurnies would provide fuel to guests staying at other properties they owned in the village. The brochure does not indicate the McBurnies were engaged in public fuel sales from any location in the village. In sum, evidence in the brochure that the McBurnies provided fuel to overnight guests at cabins somewhere else in the village while the Lake House was closed in the winter, does not support the claim that public fuel sales at the Lake House is a grandfathered activity.

*(b) Possible vehicle fuel sales*

Road access to Chesuncook Village is relatively new. A 2000 brochure prepared by the Surprenants and included in the application for DP 4254-B states: "Still inaccessible by automobile we rely upon boat, float-plane, or a 4 mile overland ski or hike for our transportation needs." The Surprenants state in their submissions that the McBurnies traditionally sold fuel to people traveling to and through the village. (See, e.g., R. Falla Letters, Sept. 3 and 12, 2018.) The lack of road access indicates the public was not traveling to the village by car or truck and that the McBurnies were not engaged in public fuel sales for these types of vehicles.

*(c) Possible boat fuel sales*

Although located close to the shore of Chesuncook Lake, the Lake House property has no frontage on the Lake. Nothing in the record indicates the McBurnies ever operated a marina. Nothing in the record indicates the McBurnies advertised public fuel sales to boaters on the Lake or engaged in any such sales, beyond what would have been incidental to their overnight lodging business.

*(d) Possible incidental fuel sales*

Based on its general understanding of traditional commercial sporting camps and similar facilities that operated self-sufficiently far from the services provided in town, the Commission finds it likely the McBurnies occasionally sold fuel they had on hand to those travelling to or passing through Chesuncook Village. This type of fuel sales, incidental to the primary business of serving overnight guests, is different than an active effort to advertise or sell fuel to the general public. Incidental fuel sales to the public, if it occurred, is not sufficient to establish public fuel sales a legally existing, nonconforming use of the Lake House or Lake House property.

The Commission finds the sale of fuel to the general public was not part of the traditional operations of the Lake House or the property.

*ii. Sale of meals to public*

At the time of the fire, hundreds of meals were sold to members of the public who traveled to the Lake House by snowmobile. Based on conversations with Mr. Surprenant, the Lake House appears to have been closed outside of the snowmobile season, although the record is not clear on this point.

When operated by the McBurnies, the Lake House was closed during the winter months and, therefore, not selling meals to snowmobilers. As noted above, vehicular travel to the Lake House was difficult, if not impossible, until relatively recently. Boat and float plane were the primary means of access. Promotional materials prepared by the McBurnies indicate the boat ride from the launch at the south end of the Lake, where they would pick up guests, was 35 minutes. (R. Falla letter, Sept. 3, 2018, Attachment 3.) While it is likely the McBurnies sold some meals to individuals who were not guests at the Lake House and happened to be in the area, given the location and relative inaccessibility of the Lake House during the months the facility traditionally was open, these sales were incidental to the McBurnies' business of serving overnight guests. Incidental meal sales to the public, if it occurred, is not sufficient to establish public meal sales a legally existing, nonconforming use of the Lake House or Lake House property.

The Commission finds the sale of meals to the general public was not part of the traditional operations of the Lake House or the property.

*b. Evolution of the Chesuncook Lake House business and the need to rezone the property to comply with land use standards*

Sometime after purchasing the Chesuncook Lake House, the Surprenants sought to capitalize on the increasing popularity of snowmobiling. As part of this effort, they opened the Lake House in the winter and focused on serving individuals who traveled to the Lake House for the day, and not just to overnight guests. This involved selling meals to the general public and selling fuel. As the Surprenants note in their submission, public fuel sales were an important part of helping snowmobilers reach and then return from the village. (R. Falla Letter, Sept. 12, 2018 (noting the Lake House is located in a "remote area" and the need to be able to refuel a snowmobile to travel in this area).)

The Chesuncook Lake House has been a legally existing, nonconforming overnight lodging facility for decades and was at the time of its purchase by the Surprenants. The Surprenants expanded and extended the grandfathered operations that had focused on serving overnight guests to also serve members of the general public. Instead of serving six to ten guest a day who lodged at the Lake House, as had the McBurnies, at the time of the fire the Surprenants were serving over 100 guests per day who traveled to the Lake House by snowmobile just for the day, selling meals and potentially fuel to these visitors.

The extension or expansion of a nonconforming use requires a permit from the Commission. This ensures that the impacts associated with the extension or expansion may be considered, along with the zoning. The Commission's review and consideration of whether land use activities are allowed in a particular zoning subdistrict enables the Commission to ensure activities are compatible with neighboring uses and that they will not have an undue adverse impact on other activities in the area or on the environment.

The sale of meals and fuel to the public from lodging facilities like the Lake House is not allowed in the zoning subdistricts in which the Lake House is located. Although not grandfathered and not allowed, the Surprenants propose the sale of meals and fuel to the public, in addition to serving overnight guests. For the proposed activity to comply with the Commission's Chapter 10, *Land Use Districts and Standards*, the Lake House property must be rezoned to a subdistrict that allows this activity and the Applicants must obtain any necessary permit authorizing the activity in the zone.

The Commission concludes the proposed use of the reconstructed Chesuncook Lake House satisfies the standards governing the continuation of legally existing, nonconforming uses, provided use of the Lake House is limited to serving overnight guests as provided in Condition 10. Before the Applicants sell meals or fuel to the public, they must comply with the Commission's standards by rezoning the property to a zoning subdistrict that allows these activities and obtain any necessary approvals as provided in Condition 11.

### 3. *Overall Proposal*

If carried out in compliance with the Conditions below, the proposal will meet the criteria for approval in Chapter 10, section 10.11,B,1 regarding nonconforming structures and nonconforming uses, as well as the criteria for approval, section 685-B(4) of the Commission's Statutes, 12 M.R.S.

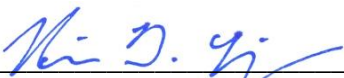
**Therefore, the Commission, through its staff, approves the application for Amendment G for Development Permit DP 4254 submitted by David and Luisa Surprenant and Chesuncook LLC, as proposed, with the following conditions:**

1. Prior to commencing the permitted activities, the Permittee, or the designated agent acting on behalf of the Permittee, must contact the Commission staff and notify them of the estimated date construction work will start. Notice may be provided in writing, in person, by email, or by calling. If you leave or send a message, please include your full name, telephone number, permit number, and the date the work will start.
2. Prior to commencing the permitted activities, the Permittee, or the designated agent acting on behalf of the Permittee, must provide a copy of the permit, including its attached conditions, to contractors that will be performing work or will be responsible for work at the site.
3. The enclosed permit certificate must be posted in a visible location on the subject property immediately after receipt and during development of the site and construction of the structures and activities approved by this permit.
4. Construction activities authorized in this permit must be substantially started within 2 years of the effective date of this permit and substantially completed within 5 years of the effective date of this permit. If such construction activities are not started and completed within this time limitation, this permit shall lapse and no activities shall then occur unless and until a new permit has been granted by the Commission.
5. The Chesuncook Lake House shall not have more than two bedrooms, as outlined in the current HHE-200 form submitted with the application unless the Permittee submits to the Commission an updated HHE-200 form for additional bedrooms.
6. All exterior lighting must be located and installed to illuminate only the target area to the extent possible. Exterior lighting must not produce a strong, dazzling light or reflection beyond lot lines onto neighboring properties, water bodies, or roadway to impair driver vision or to create nuisance conditions.

7. Clearing and construction activities, except those necessary to establish sedimentation control devices, shall not begin until all erosion and sedimentation control devices (including ditches, culverts, sediment traps, settling basins, hay bales, silt fences, etc.) have been installed and stabilized. Once in place, such devices shall be maintained to ensure proper functioning. All temporary sedimentation and erosion control devices shall be removed after construction activity has ceased and a cover of healthy vegetation has established itself or other appropriate permanent control measures have been effectively implemented. Permanent soil stabilization shall be completed within one week of inactivity or completion of construction.
8. Once construction is complete, the Permittee shall submit a self-certification form, notifying the Commission that all conditions of approval of this permit have been met, and that the permitted development was constructed in accordance with the proposal as set forth in the application and supporting documents and approved in this permit. The Permittee shall submit all information requested by the Commission demonstrating compliance with the terms of this permit.
9. The Permittee shall secure and comply with all other applicable licenses, permits, authorizations and monitoring requirements of all federal, state and local agencies including, but not limited to, the Maine Department of Health and Human Service's Division of Environmental Health's, Subsurface Wastewater Unit and Health Inspection Program.
10. The Permittee may continue the legally existing, nonconforming use of the Chesuncook Lake House as part of an overnight lodging facility that serves overnight guests. The Permittee shall not sell fuel or meals to the general public (i.e., individuals who are not overnight guests at the facility) until the requirements of Condition 11 are satisfied.
11. Prior to selling fuel or meals to the general public (i.e., individuals who are not overnight guests at the facility) the Permittee shall rezone the property to a subdistrict that allows these activities at the lodging facility and obtain a permit or permit amendment authorizing this use of the Lake House and the property.
12. All conditions of Development Permit DP 4254, as amended, shall remain in effect except as altered by this Amendment G.

This permit is approved upon the proposal as set forth in the application and supporting documents, except as modified in the above stated conditions, and remains valid only if the Permittee complies with all of these conditions. Any variation from the application or the conditions of approval is subject to prior Commission review and approval. Any variation undertaken without Commission approval constitutes a violation of Land Use Planning Commission law. In addition, any person aggrieved by this decision of the staff may, within 30 days, request that the Commission review the decision.

DONE AND DATED AT BANGOR, MAINE, THIS 18th DAY OF SEPTEMBER, 2018.

By:   
Nicholas D. Livesay, Executive Director

## **Appendix A - Administrative History<sup>4</sup>**

1. Prior to September 23, 1971, the lot was developed with a 45-foot by 98-foot principal structure (Chesuncook Lake House) served by a pressurized wastewater disposal system, a 50-foot by 60-foot barn, a workshop, a generator shed, and a fuel storage shed.
2. Development Permit DP 4254, issued to Bert W. McBurnie on May 18, 1994, authorized the removal of the 50-foot by 60-foot barn and the construction of a 24-foot by 50-foot storage building #1.
3. On February 02, 1999, David D. and Luisa Surprenant acquired Lot 20.
4. Amendment A to Development Permit DP 4254, issued to David and Luisa Surprenant on September 18, 2000, transferred the permit to reflect the new ownership and authorized the construction of a 20-foot by 40-foot two story addition #1 onto the Chesuncook Lake House.
5. Amendment B to Development Permit DP 4254, issued to David and Luisa Surprenant on March 07, 2001, authorized the construction of three, 20-foot by 20-foot rental cabins with lofts on post foundations to be served by a new combined sewage disposal system.
6. Amendment C to Development Permit DP 4254, issued to David and Luisa Surprenant on September 20, 2002, authorized the construction of an 18-foot by 30-foot pole barn for hay storage.
7. Amendment D to Development Permit DP 4254, issued to David and Luisa Surprenant on February 21, 2003, authorized a time extension for the construction of the three, 20-foot by 20-foot rental cabins with lofts and the new combined sewage disposal system.
8. Amendment E to Development Permit DP 4254, issued to David and Luisa Surprenant on August 12, 2003, authorized the construction of a 10-foot by 11-foot attached screen porch onto the existing workshop.
9. Amendment F to Development Permit DP 4254, issued to David and Luisa Surprenant on July 14, 2004, authorized the reconstruction and expansion of open, screened, and living area porches onto the Chesuncook Lake House. Additionally, the permit authorized a 24-foot by 34-foot addition #1 onto storage building #1, and after the fact approval for patio additions onto the Chesuncook Lake House, a 7-foot by 10-foot greenhouse and a 13-foot by 19-foot woodshed.
10. All existing structures were set back at least 150 feet from the normal high water mark of Chesuncook Lake, at least 75 feet from Main Street and Lake Street, and 25 feet from property lines except for the Chesuncook Lake House, which was setback 143 feet from the normal high water mark of Chesuncook Lake.

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<sup>4</sup> Information presented in the Administrative History is a summary only and may lack specific details of previously permitted activities. A copy of a particular permit action, containing a complete and more detailed description of activities authorized under that action, may be obtained through requests in writing to: Maine Land Use Planning Commission, 22 State House Station, Augusta, Maine 04333.