



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

JANET T. MILLS
GOVERNOR

NICHOLAS D. LIVESAY
EXECUTIVE DIRECTOR

**COMMISSION DECISION
IN THE MATTER OF**

David and Luisa Surprenant
(Commission-initiated)

Finding of Fact and Decision

ZONING PETITION ZP 774

The Maine Land Use Planning Commission (LUPC or Commission), at a meeting of the Commission held January 10, 2019 at Brewer, Maine, after reviewing the rezoning materials and supporting documents for Zoning Petition ZP 774, review agency and staff comments, public comments and other related materials on file, and pursuant to 12 M.R.S. Sections 681 *et seq.* and the Commission's standards and rules, finds the following facts:

- Petitioner:* Land Use Planning Commission
18 Elkins Lane, 22 State House Station
Augusta, Maine 04333
- Land Owner:* David and Luisa Surprenant
HC 76 Box 656
Greenville, Maine 04441
- 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
- Lot Size:* 3.5 acres
- Current Zoning:* Accessible Lake Protection (P-AL) Subdistrict
Great Pond Protection (P-GP) Subdistrict
Unusual Area Protection (P-UA) Subdistrict
- Proposed Zoning:* Recreation Facility Development (D-RF) Subdistrict
- 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

8. On September 18, 2018, the Commission issued development permit DP 4254-G to David and Luisa Surprenant (the Surprenants) and Chesuncook, LLC. The permit authorizes reconstruction of the Chesuncook Lake House (also referred to as the Lake House), which had been destroyed by fire in March 2018. The permit also authorizes the enclosure of the existing porch on each of the three existing rental cabins and the addition of an entrance porch onto each cabin. The permit provides that before the permittees sells gas or meals to the general public the property where the Lake House is located must be rezoned to a subdistrict that allows this activity.
9. On October 10, 2018, the Commission voted to initiate rezoning of the approximately 3.5-acre lot owned by the Surprenants where the Lake House is located (the Lake House lot) to a D-RF subdistrict.
10. Public notice of the Commission's decision to initiate rezoning of the Lake House lot was made as required under Chapter 4 of the Commission's rules and mailed on October 12, 2018.
11. Five members of the public requested a public hearing on the proposed rezoning, obligating the Commission to hold a hearing. *Rules of Practice*, 01-672 C.M.R. ch. 4, sec. 4.05(5) (last revised Oct. 18, 2013). Public notice of the hearing was made as required under Chapter 4 and the public hearing was held on November 14, 2018. The public comment period closed on November 26, 2018 and the rebuttal period closed on December 3, 2018.

Project Information

12. Proposed Zoning. The Lake House lot 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 lot was zoned P-UA in 1979 and P-AL in 1990. The Commission proposes to rezone the approximately 3.5-acre Lake House lot from the overlapping P-AL, P-GP, and P-UA subdistricts to a Recreation Facility Development (D-RF) subdistrict.
13. The purpose of the rezoning is to accommodate operation of the Chesuncook Lake House as an allowed use. The Lake House is a legally existing, nonconforming commercial lodging facility, however, not all of the activities at the facility are grandfathered. In reviewing the application to reconstruct the Lake House (DP 4254-G), the Commission, through its staff, concluded the Lake House business had evolved beyond the grandfathered uses of the property. Specifically, the operations of the facility, which traditionally focused on serving overnight guests, had been extended or expanded to include the sale of gas and meals to members of the general public. Instead of being an incidental or limited activity, providing these services to the public had become a central part of the business. Additionally, for public fuel sales to have been grandfathered this activity not only would have to have been a traditional activity at the Lake House, but also an activity that legally existed. Presently the

Surprenants are working with the Office of the State Fire Marshal to ensure fuel is properly stored and dispensed on-site and have stated they are committed to operating in compliance.

14. Within the D-RF subdistrict, recreational lodging facilities that serve overnight guests, as well as sell meals and gas to the general public, are an allowed use. The proposed rezoning is intended to accommodate the Lake House so that it may operate as a conforming use in compliance with the Commission's Land Use Districts and Standards.
15. Current Conditions and Recreation Lodging Facility Factors. Information relevant to the categorization of the Chesuncook Lake House, Section 10.27, Table A:
 - A. *On-site recreation activities, features, and/or services*. The Chesuncook Lake House is an existing, commercial lodging facility, consisting of the Lake House, three cabins, and numerous out buildings. The site is relatively small, approximately 3.5 acres, and largely cleared. The existing development is only partially screened from the lake by the limited vegetation along the shore of the lake on land owned by the State. There are few on-site recreation activities at the facility. Advertisement for the Lake House cabins indicates overnight guests have access to canoes, kayaks, and motorboats for use on the lake. A shuttle service also is offered that transports the vehicles of individuals on certain canoe trips. Prior to the fire, food was served in the Lake House, as well as outside, including during the winter months when the number of customers is greatest. The outdoor gatherings when food was provided in the winter months created some noise. The Surprenants have stated a desire to continue to provide food at the reconstructed Lake House as they did prior to the fire, both to over-night guests and other visitors. The Lake House is next to Chesuncook Lake, although the Lake House lot does not have any frontage on the lake. Use of the shore by the Surprenants requires agreement of the underlying land owner, which generally is the State and in some areas Piscataquis County.
 - B. *Utilities*. All power on the Lake House lot is self-generated on the property. The lot is not connected to electric utilities.
 - C. *Floor area of principal buildings*. There are four principal buildings at the Lake House facility, the Lake House and the three cabins. The floor area of the new Lake House, as authorized in DP 4254-G, is 5,264 square feet (4,368 sq. ft. first floor; 896 sq. ft. second floor). The floor area of each individual cabin, as authorized in the same Amendment G, is 984 square feet.¹ The total floor area of the three cabins combined is 2,952 square feet. The total floor area of all four principal buildings is 8,216 square feet.

Prior to the March 2018 fire, the total floor area of the principal buildings at the facility was 10,328 square feet (Lake House, 7,520 sq. ft. (estimated); each cabin, 936 sq. ft.).
 - D. *Footprint of clearing within 250 feet of Chesuncook Lake*. Based on review of aerial imagery and use of GIS measuring tools, there is approximately 65,000 square feet of clearing on the Lake House lot within 250 feet of Chesuncook Lake.
 - E. *Retail*. The Surprenants state retail sales at the Lake House, once reconstructed, initially will be limited to a display case by the register. If expanded in the future, the area devoted to retail sales would not exceed 500 square feet.

¹ DP 4254-G list the floor area of each cabin as 936 sq. ft. This is the square footage of each cabin as built, prior to the addition authorized in amendment G. As authorized in amendment G, each cabin has 984 square feet of floor area.

- F. *Dining amenities.* The subsurface wastewater disposal system for the reconstructed Lake House is designed to accommodate up to a 30-seat dining hall that serve one meal per day. The Surprenants state they will serve lunch during the winter months and an evening meal during the warmer months. These meals will be available to overnight guests and the general public. Overnight guests will be on their own for the other meals. The cabins are equipped with kitchens. The Surprenants state the cabins are capable of providing four season accommodations and are plumbed accordingly.
- G. *Fuel sales.* The Surprenants propose to sell gas to overnight guests and the public from a single pump. Gas would be sold to anyone traveling to and through Chesuncook Village, including to snowmobilers and fishermen.
- H. *Recreation amenities.* During the summer, canoes, kayaks, and motorboats are available for guests staying at the facility.
- I. *Overnight capacity.* All lodging for guests is provided in the Lake House and the three cabins. The subsurface wastewater disposal system for the Lake House is designed for a maximum of two bedrooms. A separate subsurface wastewater disposal system serves the three cabins and is designed to accommodate each cabin having two bedrooms. The Surprenants advertise the cabins as sleeping six to eight guests each. The stated capacity of the Pine Stream Cabin and West Branch Cabin is six each; the stated capacity of the Caucomgomoc Cabin is eight. The Surprenants state the bedrooms in the Lake House primarily will be used by family members, but may accommodate no more than three paying guests. The overall guest capacity at the facility is 23 (20 in the cabins and three in the Lake House). If three guests are accommodated in one of the two rooms in the Lake House, the second room could be used by the Surprenant family, increasing the maximum overnight capacity of the facility to more than 23.

16. Site Location and Access:

- A. *Vehicle access.* The Lake House lot is located approximately 50 miles northeast of the Moosehead Lake region and approximately 60 miles northwest of Millinocket. Chesuncook Village is accessible by private land management roads. The Surprenants recommend accessing the Lake House by boat, floatplane, or snowmobile because of the road conditions.
- B. *Utility access.* There are no public utilities extending to the Lake House lot.

17. Soil Suitability: Soils within the area proposed for rezoning have been identified by NRCS Soil Survey as Telos-Chesuncook-Ragmuff association, 3-15% slopes, very stony and somewhat poorly drained; and Monarda-Telos complex, 0 to 8 percent slopes, very stony and poorly drained, and rated as having low suitability for development. In addition, the soil description included in the HHE-200 for the reconstructed Lake House indicates that the soils near the proposed development were composed of gravely loamy sand to a depth of 40 inches, and fine sandy loam from 40 to 50 inches. The soil was classified as a profile 7 (15 or more inches of glacial till overlaying lacustrine or other more compact depositional material), condition C (moderately well drained), with 0% slope.

18. Wastewater Disposal: The facility is served by a drilled well on-site and two separate subsurface wastewater disposal systems. One system serves the Lake House and the other serves the three cabins.

19. Rivers, Lakes, Streams and Wetlands: No rivers, streams, or mapped wetlands are located on the Lake House lot. The lot is located next to Chesuncook Lake, but does not have any frontage on the lake.
20. Land Division History: In 1986, Bert and Marguerite McBurnie purchased the Lake House and other buildings from the State of Maine (Bk. 325, Pg. 599). In 1993, the McBurnies purchased the 3.5-acre lot under the Lake House from the State (Bk. 915, Pg. 338). In 1999, David and Luisa Surprenant purchased the Lake House, the associated buildings, and the Lake House lot from Marguerite McBurnie (survivor) (Bk. 1179, Pg. 256).
21. Existing Development in the Area: Chesuncook Village dates back to the mid-1800s. The original Lake House was constructed in 1863. Today, in addition to the Lake House facility, the village largely consists of residential camps. These camps are most commonly used on a seasonal basis, with winter use being the least frequent.
22. Anticipated Impacts on Existing Uses and Resources:
 - A. *Traffic.* The Surprenants propose to continue to operate the Lake House in the same general manner as they have operated it in the past. They have not proposed an increase in overnight capacity. They may accommodate some guests in the summer months who would arrive by car/truck, boat, or seaplane, but the majority of traffic to the facility is anticipated to be in the winter by snowmobile. The time of year when the Lake House is busier – the winter months – is also the time of year when camps in the surrounding village are used less frequently. Overall, traffic impacts are not anticipated to change from recent levels and the higher traffic periods are anticipated to continue to dovetail with the slower periods in the village, remaining compatible with the surrounding residential use.
 - B. *Noise.* The Surprenants propose to continue operation of the Lake House in the same general manner as they have in recent years. As a result, noise levels are not anticipated to change at the Lake House as a result of rezoning. Some noise is anticipated in conjunction with activities such as outdoor gatherings when guests are served food. The rental of motorized boats also would generate some noise. Although not a factor when categorizing the Lake House as recreational lodging facility, guests traveling to the Lake House also will generate noise. As noted in the paragraph above, travel to the Lake House is anticipated to be heavier in the winter months when guests visit by snowmobile.
 - C. *Economic.* The Lake House is a commercial facility open to the public. It is anticipated that the rezoning would have a positive economic impact on the region by helping facilitate the legal operation of this facility as it serves both overnight guests and day visitors.
 - D. *Fish and Wildlife.* The Maine Department of Inlands Fish & Wildlife (MDIFW) reviewed the rezoning materials and expressed no concerns with the proposed rezoning.
 - E. *Historic Resources.* The Maine Historic Preservation Commission (MHPC) reviewed the rezoning materials and commented that the Lake House lot is located within the boundary of the Chesuncook Village Historic District, as listed in the National Register of Historic Places on April 11, 1973. Based on the information reviewed, MHPC concluded that no historic properties (architectural or archeological) will be adversely affected by the proposed rezoning. MHPC further commented that the finding is conditional on the understanding that future development on the rezoned parcel will be designed and implemented in a manner that is compatible with the historic character and defining features of the historic district.

Governmental and Public Comments

Governmental Organizations

23. *MDIFW and MHPC*. These two state agencies commented on the proposed rezoning; their comments are summarized in Finding #22, above.
24. *Maine Bureau of Parks and Lands (MBPL)*. MBPL commented: “The Bureau of Parks and Lands understands that the Land Use Planning Commission initiated a rezoning of the Chesuncook Lake House property, which property was formerly owned by the State of Maine, Bureau of Parks and Lands, and is now owned by David and Luisa Surprenant [sic]. In the context of this rezoning, questions may arise regarding the sporting camp language found in the bill of sale to the McBurnies from the State for the Chesuncook Lake House.

Based on available information, the bureau interprets the sporting camp language found in the chain of title to the Chesuncook Lake House property to include the use(s) of the property allowed by the prospective rezoning. The Bureau takes no position, however, on the merits of the rezoning petition pending before the Land Use Planning Commission.”

25. *Piscataquis County Commissioner’s Office (PCCO)* The PCCO commented that it fully supports the proposed rezoning and that the County Commissioners hope that by approving the proposed rezoning, the LUPC will allow the Chesuncook Lake House to rebuild and continue operating as it had been before the tragic fire.

Public Hearing Comments

26. The Surprenants, through their counsel, stated that they were actively cooperating with the rezoning process, and that the purpose of the rezoning – to allow the facility to continue to sell meals and fuel to the public – had broad public support. The Surprenants are in favor of accomplishing this goal by attaining compliance with applicable laws and regulations.
27. A member of the Chesuncook Village Association (CVA), speaking in his individual capacity and not on behalf of the association, stated that he, his partner, and some other village association members were not opposed to anyone making a living, but are opposed to development ambitions that lie outside the village association charter. He read the purpose statement of the charter: “To strive to make Chesuncook Village a model wilderness community by protecting and perpetuating the rural, historic and primitive character of a life style which exists and has existed here since the early eighteen hundreds. Also, to represent our community in all matters involving local, state and federal agencies, and the public in general.” He requested the Commission constrain the Lake House’s current and future operations by issuing a restricted zoning permit that supports and safeguards the mission of the CVA and provides needed latitude for the current owners to operate the facility as a wilderness sporting camp.
28. Four outdoor recreation enthusiasts testified that the sale of fuel and meals to the public is a valuable service and should be allowed to continue.
29. One local resident commented that there was not any trash around the facility in the spring, such as beer cans, and so he felt the Surprenants were good stewards of the property.

Written Public Comments

30. The agenda for the Commission's monthly meeting in October, published October 4, 2018, identified consideration of whether to initiate rezoning of the Lake House lot as an item for the October 10 meeting. After publication of this agenda item and through the close of public hearing record for ZP 774, the Commission received a range on comments pertaining to the proposed rezoning, as well as to operation of the Lake House more generally. The Commission received:
- A. General comments, not specific to the rezoning, in support of the continued operation of the Lake House, including the sale of food and gas to the general public.
 - B. Comments from the property owners in Chesuncook Village and family members of property owners. These comments reflected a range of views, with some commenters expressing differing levels of support for the rezoning and others opposing the rezoning. Those expressing support for rezoning, tended to favor continued operation of the Lake House in a manner similar to pre-fire operations, but expressed concerns about any future expansion in light of the remote setting and historic nature of the village. For example, the president of the village association wrote to express that his impression, from polling camp owners within 1,000 feet of the facility, is that these camp owners agree the proposed rezoning is a good idea; they believe having the facility in compliance with LUPC requirements regarding the sale of gas and food makes sense; and they understand further changings would fall under LUPC review and, through the permitting process, they would have the ability to provide comment on proposed changes. Those opposing the rezoning expressed concern that the proposed change would only benefit the landowners and potentially do irreparable harm to the surrounding properties, lake and wildlife.
 - C. Comments from individuals with knowledge of historic operations of the Lake House, through ownership of the Lake House, working at the Lake House, visiting the Lake House or village, or living in the village. These comments commonly addressed individual's recollection of the Lake House business prior to the Surprenants' ownership, including whether food and gas were sold to the public.
 - D. Comments from the Surprenants, through their counsel. These comments support of ZP 744, outlining why the proposed rezoning meets the standards for approval. The comments also note: "The owners of the Chesuncook Village Lake House are pursuing all necessary approvals by the State Fire Marshal Office for code compliant reconstruction of the Lake House and for fuel storage and sales facilities to support motorized boaters in the summer and snowmobilers in the winter. The owners are currently working with the State Fire Marshal's Office to ensure that the reconstructed structure, dining area, and retail fuel operations will be compliant with all applicable standards." These comments echoed the statement made by the Surprenants' agent in the course of applying for DP 4254-G: "The Surprenants intend to continue to operate their business in a manner that complies with all applicable State standards." (R. Falla letter to N. Livesay re Reconstruction of Chesuncook Lake House (Sept. 13, 2018).)

Commission Review Criteria

31. Under 12 M.R.S. § 685-A(8-A) of the Commission's statutes and Section 10.08 of the Commission's Land Use Districts and Standards, a land use district boundary may not be adopted or amended unless there is substantial evidence that:

- A. The proposed land use district is consistent with the standards for district boundaries in effect at the time, the Comprehensive Land Use Plan and the purpose, intent and provisions of Chapter 206-A; and
 - B. The proposed land use district has no undue adverse impact on existing uses or resources or a new district designation is more appropriate for the protection and management of existing uses and resources within the affected area.
32. A proposed rezoning must be consistent with the Comprehensive Land Use Plan. 12 M.R.S. § 685-A(8-A)(A). The Commission's 2010 Comprehensive Land Use Plan (the CLUP) includes policies that speak to the location of development, protection of recreational resources, and the development of recreational facilities and uses:
- A. Provide for a sustainable pattern of development, consistent with historical patterns, which directs development to suitable areas and retains the principal values of the jurisdiction, including a working forest, integrity of natural resources, and remoteness.
 - B. Protect the values of the jurisdiction that provide residents and visitors with a unique array of recreational experiences, especially high-value natural resources and remoteness where they exist.
 - C. Encourage diverse, non-intensive and nonexclusive use of recreational resources and protect primitive recreational opportunities in certain locations.
 - D. Accommodate a range of recreational uses and facilities in appropriate locations, based on the level of use, size, scale and compatibility with existing recreational and non-recreational uses.
 - F. Consider traditional sporting camps as recreational and cultural resources, worthy of protection from incompatible development and land uses, and give special consideration to sporting camps in the Commission's development standards and in its review of rezoning petitions and development proposals within the immediate vicinity of a sporting camp.
 - G. Discourage the conversion or expansion of sporting camps located in remote locations to facilities or uses that would unreasonably impact the jurisdiction's natural resources or remote values.
 - H. Promote respect for and responsible use of private lands.

(CLUP Section 1.2, pp. 6, 17.)

33. Pursuant to Section 10.21,J,1 of the Commission's Land Use Districts and Standards the purpose of the D-RF subdistrict is "to allow for development of moderate intensity recreation facilities in locations that would not be suitable for other types of commercial development. Moderate intensity recreation facilities often rely on, and are compatible with, settings which are distant from existing patterns of development, but are relatively accessible to visitors. Such development may be appropriate in locations that provide access to recreational opportunities that are not overly sensitive to increased public use but are not present in developed areas. The D-RF subdistrict is designed to allow for the location of moderate intensity recreation facilities in areas that are distant from other development, but where the location of such a facility would; not unreasonably interfere with existing uses such as forestry and agriculture activities, fish and wildlife habitat or other recreation opportunities; and will not substantially increase the demand for public services in areas that are distant from existing patterns of development."

34. Pursuant to Section 10.08,B of the Commission's Land Use Districts and Standards, the review standards listed in Section 10.25,A must be considered in applying the statutory zoning criteria in 12 M.R.S. § 685-A(8-A) to proposed changes in subdistrict boundaries adjacent to lakes. Section 10.25, A of the Commission's Land Use Districts and Standards provides:

The standards set forth below must be met for all subdivisions and commercial, industrial, and other nonresidential structures and uses proposed on land adjacent to lakes. These standards must also be considered in applying the criteria for adoption or amendment of land use district boundaries, as provided in Section 10.08, to proposed changes in subdistrict boundaries adjacent to lakes.

In applying the standards set forth below, the Commission shall consider all relevant information available including the Maine Wildlands Lake Assessment Findings (Appendix C of this chapter), and relevant provisions of the Comprehensive Land Use Plan.

- A. *Natural and cultural resource values.* The proposal will not adversely affect natural and cultural resource values identified as significant or outstanding in the Wildland Lakes Assessment (Appendix C of this chapter);
- B. *Water quality.* The proposal will not have an undue adverse impact on water quality;
- C. *Traditional uses.* The proposal will not have an undue adverse impact on traditional uses, including without limitation, non-intensive public recreation, sporting camp operations, timber harvesting, and agriculture;
- D. *Regional diversity.* The proposal will not substantially alter the diversity of lake-related uses afforded within the region in which the activity is proposed;
- E. *Natural character.* Adequate provision has been made to maintain the natural character of shoreland;
- F. *Lake management goals.* The proposal is consistent with the management intent of the affected lake's classification; and
- G. *Landowner equity.* Where future development on a lake may be limited for water quality or other reasons, proposed development on each landownership does not exceed its proportionate share of total allowable development.

35. The facts are otherwise represented in the materials associated with Zoning Petition ZP 774 and supporting documents.

Based upon the above Findings and the following Analysis, the Commission Concludes:

Consistency with the Standards for District Boundaries

- 1. According to 12 M.R.S. § 685-A(8-A)(A) of the Commission's statute, a proposed rezoning must be consistent with the standards for district boundaries in effect at the time.
 - A. Section 10.21,J,1 of the Commission's standards establishes the purpose of the D-RF subdistrict is to allow for development of moderate intensity recreational facilities in locations that would not be suitable for other types of commercial development. Moderate intensity recreation facilities often rely on, and are compatible with, settings which are distant from existing patterns of development, but are relatively accessible to visitors. Areas that contain existing recreation facilities that meet the purpose and other provisions of the D-RF subdistrict are appropriate for inclusion in the subdistrict. (Section 10.21,J,2.)

- B. The Lake House is an existing facility with a long history. While different from many traditional recreational lodging facilities in that it is surrounded by a residential village, historically the Lake House has been a central part of the village. The village, including the Lake House, is distant from other existing patterns of development, but accessible to visitors. Access is easier for the general public in the winter months, which is when the Lake House is busier. In addition to snowmobiling, the location of the Lake House provides other recreational opportunities such as fishing, boating, and hunting. These activities coexist, without unreasonable interference, with surrounding residential and forestry activities.
- C. The Lake House lot would not be suitable for other types of commercial development. This is due, in part, to its distance from public services and other commercial development and its inclusion in a historic village in which it is surrounded by residential uses. The Lake House, as the Surprenants propose to operate it, would continue to be a moderate intensity facility, serving up to 23 overnight guests, while also accommodating family members and/or a small staff. In addition to serving overnight guests, the Surprenants propose to sell meals and fuel to members of the general public. By offering these services, and because the existing facility is only partially screened from Chesuncook Lake, the Lake House qualifies as a Level D expanded access recreational lodging facility. Such a facility may be allowed in the D-RF subdistrict by special exception.
- D. Therefore, the proposed D-RF subdistrict is consistent with the standard for district boundaries in effect at the time.

Consistency with the Comprehensive Land Use Plan

- 2. According to 12 M.R.S. § 685-A(8-A)(A), a proposed rezoning must be consistent with the Comprehensive Land Use Plan (CLUP). The CLUP, among other things, discusses providing for sustainable patterns of development that are “consistent with historical patterns,” and addresses the protection of recreational resources and the development of recreational facilities and uses to “provide residents and visitors with a unique array of recreational experiences,” “encourage diverse, non-intensive and nonexclusive use of recreational resources,” and “accommodate a range of recreational uses and facilities in appropriate locations.”
 - A. The proposed rezoning is intended to accommodate the Chesuncook Lake House, a lodging facility originally built in the 1800s, and enable the facility to operate as a conforming use. This facility, situated in a relatively remote location, is not only consistent with, but is also part of, the historical pattern of development. Chesuncook Village, of which the Lake House is a part, has been recognized since 1973 as a historic district on the National Register of Historic Places. The property proposed for rezoning to a D-RF subdistrict is unique in this regard.
 - B. Open to the general public, the Lake House is nonexclusive and provides visitors with access to a range of recreational resources for non-intensive uses, including for fishing, hunting canoeing, hiking, and snowmobiling. The proposed rezoning is a necessary step to accommodate the sale of gas and food to the general public (as opposed to serving just overnight guests) as a conforming use. Food and fuel have been sold to the general public at the Lake House in recent years, primarily to snowmobilers. These offerings make snowmobiling in the area accessible to wider range of members of the public, is consistent with the objectives of accommodating a range of recreational uses, and has proven compatible with other existing uses. In total and on balance, the proposed rezoning of the Lake House lot is consistent with the CLUP.

Consistency with Chapter 206-A

3. According to 12 M.R.S. § 685-A(8-A)(A), a land use district boundary may not be adopted or amended unless the proposed land use district is consistent with the purpose, intent and provisions of Chapter 206-A.
 - A. Title 12, Section 685-A(1) establishes the Commission zoning authority: “The [C]ommission, acting on principles of sound land use planning and development, shall determine the boundaries of areas within the unorganized and deorganized areas of the State that shall fall into land use districts and designate each area in one of the following major district classifications: protection, management and development.” Section 681 states the Legislature “finds that it is desirable to extend principles of sound planning, zoning and development to the unorganized and deorganized townships of the State” to, among other things, “encourage appropriate residential, recreational, commercial and industrial land uses.”
 - B. The Commission evaluated the proposed rezoning with respect to consistency with Chapter 206-A and principles of sound planning, zoning, and development. Having considered the location of the recreation lodging facility, the surrounding uses and resources, the type and intensity of the development the rezoning is intended to foster, the review of agency comments, and the record as a whole, the Commission concludes approval of the petition would be an act of sound land use planning. Therefore, the Commission concludes the proposed rezoning is consistent with the purpose, intent and provisions of Chapter 206-A, which cumulatively are designed to promote sound planning.

Impacts on Existing Uses and Resources

4. According to 12 M.R.S. § 685-A(8-A)(B), the proposed land use district can have no undue adverse impact on existing uses or resources.
 - A. The Chesuncook Lake House has existed in, and has been a part of, Chesuncook Village for many decades, with the lodging facility surrounded by residential uses. The lake-side village itself is relatively remote and bordered by forestland. When the previously permitted reconstruction of the Lake House is complete, the facility will have a maximum overnight lodging capacity of 23 guests. At maximum capacity, one room in the Lake House remains for the Surprenant family or facility staff. This present-day capacity is less than prior to the fire and in keeping with the historical capacity. For example, the 1972 National Register of Historic Places nomination form states the Lake House accommodated 15 guests at that time during the months of May through November (but not all the rooms were used); the Lake House was closed during the winter. What has changed since then is that the Lake House is now open during the winter months with the winter period being the busier time of year. During the winter the Lake House is predominantly visited for the day by individuals traveling by snowmobile. The residential camps in the village are used less frequently in the winter. A number of camp owners and village members provided comments to the Commission. While not uniform, the sentiment expressed by these commenters is that the Lake House as presently operated, including with food and gas sales to the general public, is compatible with the residential uses in the historic village; the Lake House should be operated in compliance with environmental and safety standards; and proposed future expansion should be carefully reviewed to evaluate compatibility with the surrounding village. Based on these factors and the record evidence, the Commission concludes that the proposed rezoning to a D-RF subdistrict, would not have an undue adverse impact on existing uses.

- B. The proposed rezoning would not have an undue adverse impact on existing resources. No new development is proposed and no concerns were identified by MDIFW about impacts to natural resources. Additionally, the Surprenants are working with the Office of the State Fire Marshal and have stated their commitment to complying with applicable standards. The MHPC also commented that the rezoning would not impact historic resources. Therefore, the Commission concludes rezoning to D-RF would not have an undue adverse impact on existing resources.

Consideration of Section 10.25.A

5. Section 10.25,A of the Commission's Standards must be considered in applying the criteria for proposed changes to subdistrict boundaries adjacent to lakes. The Commission has done so and the conclusions above remain unaltered. Further, the Commission concludes the proposed rezoning is consistent with the provisions of Section 10.25,A. Specifically:
 - A. The proposal is consistent with Section 10.25,A,1 in that proposed rezoning would not adversely affect the natural and cultural resource values of Chesuncook Lake identified as significant or outstanding as described in Appendix C of the Commission's Land Use Districts and Standards. (Chesuncook Lake has the following resource ratings: outstanding fisheries resources, outstanding wildlife resources, outstanding cultural resources, and outstanding physical resources.) Those ratings were assigned to the lake long after the Lake House was originally developed and no changes at the Lake House have been proposed that would affect those ratings. The proposed rezoning to a D-RF subdistrict, which does not involve any new development, would allow the existing recreational lodging facility to be re-designated as a conforming use and continue operating as it has in recent years. Additionally, as noted above, the proposed rezoning will not have an undue adverse effect on existing uses or resources; this directly relates to the protection of the natural and cultural resource values of the lake.
 - B. A new subsurface wastewater disposal system is being installed to serve the reconstructed Lake House (DP 4254-G) and a separate, existing system serves the three cabins (DP 4254-B). Additionally, the Surprenants are working with the State Fire Marshal's Office to ensure fuel stored and dispensed on site meets applicable standards. They have stated their commitment to complying with all applicable standards. No new activities are proposed in conjunction with the rezoning that would affect the water quality of Chesuncook Lake. The Commission concludes that the proposed rezoning is consistent with Section 10.25,A,2 and will not have an undue adverse impact on water quality.
 - C. The Commission considered the potential impacts of the proposed rezoning on all existing uses, including traditional uses, in the vicinity of the property (e.g., forestry, recreational, and residential) in applying the statutory review criteria discussed above. The proposal is consistent with Section 10.25,A,3 in that it would not have an undue adverse impact on the traditional uses in the area.
 - D. The proposal is consistent with Section 10.25,A,4 in that the proposed rezoning would not alter the diversity of lake-related uses on Chesuncook Lake. The same range of recreational opportunities that exist today will continue to exist after the rezoning.
 - E. Future development on the site would require permit review and be subject to various standards, such as density limitations and clearing standards, intended to address potential effects of development on the natural character of the shoreland. The proposed rezoning is consistent with Section 10.25,A,5.

- F. Chesuncook Lake is a Management Class 2 lake, an “accessible, undeveloped lake with exceptional values.” The Commission intends to conserve the special values of these lakes by significantly restricting the density and intensity of development within 500 feet of the lakeshore. No new development is proposed in conjunction with the rezoning, and density restrictions will remain in place once the Lake House lot is rezoned to D-RF. (See Section 10.21,J,3,g.) As noted above in the discussion of Section 10.25,A,1, the proposed rezoning will not have an adverse effect on Chesuncook Lake’s resource values. The Commission concludes the proposed rezoning is consistent with the management classification for the lake and with Section 10.25,A,6.
- G. Chesuncook Lake is Management Class 2 lake. These lakes are subject to density limitations. No new development is proposed as part of the rezoning. Any new development on the Lake House lot, or on any other lot within 500 feet of the lake, would be subject to the density provisions in the Commission’s standards. (See Section 10.21,J,3,g.) The proposed rezoning does not affect density calculations on property around the lake and is consistent with Section 10.25,A,7.

Therefore, the Commission concludes that the zoning petition is consistent with Section 10.25,A of the Commission’s Land Use Districts and Standards.

Final Conclusions

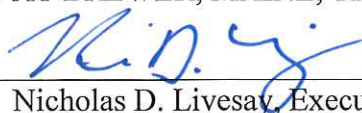
6. In summary, and for reasons explained above, the Commission concludes that the proposed rezoning of the 3.5-acre Lake House lot acres for operation of the Chesuncook Lake House and associated cabins as a Level D, expanded access recreational lodging facility:
- A. Is consistent with the standards for district boundaries in effect at the time;
 - B. Is consistent with the Commission’s 2010 Comprehensive Land Use Plan;
 - C. Is consistent with the purpose, intent and provision of Title 12, Chapter 206-A;
 - D. Will not have an undue adverse impact on existing uses or resources; and
 - E. Is consistent with the provisions of Section 10.25,A of the Commission’s Land Use Districts and Standards.

Therefore, the Commission approves the rezoning of the 3.5-acre Lake House lot owned by David and Luisa Surprenant in Chesuncook Township (T5 R13 WELS) from Accessible Lake Protection (P-AL) Subdistrict, Great Pond Protection (P-GP) Subdistrict, and Unusual Area Protection (P-UA) Subdistrict to Recreation Facility Development (D-RF) Subdistrict per the attached map.

In accordance with 5 M.R.S. § 11002 and Maine Rules of Civil Procedure 80C, this decision by the Commission may be appealed to Superior Court within 30 days after receipt of notice of the decision by a party to this proceeding, or within 40 days from the date of the decision by any other aggrieved person.

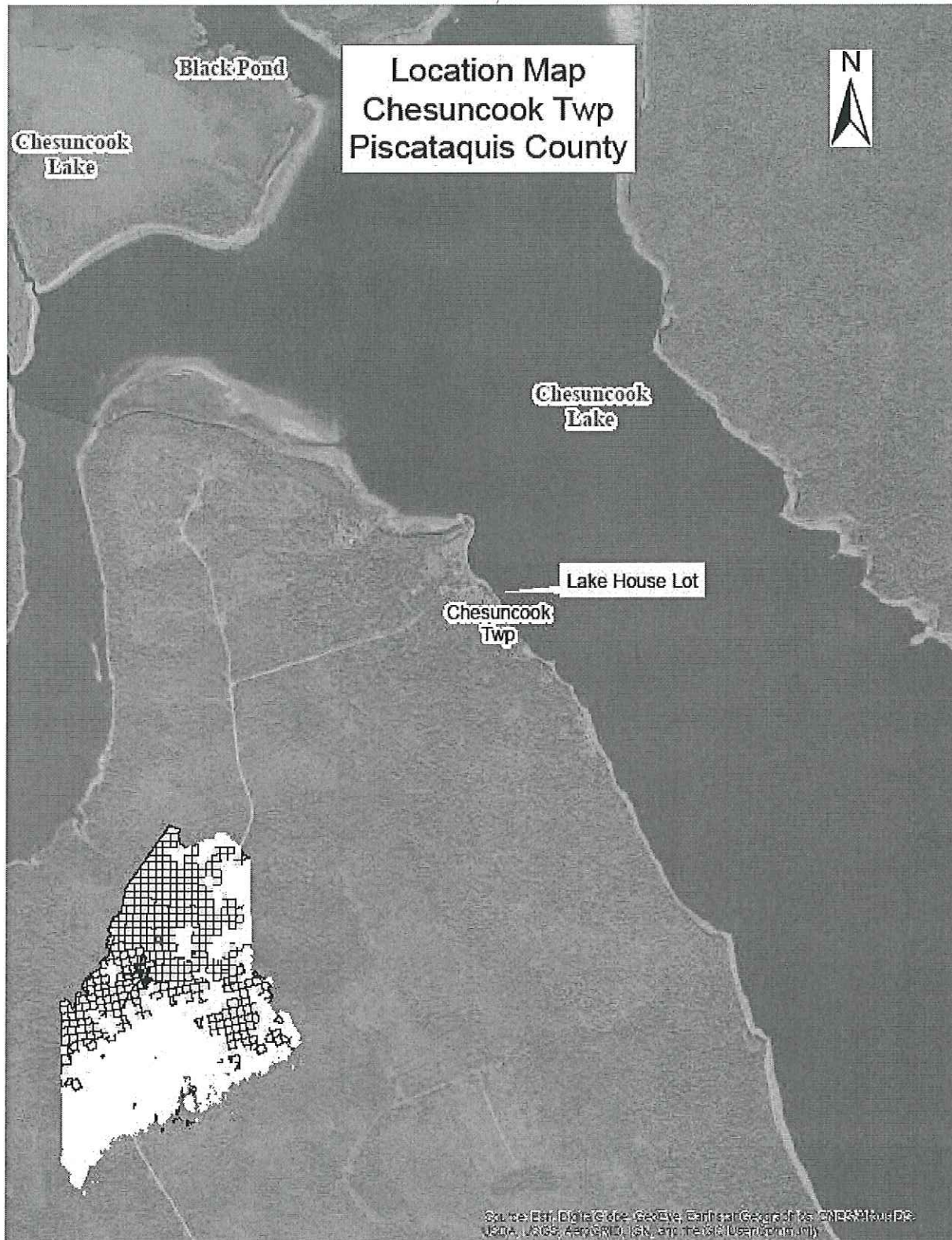
DONE AND DATED AT BREWER, MAINE, THIS 10th DAY OF JANUARY 2019.

By:




Nicholas D. Livesay, Executive Director

This change in subdistrict designation is effective on January 25, 2019.





Legend

 Lot Boundary (approx.)

**Area Proposed for Rezoning to D-RF
Lake House Lot
Chesuncook Twp**



0 50 100 200 Feet
