



STATE OF MAINE

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DEPARTMENT OF CONSERVATION
LAND USE REGULATION COMMISSION
18 ELKINS LANE – HARLOW BUILDING
22 STATE HOUSE STATION
AUGUSTA, ME 04333-0022



PATRICK MCGOWAN
COMMISSIONER

ELEVENTH PROCEDURAL ORDER IN THE MATTER OF ZONING PETITION ZP 707

PLUM CREEK MAINE TIMBERLANDS, L.L.C. AND PLUM CREEK LAND COMPANY

February 5, 2008

E. Bart Harvey, Chair and Presiding Officer

At the conclusion of the party hearings on January 25, 2008, counsel for the Commission invited Commission members to express their preference among three alternative approaches for conducting the work of the Commission subsequent to the adjournment of the hearing. These three alternatives were: (1) the Commission would proceed directly to an “up or down” vote on petitioner Plum Creek’s Concept Plan proposal as filed; (2) the Commission would allow Plum Creek the opportunity, should it so choose, to propose any amendments it considers appropriate to the Concept Plan proposal; or (3) the Commission would direct LURC staff and consultants to develop and present to the Commission for its consideration options that address whether and how the Concept Plan proposal could be amended in response to issues raised at the hearings. Each Commission member in attendance expressed a preference for the third alternative.

Counsel for the Commission also shared with the parties tentative ideas for post-hearing management of the record and briefing, and the Chair provided the parties the opportunity to submit, by 4:00 PM on January 30, 2008, written comments on any post-hearing procedural issues that it wished to raise at this time. Many of the parties have submitted such comments, and the Chair has reviewed and considered them in connection with this Order.

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POST-HEARING PROCESS GENERALLY

Consistent with the expressed wishes of Commission members, staff/consultants will evaluate whether and, if so, how the Concept Plan proposal could be amended to address issues raised at the hearings. Following this evaluation, staff and consultants will present options to the Commission for its consideration. The Chair notes substantial support for this approach in the parties’ comments. Staff will brief the Commission at its March 5, 2008 meeting on a proposed schedule and process that is consistent with this approach. Further, the Chair has directed staff/consultants to develop a proposed schedule and process that allows for reasonable comment by the petitioner, intervenors/interested persons and governmental review agencies, including the opportunity for these parties to file comments on any changes to the petitioner’s existing Concept Plan proposal that the Commission recommends.

BRIEFING

Any party may, but is not required to, file a post-hearing brief as provided for in this Order. Briefs will be accepted from the petitioner, intervenors and interested persons, but not governmental review agencies.

- Opening briefs will be due by 4:00 PM on Friday, March 7, 2008, approximately 30 days following availability of the final transcript for the January party hearings. Staff will provide a copy of the complete electronic transcript on CD to each party by postal mail as soon as it becomes available. The Chair will reconsider the March 7 filing deadline if the availability of the transcript is significantly delayed. Opening briefs must be filed with LURC and served on parties in accordance with previously established service requirements.
- Reply briefs may be filed no later than 4:00 PM on Friday, March 21, 2008, in accordance with previously established service requirements.

The briefs will not have page limits and the Chair will not direct the parties substantively on the contents of their briefs. However, parties seeking guidance on the briefing may consider the following model:

- (1) Parties who perceive that deficiencies exist in the proposed concept plan under governing review criteria should identify these deficiencies with specificity and explain whether and, if so, how these deficiencies are resolvable;
- (2) Parties who perceive no such deficiencies should explain the basis for their position with specificity, in light of the pre-filed testimony and the answers provided during the hearings by witnesses, and the governing review criteria.
- (3) Parties seeking guidance on an appropriate structure for the brief are encouraged to consider the organization of the party hearings.

To the extent the Chair grants leave for any post-hearing submissions of information, the briefs need not attempt to address them, as any such submissions will be subject to a separate comment period.

HEARING RECORD

The record will remain open for the purpose of accepting public comment until further notice. However, additional submissions from the petitioner, intervenors, interested persons and governmental review agencies will be permitted *only by leave of the Chair and only subsequent to a determination by the Chair* that the submission will assist the Commission in its decision-making and will not prejudice the other parties. Upon granting leave for any such post-hearing submission, the Chair will establish a reasonable period within which other parties may submit written comments on the submission.

ADDITIONAL INFORMATION SUBMITTALS IDENTIFIED BY THE PARTIES

Several parties have identified for the Chair potential additional information submissions since the close of the January party hearings. Each of these is addressed individually below:

- **Open Space Institute (OSI):** OSI has offered to file revised versions of the reports contained in its pre-filed testimony that take into account information subsequently presented during the party hearings. The Chair declines this offer.

- **Plum Creek:** Plum Creek identified, and the Chair herein rules, on five potential additional information submittals:
 - (1) Additional information on resort developments: The Chair grants leave for *any party* to submit certain additional information regarding so-called resort cores established and constructed in resort developments elsewhere, and the elements that define these established and constructed resort cores. Specifically, the Chair grants leave for any party to submit examples of constructed, operational resort cores (meaning, for this purpose, areas dominated by hospitality amenities, short-term rentals and associated retail facilities, as opposed to single-family residences or other types of residential dwelling units) that are located in a rural mountain setting similar to the Moosehead Lake region. Any such filings must include details regarding (a) what facilities and uses the resort cores consist of, (b) photographs and/or site plans illustrating what the resort cores look like, and (c) the acreages of the uses and facilities that make up each resort core. These submissions must be filed by 4:00 PM on February 15, 2008, and any comments on these must be filed by 4:00 PM on February 29, 2008.
 - (2) Response to AAG Mills memorandum on conservation easement terms: Plum Creek may respond to any issues raised in this memorandum through its post-hearing brief. Leave to file a separate submission addressing these issues is denied.
 - (3) Agreement concerning “stewardship and enforcement” endowment fund for the so-called “balance easement”: Leave for filing additional information regarding the endowment of the balance easement would not be helpful to the Commission’s decision-making at this point and therefore is denied. If the Commission subsequently determines that this information would be helpful, it will so inform the parties.
 - (4) Master owners association: The Chair grants leave for Plum Creek to file an example of a master owners association agreement by 4:00 PM on February 15, 2008, and any comments on this submission must be filed by 4:00 PM on February 29, 2008.
 - (5) Community Stewardship Fund: Information about organizations who could administer and manage the Community Stewardship Fund would not be helpful to the Commission’s decision-making at this point, and leave to file such information is therefore denied. If the Commission subsequently determines this information would be useful, it will so inform the parties.
- **The Nature Conservancy (TNC):** TNC has expressed an interest in potentially filing a revised purchase and sale agreement with Plum Creek relating to the Legacy Easement. In the event that such an agreement is reached and TNC wishes to submit it for the record, it may seek leave from the Chair to do so.

OTHER INFORMATION REQUESTS

To the extent Commission members, staff or consultants requested any other information from the parties during the hearings, those requests are withdrawn. To the extent any party has made any requests to file additional information that are not expressly addressed in this Order, those requests are denied. Any future requests for leave to submit additional will be addressed on a case by case basis as provided for in this Order.

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