

---

**COMMISSION DECISION  
IN THE MATTER OF  
ZONING PETITION ZP 768**

**THE FISH RIVER CHAIN OF LAKES CONCEPT PLAN**

SEPTEMBER 11, 2019

---

# TABLE OF CONTENTS

<b>1.</b>	<b>PETITIONER .....</b>	<b>1</b>
<b>2.</b>	<b>LOCATION OF PROPOSAL .....</b>	<b>1</b>
<b>3.</b>	<b>PRESENT ZONING WITHIN THE PLAN AREA .....</b>	<b>2</b>
<b>4.</b>	<b>PROPOSED ZONING FOR THE PLAN AREA .....</b>	<b>2</b>
<b>5.</b>	<b>SIZE OF PARCEL TO BE REZONED.....</b>	<b>2</b>
<b>6.</b>	<b>PROPOSAL.....</b>	<b>2</b>
<b>7.</b>	<b>ADMINISTRATIVE HISTORY .....</b>	<b>3</b>
<b>8.</b>	<b>REVIEW CRITERIA .....</b>	<b>5</b>
<b>A.</b>	<b>STATUTORY CRITERIA FOR ADOPTION OR AMENDMENT OF LAND USE DISTRICT BOUNDARIES.....</b>	<b>5</b>
<b>B.</b>	<b>STATUTORY CRITERIA FOR AMENDMENT OF LAND USE STANDARDS.....</b>	<b>5</b>
<b>C.</b>	<b>CH. 10 REVIEW CRITERIA FOR CONCEPT PLANS AND ASSOCIATED REDISTRICTING .....</b>	<b>5</b>
<b>D.</b>	<b>CH. 10 REVIEW STANDARDS FOR STRUCTURES ADJACENT TO LAKES .....</b>	<b>6</b>
<b>9.</b>	<b>REVIEW OF EVIDENCE PERTAINING TO REVIEW CRITERIA, FACTUAL FINDINGS AND LEGAL CONCLUSIONS THEREON.....</b>	<b>7</b>
<b>A.</b>	<b>EXISTING USES AND RESOURCES WITHIN AND SURROUNDING THE PLAN AREA.....</b>	<b>7</b>
<b>B.</b>	<b>THE PROPOSED LAND USE DISTRICT IS CONSISTENT WITH THE COMPREHENSIVE LAND USE PLAN AND THE PURPOSE, INTENT AND PROVISIONS OF CH. 206-A (12 M.R.S. § 685-A(8-A)(A)).....</b>	<b>10</b>
<b>C.</b>	<b>A NEW DISTRICT DESIGNATION IS MORE APPROPRIATE FOR THE PROTECTION AND MANAGEMENT OF EXISTING USES AND RESOURCES WITHIN THE AFFECTED AREA (12 M.R.S. § 685(8-A)(B)).....</b>	<b>15</b>
<b>D.</b>	<b>THE PROPOSED LAND USE DISTRICT HAS NO UNDUE ADVERSE IMPACT ON EXISTING USES OR RESOURCES (12 M.R.S. § 685-A(8-A)(B)) .....</b>	<b>24</b>

**E.** THE PROPOSED LAND USE DISTRICT IS CONSISTENT WITH THE P-RP SUBDISTRICT (12 M.R.S. § 685(8-A)(A)) AND ITS CRITERIA FOR APPROVAL (CH. 10.23,H OF THE COMMISSION’S RULES) ..... 38

**F.** THE CONCEPT PLAN IS CONSISTENT WITH THE REVIEW STANDARDS FOR STRUCTURES ADJACENT TO LAKES (CH. 10.25,A OF THE COMMISSION’S RULES) ..... 53

**10. CONCLUSIONS ..... 57**



JANET T. MILLS  
GOVERNOR

STATE OF MAINE  
DEPARTMENT OF AGRICULTURE, CONSERVATION & FORESTRY  
LAND USE PLANNING COMMISSION  
22 STATE HOUSE STATION  
AUGUSTA, MAINE 04333-0022

AMANDA E. BEAL  
COMMISSIONER  
SAMANTHA HORN  
ACTING EXECUTIVE DIRECTOR

COMMISSION DECISION  
IN THE MATTER OF

Fish River Chain of Lakes Concept Plan  
For Certain Lands Under The Ownership Of  
Allagash Timberlands, Aroostook Timberlands, and Maine Woodlands Realty Company,  
Aroostook County

Findings of Fact and Decision

ZONING PETITION ZP 768

The Maine Land Use Planning Commission, at a meeting of the Commission held September 11, 2019, at Brewer, Maine, after reviewing the petition and supporting documents submitted by Irving Woodlands, L.L.C. for Zoning Petition ZP 768, public comments, Intervenor and Interested Persons comments, governmental review agency comments and other related materials on file, pursuant to 12 M.R.S. Section 681 *et seq.* and the Commission's Standards and Rules, finds the following facts:

**1. PETITIONER**

Allagash Timberlands LLC, Aroostook Timberlands LP, and Maine Woodlands Realty Company (“Irving”)  
PO Box 5777  
Saint John, NB E2L 4M3

**2. LOCATION OF PROPOSAL**

The Plan Area<sup>1</sup> is comprised of portions of Irving’s ownership within the following six minor civil divisions in Aroostook County:

- Cross Lake Township;
- Madawaska Lake Township;

---

<sup>1</sup> The Plan Area is generally shown on Attachment A, and is more specifically identified as the P-RP Subdistrict on the Official Land Use Guidance Maps contained in Appendix A of Attachment B.



- Sinclair Township;
- T15 R 5 WELS;
- T16 R 5 WELS; and
- T17 R 3 WELS

**3. PRESENT ZONING WITHIN THE PLAN AREA**

- General Development (D-GN) Subdistrict
- Residential Development (D-RS) Subdistrict
- General Management (M-GN) Subdistrict
- Flood Prone Protection (P-FP) Subdistrict
- Fish and Wildlife Protection (P-FW) Subdistrict
- Great Pond Protection (P-GP) Subdistrict
- Shoreland Protection (P-SL) Subdistrict
- Wetland Protection (P-WL) Subdistrict

**4. PROPOSED ZONING FOR THE PLAN AREA**

Resource Plan Protection (P-RP) Subdistrict

**5. SIZE OF PARCEL TO BE REZONED**

Approximately 51,000 acres (owned)

**6. PROPOSAL**

Irving seeks a change in subdistrict boundaries from the present Management, Development and Protection Subdistrict designations to a Resource Plan Protection (P-RP) Subdistrict<sup>2</sup> and approval of the attendant *The Fish River Chain of Lakes Concept Plan* (hereinafter, “Concept Plan”), attached hereto as Attachment B. Generally, the Concept Plan:

- Facilitates limited residential and commercial development. Development areas at Long, Cross and Square Lakes would allow up to 330 residential units, and limited, small-scale commercial uses would be allowed in a mixed-use zone in the Yexas area at Square Lake. In addition, certain areas for the growth of the Sinclair and Guerette communities will be made available for sale or lease and would accommodate commercial, light industrial, and institutional activities (*Section 1,E,1.*);

---

<sup>2</sup> The land comprising the P-RP Subdistrict is hereinafter collectively referred to as the “Plan Area.” The Plan Area is generally shown on Attachment A, and is more specifically identified as the P-RP Subdistrict on the Official Land Use Guidance Maps contained in Appendix A of Attachment B.

- Provides for public recreational trail access to the Plan Area and enables commercial recreation opportunities by allowing a limited number of remote rental cabins and remote campsites (*Section 1,E,12.*);
- Provides for permanent or long-term public access to lake resources. Within a year of the effective date of the Plan, the existing Cross Lake boat launch must be conveyed to a public entity, and the Van Buren Cove beach must be leased for 99 years to a public entity. (*Section 1,G.*) Property and access rights for a Square Lake boat launch at Square Lake East or Square Lake Yexas must be conveyed to a public entity early in the Square Lake development process and the launch must be operational and available to the public before more than 15 lots or units may be approved. (*Section 10.34-FRL,B.*) Public hand carry launches may be made available at Dickey, Little California, and Carry ponds. (*Section 10.27,L-FRL,1.*);
- Requires permanent conservation in the form of a 16,760-acre perpetual working forest conservation easement, focused on the areas around Square Lake, Carry Pond, and the Mud-Cross thoroughfare, as well as some areas to the west of Cross Lake. The easement provides for a future large mammal migration corridor and enacts additional protections for high-value brook trout streams, and other habitat. (*Appendix C.*);
- Establishes a consistent process for the sale of existing lease lots. The purchasers of the lots will in most cases have back lots and in all cases have access to back land, as needed, for future septic installations to protect lake water quality, and predictability about access rights, homeowners' associations and road maintenance responsibilities. (*Section 10.28-FRL,B,2,a.*);
- Improves upon the current regulatory requirements by enacting custom standards for hillside developments, implementing a phosphorus budget program in the Long Lake, Mud Lake, Cross Lake, and Square Lake watersheds, and utilizes a phased approach for development at Square Lake. (*Sections 10.25,E-FRL; 10.25,L-FRL; and 10.34-FRL,B.*); and
- Retains the majority of the Plan Area in working forest and provides flexibility for additional community growth in the future without overburdening the highly desirable lake shorelines (*Map 2*).

The proposal does not authorize residential or commercial development to begin: it establishes a framework that sets up the process for review of future development applications.

## 7. ADMINISTRATIVE HISTORY

The administrative process undertaken to review the proposal by the Commission and, under its direction, by the LUPC staff, extended for over four years and reflects the scale and complexity of the proposal and the public interest in it. In 2011, Irving initiated informal discussions with Commission staff of its ideas for a concept plan for its ownership within the Fish River Lakes region.

In October 2013, the Commission conducted a public pre-application site visit.

In December 2014, Irving filed its original Zoning Petition ZP 768 and formally submitted a revised petition in June 2017. The 2017 petition was deemed complete for processing on August 31, 2017.

In October 2017, the Commission received a project overview and conducted a public site visit. The site visit included six different stops during which staff provided a brief summary of plan elements at or visible from the site and offered attendees an opportunity to travel through and briefly observe the variety of settings included as part of the proposal. Parties and assorted members of the public attended each part of the site visit.

In April 2018, in response to staff feedback and questions, Irving filed the first set of amendments to the proposal. The amendment provided additional supporting material, and either clarified or bolstered assorted sections of the proposed concept plan.

In May 2018, the Commission held two days of adjudicatory hearings on Zoning Petition ZP 768, in which six formal parties (Irving, plus three Intervenors and two Interested Persons) were provided the opportunity to participate and offer testimony. During this same time period, the Commission also held two evening public hearing sessions on Zoning Petition ZP 768, during which dozens of members of the public testified before the Commission.

In June 2018, as part of its post hearing brief, Irving filed the second set of amendments to the proposal. The amendments responded, in part, to a number of issues raised during the hearing process, generally: roads; water access sites; development areas; the conservation easement; hillside development standards; phosphorus; and sustainable forestry principles/outcome-based forestry.

In June 2019, Irving filed a revised plan that responded to numerous other comments submitted during the hearing.

In August 2019, the specific text of amendments that the Commission found to be required by statute and its regulations was finalized. Each of the parties with implementing responsibilities<sup>3</sup> under the Concept Plan (“implementing parties”) informed the Commission that they were prepared to accept the responsibilities set forth in the amendments.

Finally, today the Commission formally approves the Concept Plan set forth in Attachment B, and adopts the associated P-RP Subdistrict identified on the Official Land Use Guidance Maps contained in Appendix A of Attachment B.

The full administrative history of this proceeding is set forth in Attachment A.

---

<sup>3</sup> Implementing parties include the Petitioner and the Forest Society of Maine.

## 8. REVIEW CRITERIA

### A. **Statutory Criteria For Adoption Or Amendment Of Land Use District Boundaries**

In accordance with 12 M.R.S. § 685-A(8-A), “A land use district boundary may not be adopted or amended unless there is substantial evidence that:

- (1) 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 [Ch. 206-A (Use Regulation)]; and
- (2) 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.”

### B. **Statutory Criteria For Amendment Of Land Use Standards**

In accordance with 12 M.R.S. § 685-A(8-B), “Adoption or amendment of land use standards may not be approved unless there is substantial evidence that the proposed land use standards would serve the purpose, intent and provisions of [Ch. 206-A (Use Regulation)] and would be consistent with the comprehensive land use plan.”

### C. **Ch. 10 Review Criteria For Concept Plans And Associated Redistricting**

In accordance with Chapter 10, Section 10.23,H,6 of the Commission's rules, the Commission may approve a concept plan and any associated redistricting only if it finds that all of the following criteria are satisfied:

- (1) The plan conforms with redistricting criteria;
- (2) The plan conforms, where applicable, with the Commission's Land Use Districts and Standards;
- (3) The plan conforms with the Commission's Comprehensive Land Use Plan;
- (4) The plan, taken as a whole, is at least as protective of the natural environment as the subdistricts which it replaces. In the case of concept plans, this means that any development gained through any waiver of the adjacency criteria is matched by comparable conservation measures;
- (5) The plan has as its primary purpose the protection of those resources in need of protection, or, in the case of concept plans, includes in its purpose the protection of those resources in need of protection;
- (6) In the case of concept plans, the plan strikes a reasonable and publicly beneficial balance between appropriate development and long-term conservation of lake resources; and



- (7) In the case of concept plans, conservation measures apply in perpetuity, except where it is demonstrated by clear and convincing evidence that other alternative conservation measures fully provide for long-term protection or conservation.

**D. Ch. 10 Review Standards For Structures Adjacent To Lakes**

In accordance with Chapter 10, Section 10.25,A (Review Standards for Structures Adjacent to Lakes) of the Commission's rules, the standards set forth below must be met for all subdivisions and commercial, industrial, and other non-residential 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.

- Natural and cultural resource values: The proposal will not adversely affect natural and cultural resource values identified as significant or outstanding in the Wildlands Lakes Assessment;
- Water quality: The proposal will not, alone or in conjunction with other development, have an undue adverse impact on water quality;
- 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;
- Regional diversity: The proposal will not substantially alter the diversity of lake-related uses afforded within the region in which the activity is proposed;
- Natural character: Adequate provision has been made to maintain the natural character of shoreland[s];
- Lake management goals: The proposal is consistent with the management intent of the affected lake's classification; and
- 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.

**9. REVIEW OF EVIDENCE PERTAINING TO REVIEW CRITERIA, FACTUAL FINDINGS AND LEGAL CONCLUSIONS THEREON**

**A. Existing Uses And Resources Within And Surrounding The Plan Area**

The Plan Area<sup>4</sup> is situated in Northern Aroostook County within the St. John River Valley Region, which encompasses parts of the Fish River Chain of Lakes, including Long Lake, Mud Lake, Cross Lake and Square Lake. This region has a long history of agricultural, industrial, and working forest uses. Long Lake is the start of the eastern branch of the Fish River. From Long Lake, the Fish River flows southwest to Mud Lake to Cross Lake and then to Square Lake. Thoroughfares, or sections of flowing water, connect the four great ponds. The Plan Area is bisected by State Route 161, which is located between Mud Lake and Cross Lake. Outside the Plan Area, the Fish River flows from Square Lake to Eagle Lake where it merges with the western branch of the Fish River and then flows north into the Saint John River.

This section generally describes the predominant existing resources and uses of the area, namely (i) commercial forestry, forest resources, and other natural resources, and (ii) scenic and recreational resources and outdoor recreational uses. The area also supports a wide variety of other natural and cultural resources, many of which are representative of the jurisdiction’s extensive resource base. The existing Protection Subdistricts within the area<sup>5</sup> – including subdistricts that identify and protect lakes and ponds, rivers and streams, wetlands, and other resources – are an indicator of this variety.

Further details regarding the existing uses and resources within the area are contained in the administrative record.<sup>6</sup>

**(1) Existing Forest And Other Natural Resources, And Existing Commercial Forestry Uses**

The Plan Area is largely undeveloped and forested and has historically been managed for timber harvesting, which is a substantial economic driver in the area. The plan area also contains abundant natural resources, and there are large sections of shoreline, particularly on Long Lake and Cross Lake, that are developed with residential structures, both seasonal and year-round. The

---

<sup>4</sup> For purposes of describing the existing uses and resources within and surrounding the Plan Area, the Commission considered the lands within the Plan Area, the approximately 51,000 acres with significant shoreline frontage on four of the Lakes within the Fish River Chain of Lakes: Long Lake, Mud Lake, Cross Lake, and Square Lake, as well as all water bodies and wetlands within the boundaries of or contiguous with the boundaries of the P-RP Subdistrict. These are collectively referred to as “the Plan Area.” In addition, there are a number of separately owned parcels located adjacent to the Plan Area, including the lots that comprise Sinclair Village, Guerette Village, the 4,100 acres between Cross and Square Lakes, and the Eagle Lake Public Lands Reserve, they are collectively referred to as “the surrounding area”.

<sup>5</sup> For the Plan Area itself, these are listed in section 3 and identified on the Official Land Use Guidance Maps of the 6 minor civil divisions comprising the Plan Area (see Concept Plan, Appendix A).

<sup>6</sup> Petition, May 2017, Vol 1, Tab 15 and Appendix A.

majority of these residential lots were created prior to the Commission's inception and are currently being leased or licensed to camp owners. Currently, there are no commercial businesses in the Plan Area, however, there was historically a commercial sporting camp, the Yexas Camps (also known as the Gorfinkle Camps and the Square Lake Camps) on the southeast shore of Square Lake.

Forest resources within the Plan Area contain an abundant and diverse array of other natural resources, including extensive wetlands, rivers, streams, lakes, remote ponds, and other aquatic habitats; miles of undeveloped shores and riparian areas; diverse and extensive wildlife, plant, and other terrestrial habitats, including habitats of rare, threatened and endangered flora and fauna and natural plant communities, and plentiful wildlife and fish.

Typical of the forest land in northern Maine, the Plan Area provides habitat for a wide array of wildlife species, including common species of mammals (*e.g.*, moose, white-tailed deer, black bear, fox, coyote, and snowshoe hare), over 100 species of birds (*e.g.*, warblers, flycatchers, thrushes, vireos, sparrows, finches, wading birds, waterfowl, raptors, corvids); and wildlife species of moderate to very high conservation value (*e.g.*, Canada lynx, bats, bald eagle, rusty blackbird, Great Blue Heron and the Small Mouth Pond Snail).

The Plan Area also supports several species of fish, including brook trout, rainbow smelt, and landlocked salmon. Long Lake is considered as one of the best lakes for salmon fishing in Maine and the Maine Department of Inland Fisheries and Wildlife (the MDIFW) ranks it first in the 27 lakes that are rated for size quality.<sup>7</sup>

The Cross Lake Fen, located above the western shore of Cross Lake and which is partly within the plan area, is listed as a "Focus Area" by the State of Maine, Beginning with Habitat Program.<sup>8</sup> Focus areas are natural areas of statewide ecological significance that contain unusually rich concentrations of at-risk species and habitats. The Cross Lake Fen contains more than 1,500 acres of inland waterfowl and wading bird habitat, approximately 40% of which are on Irving Woodlands ownership and in the Plan Area. The Cross Lake Fen also contains several rare and exemplary natural communities, as well as two rare plant species. Other known botanical resources within the Plan Area include an S1 community of pigmy waterlily; the Cross Lake Bog, another large inland waterfowl and wading bird habitat; and several small stands of old growth hemlock and red oak.

To manage its entire 1.255 million acres of land ownership in Maine, of which the Plan Area comprises approximately 4%, Irving Woodlands directly employs 30 forestry professionals and contracts for logging and other

---

<sup>7</sup> Petition, May 2017, Vol. 1, Appendix A, p. 11.

<sup>8</sup> Petition, May 2017, Vol. 1, Appendix A, p. 19.

services with another 2,000 people. Irving Woodlands provides a sustainable wood supply to over 20 separate businesses in Maine.<sup>9</sup>

These existing forest and other natural resources, and the commercial forestry use that takes place as a result, exemplify on a landscape scale two of the four principal values of the jurisdiction: “the economic value of the jurisdiction derived from working forests and farmlands, including fiber and food production, largely on private lands,” and the value of the jurisdiction for “diverse, abundant and unique high-value natural resources and features.”<sup>10</sup> The Commission therefore finds that protecting these existing forest and other natural resources, and further protecting the ability to continue commercial forestry in the area, to be of importance to the people of the State of Maine.

(2) **Existing Recreational And Scenic Resources, And Existing Outdoor Recreational Uses**

The Plan Area is set around a chain of lakes surrounded by undeveloped, forested hills. The lakes and rivers in the region are an important contributor to the scenic and recreational resource quality of the area. The Plan Area includes all or portions of four lakes and three ponds that have a variety of aesthetic qualities, including miles of undeveloped shoreline, points, coves, beaches and wetlands. The thoroughfares connect the four lakes and provide for travel by boat from lake to lake, particularly in the springtime. The scenic character of the shoreline of these lakes and the thoroughfare varies with geographic, topographic and ecologic conditions as well as the amount of existing development.

Recreational uses within the Plan Area comprise both primitive and motorized outdoor pursuits, including fishing, hunting, camping, swimming, hiking, paddling, boating, cross-country skiing, snowshoeing, snowmobiling, and all-terrain vehicle (ATV) riding.<sup>11</sup> The most significant recreational resource in the immediate vicinity is the 24,083-acre Eagle Lake Unit of Maine Public Reserved Land, which is located adjacent to the west side of the Plan Area.<sup>12</sup>

In order to recreate in the area, recreationists depend, to varying degrees, on both the natural landscape and the recreational infrastructure that is located on privately-owned land and on public land in the region.

The Plan Area itself contains a range of recreational landscape settings from semi-primitive (*e.g.*, limited access, no recreation infrastructure, and away from permanent settlements) to developed areas (*i.e.*, easy access by roads,

---

<sup>9</sup> Petition, May 2017, Vol. 1, Appendix D.

<sup>10</sup> CLUP, 2010, p. 2.

<sup>11</sup> Petition, May 2017, Vol 1, Appendix A, pp. 25-26.

<sup>12</sup> Petition, May 2017, Vol 1, Tab 16.

recreation infrastructure, and close to permanent settlements). Nearby parcels that are publicly owned include Maine Public Reserved Land (Eagle Lake Unit) and the Town of Van Buren Conservation Easement in Cyr Plantation.

While existing recreational infrastructure within the area and immediately adjacent to it is limited, it includes motorized recreational trails (*e.g.*, the ITS snowmobile trail system, and ATV trails); boat launches and marinas (*e.g.*, trailered boat launches on Long Lake, Cross Lake and Square Lake; and a commercial marina at the Long Lake Sporting Club); a paint ball course along Route 161 in Guerette Village; campgrounds (*e.g.*, Long Lake Campground and Lakeview Camping Resort on Long Lake, and Water's Edge Campground on Mud Lake); and a range of overnight lodging facilities (*e.g.*, commercial sporting camps, hotels, motels, and bed and breakfasts).

Many of the recreational resources and infrastructure in the region are accessible and usable by recreationists because of Irving's voluntary "open lands" policy, whereby Irving Woodlands allows free public access to land in this region for many types of outdoor recreational uses.<sup>13</sup> Notwithstanding this policy, there are recreational resources in the area that are remote or difficult to access, including remote ponds, streams, and vast tracts of forested, undeveloped lands.

These recreational and scenic resources and associated outdoor recreational uses exemplify the other two principal values of the jurisdiction: the "diverse and abundant recreational opportunities, including many types of motorized and non-motorized activities..." and the "natural character values" of the jurisdiction, "which include the uniqueness of a vast forested area that is largely undeveloped and remote from population centers."<sup>14</sup> The Commission therefore finds that protecting these existing recreational and scenic resources, and further protecting the outdoor recreational uses that occur due to their existence, to be of importance to the people of the State of Maine.

**B. The Proposed Land Use District Is Consistent With The Comprehensive Land Use Plan And The Purpose, Intent And Provisions Of Ch. 206-A (12 M.R.S. § 685-A(8-A)(A))**

The purpose of the law establishing the Land Use Planning Commission is to "extend the principles of sound planning, zoning, and development to the unorganized and deorganized townships of the State: To preserve public health, safety and general welfare; to support and encourage Maine's natural resource-based economy and strong environmental protections; to encourage appropriate residential, recreational, commercial and industrial land uses; to honor the rights and

---

<sup>13</sup> May 2017, Concept Plan Vol 2, Tab 1, p. 19.

<sup>14</sup> CLUP, 2010, p. 2.

participation of residents and property owners in the unorganized and deorganized areas while recognizing the unique value of these lands and waters to the State; to prevent residential, recreational, commercial and industrial uses detrimental to the long-term health, use and value of these areas and to Maine's natural resource-based economy; to discourage the intermixing of incompatible industrial, commercial, residential and recreational activities; to prevent the development in these areas of substandard structures or structures located unduly proximate to waters or roads; to prevent the despoliation, pollution and detrimental uses of the water in these areas; and to conserve ecological and natural values.” 12 M.R.S. § 681

The principles of “sound planning, zoning, and development” and the detailed policies by which it will achieve the purpose and intent of the law are embodied in the CLUP that the statute requires the Commission to adopt, as well as the Commission’s rules. The last revision to the CLUP was in 2010, and this is the version against which consistency of the Concept Plan is evaluated. Because the statutory purpose and scope was amended in 2012, the CLUP is interpreted in light of the current law.

In evaluating the Concept Plan’s consistency with the CLUP and Ch. 206-A, the Commission considered the statutory purpose and scope; the statutory criteria for adoption or amendment of land use standards; the broad goals of the CLUP; and the principal values of the jurisdiction identified in the CLUP. The Commission also finds of particular relevance a number of CLUP goals and policies with respect to development, natural resources, and cooperative efforts with landowners. The Commission’s findings with respect to these provisions are set forth below.

(1) **The Concept Plan Is Consistent With The Purpose, Intent And Provisions Of Ch. 206-A**

The Commission considers consistency with the broad goals of the CLUP, described below, to be a key part of consistency with Ch. 206-A. Legislative amendments to the statutory purpose and scope (12 M.R.S. § 681.) in 2012 emphasized the importance of the unorganized and deorganized areas of the state to many groups in Maine, from property owners to the general public. The Concept Plan, as proposed, considers and balances the needs of the many affected stakeholder groups. In combination, this balancing as well as consistency with the CLUP constitutes consistency with the statute.

(2) **The Concept Plan Is Consistent With The Criteria For Amendment Of Land Use Standards (12 M.R.S. § 685-A(8-A)(B))**

Pursuant to 12 M.R.S. § 685-A(8-B) of the statute, the Commission evaluated the Concept Plan’s amended land use standards to ensure that they “serve the purpose, intent, and provisions of [Ch. 206-A]” and are consistent with the CLUP. These include a number of standards that are either new or have been modified from their current form in Chapter 10. For example:

- Standards<sup>15</sup> to ensure that scenic character in the area is protected have been expanded to specifically address hillside development in order to implement the CLUP’s policy to “protect the scenic values of coastal, shoreland, mountain, recreation and other scenic areas.” Generally, these include requiring development proposals to provide design standards, to involve professionals who are trained and have experience in the application of visual quality management and avoiding development that extends above the ridgeline.
- Existing Chapter 10 standards for phosphorus control have been modified<sup>16</sup> to address the need identified by the Maine Department of Environmental Protection (MDEP) and local residents to protect water quality in Cross Lake, which is already impaired due to inputs from lands higher in the watershed. This is consistent with policies in the statute and the CLUP about water quality protection.
- Standards for how the approximately 400 existing lease lots may be sold have been strengthened to ensure appropriate treatment of future septic systems, legal road access and maintenance, and clarification of lot boundaries<sup>17</sup>. This will help address leaseholder concerns about future access and road maintenance (*FRLLA testimony topic one.*) as well as protect water quality and public safety.

Consistent with the CLUP’s provisions governing concept plans and their binding effect on both the Commission and the landowner, the Commission may not during the thirty-year term of the Concept Plan modify certain identified regulatory standards and procedures set forth therein except upon agreement with the petitioner. The Concept Plan explicitly distinguishes between those provisions which are subject to amendment by the Commission, and those which may only be amended during its thirty-year term upon agreement between the Commission and the Petitioner. It is important to note, however, that the Concept Plan’s terms expressly respect the Legislature’s undiminished authority to enact statutory changes applicable to the Plan Area.

(3) **The Concept Plan Is Consistent With The Broad Goals Of The CLUP And The Specific Natural Resources Goals And Policies Of The CLUP, And Protects The Jurisdiction’s Principal Values**

The broad goals of the 2010 CLUP are:

- Support and promote the management of all the resources, based on the principles of sound planning and multiple use, to enhance the living and working conditions of the people of Maine and property owners and

---

<sup>15</sup> Concept Plan, Section 10.25,E-FRL.

<sup>16</sup> Concept Plan, Section 10.32-FRL.

<sup>17</sup> Concept Plan, Sections 10.28-FRL,B,2,a; 10.31-FRL; and 1,E,13 and 14.

residents of the unorganized and deorganized townships, to ensure the separation of incompatible uses, and to ensure the continued availability of outstanding quality water, air, forest, wildlife and other natural resource values of the jurisdiction.

- Conserve, protect and enhance the natural resources of the jurisdiction primarily for fiber and food production, outdoor recreation and plant and animal habitat.
- Maintain the natural character of certain areas within the jurisdiction having significant natural values and primitive recreational opportunities.

The Concept Plan’s focus on working forests, economic opportunity for the local community, public recreational opportunity, conservation of sensitive fisheries resources and wildlife habitat, water quality protection, and long-term stability for local camp owners fall squarely within these broad goals. As such, the Concept Plan provisions meet the needs of the public, local residents, and the landowner, and protect the important natural resources in northern Aroostook County.

The CLUP’s principal values similarly emphasize working forests, recreational opportunities, natural resource protection, and natural character of the area. The Concept Plan guides and shapes proposed development in ways that improve long-term outcomes in all these areas, as compared to future haphazard development.

Finally, although the natural resource goals of the CLUP are numerous, the Concept Plan will further the goals in the CLUP’s Forest Resource, Plant and Animal Habitat Resources, Recreational Resources, and Water Resources sections, by providing a well-managed working forest with enhanced stream buffers, increasing public recreational opportunities, and heightening water quality protection, including by tightly controlling phosphorus allocations within the Cross Lake watershed. Section 10.25,E-FRL of the Concept Plan addresses the CLUP’s scenic resources goal through enhanced standards for hillside forestry practices and screening techniques for development.

**(4) The Concept Plan Is Consistent With The CLUP Goals And Policies Regarding The Location Of Development**

The CLUP goals and policies regarding location of development focus on locating new development close to existing development and services, and away from sensitive natural resources or working lands. In addition, the policies “discourage growth which results in scattered and sprawling development patterns.” (2010 CLUP, I,A,3.)

The Concept Plan is consistent with these goals and policies because it:

- Takes the potential for scattered and sprawling future development and concentrates it in appropriate locations. (Map 2.) This is particularly true at



Square Lake, where working forest conservation easement on nearly all of the remaining shoreline will prevent future development on most of the lake, and instead focuses a predictable, and reasonable, level of development in one development area that is an area of historic sporting camp development on the east shore. Following the public hearing, development was largely moved away from the less accessible West side of Square Lake, in response to public and party comments. (*FRLLA, testimony Topic 2, St Peter; NRCM testimony p. 8.*)

- Makes reasonable arrangements for road access and maintenance for the existing approximately 400 lease holders when the lots are sold, as well as up to 330 future lots. (*Sections 1,E,13 and 14; and 10.29-FRL.*) This will prevent an inefficient system of casual access agreements that could lead to deteriorating roads and problems with service provision.
- Focuses residential, commercial, and recreational development in locations where they can be served by fire, ambulance and solid waste services. Access routes that were unreasonably long in the first iteration of the plan were amended to require that, for example, development in the Sinclair Village area will have access via Barn Brook Road, which provides significantly more direct access for emergency services. (*Map 2.*)
- Creates residential development areas that are, with the exception of Square Lake, an extension of existing areas of camp development, and at Square Lake focuses development such that it will not create undue adverse impacts on the character of the lake. (*Map 2.*) Concerns voiced by many members of the public and by the Fish River Lakes Leaseholders Association (the FRLLA) and the Natural Resources Council of Maine (the NRCM) about development nodes at Square Lake and at the southern end of Cross Lake are understandable, but the Commission notes that 1) the development on Cross Lake is an extension of an existing pattern of intense camp development, 2) the development at Square Lake will be concentrated at the site of former development, rather than scattered around the shoreline and 3) the heightened subdivision and hillside standards contained in the plan will reduce the impacts from these developments. In addition, in the absence of a plan, there would be substantial risk of scattered development that would have a greater impact than the proposed aggregated, regulated development.

**(5) The Concept Plan Is Consistent With The CLUP Goals And Policies Regarding Economic Development**

The economic development goal of the 2010 CLUP is: “Encourage economic development that is connected to local economies, utilizes services and infrastructure efficiently, is compatible with natural resources and surrounding uses, particularly natural resource-based uses, and does not diminish the jurisdiction’s principal values.”

One of the challenges in the local area, especially in Sinclair, is that the land ownership pattern makes it difficult to site new business. As discussed above, the Concept Plan makes available appropriately-sited commercial development areas that are to be offered for sale or lease at market rates. Those areas will remain available for the life of the plan, enabling the local community to grow if economic conditions can support such growth. The proposed commercial areas are close to villages and do not diminish the natural resources and working forests of the area.

**(6) The Land Not Included In Any Development Area Is Consistent With The CLUP**

The Plan Area and surrounding region is strongly tied to the working forest and to close-knit village communities and camp developments. It is possible that in the future the communities will wish to expand. Taking this into account, the Concept Plan conserves in perpetuity through a conservation easement to be held by the Forest Society of Maine a total of 16,760 acres in areas that are remote, high-value, or vulnerable, but allows that other lands within the Plan Area may be converted to other uses after the life of the Concept Plan, subject to Commission policies and rules at the time. This is appropriate both in terms of the balance that the petitioner is required to achieve to offset the development permissions granted, and in leaving open the possibility of growth in the local community in the future. This approach is consistent with the CLUP, in particular the goals for location of development, economic development, land conservation, forest resources, plant and animal habitat resources, and recreational resources.

**(7) Conclusions**

For the reasons set forth herein, the Commission concludes that there is substantial evidence in the record that the Concept Plan is consistent with the standards for district boundaries, the purpose and intent of Chapter 206-A, and the CLUP's development goals and policies to:

(i) guide development to appropriate areas, (ii) avoid scattered and sprawling development patterns, (iii) safeguard the principal values of the jurisdiction, including a working forest, integrity of natural resources, and remoteness and (iv) ensure that, at the site level, it is feasible to fit development harmoniously into the existing natural environment. This conclusion applies both to the Concept Plan as a whole and to the individual development areas contained within it.

**C. A New District Designation Is More Appropriate For The Protection And Management Of Existing Uses And Resources Within The Affected Area (12 M.R.S. § 685(8-A)(B))**

This section addresses the Commission's determination with respect to the second of the two independent and alternative criteria set forth in 12 M.R.S. § 685-A(8-A)(B):

whether “a new district designation is more appropriate for the protection and management of existing uses and resources within the affected area.”<sup>18</sup>

In reaching its determination as to whether the new P-RP Subdistrict is “more appropriate,” the Commission is, in particular, guided by the CLUP and whether the Concept Plan will more effectively achieve the CLUP’s vision, goals and policies as they relate to existing resources and uses than do the existing subdistricts. As part of its evaluation, the Commission examined the likely pattern and amount of development in the affected area over the next 30 years if there were no proposed Concept Plan and Irving Woodlands (or subsequent owners) instead utilized existing law and regulations to achieve the development that it determined to be in its interest. By undertaking such an examination, the Commission can determine whether the Concept Plan more appropriately addresses the possible detrimental effects of this anticipated development in the affected area than does existing zoning. As such, the Commission first sets forth the threats to existing uses and resources under the Commission’s current zoning approach, based on the Commission’s findings regarding the anticipated future amount and pattern of development and resulting anticipated impacts to existing resources and uses absent Concept Plan implementation, and then makes findings that support the Commission’s conclusion that the Concept Plan will better protect and manage existing uses and resources than the Commission’s current zoning approach.<sup>19</sup>

**(1) The Historic Amount And Pattern Of Residential Second Home Development at Square Lake**

The northern Aroostook County region has historically experienced small amounts of overall residential development. In contrast to that overall trend, however, the Fish River Chain of Lakes is an attractive location for waterfront development. The Plan Area includes approximately 380 of the 1,089 residences in the surrounding area. Of the residences in the region, approximately 88 are not within shoreland areas, leaving the remaining 1,001 (92%) as shorefront development. Because many of the available lots have, in the past, been leased as opposed to offered for sale, investment in those properties has been cautious. As the existing Irving leases in the Plan Area

---

<sup>18</sup> For the purpose of making these determinations as required by the Commission pursuant to 12 M.R.S. § 685-A(8-A)(B)), the “affected area” Plan Area and all water bodies within the boundaries of or contiguous with the boundaries of the P-RP Subdistrict.

<sup>19</sup> While the Commission sets forth in the following paragraphs the anticipated adverse impacts of haphazard, incremental development caused in part by the statutory exemptions to the Commission’s subdivision review, it does so in light of its conclusion that the Concept Plan development is appropriate, meaning it is, among others, consistent with CLUP goals and policies regarding the location of development for areas with special planning needs. (See paragraph 9,B). Thus, consistent with its past concept plan decisions, the Commission continues to find that “development options based on statutory exemptions that exist outside of the Commission’s policies and regulatory framework [e.g., the “two-in-five” exemption] should not be used as a rationale for approving projects which do not [otherwise] fulfill the Commission’s policies and rules.” (LUPC: Zoning Petition ZP 604, p. 19.) Eliminating the unintended harmful effects of these statutory exemptions is a desirable component of a concept plan but cannot carry the day unless the concept plan first and foremost serves as an alternative mechanism for meeting the Commission’s development goals and policies.

are offered for sale over time, development along shorelines is expected to continue to be in demand.

(2) **The Anticipated Future Amount And Pattern Of Residential Second Home Development Without The Concept Plan Is Likely To Be Substantial, Incremental And Haphazard**

There is substantial land available in the petitioner's ownership, on or near the shoreline of all the lakes within the Plan Area. This land could be developed over time with additional residential home lots – either through zoning for subdivision in some locations, or in almost all areas through 2-in-5 exempt lot development. In particular, there is substantial shoreland area still available on Cross and Square lakes. Many current leaseholders appear to be eager to purchase their lots, and despite the overall decline in demand for year-round housing in the area, sales of future waterfront or water-access lots are expected to be strong. Over the next 30 years (the life of the proposed plan) there is opportunity, through the 2-in-5 exemption, for more than 130 units to be built, in scattered fashion, near the shore of Square Lake in Irving ownership, and a far higher number when considering hillside or other backlands. Similarly, at Cross Lake and Long Lake, the buildout potential for incremental, exempt lot development far exceeds the proposed units in the Concept Plan, especially when considering that many of the proposed units in the Plan Area will either be on backlands, away from the water, or in subdivisions that will have a limited number of waterfront lots and will utilize backlots and shared water access.

(3) **Without The Concept Plan, Existing Resources And Uses Within the Affected Area Will Likely Experience Significant Adverse Impact From Incremental And Haphazard Development**

(a) *Without the Concept Plan, Existing Forest Resources And Uses Will Likely Experience Significant Adverse Impact From Incremental And Haphazard Development*

Scattered development is detrimental to maintaining a working forest because of conflicts between harvesting operations and residents, particularly related to noise and traffic safety issues. Scattered development also makes it more difficult to maintain large harvest blocks, or to plan flexibly for wildlife and other natural resources. The type and amount of development that is anticipated to occur in the absence of a plan would be likely to cause these problems.

(b) *Without The Concept Plan, Existing Scenic And Recreational Resources And Uses Will Likely Experience Significant Adverse Impact From Incremental And Haphazard Development*

There is currently no guaranteed public water access to Cross and Square Lakes, and the access points that are commonly used by the public on Cross, Square, and Long Lakes are all privately held and

made available informally. In the absence of a plan, residences will likely be built that often result in numerous private water access sites, and the public could easily lose access to these lakes as landowners convert these informal public access points to private use. Public entities are available to hold public access sites, should such public access sites become available. (*ARCC testimony p. 2, MDIFW testimony p. 5.*)

All of the lakes, but Square Lake in particular, are vulnerable to scattered future camp development spreading along the shoreline. Square Lake is a desirable lake with a semi-remote feel that would be attractive for future development. In fact, some of the area identified as Square Lake Yexas is currently designated as the General Development (D-GN) Subdistrict – a subdistrict which allows a variety of types of non-residential development. For example, current zoning would allow uses such as: auto service stations; commercial and light industrial uses having a gross floor area of more than 2,500 square feet; and marinas (a term that is not specifically limited in size, scope, or scale). The existing wild brook trout fishery and the semi-remote feel of the lake could both be in jeopardy from some types of commercial development as well as uncontrolled camp development in the future.

Multiple parties and members of the public have commented that the commercial development zone proposed in the plan for the east side of Square Lake is inappropriate and will cause permanent harm to the character of the lake. (*NRCM testimony pp. 10-16; FRLLA – St Peter testimony pp. 3-6; Bouchard; Terrell; and BHANEC.*) However, the Concept Plan will significantly limit the type, scale, and quantity of non-residential development that would be allowed in the Yexas (D-FRL-YX) zone. (*Concept Plan, Section 10.21,N-FRL,3,c.*) Only uses such as real estate, retail, restaurants and recreation will be allowed; there can be no more than four such uses in total; and they must each be less than 2,500 square feet in size. Recreational lodging facilities are also allowed. More intense uses such as auto repair garages or laundry mats are prohibited.

In the absence of a concept plan, the opportunity for a public launch on Square Lake would be by chance. Further, without a public launch each one of the over 50 existing residential units on the lake (in addition to other haphazard development discussed in paragraph 9,C,(2)) could obtain a permit for a private trailered ramp. In addition to the cumulative impacts of a large number of private ramps, this would create a serious inequity between private and public access to a public resource. (*MDIFW testimony pp. 5-6, 8; BHANEC p. 6; Morrow; and Bouchard.*)

MDIFW also suggests that anglers will seek out other opportunities in the region because of a significant increase in activity on the lakes in the Plan Area.<sup>20</sup> To address this, the MDIWF suggested that the Concept Plan address public access on a number of other lakes in the region. The Commission finds that the amount of development proposed and the resulting projected boating activity will be incremental and otherwise does not warrant this mitigation. (*MDIFW testimony pp. 6-8; BPL testimony p. 2.*)

Potential scenic impacts from future potential haphazard development are significant and are discussed in paragraph 9,D,1, and water quality is discussed in paragraph 9,E,3.

**(4) The Concept Plan Is More Appropriate For The Protection And Management Of Existing Natural Resources**

**(a) *Development Will Be Better Guided To Appropriate Locations Due To Prospective Decision-Making That Considers Natural Resources***

The Concept Plan guides development away from the majority of the shoreline of Square Lake, which comprises the most sensitive shoreline in the Plan Area. Most development allowed within the development areas at Cross and Long Lakes will be on backlands – away from the shorelines. And, as depicted on Concept Plan map 2, the community and economic development areas are sited to be well away from lakeshores or sensitive brook trout streams, and near major public roads and established communities. These locations were chosen after feedback from resource agencies and environmental NGOs about the most and least desirable locations for future development. For example, a community and economic development area that was initially proposed for Rt. 161 in Madawaska Lake Township has now been moved far to the west because of feedback about wildlife passage through the area. And in the final version of the plan, a portion of that wildlife passage area is in permanent conservation easement to facilitate wildlife crossing of Rt. 161. (*FSM testimony p.9.*)

Further, while locations designated for development may contain small or scattered areas that are not suitable for development (*e.g.*, steep slopes, soils, or other natural resource limitations); the Development Areas have been i) located to avoid concentrations of these constraints; and ii) sized and configured to include sufficient land to accommodate the allowed development while avoiding

---

<sup>20</sup> MDIFW and BPL assert that the Concept Plan is deficient regarding public access needs. First, they note that because Mud Lake lacks a publicly available hand-carry launch or trailered ramp, the Concept Plan should include one. Through several iterations or amendments to the Concept Plan, the Petitioner proposed the construction of a hand-carry launch on Mud Lake. However, these sites were found to be unsuitable for this use; that element is no longer part of the Concept Plan.

sensitive resources that may be present. Subsequent subdivision and development proposal review processes will ensure that sensitive resources are taken into consideration in the detailed design of the developments. (*Pierson testimony pp. 2-3.*)

(b) *The Conservation Easement Offers Greater Natural Resource Protections Than Existing Zoning*

The conservation easement is strategically located and formulated to provide, in perpetuity, greater natural resource protections than current zoning. The conservation easement eliminates all residential and most commercial uses and focuses on conservation values in the context of timber harvesting and recreational uses. All existing protection zones will still apply, and the conservation easement adds substantial restrictions on top of those existing protections. For example, the conservation easement<sup>21</sup>:

- Protects the majority of the shoreline around Square Lake and Carry Pond, which otherwise are desirable places for development;
- Provides a wildlife passage area across Route 161 to allow migration routes even if the surrounding area experiences development over time;
- Provides enhanced buffering for important brook trout streams that is substantially more stringent than current forestry standards;
- Includes important additional restrictions on residential and non-forestry commercial uses in perpetuity; and
- Requires that all forestry activities are compatible with conservation values as spelled out in the conservation easement, with verification systems in place.

(5) **The Concept Plan Is More Appropriate For The Protection And Management Of Existing Scenic And Recreational Resources**

Some of the primary public benefits of the plan address the lack of guaranteed access to recreational resources in the Plan Area. This is a critical component of the plan, as public management of recreational use of the lakes such as boating and fishing would become nearly impossible in the absence of public access. In addition, the plan incorporates scenic protections that are more stringent than the Commission's typical regulatory structure.

(a) *Public Access To Recreational Resources Is Permanently Guaranteed*

As illustrated on Map 2, the Concept Plan incorporates public water access points at Square Lake, Cross Lake and Van Buren Cove, held

---

<sup>21</sup> Concept Plan, Map 2; and FRCLCE, Section 3.2.

by public agencies, to ensure access beyond the life of the Concept Plan. At Square Lake and Cross Lake, the public water access sites will be held in fee by a public entity. At Van Buren Cove, a public entity will hold a 99-year lease.

The conservation easement guarantees public pedestrian access in perpetuity, and the Plan Area will remain open, for the life of the Concept Plan, to levels of motorized trail access that are comparable to the access voluntarily provided by the landowner in recent years.

(b) *Development Will Be Guided To Appropriate Locations Due To Prospective Decision-Making That Considers Scenic And Recreational Resources*

Evidence in the record about recreational and scenic impacts focused particularly on the boating experience on Square Lake and the south end of Cross Lake. In those areas, users of the public water bodies expect to have a quiet boating experience with relatively few other users present. As there is no development proposed for Mud lake, and Long Lake is already heavily used, these waterbodies were not a point of contention with regard to recreational boating.

The petitioner conducted an analysis of recreational boating potential on the lakes in the Plan Area. The method of analysis was based on the Recreation Opportunity Spectrum (ROS) and Water and Land Recreation Opportunity Spectrum (WALROS) systems, sometimes used in evaluations of actions on public and private lands in both the western U.S. and parts of the northeastern U.S.

Each section of the water body was characterized and anticipated maximum numbers of boats were estimated in the analysis. For Square Lake, assuming that 15% of all the current and potential camps had a boat on the lake at one time, plus traffic from public access points, the estimate of the maximum number of boats on the lake at any one time was 67. This is for an 8,000 acre lake, which results in approximately 119 acres per boat.

The Bureau of Parks and Lands (the BPL) commented that the WALROS class system's use in the petition is not entirely consistent with how it is implemented at federal agencies, and that the classes in this case are arguably tilted toward the developed end of the spectrum by a full class. BPL expressed concerns about a change in character of the boating experience on Square Lake, but expresses that a change in character is less likely on the southern end of Cross Lake. (*BPL testimony p. 2.*)

Similarly, MDIFW comments indicate that there is currently low use of Square Lake, and present aerial boat counts from 2015. The counts indicate a mean number of boats on the lake that is consistently less



than 10. MDIFW points out that, using only this factor, the lake would qualify as a “primitive” class. The agency expresses concerns about changing the character of the lake, and also concerns about additional fishing pressure on what is a naturally-reproducing, native fishery. (*MDIFW testimony p. 8.*)

Commission staff commented to the petitioner during the review process that some of the classifications may need to be adjusted down to account for the relatively undeveloped nature of the shoreline, and light boat traffic. This was particularly true for Square Lake. Commission staff recommended that Square Lake be evaluated at classes of Rural Natural for the north half, and Semi-Primitive for the southern half. The petitioner revised the calculation of acceptable boating numbers to demonstrate that the proposal will generate a reasonable number of boat trips, even at the lower class. (JDI, testimony exhibit 19.) Following an examination of the revised acceptable boating numbers, review of likely traffic from a public launch, and review of the party testimony, Commission staff recommended to the petitioner that development on Square Lake be phased, with up to 100 units allowed in the first phase, and the final 30 units allowed only if buildout during the first phase was not causing unreasonable effects on the fisheries or the boating experience. The petitioner adopted this suggestion, which is incorporated into the plan as revised. Boating traffic is not expected to approach the calculated total of 67 boats, except on the busiest summer weekends, and a figure of 119 acres per boat falls near the dividing line between semi-primitive and rural natural in the WALROS classification system. The evidence suggests that this level of development will somewhat change the character of the lake, but that concentrating and limiting the development, including the elimination of the possibility of a marina, will contain the change in character to an acceptable level.

In guiding future development, the Concept Plan limits the number of residential units on Square Lake to a total that is not expected to cause undue adverse impacts on the recreational experience. The phasing requirement also serves as a way to check and see if the outcomes of the development with regard to scenic, recreational and fisheries impacts are as expected before authorizing the final 30 units for Square Lake. This is in contrast to the potential, in the absence of a concept plan, for scattered residential development along the majority of Square Lake’s shoreline and no central point for trailered launching, which could result in the proliferation of private trailered ramps. As noted in paragraph 9,C,3,b, Commercial development on Square Lake will be limited in type and amount and will serve the residential and public recreational uses to minimize the need for extensive vehicle traffic along the access road. This contained, well-

planned development area is a better alternative than spreading residential development along the shoreline and having inadequate infrastructure to accommodate the new use.

At Cross Lake, the Concept Plan conserves the southern tip and some areas to the west of the lake and focuses much of the development on backlands, behind existing camp development. Open space lands between Cross Lake D and E development areas (*i.e.*, D-FRL-RS residential development zone), will remain undeveloped. While some change will happen in the boating experience at the southern end of Cross Lake, the mix of backland development, conservation, and limited shoreland development will produce a pattern of development that is more compact, easier to serve, and less disruptive to natural resources and working forests than scattered lots that are created haphazardly over time.

(c) *The Conservation Easement Offers Greater Scenic And Recreational Resources Protections Than Existing Zoning*

With the exception of some protected deer yard areas, the current zoning<sup>22</sup> allows for typical forest management and single lot residential development. Existing zoning does not require any public recreational resource access, nor does it provide any special restrictions on building or harvesting near important brook trout streams to ensure healthy fisheries, including a highly-valued sport fishery. The conservation easement provides for limited, but assured, public access to the Plan Area that is comparable to today's system of use by permission, but which will now be guaranteed in perpetuity. Further, the conservation easement spells out key natural resource values that must be protected within the easement area, including heightened buffer standards around key brook trout streams.

**(6) Conclusions**

For the reasons set forth above, the Commission concludes there is substantial evidence in the record that the Concept Plan is more appropriate for the protection and management of existing uses and resources within the affected area than the existing district designations.

Additionally, for the reasons set forth above, the Commission finds that the Concept Plan better protects the principal values of the jurisdiction, better achieves the specific goals and policies of the CLUP, and significantly furthers the Commission's vision for the jurisdiction, than is provided by existing district designations. Therefore, the Commission concludes that the Concept Plan and the associated P-RP Subdistrict are more appropriate for

---

<sup>22</sup> E.g., General Management (M-GN) Subdistrict, Residential Development (D-RS) Subdistrict, and Great Pond Protection (P-GP) Subdistrict.

the protection and management of existing uses and resources within the affected area than are the existing district designations.

**D. The Proposed Land Use District Has No Undue Adverse Impact On Existing Uses Or Resources (12 M.R.S. § 685-A(8-A)(B))**

In this section the Commission addresses whether the change in zoning will cause undue adverse impact to existing uses or resources and concludes that it will not.<sup>23</sup>

To determine whether the Concept Plan satisfies 12 M.R.S. § 685-A(8-A)(B), the Commission evaluated the following existing uses and resources, among others, located within the Plan Area and considered whether impacts to those uses and resources attributable to the Concept Plan are unduly adverse: (i) scenic resources within and surrounding the Plan Area, including lake shores and scenic hillsides; (ii) recreational resources and uses, including primitive recreational pursuits such as fishing and paddling, and motorized recreational pursuits such as boating, snowmobiling and all-terrain vehicle riding; (iii) wildlife and plant resources, including riparian habitat, wildlife travel corridors, natural plant communities, whitetail deer, waterfowl and wading birds, bald eagles, salmon, and wild brook trout; (iv) cultural, historical and archaeological resources; (v) soils and wetlands resources; and (vi) community services such as waste management, fire protection and emergency services, law enforcement, education, and other governmental services.<sup>24</sup> Depending on the use or resource that might be impacted, the Commission extended the geographic range of its evaluation beyond the Plan Area.

The rezoning granted in the Concept Plan does not imply or guarantee Commission approval of any specific development proposed within the Plan Area pursuant to this rezoning. The Concept Plan, however, does establish review processes, including subdivision and development permit approvals, and, at Square Lake, Schematic Design Plan approval. These processes require natural resource inventory submissions as part of each subsequent site-specific development review to further avoid, minimize and mitigate impacts of the Concept Plan on the natural and cultural resources and uses within and surrounding the Plan Area. In the normal course of review of these projects, natural resource agency comments will be sought, as is suggested by the FRLLA, and as is the standard practice of the Commission.

---

<sup>23</sup> Where the Commission found credible evidence of potential undue adverse impacts to existing uses and resources from the Concept Plan as proposed by Irving Woodlands, the Commission met with Irving Woodlands and governmental review agencies with expertise in resource protection and management to ensure that the Concept Plan, as finally amended, would have no undue adverse impact on existing uses or resources.

<sup>24</sup> Complete information on these and other natural and cultural resources and uses issues are contained in the administrative record.

(1) **The Proposed Land Use District Has No Undue Adverse Impact On Existing Scenic Or Recreational Uses Or Resources**

Potential impacts to existing scenic or recreational uses or resources has been a key component of the testimony from parties, governmental agencies and the public. Hillsides, viewed from the lakes, are of particular interest because there is limited existing hillside development in the Plan Area, and views of future hillside developments could change the experience of boaters on the lakes, a principal form of local recreation. Further, the number and type of boats on the lakes also has an impact on the recreational experience of boaters. A topic which received less emphasis, but which is nonetheless important, is the availability of recreation activities away from the large lakes, including motorized trail networks and access to ponds that are popular for fishing.

*Regarding Scenic Resources:*

Following its approval of the Moosehead Region Concept Plan, the Commission adopted general hillside development standards for the Commission's entire service area. The Commission's hillside development standards account for the visual sensitivity of the lake resource and help ensure that residential development blends in with the surroundings, although the resulting vegetation will not hide the development entirely. The Concept Plan for the Fish River Chain of Lakes supplements the Commission's hillside development standards, in recognition of the sensitivity of views from the water, particularly at Square and Cross Lakes. Section 10.25,E-FRL of the Concept Plan requires mandatory inspections every two years to determine compliance with vegetative clearing plans. Those mandatory inspections will help avoid situations where the hillside development standards become meaningless due to non-compliance. The combination of enhanced hillside development standards and aggregation of development into limited portions of the Plan Area visible from the lake is more protective of visual resources than is the scattered development that would likely occur absent the Concept Plan.

In addition, the amount of proposed development allowed by the Concept Plan is compatible with the lakes when taking into account the Wildlands Lake Assessment ratings and current use patterns, as described in paragraph 9,F,5. The largest change will be at Square Lake. However, there are already lakeshore residences on Square Lake; the new development will be aggregated and screened; a large majority of the shoreline will be permanently conserved; and the location of the new development will only be perceptible from some portions of the lake, due to topography and distance. If the development at Square Lake requires a waiver of adjacency, and therefore development may happen faster than allowed under the 2-in-5 system of lot division, there will be some impact in the short term on visual resources. However, this is balanced in the long run and is mitigated through

the enhanced regulatory requirements for hillside development, as well as the Square Lake sequencing requirements; Square Lake reserved land system; Square Lake Schematic Design Plan which requires aggregation of shoreline development features; and the extent and location of the conservation easement; all discussed elsewhere in this decision document.

*Regarding Recreational Resources And Uses:*

**Boating:** The lakes in the Fish River Chain of Lakes experience substantially different levels of boating. This is driven by current levels of development and access. Long Lake experiences enough boating traffic already that the scale of development that is proposed is unlikely to substantially alter the feel of the lake. Cross Lake is classified as “heavily developed”, with approximately 260 camps already ringing the shoreline. Despite that development pattern, and a well-maintained trailered ramp that is currently open to the public, the boat traffic is generally light. Square Lake is the most lightly traveled because the current access does not permit large boats, and the lake can experience high winds, making travel in small boats safe only on certain days. Many members of the public, intervenors and government agencies particularly commented on the character of Square Lake. (*for example, FRLLA – Jandreau, NRCM, MDIFW, BHANEC, and TU.*)

Because of the current limited access to Square Lake, the MDIFW commented that public access would be desirable. Without a concept plan, there is no guarantee that public access would be achieved; currently, there is no public land on the lake that is designated as an access point for boats. The Concept Plan requires that a public launch be operational before most of the development at Square Lake can occur. A public trailered ramp and additional development at Square Lake is likely to substantially increase boating traffic. However, as is discussed in paragraph 9,C,5,b, the level of increase in boating traffic will not create an undue adverse impact. Additionally, the Commission’s review the Schematic Design Plan submission will further ensure that the arrangement and capacity of the waterfront facilities at Square Lake meet the needs of the allowed uses, but also minimize the impact of the development on the boating experience at Square Lake.

A publicly owned launch at Cross Lake and a long-term public lease at Van Buren Cove on Long Lake are also parts of this Plan that provide for public access to the water, as opposed to the current private arrangements that are not guaranteed into the future.

**Fishing:** Increased public access to the lakes will also increase access to the fisheries resource. This is generally desirable, except that in the case of Square Lake, the MDIFW expressed concern that increased fishing pressure may potentially impact the native brook trout fishery. This does pose a dilemma, since, over time, haphazard development is also likely to pose a

risk to the native fishery and provide no public access. The most logical course is to put some reasonable limits on development while also enhancing habitat protections to give the native stocks the best chance of maintaining healthy populations. The Concept Plan does both: development is limited to levels below what would otherwise be allowed, and it is phased in with a check on fisheries condition before authorizing the final development units; and the conservation easement requires enhanced buffers on certain high-value brook trout streams that feed into Square Lake. Issues of fisheries health will be of strong interest to the Commission during the permitting process.

Pond access: Carry Pond, which has a small native fishery and is proximate to a public road, is protected in the Concept Plan through the permanent conservation easement. The conservation easement prohibits most development and enhances resource protections by increasing the width of, and reducing the extent of timber harvesting that can occur within, the riparian buffer. Several other small ponds will also be available for fishing and boating during the life of the plan.

Motorized trail availability: The Concept Plan maintains a comparable level of motorized trail access as is currently in place. In the non-easement areas, this will be for the life of the plan.<sup>25</sup>

#### Conclusions

Through enhanced standards and careful placement of development and conservation, the Concept Plan avoids impacts to scenic and recreation resources where possible, and minimizes them when necessary. Grants of land for permanent public access and the conservation of resources through easement serve as mitigation for those impacts that cannot be avoided. By employing these measures, the Concept Plan ensures that there will be no undue adverse impact on scenic and recreational existing uses and resources.

#### **(2) The Proposed Land Use District Has No Undue Adverse Impact On Existing Wildlife or Plant Uses Or Resources**

Comments on wildlife and plant impacts have been predominantly related to impacts on native fish populations, protection of certain bog and stream complexes, and some occurrences of habitat for other species such as deer, wading birds, and rare plants. There has also been comment regarding the function of the area as passage for large mammals moving through northern Maine to Canada.

Fish: MDIFW, in particular, expressed concerns about impacts to native fisheries, and that sentiment was echoed by some individuals and groups who

---

<sup>25</sup> Concept Plan, Section 1,E,9.

gave testimony. The most sensitive waterbody in this regard is Square Lake, but the concern existed to lesser degrees on most of the lakes and ponds in the Plan Area. The primary threats identified included direct impacts from development on streams that provide important habitat; increase in fishing pressure; and non-native species introductions.<sup>26</sup>

The proposed conservation easement includes enhanced stream buffers for key areas that host native fish species around Square Lake, and the Concept Plan includes an enhanced water crossing standard to guarantee adequate fish passage for all roads in the Plan Area, including land management roads. The conservation easement language was also strengthened to clarify the management plan provisions. Twenty-four residential development units were moved from the west side of square lake to the east side and made contingent on an assessment of the impact of Square Lake East development on fisheries. The conservation easement area was enlarged to include Carry Pond and much of its tributaries, which host a small native fishery and are relatively close to a public road, making it a likely fishing destination in the coming years, despite relatively low fishing pressure currently.

The Commission also considered the potential risks of creating public access and additional development at Square Lake, both in terms of the risk of non-native species introductions and direct impacts to the fishery. As described in paragraph 9,C,(5) about boating impact, the Commission felt that planned and monitored development of Square Lake could be kept at a level that does not produce an undue adverse impact, and the creation of public access was a distinct benefit of doing so through a concept plan. After considering the comments regarding stream buffers, Commission staff recommended that the petitioner add substantial buffers on certain streams, and these changes are reflected in the current draft of the conservation easement. The addition of stream buffers in the conservation easement area is intended to be extra insurance for the native fish population and serves as mitigation for any potential harm to the fishery. There is little the Commission can do to prevent introduction of non-native species, whether that comes from haphazard development of camps and informal public access over time, or from formal public access and planned development. However, as individual developments are permitted, any MDIFW recommendations about the design of the developments and the trailered ramp facilities that may raise awareness of the issue or allow for monitoring of boat launches will be taken into serious consideration.

**Bogs and stream complexes:** As MDIFW and NRCM commented, some places within the Plan Area are already unlikely to be developed. When choosing among potential sections of the Plan Area to conserve, the

---

<sup>26</sup> Avoidance, minimization, and mitigation strategies that were suggested were: a scaling back of development; increases in the stream protections included in the conservation easement area; and an increase in the size of the conservation easement. After hearing public testimony, Commission staff recommended, and the petitioner adopted, changes in these areas, although the changes are not as extensive as some commenters requested.

Commission focused first on areas most at risk of development. While the Bog and stream complexes are very valuable, and ideally would be subject to a conservation easement, they are not the places most at risk because there is already some level of protection for them through natural resource laws. The Commission instead focused on areas that were likely, over time, to be developed with residential dwellings or commercial uses, and were important for overall habitat conservation in the area. These priorities are discussed elsewhere in this section.

Other wildlife: MDIFW identified a number of other wildlife resources that should be protected. Some of these protections are accomplished currently through zoning or voluntary agreements. One type of protection that MDIFW stressed was riparian buffers. Enhanced buffers were incorporated in particular locations within the conservation easement area. All locations in the Concept Plan Area are subject to the sustainable forestry management practices in section 10.30-FRL of the Concept Plan, including 100 foot riparian buffers for flowing waters, which is a higher standard than exists in current forestry regulations. Other of the recommendations for protection of species that may occur in the Plan Area are best addressed through review at the time of a development proposal or through implementation of the conservation easement.

Rare plants: Comments by the Maine Natural Areas Program (*MNAP Feb. 20, 2018.*) indicated that additional inventories and protection of certain classes of rare plant communities were warranted. Through discussions with FSM and Commission staff, the language in the conservation easement was strengthened to better articulate the requirement for implementation and review of a management plan that meets the conservation goals of the easement. Sections 3, 4 and 6 of the conservation easement require an evaluation of allowed uses against the impacts to the “Conservation Values”, which encompass “...natural communities, sensitive sites, which include at a minimum all S1 and S2 documented plants, wildlife and habitats occurring on the property, and the ecological values of these areas...” (*FRCLCE section 1.10,d.*) In addition, portions of the areas that MNAP recommended for easement expansion were included in the revised easement. Section 10.30-FRL of the Concept Plan articulates Forest Sustainability Goals for the entire plan area. It will be incumbent upon Irving, or subsequent owners, to work with resource agencies to obtain information that will inform their harvest planning and achieve the forest sustainability goals as specified in the Concept Plan.

Wildlife Passage: The Nature Conservancy (June 21, 2018) and FSM (pre-filed testimony) recommended an addition to the conservation easement area for the purpose of providing wildlife passage in case the route 161 are becomes built-up over time, reducing access for migrating wildlife. This is based on work of the Staying Connected Initiative. The revised conservation



easement includes one-half mile of conservation easement on both sides of Route 161 in Madawaska Lake Township to accomplish this purpose.

### Conclusions

The Commission concludes that the terms of the Concept Plan and the conservation easement, particularly because of revisions responsive to public and agency comments, are sufficient to ensure that there will be no undue adverse impact on existing wildlife or plant uses or resources.

### **(3) The Proposed Land Use District Has No Undue Adverse Impact On Existing Community Uses Or Resources**

To determine whether the Concept Plan will have an undue adverse impact on resources or uses, the Commission considered the following community services: transportation, waste management, water supply, fire protection and emergency services, police and law enforcement, education, health care, and general government services.

Based on its review of the record, the Commission finds that most of these community services are likely to have sufficient capacity to serve the development contemplated by the Concept Plan. Where such capacity does not presently exist, the Commission finds that the likely pace of development will allow these services to catch up with demand.<sup>27</sup> The Commission therefore concludes that the Concept Plan will have no undue adverse impacts on community services. The facts and analysis supporting the Commission's conclusion with respect to certain specific community services are presented in the paragraphs immediately below.

#### *(a) The Concept Plan Will Not Cause Undue Adverse Impact To Transportation Infrastructure Or Traffic Safety*

The Plan Area is accessible from State Routes 161 and 162. Maine Department of Transportation (the MDOT) confirmed that the anticipated amount of new traffic generated from development allowed within the Plan Area would not have an unreasonable effect on current level of service of these roads.<sup>28</sup>

---

<sup>27</sup> In addition, because the matter before the Commission is a rezoning petition, the focus in evaluating community impacts is on the feasibility of providing community services without undue adverse impact on governments and communities – that is, does capacity exist or is there evidence that it can be created without an undue burden on providers, given the projected amount, location, and pace of development proposed? The details of how the service will be provided (for example, direct hauling of solid waste to licensed disposal sites versus using a local transfer station) must be presented, with additional documentation by providers of the services that the arrangements are satisfactory to them, at the time of submission of subdivision or development permit applications for proposals within the Plan Area.

<sup>28</sup> Petition, May 2017, Vol. 1, Tab 25, p. 2.

The Long Lake portion of the Plan Area is accessible from the Town of Van Buren over the Lake Road, a portion of which is maintained by the Town. After considering the evidence in the record, the Commission finds that the proposed plan's impact to the public roads in the Town of Van Buren will not constitute an undue adverse impact, however, the Commission understands the Town of Van Buren's concern about maintenance. To address a portion of the town's concern and also to address the Aroostook County Commissioners' concerns over additional impacts and demands, the Concept Plan establishes minimum maintenance requirements, procedures to create new or expand existing road associations, and the framework for certain expectations regarding cost sharing. There are approximately seven existing formal road associations, three informal associations, and any number of other relationships/agreements in place. As developments contemplated by the Concept Plan are built, other associations will be created, and the roads used for access may be used by the members of more than one association.

The Commission appreciates the concerns expressed by several parties and members of the public regarding the regularity of road maintenance and overall quality of access. Such issues—whether the road will be plowed in the winter, establishing a fee schedule, and identifying the overall quality of access—are best determined by the association members. The Commission finds that the Concept Plan includes appropriate minimum expectations and procedures, but is also provides the necessary level of flexibility.<sup>29</sup> (*FRLLA testimony – St. Peter pp. 2-4, Ouellette, Roberts; Vincent; Morrow; and Cormier.*) Further, when leases are sold or new lots are created, deeded access must be provided and the geographic and physical bounds of any maintenance rights and responsibilities must be specified. This also means that the Concept Plan is appropriately flexible enough to respond to conditions and factors that exist at the time the lots are sold or created.

With respect to development design, the Commission finds that the Concept Plan recognizes the need for limiting the number of driveway cuts on to Route 161 for Cross Lake B and designating certain roads as access routes that will minimize conflicts with ongoing forest management operations in order to preserve safe traffic flow.<sup>30</sup> The details would be determined as part of each subdivision or development permit review.

Therefore, the Commission finds that the Concept Plan will not cause undue adverse impact to transportation infrastructure or traffic safety.

---

<sup>29</sup> Concept Plan, Sections 1,E,13 and 14; and section 10.29-FRL.

<sup>30</sup> Petition, May 2017, Vol. 1, Tab 25, p. 2. (see also Concept Plan, map 9.)

(b) *The Concept Plan Will Not Cause Undue Adverse Impact To The Provision Of Waste Management Services*

Waste management entails several forms of solid waste – land clearing debris, construction and demolition debris, municipal solid waste, and universal and bulky waste – and sludge from septic systems and potentially other wastewater treatment systems. Each of these forms of solid waste is discussed below:

**Land Clearing, Construction And Demolition Debris:** No land clearing, construction or demolition is proposed as part of the Concept Plan. The Commission finds that disposal of debris from activities allowed by the Concept Plan is a matter that is most appropriate to be determined as part of each subdivision or development permit review.

**Municipal Solid Waste and Universal and Bulky Waste:** Tri-County currently contracts with Aroostook County for recycling and disposal of solid waste generated from within the Plan Area. Irving Woodlands presented a signed letter from Tri-Community Recycling and Sanitary Landfill that it has capacity at its Fort Fairfield facility for this type of waste generated within the Plan Area.<sup>31</sup>

**Septage Sludge:** Several septic tank pumpers serve the existing development in the Plan Area, each of which were contacted during the review process. No comments were received. The Sinclair Sanitary District is also an option for potential development in CD-2. The Sinclair Sanitary District does have some limited capacity to take on new development. However, engineered upgrades to the district's overall capacity and treatment capabilities may be required to provide treatment for certain commercial/industrial wastes and any high volumes of inflows associated with commercial operations.<sup>32</sup>

Considering all these factors, the Commission finds that the Concept Plan will not cause undue adverse impact upon the provision of waste management services.

(c) *The Concept Plan Will Not Cause Undue Adverse Impact To Water Supply*

No comments were received with regards to impacts to water supply. Due to the absence of public water supply systems in the area, water supply will be provided by individual or common drilled wells. The Concept Plan requires a demonstration, as part of the filing of a development or subdivision permit, that a healthy and sufficient water supply will be reasonably available for the development. As a result,

---

<sup>31</sup> Petition, May 2017, Petition of Rezoning, Vol. 1, Tab 10, p. 3.

<sup>32</sup> Petition, May 2017, Petition of Rezoning, Vol. 1, Tab 10, p. 1.

the Commission finds that the Concept Plan will not cause undue adverse impact to water supply.

(d) *The Concept Plan Will Not Cause Undue Adverse Impact To Fire Protection And Emergency Services*

The Concept Plan development is projected to generate a number of new fire-related dispatches per year once the development is built out. Fire Protection Service currently is provided by the Aroostook County North Lakes Fire and Rescue Department, which has three substations serving Cross Lake, Mud Lake, Long Lake, Madawaska Lake and Square Lake. North Lakes Fire and Rescue has entered into written mutual-aid agreements with the Towns of Stockholm, St. Agatha, and Fort Kent, and the Caribou Fire and Ambulance Department. Budgetary responsibilities for this service are part of the annual budget process for the department. The Maine Bureau of Forestry provides forest fire protection and frequently responds to structural fires, sometimes as a first responder, in order to prevent their spread to surrounding forests.

The Concept Plan does not change, or exempt development from, existing regulations, such as the Maine Fire Marshall's Office requirement and life safety codes.

The Concept Plan development is projected to generate a number of new ambulance calls per year once the development is built out. Ambulance services in the majority of the Plan Area are provided by Ambulance Service, Inc. Caribou Fire & Ambulance also provides service to the Madawaska Lake Region. The Plan Area is either within the service area of Cary Medical Center in Caribou or Northern Maine Medical Center in Fort Kent. Emergency calls to 911 from landlines go to Penobscot County, while calls from cell phones are handled by the Department of Public Safety dispatch in Houlton. All call are then transferred to the appropriate dispatch in Aroostook County.<sup>33</sup>

The service providers commented that they could handle additional calls attributed to development of the Plan Area. Thus, the Commission finds that the Concept Plan addresses fire protection and emergency service sufficiently to avoid undue adverse impacts. However, as highlighted by the Aroostook County Commissioner's testimony, the conditions of access roads affect response times, and therefore, public safety. While the Concept Plan includes minimum road maintenance requirements (as discussed in paragraph 9,D,(3),(a), above), review of subsequent subdivision proposals will consider road conditions and the quality of road access as they regard public safety.

---

<sup>33</sup> Petition, May 2017, Petition of Rezoning, Vol. 1, Tab 24.

(e) *The Concept Plan Will Not Cause Undue Adverse Impact To Law Enforcement Services*

Law enforcement in the Plan Area is provided by the Aroostook County Sheriff's Department and the Maine Department of Public Safety, Maine State Police. Service providers stated that they will be able to manage the increased demand on services with no decrease in service quality. Thus, the Commission finds that the Concept Plan will not cause undue adverse impact to law enforcement services.

(f) *The Concept Plan Will Not Cause Undue Adverse Impact To Public Education Services*

The school administrative units serving the area – MSAD #27 in Fort Kent and MSAD #33 in Agatha and Frenchville – have suffered declines in enrollment over the past decade and have capacity to accept the projected increases from the development.<sup>34</sup> The Commission finds that the Concept Plan will not cause undue adverse impact to public education services.

(g) *The Concept Plan Will Not Cause Undue Adverse Impact To Other General Government Services*

General government services (besides those already discussed) include maintenance of public roads (other than State Routes 161 and 162), registration, administrative, permitting, and enforcement services. The primary providers of these services are the counties, the Towns of Van Buren, New Canada, and Fort Kent and the Land Use Planning Commission. Counties are responsible for road maintenance and provide other countywide services, such as Registries of Deeds. Among the general government services provided by the municipalities are: fishing and hunting licenses, motor vehicle registration, recreation vehicle registration, voting booths, tracking of vital statistics records, public library, municipal recreational facilities, and maintenance of local streets and sidewalks for visitors as well as town residents. The Land Use Planning Commission provides planning and permitting and code enforcement services.

It is likely that any increased demand for these services can be absorbed by the providing agencies, although one area that is currently deficient and likely to be stressed by the proposed development would be permitting and compliance monitoring. To mitigate this issue and assist the Commission in the enforcement of vegetation clearing and water quality standards, the Concept Plan contains provisions that establish a mandatory third-party inspection and reporting system financed by subdivision homeowner's

---

<sup>34</sup> Petition, May 2017, Petition of Rezoning, Vol. 1, Tab 10.

associations. Therefore, the Commission finds that these government services will not be unduly adversely impacted by the Concept Plan.

(h) *The Concept Plan Will Not Cause Undue Adverse Impact To The Commercial Viability Of Existing Businesses*

Generally, the record demonstrates that Concept Plan development will be an economic boost to an area that is dwindling in population. Although mainly seasonal in nature, the proposed residential development will benefit local businesses. Some commenters stated that non-residential development will have an undue adverse impact on the viability of existing businesses within the Plan Area. However, the commercial services that the Concept Plan contemplates at Square Lake will serve new development and will be so far off the main road that it is unlikely to draw existing traffic. Development in the Community and Economic Development Areas in the Plan Area will be by local businesses as the economy allows.

The Commission finds that the Concept Plan will not have an undue adverse economic impact on existing businesses, and may benefit those businesses.

(4) **The Proposed Land Use District Has No Undue Adverse Impact On Other Existing Natural Or Cultural Uses Or Resources**

In addition to those resources and uses specifically discussed above, the record contains information regarding a range of other resources and uses existing within and surrounding the Plan Area, including: (i) water quality; (ii) ambient noise levels; (iii) air quality; and (iv) cultural, historical and archaeological resources. Descriptions of these existing natural and cultural resources are contained in the administrative record. As set forth below, the Commission finds that there will be no undue adverse impacts on other existing natural or cultural uses or resources.

Throughout the proceeding, numerous parties, governmental review agencies, and members of the public presented information, analysis and argument regarding the Concept Plan's impacts on these natural and cultural resources. Issues presented in testimony and comments, as well as during hearings, included the following:

(a) *The Concept Plan Will Not Cause Undue Adverse Impact To Water Quality*

There is a water quality problem at Cross Lake. Residents described periodic algal blooms that are worsening over time and impairing their enjoyment of the lake resource. Indeed, the MDEP reports that Cross Lake fails to meet water quality standards. The MDEP's assessment states that "While the principle reason for impairment of Cross Lake is inputs of phosphorus from agricultural activities located

primarily in the Dickey Brook watershed, runoff from roads and harvesting operations also contribute to the problem.” (MDEP, December 7, 2017.)

At the hearing, members of the public and intervenors requested changes to the petitioner’s initial Phosphorus management strategy. Some of the specific comments related to closer adherence to the MDEP’s standard process for assessing mitigation credits and also to inspections of appropriate maintenance of phosphorus control measures such as vegetative buffers.

The Concept Plan establishes a system that limits allowable phosphorus exports from lands within the Plan Area. This system is incorporated in the Concept Plan as section 10.32-FRL. It caps phosphorus exports from development areas and establishes a system for flexibly assigning phosphorus allocations to each Development Area. Allocations to Development Areas may not exceed the limits established in the Concept Plan, however, phosphorus mitigation projects in other locations in the Cross Lake watershed may be used to offset additional development activity in the Cross Lake development areas in accordance with standard MDEP practices. The revision eliminated the suggested 1:1 mitigation credit ratio in favor of existing MDEP practice for such calculations (currently a 2:1 ratio). Caps also apply to non-development area lands, but documentation of phosphorus generating activities is only required if mitigation credit will be sought.

The MDEP has opined that the Concept Plan should meet the Department’s goals provided that the on-the-ground activities are consistent with what is anticipated and required in the Concept Plan document and subsequent permits; that phosphorus loading from activities outside the Plan Area do not increase significantly; and that harvesting activities are conducted in ways that are consistent with harvesting methods over recent decades. (MDEP June 6, 2019.)

The Concept Plan anticipates that phosphorus control method inspections may be needed, depending on the development that takes place in the Cross Lake watershed. Inspection requirements will be tailored to the circumstances at the time that a phosphorus management plan is prepared and reviewed by the MDEP.<sup>35</sup>

Based on a review of the record, the Commission finds that the proposed Phosphorus control plan is more likely to successfully control phosphorus than would be the case with haphazard development. Considering that the bulk of the Phosphorus inputs to the watershed are from agriculture and other unregulated activities, it is reasonable to control Phosphorus from planned development, but

---

<sup>35</sup> Concept Plan, Section 10.32-FRL,E.

not to prevent all development: such an outcome would not be equitable. The Commission is mindful that, during permit reviews, realistic measures to control phosphorus such as vegetative buffers will need to be emphasized, rather than highly technical solutions such as engineered water retention systems that may fail over time.

(b) *The Concept Plan Will Not Cause Undue Adverse Noise Impacts*

The Concept Plan supplements the Commission's jurisdiction-wide standards for noise<sup>36</sup> to clarify that sounds emanating from snowmobiles, ATVs, vehicles, event-related activities and forestry and forestry-related activities are exempt from the noise threshold requirements. The primary areas in which this could be an issue are near and within existing dense residential areas, particularly the existing lease lots. New developments must be designed to buffer residences from potential sound-generating activities.

The primary type of development that will be located in proximity to the existing neighborhoods of camps is common water access sites for the new subdivisions. Prior versions of the Concept Plan included broad reductions in minimum dimensional requirements, and the ability for common water access sites to include playground equipment. (*FRLLA testimony Topic One – St. Peter pp. 5-6.*) Many of the common water access sites may be located in fairly small areas between existing camp lots, thus presenting a risk of creating noise impacts on the neighboring residential uses. To address this problem, the Concept Plan was revised to restore most dimensional requirements and be clear about the types of structures that could be located at a common water access site.

(c) *The Concept Plan Will Not Cause Undue Adverse Impact To Air Quality*

No comments or concerns regarding air quality were submitted. Nuisance issues such as dust generated from construction traffic are matters that can be addressed at subsequent subdivision and development review stages. Certain types of facilities permitted in specific land use zones within the Plan Area (*e.g.*, sawmills in the D-FRL-CI zone, fuel burning equipment associated with commercial development) will be subject to the State air emission licensing program and will be required to maintain compliance with State and Federal air quality laws and standards.

---

<sup>36</sup> Chapter 10, Section 10.25,E-FRL.



(d) *The Concept Plan Will Not Cause Undue Adverse Impact To Cultural, Archaeological And Historical Resources*

Based on information submitted by Irving Woodlands in consultation with the Maine Historic Preservation Commission (the MHPC), four pre-historic archaeological sites have been identified within the Plan Area, three near Cross Lake and one near Square Lake. The Commission finds that archaeological and historical resources of varying levels of significance likely exist within the Plan Area and that some of these resources may meet the eligibility criteria for listing in the National Registry of Historic Places;<sup>37</sup> and based on recommendations made the MHPC, Phase I archaeological survey work will need to be conducted in advance of future ground disturbance or development.<sup>38</sup>

The means to mitigate adverse impacts to archaeological and historical resources, whether they are known now or discovered during subsequent survey work, are well established (*e.g.*, legal or physical protections of the resource, or archaeological data recovery) and are best determined at the site-specific permit review phase.

(5) **Conclusions**

In summary, based on the findings set forth above, the Commission concludes that the Concept Plan will cause no undue adverse impact to existing uses or resources within and surrounding the Plan Area.

**E. The Proposed Land Use District Is Consistent With The P-RP Subdistrict (12 M.R.S. § 685(8-A)(A) And Its Criteria For Approval (Ch. 10.23,H Of The Commission’s Rules)**

The Commission may adopt or amend a land use district boundary if there is substantial evidence that, among other criteria, the proposed land use district “is consistent with the standards for district boundaries in effect at the time...” (12 M.R.S. § 685(8-A)(A)). The criteria for approval of a P-RP subdistrict are:

- The plan conforms with redistricting criteria and the CLUP;<sup>39</sup>

---

<sup>37</sup> Petition, May 2017, Rezoning Petition, Vol. 1, Tab 9.

<sup>38</sup> Petition, May 2017, Rezoning Petition, Vol. 1, Tab 9.

<sup>39</sup> The Commission’s findings and conclusions regarding the Concept Plan’s conformance with the statutory criteria for adoption or amendment of land use district boundaries (12 M.R.S. § 685-A(8-A)) and the CLUP are set forth in sections 9,B. through 9,E.

- The plan conforms, where applicable, with the Commission’s Land Use Districts and Standards (Chapter 10);<sup>40</sup>
- The plan, taken as a whole, is at least as protective of the natural environment as the subdistricts which it replaces;
- The plan includes in its purpose the protection of those resources in need of protection;
- Any development gained through any waiver of the adjacency criterion is matched by comparable conservation measures;
- The plan strikes a reasonable and publicly beneficial balance between appropriate development and long-term conservation of lake resources; and
- Conservation measures apply in perpetuity, except where it is demonstrated by clear and convincing evidence that other alternative conservation measures fully provide for long-term protection or conservation.

(1) **The plan conforms, where applicable, with the Commission’s Land Use Districts and Standards (Chapter 10)**

The Concept Plan conforms with Chapter 10 because:

- The Concept Plan leaves most provisions in Chapter 10 as “LUPC Amendable Provisions”, which means that as the Commission amends its land use standards over time, resources will benefit from, and development will be accountable to, the same regulatory provisions as would otherwise apply.
- The Concept Plan employs the structure and phrasing of the Commission’s rules to build upon regulations that are familiar to the public and that are responsive to the regulatory authority of the LUPC and the MDEP.
- Most land use standards within the Concept Plan are equal to or exceed the standards contained in Chapter 10, and any exceptions have been considered in balance with other protective measures.

---

<sup>40</sup> Irving, through Zoning Petition ZP 768, is not concurrently seeking approval of any detailed, site-specific development proposals, although seeking such concurrent development approval is a permissible request under Concept Plans. As such, the Commission consideration of the Concept Plan’s conformance with its Land Use Districts and Standards (Chapter 10) is limited to a review of whether it would be feasible for anticipated site-specific developments to comply with the Commission’s rules applicable to subdivision and development permit reviews. The Commission also considered such regulatory feasibility in assessing, among others, the Concept Plan’s consistency with the CLUP (see paragraph 9,B.), and whether the Concept Plan would have undue adverse impact on existing uses or resources (see paragraph 9,D.).

Based on a review of the record, the Commission finds that the plan conforms, where applicable, with the Commission's Land Use Districts and Standards.

(2) **The Concept Plan, taken as a whole, is at least as protective of the natural environment as the subdistricts which it replaces**

As noted above, the Concept Plan deviates from Chapter 10 to a limited extent. Specifically, as is common for concept plans, this plan reduces certain dimensional requirements. Otherwise, deviations from Chapter 10 largely represent standards that have been added as supplemental requirements.

- The Concept Plan includes additional supplemental standards that address hillsides, noise and lighting, and subdivisions. In fact, while Chapter 10 now includes standards addressing hillside development, at the time it was submitted, the Concept Plan responded to a deficiency in the Commission's regulations by addressing hillside development. (*Concept Plan, sections 10.25,E-FRL; 10.25,F-FRL; and 10.25,Q-FRL.*)
- The Concept Plan includes additional procedures and opportunities for the replacement of subsurface wastewater disposal systems for the license lots. (*Concept Plan, section 10.31-FRL.*)
- The Concept Plan prohibits certain uses, including private trailered ramps, which reduces cumulative pressures upon resources. (*Concept Plan, part 2, sections C and 10.27,L-FRL.*)
- Consistent with all concept plans, as is part of their purpose, the Plan Area has been assessed at a landscape scale in order to avoid vulnerable resources and focus development in areas that are generally appropriate.
- The plan also includes provisions, such as third-party inspections and sequencing requirements, that serve to provide additional safeguards against adverse impacts. (*Concept Plan, section 10.25,E-FRL and 10.34-FRL.*)

Based on a review of the record, the Commission finds that the concept plan, taken as a whole, is at least as protective of the natural environment as the subdistricts which it replaces.

(3) **The Concept Plan includes in its purpose the protection of those resources in need of protection**

One of the fundamental purposes of the Concept Plan is to protect from harm the existing natural and cultural resources located within and surrounding the Plan Area, including the forest resources, wildlife and plant resources,

recreational and scenic resources, and community resources.<sup>41</sup> These are the resources that the CLUP recognizes as comprising the principal values which make the jurisdiction so special.

The Commission finds that the Concept Plan includes specific provisions that ensure that these existing resources and, consequently, the four principal values are permanently protected from threats that they face absent the Concept Plan – particularly threats stemming from incremental, haphazard development. These provisions significantly restrict and regulate land uses not only on the lands protected by the terms of the FRCLCE but also within the development areas themselves. They include:

- Numerous significant restrictions regarding the location, scale, and nature of development within the 2,143 acres that comprise the Concept Plan development areas, and rigorous land use standards and processes, all of which are designed to protect existing resources, as well as explicit acknowledgment and reinforcement of the Commission’s legal authority at subsequent development review stages to require detailed resource inventories to determine or confirm the presence of natural resources within areas proposed for development and to protect those resources from harm, including by continuing to apply the natural resources protections afforded by the Commission’s Protection Subdistricts as these protections adapt and evolve over time. (*Concept Plan, sections 10.25,E-FRL; 10.25,F-FRL; and part 2, sub-chapter IV.*)
- For the approximately 16,764 acres that are subject to the FRCLCE, the permanent prohibition of residential development, and numerous significant permanent restrictions on the location, scale, and nature of non-residential development. (*FRCLCE, section 3.2.*) The restrictions contained in this conservation easement collectively will forever protect a combination of forestland values, aquatic resources and wetland values, wildlife, plant and natural community values, recreational values, and scenic values at a landscape scale.

In addition, the Concept Plan includes provisions to provide additional protections for specific resources, including:

- Fisheries Resources: The Concept Plan and the conservation easement include increased protections<sup>42</sup> for fisheries resources by increasing riparian buffers as determined by lake or stream. Specifically, each riparian buffer is limited in two ways: i) the degree to which timber harvesting may occur (*i.e.*, no harvesting, or harvesting up to one-third of the basal area within a certain period); and ii) whether machines may

---

<sup>41</sup> These resources are generally described in paragraph 9,A. and more specifically discussed in paragraph 9,E.

<sup>42</sup> Concept Plan, Section 10.30-FRL,B,5,f; and FRCLCE, Section 3.2,f.

leave tracks. The distances to which these limits apply respond to the fishery resource involved.

- Square Lake: The Concept Plan requires an additional planning step (Schematic Design Plan Review) prior to development at Square Lake. This is in response to the potential for development to affect the lake experience. The reserved land designation at Square Lake will protect against effects on fisheries and the character of the lake by preventing secondary development pressure. (*Concept Plan, section 10.34-FRL.*)
- Water quality: The Plan Area includes several hundred existing lease lots, largely used for residential development. Most of these leases were created prior to 1971 and often do not meet minimum dimensional requirements, such as minimum shoreline frontage, minimum acreage, and minimum shoreline setbacks. (*Concept Plan, section 10.31-FRL.*)

The Concept Plan anticipates the sale of these leases. As is common practice, in most cases, the lots will be enlarged at the time of sale to include “back lots,” which will likely result in most lots being less nonconforming. Additionally, the Concept Plan provides the opportunity and procedures through which additional land (“back land”) may be available for the replacement waste water disposal systems. Both back lots and back land will contribute to locating waste water disposal systems away from lake resources.

- Deer Wintering Areas: Sections 1,E,6 and 10.30-FRL,B,5 of the Concept Plan require long-term management of Deer Wintering Areas (DWAs) through a cooperative agreement that is incorporated as Appendix D of the Concept Plan. The purpose of the agreement is to manage for sustainable winter habitat for deer, in part, by directing the timing of timber harvesting activity and establishing guidelines for road construction, recreational use, and travel corridors. While these agreements are typically voluntary and often last for five years; the Concept Plan requires the Petitioner to maintain a comparable agreement for the life of the Concept Plan.

While some parties have raised concern over resources not included in the conservation easement, most notably the Cross Lake Bog, there is some regulatory protection today, and the Concept Plan does not reduce any existing regulatory protections afforded to these resources.

Based on these and other provisions contained in the Concept Plan, the Commission finds that the Concept Plan sufficiently includes in its purpose the protection of those resources in need of protection.

(4) **The Concept Plan Strikes A Reasonable And Publicly Beneficial Balance Between Appropriate Development And Long-Term Conservation Of Lake Resources (Ch. 10.23,H,6,f Of The Commission's Rules)**

Unlike other governing review criteria applicable to concept plans whose purposes are predominantly to prevent harm and protect the public's health, safety and welfare,<sup>43</sup> the criterion that a concept plan must strike "a reasonable and publicly beneficial balance between appropriate development and long-term conservation" is intended to ensure that both the landowner and the public are receiving benefits as a result of the Concept Plan that neither would be entitled to in its absence, and that these benefits are "balanced" in a manner that is publicly beneficial.

For the landowner, these benefits include being permitted to develop certain lands that would not otherwise be permitted under the Commission's traditional zoning framework, provided the development is "appropriate." For example, the Concept Plan provides certain waivers of the Commission's adjacency criterion, whereby Irving obtains zoning authority to develop in locations and at a scale and pace that is not afforded through the Commission's typical zoning approach. The Concept Plan also provides Irving with predictability regarding certain Commission actions related to (i) where development will and will not be allowed in the Plan Area, (ii) the type of development that will and will not be allowed in each development area, (iii) the maximum number of dwelling units and overnight accommodation units permitted within the thirty-year term of the Concept Plan, and (iv) the development standards and procedures that will remain static versus those that may change during the term of the Concept Plan. While the Commission's approval of the Concept Plan does not constitute a pre-approval of any subsequent required permits within the Plan Area, Concept Plan approval does represent a commitment by the Commission that the development described in this Concept Plan is acceptable to the Commission provided that any subdivision or other development proposed within the Plan Area is consistent with the purposes, descriptions, and permitted uses set forth in the applicable Concept Plan land use zones, meets the Commission's statutory and regulatory criteria, and otherwise complies with the Concept Plan's provisions.

For the public, the benefits include substantial long-term conservation, access to recreational resources to which it would not be entitled in the Concept Plan's absence, and the availability of land for economic development in or near existing villages. At its most basic level, these public entitlements are (i) the protection of natural and cultural resources (including recreational and scenic resources) through the permanent elimination of certain threats to these resources, as provided for pursuant to the terms of the conservation

---

<sup>43</sup> E.g., "The proposed land use district has no undue adverse impact on existing uses or resources," 12 M.R.S. § 685-A(8-A)(B); and "The plan, taken as a whole, is at least as protective of the natural environment as the subdistricts which it replaces," Chapter 10.23,H of the Commission's rules.

easement and the other terms of the Concept Plan, (ii) the legal guarantee of public access to use and enjoy those resources permanently, particularly the granting of permanent or long-term rights for public boat launches, and recreational access to areas within the conservation easement, and (iii) the guaranteed availability for sale or lease of substantial plots of land, appropriately zoned, on which local business or community facilities such as elderly housing could be established in an area that is currently constrained by land ownership patterns.

While the Commission interprets this criterion to mean that substantial public entitlements must be provided upon approval of a concept plan, and finds that they are in this Concept Plan, it also finds that the required “balance” can only be struck if the Concept Plan development is appropriate and if resources are sufficiently conserved. The Commission’s findings that lead it to conclude that the Concept Plan does indeed strike a balance between appropriate development and long-term public benefits that is both reasonable and publicly beneficial are set forth below.

(a) *The Concept Plan Ensures That Development Is Appropriate*

As set forth in paragraphs 9,B through E, the Commission carefully evaluated the development components of the Concept Plan from numerous vantage points, including whether the scale of proposed development as a whole and as proposed for each development area (i) is consistent with the CLUP, (ii) is more appropriate for the protection and management of uses and resources than existing zoning, and (iii) does not cause any undue adverse impacts to existing resources and uses within and surrounding the Plan Area. Based on its review, the Commission finds that the Concept Plan development elements:

- Are consistent with the CLUP goals and policies regarding the location of development;
- Avoid both cumulative and individual undue adverse impacts to the jurisdiction’s principal values;
- Avoid both cumulative and individual undue adverse impacts to natural, cultural, and community resources and uses;
- Ensure the separation of incompatible uses;
- Contribute to satisfying a public need for orderly, prospective, well-planned growth in the region; and
- Contribute to achieving the Commission’s vision for the jurisdiction.

Based on these findings, the Commission concludes that the development allowed by the Concept Plan is “appropriate,” meaning

the development elements are of a location, type, and scale, and are governed by rigorous land use standards and review processes such that the tests stated above have been met.<sup>44</sup>

(b) *The Concept Plan Provides Publicly Beneficial Conservation Which Includes The Conservation Of Lake Resources*

In evaluating the Concept Plan in light of the “long-term conservation” requirement, the Commission examined whether the Concept Plan’s conservation elements provide both:

- The minimum amount of conservation necessary to accomplish the comprehensive planning objective of concept plans, meaning to encourage long-range planning as an alternative to haphazard, incremental development; and
- Conservation elements of a location, amount, and type to realize public benefits to which the public is not entitled under the Commission’s traditional zoning framework.

Based on the Commission’s findings set forth below, the Commission concludes that the Concept Plan provides a reasonable and publicly beneficial amount, type and nature of long-term conservation of resources, including lake resources.

(i) *The Concept Plan Provides The Requisite Amount Of Conservation To Accomplish The Comprehensive Planning Objective Of Concept Plans*

The CLUP states that “The goal of concept planning is to encourage long-range planning based on resource characteristics and suitability as an alternative to haphazard, incremental development... To accomplish the comprehensive planning objective of concept plans, the width of zones should generally be designed to encompass all lake-related development planned for the area over the life of the concept plan, or 500 feet, whichever is more.”<sup>45</sup>

The Concept Plan includes all land in Irving’s ownership that is located within 500 feet of the lakes and ponds within the affected area. The Concept Plan conserves key shores and backlands. Of particular note is the conservation of 11.4 miles of shoreline on Square Lake, which constitutes the extinguishment of development rights to all but the 2.5 miles of shoreline at Square

---

<sup>44</sup> Had the Commission alternatively found that the Concept Plan development failed to meet any of these tests, it would have concluded that the development was not “appropriate” and, pursuant to Chapter 10, Section 10.23,H,6,f, no amount or type of public benefit would have been able to reverse this conclusion and thus this regulatory requirement would not have been satisfied.

<sup>45</sup> CLUP, 2010, pp. C7 and C9.



Lake E/Yexas and 6 infill lots on the West side of the lake. In some areas where a conservation easement was not practical, either due to ownership issues or the small size of the parcels, open space designations were created that will make subdivision development contingent on setting aside those shorelands for trails or other open space uses. (*Concept Plan, section 1,E,4.*)

Many backland areas were also conserved, however, there are substantial backland areas that are subject only to the terms of the 30-year Plan, not to permanent conservation easements. This is appropriate because the area is, in general, not remote, and may be an appropriate place for community expansion after 30 years. The areas that were important in dealing with threats to long-term resource protection and lake character were appropriately protected through conservation easement or subdivision regulation.

Therefore, the Commission finds that the Concept Plan provides a sufficient amount of protection of shore and backland area to accomplish the comprehensive planning objective of concept plans.

(ii) *The Concept Plan Provides The Amount, Location And Type of Conservation To Satisfy The Requisite Public Benefits*

Many of the public concerns on the record focus on the same resources, uses, and rights that the Commission finds are likely to be significantly and adversely impacted by land use changes that would occur in the absence of this Concept Plan – that is, if Irving or a subsequent landowner utilizes existing laws and regulations to pursue alternative proposals permitted under the Commission’s current laws and regulations. As set forth in paragraph 9,C, above, such land use changes would largely stem from haphazard, incremental development permissible under the Commission’s current zoning framework and from the creation of lots exempt from subdivision review (so-called “two-in-five” development). This development would likely include a substantial amount of development along shores of lakes and ponds, in backland areas within the viewsheds of lakes and ponds, and in other areas of high recreational and scenic value. The location, nature and amount of such haphazard, incremental development would also result in substantial restrictions on public access and use of these publicly valued resources, including for outdoor recreational pursuits.

The Commission finds that the amount, location and type of conservation provided in the Concept Plan, together with provisions for public boat launches, not only alleviates these threats but ensures that the public forever benefits from both the

permanent protection of resources within the affected area and the legal guarantee of public access to use and enjoy these resources – entitlements that could not be attained under the Commission’s current zoning framework. The Commission further finds that, given the scale of the proposed development – up to 330 residential units and limited commercial development – conservation of 16,764 acres is sufficient.

The conservation easement, together with the granting of fee ownership of public boating access points and long-term public lease of the Van Buren Cove beach access point, provide important, long-term public benefits in the areas most suitable for those benefits. If a conservation easement were to be created for all Plan Area lands, the local communities would lose flexibility in the future for development in areas that may be suitable. This contrasts with other places in the Commission’s service area which are more remote or environmentally sensitive. In this case, protection of the lands around Square Lake, portions of Cross Lake, all of Carry Pond and Little California Pond, and the Mud/Cross thoroughfare and a significant portion of those backlands, are sufficient to fulfill the conservation goals.

As such, the Commission finds that the Concept Plan provides the amount, location and type of conservation to realize the requisite public benefits described above.

(c) *The Concept Plan Provides Substantial Community Economic Development Benefits In Addition to Long-term Conservation of lake Resources*

The local area has substantial residential and community development already, in contrast to some other parts of the UT that are more remote. Many rural communities in Maine are struggling to maintain population, and the Sinclair and Guerette areas are no exception. One of the barriers to the health of the local villages is available land for economic activity that is well-sited near state routes, near villages, and on reasonable soils. The Concept Plan makes available substantial land area for 30 years. This is sufficient time for local economic development efforts to take advantage of this benefit, if the local economy warrants such projects. Although this is in contrast to traditional views of public benefits coming only in the form of conservation easements, in this case the nature of the local circumstances warrant a view of planning that takes into account several factors, including conservation, but also economic health of the community. An unintended consequence of shutting out development by conserving land in areas that are close to existing populated areas is that it may push future development to less appropriate areas, causing fragmentation of habitat. Planning at the

scale of a chain of lakes that surround several villages requires thought to all of the components of a healthy community, including environmental protection, the maintenance of substantial undeveloped areas, recreation access, and economic opportunity. These factors all work together to maintain the quality of place that is the mission of the agency.

(d) *Conclusions*

Based on its analysis of the facts in the record, the Commission concludes that the Concept Plan strikes a reasonable and publicly beneficial balance between appropriate development and long-term conservation of lake resources; and the Concept Plan provides substantial community economic benefits. Additional benefits that have been suggested by parties, for example the funds suggested by MDIFW, may be desirable, but are not necessary to reach a finding of publicly beneficial balance.

(5) **The Concept Plan Development Gained Through A Waiver Of The Commission's Adjacency Criterion Is Matched By Comparable Conservation Measures (Ch. 10.23,H,6,d Of The Commission's Rules)**

In order to approve a concept plan and the associated change in zoning, the Commission must find that “[t]he plan, taken as a whole, is at least as protective of the natural environment as the subdistricts which it replaces. In the case of concept plans, this means that any development gained through any waiver of the adjacency criterion is matched by comparable conservation measure[s].”<sup>46</sup>

In reaching its determination as to whether the Concept Plan satisfies the “comparable conservation” criterion, the Commission is guided in particular by the CLUP descriptions of the adjacency criterion.<sup>47</sup> These descriptions are set forth in paragraph 9,B,(4), above. The Commission notes that, as a general matter, waivers of adjacency in concept plans are fitting because they come in tandem with, and are dependent upon, affirmative conclusions that must be reached by the Commission with respect to a concept plan’s consistency with the CLUP, including (i) findings that development is consistent with the goals and policies pertaining to the location of development and is otherwise “appropriate,” and (ii) because a concept plan must ultimately be an alternative to haphazard, incremental growth.<sup>48</sup> Below,

---

<sup>46</sup> Chapter 10, Section 10.23,H,6,d of the Commission’s rules.

<sup>47</sup> CLUP, 2010, pp. 6 and 62.

<sup>48</sup> The Commission notes that in this Concept Plan, both the “balance” and “comparable conservation” criteria trigger requirements for conservation of an amount, location and type that address the impacts of haphazard, incremental development. However, these criteria serve two distinct purposes. The “balance” criterion requires that certain public benefits are granted above and beyond those that would otherwise be realized under the Commission’s current zoning framework. These public benefits must be provided irrespective of whether a waiver of adjacency is

the Commission sets forth its findings with respect to whether the conservation elements of the Concept Plan are sufficient to prevent harm from the development allowed through waivers of adjacency – that is, development in locations and of a scale and intensity that would otherwise not be permitted.

(a) *The Concept Plan Requires A Substantial Waiver Of Adjacency*

According to Commission staff analysis of development in the Concept Plan as it was proposed by the Petitioner in its June 2019 revised plan, and as adjacency was interpreted at that time, approximately 206 of the 330 dwelling units that are proposed meet the adjacency criterion, in terms of both distance from and character of nearby development. Approximately 124 of the proposed dwelling units within Square Lake East and Square Lake Yexas did not meet the adjacency criterion. The 24 residential dwelling units allowed for affordable housing in CD-2, which are not included in the lake cap of 330, would meet the adjacency criterion.

The Commission finds that 124 of the 330 residential units require a waiver of adjacency.

Commercial development in the Plan Area is proposed as a public benefit in the case of the CD areas, and at the suggestion of Commission staff in the case of Yexas, to provide services and public access to East side of Square Lake. While some of these commercial units are non-adjacent, they are included in the Concept Plan to provide benefits related to sound planning, and the Commission finds that these units are consistent with the purposes of the adjacency principle.

(b) *Absent Specific Action (e.g., Conservation or other Plan provisions), The Secondary Effects Of Development Requiring A Waiver Of Adjacency Would Likely Harm The Natural And Cultural Resources Of The Affected Area*

While the Concept Plan development that requires a waiver of adjacency is of a location, scale and type that is appropriate and thus will not unduly adversely affect the resources within and surrounding the Plan Area, the Commission finds that, absent specific provisions imposed by the Concept Plan, the secondary development pressures that this allowed development would generate would likely trigger future haphazard, incremental development in adjoining areas, which would harm existing natural and cultural resources.

---

granted. In contrast, the “comparable conservation” criterion is only required for concept plans where waivers of the adjacency criterion are requested. This criterion ensures that any potential harm deriving from such waivers in fact will not occur.

Although no specific numerical record evidence exists regarding the likely scale of secondary development that may follow from this waiver of adjacency, the record shows that, absent the Concept Plan, development pressures in the region will likely continue to occur in the affected area in a haphazard and unplanned way, as is permissible through lot creation exempt from subdivision review (so-called “two-in-five” development). This development would likely come in the form of (i) kingdom lot development (very large lots owned by an individual primarily for residential or recreational use), (ii) shorefront development, and (iii) backland development within the viewshed of lakes, ponds, and rivers. Given that the number of units requiring a waiver of adjacency are a significant portion of the development contemplated in the Concept Plan, and that the Concept Plan has the potential to accelerate the rate of development beyond historic development rates, it is reasonable to assume that the Concept Plan development requiring a waiver of adjacency would substantially contribute to these secondary development pressures in the absence of adequate conservation measures. The likely resource impacts of such secondary development pressures, set forth in paragraph 9,C,(3), would include harm to the long-term protection and management of the existing forest resources, wildlife and plant resources, and recreational and scenic resources

(c) *The Concept Plan Provides Sufficient Protections To Prevent Harm From The Secondary Effects Of Development Requiring A Waiver Of Adjacency*

The plan has addressed secondary development pressures (in part), in several ways. Primarily, all other shoreline on Square Lake will be permanently conserved, as discussed in paragraph 9,D. However, once there is recreational infrastructure at Square Lake Yexas and road access rights, secondary development pressures are likely on the hills overlooking Square Lake. To deal with this issue, the Concept Plan includes the Reserved Land. The Reserved Land includes the hillsides behind the two Square Lake development areas, which locations would be desirable for residential development. The reserved land designation (*section 10.34-FRL,C.*) will occur prior to any development on Square Lake, it will restrict all residential development and all lot creation and will be implemented through permit conditions that will remain in place, beyond the life of the plan, until and unless the Petitioner can demonstrate certain adverse impacts have not occurred. The designation will be sufficiently effective and durable. This reserved land element was added to the plan in response to testimony by the public and parties (particularly NRCM) at the hearing, and in response to Commission staff analysis.

Other Plan Areas, in Madawaska Lake Township and the eastern edge of T16 R 5 WELS, were raised on the record as areas of potential

future development pressure (*including Pierson, July 2019.*). These areas are separated by distance and landforms from Square Lake, may be adjacent to other development that does not require a waiver of adjacency, or may be otherwise appropriate, and moderately attractive, for small-scale secondary growth. There is no compelling evidence that there is a threat to these lands from secondary development pressure.

(d) *Conclusions*

Based on its analysis of the facts on the record, the Commission finds that the conservation elements of the Concept Plan are sufficient to prevent harm from the development requiring a waiver of adjacency. Therefore, the Commission concludes that the development gained through the Commission's waiver of the adjacency criterion is matched by comparable conservation measures, thus making the Concept Plan at least as protective of the natural environment as the subdistrict which it replaces.

(6) **The Concept Plan Conservation Measures Apply In Perpetuity (Ch. 10.23,H,6,g Of The Commission's Rules)**

To approve a concept plan, the Commission must find that "conservation measures apply in perpetuity, except where it is demonstrated by clear and convincing evidence that other alternative conservation measures fully provide for long-term protection or conservation."<sup>49</sup> In evaluating the Concept Plan in light of this requirement, the Commission considered, among others, the longevity of the Concept Plan's conservation elements, the timing of execution of conservation elements, the provisions within the conservation easements related to holder and third party holder enforcement rights and amendment of conservation easement, and holder qualifications.

The facts and analysis set forth below lead the Commission to conclude that the Concept Plan conservation measures apply in perpetuity and fully provide for long-term protection of resources and uses.

(a) *The FRCLCE Applies In Perpetuity*

The Concept Plan includes a conservation easement that provides in-perpetuity conservation of approximately 16,700 acres of land within and contiguous with the Plan Area. The Concept Plan also requires that the conservation easement will be executed within one year of the Concept Plan effective date. The Concept Plan stipulates that should the Petitioner fail to satisfy any of the applicable requirements of the implementation schedule, the Commission shall immediately cease processing of any and all subdivision and development applications

---

<sup>49</sup> Chapter 10, Section 10.23,H,6,g of the Commission's rules.

under the Concept Plan unless and until the Petitioner satisfies all such requirements.

(b) *The FRCLCE is Enforceable and Appropriately Difficult To Amend*

The FRCLCE contains specific provisions to ensure that the holder maintains the legal authority and means to effectively enforce the protective terms of this conservation easement. For example:

- The FRCLCE imposes substantial limits on the total number of divisions of the protected property, thus minimizing the monitoring of performance of multiple landowners practicable for the holder.
- The FRCLCE is bound by statutory limitations to the termination or amendment of conservation easements. Specifically, the conservation easement cannot be terminated or amended in such a manner as to materially detract from the conservation values intended for protection without the prior approval of the court. Further, the Attorney General is a party to any such action to terminate or amend the easement.
- The Attorney General can independently enforce the terms of the FRCLCE.

(c) *The Holder Is Qualified To Hold The FRCLCE*

In considering whether the Forest Society of Maine (the FSM) is qualified to hold the FRCLCE, the Commission evaluated the qualifications of the FSM against its Guidelines for the Selection of Conservation Easement Holders.<sup>50</sup>

In reviewing the record evidence, the Commission finds that FSM operates for public conservation purposes and has the commitment and, in light of the protective legal terms contained in the FRCLCE, the capability to monitor and enforce the FRCLCE.

(d) *Conclusions*

Based on its analysis of the facts on the record, the Commission finds that the Concept Plan's conservation measures apply in perpetuity.

(7) **Conclusions**

In summary, based on a thorough review of the record evidence and analysis of the provisions of the Concept Plan, including the terms and conditions of the FRCLCE, the Commission concludes that there is substantial evidence that the Concept Plan and the associated P-RP Subdistrict is consistent with the standards for district boundaries in effect at this time, and fully satisfies

---

<sup>50</sup> LURC: Nov. 10, 2004, Guidelines for Selection of Conservation Easement Holders.

the criteria for approval contained in Chapter 10, Section 10.23,H of the Commission’s rules.

**F. The Concept Plan Is Consistent With The Review Standards For Structures Adjacent To Lakes (Ch. 10.25,A Of The Commission’s Rules)**

In applying the criteria for adoption or amendment of land use district boundaries pursuant to 12 M.R.S. § 685-A(8-A), the Commission considered the following review standards set forth in Chapter 10, Section 10.25,A of its rules, which otherwise must also be met for all subdivisions and commercial, industrial and other non-residential structures and uses proposed on land adjacent to lakes.

Consistent with Chapter 10, Section 10.25,A, the Commission considered, among other factors, the Wildlands Lakes Assessment findings and relevant provisions of the CLUP in applying these review standards. The Commission’s findings and conclusions with respect to each of these review standards is set forth below.

**(1) The Concept Plan Will Not Adversely Affect Significant Or Outstanding Natural And Cultural Resource Values**

The Commission finds that many of the lakes and ponds adjoining or encompassed by the Plan Area include one or more fisheries, wildlife, scenic, shore character, botanic, cultural and physical resource values identified as significant or outstanding in the Wildlands Lakes Assessment. For example, the six lakes and ponds directly affected by the Concept Plan’s development components are rated as follows:

	Resource Value Ratings (S = Significant; O = Outstanding)						
	Fisheries	Wildlife	Scenic	Shore Character	Botanic	Cultural	Physical
Cross Lake	S				O	S	
Long Lake	S					S	
Mud Lake	S					S	
Square Lake	O					S	S
Carry Pond	S					S	
Dickey Pond	S						

The Commission considered the resource value ratings for these lakes and ponds in reaching its conclusions that the Concept Plan (i) is consistent with the CLUP, particularly the natural and cultural resources goals and policies set forth therein, and (ii) will cause no undue adverse impacts to existing uses and resources.

Consistent with its findings in paragraph 9,D, above, wherein the Commission evaluates the Concept Plan’s impacts on existing natural and cultural resources within and surrounding the Plan Area – including the natural and cultural resources associated with lakes and ponds and their



shores – the Commission finds that the significant and outstanding natural and cultural resource values, on individual lakes as well as in the aggregate, will not be adversely affected by the Concept Plan or the associated P-RP Subdistrict.

(2) **The Concept Plan Will Not Have An Undue Adverse Impact On Water Quality**

As set forth in paragraphs 9,D and E, the Commission finds that the Concept Plan will not have an undue adverse impact on water quality. Specifically, the Commission finds that the Concept Plan puts in place: (i) review standards and processes that establish phosphorus export budgets for the Long, Mud, Cross, and Square Lake watersheds, each accounting for development and non-development activities, (ii) procedures for the conveyance of “back land” and for enlargement of existing license lots, both improving the likelihood that replacement subsurface waste water disposal systems will be further separated from lake resources, and (iii) requirements for the vast majority of the Plan Area that all forest management activities be conducted in a manner that meets or exceeds current standards for setbacks and buffering. In reaching this determination, the Commission considered the effect of the Concept Plan in isolation as well as in conjunction with other development that may occur on lakes and ponds affected by the Concept Plan.

(3) **The Concept Plan Will Not Have An Undue Adverse Impact On Traditional Uses And Will Not Substantially Alter The Diversity Of Lake-Related Uses Afforded Within The Region**

As discussed in paragraphs 9,A, C, and D, the Plan Area includes a diversity of lake experiences. Many comments from the public and parties focus on the development allowed around Square Lake, and the presumed impact it will have on the character of the lake. (*NRCM testimony pp. 17-19; FRLLA topic 3 testimony – St. Peter pp. 7-8 and Jandreau; LeClaire; Monahan; Fields; Vincent; Trout Unlimited; Hill; Terrell; Cormier; BHANEC; and Maine Audubon*) However, there are two primary factors involved. First, the amount of development proposed by the Concept Plan is consistent with development that could otherwise occur (see paragraph 9,C,(3)), except that now the development will not be sprawling along most of the 13.9 miles of shoreline owned by the Petitioner. Further, much of the development will be located away from the shoreline. Second, as discussed in paragraph 9,D, the assessments required as part of the sequencing requirements serve as an additional safeguard. As a result, the lake related uses on Square Lake will be affected, but they will not be substantially altered on the lake or the range of lake experiences in the region.

The Commission sets forth its findings and conclusions with respect to the Concept Plan’s impacts on recreational uses in paragraph 9,D. As set forth in these paragraphs, the Commission finds that the Concept Plan has no undue

adverse impact on traditional recreational uses and the existing diversity of lake-related uses, including the economic value of the service area for diverse and abundant recreational opportunities (particularly for primitive pursuits). In reaching this determination, the Commission evaluated the effect of the Concept Plan on, among others, non-exclusive recreational opportunities, and non-intensive public recreation, including the diversity of motorized and non-motorized lake-related recreational uses in the region, and the character and intensity of development allowed by the Concept Plan.

**(4) The Concept Plan Maintains The Natural Character Of Shorelands**

In reaching its conclusions regarding the Concept Plan's effect on natural character,<sup>51</sup> the Commission evaluated the Concept Plan's effect on the natural character of the shorelands of lakes and ponds within and surrounding the Plan Area. The Commission finds that the Concept Plan acts to protect shoreland areas by: i) permanently protecting from development shorelands within the Plan Area, pursuant to the terms of the FRCLCE; and ii) includes specific provisions that impose vegetation clearing restrictions both along the shore and within lake viewsheds. Therefore, the Commission concludes that adequate provision has been made to maintain the natural character of the shorelands affected by the Concept Plan.

**(5) The Concept Plan Is Consistent With The Management Intent Of Lake Classifications**

In evaluating the location, amount and type of development contemplated for the lakes and ponds within and surrounding the Plan Area, the Commission considered, among other factors, the management classifications of these waters, including the attendant management intent of their classifications as set forth in the CLUP.<sup>52</sup>

The Concept Plan contemplates development on and nearby the shores of six water bodies – Carry Pond, Dickey Pond, Cross Lake, Long Lake, Mud Lake, and Square Lake. The Commission's findings with respect to these six water bodies are set forth below.

- *Carry Pond, Dickey Pond, Long Lake, Mud Lake, and Square Lake – Management Class 7:*

Management Class 7 water bodies consist of all lakes not otherwise classified, including many lakes which have multiple outstanding or significant resource values identified in the Wildlands Lakes Assessment. The management intent for these lakes is one of multiple use, including for resource conservation, recreation, and timber production, giving

---

<sup>51</sup> The Commission's findings regarding the Concept Plan's effect on natural character is set forth in paragraph 9.B.

<sup>52</sup> CLUP, 2010, pp. C-9 through C-11.

specific consideration to identified resource values when evaluating the merits of lake-related rezoning and permit applications.

As set forth above, the Commission specifically considered the significant and outstanding resource value ratings for Carry Pond, Dickey Pond, Long Lake, Mud Lake, and Square Lake in assessing whether development contemplated for these water bodies would adversely impact existing resources and uses. Based on these considerations, the Commission concludes that the location, amount and type of development contemplated for these five water bodies is consistent with the multiple use management intent of Management Class 7 water bodies.

- *Cross Lake – Management Class 5:*

Management Class 5 water bodies are lakes that are heavily developed. The management intent for these lakes is to support additional development around these water bodies, as long as such development is both responsible and the significant natural resource values of these water bodies are conserved.

In evaluating the location, amount and type of development contemplated for Cross Lake, the Commission finds of particular relevance that the Concept Plan (i) locates most of the ‘Cross Lake’ development areas more than 400 feet from the shoreline; (ii) new development areas along the shoreline are configured to facilitate clustering; (iii) imposes hillside standards for development areas visible from public vantage points (*e.g.*, lakes); and (iv) permanently prohibits development and takes other measures to permanently protect, pursuant to the terms of the FRCLCE, 2 miles of the remaining shoreland areas.

The CLUP also identifies Long Lake as a lake approaching heavily developed status – lakes with less than 20 acres or 1,000 feet of frontage per dwelling unit taken as an average around the entire lake. However, nearly all new units allowed proximate to Long Lake would be more than 400 feet from the shoreline, thus outside the area of direct influence to the lake. Further, the hillside development standards included in the concept plan will also apply to these locations.

In light of these and other provisions contained in the Concept Plan, the Commission finds that the development contemplated for this Management Class 5 lake, and a lake that is approaching heavily developed status, is responsible. Thus, the Commission concludes that the development contemplated for these lakes is consistent with the management intent of Management Class 5 water bodies.

**(6) The Concept Plan Maintains Landowner Equity**

The Commission finds that the Concept Plan attends to landowner equity in that it does not authorize development that exceeds the Petitioner’s proportionate share of total allowable development for the following reasons:

First, none of the development contemplated in the Concept Plan exceeds either of the two general planning guidelines set forth in the CLUP, which were designed to preserve the natural character of lakes and prevent conflicts between incompatible uses.<sup>53</sup> Specifically, shore development contemplated in the Concept Plan will not exceed an average of one dwelling unit per 400 feet of shore frontage within the Petitioner's ownership, and one dwelling unit per ten acres of lake surface area.

Second, the provisions of the Concept Plan ensure that specific water quality information, including phosphorus export allocations, were based on the percentage of each watershed owned by the Petitioner.

Third, the Commission finds that nothing in the Concept Plan precludes adjoining or nearby landowners from petitioning and obtaining zoning and permit approvals from the Commission for development adjacent to any of the six water bodies as long as such proposals satisfy governing review criteria.

**(7) Conclusions**

Based on the facts set forth above with respect to each of the review standards for structures adjacent to lakes, the Commission finds that it is feasible to undertake the development contemplated under the Concept Plan in a manner that complies with the review standards for structures adjacent to lakes; more specific assessment will be made as part of the review of subsequent subdivision and non-residential development proposals. Therefore, the Commission concludes that the Concept Plan and the associated P-RP Subdistrict are consistent with the review standards set forth Chapter 10, Section 10.25,A.

**10. CONCLUSIONS**

Based on the above Findings and the facts and supporting documents as represented in the administrative record of Zoning Petition ZP 768, the Commission reaches the following Conclusions:

- A.** The Concept Plan and the associated P-RP Subdistrict are consistent with the standards for district boundaries, the Commission's Comprehensive Land Use Plan, and the purpose, intent, and provisions of Ch. 206-A (the Use Regulation Law).
- B.** The Concept Plan and the associated P-RP Subdistrict have no undue adverse impact on existing uses or resources.
- C.** The Concept Plan and the associated P-RP Subdistrict are more appropriate for the protection and management of existing uses and resources within the affected area.

---


<sup>53</sup> CLUP, 2010, p. C-5.

- D. The land use standards contained in the Concept Plan serve the purpose, intent and provisions of Chapter 206-A and are consistent with the Commission's Comprehensive Land Use Plan.
- E. The Concept Plan and the associated P-RP Subdistrict satisfy the Criteria for Review of Chapter 10, Section 10.23,H. Specifically:
  - (1) The Concept Plan, taken as a whole, is at least as protective of the natural environment as the subdistricts which it replaces. In the case of concept plans, this means that any development gained through any waiver of the adjacency criterion is matched by comparable conservation measures.
  - (2) The Concept Plan includes in its purpose the protection of those resources in need of protection.
  - (3) The Concept Plan strikes a reasonable and publicly beneficial balance between appropriate development and long-term conservation of lake resources.
  - (4) The Concept Plan's conservation measures apply in perpetuity.
- F. The Commission has fully considered the standards set forth in Chapter 10, Section 10.25,A (Review Standards for Structures Adjacent to Lakes) of the Commission's rules in reaching its conclusions regarding the criteria for adoption or amendment of land use district boundaries.

**Therefore, the Commission approves the petition of Irving Maine Timberlands, L.L.C. and Irving Land Company to rezone approximately 51,000 acres to a Resource Plan Protection (P-RP) Subdistrict per the maps attached hereto as Appendix A of Attachment B, and make effective the attendant *The Fish River Chain of Lakes Concept Plan*.**

In accordance with 5 M.R.S. section 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 11<sup>th</sup> DAY OF SEPTEMBER 2019.

By:  \_\_\_\_\_  
Samantha Horn, Acting Executive Director

This change in subdistrict designation is effective on September 26, 2019.

Attachments

- A: Administrative History
- B: The Fish River Chain of Lakes Concept Plan (Dated September 26, 2019)

Zoning Petition ZP 768 – Fish River Chain of Lakes Concept Plan

**ATTACHMENT A: FULL ADMINISTRATIVE HISTORY**

**A. October 2013 – March 2015: Filing And Processing Of Original Zoning Petition**

1. In June 2013, the Commission conducted a preapplication meeting with the Petitioner, and offered initial yet informal feedback about a possible concept plan.
2. On October 9 and 10, 2013, the Commission received a brief introduction to the anticipated proposal, and conducted a public pre-application site visit. The site visit included stops at four locations<sup>1</sup> during which the Petitioner provided a brief summary of Concept Plan elements at or visible from the site. Parties and assorted members of the public attended the site visit.
3. On December 24, 2014, Irving filed its original Zoning Petition ZP 768 to the Commission to rezone approximately 51,000 acres of its ownership in northern Aroostook County to a P-RP Subdistrict in order to implement a thirty-year Concept Plan. Public notice of the petition was posted in accordance with Section 4.05,(4) of the Commission’s Chapter 4 Rules of Practice.<sup>2</sup> Paper copies of the proposal were made available for public inspection at the Commission’s Augusta and Ashland offices, the Fort Kent town office, and the Aroostook County Commissioners office. Digital copies of the proposal were posted for review and download on the Commission’s publicly available FTP site and the Commission’s webpage<sup>3</sup> dedicated to the review of the proposal.
4. In January and February 2015, state and federal resource agencies advised the Commission whether the petition contained sufficient information to begin the formal review process; some agencies identified additional information needs.
5. In late January through March 2015, Commission staff provided feedback to the Petitioner regarding: i) elements of the petition that were complete and incomplete for processing<sup>4,5</sup>;

---

<sup>1</sup> Stops included: Van Buren cove, Sinclair village, Cross Lake boat launch, and “Yerxas camps.”

<sup>2</sup> This notice included the following methods and recipients: i) listing of the petition on the Commission’s period list of applications received; ii) the Commission maintained list of persons interested in receiving postal or e-mail notices about the project (308 recipients) (later this list was incorporated into the Commission’s GovDelivery system); iii) publication of a legal notice in two newspapers of general circulation in the area (*i.e.*, the Bangor Daily News, and the St. John Valley Times); iv) posting notice on the Commission’s website; and v) notice by registered mail to all persons owning or leasing land within 1,000 feet of the proposed project.

<sup>3</sup> [www.maine.gov/dacf/lupc/plans\\_maps\\_data/resourceplans/fishriverlakes\\_prp015.html](http://www.maine.gov/dacf/lupc/plans_maps_data/resourceplans/fishriverlakes_prp015.html)

<sup>4</sup> “Completeness” memos: January 26, 2015; February 17, 2015; and March 13, 2015.

<sup>5</sup> “Complete for processing” means that the information provided is sufficient to understand the proposal and therefore to begin the formal review process. This finding does not necessarily mean that the Commission has sufficient information to hold a public hearing on the proposal, nor is it a final disposition on the zoning petition. Additional information may be requested of the petitioner by the Commission during the review process.

and ii) other feedback and information requests<sup>6</sup>. In response to the Petitioner's request, staff provided this feedback periodically.

**B. June 2017 – December 2018: Filing And Processing Of Revised Zoning Petition**

1. In June 2017, Irving submitted a revised zoning petition to the Commission. The revision responded both to items found incomplete and the other feedback, as identified in 2015. Key revisions included:

- a. Adding a process for replacement septic systems for the existing lease lots;
- b. Revised Concept Plan provisions regarding water access sites, both private and public;
- c. Added the proposed development of a hand-carry launch on Mud Lake;
- d. Revised unit caps for the development areas and established a unit cap for each lake;
- e. Added a resource management plan to accompany the conservation easement;
- f. Revised numerous residential development areas and community and economic development (CD) areas;
- g. Added provisions regarding homeowners associations and road associations;
- h. Added a commitment and deadline for the removal or restoration of structures at Yexas; and
- i. Removed the freezing of the standards in Section 10.25,P regarding the protection of natural resources.

This set of revisions is often referred to as “the Petition”, as distinguished from the April 2018, June 2018, and June 2019 amendments.

2. On August 9, 2017, in accordance with Chapter 4 and prior to any requests, the Commission determined that a hearing would be valuable due to anticipated public interest and the high probability that information presented at a public hearing would assist the Commission in reaching its decision.
3. On August 31, 2017, the Commission deemed the petition complete for processing.
4. On September 13, 2017, the Commission posted public notice of the petition pursuant to Ch. 4.05(4) of the Commission's rules.<sup>7</sup> This notice: i) confirmed the petition was complete for processing; ii) announced that a hearing would be held; iii) set a deadline for petitions to intervene; and iv) identified four locations where paper copies of the proposal were available for public inspection.

---

<sup>6</sup> “Other feedback” memos: February 3, 2015 and March 16, 2015.

<sup>7</sup> This notice included: i) listing of the petition on the Commission's period list of applications received; ii) the Commission's list of persons interested in receiving notices about the project (*i.e.*, GovDelivery); iii) publication of a legal notice in two newspapers of general circulation in the area (the Bangor Daily News, and the St. John Valley Times); iv) appropriate state and federal agencies; v) county officials; vi) legislators whose districts encompass the project; vii) posting notice on the Commission's website; and viii) presumptive implementing parties (*i.e.*, Forest Society of Maine as the proposed easement holder).

5. In October 2017, the Commission received a project overview and conducted a public site visit. The site visit included six different stops<sup>8</sup> during which staff provided a brief summary of Concept Plan elements at or visible from the site, and offered attendees an opportunity to travel through and briefly observe the variety of settings included as part of the proposal. Parties and members of the public attended each part of the site visit.
6. On or prior to October 10, 2017, the Commission received petitions to intervene from five parties:
  - a. The Fish River Lakes Leaseholders Association (FRLLA or Leaseholders Association);
  - b. The Natural Resources Council of Maine (NRCM);
  - c. Ms. Carol Pierson;
  - d. The Forest Society of Maine (FSM); and
  - e. The Sandy Point and Connection Lane Road Association (SP & CLRA or Road Association)
7. On October 19, 2017, the Presiding Officer issued the First Procedural Order, which addressed all initial procedural issues:
  - a. Intervenor status was granted to: The Fish River Lakes Leaseholders Association; The Natural Resources Council of Maine; and The Forest Society of Maine; and
  - b. Intervenor status was denied for: Ms. Carol Pierson; and The Sandy Point and Connection Lane Road Association. However, the order also set a deadline of November 6, 2017, for those parties denied intervenor status to submit additional information should they wish to request interested person status.
  - c. Confirmation of the service list and filing requirements; and
  - d. Set a deadline for the petitioner to provide each Intervenor with a complete paper and electronic copy of the petition.
8. On November 1, 2017, the Presiding Officer held the first pre-hearing conference call, which was attended by the Petitioner and the intervenors. The conference provided an overview of the anticipated process; identified the review criteria relevant to the Commission's review of the proposal; and described next steps, including the filing of detailed issues lists, anticipated witnesses, and discussed the need for pre-filed testimony.
9. Prior to the deadline of November 6, 2017, the Commission received requests for interested person status from two parties:
  - a. Ms. Carol Pierson; and
  - b. The Sandy Point and Connection Lane Road Association.

---

<sup>8</sup> Stops included: Long Lake Camps; Waters Edge RV Resort; St. Peters Store (including short walk); driving on Cyr Road; Cross Lake boat launch; intersection of two unnamed roads off of Disy Crossover Road; and Yexas / Square Lake East.



10. On November 2, 2017, the Presiding Officer issued the Second Procedural Order, which set a deadline for the filing of detailed issues lists and statements; and extended the deadline by which copies of the petition were to be provided to intervenors.
11. On November 17, 2017, the Presiding Officer issued the Third Procedural Order, which granted interested person status to Ms. Pierson and the Sandy Point and Connection Lane Road Association; and set a deadline for these parties to file a detailed issues list.
12. On March 16, 2018, the Presiding Officer issued the Fourth Procedural Order, which summarized the March 5 pre-hearing conference call, and:
  - a. set a deadline by which the Petitioner would provide an outline of any updates to the proposal, and for the specific updates;
  - b. confirmed the dates for hearing and a draft schedule of topics; and
  - c. identified topics for which pre-filed testimony would be required and set a deadline by which pre-filed testimony was to be filed;
  - d. set a deadline for parties to provide a list of witnesses and topic issues on which they would be testifying.
13. On March 29, 2018, the Petitioner filed an outline of the updates to be filed in April. Responding to resource agency comments and intervenor issues lists, the filing described additional supporting information, and amendments to the Concept Plan and maps.
14. On April 6, 2018, the Presiding Officer issued the Fifth Procedural Order, which summarized the April 4<sup>th</sup> pre-hearing conference; and finalized several procedural matters, such as confirming or adjusting deadlines previously set, addressing exhibits and demonstrative aids, and governmental agency participation in the hearing.
15. On May 11, 2018, the Presiding Officer issued the Sixth Procedural Order, which updated the hearing location and confirmed the deadline for post-hearing briefs.
16. On April 12, 2018, in response to staff feedback and questions, the Petitioner filed the first set of amendments to the proposal. Topics addressed by the amendment included: inclusion of shorelines; hillside development, Yexas/Square Lake E development; subdivision standards; cluster development standards; floodplains; uses in M-GN affecting owners in D-RS; minimum lot size; assurance of public benefits; trail access; community and economic development areas; land divisions; conservation easement; sustainable forestry principles; access; service provisions; allowed uses; recreational boating numbers; phosphorus; roads; outcome-based forestry agreement; and eighteen revised maps.
17. On May 22, 23, and 24, the Commission held a hearing on Zoning Petition ZP 768. The technical sessions provided the opportunity for the six formal parties (Petitioner, plus three Intervenors and two Interested Persons), and representatives of two governmental agencies (the Maine Bureau of Forestry and the Town of Van Buren) to testify. The two evening sessions provided opportunities for members of the public to offer testimony.
18. On June 22, 2018, the first comment period closed. The Petitioner, Leaseholders Association, NRCM, and Ms. Pierson's agent submitted post hearing briefs. As part of its

post hearing brief, the Petitioner filed the second set of amendments to the proposal. The amendments responded to numerous issues raised during the hearing process, generally: roads; water access sites; development areas; the conservation easement; hillside development standards; phosphorus; and forestry. The Commission also received public comments from 21 individuals or organizations.

19. On July 13, 2018, the rebuttal period closed. The Commission received rebuttal comments from the Leaseholders Association and from one member of the public.

**C. 2019: June 2019 Revised Zoning Petition**

1. On May 17, 2019, the Presiding Officer issued the Seventh Procedural Order, which addressed revisions to the petition and Concept Plan, and established a schedule for the submission of comments on the revised petition. Specifically, the order set deadlines by which:
  - a. the Petitioner would file its revised Concept Plan and supporting petition materials;
  - b. certain resource agencies and parties were to file comments on the revised Concept Plan; and
  - c. the petitioner and proposed conservation easement holder were to file statements addressing whether each is prepared to accept and implement the responsibilities stated in the revised Concept Plan and related conservation easement; and
  - d. the Commission staff would file an updated list of the hearing record.
2. On May 29, 2019, to facilitate comments by appropriate resource agencies, the Petitioner filed those portions of the revised Concept Plan regarding i) phosphorus control and ii) water crossings . This submission included changes to the Concept Plan and additional supporting materials regarding phosphorus data for Mud Lake watershed.
3. On June 7, 2019, the Petitioner filed amendments to the petition and Concept Plan. Among other topics, the revisions included:
  - a. Increasing the size of the proposed conservation easement;
  - b. Eliminating the proposed new development area on the west side of Square Lake;
  - c. Clarifying road maintenance responsibilities and access;
  - d. Revising the phosphorus control rules;
  - e. Providing enhanced buffers on certain streams in the Square Lake Watershed;
  - f. Addressing secondary development on the east side of Square Lake;
  - g. Eliminating certain controversial uses from the Concept Plan; and
  - h. Eliminating the freezing of certain standards.
4. On June 7, 2019, the Maine Department of Environmental Protection filed comments regarding the Concept Plan revisions dated May 29, 2019.

5. Between June 28 and July 1, 2019, the Commission received comments on the June 2019 Revision from Ms. Pierson, the leaseholder's association, and the Natural Resources Council of Maine.
6. On August 5, 2019, the Presiding Officer issued the Eighth Procedural Order, which addressed changes to the schedule, clerical edits to the Concept Plan, and a request regarding the location of Commission deliberations.
7. On August 14, 2019, the Commission staff recommended clarifications and other minor changes to the Concept Plan.
8. On August 21, 2019, final commitments and statements were filed. Specifically:
  - a. the Petitioner confirmed it is prepared to implement its responsibilities set forth in the Concept Plan and Fish River Chain of Lakes Conservation Easement; that its ownership within the Plan Area, as amended, has not changed since June 2017; and that the Petitioner accepts the August 14 staff recommended clarifications to the Concept Plan and the conservation easement.
  - b. the Forest Society of Maine confirmed it is prepared to accept and implement its responsibilities set forth in the Fish River Chain of Lakes Conservation Easement, including the August 14, 2019, staff recommended clarifications.
9. On August 27, 2019, the hearing record closed.

## ACRONYMS

This document or the related decision document include the following acronyms:

· ARCC	Aroostook County Commissioners
· BHANEC	Backcountry Hunters and Anglers New England Chapter
· BPL	Bureau of Parks and Lands, Maine Department of Agriculture, Conservation, and Forestry
· CLUP	Comprehensive Land Use Plan
· DEP	Maine Department of Environmental Protection
· DHHS	Maine Department of Health and Human Services
· FRCLCE	Fish River Chain of Lakes Conservation Easement
· FRLLA	Fish River Lakes Leaseholders Association
· FSM	Forest Society of Maine
· GIS	Geographic Information Systems [mapping software]
· JDI	JD Irving (Petitioner)
· LUPC	Land Use Planning Commission, Maine Department of Agriculture, Conservation, and Forestry <sup>9</sup>
· MDACF	Maine Department of Agriculture, Conservation, and Forestry
· MDIFW	Maine Department of Inland Fisheries and Wildlife
· MDOT	Maine Department of Transportation
· MBF	Maine Bureau of Forestry
· MHPC	Maine Historic Preservation Commission
· MNAP	Maine Natural Areas Program
· MRS	Maine Revenue Service
· M.R.S.	Maine Revised Statutes
· MSAD	Maine School Administrative District
· NGO	Non-Governmental Organization
· NLF & R	North Lakes Fire & Rescue
· NRCM	Natural Resources Council of Maine

---

<sup>9</sup> “Commission staff” herein refers to the administrative staff to the Land Use Planning Commission and/or consultants retained by the Land Use Planning Commission to assist in the agency’s review of Zoning Petition ZP 768; “Commission” herein refers to the nine-member voluntary citizen board of Commissioners of the Land Use Planning Commission.

- . OAG Office of the Attorney General
- . P-RP Resource Plan Protection Subdistrict
- . ROS Recreation Opportunity Spectrum
- . SP & CLRA Sandy Point and Connection Lane Roads Association
- . TU Trout Unlimited
- . USACE U.S. Army Corp of Engineers
- . USFWS U.S. Fish and Wildlife Service
- . UT Unorganized and Deorganized Territories of Maine
- . WALROS Water and Land Recreation Opportunity Spectrum