

LUPC REFERENCE SHEET IN THE MATTER OF ZONING PETITION ZP 768

IRVING PROPOSED FISH RIVER CHAIN OF LAKES CONCEPT PLAN

May 16, 2018

This reference sheet has been prepared by Commission staff to provide assistance to Commission members as they review and consider the record in this matter. The sheet is not intended to contain an exhaustive list of the potential issues associated with a particular topic or to reference all the applicable testimony or regulatory criteria. Further, this reference sheet does not represent staff or Commission conclusions on any issue of law or fact, and should not be relied upon as a substitute for a careful review of the petition, testimony, and applicable regulatory criteria.

TOPIC 2. POTENTIAL RESOURCE IMPACTS, IMPACT MINIMIZATION EFFORTS, AND CONSERVATION

A. TOPIC DESCRIPTION

Potential Resource Impacts, Impact Minimization Efforts, and Conservation

By way of example, this topic includes the following subjects:

- Extent and location of proposed development areas;
- Outcome based forestry and certification – what these processes involve;
- Resource impacts (e.g., brook trout habitat, vernal pools); and
- Conservation easement – identified conservation values and manner in which values are promoted/ensured; easement area and activities allowed within easement area; certainty that desired conservation will be achieved

Topic two focuses on the natural resources in the plan area, how the proposed development is likely to affect those resources, and whether the proposed measures to conserve or protect those resources are sufficient to meet the legal criteria for approval of a concept plan. Key elements of topic two are the assessments of species and habitats that are sensitive to disturbance; development location, quantity and design; conservation easement location and terms; and forest management practices throughout the Plan area.

For each element of this topic, it is important to ask 3 questions:

- 1) How significant is the need for protection? (e.g., how vulnerable/important is the resource)
- 2) Is the proposed protection or mitigation likely to be effective?
- 3) Will the protection last an appropriate length of time? (Mitigation for development arguably should last as long as the development does; mitigation for temporary impacts can be temporary.)

Protection measures that last into the future are important to balance the likely effects of development that will also last into the future. It is also important that protection measures are flexible enough to adapt to future environmental and regulatory conditions to reduce the chance that those measures will become ineffective over time. Finding the right balance of specificity today and future flexibility is a key part of Topic 2.

B. EXAMPLES OF ISSUES TO CONSIDER

Extent and Location of Proposed Development Areas

- Are development areas located to avoid or otherwise minimize impacts upon resources that are known to be on or near each site? ([12 M.R.S. §685-A\(8-A\)](#).)
- Is the type, density, and intensity of development allowed by the Plan appropriate, in the context of the natural resources and the Commission's approval criteria?
- Some areas of the Plan are proposed for development (purple and pink), others are proposed for permanent working forest easement (dark green), and some are not in either category (light green). The light green areas may become eligible for development after the Plan expires, including some shorelines (Mud lake and some small ponds) and a substantial amount of upland and hillside area. Are these light green areas appropriate to leave for development after the life of the Plan?
- Are the Commercial and Economic Development (CD) areas sited to reasonably provide commercial opportunities to the surrounding area and to have acceptable environmental impacts? CD areas are proposed as a public benefit to make land available for commercial and institutional use because the local communities have little available land. Is there an adequate mechanism to ensure those lands become available to public or private developers?

Timber Harvesting and Forest Management Standards

- Because timber harvesting and forestry-related development will be reviewed and authorized by the LUPC in development areas where a development application has been initiated or by the Maine Forest Service in all other areas, including development areas if no development application has been submitted, does the plan include standards and procedures that are likely to produce acceptable results regardless of which agency is conducting the review?
- Does outcome-based forestry contain standards that would protect the resources in need of protection; is it predictable enough over long periods of time to assure the positive effects continue; and is there sufficient oversight for the purposes of ensuring compliance, regardless of who the future landowner may be? Examples of resources to consider are brook trout habitat, vernal pools, inland wading bird and waterfowl habitats, deer yards, and rare plants.
- If some of the land in the Plan area is no longer enrolled in the Outcome Based Forestry (OBF) program, will there be sufficient oversight of compliance with the sustainable forestry principles outlined in the plan? This question is related to the third-party certification method of monitoring compliance, and the appropriate level of specificity of a management plan.

Conservation Easement

- Does the intent and anticipated result of the proposed easement include: retaining or protecting natural, scenic or open space values of real property; assuring the property's availability for agricultural, forest, recreational or open space use; protecting natural resources; or maintaining or enhancing air or water quality of real property? ([33 M.R.S. Section 476\(1\)](#).)
- Have the conservation values been adequately identified and promoted or ensured?
- Are the uses allowed within the proposed easement appropriate, considering the resources involved and the intended purpose, value, and life span of the easement?

- Is the amount of proposed conservation, and the amount of developable area proposed for conservation, sufficient to offset waivers of adjacency on Square Lake and Cross Lake E? And does the location of the proposed conservation prevent future development in unsuitable locations?

C. CITATIONS TO RELEVANT MATERIALS WITHIN THE RECORD¹

NOTE: Prior party comments and prior governmental agency comments were provided regarding the 2017 Petition; Pre-filed testimony and pre-filed governmental agency comments were provided regarding the April 2018 amendment.

Extent and Location of Proposed Development Areas

Petition

- Volume 1, [Questions 9 \(Surrounding Uses and Resources\)](#), [10 \(Proposed Uses\)](#), [15 \(Anticipated Favorable Impacts\)](#), [16 \(Anticipated Unfavorable Impacts\)](#), [18 \(Compliance with Laws and Standards\)](#), and [19 \(Conformance with the Commission's Standards\)](#)
- [Volume 3, Maps 21 through 26](#)
- Amendment: [1. Plan Area](#); [3. Yexas & Square Lake Development](#); [11. CD Areas](#);

Pre-filed Testimony

- Petitioner: [Musson](#); [Dewan](#); [Clark](#)
- Intervenors: [FRLLA – St. Peter Topic Two](#); [NRCM, pp. 3, 7-19](#)

Prior Party Comments

- [FSM, 12/11/2017 letter, Item 3](#)
- [NRCM, 12/11/2017 letter, Item 6](#)
- [Pierson, 12/29/2017 letter, Item 2](#)

Outcome-based Forestry and Third-party Certification

Petition

- [Volume 1, Appendix H \(Resource Management Plan\)](#)
- [Volume 2, Section 2,E,10.31 \(Sustainable Forestry Principles\), Appendix C \(Outcome Based Forestry Agreement\)](#)
- Amendment: [14. Sustainable Forestry Principles](#); [21. Other](#)

Pre-filed Testimony

- Petitioner: [Hourihan, p. 3-10](#); [Gilbert](#); [Coffin](#)
- Intervenors: [NRCM, p.25](#)

Pre-Filed Governmental Agency Comments

- [MFS](#)
- [DIFW, p.2-4](#)

¹ Each link below regards items posted on the Commission's webpage dedicated to the review of this proposal, which can be viewed at www.maine.gov/dacf/lupc/reference/resourceplans/fishriverlakes_prp015.html.
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Prior Party Comments

- [FSM, 12/11/2017 letter, Item 7](#)

Prior Governmental Agency Comments

- [Maine Forest Service, 12/01/2017](#)
- [Maine Natural Areas Program, 02/20/2018, Item V and VI](#)

Potential Resource Impacts & Impact Minimization Efforts

Petition

- Volume 1, [Questions 9 \(Surrounding Uses and Resources\), 10 \(Proposed Uses\), 15 \(Anticipated Favorable Impacts\), 16 \(Anticipated Unfavorable Impacts\), 18 \(Compliance with Laws and Standards\), and 19 \(Conformance with the Commission's Standards\)](#)
- [Volume 3, Maps 19, 20, and 32](#)
- Amendment: [2. Hillside Development; 3. Yexas & Square Lake Development; 6. Floodplain Changes; 7. Uses in M-GN Affecting D-RS; 11. CD Areas; 12. Land Divisions; 13. Conservation Easement; 14. Sustainable Forestry Principles; 16. Service Provision; 17. Allowed Uses; 19. Phosphorus; 20. Roads; 22. Maps](#)

Pre-filed Testimony

- Petitioner: [Musson, p.2-16](#)
- Intervenors: [FRLLA – St. Peter Topic Two; NRCM, p. 10;](#)

Pre-Filed Governmental Agency Comments

- [ARCC](#)
- [BPL, p.2-5](#)
- [DEP - Phosphorus](#)
- [DIFW, p.2-4](#)

Prior Party Comments

- [FSM, 12/11/2017 letter, Items 3, 5, and 7](#)
- [NRCM, 12/11/2017 letter, Items 1, 2, 4 through 6, 9, 13, and 14](#)
- [FRLLA, 12/11/2017 letter, Items 2,b, c, and d; and 3 through 5](#)
- [SP & CLRA, 12/28/2018 letter, Items 2 through 5](#)

Prior Governmental Agency Comments

- [Maine Department of Inland Fisheries and Wildlife, 12/06/2017 letter, Pages 9 through 11, 13 through 16](#)
- [US Fish and Wildlife Service, 12/10/2017 letter, Paragraphs 2 through 4](#)
- [Maine Natural Areas Program, 02/20/2018, Item V](#)

Conservation Easement

Petition

- [Volume 1, Question 22](#)
- [Volume 2, Section 1,G \(Implementation Schedule\); Appendix A \(Conservation Easement\) and Appendix D \(Management Plan\)](#)
- [Volume 3, Maps 21 through 26](#)

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- Amendment: [13. Conservation Easement](#); [14. Sustainable Forestry Principles](#); [22. Maps 21, 23-26, and 33](#)

Pre-filed Testimony

- Petitioner: [Musson, p.16-19](#)
- Intervenors: [FSM, p.4-27](#); [NRCM, p.19-31](#)

Pre-Filed Governmental Agency Comments

- [DIFW, p.1-2](#)

Prior Party Comments

- [FSM, 12/11/2017 letter, Items 2 through 5, and 7](#)
- [NRCM, 12/11/2017 letter, Items 3, 4, 7, 8, and 12](#)

Prior Governmental Agency Comments

- [Maine Department of Inland Fisheries and Wildlife, 12/06/2017 letter, Items 1 through 3, and 5 through 14](#)
- [Maine Natural Areas Program, 02/20/2018, Items II through VI](#)

D. REGULATORY CRITERIA THAT MAY BE IMPLICATED BY THIS TOPIC²

Statute

- Whether the proposed rezoning “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 this chapter” ([12 M.R.S. §685-A\(8-A\)](#); Section 10.08 of the Commission’s [Land Use Districts and Standards; Comprehensive Land Use Plan](#), p. 61)
- Whether the proposed rezoning “is more appropriate for the protection and management of existing uses and resources within the affected area” ([12 M.R.S. §685-A\(8-A\)](#); Section 10.08 of the Commission’s [Land Use Districts and Standards; Comprehensive Land Use Plan](#), p. 61)
- Whether “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.” ([12 M.R.S. §685-A\(8-A\)](#); Section 10.08 of the Commission’s [Land Use Districts and Standards](#))
- Whether the proposed plan is consistent with the provisions of [12 M.R.S. §685-A\(12\)](#) in that the Maine Forest Service and the Maine Land Use Planning Commission maintain sufficient regulatory authority.
- Whether the proposed conservation easement sufficiently states the conservation purposes of the easement, the conservation attributes associated with the real property and the benefit to the general public intended to be served by the restriction on uses of the real property subject to the conservation easement.” ([33 M.R.S. § 477-A\(2\)\(B\)](#))

Chapter 10

- Whether the plan “includes in its purpose the protection of those resources in need of protection;” (Section 10.23,H,6,e of the Commission’s [Land Use Districts and Standards](#))
- Whether the plan “includes in its purpose the protection of those resources in need of protection;” (Section 10.23,H,6,e of the Commission’s [Land Use Districts and Standards](#))
- Whether “the plan strikes a reasonable and publicly beneficial balance between appropriate development and long-term conservation of lake resources;” (Section 10.23,H,6,f of the Commission’s [Land Use Districts and Standards](#))
- Whether the “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.” (Section 10.23,H,6,g of the Commission’s [Land Use Districts and Standards](#))

² Each link below regards items posted on the Commission’s webpage dedicated to the review of this proposal, which can be viewed at www.maine.gov/dacf/lupc/reference/resourceplans/fishriverlakes_prp015.html.
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