

## **V. REVIEW CRITERIA FOR LAKE CONCEPT PLANS**

The following criteria are considered when justifying the rezoning to a P-RP subdistrict to implement a Lake Concept Plan. Provisions listed after each criterion identify how this plan meets or exceeds the criterion.

### **A. Statutory Rezoning Criteria**

**Under provisions of the Commission’s statute, 12 MRSA §685-A (8-A), no change in a district boundary may be approved unless there is substantial evidence that:**

- A. The proposed land use district is consistent with the standards for district boundaries in effect at the time; the Comprehensive Land Use Plan; and the purpose, intent, and provisions of Chapter 206-A (the Land Use Regulation Law); and
- B. The proposed land use district satisfies a demonstrated need in the community or area and 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.

### **Provisions**

This Lake Concept Plan contains the Land Use Standards for the districts that it replaces in Section IV and Appendices 2-13. In addition, Deeded Covenants (Appendix 1) for the development areas restrict building size, height, type, lot clearing, noise and light levels.

The following provides assurance that the area proposed for development reflects the guidelines of the Comprehensive Land Use Plan:

1. Placed in permanent conservation - 10 miles of shore frontage encompassing 1,185 +/- acres on both Brassua Lake and Baker Pond available for primitive recreational use.
2. Placed in 20-year conservation – 3,924 +/- acres available for primitive recreation use and timber harvesting.
3. A plan for development that places a majority of the development in one location thereby eliminating haphazard development of Brassua Lake’s shorefront.
4. A Public Hand-Carry Boat Launch site.
5. A trail and hut system available for seasonal public use.
6. Allowances that traditional uses of the land remain available (such as snowmobiling and forest management).

The need for quality shorefront lots is evident by:

1. The number of request received by local real estate professionals in the Greenville and outlying areas.

2. The increase in seasonal population in the Greenville area, in which the Greenville area seasonal population nearly triples the year-round resident population presenting a need for quality housing.
3. The opportunity to increase business of consumer services providers, including building contractors, surveyors, recreational vehicle service providers, grocery stores, and sporting supply stores.
4. The support of the Somerset County Commissioners who view the proposed development as a favorable impact to northern Somerset County, by bringing more tourist to the region thus increasing economic growth and increasing the tax revenues.

In order to ensure that no undue adverse impacts on existing uses or resources, the proposed plan provides the following:

1. The development, although not directly adjacent to a residential subdistrict, is located with 5 miles of similar development on Moosehead Lake and at Rockwood, the closest residential district.
2. The proposed development is accessed by an established road system that can be accessed by two-wheel drive vehicles.
3. Deed Restrictions (Appendix 1) and Land Use Standards (Appendix 2-13) are part of this Lake Concept Plan, enabling the applicant, the Land Use Regulation Commission, and other agencies to review and if necessary enforce the land uses to prevent undue adverse impacts.
4. The Somerset County Commissioners feel the impact to services provided by the Sheriff's Department, and contracted services with Rockwood Fire/Rescue Services and Rockwood Transfer Station will be minimal.

A new district designation is more appropriate for the following reasons:

1. This designation is a means for the landowner to place more restrictive measures (a reduction in allowed uses), thereby providing more protection of natural resources of a substantial land area.
  - a. The area proposed for Resource Plan Protection, P-RP, establishes that over 10 miles of shorefront along Brassua Lake and Baker Pond will be placed in perpetuity conservation vs. the present zoning of P-GP and M-GN that could allow for the potential development (dwellings) of these shorefronts in the future, either through rezoning to development subdistricts for subdivisions or through incremental development of two lots every five years without any regulatory oversight.
  - b. The owner has proposed a more restrictive zoning than the existing protection subdistricts in place and applied these land use standards to the entire Lake Concept Plan. The P-RP zoning also provides additional restrictions within areas presently zoned P-WL, P-FW and P-SL subdistricts.
2. Because the area is a fringe township (< 30 miles to Greenville) and seasonally accessible by 2-wheel drive vehicle, the area has the potential to have many visitors. It is important to establish this area as a P-RP area, so that others (visitors, abutters, and planners) are aware of the important conservation values that exist in the area.

Protecting the shoreline along Brassua Lake and Baker Pond through the implementation of this Concept Plan is an important conservation tool with benefits not only in Tomhegan Township, but also for the State of Maine.

3. The permanent conservation of potentially developable shoreline coupled with placing a large land area in a 20-year conservation will reduce the need for repetitious permit applications to the Commission.
4. The new designation allows the Commission (and the people of Maine) to have more predictability on how Brassua Lake and the lands within the Lake Concept Plan should be developed.
5. The plan offers a reasonable balance between development while providing for long-term conservation of lake resources (greater than 10 miles of shorefront and 1,185 +/- acres placed in perpetuity conservation and over 3,924 +/- acres of land placed in a 20-year conservation area).

## **B. Consistency with the Commission’s Comprehensive Land Use Plan (Version 1997):**

### **Goals and Policies for Development (p. 140-142)**

- A. Location of Development – Encourages orderly growth proximate to existing, compatibly developed areas (p 141). Encourages residential development near existing towns and communities where it can be efficiently served by existing services, facilities, and utilities (p 140).
- B. Economic Development – Encourage resource-based enterprises that further the tradition of multiple uses w/o diminishing the jurisdiction’s principal values (p 141).
- C. Site Review – Harmonious fit. Require use of buffers, building setbacks to maintain scenic quality. Adequate parking & traffic circulation, limit number and size of signs, prevent cumulative impacts from incremental development, discourage unnecessarily large lot sizes and encourage clustering & open space (141-142).
- D. Infrastructure – well planned, no adverse impact. Utilities located within existing Right-of-Way of new roads to plan for future growth and public access (142).
- E. Development Rate, Density and Type (142).

### **Provisions**

#### **Location of Development:**

The location of the proposed development is within 5 miles of existing seasonal and year round development. The proposed dwellings are near to the Rockwood and Greenville areas, both of which can provide services.

### **Economic Development:**

The traditional uses of this area have been primitive recreational use and wood harvesting. Residential dwellings along the shorefront, a sporting camp and cabins, a trail and hut system, and maintaining a large woodland area promotes the values of blending outdoor recreation use and forest management. The development will require services from real estate professionals, surveyors, building contractors, and propane suppliers, along with support services of convenience stores, recreational supply stores, and grocery stores providing economic development to the adjacent communities.

### **Site Review:**

Each lot has a 100' building setback from the normal high water mark, 15' setback from property lines, and 50' setback from the access road. Deeded Covenants are included to restrict building size, height, color, lot clearing, noise, signage, and lighting so that the development blends into the existing character of the ponds.

The lots sizes provide for adequate soils for subsurface septic systems, provide for adequate privacy between dwellings, and ensure that the 10,000 sq. ft. clearings are separated to provide undeveloped portions of shorefront between residences. The lots sizes are small enough to enable the use of shared drives.

Existing roads provide access to the proposed developed areas. The loop road will be upgraded in accordance with Land Use Standards and with the coordination of State Soil Scientist, David Rocque.

Traffic circulation is not an anticipated problem, however turnouts may be needed on the loop road.

### **Infrastructure:**

The proposed site does not have electrical power. Several options are feasible to bring electrical power to the proposed development, including a submarine cable from Brassua Dam or overhead or underground power lines.

Either option will require permitting. Land utilities will be placed along the right-of-way of access roads as much as possible to minimize the impact to forested areas.

Wells and subsurface septic systems are allowed on each lot and are to be built in accordance with Maine Plumbing Codes.

### **Development Rate, Density and Type:**

The proposed development rate includes 60 shorefront units, a sporting camp with 10 cabins in a 20-year period on 5,673 +/- acres of land. This shorefront build out rate for Brassua Lake equates to 3 units per year (60 units divided by 20 years).

In comparison, the amount of shoreline available on Brassua Lake within the Lake Concept Plan could theoretically have 175 dwellings (at the rate of one dwelling per 400 ft.) without degrading the water quality. The applicant could develop the land at the rate of 2 dwellings in a five-year period (based on single ownership in one contiguous lot) without any regulatory oversight by LURC. The location of dwellings could be placed haphazardly around the lake. The applicant has acted prudently to reduce the number of potential lots on Brassua Lake and chose to group the lots and limit the number of lots, enabling much of the shoreline to be preserved.

The development of Poplar Hill is proposed in phases of 10-15 lots per phase.

The majority of density (52 of the 60 shorefront units) of the proposed development is located on Poplar Hill. Commonly owned open green spaces between the proposed lots will assure that 3000 feet and 40 acres of space are maintained as green space among the dwellings.

The types of dwellings proposed are single-family residential dwellings with up to 2 accessory structures. Deed restrictions limit size, height and color and number of accessory structures.

The proposed development cannot be used as a justification of the Commission's "adjacency criterion" for future development in the surrounding area.

### **C. Standards for P-RP Subdistrict Boundaries**

Under provisions of 10.16, F, 6 of the Commission's Land Use Districts and Standards, the Commission may approve a Concept Plan and any associated redistricting to the Resource Plan Protection (P-RP) Subdistrict if the following criteria are satisfied:

- A. The plan, taken as a whole, is at least as protective of the natural environment as the subdistricts that it replaces. In the case of concept plans, this means that any development gained through any waiver of the adjacency criterion cited in the Commission's *Comprehensive Land Use Plan* is matched by comparable conservation measures;
- B. The plan includes in its purpose the protection of those resources in need of protection;
- C. Conservation measures apply in perpetuity, except where it is demonstrated that other alternative conservation measures fully provide for long-term protection or conservation; and
- D. The plan strikes a reasonable and publicly beneficial balance between appropriate development and long-term conservation of lake resources.

### **Provisions:**

By limiting growth within 5,673 +/- acres for the next 20 years and placing 1,185 +/- acres of land in permanent conservation and 3,924 +/- acres of land in a 20-year conservation easement, Moosehead Wildlands, Inc. establishes a commitment to continue the traditional forest management and primitive recreational use of the land as has been enjoyed in the past.

This Lake Concept Plan, taken as a whole, places ninety (90) percent of the lands within its boundaries into some form of conservation, the least of which is a 20-year conservation area.

This Lake Concept Plan places over 10 miles (9.3 miles on Brassua Lake and 1.5 miles on Baker Pond) of shorefront in permanent conservation.

The plan includes Deeded Covenants and Land Use Standards to assure that the protection of the P-RP area is at least protective as presently zoned.

## **D. Review Criteria for Residential Development within the Concept Plan**

The Commission shall review all subdivision and development applications associated with this Lake Concept Plan in accordance with the criteria for approval of permit application as listed in Appendix 2, Section 10.13-B. In addition, the review standards for structures adjacent to lakes (Appendix 2, Section 10.13-B.2 of the Commission’s Land Use Districts and Standards), as further elaborated below, must be met for all subdivisions and development proposed on land adjacent to Brassua Lake and Baker Pond.

All lots, on which structural development is proposed, including all proposed subdivisions, must comply with the dimensional requirements of Appendix 9 and the Land Use Standards of Section IV and Appendices 2 through 15.

### **Review Criteria for Structures Adjacent to the Ponds**

#### **1. Natural and Cultural Resource Value**

Brassua Lake has received a “significant” rating for fisheries and an “outstanding” rating for cultural resources. The Lake Concept Plan in preserving these values has limited development to 26,054 +/- feet along Brassua Lake, most of which occurs around Poplar Hill peninsula (16,491 +/- feet). Moosehead Wildlands commits to placing 49,425 +/- feet in permanent conservation, which represents 63% of its shorefront land holdings on Brassua Lake. Moosehead Wildlands, Inc. commits to placing 8,205 +/- feet in permanent conservation, which represents 97.6% of its shorefront land holdings on Baker Pond.

#### **2. Water Quality**

The water quality within the proposed development areas is very important to Moosehead Wildlands, Inc. The lake’s water quality is directly reflected in its “significance” fisheries. Moosehead Wildlands, Inc. has completed the following actions to ensure this water quality is maintained:

- a. A Preliminary Phosphorus Impact Analysis for the new development has been performed. Buffer areas along roadways have been identified to reduce phosphorus

impact, and these buffer areas will be included as deed restrictions in the subdivision phase of permitting.

- b. Requirements that Septic systems be located at least 100' from the shoreline and meet Maine Plumbing Code.
- c. Moosehead Wildlands, Inc. commits to erosion control measures to be used in accordance with the guidelines for vegetative stabilization and best management practices or other equally effective methods, and these guidelines will be part of the subdivision phase of permitting as an Erosion and Sedimentation Control Plan.

### **3. Traditional Uses**

The lands included within the Lake Concept Plan area have historically been in private ownership.

In the past, the traditional uses associated with this area have been allowed with landowner permission.

Brassua Lake, Baker Pond, and the interior woodlands within this Lake Concept Plan have traditionally been used for seasonal lakeshore camps, recreational activities such as hunting, camping, fishing, and forest management purposes. In order to ensure that these traditional uses are preserved, a significant percentage of the shorefront is placed in permanent conservation easement and a major tract of interior land is placed in a 20-year conservation easement. The Lake Concept Plan does allow the traditional uses of the land in the conservation area, however the landowner reserves the right to restrict access around operational forest management areas, sensitive wildlife habitat and to those who do not respect the conservation values of the land and water. Specific provisions are made for timber harvesting within the conservation easement area.

### **4. Regional Diversity**

The area in which the proposed development lies is in close proximity to Moosehead Lake and Rockwood, and is accessible by an access route between Rockwood and Pittston Farm. The Moosehead Lake Region has seen greatly expanded growth in residential dwellings providing waterfront or waterfront access in the past 20 years. This growth is due in part to the demand of shorefront property and the easy access of state and private roads.

Moosehead Wildlands, Inc. has recognized the growth pattern in the Moosehead Lake Region, but is also concerned with maintaining their continuous land holdings as large tracts of land devoted to forest management and recreational use. By limiting the size and physical location of the proposed development, Moosehead Wildlands, Inc. is proposing to seek a balance between planned development that fits with the growth pattern in the Moosehead Lake Region and providing a means to pay property taxes to keep the land in a largely undeveloped and undivided tract and providing opportunities for other to enjoy primitive recreational use and to manage the land as a working forest.

## 5. Natural Character

The Lake Concept Plan includes Deeded Covenants (Appendix 1) on building size, type, color, and height, as well as noise and clearing limits, in order to ensure that the dwellings blend with the natural character of traditional lakeside dwellings. The Lake Concept Plan addresses current Land Use Standards in the Appendices (Appendix 2-13) and Section IV.

## 6. Lake Management Goals

By giving up development equity rights and protecting the majority of the northern shorefront of Brassua Lake and almost the entire shorefront of Baker Pond, Moosehead Wildlands, Inc. has greatly aided in the Lake Management Goals of the State of Maine.

## 7. Landowner Equity

Moosehead Wildlands, Inc. owns the entire shorefront of the Baker Pond, so landowner equity is not an issue. Moosehead Wildlands, Inc. owns  percent of the shorefront of Brassua Lake. (For the purpose of this calculation the southern boundary line of Rockwood Strip T2 R1 was used as a dividing line between Brassua Lake and Little Brassua Lake. The approximate shorefront on Brassua Lake is 193,900 feet.) On its ownership, therefore, Moosehead Wildlands, Inc. has the potential for approximately 196 units at the rate of the Commission's guidelines of one development unit per 400 feet of shoreline. They are, therefore, not using up their share of the development potential for this lake and are not impinging on the development potential of other landowners on this lake.

Because development is restricted, other landowner's rights increase. These rights are:

- a. Fewer developed lots will ensure that the water quality is preserved.
- b. As a large undeveloped shorefront preserves the natural character of the lake, it establishes the character of the lake other landowners have come to expect.
- c. By limiting development of the available shorefront, the monetary value of other shorefront lots will continue to increase (Historically shorefront lot prices have increased, especially if surrounded by undeveloped areas).

### **Provisions for Section 10.17,B, 1 and 10.13,B, 1A of the Land Use Districts and Standards**

The concept plan lots will comply with the State's environmental laws, site location, protection of natural resources, and provisions for solid waste and sewage disposal, and maintaining a healthy water supply.

### **Lot Dimensions**

The lots are greater than 1 acre in size and have a minimum of 200 feet of shorefront. The minimum setbacks include 100 feet from the normal high water mark, 50 feet from access road and 15 feet from side property lines.

## **E. Criteria for Management of Lakes (Ponds) within the Concept Plan**

The Wildlands Lakes Assessment, initiated in 1996 by LURC, established a systematic base of natural resources and land use information on all lakes within the Commission's jurisdiction. The assessment classifies each lake based on management classes and resource class. The ponds within the lake concept plan are classified as follows:

- **Brassua Lake** is classified as a **Management Class 3, Resource Class 1B** Lake.
- **Baker Pond** is classified as a **Management Class 7, Resource Class 3** pond.

### **Management Class 3**

Consist of "lakes potentially suitable for development". The commission through a consideration of existing water quality, potential water quality impacts, location, access, conflicting uses, available shoreline, water level fluctuation, regional considerations, and special planning needs has found these lakes to be a potentially suitable location for shore land development.

### **Management Class 7**

Consist of all lakes not otherwise classified. Many of these lakes have multiple outstanding or significant resources values identified in the Wildlands Lakes Assessment. The Commission will manage these lakes for multiple uses, including resource conservation, recreation, and timber production, giving specific consideration to identified resource values when evaluating the merits of lake-related rezoning and permit applications.

### **Resource Class**

- 1A = Lakes with statewide significance with two or more outstanding values
- 1B = Lakes with statewide significance with one outstanding value
- 2 = Lake of regional significance (with no outstanding values but at least one significant resource value)
- 3 = Lake of local or unknown significance (either had no significant or outstanding natural value or information was inadequate to make a determination)

Brassua Lake is classified as Management Class 3 Lake designated by the Commission as potentially suitable for development, based on such factor as water quality, access, no conflicting area, shore land availability, water level fluctuations, locations, regional considerations, and special planning needs. LURC's Comprehensive Plan states that the Commission "supports additional responsible development around Class 3 lakes" and waives the adjacency criterion so long as there are no water quality problems and there are suitable soils.

In designating Brassua Lake as a Class 3 Lake, the commission has already found that Brassua Lake meets the following criteria:

- a) The water quality can sustain development of the remaining undeveloped shoreline at the rate of one dwelling per 400 feet of frontage or a total of a theoretical 484 units (193,900 ft. ÷ 400 ft.). The proposed concept plan shore frontage can support a total of a theoretical 196 units (78,689 ÷ 400 ft). The plan is well below this theoretical figure at 60 proposed shorefront dwellings on Brassua Lake. The shorefront to dwelling unit frontage ratio will be 1,310 ft. per dwelling (78,689 ÷ 60);
- b) It is located within two townships of the organized portion of the State of Maine or within existing settlements with Public Services;
- c) It is accessible by 2 wheel drive motor vehicle in the summer to within one-quarter (1/4) mile of the normal high water mark;
- d) There is no conflicting use, such as major or unavoidable conflict with critical species or habitats, or with recreational activities requiring undeveloped setting;
- e) The undeveloped shore area is adequate for 10 or more dwelling units and has greater than 10 acres of surface area per existing dwelling unit (the proposed Lake Concept Plan exceeds the minimum standard—the 60 units combined yield 33 acres of lake surface area per unit, the Lake Concept Plan contains approximately 2000 acres of lake surface area - this conservative figure was calculated by extending a line from the lake concept plan shoreline to the middle of the lake in areas where the opposite shore was not owned by Moosehead Wildlands, Inc. and by including the entire lake surface area if opposite shorelines were owned by Moosehead Wildlands, Inc.);
- f) There is no extreme water level fluctuations which makes the shoreline unsuitable for development (the majority of draw down of lake water level occurs after August 30<sup>th</sup>); and
- g) As compared to other large water bodies, it is least sensitive to water quality degradation; closest to paved, all-season roads, closest to existing development centers; and has the least conflict between development and its resource significance.