

**STATE OF MAINE  
LAND USE PLANNING COMMISSION**

**Irving's Proposed Fish River Chain of Lakes  
Concept Plan in Northern Aroostook County,  
Maine; Zoning Petition 768**

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**FILING OF DETAILED ISSUES LIST & STATEMENTS  
OF  
THE FOREST SOCIETY OF MAINE**

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Intervenor Forest Society of Maine ("FSM") files this Detailed Issues List pursuant to the Second Procedural Order in the Matter of Zoning Petition ZP 768, Section I.

a) List of issues that FSM wishes to address as part of this Concept Plan proceeding:

FSM, as potential holder of the perpetual conservation easement, will ask the Land Use Planning Commission to ensure that the proposed "14,600-acre Conservation Easement" meets LUPC lake concept plan review criteria including: that "any development gained through any waiver of the adjacency criteria is matched by comparable conservation measures"; that the plan "includes in its purpose the protection of those resources in need of protection"; that "the plan strikes a reasonable and publicly beneficial balance between appropriate development and long-term conservation of lake resources"; and that 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." *See* Chapter 10, Section 10.23,H,6(d)-(g). All of these determinations must be made under the statutory requirement to mitigate a concept plan's undue adverse impacts to existing uses and resources. 12 M.R.S. § 685-A(8-A)(B). The Commission also publishes model conservation easement provisions and guidelines for the selection of easement holders: <http://www.maine.gov/tools/whatsnew/index.php?topic=lurcfiles&id=2645&v=tplfiles> and has evaluated perpetual conservation easements as requirements in all of its previous concept plan approvals. FSM expects to specifically address the following issues:

1. Holder of the Conservation Easement.

FSM has been proposed as the holder of the conservation easement. The Commission's published guidelines contain a preference for a public natural resource agency to hold a conservation easement associated with a concept plan. The Commission has in previous concept plan approvals determined that it is appropriate for a non-profit holder, such as FSM, to serve as the primary holder of a required conservation easement. FSM has agreed to be considered as a potential holder of the conservation easement in this concept plan. As a condition of accepting any final conservation easement as holder, FSM reserves the right to review and approve the terms of any final conservation easement and related agreements, the sufficiency of any monitoring and enforcement funds, and any other component of the concept plan required by the Commission that could result in the

long-term commitment of resources by FSM. FSM expects that the Commission would require the Grantor to cover the transactional costs associated with any required component of the concept plan approval, including the cost of any title review and title insurance for the conservation easement, the cost of preparation and recording of necessary documents, and other reasonably foreseeable transactional costs resulting from a required component of any concept plan approval. Furthermore, as part of its agreement to be considered as a potential holder of the conservation easement, FSM reserves the right to negotiate with the applicant regarding reimbursement of FSM's costs in participating in the regulatory process.

2. Location and Size of Conservation Easement.

The review criteria in Chapter 10, Section 10.23,H,6(d)-(g) require the Commission to evaluate the location and the size of the conservation easement in relation to the resources in need of protection. FSM will provide suggested areas where the proposed conservation easement could be considered for enlargement to provide greater protection for conservation values and could provide enhanced connectivity to nearby public lands.

3. Location of Development Areas in Relation to Conservation Easement.

FSM, as potential holder of the perpetual conservation easement, would have the responsibility in perpetuity, to monitor and enforce the terms of the conservation easement. In FSM's experience, the existence of developed areas in close proximity to conservation easements, often are where there are issues of conflict and potential third-party easement violations over time. The location of the development areas in relation to the final conservation easement boundaries is therefore an important matter for the holder of the easement and the integrity of the conservation easement, and an issue that the Commission should evaluate in regard to the review criteria in Chapter 10, Section 10.23,H,6(d)-(g).

4. Stewardship Endowment Contribution and Baseline Documentation Report Costs.

Under Maine law, the holder of a conservation easement has a legal responsibility to monitor and enforce the terms of any easement it accepts, which for a perpetual conservation easement involves a direct and substantial commitment of organizational and financial resources. While a provision has been written in the draft conservation easement regarding stewardship endowment, see draft easement Section 10, FSM will provide an estimate for consideration, which number could change based on the final terms, size, and location of the conservation easement. Additionally, it is contemplated that if FSM is approved as the holder, FSM will prepare the required baseline documentation report and the staff and organizational costs associated with the preparation of the baseline documentation report should be estimated and included in the Plan. FSM currently holds 38 easements encompassing 803,469 acres throughout Maine that include a variety of different provisions, and, over time, has developed methodology to calculate an estimate of the anticipated costs for both the preparation of baseline documentation reports and for successful monitoring of easements. A detailed baseline and a sufficient stewardship

endowment are necessary elements of ensuring that a conservation easement's terms can be adequately enforced in perpetuity regardless of the holder or any successor holder; accordingly, the Commission must ensure adequate resources are provided to cover these costs as part of the requirement "conservation measures apply in perpetuity," Chapter 10, Section 10.23,H,6(g). FSM will provide a range of estimates for the baseline documentation report costs and the appropriate stewardship endowment contribution to be made to FSM by the applicant and a final estimate once the terms of the conservation easement are finalized.

5. Conservation Easement Terms – Scope of Retained Rights.

FSM has reviewed the proposed conservation easement terms and will provide information at the public hearing regarding the following issues concerning the appropriate scope of retained rights of the grantor for certain activities. Depending on the final location of the development areas and the final design of the easement, the following proposed retained rights could more appropriately be conducted on non-easement lands covered by the lake concept plan. FSM understands the desire to allow the applicant flexibility in future planning but given the size and location of the proposed conservation easement, believes further consideration should be made regarding the appropriateness of the following provisions of the proposed conservation easement.

- A. Utility Structures and Improvements (see sections 31.(b), 4.1
- B. Construction Materials Removal Activities (see section 3.2(a))
- C. Water Extraction Activities (see section 3.2 (c))
- D. Recreational Facilities (see section 3.2(d))
- E. Division Limitations (see sections 7.1, 10.2)

The review criteria in Chapter 10, Section 10.23,H,6(d)-(g) and the Commission's model easement provisions require the Commission to evaluate whether these uses are more appropriately conducted on non-easement lands covered by the lake concept plan.

6. Conservation Easement Terms – Provisions of Concern.

Additionally, there are certain provisions of the easement that the FSM will not accept or that FSM has concerns with and FSM will provide information concerning section 8.5 Insurance, section 8.8 Indemnity, 8.13 Offset for Civil Penalties, section 17.5, and section 18 along with suggested language to address FSM's concerns. FSM will provide a red-line version of the proposed conservation easement with suggested modifications that FSM, based upon its experience and the goals of the lake concept plan provisions, will remove ambiguity and align with established standards and practices for conservation easements. The review criteria in Chapter 10, Section 10.23,H,6(d)-(g) and the Commission's model easement provisions require the Commission to evaluate whether these provisions are appropriate in a perpetual conservation easement.

7. Conservation Easement Terms – Forestry Management Activities.

FSM is the holder of numerous working forest conservation easements and has considerable experience with monitoring such easements. FSM acknowledges that it is the petitioner's intent to develop a conservation easement that protects conservation values while allowing for timber management. FSM is concerned, however, that the easement as now drafted does not clearly and strongly connect management objectives with easement provisions to ensure Conservation Values can be maintained through time. Specifically, external plans and agreements—the J.D. Irving Northern Maine Woodlands 2012 -2037 Strategic Forest Management Plan, third party certification, the Outcome Based Forestry agreement with the Maine Forest Service— are referenced in a draft Resource Management Plan but there are not specific goals expressed in the perpetual conservation easement that would adequately guide all external plans and activities in perpetuity, particularly after the expiration of the above referenced plans, certifications and agreements. The review criteria in Chapter 10, Section 10.23,H,6(d)-(g) and the Commission's model easement provisions require the Commission to evaluate whether these provisions are appropriate in a perpetual conservation easement. FSM will provide suggestions for how the Multi-Resource Management Plan could be drafted in a manner that is adaptable to changing conditions, science, and forest management practices but that remains no less protective than original objectives established in the conservation easement.

b) List of witnesses, if any and c) any comments on the need for pre-filed testimony:

FSM does not intend to call additional witness, although it does intend to provide all information and suggested easement language referenced herein, in written form as directed by the Commission.

Respectfully submitted on behalf of the Forest Society of Maine.

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