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GOVERNOR

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

WALTER E. WHITCOMB  
COMMISSIONER

NICHOLAS D. LIVESAY  
EXECUTIVE DIRECTOR

**Fifth Procedural Order  
In the Matter of  
Zoning Petition ZP 768**

**Allagash Timberlands LP, Aroostook Timberlands LLC, and  
Maine Woodlands Realty Company (Irving)**

April 6, 2018  
Commissioner E. Worcester, Chair and Presiding Officer

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This Fifth Procedural Order summarizes the April 4, 2018 pre-hearing conference, addresses requests for adjustments to the hearing schedule and procedure, and includes a summary of key dates and deadlines leading up to the hearing.

**I. PRE-HEARING CONFERENCE**

On April 4, 2018, a pre-hearing conference was held pursuant to Chapter 5.07 of the Commission's Rules. The following individuals participated in the conference:

LUPC Commission

Everett Worcester, Chair and Presiding Officer

LUPC Staff

Nick Livesay, Director

Samantha Horn, Planning Manager

Tim Beaucage, Senior Planner and Project Manager

Billie MacLean, Permitting and Compliance Regional Supervisor

Maine Attorney General's Office

Lauren Parker, Assistant Attorney General

Petitioner

Anthony Hourihan, Owner Representative, Irving Woodlands

Noel Musson, Project Manager, The Musson Group

Brian Rayback, Attorney, Pierce Atwood

Terry Dewan, Consultant, Terrence DeWan & Associates

Intervenors

Kirk St. Peter, President, Fish River Lakes Leaseholders Association (FRLLA)  
Cheryl St. Peter, Secretary, FRLLA  
Andy Hamilton, Eaton Peabody  
Jake Metzler, Forest Society of Maine  
Cathy Johnson, Senior Staff Attorney, Natural Resources Council of Maine (NRCM) (by phone)  
Carly Perruccio, NRCM (by phone)

The conference focused on the hearing schedule, topics, and time allotments.

**II. PETITIONER UPDATES TO PROPOSAL**

On March 29, the Petitioner filed an outline describing the updates to its proposal. As established in the Fourth Procedural Order, the deadline for the Petitioner to submit the updates identified in the outline and any related GIS shapefiles is April 12.

**III. HEARING SCHEDULE AND PROCESS**

The dates for the public hearing have been set, May 22 through 24. The hearing schedule is included as Attachment A to this order. Public hearings convened by the Commission are subject to applicable State statutes and Commission Rules, Chapter 4, Rules of Practice and Chapter 5, Rules for the Conduct of Public Hearings.

The purpose of the public hearing is to provide a forum for the Commission to receive and evaluate evidence relevant to its review of the Petitioner's zoning petition and proposed concept plan. Oral testimony provided at the hearing is one source of information considered by the Commission as part of its review. The petition and concept plan, written agency comments, pre-filed testimony, post-hearing briefs and rebuttal briefs, and written public comments also aid the Commission.

The hearing will include technical sessions and public comment sessions. The technical sessions will include an opportunity for the Petitioner, Intervenors, Interested Persons, and government agencies to provide testimony to the Commission. Along with providing testimony on select, key topics, as part of the technical sessions, the Petitioner, Intervenors, and Interested Persons will have an opportunity to provide opening statements and closing statements. While the Commission will consider many different topics as it conducts its review of the Petitioner's proposal, all topics relevant to the Commission's review will not be covered during the hearing. The public hearing topics have been selected based on consideration of a range of factors, including, among other things: significance and relevance to the Commission's overall review, interest expressed by Intervenors and Interested Persons, anticipated value added by oral testimony (as opposed to Commission reliance on written materials), comments provided on the draft hearing schedule, and public interest.

The hearing schedule is included as Attachment A. The schedule identifies procedure, the topics of focus at the hearing, order of testimony, and time allotments. There is no obligation to fill all the allotted time.

The public comment sessions will be held in the evening on May 22 and 23. Witnesses scheduled to testify during the technical sessions may not testify during the evening public comment sessions. Member of the public affiliated with the Petitioner, an Intervenor, or an Interested Person may testify in the evening session in their individual capacity only and not on behalf of the organization that person is affiliated with. Members of the public testifying at the public comment session may be directly questioned by Commissioners and Commission staff only. The Petitioner or Intervenors may ask for clarification through the Presiding Officer.

#### **A. Petitioner and Intervenors**

In response to comments provided by FRLLA and NRCM on the draft schedule, the deadline for each party to provide a final list of witnesses shall be May 2. These two parties also requested the ability to cross-examine witnesses. In response to these comments and following further discussion of the topic at the April 4 pre-hearing conference, cross-examination of witnesses will be allowed for witnesses testifying on Topics Two and Three. Time allotments for Topics Two and Three, contained in Attachment A, include the total time each party may devote to direct testimony and cross-examination. How a party allocates its time between direct testimony and cross examination is up to each party.

To assist the Commission and hearing participants and enable them to come to the hearing prepared to participate in an efficient and focused manner, all witnesses testifying for the Petitioner and Intervenors on Topic Two and Topic Three must submit pre-filed testimony by May 2.

Pre-filed testimony must be sworn under oath and notarized. If the witness wishes to be considered an expert, his or her credentials must be set forth in the pre-filed testimony. No person will be allowed to testify at the hearing for the Petitioner or Intervenors on Topics Two or Three unless that person has submitted pre-filed testimony, and no testimony will be allowed into the record if the witness does not participate in the hearing. All direct testimony delivered at the hearing must be consistent with the witnesses' pre-filed testimony. Topics and issues not covered in pre-filed testimony may not be raised in direct testimony at the hearing.

All persons providing sworn, written, pre-filed testimony must be made available in person at the hearing for questioning by the Commission, staff/consultants and appropriate parties. Any scheduling constraints or other limitations concerning a witness's ability to appear at the hearing, including any relevant physical disabilities, must be noted in writing with that witness's pre-filed testimony. It is the responsibility of each party to keep their witnesses informed regarding the hearing schedule and to ensure that their witnesses maintain maximum flexibility during this period.

Pre-filed rebuttal testimony is not allowed.

#### **B. Governmental Agencies**

The Commission has requested the participation of the Department of Inland Fisheries and Wildlife, as well as the participation of the Maine Forest Service and Bureau of Parks and Land, both of which are part of the Department of Agriculture, Conservation and Forestry. Participation of these state agencies has not been confirmed, however, time has been allotted for all three at the hearing.

In addition to these state agencies, Aroostook County and the Town of Van Buren have stated their interest in participating. Each has been allotted time.

For governmental agencies participating in the hearing, the agency representative(s) who will provide oral comments at the hearing must be identified by May 2. Written agency comments must be filed by May 2, as well. No representative of a governmental agency may participate in the hearing without submission of written comments. Written comments may be submitted without participation in the hearing, however, participation is preferred and will be of greater value to the Commission and aid in efficient review of the proposal. Any oral comments provided at the hearing must be consistent with the written comments. Topics and issues not covered in the written comments may not be raised orally at the hearing.

### **C. Interested Persons**

Ms. Pierson, through her agent, submitted comments on the draft agenda. In her comments she objected to not being included in the discussion of Topics Two and Three. The Commission granted Ms. Pierson interested person status because her property is uniquely situated proximate to a proposed development area and because she owns her property and is not a member of FRLLA. The intended focus of Topic One is consideration of potential impacts of the proposal to camp and other property owners. Ms. Pierson fits squarely in this category. In addition to the time allotted Ms. Pierson to address Topic One, she also is allotted time for opening and closing statements where all the participants have greater latitude as to the topics they raise and arguments they present, provided they are relevant to the Commission's review. Additionally, Ms. Pierson may submit written comments on the proposal at any time prior to close of the record. Ms. Pierson's request for time allotment on Topics Two and Three is denied.

In her comments, Ms. Pierson also requested clarity as to whether her agent may deliver comments on her behalf when participating in Topic One. Ms. Pierson may be unable to attend due to medical reasons. This request was discussed at the pre-hearing conference on April 4. There was no objection to Ms. Pierson's agent representing her in this manner. Ms. Pierson's agent may participate during the testimony portion of Topic One on her behalf.

Interested persons are not required to submit pre-filed testimony or a written summary of comments they intend to deliver at the hearing. However, interested persons may do so if they like. Interested persons are not subject to cross-examination and may not cross-examine other witnesses.

## **IV. OTHER PROCEDURAL MATTERS**

### **A. Exhibits and Demonstrative Materials**

Generally, any exhibit that a participant wishes to introduce into the administrative record related to Topic Two and Topic Three must be attached to pre-filed testimony or written agency comments. The Presiding Officer retains the discretion to allow the introduction of an exhibit at the hearing that was not pre-filed based on a showing of good cause; however, such requests will be looked upon with extreme disfavor, and the requesting party will bear the heavy burden of demonstrating why it was not feasible to pre-file the exhibit, and that the need to introduce the exhibit outweighs any prejudice to other parties.

The use of exhibits that were not pre-filed and are not in the administrative record to impeach witnesses at hearing may be approved by the Presiding Officer on a case by case basis if the Presiding Officer is satisfied that the use of the exhibit as proposed will assist the Commission in its

decision-making. Reduced versions (no larger than 11 x 17") of oversized exhibits must be pre-filed, with the full-size exhibit presented at hearing. It is the responsibility of each party to label their exhibits in a manner that allows them to be easily identified and referenced. All demonstrative materials that a witness intends to use at the hearings as part of her/his testimony must be included as a pre-filed exhibit, unless all information contained in the demonstrative material is also contained in pre-filed exhibits. PowerPoint presentations, for example, that simply summarize key components of pre-filed testimony or written agency comments do not need to be pre-filed.

The Commission requests, but does not require, submission by May 18 of demonstrative materials not otherwise required to be pre-filed. This will facilitate provision of the materials to Commissions and other parties. Any such electronic demonstrative materials participants would like made available to Commissioners on their individual laptops during the hearing must be submitted by May 18.

### **B. Ex Parte Communications**

Ex parte communications are prohibited. The parties are directed to 5 M.R.S. § 9055 and Commission Rules, Chapter 5, Section 5.25, for a statement of legal restrictions on contact with Commission members during pending proceedings. The parties are cautioned to avoid any conduct that could give rise even to the appearance of improper contact with Commission members.

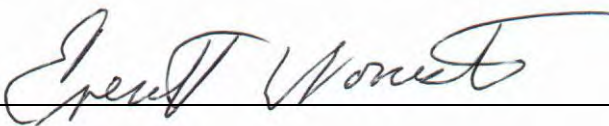
### **V. SUMMARY OF SCHEDULE**

A summary of key dates and deadlines, noted above in this order, follows:

April 12	Deadline for Petitioner to file updates to proposal
April 27-May 4	Newspaper hearing notice published
May 2	Deadline for Petitioner and Intervenors to file final witness list and pre-filed testimony; deadline for Governmental Agencies to identify hearing participants and submit written comments
May 18	Deadline for submission electronic demonstrative materials for loading onto Commissioner laptops
May 22-24	Public hearing

If you have any questions on this *Procedural Order*, please contact Tim Beaucage (call (207) 287-4894; e-mail [Timothy.Beaucage@maine.gov](mailto:Timothy.Beaucage@maine.gov)).

DONE AND DATED AT AUGUSTA, MAINE THIS 6<sup>TH</sup> DAY OF APRIL 2018



Everett Worcester, Chair and Presiding Officer

## Attachment A

### Fifth Procedural Order In the Matter of Zoning Petition ZP 768

Allagash Timberlands LP, Aroostook Timberlands LLC, and  
Maine Woodlands Realty Company (Irving)

#### FINAL HEARING SCHEDULE

#### **TUESDAY, MAY 22**

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*Location: New Canada Community Center, 1809 Caribou Road, New Canada, Maine*

#### **Afternoon (1:30 to 5:00 PM): Technical Session**

- Introductions, opening statement by Presiding Officer, and swearing in of those testifying [5 minutes]
- LUPC staff statement, administrative history, overview of hearing process, and submitting the file to the record [15 minutes]
  
- Opening statement and project summary by Petitioner [30 minutes]
- Opening statements by Intervenors and Interested Persons
  - Intervenors (Fish River Lakes Leaseholders Association (Leaseholders Association), Forest Society of Maine (FSM), Natural Resources Council of Maine (NRCM)) [10 minutes each]
  - Interested Persons (Ms. Pierson, Sandy Point & Connection Lane Road Association (Road Association)) [5 minutes each]
- Topic One: Access and Potential Impacts to Existing Camp Owners:
  - *Means of access to proposed and existing development*
  - *Road ownership, associations, and maintenance*
  - *Impacts to roads*
  - *Impacts on existing camp owners (e.g., traffic, common water access for subdivisions, proximity of proposed development areas to existing camp/dwellings)*
  
- Commission staff introduction of topic and related review standards [10 minutes]
- Testimony
  - Petitioner [25 minutes]
  - Governmental Agency (Town of Van Buren) [10 minutes]
  - Intervenor (Leaseholders Association) [25 minutes]
  - Interested Persons (Road Association, Ms. Pierson) [10 minutes each]
  - Petitioner [5 minutes]
- Commissioner and staff questions [25 minutes]

- Note: Commissioners and staff may ask questions throughout the delivery of testimony. During their allotted time, the Petitioner, Intervenor, and Interested Persons may identify questions they would like the Commission to ask; questions must be asked through the Presiding Officer. Additionally, the Intervenor and each Interested Party with allotted time during the topic will have an opportunity to identify questions to be asked through the Presiding Officer after the conclusion of the Petitioner's closing remarks on the topic area. The Presiding Officer, at his discretion, will ask the questions raised.

**BREAK (approximately 5:00 PM)**

**Evening (6:00 PM): Public Comment Session**

- Introductions, opening statement by Presiding Officer, and swearing in of those testifying [5 minutes]
- Project summary by Petitioner [15 minutes]
- Public testimony [3 to 5 minutes each; may be adjusted based on number of individuals interested in offering testimony]
  - Note: Witnesses offering testimony during the technical sessions may not provide public comment; affiliates (e.g., employees, members) of the Petitioner, Intervenor, and Interested Persons may participate in the public comment session, but only in their individual capacities and not on behalf of a party; members of the public may only be directly questioned by the Commission and its staff; the Petitioner and Intervenor may ask for clarification through the Presiding Officer
- Recess and closing statement by Presiding Officer [2 minutes]

**WEDNESDAY, MAY 23**

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*Location: Caribou Inn & Convention Center, 19 Main Street, Caribou, Maine*

**Morning (8:30 AM to 12:00 Noon): Technical Session**

- Introductions, opening statement by Presiding Officer, and swearing in of those testifying [5 minutes]
  
- Topic Two: Potential Resource Impacts, Impact Minimization Efforts, and Conservation:
  - *Extent and location of proposed development areas*
  - *Public resource impacts associated with location of development and service provision*
  - *Outcome based forestry and certification – what these processes involve*
  - *Resource impacts (e.g., brook trout habitat, vernal pools) Note: Any discussion of potential phosphorus impacts at the hearing as part of Topic Two should focus on potential impacts generally. Technical assessment of phosphorus impacts will be*

*conducted through submission and review of phosphorus calculations, written comments, reports, and other record materials.*

- *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*
- Commission staff introduction of topic and related review standards [15 minutes]
- Testimony
  - Petitioner [30 minutes]
  - Government Agencies (Maine Forest Service (MFS), Dept. of Inland Fisheries and Wildlife (DIFW), and Aroostook County) [15 minutes each]  
Note: participation of State agencies to be verified
  - Intervenors (FSM, NRCM) [30 minutes each]
  - Intervenor (Leaseholders) [20 minutes]
  - Petitioner [5 minutes]
- Commissioner and staff questions [25 minutes]
  - Note: All witnesses are subject to cross-examination by the Commission, Commission staff, governmental representatives, the Petitioner, and Intervenors. Commissioners and staff may ask questions throughout the delivery of testimony. Cross-examination by other participants will be in the order identified in Chapter 5. The time allotments listed above capture both direct testimony and cross-examination. How a participant allots its time is up to them.

**BREAK (approximately 12:00 Noon-1:30 PM)**

**Afternoon (1:30 PM to 5:00 PM): Technical Session**

- Introductions, opening statement by Presiding Officer, and swearing in of those testifying [5 minutes]
- Topic Three: Anticipated Use of Lakes and Lake Character:
  - *Types and location of public access to lakes*
  - *Anticipated change in intensity and types of use of lakes*
  - *Anticipated effect on recreation uses and experiences*
  - *Public expectations regarding use of and experience on different lakes*
  - *Effect on character of lakes (including scenic impacts of hillside development) and user experience*
- Commission staff introduction of topic and related review standards [15 minutes]
- Testimony
  - Petitioner [30 minutes]



- Government Agencies (Bureau of Parks and Lands (BPL), DIFW, and Aroostook County Commissioners) [15 minutes each] Note: participation of State agencies to be verified
- Intervenors (NRCM, Leaseholders) [30 minutes each]
- Petitioner [5 minutes]
- Commission and staff questions [25 minutes]
  - Note: All witnesses are subject to cross-examination by the Commission, Commission staff, governmental representatives, the Petitioner, and Intervenors. Commissioners and staff may ask questions throughout the delivery of testimony. Cross-examination by other participants will be in the order identified in Chapter 5. The time allotments listed above capture both direct testimony and cross-examination. How a participant allots its time is up to them.

**BREAK (approximately 5:00 PM)**

**Evening (6:00 PM): Public Comment Session**

- Introductions, opening statement by Presiding Officer, and swearing in of those testifying [5 minutes]
- Project summary by Petitioner [15 minutes]
- Public testimony [3 to 5 minutes each; may be adjusted based on number of individuals interested in offering testimony]
  - Note: witnesses offering testimony during the technical sessions may not provide public comment; affiliates (e.g., employees, members) of the Petitioner, Intervenors, and Interested Persons may participate in the public comment session, but only in their individual capacities and not on behalf of a party; members of the public may only be directly questioned by the Commission and its staff; the Petitioner and Intervenors may ask for clarification through the Presiding Officer
- Recess and closing statement by Presiding Officer [2 minutes]

**THURSDAY, MAY 24**

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*Location: Caribou Inn & Convention Center, 19 Main Street, Caribou, Maine*

**Morning (8:30 AM to 10:45 AM): Technical Session**

- Introductions and opening statement by Presiding Officer [5 minutes]
- Closing statements
  - Interested Persons (Ms. Pierson, Road Association) [10 minutes each]
  - Intervenors (Leaseholders, FSM, NRCM) [20 minutes each]
  - Petitioner [20 minutes]
- Recess and closing statement by Presiding Officer [5 minutes]