

**STATE OF MAINE
LAND USE REGULATION COMMISSION**

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| IN THE MATTER OF |) | |
| FISH RIVER CHAIN OF LAKES |) | Pre-Filed Direct Testimony of |
| CONCEPT PLAN |) | Anthony Hourihan |
| ZONING PETITION ZP 768 |) | |

On behalf of Aroostook Timberlands LP, Allagash Timberlands LLC, and Maine Woodlands Realty Company and their operating affiliate Irving Woodlands LLC (collectively, Irving), Anthony Hourihan is submitting this pre-filed direct testimony in support of Zoning Petition ZP 768, the Fish River Chain of Lakes Concept Plan.

I. QUALIFICATIONS AND BACKGROUND

My name is Anthony Hourihan. I am a forester employed by J.D. Irving, Limited, currently based at our corporate headquarters in Saint John, New Brunswick. I received a Bachelor of Science in Forestry (BScF) in 1992 from the University of New Brunswick in Fredericton, New Brunswick. I also hold a Master’s in Business Administration (MBA) from The Richard Ivey Business School at Western University in London, Ontario, which I received in 2008.

I have been involved in forest management and environmental management systems related to forestry and long-term landscape planning since the 1990s. I have had the opportunity to work in these areas on both publicly- and privately-owned lands in New Brunswick, Nova Scotia, Prince Edward Island, and Maine. In Maine I led our team from 2004 until 2008 as the Regional Manager responsible for the timberlands and sawmills business. During my time living in Aroostook County I had the privilege of serving as a member of the “Commission to Study Henderson Brook Bridge in the Allagash Waterway,” which studied options and solicited stakeholder input that ultimately led to a new structure bridging the Waterway that was practical for the forest products industry and balanced visual impacts to waterway users. I also served on Governor Baldacci’s Working Group on the Allagash Wilderness Waterway.

On behalf of Irving Woodlands, LLC, I led the initial discussions with the State when it was looking to pilot the Outcome Based Forestry (OBF) program, and I was involved with developing the project over the next 6 years until we entered our first agreement with Maine Forest Service (MFS) in 2012. I still review the results associated with the annual reports and attend the tours, and I continue to periodically participate in discussions on changes to the program as the evolution continues.

II. INVOLVEMENT WITH THE FISH RIVER CHAIN OF LAKES CONCEPT PLAN

In 2008 I was asked by our owners to evaluate both current and future potential uses on our lands, including forest management, recreation, potential residential/recreational developments, and other commercial developments, such as wind and solar projects. In our “normal” forest management planning we look at the impacts that sustainable management operations will have on the forest over an 80-year horizon. These analyze variables such as volume and quality of wood supplies by different species; area and connectivity of special habitats such as riparian areas along waterways, deer wintering areas, rare plant populations, and unique areas that are identified for special habitat, plant populations or culturally significant areas. There traditionally has been little planning on where future recreational development should take place, and we felt that as part of the overall planning process the areas that were likely to receive future development pressure should be identified and a plan put in place to guide this future development. This is where the Fish River Chain of Lakes Concept Plan originated. The Concept Plan is shown on the attached map in Petitioner’s Exhibit 1.

I played the role of Overall Project Manager for the Concept Plan and was involved in nearly every aspect of its development. I insured that the team working on the rezoning for potential future development took in to account what the impacts would be on the working forests of the area that support many local jobs; and worked with our foresters, biologist, and naturalist to insure that what was being proposed was able to be efficiently incorporated in to our long term management systems, including OBF-based management coupled with the on-the-ground environmental management systems, and third party certification. This comparison

of compatibility of uses was also undertaken for the proposed conservation easement area to insure sustainable forest management using OBF standards, conservation values, and traditional recreational activities could co-exist within the framework of the easement.

III. OUTCOME BASED FORESTRY (OBF) & SUSTAINABLE FORESTRY PRINCIPLES

The Concept Plan makes the application of the principles behind Irving's OBF agreement with the State mandatory for all forestry operations in the Plan Area. This ensures that forestry in the Plan Area will be based on sound forestry science and will be sustainable. The following describes what OBF is and how it applies.

Maine's Forest Practices Act (FPA), 12 M.R.S § 8866 *et seq.*, was passed in 1989 to reduce what the public perceived as unacceptably high rates of clearcut harvesting following the spruce budworm outbreak of the 1970s and 80s. The FPA defined a clearcut and imposed for administrative convenience a strict set of arbitrary and prescriptive rules for limiting clearcutting and its visual impacts. The immediate response of landowners was a near complete shift to various forms of partial harvesting to avoid the risks associated with violating clearcutting rules and reduce burdensome paperwork associated with clearcuts of certain specified sizes.

Over the next few decades the unintended negative impacts from adopting standards not based in science were:

- Doubling of annual harvest area to yield the same amount of wood,
- Substantially increased road and trail networks to access the larger harvest area with associated ecological (siltation and stream crossings) and financial costs,
- Homogenization of the forest due to partial cuts that dropped the volumes per acre but were not considered clearcuts, resulting in large areas of forest with similar ages and structure,
- Increased forest fragmentation due to the increased areas of operation,
- Reduced silvicultural investment and suboptimal silviculture, because in general planting of trees and in many cases pre-commercial thinning are associated with clearcuts and even aged areas of forest, and

- Degradation of wildlife habitat.

In 1999, the MFS declared in its State of the Forest report that the state had

“reached the limits of what a command and control regulatory framework has to offer [with respect to regulation of forest practices]. Command and control regulation has many limitations and may result in unintended consequences, such as forest fragmentation and premature harvesting to recover equity in a forest investment.” (Maine Forest Service 1999b).

As a result, Outcome-Based Forestry (OBF) policy was developed in 2001 and enacted by the Legislature as an alternative approach within the FPA legislation itself. See 12 M.R.S. § 8869(3-A). The objective of OBF was to give more flexibility to landowners in deciding how they harvest their forestlands in exchange for ensuring that specific outcomes would be achieved. The overarching goal of OBF is to encourage forest managers to prescribe harvests that are guided more by sound scientific and forest management principles and less by administrative convenience.

These outcomes were developed by the MFS and vetted through the State Legislature, resulting in a new statutory program that allowed increased flexibility in the location, size, and separation zones between clearcuts. This also provided increased flexibility for regeneration of cut areas. By enrolling in OBF, landowners are exempt from certain clearcutting rules under the FPA, but still must follow all other regulatory standards and protections, including as to traditionally environmental requirements. Also, the landowner must conform to the statewide standards of sustainability, which are:

State Forest Sustainability Goals

1. Criterion 1: Soil productivity

- a) Goal: Maintain site productivity.
- b) Outcome: Site productivity will be maintained or improved, and the area in roads and yards will be minimized.

2. Criterion 2: Water quality, wetlands and riparian zones

- a) Goal: Maintain or improve the chemical, physical, and biological integrity of aquatic systems in forested areas and riparian forests.

- b) Outcomes: Forest management in shoreland areas protects water quality and aquatic and riparian forest biodiversity.

3. Criterion 3: Timber supply and quality

- a) Goal: Improve the quantity and quality of future timber supply when appropriate.
- b) Outcome: The management strategy and harvest levels for the lands will increase the quality and quantity of the forest resource as appropriate in the medium and long term (20 – 50 years).

4. Criterion 4: Aesthetic impacts of timber harvesting

- a) Goal: Minimize adverse visual impacts of timber harvesting.
- b) Outcomes:
 - 1. The landowner will minimize visual impacts of harvests, roads, landings and other management activities.
 - 2. The landowner's planning staff are trained in and apply principles of visual quality management.
 - 3. The landowner identifies areas with high and moderate visual sensitivity, and takes appropriate measures to avoid significant visual impacts whenever necessary.

5. Criterion 5: Biological diversity

- a) Goal: Maintain biological diversity with healthy populations of native flora and fauna, forest communities and ecosystems.
- b) Outcomes:
 - 1. Management addresses the habitat needs of the full range of species present.
 - 2. Maintain or manage for acreage in the late successional condition through management and protection.
 - 3. Maintain a reasonable component of standing dead trees, live cull trees, and down logs across the landscape (not necessarily on every acre).
 - 4. High Conservation Value Forests are properly identified and values are protected on the ownership.

5. Rare, threatened and endangered species habitats are properly identified, and the land is managed to protect the habitats and occurrences of rare, threatened and endangered species.
6. Important plant communities are properly identified, and the land is managed to protect important plant communities.
7. Deer wintering areas are properly identified and managed to maintain or improve their value as winter cover for deer.

6. Criterion 6: Public accountability

- a) Goal: Demonstrate sustainable forestry and build public confidence that forest management is protecting public values for the long-term.
- b) Outcomes:
 1. The landowner will maintain independent 3rd party certification with a nationally recognized sustainable forest management certification system without major, unresolved nonconformances on managed lands.
 2. A Licensed Forester within the company will review and approve the landowner's Forest Management Plan.
 3. The landowner will employ Licensed Foresters who are actively involved in the management, planning and supervision of operations on the land.
 4. All timber harvesting contractors will employ at least one person possessing Certified Logging Professional or Qualified Logging Professional certifications or the equivalent.

7. Criterion 7: Economic considerations

- a) Goal: Optimize benefits to the local and regional economy while also achieving the goals specified for the other criteria, to the extent allowed by market conditions.
- b) Outcome: The landowner's management activities support as vibrant and diverse a forest products industry as is practicable, including loggers, truckers, and production facilities.

8. Criterion 8: Social considerations

- a) Goal: The landowner supports the communities surrounding their lands and operations, and except where special circumstances dictate otherwise, the landowner continues to provide historic and traditional recreational opportunities that do not conflict with the landowner's objectives or values.
- b) Outcome: The landowner provides opportunities for appropriate historic and traditional recreational uses that do not conflict with the landowner's values or objectives.

9. Criterion 9: Forest Health

- a) Goal: The forest is healthy and vigorous with no serious insect infestations or disease outbreaks.
- b) Outcome: The landowner does what is prudent and practicable to monitor for and prevent and control insects, disease, and fire, consistent with good practice in the industry and assists MFS in forest health monitoring programs on the ownership.

The conformance to the State Wide Standards of Sustainability is the real benefit of OBF. Irving's commitments exceed current regulatory requirements and demonstrate the ongoing commitment to protecting resources other than just timber. This means that the landowner must comply with all other statutes regarding resource protection, and must take into account and demonstrate on the ground how the planning and operations associated with OBF offer additional ecological and social benefits. A governor-appointed panel of technical experts¹ ensures that the outcomes are achieved and monitors the progress of each OBF agreement, including through on the ground audits.

As an example, the OBF enrolled landowner must show how it is protecting soil quality, often through improved planning and Best Management Practices (BMPs). In addition, they must demonstrate the conservation of biological diversity and old growth components of the forest and there are requirements to demonstrate how long term planning and execution will

¹ By statute, the panel of technical experts must have expertise in the nine criteria for OBF listed above and they are charged with implementing, monitoring, and assessing tests of OBF. See 12 M.R.S. § 8869(3-A). The current technical panel includes licensed foresters and a wildlife biologist. One of the members is the Director of MFS's Forest Health and Monitoring Division, Dave Struble.

result in increased wood supply and quality. These are just a few of the benefits of OBF, none of which are required under normal forestry and the FPA.

Under the four OBF agreements in the State, including ours, forest landowners are required to rigorously plan and document their yearly operations, reporting a variety of metrics to the MFS, and the panel of technical experts for review.² The director of the MFS must report annually to the Agriculture, Conservation, and Forestry committee of the Legislature on the status of the agreements. A copy of the most recent report, which, among other things lists the public benefits of OBF and describes the oversight provided by both the technical panel and MFS, is attached as Petitioner's Exhibit 2.

Irving also publishes an annual report of the outcomes for the public, an example of which is attached as Petitioner's Exhibit 3.

If Irving fails to meet the Standards as laid out in the OBF Statute, the panel can issue a non-conformance that requires a plan of action to fix or improve the issue. If this is not done, then the panel has the right to recommend that OBF be suspended. All other violations of regulations are dealt with the same as with any landowner outside of OBF.

Furthermore, recognizing that Irving may not own all of the land throughout the life of the Concept Plan, the Concept Plan makes the underlying principles of Irving's OBF agreement applicable throughout the Plan Area for the life of the Plan and regardless of who owns it. In other words, even if Irving were to sell the land to another company or the Legislature were to eliminate the OBF program, all forestry in the Plan Area would still need to achieve the improvements proposed in the Concept Plan under a proposed "anti-backsliding" provision. This ensures that the sustainable forestry principles cannot "go backwards" by becoming less stringent even if circumstances were to change. Likewise overall levels of habitat quality actually achieved under our OBF program must, under an "anti-degradation" provision in the Concept Plan, be maintained and protected, regardless of who owns the land or whether the Legislature eliminates the program. As a result, the improvements of OBF will be guaranteed throughout the life of the Plan, which provides a meaningful public benefit by going above and beyond current regulations.

² One of the other participants in OBF is the Maine Bureau of Public Lands.

IV. THIRD PARTY CERTIFICATION

An additional layer of protection is provided through a rigorous third-party certification process that is a required element of the sustainable forestry principles in the Plan Area. Customers of forest products are interested in where products come from, how they are made, and their impact on the forests and the world around them. This means eco-credentials are playing an increasingly big role in consumers' and businesses' decisions about what they buy. It has become important to show that you operate in an environmentally, economically and socially responsible way. In response to this market reality, the OBF agreement Irving Woodlands entered into with MFS goes beyond statutory requirements by specifying that Irving must maintain Independent Third Party Certification with the Forest Stewardship Council (FSC) as part of the agreement.

So, for a customer of a forest owner, or a business that produces forest products, it becomes an expectation that forests and products from those forests are certified to be managed sustainably and in accordance with the applicable National or Regional Standards. The Certification guarantees customers that the labelled product they buy has come from a forest and supply chain that is managed responsibly. Forest Management certification is a voluntary system available to organizations who want to demonstrate responsible forest management by having their forest management planning and practices independently evaluated against documented forest management standards.

Irving Woodlands has all lands in Maine Certified under three different Certification systems:

Forest Stewardship Council (FSC) - U.S. Forest Management Standard, contains 10 Standards for management. This is generally considered the most rigorous of the certification programs.

Sustainable Forestry Initiative (SFI) - promotes sustainable forestry practices based on 13 Principles, 15 Objectives, 37 Performance Measures and 101 Indicators. These

requirements include measures to protect water quality, biodiversity, wildlife habitat, species at risk and forests with exceptional conservation value.

International Standards Organization (ISO 14001): These standards sets out the criteria for an environmental management system and can be certified to. The ISO 14001 standard forms the basis for the Irving Environmental Management System.

On an annual basis an accredited independent auditor, KPMG in Irving's case, undertakes multiple day visits to the operations during which the main evaluation process is an in-depth review of the environmental management system, the forest management systems and the results on the ground. At the end of the evaluation, the assessment team reports any areas where management does not meet the applicable requirements, known as "non-conformance". Any non-conformances must be remedied, and any failure to do so can result in the loss of the certificate, which could result in the loss of customers and markets. Irving also makes public audit results on-line. As part of our OBF agreement a member of the technical panel has the right to participate in the audit with the third party. An example of an FSC audit report for Irving lands is included as Petitioner's Exhibit 4.

V. CONSERVATION EASEMENT

As part of the Concept Plan, we have proposed a conservation easement that is more than 14,750 acres. The Maine Land Use Planning Commission (LUPC) requires applicants for a Concept plan to demonstrate public benefit for allowing an accelerated development versus normal allowable means of development in the Unorganized Territories in the State. The LUPC Guidance document on "Concept Planning Overview and Guidance" states,

B. Conservation Requirements

In exchange for development at densities or rates not permitted through the Commission's traditional regulatory framework, a concept plan must include binding commitments to conserve areas with important public values. The amount, location, and type of these conservation measures must satisfy all of the Commission's applicable review criteria and ensure that the protections offered by the proposed conservation measures are

legal, readily enforceable, and capable of being effectively administered by the conservation easement holder or property owner.

In identifying the appropriate location of areas to rezone for development, those to maintain in forestry, and those to be in permanent conservation under an easement, Irving staff and consultants, including foresters, a biologist, and a naturalist, reviewed the Plan Area and made preliminary determinations of appropriate areas for each. The permanent conservation areas were initially determined using current resource protection zoning and Maine Natural Areas Program information, as well as company data through Irving's Unique Areas Program on Deer Wintering Areas (DWAs), both regulated and co-operative, stick nests, unique geological and historic sites, and staff's knowledge of recreational usage of the area. In addition, we conducted surveys of proposed development areas for vernal pools, Rusty Black Bird habitat, soils, and other analyses. An overall consideration of fish habitat values was also included, comparing lake shore habitat versus streams and feeder brooks.

The initial (2014) proposed plan was reviewed in multiple meetings with environmental groups, current camp lot license holders, State and Federal government agencies, as well as the Forest Society of Maine, who we approached about being a potential easement holder.

The result of the feedback in these meetings was to change the proposed conservation easement configuration to create larger contiguous blocks of land that would be easier to monitor and enforce from a holder's point of view and be more valuable ecologically. In addition, certain proposed development areas were removed from the Plan, such as one on Mud Lake, and some were reconfigured.

Following the submittal of an amended application from Irving in May, 2017, and the determination by staff that the application was complete, different agency comments were received questioning the value of conserving certain areas that are already protected by regulation, such as the Cross Lake Bog, and pointing out that higher value scenic areas, such as the ridge line between Square Lake on Irving land and the BPL lands on Eagle Lake, should be protected in the easement. We also had input that the intricate series of brooks and wetlands to the north and west of Square Lake adjacent to the Cross Lake fen were of high conservation

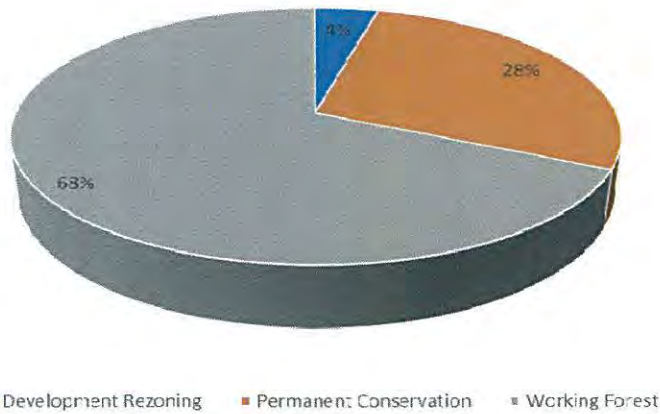
value both from a fresh water wetlands network perspective, and from a brook trout spawning and habitat perspective.

With all of this input, we proposed another revision to the conservation easement in our April 2018 submittal, which changed the location and increased the size of the area to be conserved. The final proposed Conservation Easement associated with the Fish River Lakes incorporates protection for the thoroughfares between Mud and Cross Lake, Cross and Square Lake, and adjacent to the thoroughfare between Square and Eagle Lake. The addition of the ridgeline and other lands adjacent to the Square Lake West development area will alleviate any concerns of the viewshed from the BPL public lands. Given the feedback from agencies that there was little conservation value in the Cross Lake Bog, we removed that portion and added additional lands adjacent to the Cross Lake Fen, which now includes Little California Pond, California Brook, the mouth of Halfway Brook where it comes off the public lands, Dimock Brook, and the headwaters of Black Brook. These brooks and Goddard and Little Goddard Brooks, at the south end of Square Lake, represent most of the larger brooks and smelt streams that are associated with Square Lake and the thoroughfare to Eagle Lake. The evolution in the conservation easement can be seen in Petitioner's Exhibits 5, 6, and 7.

We believe that the proposed Conservation Easement represents a clear demonstration of the public benefits that are required associated with the Concept Plan that goes well above the LUPC requirements outlined as the "amount, location, and type of these conservation measures must satisfy all of the Commission's applicable review criteria." The proposed conservation easement is comparable or exceeds ratios of Conservation to development associated with other Concept plans in the State.

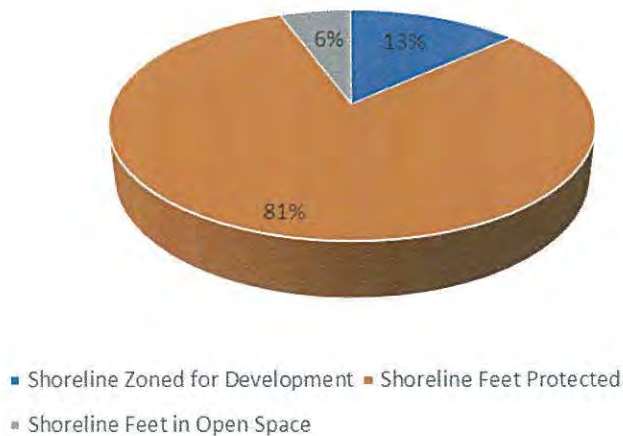
The high level summary of permanent conservation proposed by the Plan is as follows:

Fish River Lands Conserved



Land rezoned for development 1,923 acres (3.7% of plan area)
 Land in Conservation Easement 14,769 acres (28% of plan area)
7.7 acres of Permanent Conservation per acre rezoned for potential development

Shoreline Protection Comparison

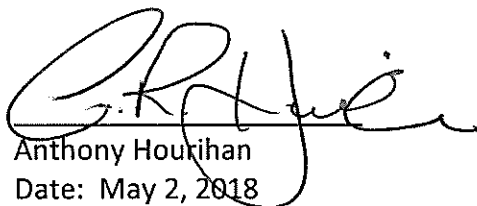


Shoreline rezoned for development 2.8 miles (13% of shoreline)
 Shoreline in Conservation Easement 16.9 miles (81% of shoreline)
6 miles of shoreline Conservation per mile of Shoreline Rezoned

As these figures demonstrate, there are approximately 7.7 acres of permanent conservation for every acre of land zoned for potential new development and approximately 6

miles of shoreline for every mile of shoreline zoned for potential development. Further, there is an additional 1.2 miles (6%) of shoreline designated as open space as part of the new development areas that are not part of the permanent conservation but will be required to stay as open space during the life of the plan. This Conservation Easement and Concept Plan demonstrates a significant extinguishment of future development rights, protecting high value natural resources, fish habitats, and viewsheds to balance very limited development in the Plan Area.

In addition, for context it is helpful to recognize that the draft easement is more restrictive on development activities than the last Conservation Easement approved with the Moosehead Lake concept plan, which is the most recent such plan approved in Maine. That easement allowed, among other things, industrial wind farms and a railroad spur, neither of which would be permitted in the conservation easement proposed here. There are allowances for continuation of a working forest and associated activities, low impact public recreation, and controlled motorized recreation such as snowmobile and ATV trails, all of which can only be allowed if they are consistent with the conservation values of the easement. There is also the ability to locate a limited number of small recreational rental cabins and campsites on the easement area, in compliance with the Concept Plan. The draft easement extinguishes the ability to develop industrial scale energy projects, transmission lines and related infrastructure, as well as new public roads and any future residential or commercial developments. It also preserves in perpetuity public access rights for recreational purposes.


Anthony Hourihan
Date: May 2, 2018

PROVINCE OF NEW BRUNSWICK
COUNTY OF SAINT JOHN

Personally appeared before me the above-named Anthony Hourihan and made oath that the foregoing is true and accurate to the best of his knowledge and belief.

Dated: MAY 2, 2018

John C. Pappas

Notary Public



My commission expires:

N/A