

STATE OF MAINE  
LAND USE PLANNING COMMISSION

Irving Woodlands LLC ) FISH RIVER LAKES LEASEHOLDERS  
Proposed Fish River Lakes Concept Plan ) ASSOCIATION (FRLLA) COMMENTS ON  
Zoning Petition ZP 768 ) JUNE 2019 CONCEPT PLAN, JULY 1, 2019

The Fish River Lakes Leaseholders Association (FRLLA) appreciates the work put into the revisions in the June 2019 Concept Plan by the Petitioner. We have reviewed the revised Plan and wish to file the following comments with the Commission, as required by the Seventh Procedural Order.

**1. Section G. Concept Plan Implementation Schedule, Subsection 1,c,(3).**

This section states that, *“The deed conveying a camp lot from Petitioner to buyer shall: (a) provide the buyer with a legal right of vehicular access or, in the case of camp lots on the western shore of Square Lake, a legal right of vehicular access to the Square Lake boat ramp...”* The camp lot licensees on the west shore of Square Lake are concerned that this language indicates they will not be granted legal right of vehicular access over the Irving-owned roads to access their lots. They realize that the State of Maine owns a portion of the access road, but can deal with that as long as they will have legal right of access over the Irving-owned roads. We assume that the six proposed new “infill” lot owners in this area would also desire legal right of vehicular access over the Irving-owned roads to these lots. Therefore, the language should be changed to state that the deed conveying a camp lot shall: *“... (a) provide the buyer with legal right of vehicular access to the camp lot ~~or~~ and also, in the case of camp lots on the western shore of Square Lake, a legal right of vehicular access to the Square Lake boat ramp...”* See related Comment 4.b. on page 4 regarding Sections E,13-14 and Map 9.

**2. Section 10.32 Phosphorus Control for Cross, Long, Mud, and Square Lake Watersheds.**

Cross Lake has impaired water quality and does not meet state and federal water quality standards. It is the only Maine Department of Environmental Protection (DEP)-listed impaired lake in the Concept Plan area. The DEP has stated in their December 7, 2017 Technical Review Memorandum, *“Any additional phosphorus load to the lake has the potential to increase the duration and intensity of the algal blooms, so any new phosphorus sources or expansion of existing phosphorus sources should be treated with particular care.”* [underline added] The memo continued, *“If all proposed lots in the Development Areas in the Cross Lake watershed were developed without restrictions or treatment, increase in phosphorus load to the lake would exceed the plan’s phosphorus budget, even without taking into account all the increases in phosphorus export that would likely occur over time within the Concept Plan area but outside of the Development Areas.”*

As Roy Bouchard, former DEP Biologist for 30 years and Supervisor of the Lake Assessment Program for 15 years, wrote in his June 22, 2018 written comments, *“Since the plan uses up the maximum phosphorus allocations for Cross Lake’s watershed, it will exceed them if not accompanied by a method that assures compliance over the longer term.”* [underline added]

Furthermore, DEP’s June 6, 2019 Technical Review Memorandum on the revised Plan lists five conditions that DEP concludes must be met so that the Plan should (not will) meet the following phosphorus export goal: *“...limit phosphorus contributions from the Plan area sufficiently to prevent a perceivable increase in the trophic state of the Concept Plan lakes.”* Although the first of these five conditions is outside of the Petitioner’s control, the other four are not and we strongly urge the Commission to require Section 10.32 be amended to ensure that the third condition, quoted here, is met, *“Actual construction and maintenance of development within the Development Areas adheres to the requirements of the specific permits under which they are developed;”* [underline added]

As a comparison, Section 10.25,E-1(7) Supplemental Hillside Standards requires that a, “...qualified third-party inspector review the development as built for compliance with these hillside development standards, unless an applicant can demonstrate that the development will not be visible from any lake or other public viewpoints. Inspections shall be completed every two years and the results reported to the homeowners association and the Commission.” We would argue that protecting Cross Lake’s water quality is at least as important as the public view of hillside developments. Without initial and periodic inspections of the development areas in Cross Lake’s watershed for permit compliance, how can the Commission and/or DEP determine whether, “Actual construction and maintenance of development within the Development Areas adheres to the requirements of the specific permits under which they are developed”? Based on the above DEP statements and more not quoted here, we propose amending Section 10.32 to require initial and periodic inspections (conceivably every two years) by a qualified third-party inspector of all new developments in Cross Lake’s watershed for permit compliance regarding phosphorus export, with the inspection results reported to the Commission and DEP.

To support this request, the Commission should be aware that the lake association Friends of Cross Lake or FOCL, with its many partners (including Irving Woodlands), is completing the following major work in an effort to restore Cross Lake’s water quality: (1) a survey of the developed land in Cross Lake’s watershed, including agricultural and forest land, to identify and prioritize nonpoint source erosion sites; (2) extensive water quality monitoring with DEP’s assistance in 2019 and 2020; and (3) development of a watershed-based plan (WBP) that will describe the actions needed to restore Cross Lake to meet the state water quality standards over the next 10 years. Our grant application received the highest score in Maine’s competitive EPA-funded, DEP-administered WBP grant program. Cross Lake’s watershed also recently became a USDA National Resources Conservation Service National Water Quality Initiative (NWQI) project, which targets impaired watersheds and accelerates farm conservation investments and assessment resources. Other 2019 FOCL efforts, although not all inclusive, include hosting a gravel road workshop and starting a LakeSmart program for camp owners. Cross Lake is in trouble and needs as much protection as possible, as evidenced by the photo at right, taken on June 28, 2019, of a very early algal bloom that appeared near the shoreline in areas around the lake and persisted for days.



**3. Maps 5 and 5A, Section 10.23-A Protection Subdistrict Clarifications and Section 10.27,L Water Access Sites.** We have a couple of questions/concerns regarding some of the language in these sections and Maps 5 and 5A illustrate one question/concern.

- a. **Map 5A** shows the Cross Lake A development area extending just east of West Side Road and not to the shoreline, presumably due to the overlaid P-WL1 wetland protection zone in this location; **Map 5** shows the “purple” development area extending to the shoreline here. **Section 10.23-A,1,b,(2)** requires a permit for public and remote water access sites with a hand-carry launch or trailered ramp in a Protection Subdistrict, but does not address “common” water access sites for the development areas, as this “purple” area on Map 5 may be intended. Regardless, Section 10.23,N,3,b of the Commission’s Land Use Districts and Standards (Chapter 10), does not allow hand-carry launches or trailered ramps in a P-WL1 Subdistrict, except for, “...below the normal high water mark of flowing waters or bodies of standing water.” Our understanding is that no water access site, whether common, public, or remote, or whether it contains a hand-carry launch or trailered ramp, can be located in a P-WL1 Subdistrict except for below the normal high water mark, as stated in Chapter 10, Section 10.23,N,3,b. If our understanding is correct, this should be made clear by revising the language in Section 10.23-A of the plan.

b. **Section 10.27,L Water Access Sites, Subsection 2,n, Access**, states, “*Any water access site located in a given development area must be open and accessible to all lot owners within that development area.*” [underline added] There are several “purple” shaded development areas on the maps that do not extend to the shoreline, so a water access site constructed to serve that development area would necessarily be located in a D-FRL-RS zone, between existing camp lots or on a lot that was not purchased. If the distinction is important, although the new residential development areas will be zoned D-FRL-RS, as will the existing camp lots, our understanding is that the development areas are separate from areas not shaded purple on the maps, such as the existing camp lots and the shoreline areas between the lots or between the camp roads.

**4. Maps Issues and Plan Language Regarding Existing Camp Lots.** There are some errors and potential concerns regarding some of the maps in the plan, as well as section language regarding the existing camp lots. Some are minor with possibly no foreseeable consequences, while others may/will present issues if/when a development area or camp lots are sold.

a. **Camp Lots Maps 11-18, Section 10.02-A,3 Supplemental Definitions and Section 10.28 Lot Creation and Limitations, Subsections B,1,e Renewal of Leases and B,2,a Existing Camp Lots.** Whether the Camp Lots Maps are accurate regarding existing licenses and whether or not those licenses shown on the maps have been continuously licensed, together with the language in the above referenced plan sections is important because it will determine whether an existing camp lot may be exempt from subdivision standards and Commission review and approval prior to sale.

**Section 10.02-A,3**, defines a “camp lot” as, “*A lot in the plan area that is or was leased or licensed that legally exists as of the effective date. The approximate location of the camp lots are shown on Maps 11 through 18 of the Concept Plan.*”

**Section 10.28,B,1,e**, states, “*...For the renewal of leases or licenses in other than Commission approved subdivisions, as enumerated in Section 10.28,B,2,a, a lease or license that is renewed within two years of its expiration shall not be counted as the creation of a lot. Renewal of leases or licenses in other circumstances shall be counted as the creation of a lot.*” [underline added]

**Section 10.28,B,2,a**, states, “*A camp lot satisfying the following conditions does not require Commission review and approval, including prior to sale if: (1) The camp lot is identified on Maps 11 through 18 [underline added]; and...*”

The sections above require that a license must be renewed within two years of expiration to not be counted as the creation of a lot and that Maps 11-18 identify the existing camp lots that do not require Commission review and approval prior to sale. (The 2018 Amendment referenced a listing of licenses, presumably with the current licensee, which would be helpful.) Therefore, it should be important to determine if there are lots (identified by their license number) on these maps that have not been licensed for two years, when that two year expiration period began and ends, and the maps should identify only those lots that may be sold without being counted as the creation of a lot. We are likely not aware of all errors on these maps, but on Map 13, the southernmost of the two large lots labeled 2246 apparently should be 2247 (not 2246), licensed to Peter Prescott. On Map 17, the northernmost licensed lot labeled 1988 should be 1981, licensed to Cheryl St. Peter. The southernmost lot labeled 1988 is correct and licensed to Richard Flewelling. We were also informed by Allagash Timberlands in March 2018 that licenses 3639 and 2602 on Map 17 were cancelled, but not when they were cancelled or if they have since been reinstated. Since we have not been able to obtain an updated license holder list since, we are not sure of the current status of these or any other licensed lots. Also according to Maine Revenue Service records, some of the licenses shown on the maps are either licensed to Allagash Timberlands or not licensed (e.g., Map 13: licenses 2732, 3073, 3074 and Map 14: 1855 and 3551, all on Cross Lake).

- b. **Section E,13 Access, 14,b Road Maintenance, and Map 9 Access to Development Areas.** Section E,13 grants access easements “(in accordance with Map 9)” and Section E,14,b requires, “...maintenance of deeded access ways, as illustrated on Map 9,...”. [underline added] Both sections necessarily apply to the existing camp lots, as well as the development areas. Therefore, Map 9 should be titled “Access to Development Areas and Existing Camp Lots” and the access road to the existing camp lots on the west shore of Square Lake should be included on Map 9. St. Peter Road, which is an existing camp lot access road and not a development area access road, is already shown on this map. Also, E911 road names should be used for accuracy – Shoreline Road should be Shoreline Drive, Manzer Road should be Beaulieu Road, Copper Road should be Cooper Road, and Shady Road should be Shady Lane Road.
  - c. **Development Areas, Map 3.** This map shows the Long Lake A “purple” development area extending to the shoreline at the south end of East Van Buren Cove Road just north of the beach. However, Ken and Kelli Hixon, who have a license for the southernmost camp lot on this road and an additional lot (Lic #2353, lot #2 & addn'l lot #2B), had their septic system leach field installed several years ago on the “purple” area south of their licensed camp lot #2 on their additional licensed lot #2B, although it’s not shown on Map 3 with a dot to indicate “Additional Licensed Land.” It does not appear that it would be possible for the Long Lake A development area to extend to the shoreline where the Hixon’s additional licensed lot is located. We also assume this “purple” extension to the shoreline is there to indicate one of two potential common water access sites to serve the Long Lake A development area, which leads to a question regarding a couple of common water access site locations. If all of the shoreline is taken by existing camp lots (as in Long Lake A and the camp lots on East Van Buren Cove Road, as well as Cross Lake C and the camp lots on Cyr Road) and if all of the existing licensees wish to keep licensing their lots or purchase their lots if offered for sale, where would the common water access sites for these development areas be located?
  - d. **Camp Lots Map 17.** Although the diagrammatic back lot lines previously shown on Maps 40-47 in the June 1, 2017 Petition Amendment are no longer shown on Maps 11-17 (although the lines are still shown on Map 18), we wish to point out that issues with some back lot locations and boundaries will arise. Just one example that we are aware of is that the additional licensed land east of license 2630 on Map 17 is licensed with 2529, not 2630, and is used for a replacement leach field that serves 2529. The leach field was placed here and the additional land licensed to 2529 due to a stream located east of 2529 where that backlot is diagrammatically shown on Map 46 in the 2017 Amendment. It is our understanding that such issues will be worked out during the survey required under Section G,1,c,(1),(a), including back lot locations, and the location of replacement subsurface waste water disposal systems will be determined by Section 10.31.
- 5. Section 10.21,M Residential Development Zone (D-FRL-RS) Land Uses, Subsection 3,a,(1),(a) Uses Allowed Without a Permit.** “Docking structures: Temporary docking structures;” is the only exception to uses that shall be allowed without a permit in the Chapter 10 D-RS Subdistrict (Section 10.21,M). Our understanding is that this exception is intended to keep temporary docking structures permanently allowed without a permit if Chapter 10 is amended. However, the language could be interpreted to mean that temporary docking structures are not an allowed use without a permit.

**6. Minor or Typographical Errors.**

**Table 5 Development Summary.** The “Area for Residential Development Areas” at 1,213 ± acres (if correct) should be 1.9± square miles, not 2.9.

**Section 10.31,D,4.** Map 17 does not show license numbers 4320 and 6105 on Mif’s Lane.

**Section 10.34,C, 3,b, Modification of Reserved Land Boundary and Amendment of Reserved Land Designation Order.** This section should refer to 10.34,C,2,c,(5), not 10.34,C,2,b,(5).