

LUPC REFERENCE SHEET IN THE MATTER OF ZONING PETITION ZP 768

IRVING PROPOSED FISH RIVER CHAIN OF LAKES CONCEPT PLAN

May 18, 2018

This reference sheet has been prepared by Commission staff to provide assistance to Commission members as they review and consider the record in this matter. The sheet is not intended to contain an exhaustive list of the potential issues associated with a particular topic or to reference all the applicable testimony or regulatory criteria. Further, this reference sheet does not represent staff or Commission conclusions on any issue of law or fact, and should not be relied upon as a substitute for a careful review of the petition, testimony, and applicable regulatory criteria.

TOPIC 3 ANTICIPATED USE OF LAKES AND LAKE CHARACTER

A. TOPIC DESCRIPTION

Anticipated Use of Lakes and Lake Character

By way of example, this topic includes the following subjects:

- Public expectations regarding use of and experience on different lakes
- Type, location, and permanence of proposed public and private access to lakes
- Anticipated change in intensity and types of use of lakes
- Anticipated effect on recreation uses and experiences
- Effect on character of lakes (including scenic impacts of hillside development)

Each of the four lakes in the plan area has a distinct character. The proposed development and conservation may change the character of the lakes. It is important to understand how the character of the lakes may change, and compare that to what is likely to happen if there were no plan.

For example, additional residential and commercial development on Square Lake, including a public boat launch, would add more boats to the lake. At the same time, proposed conservation of shoreline around much of the lake would prevent scattered development that could occur in the absence of a plan. After the plan expires, because the hillsides behind Square Lake East are not proposed to be conserved, they may be developed with additional units attracted by access to the water established as part of the Plan and the water views. Without the water access established as part of the Plan, it is unlikely that the hillsides would be developed.

Public and Party testimony should assist the Commission to estimate the likely degree of change to all four lakes over time, and to make an assessment about whether the type and amount of proposed development and the amount and location of proposed conservation will lead to an outcome that is approvable under the regulatory criteria.

Similarly, the Commission will hear testimony about the appropriate location, scale and implementing mechanisms for recreation facilities, such as water access sites, campsites, and rental cabins. These will have an impact on how the lakes are used and the expectations of the recreating public. One of the criteria for approving a concept plan is that the plan provides sufficient public benefits, and public recreation access is a key public benefit in most plans.

Just as additional users of a lake can have an effect on the character, so too can visual impacts. This may take the form of hillside development seen from the water, or shorefront development, such as a marina or common docking area. The Commission will need to assess the likely visual impacts from the proposed development.

For topic 3, the issues are closely linked to one another. In the end, what is most important is that the Commission use public and party testimony to help assess: 1) what is the appropriate type and intensity of use of each lake – factors that shape lake character into the future; and 2) does the Plan better achieve that outcome than would happen in the absence of a plan?

B. EXAMPLES OF ISSUES TO CONSIDER

- Is the proposed development and conservation in keeping with the Commission's management goals for each lake? (Cross is class 5 – “heavily developed;” Mud, Long, and Square are class 7 – “not otherwise classified,” which means that each should be reviewed based on the circumstances.)
- How does the public view each of the lakes, their character today, and the desired use and character for the future?
- Does the plan produce or contribute to equitable public access to public resources (such as lakes) without exceeding the capacity or inappropriately altering the character of the resources? Is the access guaranteed, and for how long? Who will maintain the facilities and at what capacity?
- Is the Plan likely to change the types and intensity of uses of each of the lakes? If so, are there particular plan elements that are anticipated to be the predominant driving factor? Does the anticipated change meet the “no undue adverse impact” criterion?
- Will the Plan substantially alter the diversity of lake experiences available in the region? One of the Commission's approval criteria speaks to maintaining different kinds of lake experiences in each region so there is appropriate opportunity for development while still maintaining some options for recreation on undeveloped or lightly developed lakes.
- Is hillside development likely to be visible from public vantage points (such as lakes)? Are the proposed standards for screening hillside development sufficient to avoid an undue adverse impact on the public use of the lakes? The petitioner proposes to choose hillsides within the development areas and use selective cutting techniques within the Outcome Based Forestry program to leave screening vegetation for future development – is this likely to be effective?
- Based on its regulatory criteria, the Commission encourages facilities that provide public access to lakes, as well as private access. This encouragement of facilities that are available to the public applies to both water access points and overnight accommodations. In the case of Square Lake, how the Yexas area is developed could have implications for public access to the lake. Is the proposed development sufficient to allow and encourage appropriate levels of public use, considering the likely amount of private use and the amount of additional use that is acceptable based on lake character (see topic 3)?
- Because Square Lake East and the Yexas development areas are distant from villages, staff indicated to the petitioner that if a substantial subdivision and public boat launch are proposed in that area, it would be important to provide opportunity for small-scale commercial services to support public use of the lake and the residential subdivision. Small-scale commercial services for the users on the new residential lots could help prevent excess vehicle traffic between the proposed development and the villages for daily food and supplies. Is the list of proposed uses in the Yexas zone appropriate for the area?

C. CITATIONS TO RELEVANT MATERIALS WITHIN THE RECORD

NOTE: Prior party comments and prior governmental agency comments were provided in response to the 2017 Petition; Pre-filed testimony and pre-filed governmental agency comments were provided in response to the April 2018 amendment.

Petition

- [Volume 1:](#)
 - [Questions 14 through 16 \[digital pages 72 through 101\]](#)
 - [Appendix C \[digital pages 37 through 60\]](#)
- [Volume 2:](#)
 - [Section 1,D – summary of where allowed \[digital pages 6 through 19\]](#)
 - [Section 1,E – summary of standards \[digital pages 20 through 23\]](#)
 - [Section 2,D, 10.27,L – standards \[digital pages 189 through 193\]](#)
- [Volume 3, Maps 34 and 35](#)

Pre-filed Testimony

- Petitioner: [Dewan, p.3-24](#)
- Intervenors: [FRLLA – Jandreau](#); [St. Peter Topic Three, p.3-5](#); [NRCM, p.3, 7-19](#)

Pre-filed Governmental Agency Comments

- [ARCC](#)
- [BPL, p.1-5](#)
- [DIFW, p.5-10](#)
- [DEP – Site Law](#)

Prior Party Comments

- [Fish River Lakes Leaseholders Association, 12/11/2017 letter: Items 2,b, 4, and 5](#)
- [Natural Resources Council of Maine, 12/11/2017: Items 1, 5, and 13](#)

Prior Governmental Agency Comments

- [Bureau of Public Lands, 10/31/2017 letter: bullets one, and three through six](#)
- [Department of Inland Fisheries and Wildlife, 12/6/2017 letter \[digital pages 5 through 9\]](#)

D. REGULATORY CRITERIA THAT MAY BE IMPLICATED BY THIS TOPIC

- Whether “the proposed land use district has no undue adverse impact on existing uses or resources or a new district designation is more appropriate for the protection or management of existing uses and resources within the affected area.” ([12 M.R.S. §685-A\(8-A\)](#); Section 10.08 of the Commission’s [Land Use Districts and Standards](#))
- Whether “adequate provision has been made for fitting the proposal harmoniously into the existing natural environment in order to ensure there will be no undue adverse effect on existing uses, scenic character, and natural and historic resources in the area likely to be affected by the proposal.” ([12 M.R.S. §685-A\(8-A\)](#); Section 10.24 of the Commission’s [Land Use Districts and Standards](#))
- Whether “the proposed land use standards would serve the purpose, intent and provisions of this chapter and would be consistent with the comprehensive land use plan.” ([12 M.R.S. §685-A\(8-A\)](#))

(golden rod)

- Whether the plan conforms with the Commission's lake policies and lake program guidelines, is feasible, and is compatible with other public and private interests. ([Comprehensive Land Use Plan](#), page C-8)
- Whether the review standards for structures adjacent to lakes have been considered. (Section 10.08 of the Commission's [Land Use Districts and Standards](#))
 - Whether "the proposal will not adversely affect natural and cultural resource values identified as significant or outstanding in the Wildland Lakes Assessment (Appendix C of this chapter)."
 - Whether "the proposal will not, alone or in conjunction with other development, have an undue adverse impact on water quality;"
 - Whether "the proposal will not have an undue adverse impact on traditional uses, including without limitation, non-intensive public recreation, sporting camp operations, timber harvesting, and agriculture;"
 - Whether "the proposal will not substantially alter the diversity of lake-related uses afforded within the region in which the activity is proposed;"
 - Whether "adequate provision has been made to maintain the natural character of shoreland;"
 - Whether "the proposal is consistent with the management intent of the affected lake's classification; and"
 - Whether "where future development on a lake may be limited for water quality or other reasons, proposed development on each landownership does not exceed its proportionate share of total allowable development." (Sections 10.25,A of the Commission's [Land Use Districts and Standards](#))