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**Importance:** High

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Hi Samantha and Tim,

MDIFW's preliminary comments on the Fish River Chain of Lakes Concept Plan are attached. Our comments include input from biologists with MDIFW's Fisheries and Wildlife Divisions, our Reptile, Amphibian, and Invertebrate Group, and our Water Access Program.

Please let us know if you have any questions.

John

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**The Fish River Chain of Lakes Concept Plan  
Submitted by Irving Woodlands, LLC, to the Land Use Planning Commission**

**MDIFW Fisheries Division Comments**

The Irving Fish River Chain of Lakes Concept Plan being considered now is a petition process with the Maine Land Use Planning Commission that, if accepted as proposed, would rezone 51,015 acres of land on and around four lakes of the Fish River Lakes. The Fish River Chain of Lakes forms a unique and important watershed in northern Maine. The Fish River Chain comprises the largest lakes within the developed portion of Aroostook County and has long been known for its outstanding natural resources and recreational opportunities, including fishing, boating, and other pursuits. The current proposal has no specific development, but rather rezones large tracts of land, paving the way for future development at specific locations on and around Long, Mud, Cross and Square Lakes, the major lakes of the Eastern arm of the watershed.

There are four major development areas being proposed:

- a. Residential
  1. 330 new residential housing units are proposed (an increase of 77.6 % over the currently existing 425 licensed or leased lots within the Plan area)
- b. Recreation Facilities
  1. One recreational lodging facility with 67 units is proposed
- c. Commercial Industrial Development
  1. Two areas of 281 and 73 acres respectively, would be rezoned for industrial uses
- d. General Development
  1. Four areas of 167, 11, 6, and 11 acres, respectively for general development
  2. Multi-family dwellings for affordable housing
  3. Remote rental cabins, remote campsites

***Conservation Areas***

The Plan calls for permanent conservation by easement on 14,600 acres within the Plan area. All of this property would continue as a commercial working forest, i.e., road building, stand conversion, etc. This conservation area includes a 6,400-acre wetland complex west of Cross Lake (Cross Lake Twp.) that already greatly reduces or eliminates development potential. The Plan's easement offer does not appear to provide added benefit for resource protection as this area would still be working forest subject to road building and related stream crossings, stand conversion, and associated wetland, stream, and riparian habitat impacts. The second largest easement parcel consists of 4,909 acres within T16R5 WELS and T15R5 WELS; an important parcel as it contains numerous sensitive tributaries to the southern end of Square Lake that are important wild brook trout habitat. However, as this area is also proposed to remain as working forest, these proposed conservation areas contain no special provisions for the protection of fisheries and aquatic habitat, and in particular for wild brook trout. Additionally,

it is important to note that there are no conservation easement proposals for Long Lake, which consists of one of the best landlocked salmon fisheries in the State of Maine, as well as habitat for wild brook trout.

### **General Themes**

In the *Introduction and Purpose* section, the petitioners state:

*“To ensure that development pursuant to the Concept Plan will not have any undue adverse impact on the Plan area, the Concept Plan:*

- a. Preserves and improves public access to the Plan area’s recreational resources and maintains and promotes traditional uses, such as forestry, that are intrinsic to the economy and character of the region;*
- b. Protects the forest values, aquatic resource and wetland values, wildlife, plant and natural community values, and scenic values that contribute to the unique character of the Plan area;*
- c. Ensures the sustainability of the working forest economy by protecting large areas of mostly unfragmented, diverse, and substantially natural forestland through sustainable forest management practices; and*
- d. Provides for conservation in perpetuity of a substantial and ecologically valuable area via a conservation easement.”*

Regarding Item a, the Plan does not appear to provide substantive improvements for the preservation of public access in the Plan area. It should be noted that the current access sites are presently under long term lease agreements or already contain designated public access areas. It is our understanding that the stated improvements to public access only refer to the proposed development of a hand carry launch to Mud Lake. MDIFW does not view the hand-carry access trail from Route 162 as appropriate for a lake of this size. The public would have to walk more than 250 feet to hand-carry watercraft of a size appropriate for Mud Lake. MDIFW does not view this as an improvement to public access, nor do we anticipate significant use due to the conditions described.

Items b and c above represent historical and current practices in the Plan area of management as a working forest. Thus, the proposed Concept Plan apparently provides little added benefit to natural resources or to the natural character of the Plan area.

Regarding Item d, the conservation area with proposed perpetual easement contains mostly inaccessible wetlands that already have inherent regulatory protections, with the exception of State exemptions for forest management practices. As the Plan allows forest management activities to continue, the perpetual conservation easement provides no further level of protection and therefore no further benefit to natural resources than now exist. Furthermore, some conservation areas contain sensitive, highly important brook trout streams, yet the conservation easement proposes no added protections aside from those that already exist.

Thus, it is not apparent to MDIFW that the proposed perpetual conservation easement will preserve wild brook trout and wild brook trout habitat as promised. The Concept Plan needs much more resource protection than is currently proposed in order to offset potential adverse impacts from the extent of development proposed.

Finally, MDIFW recommends that the Plan specifically prohibit development of private trailer launches. This will help reduce shoreline impacts, eliminate sources of erosion and phosphorous inputs, and limit the potential for unchecked introductions of invasive species by focusing water access to well-designed and maintained publicly owned sites. This also provides an important public safety benefit.

### ***Proposed Items to balance development proposals***

#### ***Public Access***

MDIFW recommends a regional focus on providing public water access in consideration of the extent of the proposed development plan. As the proposal includes significant development, including in some now sparsely developed areas, it seems appropriate that Irving Woodlands, LLC provide commensurate water access across northern Maine on its holdings. MDIFW believes that the significance of the fisheries resources and related recreational opportunities in this region will drive the desirability of these proposed lots. For this reason, it seems appropriate that MDIFW be the agency partner for new water access sites to ensure that the needs of both the anglers and the resources are being managed over the long term.

MDIFW recommends that the following be considered as a more balanced effort to offset Plan effects on the four Fish River Lakes in regards to public access:

Long Lake: Convert the Van Buren Cove to permanent, fee ownership status by MDIFW.

Mud Lake: Identify an appropriate site for a new trailered launch access facility, in conjunction with MDIFW, and develop as such, with fee ownership by MDIFW.

Cross Lake: Convert the current public access facility leased to Sportsmen Inc. to a permanent, fee ownership parcel by MDIFW.

Square Lake: Identify at least one, and likely two, appropriate sites for new trailered launch access facilities (east and west sides) in conjunction with MDIFW, and develop as such, with fee ownership by MDIFW. We reiterate previous concerns with the development of private boat launch facilities in the proposed recreational lodging facility development and the residential development zones for Square Lake. MDIFW recommends the development of common access for public and private interests with the ownership as outlined above, and that the Plan specifically prohibit development of private trailer launches.

Other waters in the Plan area: Within the Plan area the following locations have been identified as having future potential development of either remote campsites or remote rental cabins. Each of the following water bodies should have identified permanent public access facilities with associated easement for public access. In most cases there are already trails and/or roads used by the public for access. In each case, these should be formalized to provide for perpetual public access with appropriate facilities provided (i.e., foot paths, unimproved gravel boat launches).

1. Carry Pond, T16R4 WELS
2. Little California Pond, Cross Lake Twp.; and
3. Dickey Pond, Cross Lake Twp.

Public Access to Waters outside the Plan Area: Given the scope of the proposed development in the Plan, MDIFW expects a significant amount of new activity on all waters within the Plan area. Consequently, anglers and boaters will seek out other recreational opportunities on waters outside the Plan area. We expect this shift in use based on numerous scientifically conducted surveys of what anglers seek out for good experiences when recreating on water. Therefore, the petitioners should address public access on the following waters with the aim of absorbing new attention across northern Maine in response to the significant development plans now proposed in the Plan.

Beau Lake, T19R11 WELS: provide fee ownership and associated easements for road access to MDIFW for a parcel that would provide facilities for a trailered boat launch and parking area for up to 10 trailered rigs. The petitioners should develop the parcel access road and parking area adjoining existing forest management roads; with future installation of the boat ramp and other necessary facilities to be carried out by MDIFW through funding mechanisms described later in this document.

Madawaska Lake, T16R4 WELS: provide fee ownership and associated easements for road access to MDIFW for a parcel that would provide facilities for a trailered boat launch and parking area for up to 15 trailered rigs. This parcel should be located on the west side of Madawaska Lake and would only be developed should there be loss of public access at the former Stan's Grocery site off Route 161.

Third Sly Brook Lake, New Canada: provide fee ownership and associated easements for road access to MDIFW for the parcel that currently serves as public access. The petitioners should improve the current parcel such that the current environmental impacts are eliminated (erosion on the steep access road). No further improvements to the current site are necessary.

First and Second Wallagrass Lakes, St. John Plt.: provide fee ownership and associated easements for road access to MDIFW for the parcel that currently serves as public access. No further improvements to the current site are necessary.

Third Wallgrass Lake, St. John Pkt.: provide fee ownership and associated easements for road access to MDIFW for the parcel that currently serves as public access. No further improvements to the current site are necessary.

Hunnewell Lake, St. John Pkt.: Convert the current MDIFW-leased public access/barrier dam site to provide fee ownership and also provide associated easements for road access.

Wheelock Lake, St. John Pkt.: provide fee ownership and associated easements for road access to MDIFW for the parcel that currently serves as public access. No further improvements to the current site are necessary.

All other waters on Irving Woodlands holdings: maintain current public access policies for all water bodies including rivers, brooks, and streams (i.e., no loss of public access to any water where public access is currently afforded).

### ***Resource Protection/Enhancement***

With the level of development proposed in the Plan, MDIFW is concerned with the potential for negative effects on fish and fisheries habitat in the region. Increased use of fisheries resources and degradation to habitat in the Plan area could have severe consequences for maintaining wild brook trout populations and quality landlocked salmon fisheries, some of which are of statewide significance. The factors for such declines are twofold: first, increased angling pressure will lead to increased harvest of wild and hatchery stocks. Of particular concern are the effects on wild brook trout populations and how well they will be maintained in the face of increased fishing pressure. Second, based on past observations, increased human development has the potential to result in aquatic habitat degradation from shoreline development, construction of roads in riparian areas, increased water temperatures and increased nutrient levels (e.g. phosphorus) in receiving waters, etc. These adverse effects on coldwater fisheries will result in reduced production in wild stocks which further compounds the issues of increased fishing pressure. Consequently, the current sportfish regulation structure may not be adequate to maintain fisheries at current levels.

MDIFW recommends that the impacts of the Plan should be viewed as a regional issue, with far-reaching effects, and thus the following measures should be considered as trade-offs:

Carry Pond, T16R4 WELS: the site of a proposed remote cabin rental, this shallow pond currently supports a small wild trout population that supports a low level of local angling pressure. Additional use on this fishery would be counter to providing a wild brook trout fishery. In other words, additional use, development, and harvest of wild trout would result in a much lower trout population.

Carry Pond was chemically reclaimed in the early 1960s. The treatment was unsuccessful due to an improperly placed barrier dam, leaving competing populations of brown bullhead, white sucker, fallfish, and sunfish. There is a road crossing on the outlet today that could be used as a

suitable barrier. With appropriate regulatory approvals, and in conjunction with MDIFW Fisheries Division biologists, the petitioners should seek to construct a new barrier and provide the means for a chemical reclamation of Carry Pond. The result would be a much more productive trout population that would be capable of providing some of the increased use expected with execution of the Plan.

Beavertail Pond, T14R10 WELS: provide fee ownership and associated easements for road access to MDIFW for a parcel at the junction of the St. Francis Road on the outlet of Beavertail Pond that would serve as a site for a future fish migration barrier.

Chase Lakes, T14R9 WELS: convert the present Chase Lakes Cooperative Agreement with MDIFW to a permanent, conservation easement that mirrors LUPC Remote Pond zoning.

Little Falls Pond, Allagash: provide fee ownership and associated easements for road access to MDIFW for a parcel at the outlet of Little Falls Pond that would serve as a water control structure to improve fish habitat.

### ***Brook Trout Conservation***

To properly conserve brook trout throughout the 30-year Plan period and beyond, there must be increased habitat protection in the tributaries of the affected lakes. MDIFW proposes to select key tributaries in each lake and implement habitat protection according to MDIFW's "Forest Management Recommendations for Brook Trout". This special management would cover the entire tributary system from confluence with the lake to the headwater springs. These measures would help guarantee the long term persistence of wild brook trout and forage species (e.g. rainbow smelt) in the watershed. In contrast, the current conservation easement proposal will achieve little additional habitat protection for wild brook trout.

### ***Creation of Aquatic Resource Management and Recreational Enhancement Funds***

#### Fish River Lakes Aquatic Resource Management Fund

The increased human development of the Plan area and resulting angling pressures will necessitate the need for increased fisheries management attention on the four lakes and flowing waters in the Plan area, as well as lakes, ponds, and flowing waters in the region outside the Plan area. With the likelihood of increased human development, the demand to maintain current wild brook trout and wild/hatchery landlocked salmon fisheries will place an increasing burden on the State.

To compensate for this, and provide for necessary increased attention to fisheries management, MDIFW recommends the petitioners establish a Fish River Lakes Aquatic Resource Management Fund such that an increased management focus can be accomplished over the 30-year term. This fund would be administered by MDIFW.

## Fish River Lakes Recreational Enhancement Fund

In addition, MDIFW believes it is appropriate for the petitioners to provide financial resources for water access construction and maintenance by establishing a Fish River Lakes Recreational Enhancement Fund, to be administered by MDIFW. These monies would be used to pay for some of the infrastructure that will be needed to accommodate new use and development pressures. For example, some of the access facilities would need to be significant in size and capacity given the development proposed. Precedent for the establishment of this fund was provided in the Moosehead Lake Concept Plan, in which Plum Creek was required to provide \$1,000,000 for a recreation and trails fund that is reportedly now being managed and utilized by the Bureau of Public Lands (BPL).

Further, under the Moosehead Lake Concept Plan Plum Creek donated 50 acres to BPL for recreational infrastructure, specifically referencing water access sites (boat launches) during the public process and in their campaign materials, and 120 acres (in easements) for trails and trailhead parking areas. Additionally, the Moosehead Lake Concept Plan created a permanent stewardship fee on sales of property in the development zones to fund recreational infrastructure. Our understanding is that as each lot is sold (or resold), a percentage of that sale goes into the fund. Again, this is in addition to the \$1M Moosehead Lake Concept Plan Recreational Enhancement Fund. MDIFW envisions a similar scenario for Irving's Fish River Chain of Lakes Concept Plan.

In summary, Plum Creek was required to establish a number of funds as part of the Moosehead Lake Concept Plan approval, including:

- Moosehead Region Conservation Easement Stewardship Fund
- Roaches Pond Tract Conservation Easement Stewardship Fund
- Moosehead Hiking Trails Funding Agreement: \$1M to BPL
- Affordable Housing Fund: 25 acres donated to CEI along with \$1.75M in low interest loans
- Moosehead Recreation Fund (different than BPL fund)
- Wildlife and Invasive Species Fund to financially support projects focused on addressing (1) wildlife mitigation projects and (2) invasive species prevention/botanical communities protection needs in the Moosehead Lake region.

The Department recognizes that the Moosehead Lake Concept Plan included a larger development than does the proposed Fish River Chain of Lakes Concept Plan. However, the Moosehead Lake region also included a much greater amount of pre-existing development and use. Considering the rich, natural resources of the Fish River Chain of Lakes and the efforts provided by Plum Creek in the Moosehead Lake Concept Plan, MDIFW believes that the funding scenarios and water access sites described above are reasonable requests for the scale and magnitude of the Fish River Chain of Lakes Concept Plan.



## **MDIFW Wildlife Division Comments**

MDIFW Wildlife Division offers the following preliminary comments on the proposed Concept Plan.

### ***Conservation Areas***

As stated earlier, the Plan calls for permanent conservation by easement on 14,600 acres within the Plan area. MDIFW notes the removal of development projects as allowable activities from the original 2014 description of conservation lands to the most current 2017 draft. As our Agency previously stated, large-scale development activities, such as industrial, commercial, energy development, transmission corridors, etc., are not compatible for lands being proposed as conservation areas.

MDIFW recognizes and appreciates the designation of permanent conservation areas for those areas known to include important wildlife resources. However, it is also noted that all of the proposed conservation areas would continue as commercial working forest, without the protective measures that are typically included in conservation easements. Other than the proposed cooperative agreement for deer wintering areas, ([A Strategy for the Management of Deer Wintering Habitat Areas in Maine](#)), the Plan's easement offer does not appear to provide added benefits for resource protection for other habitats and species of concern. The Department considers the Concept Plan as unique from other proposals and is particularly concerned if it is interpreted that permanent conservation areas that are intended as working forests are provided exemptions for forest management activities in Significant Wildlife Habitats as provided in the Natural Resources Protection Act.

MDIFW is also concerned the Plan is to include "remote rental cabins" in the permanent conservation areas, as the term suggests the potential for significantly greater impact than does the also proposed "remote campsites".

MDIFW offers the following preliminary recommendations for protection of wildlife resources of concern:

### **Significant Vernal Pools**

At this time, MDIFW Significant Wildlife Habitat maps indicate no known presence of Significant Vernal Pools in the areas identified for Residential and Commercial development; however, this is not surprising as a comprehensive statewide inventory for Significant Vernal Pools has not been completed. Therefore, we strongly recommend that surveys for vernal pools be conducted within the Residential and Commercial development boundaries by qualified wetland scientists prior to development to determine whether there are Significant Vernal Pools present in the area. These surveys should extend out to a distance of 250 feet beyond the anticipated project footprint because of potential performance standard requirements for off-site Significant Vernal Pools, assuming such pools are located on land owned or controlled

by the applicant. Once surveys are completed, our Department will need to review and verify any vernal pool data prior to final determination of significance. Any vernal pools identified should be avoided during the development phase of the Plan, including their associated 250-foot critical terrestrial habitat buffer.

In addition, any Significant Vernal Pools identified in the proposed Conservation Areas should be protected, included to forest management activities within the pools and their associated 250-foot critical terrestrial habitat buffer.

#### Inland Waterfowl and Wading Bird Habitats

Inland Waterfowl and Wading Bird Habitats (IWWHs) provide important breeding, feeding, migration, staging, and wintering habitat for waterfowl and wading bird species. IWWHs within the study area include both the wetland complex and a 250-foot upland zone. To protect the integrity of IWWHs in the proposed conservation areas, MDIFW recommends that forest management activities in the IWWHs, including their upland zones, be restricted. Additionally, MDIFW recommends that a forest management plan be developed in conjunction with and approved by MDIFW Regional Wildlife Biologists for areas beyond the IWWHs and their upland zones prior to any future forestry activities.

#### Deer Wintering Areas

It appears that the proposed cooperative agreement for deer wintering areas--A Strategy for the Management of Deer Wintering Habitat Areas in Maine--is an early draft version of Irving's cooperative agreement (originally from 2003), while incorporating the then MDIFW Wildlife Management Supervisor's comments dated 1 Feb 2010. As stated in the cooperative agreement, "The Properties were selected by Irving in consultation with MDIF&W...and special consideration was given to areas with traditional winter use by white-tailed deer as documented by MDIF&W surveys." As such, the cooperative agreement appears to satisfy MDIFW's concerns for mapped Deer Wintering Areas.

### ***Wildlife Species of Concern***

#### Bats

Of the eight species of bats that occur in Maine, the three *Myotis* species are protected under Maine's Endangered Species Act (MESA) and are afforded special protection under 12 M.R.S §12801 - §12810. The three *Myotis* species include little brown bat (*M. lucifugus*, State Endangered); northern long-eared bat (*M. septentrionalis*, State Endangered); and eastern small-footed bat (*M. leibii*, State Threatened). The five remaining bat species are listed as Special Concern: big brown bat (*Eptesicus fuscus*); red bat (*Lasiurus borealis*), hoary bat (*Lasiurus cinereus*), silver-haired bat (*Lasionycteris noctivagans*), and tri-colored bat (*Perimyotis subflavus*).

While a comprehensive statewide inventory for bats has not been completed, based on historical evidence and area specific research, it is likely that several of these species occur within the project area during migration and/or the breeding season. We recommend that you contact the U.S. Fish and Wildlife Service--Maine Fish and Wildlife Complex for further guidance, as the northern long-eared bat is also listed as a Threatened Species under the Federal Endangered Species Act. Otherwise, our Agency does not anticipate significant impacts to any of the bat species as a result of this Plan.

### Canada lynx

Canada lynx are listed as a Species of Special Concern in Maine and are known to be in the Plan area. As Canada lynx are listed as a Threatened species under the Federal Endangered Species Act, MDIFW will defer recommendations to the U.S. Fish and Wildlife Service.

### Great Blue Heron

The great blue heron is a State Species of Special Concern due to a 64% decline in the coastal breeding population observed from 1983 to 2009. Since 2009, MDIFW has been monitoring the statewide population to determine if the decline seen along the coast is also occurring statewide. Great blue herons nest in groups and generally occupy colonies from April 1 through August 15 (known as the Sensitive Nesting Period). During this time the birds can be extremely sensitive to disturbances caused by human intrusion, noise, and predators, and may even abandon a colony as a result. Not all great blue heron colonies have been mapped in Maine; therefore, we recommend that the proposed development areas be surveyed for heron colonies, and that any colonies be avoided, and that any adjacent (within 600 feet) construction activities (land clearing, road construction, and building of permanent structures) occur outside of the Sensitive Nesting Period. We also recommend that any forest management activities, including road construction and land clearing located in proposed conservation areas that are adjacent (within 600 feet) to heron colonies also occur outside of the Sensitive Nesting Period.

### Big Mouth Pond Snail

The Big Mouth Pond Snail, a State Species of Special Concern aquatic snail, is present in Square Lake (and Eagle Lake just outside the Plan area) and potentially present in the other lakes within the project area. This species is known from only approximately ten sites statewide. As this species requires pristine water quality, for the benefit of this and other sensitive species and habitats the Department recommends ecologically responsible lakeshore development, including appropriate setbacks, maintenance of riparian vegetation, control of runoff, and a prohibition on private boat ramps.

### Bald Eagle

Until recently, bald eagles were listed as a Species of Special Concern in Maine. However, eagles continue to be protected under the federal Bald Eagle and Golden Eagle Protection Act

("Eagle Act") as well as other federal laws. Therefore, we recommend that you contact the U.S. Fish and Wildlife Service--Maine Fish and Wildlife Complex for further guidance if any proposed development is within 660 feet of eagle nests.