

STATE OF MAINE
LAND USE PLANNING COMMISSION

Irving's Proposed Fish River Chain of Lakes Concept Plan – Zoning Petition ZP 768

FISH RIVER LAKES LEASEHOLDERS ASSOCIATION (FRLLA) FILING OF DETAILED ISSUES LIST

Pursuant to the Second Procedural Order in the Matter of Zoning Petition ZP 768, Section I. a)

1. **Cost and Timing of the Sale of Existing Camp Lots.** Although likely outside the scope of the Commission's review, the cost and timing of the sale of existing camp lots is a Key Issue for the FRLLA.

Our Concern: The most important element of the Concept Plan (in fact, the main "Key Issue") for existing camp lot license holders is the potential cost and timing of the sale of our lots, for if the Concept Plan is approved, this single element may determine whether they remain camp owners in the future. The FRLLA Board and many license holders recognize and greatly appreciate, as stated in the Plan, these transactions depend on "various business considerations," that the lots will be valued using an "equitable formula that takes into account valuation factors, such as the amount of lake frontage and total lot area", that "current lease or license holders would be given first option to purchase the lots at the determined valuation", and that the lots, "...would be sold gradually over a number of years, as boundary surveys and legal descriptions will need to be prepared and other business factors considered to determine the best time for multiple transactions." However, much uncertainty remains, especially concerning whether those license holders who cannot afford to purchase their lot (many of whom are elderly and live here) will be forced out.

Associated Statutory or Regulatory Criteria: Only the Concept Plan Element implementation schedule in Volume 2, Section 1,G, which includes four elements regarding selling the existing camp lots.

Specific Suggestions to Address the Issue: Other than the reassuring statements above included in the Concept Plan, additional statements have been made by Irving that, "...the owner will work with individuals to accommodate a continuation of licensing for some period of time." And The Associated Press reported on October 2, 2017 in the Bangor Daily News that, "The company has said it isn't going to force individuals to vacate their camps or homes." A similarly worded statement added to the Concept Plan would help to address this issue.

2. **Residential Development Area 'Water Access Site' Types, Standards, and Locations.** The types of residential development area water access sites, applicable standards, and potential locations are a FRLLA Key Issue. Our concerns are listed below with specific suggestions to address each under the same lettered section.

Associated Statutory or Regulatory Criteria: Volume 2 – The Concept Plan, Tab 2, Addendum to LUPC's Land Use Districts and Standards (Chapter 10), standards applicable to water access sites, including, but not limited to:

Subchapter I, Section 10.02,215.A

Subchapter II, Section 10.21,K,3,a-d

Subchapter III, Section 10.23,N,3,c,(7);10.26,A,4; 10.26,B,2,b,d-f & 6; 10.26,C,1,b,d-f; 10.26,D,1 & 2; 10.26,G

Subchapter IV, Section 10.27,B, L and P

- a. Our Concern: There is no clear distinction between or definition of "Temporary docking structure" and "marina." The definition of water access site in Section 10.02,215,A includes both docking structures

and marinas. Subchapter II, Section 10.21,K,3,a,(1) allows temporary docking structures without a permit, and Section 10.21,K,3,d,(3) allows marinas only by special exception in a Residential Development (D-FRL-RS) zone. Figures 2 – 4 in Volume 2, Section 1 include docks with multiple slips to secure boats and which therefore appear to be marinas, as well as other structures which could be considered part of a “marina.” What is allowed without a permit and what is allowed only by special exception is not clear and this is concerning.

Specific Suggestions to Address the Issue: Include a definition of “marina” in Subchapter I, Section 10.02 or otherwise clearly define when a “docking structure” is considered a “marina.”

- b. Our Concern: Opening the residential development area water access sites to the public would cause *numerous* problems for the existing camp owners, road associations, and any residential development that the water access site serves, including: excessive traffic on a private road, parking on the road, noise, trash, parties with drinking and illegal substance use, safety issues with campfires, and boats and people in the water. There is no compelling reason to open these locations to public use – the Concept Plan already shows a public access point on each of the four lakes but in either an existing or more appropriate location. In addition, if the only land access to these locations is over private roads, this invites legal conflicts between the road owners and members of the public attempting to gain access. Allowing public access to these locations underscores the road ownership and maintenance issues discussed in Key Issue 3 below.

Specific Suggestions to Address the Issue: Amend Subchapter II, Sections 10.21,K,3,a-d to allow *only private* temporary docking structures without a permit, *private* hand-carry launches with a permit, and *private* trailered ramps with a special exception in D-FRL-RS zones. Eliminate all language in these sections allowing public or commercial docking structures, hand-carry launches or trailered ramps, other than in Square Lake E, if one is not developed in the Yexas D-FRL-RF zone. Section 10.27,L,2,n, already requires that any water access site, “must be open and accessible to all lot owners within that development area.”

- c. Our Concern: The proposed reduced dimensional requirements in Subchapter III Sections 10.26 and 10.27 listed below for water access sites have the potential for undue adverse impact on abutting and nearby camps and to influence the use, character, and water quality of the lakes. Each specific concern listed below is related to this overarching concern and includes specific suggestions, which together should help to address this overarching concern.
- i. Except for Cross Lake D and E and Square Lake E and W, these water access sites will either be between existing camp lots or at the end of a line of camp lots and should therefore conform to the approximate minimum lot size of the abutting lots, which will also help to minimize the adverse impact to the abutting and nearby camps, as well as minimize their influence on the use, character, and water quality of the lakes.

Specific Suggestions to Address the Issue: In Section 10.26,A,4, increase the minimum lot size for all water access sites from the reduced 20,000 square feet to 40,000 square feet to correspond with the Concept Plan proposed expansion of existing shoreland camp lot sizes (with back lots) to as close to 40,000 square feet as possible, to make them less nonconforming with the current minimum lot size.

- ii. The minimum shoreline frontage proposed for hand carry launches, trailered ramps, and docks is not clear. Section 10.26,B,2,d-f has 100 feet of minimum shoreline frontage for a hand carry launch, 200 feet for a trailered ramp; *and* 100 feet per dock for a docking structure. Therefore, as proposed, a lot with a hand carry launch *and* a dock should have 200 feet of minimum shoreline frontage. However, Volume 2, Section 1, Figure 3 shows a lot with a hand carry launch and a dock which is only 100 feet wide; Figure 2 shows a lot with a hand carry launch and two docks, so the lot should be 300 feet wide, but is only 200 feet wide; and Figure 4 shows a lot with a hand carry launch, a dock, and a trailered ramp, which should be 400 feet wide, but is only 200 feet wide. These discrepancies underscore our concern about the dimensional requirements of water access sites in general and with each added element.

Specific Suggestions to Address the Issue: Clarify the minimum shoreline frontage required as each element is added to a water access site in Section 10.26,B,2,b,d-f and these numbers should coincide with revised Figures 2 – 4.

- iii. Despite our shoreline frontage concern in 2.c.ii above, water access sites are non-residential uses and could involve one or more buildings. The minimum shoreline frontage in Section 10.26,B,2,b for such uses is 300 feet for these lakes. To minimize the adverse impact to the abutting and nearby camps, as well as minimize their influence on the use, character, and water quality of the lakes, this should be the minimum shoreline frontage for all water access sites.

Specific Suggestions to Address the Issue: Parts d-f in Section 10.26,B,2 should be removed and the applicable minimum shoreline frontage of 300 feet in Section 10.26,B,2,b for this type of use should be the standard for water access sites.

- iv. Section 10.26,B,6, as proposed states, “~~The shoreline frontage may be waived to no less than 200 feet for public boat launches where~~ The Commission may reduce the shoreline frontage to no less than 75 feet at sites with either a hand carry launch or a docking structure if the applicant demonstrates there will be no undue adverse impact to surrounding uses.” To minimize the impact of water access sites on abutting and nearby camps and their influence on the use, character, and water quality of the lakes, reducing water access site shoreline frontage to less than that allowed for residential uses in Section 10.26,B,2,a for these lakes, currently 200 feet, should not be allowed. [The shoreline frontage for residential uses should also not be reduced to the proposed 150 feet (see Key Issue 4.c. below).]

Specific Suggestions to Address the Issue: The strikethrough regarding public boat launches should be restored in Section 10.26,B,6, and the added text allowing a reduction in shoreline frontage to “75 feet” should be changed to “200 feet.”

- v. Water access sites are non-residential use lots which could involve one or more buildings and should therefore not have separate minimum road frontage requirements, but should be subject to the minimum road frontage requirement of 200 feet in Section 10.26,C,1,b for this type of use.

Specific Suggestions to Address the Issue: Parts d-f in Section 10.26,C,1, should be removed and the minimum road frontage of 200 feet in Section 10.26,C,1,b applied to water access sites, since that is the standard for their use type.

- vi. Section 10.27,L,2,k in the plan proposes to reduce the minimum shoreline setback for parking areas serving water access sites to 75 feet from the current 100 feet from the nearest shoreline of these lakes in Section 10.26,D,1. In addition, Section 10.27,L,2,k also reduces the vegetated shoreline buffer to 75 feet from the existing standard for a vegetative shoreline buffer of 100 feet in Section 10.27,B,1,d. This would have an adverse impact to the abutting and nearby camps, as well as influence the use, character, and water quality of the lakes.

Specific Suggestions to Address the Issue: Restore the strikethrough text in the last paragraph of Section 10.26,D,1 to include, “parking areas for trailered ramps or hand carry launches,” in the minimum setbacks included in that section. This would primarily restore the shoreline setback for water access sites to 100 feet from the nearest shoreline of these lakes from the proposed reduced setback of 75 feet in Section 10.27,L,2,k. Eliminate Section 10.27,L,2,k which provides for a reduced shoreline buffer of 75 feet for parking areas serving water access sites. Instead use the existing standard for a vegetative shoreline buffer of 100 feet in Section 10.27,B,1,d and restore the strikethrough text in the last sentence of the second paragraph of Section 10.27,B,1,d (except for the word “public”) to “trailered ramps and hand carry launches.”

- vii. The *only* structures that are not accessory structures on water access sites are the necessary components of the hand-carry boat launch, dock, or trailered ramp. Water access sites as shown in Figures 1 – 4 with the proposed reduced dimensional requirements for all the possible accessory structures, including parking areas, *will* have an undue adverse impact on the abutting and nearby camps and influence the use, character and water quality of the lakes. Section 10.27,L,3,d,iv, of the plan proposes to reduce the shoreline setback for accessory structures at water access sites to 25 feet from the current 150 feet (on these lakes) in Section 10.26,D,2,b. The existing accessory structure setback in Section 10.26,D,2,b of 150 feet from the nearest shoreline of a water body of 10 acres or greater (these lakes) will help to reduce that impact and influence, as will the other suggestions below.
- viii. Specific Suggestions to Address the Issue: Eliminate part iv from Section 10.27,L,3,d, which reduces the shoreline setback for accessory structures at water access sites to 25 feet and keep the 150 feet setback in Section 10.26,D,2,b. Also increase the property line vegetative buffer in Section 10.27,L,2,1, from 20 feet to 25 feet to coincide with the existing 25 foot setback in Section 10.26,D,2,e. In Section 10.27,L,2,1, require a 10 foot high fence on either side of the water access site to provide an effective screen and prevent trespassing onto the abutting camp lots. A requirement for gating access to the water access site to allow only authorized user access should also be added to Section 10.27,L,2.
- d. Our Concern: According to Section 10.27,P,12, an accessory structure must, “Be consistent with the use of the principal structure and not add a new activity to those currently permitted at the site or facility.” The primary use of these water access sites is to provide the residential developments with common water access for boats and nothing further. A common area for playgrounds and picnic shelters for 15, 30, or 50 camps or homes should not be placed on a site adjacent to existing camp lots, but instead somewhere less impactful to the abutting camps and the lake, back from the shoreline, inside the residential development area. Other concerns include overnight camping, fire pits and swimming (for safety reasons).

Specific Suggestions to Address the Issue: Eliminate some of the allowed accessory structures, such as “picnic-shelters and related facilities” and “playground structures” from the definition of water access

site in Section 10.02,215.A. Also amend the definition of water access site to state, “Water access site does not include fire pits, overnight camping or swimming (for safety concerns).”

- e. **Our Concern:** A water access site will *without doubt* adversely impact the abutting and nearby camps and would lower their lot valuations. No specific regulatory criteria may directly apply to this concern, other than perhaps Sections 10.26,G,4 and 18, which also contains proposed amendments regarding water access sites in D-FRL-RS zones that should be addressed *if* they are allowed to be “public” (other than in Square Lake E). Section 10.26,G,4 recognizes “undue adverse impact on existing uses, scenic character or natural and historic resources in the area likely to be affected by the proposal” and allows that, “the Commission may impose additional or more protective standards with respect to clearing, frontage and setback requirements, waste water disposal, and other aspects of the development to reasonably assure that undue adverse impact is avoided.”

Specific Suggestions to Address the Issue: Due to this adverse impact, it follows that abutting and nearby camp owners to a water access site should receive a substantial reduction in the cost of their lot. This is one reason why we’ve also asked that potential water access site locations be identified prior to existing camp lot sales. Otherwise, abutting and nearby camp owners will pay for a lot if/when they are sold that could later decrease in value due to water access site development on the land next to them, as allowed by the Concept Plan.

3. **Road Ownership and Maintenance.** Access road ownership and maintenance as it relates to existing camp lot sales and residential developments is a Key Issue for the FRLLA.

Our Concern: Although the petitioner has stated that this issue will be addressed at the time of the sale of existing camp lots and during the approval process for individual developments, both would occur after plan approval and would therefore not be subject to any standards or other conditions that could be included in the plan to alleviate potential problems regarding this issue. To avoid this, the following should be addressed in the plan in the appropriate sections or on appropriate maps. Some of the specific suggestions below also include a statement of the specific concern related to that particular suggestion.

Associated Statutory or Regulatory Criteria: Subchapter IV, Section 10.29 and elsewhere in the plan, including Volume 2, Section 1,E,1,a and G and Volume 3, Map 36.

Specific Suggestions to Address the Issue:

- a. The portions of each access road to be retained by Irving after the camp lot sales should be identified diagrammatically on a map, as the back lots are identified on Maps 40 – 47.
- b. Although some “anticipated” maintenance arrangements have been stated by the petitioner in response to our clarifying questions, the responsibility for maintenance of each portion of the individual access roads to the existing camp lots after lot sales should be addressed in the plan, most likely in Section 10.29.
- c. Although the petitioner has stated it is “anticipated” that roads that primarily access residential development areas would be owned and managed by the lot owners, maintenance of shared portions of roads with existing camp lots has not been addressed. This should be addressed in the plan for each existing access road that would also serve a development area, most likely in Section 10.29.

- d. Assuming that the water access sites in the D-FRL-RS zones will not be made public, except for possibly Square Lake E (see Key Issue 2.b. above), two access roads serving existing camp lots also serve a public access point listed in Volume 2, Section E,4,b,iii – a, the beach at Van Buren Cove accessed by the Lake Road, and c, the Cross Lake boat launch accessed by Disy Road and Landing Road. Ownership and maintenance is of particular concern for these roads that also serve an area open to the public. Volume 2, Section E,4,b,i also provides for the closing of certain roads to public access. Although there is an alternate route owned by Irving to access Van Buren Cove, there is no alternate route to the existing camps on Mif’s Lane and Landing Road that are accessed by Disy Road. Ownership and maintenance of shared roads to public areas and existing camp lots, as well as the potential impacts to existing camp lots of the petitioner possibly closing those roads, should be addressed in the plan, most likely in Section 10.29.
- e. Ownership and maintenance of Disy Road, where the camp owners also own their lots (non-Irving land), has not been clarified. As stated above, this should be addressed in the plan, most likely in Section 10.29.
- f. Due to past experience, there are concerns regarding the level of maintenance on Irving-retained portions of access roads on some of the longer access roads (specifically Lake Road to Van Buren Cove and Square Lake Road). Could a standard of the level of maintenance be included in the plan?

4. **Residential Development Consistency with the Land Use Planning Commission (LUPC) Lake Management Program Management Intent of Each Lake’s Classification.** The Management classification of Cross Lake as Class 5, Heavily Developed, and Long Lake approaching Class 5 is a FRLLA Key Issue. Also, Square Lake may be placed on the Management Class 3 Lakes list (Potentially Suitable for Development) if the Maine Department of Environmental Protection (DEP) is able to show that increased shoreland development would not significantly contribute to the stresses already being placed on it from lakes upstream. We did not receive an answer as to whether this has been done or not.

Associated Statutory or Regulatory Criteria: Chapter 10 Addendum, Subchapter III, Section 10.25,R and the Commission’s Comprehensive Land Use Plan (CLUP), Appendix C, *The Commission’s Lake Management Program*. [LUPC staff have clarified that they consider areas within 250 feet of these lakes to be where shoreland considerations apply, as that depth will influence the use, character, and water quality of the lake. Areas outside of 250 feet of the shoreline are not considered by LUPC staff to influence these lakes. Therefore, only the 0.1± mile of shoreline development on Long Lake, the 0.8± mile of shoreline development on Cross Lake, and the 1.7± mile of shoreline development on Square Lake are considered when counting units for comparison with the density goals in the *Lake Management Program*.]

Specific Suggestions to Address the Issue: Although the 0.8± mile of shoreline development on Cross Lake must be clustered, we have the concerns listed below and suggest the following changes to address the influence of additional shoreland development on the use, character, and water quality of all of the lakes in the Concept Plan.

- a. Our Concern: Much of the proposed additional shoreland development in the Concept Plan is on hillsides with some steep slopes. The ARC Soil Suitability Evaluation Update in Volume 1, Exhibit D identifies slopes steeper than 15% as “*Generally Unsuitable*” for development and Section 10.25,M,1,a states, “Operations that result in soil disturbance shall be avoided or minimized in sensitive areas such as

slopes exceeding 15% and areas that drain directly into water bodies, drainage systems, water crossings, or wetlands.”

Specific Suggestions to Address the Issue: Revise Sections 10.25,R,2,a,(1),(b) and (2),(c) and (2),(d) – in (1),(b) restore the strikethrough current standard of “20” or revise to “15” and eliminate the change to “25” percent slopes as unbuildable land; in (2),(c) restore the strikethrough current standard of “20” or revise to “15” and eliminate the change to “25” percent slopes as unbuildable shorefront land; in (2),(d) remove the added text, “to the greatest extent practicable.” These changes will help to prevent development on steep slopes near the shore, which the current standards restrict to 20% and parts of the plan suggest should be 15%, but which the plan proposes to increase to 25%.

- b. Our Concern: New shoreland lots should conform to the approximate expanded size of the existing camp lots, which will help to minimize their influence on the use, character, and water quality of the lakes, the same reasons that the existing camp lots are being required to expand.

Specific Suggestions to Address the Issue: Eliminate the proposed reduced minimum lot size of 20,000 square feet in Section 10.26,A,1 and restore the strikethrough current standard for residential uses of “...40,000 square feet per dwelling unit or residential campsite except where each dwelling unit is to use a common or community sewer and not on site subsurface waste water disposal, the minimum lot size shall be 20,000 square feet per dwelling unit.” This corresponds with the Concept Plan expansion of existing shoreland camp lot sizes (with required back lots) to as close to 40,000 square feet as possible to make them less nonconforming with the current minimum lot size.

- c. Our Concern: In order to further minimize the influence of new shoreland units on the use, character, and water quality of the lakes, the minimum shoreline frontage should not be reduced to 150 feet, but kept at the current standard of 200 feet per dwelling unit for residential uses. This has been and is currently the standard for new shoreline development and should not be amended in the plan area for new development.

Specific Suggestions to Address the Issue: In Section 10.26,B,2,a, eliminate the proposed reduced minimum shoreline frontage of 150 feet and restore the strikethrough current standard of 200 feet per dwelling unit for residential uses. Allowing abutting license holders second option on any abutting lots not purchased by the current license holder could also help the existing shorefront camp lots meet this standard (see 4.d. below).

- d. Our Concern: The existing shorefront camp lots are mostly nonconforming lots and there are provisions in the Concept Plan to help make them conforming or less nonconforming. When sold, if an existing lot is not purchased by the current license holder, but offered for sale to someone else, this nonconforming lot will likely continue as is. However, if the abutters are given second option to purchase, many camp owners would choose to expand their lots (or split the lot between them), removing any camp on that lot (if one is present) depending on its condition, which would make their existing lots either conforming or less nonconforming.

Specific Suggestions to Address the Issue: Related to the expansion of existing camp lots by requiring back lot purchases in the sales, the abutting license holders should be given second option to purchase any abutting licensed lots not purchased by the current license holder (who would have first option, as stated in the plan). In addition to the required back lot expansions, this would serve to make the existing shorefront lots conforming or less nonconforming with the applicable Commission Requirements

(specifically 200 feet of shoreline frontage) and would not be counted for the purposes of subdivision as stated in Subchapter III, Section 10.25,Q,1,g,(9).


5. **Scenic Impact of Hillside Developments.** The scenic impact of hillside development in several of the proposed residential development areas is a Key Issue for the FRLLA. Hillside developments in Long Lake A, B, and C, Cross Lake D and E, and Square Lake E and W will be seen from the lakes, and the new units with vegetation clearing, roads, and associated lights will negatively impact the scenic resource of an unbroken view of trees on these hills that boaters currently enjoy. As one Cross Lake license holder stated, 60 additional dwelling units with roads, clearing, and lights, will put a huge scar on the very scenic hill at the remote Cross Lake E location.

Associated Statutory or Regulatory Criteria: Including, but not limited to: Chapter 10, Subchapter III, Section 10.25,E. Scenic Character, Natural and Historic Features and applicable standards in Section 10.26 Dimensional Requirements, the Commission’s CLUP, and the Commission’s *Concept Planning Overview & Guidance*, where the last paragraph on page 9 under Appropriate Development Standards in Section IV,B states, “Although the Commission’s regulatory framework is effective at minimizing the scenic impacts of shoreland development, the agency’s existing land use standards for hillside development lack the same level of specificity. The Commission has acknowledged the need to develop vegetation clearing and non-vegetative scenic impact standards for hillside development, but has not yet undertaken this initiative. As a result, concept plan proposals should include scenic impact standards for hillside development if such development is being proposed.”

Specific Suggestions to Address the Issue:

- a. Our second suggestion to address Key Issue 4 (4.b.), to keep the current minimum lot size of 40,000 square feet per dwelling unit in Section 10.26,A,1, instead of reducing it to 20,000 square feet, is also applicable to this Key Issue.
- b. Add scenic impact standards for hillside development to the plan, as recommended in the Commission’s *Concept Planning Overview & Guidance*.
- c. Depending on whether sufficient scenic impact standards for hillside development are added to the plan, the Commission should consider Section 10.26,G,4, which states, “Where development would otherwise have an undue adverse impact on existing uses, scenic character or natural and historic resources in the area likely to be affected by the proposal, the Commission may impose additional or more protective standards with respect to clearing, frontage and setback requirements, waste water disposal, and other aspects of the development to reasonably assure that undue adverse impact is avoided.”

Respectfully Submitted on behalf of the Fish River Lakes Leaseholders Association on December 11, 2017,



Cheryl L. St. Peter
FRLLA Secretary
203 Cyr Road
Cross Lake, ME 04779
207-834-1127
countyee@fairpoint.net

From: [Cheryl St. Peter](#)
To: [Beaucage, Timothy](#); [Noel Musson](#); [Karin Tilberg](#); [Cathy Johnson](#)
Subject: FRLLA Filing of Detailed Issues List & Statements
Date: Monday, December 11, 2017 4:05:03 PM
Attachments: [FRLLA Detailed Issues List.pdf](#)

Good Afternoon Tim,

Attached please find the Fish River Lakes Leaseholders Association (FRLLA) Filing of Detailed Issues List, pursuant to the Second Procedural Order in the Matter of Zoning Petition ZP 768, Section I. a). Pursuant to Section I. b), our possible witnesses would be Kirk and/or Cheryl St. Peter, President and Secretary of the FRLLA, who would speak on behalf of the FRLLA on the issues included in the attached list; we do not intend to call additional witnesses. Pursuant to Section I. c), we do not believe there is a need for pre-filed testimony in this hearing.

Please contact me anytime if you have any questions concerning the attached list or the above statements.

Thank you,
Cheryl

Cheryl St. Peter
FRLLA Secretary
203 Cyr Road
Cross Lake, Maine 04779
Tel: (207) 834-1127, Cell: (207) 768-6617
Email: countyee@fairpoint.net