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GOVERNOR

STATE OF MAINE
DEPARTMENT OF AGRICULTURE, CONSERVATION & FORESTRY
LAND USE PLANNING COMMISSION
22 STATE HOUSE STATION
AUGUSTA, MAINE 04333-0022

AMANDA E. BEAL
COMMISSIONER
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Memorandum

To: Irving and the Forest Society of Maine
CC: Fish River Lakes Leaseholders Association; Natural Resources Council of Maine; Ms. Pierson; and Sandy Point & Connection Lane Road Association
From: Tim Beaucage, Senior Planner
Date: August 14, 2019
Re: Suggested Staff Edits – Fish River Chain of Lakes Concept Plan

In accordance with the eighth procedural order, the LUPC staff offer the following suggested edits. In addition to items identified by the LUPC staff, the following are viewed as also addressing comments submitted on July 1, 2019 by the Fish River Lakes Leaseholders Association (items 1, 3a, 4b; 5; and parts of 4a and 6); and one comment from Ms. Pierson (unnumbered).

Suggested Edits

1. Correct Section 1,D,3,a, “Upon filing of notice pursuant to Section 10.33,A,3 with the Commission, an individual development area (e.g., D-FRL-RS) will be automatically changed to M-FRL-GN or applicable protection subdistricts, with overlaying P-RP, as correspond to the zoning designation(s) in effect immediately prior to the effective date, provided...” thus removing the development area designation without removing the location from the plan or the related P-RP designation.
2. Clarify Section 1,G,1,c,(3),(a) to reflect the understood intent, “Provide the buyer with a legal right of vehicular access over Petitioner’s land/roads to the camp lot, and-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; and”
3. Update or otherwise correct footnote 2 within Section 1,G,1,e to reflect that the resource management plan is incorporated into the easement, “For the purposes of this section only, “agreement” means an agreement, contract, or plan appended to the Fish River Chain of Lakes Concept Plan (e-g.i.e., DWA Agreement; and OBF Agreement;~~and Resource Management Plan~~).”
4. Correct Section 1,H, Table 5, Areas for Residential Development ... “2-91.9”

5. Correct the following maps in Section 1,I:
 - a. In the event that the FRLLA comment (#4,a) regarding improperly numbered license lots, is correct; Maps 13 and 17 should be adjusted to label the correct license lot number.
 - b. Clarify Map 9, consistent with prior versions, by labelling the map as “Access to Development ~~Areas~~” or “Access to Existing and Allowed Development.” And, related to item 2 above, illustrate the Irving portions of the Square Lake Road as “Potential Access to Development” (i.e., the thicker line).
 - c. Correct all appropriate maps regarding those portions of new development areas that were to extend to a water body. By way of example, Cross Lake B used to include purple ‘fingers’ that extended between license lots to the shoreline of Cross Lake; revised maps no longer illustrate this intended outcome.
 - d. Correct the boundary between the Square Lake Infill (southern end) and the conservation easement. At least Maps 7 and 8 illustrate these areas as overlapping, also Map 6 of the easement may need to be corrected.
 - e. Maps 9, 17, and 18 illustrate areas with a white and black stippling. It is not clear what information or feature is identified.
 - f. Clarify Map 15 by illustrating Cross Lake B. While the license lots are the primary subject, the relationship between the licenses and this development area will be important.
 - g. Correct the label for Map 18 “~~Cross Lake-6~~Square Lake”.
6. Consistent with the zone acronyms, revise the nomenclature in Part 2 of the plan to improve the distinction between citing the provisions of Chapter 10 and the supplemental/companion standards in the Plan. Specifically, include “-FRL” (stated as ‘dash FRL’) as appropriate and revise each reference in the Concept Plan appropriately. Note that some plan elements currently include a “-1” to serve this purpose; each of these would also be changed to “-FRL.” This will also result in corresponding clarifications to Section 2,B Explanatory Table.

The following illustrate this through several examples, each including a heading from the Plan and a possible citation:

10.02-FRL SUPPLEMENTAL DEFINITIONS

‘... in accordance with Section 10.02-FRL,14.’

10.21,A-FRL COMMERCIAL INDUSTRIAL DEVELOPMENT ZONE (D-FRL-CI)

‘... in accordance with Section 10.21,A-FRL,3,c,(1).’

10.23-A-FRL PROTECTION SUBDISTRICT CLARIFICATIONS

‘... as provided by Section 10.23-A-FRL,1,b,(2),(c).’

10.25,E-FRL SUPPLEMENTAL HILLSIDE STANDARDS

‘... in accordance with Section 10.25,E-FRL,1,a.’

10.25,L-FRL PHOSPHORUS CONTROL

“[The standards within Section 10.25,L in effect at the time apply, except that Section 10.32-FRL governs phosphorus allocations.]”

10.26-FRL DIMENSIONAL REQUIREMENTS

‘Section 10.26-FRL,A through F represent the minimum dimensional requirements for...’

10.33-FRL NOTICE OF PLANNED ACTIVITIES

‘... pursuant to Section 10.33-FRL the proposed activity...’

7. Correct the reference to the concept plan maps (i.e., “...Section 1,~~H~~...”) within the description for Sections 10.21,A,2; C,2; M,2; N,2; 10.22,A,2; and 10.23-A,1,a,(1).
8. Clarify and otherwise unify the structure of Section 10.21,M,3,a with other sections.
 - “(1) Those uses listed as “Uses Allowed Without a Permit” within the Residential Development (D-RS) Subdistrict of the Commission’s Land Use Districts and Standards, as may be amended from time to time except as provided in Section 10.21,M,3,a,~~(1)~~.
 - (2) Notwithstanding Section 10.21,M,3,a,(1), the following uses shall be allowed without a permit:
 - (a) Docking structures: Temporary docking structures; ...”
9. Correct the two following items in Section 10.21,N,3,c:
 - a. (11)... “Shoreland alterations, including ~~and~~ permanent on-shore...”
 - b. (13)... “moderate-density subdivisions~~r,i~~ and”
10. Correct the citation in Section 10.23-A,1,a,(2) to match other zones, “Except as authorized by Sections ~~1,D,3~~ and 10.08 no new protection subdistricts...”
11. Clarify Section 10.23-A,1,b,(2),(c) by the following use listing to account for those portions of a common water access site that need to occur below the normal high water mark (i.e., in a P-WL) and that temporary docking structures are also located within ‘open water’ P-WL subdistricts.

“(c) Water access sites: ~~Public and remote w~~Water access sites in accordance with Section 10.27,L; and

(d) Docking structures: Temporary docking structures; ...”

12. Correct the title for Section 10.25,E-1 to match Chapter 10, “~~Scenic Character, Natural and Historic Features~~Natural Character and Cultural Resources”
13. Correct Section 10.27,L,1,a to list “...; picnic shelter; bulletin boards; ...” as a type of structure that could be part of a common water access site.
14. Clarify Section 10.28,B,2,a “Existing Camp Lots. A camp lot, as defined in Section 10.02-A, satisfying the following conditions does not require Commission approval...” [Also see clarification for Section 10.33,B,1, below.]
15. Match the phrasing in Section 10.28,B,2,m
 - “(1) The lot ~~or parcel~~ is created...
 - (2) The lot is located...”
16. Match the phrasing in Section 10.28,B,2,n
 - “(1) The lot is one of six lots allowed...
 - (2) The lot is one of ~~the~~ six lots allowed...”
17. Clarify Section 10.28,B,2,n, to confirm that an additional lot is allowed,
 - “n. **In-fill Lots within or Serving Certain Camp Lot Areas.**
 - ...
 - (2) The lot is one of the six lots allowed within the Square Lake Infill area consistent with the residential development unit cap in Section 10.28,C; or
 - (3) The lot is created within Square Lake East or Square Lake Yexas in accordance with, and for the purposes of, Section 10.34,A,5,h.”
18. Clarify Section 10.32,C,3 in order to match provisions/cross references in Section 10.33:
 - “a. ... conveyance and shall provide notice, in accordance with Section 10.33, to the Commission and the DEP sufficient to allow the Commission to track compliance with this rule. ...
 - d. ...In each case, Petitioner or owner shall provide notice, in accordance with Section 10.33, to the Commission and the DEP of the intent to ...”
19. Revise Section 10.33,A to reflect other plan provisions, and to confirm the information needed with the related notices.
 - a. Revise sub-section A:
 - “1. Prior to any lot divisions or the transfer of any lands within the Plan Area, as allowed by Section 10.28;~~and~~
 - 2. Prior to the allocation, revocation, or surrender of any phosphorus allocation authorized by Section 10.32,C;i
 - 3. Prior to a zone modification to revert to prior management or protection subdistricts in accordance with Section 1,D,3; and
 - 4. At the time of creation or expansion of an association in accordance with Section 10.29,B,9.”

b. Revise sub-section B:

“1. Lot Divisions or Transfers: Where the notice regards a lot division or transfer, a draft plat that is consistent with the Commission’s Specifications for Subdivision Plats must be filed with the Commission. In regards to camp lots, also provide documentation that the lot was legally existing as of the effective date of the concept plan.

...

3. Associations: Where the notice regards the creation or expansion of an association, the name of the association, contact information, and identification of the applicable infrastructure must be filed with the Commission.

4. Commission staff, within 14 days of the...”

20. The plan requires all lot owners and lessees to be members of the related association. However, we understand that some public entities may experience legal or political challenges to being association members, yet public use of related roads should not be overlooked. In order to ensure that these public elements can be carried out, the plan should incorporate a fair alternative.

“Section 1,E. Elements of the Plan

...

13. Access

...

b. All lot owners or lessees with deeded rights of access, except those that obtain access off of a public road and public entities, will be required to be members of the road association(s) for the roads used for access. See Section 10.29.”

...

“Section 10.29 Associations

Common infrastructure (e.g., roads and common facilities, such as roads, open space, water access sites and stormwater management structures) may be managed by a road association or an owner association.

A. Joining Associations.

1. All lot owners or lessees with deeded rights to use common infrastructure are required to be members of the association managing the common infrastructure.
2. Notwithstanding Section 10.29,A,1, owners or lessees of lots accessed directly from a public road, and public entities, shall not be required to be a member of a road association.

Associations and public entities are encouraged to work out an agreement through which, subject to allocation by the Maine Legislature or applicable budgetary authority, the public entity would contribute a fair percentage of the minimum maintenance and repair costs through financial contributions or in-kind services. ...”

21. Revise Section 10.30,B,5,f for consistency with other provisions “...no more than approximately one-third of the total basal area shall be removed within a ~~20~~-25 year time period...”

22. Correct the citation in Section 10.34,C,3,b, “...Section 10.34,C,2,~~bc~~(5)...”

23. Clarify the conservation easement (both the stand alone/formal version and Appendix C in the plan):

- a. Section 1.18 – “...associated signs and Structures, and wells, but does not include permanent sawmills or other permanent forest processing facilities.”
- b. Section 3.2,(b),(iv),(C),(8), “...Forest health: practices to promote forest health or to mitigate greater damage to the Conservation values ~~of~~ due to natural...”
- c. Section 4.1,a,(iv) is ambiguous or confusing.

“(iv) as Grantor may determine to be required to access or service (A) Structures existing as of the date of the grant of this Conservation Easement, as identified in the Baseline Documentation, (B) Structures used for nature observation (including, but not limited to, observation blinds and platforms), (C) Trails, or (D) Structures required for the administration and collection of fees pursuant to Section 6.2 hereof; ~~provided, however that under no circumstances may there be more than one (1) “cell” tower on the Protected Property at any point in time provided that Grantor first obtains the consent of Holder;~~

...

- (b) All such roads, driveways and/or Utility Structures shall be located, designed, placed, and constructed in a manner so as to (A) minimize the amount of Protected Property utilized, and (B) minimize undue adverse effects on the Conservation Values; when prior consent of Holder is required, it shall be granted only upon a determination by Holder that this standard is met. All such roads, driveways and/or Utility Structures shall be constructed, placed, or expanded only in accordance with all necessary regulatory approvals, including, but not limited to, permits required for the development that is to be accessed or serviced by such roads, driveways and/or Utility Structures. Under no circumstances may there be more than one (1) “cell” tower on the Protected Property at any point in time, and for which Grantor must first obtain the consent of Holder.”
- d. Section 8.7 Insurance. “Each Party shall maintain insurance policies ~~in~~ of a commercially reasonable type, ...”
- e. Section 10.1 Initial Contribution – “... An additional contribution by the Grantor to the Holder in the amount of \$25,000 shall be made to support the creation of the Baseline Documentation Report described in ~~s~~Section 5.1.”
- f. Exhibit A-1, Area 6. Consistent with item 5,d above, confirm that the conservation easement boundary as illustrated on area 6 at the southern end of the Square Lake Infill, does not overlap with the development area. Note that the property description in Exhibit A-2 appears to be correct (*i.e.*, the description at “n;” however, due to the scale of the map, we have raised this here to confirm that the two areas do not overlap.

24. Unify or otherwise correct formatting throughout the Plan:

- a. punctuation (*e.g.*, Sections 10.27,L,3,a and c “Hand carry launches~~;~~” and “Trailerred ramps~~;~~”);
- b. formatting (*e.g.*, bold, italics, alignment), such as Section 10.29,B,1 through 3;
- c. numbering (*e.g.*, the six sub-items within Section 10.29,B); and
- d. correct all instances of “and/or” with “or” as the Commission interprets “or” to include the possibility of “and”.