

**STATE OF MAINE
LAND USE PLANNING COMMISSION**

In the Matter of Zoning Petition, ZP 768

**Irving's Proposed Fish River Chain of Lake Concept Plan in Northern Aroostook
County, Maine**

**Comments on the June 2019 revised Concept Plan from the Natural Resources
Council of Maine**

July 1, 2019

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Summary

While the Natural Resources Council of Maine (NRCM) appreciates the changes that have been made to the proposed Concept Plan since the May 2018 hearings, we remain convinced that the development proposed for Square Lake and the south end of Cross Lake is inappropriately sited and will have an undue adverse impact on the scenic and natural resources and character of those lakes and on existing uses. NRCM further believes that even if the Commission determines that there is no undue adverse impact, the amount of conservation proposed is insufficient to compensate for the indisputable adverse impacts articulated by multiple parties and members of the public that the development will have on Square Lake and the south end of Cross Lake. NRCM urges the Commission to reject the proposal for development on Square Lake and the south end of Cross Lake, or, if the Commission approves the amount of development proposed, to require additional permanent conservation as outlined below and illustrated on the attached attachment.

Improvements to the Proposed Plan

NRCM acknowledges the changes to the plan that have somewhat lessened the adverse impacts on natural resources and existing uses and increased the conservation measures. These include:

- The removal of the subdivision proposed for the west side of Square Lake;
- The addition of 1,986 additional acres of conservation land, bringing the total to 16,764 acres;
- The provisions to regulate the pace of development on Square Lake;
- The replacement of the proposed marina on Square Lake with a public water access site; and
- The improvement in the terms of the easement, particularly those terms improving the quality of the stream buffers.

Serious Concerns about the Undue Adverse Impacts of the Proposed Project Remain

Despite the acknowledged improvements to the proposed plan, there remain aspects of this plan that raise serious concerns and render the plan inconsistent with existing laws and regulations and which require amendment prior to any approval of this plan.

A. The Square Lake East and Square Lake Yerxes Development Should be Eliminated or Downsized

NRCM applauds the removal of the subdivision previously proposed for the west shoreline of Square Lake. This will decrease the negative impacts on the riparian habitat of the lake and avoid increased use of the very long access road that crosses important deer wintering habitat and brook trout streams.

However, we note that the total amount of development on Square Lake has not changed. As such, the adverse impacts on the character of the lake, the fishing experience, and the existing uses of the lake remain unchanged.

We urge that Square Lake East and Square Lake Yerxes development areas be eliminated or significantly downsized. Virtually all of those who testified in this proceeding said that the proposed level of development will adversely affect the character and the user's experience of the lake:

- Square Lake "is a unique and very special place both because of its remote and intrinsic form and beauty and because of its increasingly rare and relatively unspoiled venue and pristine waters."¹
- "This much development on a primarily undeveloped lake would have a devastating and permanent impact on the scenic beauty and quiet and unspoiled character."²
- "Remote and untouched places like Square Lake are rare and should be preserved and treasured... Square Lake is not in my opinion appropriate for the type of development proposed which would forever change its character as a remote and rustic recreational destination it currently is."³
- "Square sits in the middle and it's unique to the entire chain... It's just a gem sitting there and it should not be developed any further."⁴
- "More development [on Square Lake] would ruin the fishing quality... it scares me...that we will no longer be able to enjoy the quality of peace and quiet, wonderful fishing, boating, quiet boating."⁵
- "When you have that much development [as proposed for Square Lake] you lose your air quality, water quality, and your noise quality. Once you start developing that [Square Lake] it will forever be altered and you'll never be able to get that back."⁶

NRCM agrees with these members of the public and urges the Commission to eliminate these development areas. However, if the development will not be eliminated, NRCM urges that the amount be decreased.

We note the proposed sequencing of development for Square Lake and think that it is a step in the right direction if the development is not eliminated or the amount significantly decreased. However, we believe that the trigger for review of the impact of the development on the experience of lake users and the population of native fish is too high. Triggering that review only after 100 units have been approved is like trying to close the barn door after the horses are out. We urge that the sequencing review be triggered when 50 units have been approved, and again when 90 units have been approved. Short of eliminating or significantly decreasing the amount of development on Square Lake, this would provide the best opportunity of ensuring that the character of the lake is not irreversibly degraded.

¹ Sarah LaClaire testimony, May 22, 2018

² Doug Roberts testimony, May 22, 2018

³ Rosemary Monahan testimony, May 22, 2018

⁴ Brian Field testimony, May 22, 2018

⁵ Cricket Bouchard testimony, May 22, 2018

⁶ Sarah Anderson testimony, May 22, 2018

If the Commission approves development for the Square Lake Yexes development site, we also urge that a public hearing be required — not simply allowed — once the developer has submitted a Schematic Design Plan. The type and scope of development at this site has the potential to dramatically change the character of Square Lake, and members of the public should be guaranteed that they will have an opportunity to comment on any proposed plan.

B. The Development on the South End of Cross Lake Should be Eliminated or Conditioned

Despite extensive evidence about the degraded water quality of Cross Lake and significant concerns about the adverse impact of the proposed Cross Lake E development on the diversity of lake experiences on Cross Lake, it appears no changes have been proposed related to this development. Given the extensive documentation of water quality problems on this lake and the photographs showing severe algal blooms from as recently as this past weekend submitted by Steve DeMaio, NRCM strongly urges the Commission to eliminate Cross Lake E from the plan. Allowing an additional 60 lots in Cross Lake E in the face of this evidence would completely undermine any effort to protect the water quality and the character of the south end of Cross Lake.

However, if the Commission should decide to allow the development proposed for Cross Lake E, NRCM strongly urges that prior to the submission of any application for development at that site, the Applicant be required to show that Cross Lake has met water quality standards and that algal blooms have ceased for at least three consecutive years immediately prior to the submission of the application. While the activities of the Applicant may or may not have contributed to the degraded water quality in Cross Lake, additional development, which will indisputably have an impact on water quality, should not be allowed until prior problems have been resolved.

C. The Conservation Area in the Plan Should be Increased

NRCM appreciates the 1,986-acre increase in the area covered by the conservation easement but urges the Commission to require additional lands be permanently protected in the conservation easement. Multiple parties, including The Nature Conservancy, Maine Audubon, the Forest Society of Maine, and NRCM, have identified ecologically important areas within the Concept Plan area that should be permanently protected. These areas are identified on Exhibit C to the Forest Society of Maine's testimony, which is attached to these comments.

The revised plan includes a portion of Area B and Area C within the conservation easement, which is good, but fails to include the full area (all of Areas B, C, and D) that would provide the needed connectivity corridor identified on Exhibit C. This area "has been identified as an important wildlife corridor by the Staying Connected Initiative, a cross-border collaboration focused on regional habitat connectivity."⁷ We urge the Commission to require the inclusion of this entire area (Areas B, C, and D) in the conservation easement.

⁷ The Nature Conservancy letter, June 21, 2018

The revised plan fails to include Area F which The Nature Conservancy noted “encompasses important headwater streams and wetlands that flow into both Square Lake and Cross Lake.”⁸ Maine Audubon also noted that this area “would provide important riparian protections along streams that feed into Cross Lake and Square Lake” and would provide “connectivity to existing public land ownership in New Canada Township.”⁹ We urge the Commission to also require the inclusion of Area F within the conservation easement.

Finally, we continue to be baffled about why Area A, which was initially proposed to be included in the conservation easement, is now excluded. As the Nature Conservancy noted “the large wetland west of Mud Lake (north of Rt. 161 and west of Rt. 162) has been mapped as an exemplary Dwarf Shrub Bog by the Maine Natural Areas Program. Given its high ecological value and low development value, it is logical to add this important open wetland to permanent conservation.”¹⁰ We urge the Commission to require the inclusion of Area A in the conservation easement.

The revised plan proposes a total of 16,764 acres, 33% of the plan area, to be included in the conservation easement. If the additional acres described above were added to the easement, the total acreage included in the easement would be approximately 23,000 acres or approximately 45% of the plan area.

Three separate regulatory requirements trigger a need for conservation measures in the concept plan:

- Publicly beneficial balance – A concept plan must provide “a reasonable and publicly beneficial balance between appropriate development and long-term conservation of lake resources;”¹¹
- Comparable conservation — If a waiver of the adjacency principle is requested, comparable conservation is required to ensure that the plan “is at least as protective of the natural environment as the subdistricts it replaces;”¹² and
- Mitigation – If the plan has adverse impacts that cannot be avoided or minimized, those impacts must be mitigated or off-set with other conservation measures.¹³

It is beyond question that this plan would require a waiver of adjacency and that it would have adverse impacts that require mitigation. Taking into account the amount and location of development proposed and the need for comparable conservation and mitigation, it is clear that the amount of conservation proposed does not constitute a publicly beneficial balance between appropriate development and long-term conservation.

Forty-five percent of the plan area in conservation as proposed above would still be a dramatically smaller percentage of the plan area included in a conservation easement than the 95% of the plan area

⁸ Id.

⁹ Maine Audubon letter, June 21, 2018

¹⁰ The Nature Conservancy letter, June 21, 2018

¹¹ LUPC Chapter 10, Section 10.23 (H)(6)(f)

¹² LUPC Chapter 10, Section 10.23 (H)(6)(d)

¹³ 12 MRS §685-A(8-A)(B)

that the Commission required Plum Creek to include in the Moosehead Region Concept Plan. It is entirely reasonable (and only fair, given what has been required of other landowners) to require the inclusion of these lands in the conservation easement. We urge the Commission to require the inclusion of the entirety of Areas A, B, C, D, and F in the conservation easement.

D. Additional Clarification is Needed in the Easement Terms

NRCM is pleased to see improvements in the easements terms. We particularly appreciate the improved protections that should be provided by the proposed Riparian Management Zones and Standards. To ensure that these riparian standards achieve their intended purpose, there are additional details that we urge the Commission to clarify before approving the easement:

1. The definition of “Flowing Waters” appears to be the State’s definition of river, stream, or brook. How that call is made in the field, by either the agencies or a forester planning a harvest, is highly variable. We suggest that the baseline documentation include a detailed map of the streams covered. We recognize that generating that map would be a big task, but without it, monitoring of these standards on small streams would be essentially impossible.
2. It is unclear how is the 1/3 of basal area would be calculated. Are all trees counted, or only trees over a specified size? How would the accounting work? If we set today as the baseline, basal area will change based on the growth of trees, natural mortality, harvests, and perhaps other factors. If the accounting sets today’s basal area (which may be very low in some areas) as the standard, and allows for the basal area 25 years from now to be 75% of today’s value, it is possible this standard is less protective than the current MFS standards. But if it accounts for growth, and allows only 1/3 of today’s basal area to have been removed by the end of the 25-year period, it would be much more meaningful. We urge clarification of this accounting process to ensure that the expected benefits are achieved.

Conclusion

NRCM continues to believe that the development proposed for Square Lake and the south end of Cross Lake does not meet the requirements of law and those parts of the proposed plan should be rejected. In addition, NRCM believes that the amount of conservation proposed fails to establish a publicly beneficial balance between appropriate development and permanent conservation, and fails to provide comparable conservation or sufficient mitigation for the proposed development. We urge the Commission to deny the proposed development on Square Lake and the south end of Cross Lake. We further urge the Commission to require the additional conservation of the entirety of Areas A, B, C, D, and F shown on the attached map. We also urge the Commission to clarify the standards for the required riparian buffers in the proposed easement.

If the Commission decides not to eliminate or significantly decrease the amount of development proposed for Square Lake and the south end of Cross Lake, NRCM urges further conditions and sequencing of the proposed development to ensure that the water quality, the natural resources, the character, and the existing uses of Square Lake and the south end of Cross Lake are not further damaged by additional development.

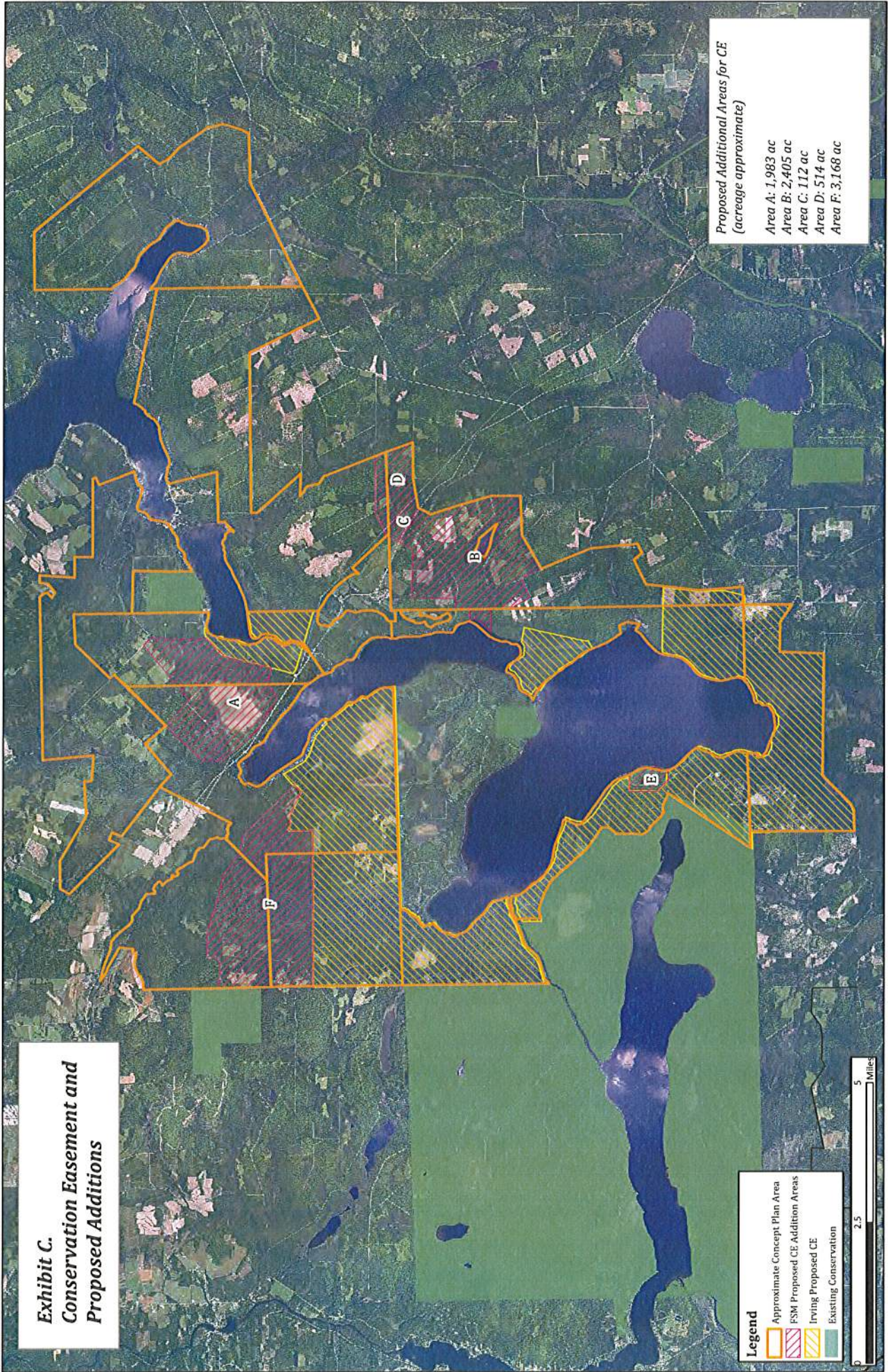
Thank you for the opportunity to comment on the revised plan.

Respectfully submitted on behalf of the Natural Resources Council of Maine, July 1, 2019.

A handwritten signature in black ink that reads "Catherine B. Johnson". The signature is written in a cursive style with a large, prominent initial "C".

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**Exhibit C.
Conservation Easement and
Proposed Additions**



Proposed Additional Areas for CE
(acreage approximate)

- Area A: 1,983 ac
- Area B: 2,405 ac
- Area C: 112 ac
- Area D: 514 ac
- Area E: 514 ac
- Area F: 3,168 ac

Legend

- Approximate Concept Plan Area
- FSM Proposed CE Addition Areas
- Irving Proposed CE
- Existing Conservation

