

1 MS. KURTZ: In my other life I worked with a
2 government agency, and because the way the government is
3 structured, projects that they do cost four to five times more
4 than could be done on a private level.

5 I was just wondering if you could provide us
6 information about the stewardship and the monitoring and the
7 care of these lands from a private perspective versus a public,
8 we're going to have a fund that's developed to carry out all
9 these activities, where are we going to get more bang for our
10 buck? What's the most cost effective way to use that fund, by
11 a private entity or public?

12 MR. KREISMAN: I'll leave it Jerry to advise you as
13 to whether we provide you that information during the comment
14 period or whether that issue is subject to comment from State
15 agencies and private parties.

16 MR. REID: I think the latter approach is the way to
17 go. Hopefully all the parties were listening intently for your
18 request for information, and they'll have an opportunity to
19 educate the Commission on that subject.

20 It's an entirely appropriate subject for parties to
21 comment on.

22 CHAIRMAN HARVEY: I think with that, Aga, we probably
23 better not launch into another long discussion.

24 MS. PINETTE: I think that's a good idea.

25 CHAIRMAN HARVEY: We have five minutes left. We'll

1 never make it.

2 MS. PINETTE: Given the dialogue, maybe I can quickly
3 run through the list of issues that we have identified as what
4 the Commission wanted to circle back to and continue dialogue
5 on to make sure I haven't missed anything so that we can do
6 some planning with respect to how we will time tomorrow's
7 discussion.

8 What I have on my list is continuing discussion on
9 Lily Bay, discussion on 10.25,Q,3 the subdivision layout and
10 design standards, which we will be prepared to provide you with
11 some illustrations that contextualize the approaches we're
12 talking about.

13 I was unclear whether the Commission wished to circle
14 back to further discuss the total number of units at this
15 point.

16 CHAIRMAN HARVEY: If everybody's happy, I'm happy.

17 MS. HILTON: I think I would like to just put that on
18 the list sort of at the end, okay.

19 MS. PINETTE: Sure. And then I'm assuming that this
20 issue of who the holder of each of the easements should be. It
21 should be a discussion item to revisit perhaps after we get
22 through the terms of the easements and the issues related
23 thereto.

24 CHAIRMAN HARVEY: We still have a lot of easement
25 stuff to talk about.

1 MS. PINETTE: We will keep an ongoing list, and
2 please let me know if I've missed anything. Of course I would
3 suggest that we continue going through this document starting
4 tomorrow morning and then circle back to the issues that are on
5 my list.

6 MR. KREISMAN: Mr. Chair, if I could make a
7 recommendation just to move things along on the balance and the
8 legacy, which is we've been moving page-by-page on these
9 issues, which, we have identified, made necessary to go
10 page-by-page, but I think the staff and consultants would be
11 happy just if there are issues that Commissioners want to know
12 about that can test whether that -- take some things off the
13 table or maybe everything on the table we really do need to go
14 there.

15 CHAIRMAN HARVEY: Okay, thank you. We'll see you
16 tomorrow morning at 8:30. Thank you.

17 * * * * *

18 (The deliberation was suspended on May 27, 2008 at
19 5:30 p.m.)

20 * * * * *

21 (The deliberation resumed on May 28, 2008 at
22 8:36 a.m.)

23 * * * * *

24 CHAIRMAN HARVEY: All set, Rebecca. Good morning
25 everyone. Just before we start I'm going to try to explain

1 something I know nothing about, it's the computers. What we
2 think the problem was yesterday was we were trying to broadcast
3 on the Internet, and when all of you showed up and turned your
4 computers on, we sucked up all the broadband, whatever that is,
5 the capacity that's in the building.

6 So for -- this also works on the wireless system, and
7 what we've done is we really need to have you -- if you are
8 on-line, if you just want to record, you can turn off your
9 wireless that would be helpful.

10 If you need to be on-line we've somehow set up
11 another room that has another network on it that you can go to
12 and you can hear everything that's going on, you just won't be
13 able to see us, which is probably something that's not of
14 concern to you anyway. As long as you can hear what we have to
15 say.

16 I think if we can use the use of the -- let this
17 network have what it needs to operate, we will be able to
18 successfully broadcast to the rest of the world. The same goes
19 for our own computers, here. Make sure you turn off your
20 wireless because these will connect automatically if you don't.

21 Is that a sufficient explanation?

22 All right, with that said, I guess there's nothing
23 else. We're going to go all day if we need to, and we have no
24 restrictions on getting out of here tonight other than our own
25 capacity to be here.

1 We're going to start right out with the conservation
2 easement discussion we were engaged in yesterday afternoon, and
3 I think we're picking it up with the third party holder
4 discussion, and Ron has a couple of comments he'd like to make
5 before we get started to get us going here.

6 MR. KREISMAN: Good morning, commissioners. Two very
7 quick, one clarifying, one corrective comment.

8 In the discussion yesterday on the holder, there was
9 discussion about -- without putting words in Commissioners'
10 mouths, it appeared to me that regardless of who the holder
11 was, there was a desire for the third party backup holder to
12 have equal rights to be able to step into the shoes of the
13 holder, circumstances warranted.

14 I just wanted to clarify that it is my understanding
15 from record evidence it is both the intent of the current
16 holders, or the proposed holders, meaning the Forest Society
17 and TNC and the applicant, Plum Creek, that the third party
18 holder, regardless of who holds the -- has the exact same
19 rights as the holder and that their view is that the easement
20 documents provide that right now.

21 I think there is, in one of the documents, slight
22 question in one paragraph as to whether those rights are equal,
23 but that's really a small housekeeping deal.

24 So, point No. 1 is there's no record evidence
25 whatsoever that the intent of any of the parties involved in

1 that part of this for the third party holder to have any less
2 rights than the holder, although in a secondary way, and that
3 is what the language either does or attempts to do.

4 Secondly, I may -- regarding the third party holder
5 and the legacy easement, not the balance easement, I made a
6 misstatement yesterday that I wanted to correct.

7 The -- I said yesterday that there was no third party
8 holder for the legacy easement, and that's not entirely true.
9 For the limited purpose of assuring or enforcing the public
10 access that is given in the legacy easement, BPL is the third
11 party holder but BPL is not the general -- BPL is not -- there
12 is no third party holder in the legacy easement, for instance,
13 to enforce or monitor forestry terms that are contained in
14 there.

15 So I was mistaken and I apologize for saying there
16 was no third party holder in the legacy easement, but the third
17 party holder has a very limited -- narrow role in the legacy
18 easement, which is just to monitor and enforce the public
19 access easement terms that are contained in Paragraph 7. So I
20 wanted to correct that and I apologize.

21 That's all I have to say about third party holder
22 provisions other than responding to questions you have on
23 recommendations.

24 MR. WIGHT: Could I just ask you, in regards to the
25 easement itself, is the easement a document that is settled

1 between the holder and the landowner? Do we weigh into the
2 easement language? How does that work?

3 MR. KREISMAN: Our recommendation,
4 Commissioner Wight, is that in a number of cases you seek
5 amendments, my belief is they're limited amendments, but you
6 seek amendments to the terms of the balance and indirectly --
7 not indirectly, but in the same way to the legacy easement, and
8 the regulatory basis that we believe that that is justified --
9 and Jerry may want to comment more on that -- is that you have
10 four regulatory criteria that direct the need for wildlife or
11 recreation mitigation, for appropriate comparable conservation,
12 publicly beneficial balance.

13 So to the extent that the amendments that we are
14 proposing and we have to justify that that's what they're doing
15 as opposed to a wish list that, you know, Ron Kreisman may
16 suggest for a client who's negotiated another easement but has
17 nothing to do with this proceeding; but to the extent that the
18 changes we're proposing there is a nexus or a connection to the
19 changes that we're proposing fulfilling regulatory
20 requirements, our view is that the recommendations are very --
21 very much have the authority to propose changes in language.

22 Jerry, you may want to comment on this.

23 MR. REID: I would endorse what Ron has to say about
24 that. The easements are a very important part of the proposal,
25 and the Commission needs to find that they're adequate to deal

1 with what they purport to do in every way in their terms, in
2 substance and the procedures that are incorporated into that.
3 All of that is fair game, and as Ron has pointed out, there are
4 four different ways in which it connects to the governing
5 review criteria. They're all on the table for you.

6 MR. LAVERTY: Ron, could I ask a clarifying question?
7 Your description of the third party -- the rights of the third
8 party backup easement holder in the legacy easement is that as
9 proposed by Plum Creek, if I understood you correctly, that the
10 rights of the third party would extend only to insuring public
11 access provisions.

12 MR. KREISMAN: It's Paragraph 7 of the legacy
13 easement; that's right.

14 MR. LAVERTY: Now, what is the staff -- is the staff
15 proposing that that responsibility for the third party backup
16 holder be extended beyond just public access to include --

17 MR. KREISMAN: Absolutely. Going to
18 Commissioner Wight's question, the nexus of the regulatory
19 justifications, to the extent that the legacy easement isn't
20 viewed with -- or contains requirements, that's a better term,
21 that you believe are necessary for wildlife mitigation, for
22 instance, if you determine that there needs to be public
23 accountability to ensure that occurs and if you -- this is
24 going to somewhat hinge or significantly hinge on who you
25 determine will be the holder -- but if, for instance, the

1 government agency is BPL and they're a third party holder, our
2 recommendation is that the third party holder should be able to
3 ensure that that mitigation is achieved.

4 Part of the mitigation is certainly public access,
5 but that's not the whole story.

6 MR. LAVERTY: Right. I would hope that -- I would
7 expect that the third party backup holder rights would extend
8 to all the aspects of the easement.

9 I think one of the concerns that I have is -- and
10 I'll express it, now maybe this isn't the appropriate time --
11 that the forestry certification, the mechanism that was
12 established, seems to be rather cumbersome and quite frankly
13 rather suspect. I don't mean that with any -- I am a person --
14 I, in an academic world, we deal with accredited programs and
15 accredited agencies all the time.

16 I think it's kind of difficult when you've got an
17 accrediting agency has -- its interests are to maintain a
18 stable of accredited clients. Consequently, there's sort of an
19 adherent attempt to maintain certification perhaps in certain
20 instances where it should be challenged, and I think there's
21 information in the record that Plum Creek retained its
22 certification at a time when it was held in violation,
23 substantial violation, and a number of violations, of
24 particularly deer yard incursions.

25 What I'm concerned about here is not fiddling so much

1 with that mechanism, should the advisory committee be beefed
2 up, there may be some issues there, but I would feel much more
3 comfortable with that whole issue if the third party backup
4 easement holder had the option of interceding in that process.

5 MR. KREISMAN: I understand what you're saying,
6 Commissioner. I do want to say that I think the structure of
7 the legacy easement -- my guess is, I haven't asked, it's not
8 in the record exactly, also Tom Rumpf from TNC did comment on
9 it and would illuminate this -- that the structure, the
10 different structure the third party holder in the legacy
11 makes -- the limited structure in which they only have
12 enforcement for public access makes sense in light of
13 Mr. Rumpf's testimony that it was their attempt to transfer
14 their holdership of that easement to BPL in the fairly near
15 future.

16 So in that way what BPL would be doing is the limited
17 holder for public access in that interim period really makes
18 some sense that they would be protecting their public access
19 interests and ensuring it would, and then when it gets
20 transferred, they step into the role of full holdership so to
21 speak.

22 MR. LAVERTY: Beyond just the public access?

23 MR. KREISMAN: That isn't how it's explicitly
24 structured. There's not legal requirement of that now. That
25 goes to the recommendation we're making, but I'm not -- I don't

1 know that there was any intent to not have a government agency
2 having either full holder or full backup holder from the legacy
3 easement. It could have been more of a matter of just timing
4 based on Mr. Rumpf's testimony.

5 MR. LAVERTY: Ill think about it as we move forward.

6 MR. KREISMAN: I understand. I was really just
7 clarifying the --

8 MR. LAVERTY: Thank you.

9 CHAIRMAN HARVEY: Ron, if BPL were the holder of the
10 easement, or both easements, would that eliminate the need for
11 a third party?

12 MR. KREISMAN: Well, that is a decision on which --
13 you're asking my opinion, there's no record evidence of that
14 right now.

15 I am not aware, my knowledge is quite limited here,
16 Mr. Chair, I am not aware of an easement held by a State of
17 Maine agency in which there is a third party backup holder
18 although there may be.

19 To the extent that you have a third party backup
20 holder who is there because of the uncertainties in life of a
21 primary holder and what their status would be and the thought
22 is that the closest one gets the certainty is the State
23 governmental agency over the long run.

24 So it might somewhat be eliminated, but I think
25 that's a decision the Commission could explore. It may be

1 something that BPL would wish to comment on in the 30-day
2 period.

3 CHAIRMAN HARVEY: I would assume that in the case of
4 a public holder there's probably no backup. If something
5 happens to the State, then we've got bigger problems than the
6 easement.

7 MR. KREISMAN: I think I've exhausted my knowledge.

8 MR. LAVERTY: I need to be corrected here, because my
9 assumption is that if you have a State, or public entity, as
10 the easement holder, either as the primary holder or backup
11 easement holder, the public through existing -- and I guess
12 this is a question to Jerry as well as you -- existing
13 mechanism for public accountability would allow the public to,
14 through some means, to force the agency to do its job.

15 I'm not being very specific about it. But whereas a
16 private easement holder, those same kind of public
17 accountability mechanisms, citizens suit provisions -- I don't
18 want to raise the specter of legal suit -- but if BPL wasn't
19 fulfilling its responsibility, it seems to me that that either
20 through the legislature or perhaps direct means of redress
21 already available sort of administratively, that the agency
22 could be held accountable by the public.

23 So the mechanism of public accountability is much
24 more direct through a public entity as opposed to a private or
25 a quasi public entity; and therefore the need for a backup

1 holder is substantially less, not just because government in
2 theory exists in perpetuity, but because the accountability
3 mechanism is much more direct through a public agency as
4 opposed to a nonpublic agency.

5 MR. WIGHT: BPL holds many, many easements. Just
6 find out what their standard operating procedure is.

7 MR. LAVERTY: Right. That's not what I'm referring
8 to. I'm referring to 20 years from now, okay, BPL --
9 supposedly BPL, I mean, we know what can happen either by
10 omission or commission, the easement may not be living up to
11 public expectations.

12 How does the public ensure that the agency changes
13 its ways? It seems to me that you have a public agency with
14 legislative oversight, citizen access through the legislature,
15 as well as there may exist administratively means for the
16 citizens to directly challenge the agency actions, you've got a
17 much more direct link between public accountability, the
18 easement, and the public values that are going to be preserved
19 by the easement.

20 MR. KREISMAN: I think my role in this discussion is
21 close to attempting to explain factually what rights are given
22 right now to BPL as the third party holder in the balance
23 easement.

24 Then it's for you to decide -- weighing political,
25 legal, organizational issues -- whether you think that's an

1 issue or not. Let me just go through that explanation rather
2 than go beyond that.

3 Under the balance easement now, BPL is either given
4 or the intent was to give it all the rights of the holder.

5 Now, when one thinks of what those rights are -- and I'm going
6 to invite Jerry to step in here -- there are certain -- there
7 are certain rights to information flow that could be very
8 important, and there's certain rights to step in for
9 enforcement, there's certain rights for inspection, for access
10 to the land, so it's that whole basket of rights that one would
11 want to look at.

12 If you're concerned -- it sounds like you are --
13 about public accountability, a member of the public, if it were
14 a nonprofit private entity, unless the easement provided for
15 it, and it does not, could not walk up to the door of
16 organization X, whether it be the Forest Society of Maine or
17 others, and say I want to see all the documents, all the
18 inspections, et cetera, et cetera.

19 The public has limited rights of what kind of
20 documents it can access from a nonprofit. They don't go much
21 beyond certain IRS filings essentially.

22 So we can talk about -- you know, and if the
23 Commission's desire is for a public entity to be a third party
24 holder, not the primary holder, there could be terms that could
25 be examined as to ensuring those kinds of rights.

1 I think the easement is quite clear now that in terms
2 of access, in terms of inspection, in terms of enforcement the
3 rights are co-equal.

4 I think there is some uncertainty right now in my
5 mind as to what the rights of the public are to see documents
6 that may not be in BPL's ownership and how those would be
7 accessed.

8 There also are going to be, I can tell you, certain
9 business and proprietary issues that I think the Commission is
10 going to want to be sensitive to and respectful of.

11 MR. LAVERTY: No question.

12 MR. KREISMAN: So I think that's what I have to say
13 in terms of how it works.

14 Now, whether there are legal words that can be
15 changed that give that access -- give those equal rights and
16 whether that is sufficient from an organizational or political
17 point of view to cause the kind of active oversight that some
18 or all the Commissioners may want on a day-to-day,
19 month-to-month, or year-to-year basis, if they're really in
20 secondary status, I think is a different question, and there
21 may be other things that could be done, as we indicated in our
22 footnote, for that such as third party holder conducts reviews
23 of the role of the holder and whether they're doing it.

24 Jerry can think about how that all is enforced in the
25 context of the essentially contractual agreement between the

1 holder and third party and a grantor.

2 I think that's the range of issues to discuss.

3 MR. LAVERTY: Does this discussion also apply to the
4 legacy easement?

5 MR. KREISMAN: We believe it's -- our recommendation
6 is that it's the same issue.

7 CHAIRMAN HARVEY: Why don't --

8 MR. REID: Once again, I think I will endorse
9 everything that Ron said, which is not surprising me because he
10 and I have been working closely together on these issues, but
11 as he's alluded to, the Freedom of Access law applies directly
12 to BPL, so BPL has a role under these easements. Its entire
13 involvement would be subject to whatever paperwork is in its
14 possession would be subject to disclosure under the Freedom of
15 Access law.

16 That would not be true of a private holder
17 necessarily, although as Ron has correctly pointed out, there
18 may be ways within the terms of the easement to try to engineer
19 a solution to that by requiring any documentation that could
20 potentially be of public interest in the possession of the
21 private holder to be also provided to BPL, and in that way the
22 documents might be assured to be in the public realm.

23 Commissioner Laverty mentioned the prospect of a
24 citizen suit I think maybe just by way of example of a way that
25 the public might be able bring pressure to bear if BPL had an

1 official role under these easement to do its job.
 2 As he said, I actually don't think there's any
 3 potential for that under the current law. Nobody could sue BPL
 4 for failure to enforce the terms of the easement or to do its
 5 job, as he said it, under these easements. If the public
 6 perceives that it's not doing its job, its only recourse would
 7 be for the political process, which can be quite effective as
 8 you know, or sometimes it's not.

9 It would -- the political process would work in a
 10 different way, obviously, when you're dealing with BPL as
 11 opposed to a profit holder.

12 I think all the considerations have been pointed out
 13 and it's up to the Commission to weigh how to balance those.

14 CHAIRMAN HARVEY: Gwen.

15 MS. HILTON: I think -- it is my understanding,
 16 though, that the benefits of having a nonprofit who's primary
 17 mission is conservation are -- that there are benefits from
 18 that.

19 I guess I look at Baxter Park, how that park has
 20 reminded the same with the same goals even though I think over
 21 the years there's been a lot of discussion about how it's
 22 managed.

23 It is what it is as a result, I think, of it not
 24 being in the public realm; and I don't know if I've said that
 25 as well as I could.

1 I think the other thing for us to consider or to look
 2 at -- and I guess I would like to hear from those that are
 3 involved with land trusts on this -- is that a land trust or a
 4 private organization, because it has that primary mission of
 5 conservation values, will maintain those into the future our
 6 hope is, and of course having BPL as a backup as sort of a
 7 public check on that, but because the conservation organization
 8 whose mission it is to conserve land, their primary focus is
 9 that, they are less or not at all subject to -- this is
 10 probably not the right term -- but the public whim or public
 11 views of the time.

12 I guess for us in deciding what route to go here, the
 13 question is what we put into place today, is it something --
 14 with respect to the conservation, is it something that we want
 15 to maintain as we view it now into the future, how firmly do we
 16 believe that. Is that so important that we would prefer to
 17 maybe see a conservation organization take over the easement,
 18 the primary holder as BPL as the backup.

19 I don't know if I said that very well but I hope you
 20 get the general gist.

21 MR. LAVERTY: I understand your point. I think that
 22 perhaps Baxter State Park is not the appropriate example
 23 because the authority and its public characteristics and there
 24 is -- the very purpose of providing some kind of public
 25 accountability. I appreciate your point.

1 CHAIRMAN HARVEY: Perhaps to push a ball downhill a
 2 little bit is to suggest that the -- a couple of things. One,
 3 that we -- we potentially -- we basically at this point agree
 4 with the idea that there be a common easement holder, and that
 5 secondly that that easement holder be a public entity, in this
 6 case, the Bureau of Public Lands.

7 Of course, what happens after this discussion,
 8 obviously, this is going out for comment. None of our
 9 decisions today are necessarily binding on ourselves even, so
 10 it might be -- and as Steve pointed out yesterday, it might be
 11 nice to hear from perhaps -- this gives us a chance to hear
 12 from all the parties at play here on this issue and might
 13 provide us with a perspective we hadn't considered ourselves,
 14 both ourselves and the staff.

15 So just a suggestion on how to move this along would
 16 be -- do you have any -- I don't think that staff has any
 17 problems with that.

18 MR. REID: Let me just say, I think that what you
 19 said is a very important point, something I tried to suggest
 20 yesterday, that the notice and comment process here is not a
 21 mere formality, it's not an afterthought; it's a very important
 22 part of the process, and this is an example of where it's
 23 especially true where the Commission is making a decision based
 24 on information where they feel like you may be not as complete
 25 as you would like it to be and you're very interested in

1 hearing from some of the players on where they stand on some of
 2 these ideas we've been deliberating on.

3 What you're doing now is not making a final decision;
 4 you're trying to put together a coherent set of amendments that
 5 you think will satisfy governing review criteria.

6 This is one element of that, and we're going to put
 7 it out for comment as a proposal for everyone to comment on,
 8 and you're going to get some interesting responses that will
 9 inform where you ultimately end up.

10 I don't want the Commission to feel undue pressure
 11 here to get it precisely right at this stage because I don't
 12 think that's realistic. Let's make the best decision we can
 13 based on the record we have in front of us.

14 MR. LAVERTY: Thank you, Jerry. I agree with
 15 Commissioner Harvey.

16 I'm still compelled to say that I think our debate
 17 here, it should not be looked at as any way reflecting
 18 negatively on Plum Creek's proposal or the proposed easement
 19 holders.

20 To me this is sort of a larger public policy question
 21 that will set precedent for other types of easements,
 22 regulatory easements.

23 I don't want to imply that Plum Creek has somehow
 24 attempted to shirk its responsibility, you know, public due
 25 diligence or anything like that or that any of the proposed

1 easement holders are somehow not capable of fulfilling the
2 terms of the easement.

3 But I do think it's an important issue in terms of
4 public accountability, public policy, and the precedent set in
5 the future, so I think it's very important in the comment
6 period to get some public robust comments on this issue.

7 MR. KREISMAN: Mr. Chair, the only thing from a
8 factual point of view that I think staff would add to that is
9 really, without taking a position, I think there is an eminent
10 sense of what we're doing is really contained in Footnote 74.

11 I want to restate of what I said yesterday of the
12 limits of record evidence that there is right now, and what I
13 mean by that is that to the extent the Commission at this stage
14 in the proceeding, as both you, Mr. Chair, and Jerry just
15 pointed out, adopting a recommendation for one easement holder.

16 You have record evidence that on -- one easement
17 holder for both easements. You have very limited record
18 evidence that one could argue almost leaves you no choice --
19 although I think this is pushing it -- but almost leaves you no
20 choice but to go with this approach for now because you have
21 record evidence on the balance that says FSM should be the
22 holder.

23 You have record evidence on the legacy easement,
24 which, lest I remind everyone, TNC is paying for, that it would
25 be the holder, and if not it, then BPL; and those two forces

1 haven't come together yet in the record.

2 I think there are other positions you could take, but
3 I don't think this -- I think this is one that is not in any
4 way inconsistent with the record you have before you right now.

5 This is some of the reasons that here in one of the
6 few places you'll note in this 126-page document the staff
7 provided you with some alternatives simply to engender this
8 type of a discussion that's taking place.

9 CHAIRMAN HARVEY: Well, is there any discomfort with
10 proceeding as I kind of outlined? I don't think Ron was
11 arguing against me.

12 Emphasizing Jerry's comment that this is certainly --
13 we're keeping an open mind even though we're kind of throwing
14 out this for discussion, a starting point for some more
15 discussion.

16 Okay, I don't see any major dissent so I think we
17 can -- where would you like to go from here, Ron?

18 MR. KREISMAN: Having quickly violated the suggestion
19 that I offered to the Commission at the end of yesterday, which
20 is you tell me where you want to go and I quickly jumped in
21 with comments on the third party -- some questions I want to go
22 back to.

23 CHAIRMAN HARVEY: Just -- could I just make one other
24 comment. You don't need to include this in your
25 recommendation, but I would hope that some of the comments we

1 get, the feedback we get, will also address the question of
2 third party, that would address the third party question as
3 well.

4 MR. KREISMAN: I understood what you were saying,
5 Mr. Chair, that this whole package is open for comment.

6 CHAIRMAN HARVEY: And whether or not we had a public
7 entity as the holder, there's a third party --

8 MR. KREISMAN: Right, I -- so I guess I'm going to
9 attempt to retreat to where I left it yesterday before offering
10 those errors and omissions at the end of the day on what would
11 the Commission like to discuss now that we've gotten through at
12 least a major chunk of the overall architecture.

13 MS. HILTON: I guess, I've been reading through this.
14 On Page 82 I'd like to talk about the uses that are being
15 allowed in your recommendation, what you're recommending there.

16 It appears to me that the overall intent here,
17 particularly with construction material removal and septic
18 fields, that what you're recommending that those uses be
19 allowed but that they be allowed for use by the local community
20 or that there is a connection between the -- the extent of
21 those activities and the conservation land and how much the
22 need is in the local community and development areas?

23 MR. KREISMAN: I think that's correct. I think we're
24 suggestion two limitations and not one, Commissioner Hilton.

25 One you just noted that it be tightened down so

1 that -- let me just take one slight step up.

2 Our view is that these uses, to a limited extent, are
3 not inconsistent with the purpose of the easement, okay, that
4 they are necessary -- they're not inconsistent so long as two
5 things happen: No. 1, they're very much tied to the needs of
6 the local community and you don't have an easement in which you
7 have gravel extraction that is supporting Williams Construction
8 in Hallowell, Maine, okay, down the street from where I live.
9 That's number one. That doesn't strike us as a publicly
10 beneficial balance as Evan mentioned yesterday.

11 But secondly that certain of these uses -- and here I
12 would note construction material and water extraction, because
13 I think we thought for the first limitation we're proposing,
14 construction material removal, septic spreading, and water
15 extraction are really all three of a package, so I would
16 include.

17 For two of those that are limited by the resource of
18 the location, meaning a gravel pit is where -- a gravel find is
19 where a gravel find is and water is where water is, to some
20 extent, that we're suggesting a second restriction which is
21 found on Page 82 in the second paragraph in the recommendation:
22 Require sufficient holder notice for pre removal. For any
23 proposed removal the holder believes would adversely impact
24 conservation values, require landowner showing to holder of no
25 reasonable alternative location for obtaining needed materials.

1 So what we're saying is that if the holder gets
2 notice where there will be gravel extraction -- and there will
3 probably be a size limitation on that, I'm not sure if half an
4 acre makes a difference -- and if the holder determines that
5 there isn't adverse impact on conversation values for whatever
6 reason, unique area, natural area, that there be a showing that
7 you've really got to do gravel extraction where that resource
8 is located right there and that you can't meet your quota, so
9 to speak, by going someplace else.

10 This is a very common requirement in the Natural
11 Resources Protection Act, in the cite law. What we're
12 recognizing here, unlike septic fields -- we made a different
13 recommendation there -- but for certain very site-dependent
14 locations -- water extraction, the two that are listed here,
15 water extraction, construction materials -- where you may have
16 limited choices as to where those resources are, that there
17 really be a showing that you try hard to find another area as
18 well as it being limited to just serving local needs and not
19 Hallowell, Maine.

20 MS. HILTON: It is possible, along those lines, that
21 any of those uses could actually occur in the development area?
22 Do we allow for that? In other words, what about gravel and
23 would we have a preference for that?

24 MR. KREISMAN: Aga, do you want to comment on that?
25 We talked about this.

1 MS. PINETTE: Yeah, I don't think any of these uses
2 would be prohibited, per say, from occurring in development
3 areas.

4 Whether as part of this criterion there should be a
5 preference or, you know, a determination that no reasonable
6 alternative also involves looking outside of the easement area
7 and in development areas is something that we can look into
8 here if that is something that you like.

9 MS. HILTON: I think I would like that consideration.
10 I haven't given as much thought to it perhaps as you have.

11 MR. KREISMAN: I think the wording, though, would
12 have to be careful, because if I were Plum Creek, I would be
13 nervous about being forced to put -- go for a gravel pit in the
14 middle of the community center on the South Brassua peninsula
15 because I would want to very carefully look at the wording
16 there because, you know, we believe that these development
17 zones, as you can tell, are in the right place and the right
18 scale.

19 To the extent that we've expressed sensitivity under
20 the freezing of protection zones so that Plum Creek knows what
21 they're getting -- remember, they're giving up all this
22 conservation if that's what's going to happen at the front-end
23 before a single development goes forward.

24 There is some legitimate expectation in my view of
25 benefit of the bargain, so to speak, in which they're not

1 having to defend not putting a gravel pit in the middle of what
2 they thought was a development area.

3 I understand your point, I respect where you're
4 trying to go, but I think there needs to be some limits and
5 cautions there.

6 MS. HILTON: I agree with you there. The thought is
7 that some of these development areas are very large, and if
8 there is indeed gravel -- I think it's something that should --
9 should be considered in some way or not forgotten.

10 With respect to water extraction, are you, in your
11 recommendation, not recommending that commercial or bottled
12 water be -- are you recommending that we strike that provision
13 of the proposal? In other words, are you recommending that we
14 do allow commercial bottled water? I didn't think you were.

15 MR. KREISMAN: No, we're not touching that. That
16 was -- I'm going on memory here, but there will have to be
17 some -- I believe it may have been corrected in the latest
18 version that came in in October, so I may be wrong on this --
19 but there was difference on what was permitted between the
20 balance and the legacy easement, but Plum Creek testified in
21 January that their intent was what you see at the top of
22 Page 83 governed for the easement, so we're not suggesting that
23 that change.

24 MS. HILTON: Okay. All right. I guess that's --
25 I'll let somebody else jump in here.

1 MR. WIGHT: I want to weigh in on septic. A small
2 town municipal officials are experts on septic and the terms
3 apply thereto. Septic field is the field that you hook to your
4 septic tank for evaporation. I think here you're talking about
5 septage spreading.

6 MR. KREISMAN: Yes.

7 MR. WIGHT: And that probably should be --

8 MR. KREISMAN: It was fields in which it would be
9 spread, but I'm painfully familiar with the other term, too
10 familiar.

11 MR. WIGHT: The product or the resource, one or the
12 other, it's all septage.

13 The other thing is that that too requires
14 site-specific identification. In BEP areas it's very difficult
15 to locate in some cases, particularly in the mountains, soil
16 types that are correct for septage spreading.

17 I think when you're thinking about site-specific, you
18 should also keep that in the fold.

19 MR. KREISMAN: Okay, I understand. Just to tell you,
20 our judgment there, Commissioner Wight, and your recommendation
21 or your request to change, our judgment looking at broadly at
22 the type of soil types that we expect to find in this 360,000
23 acres in some reasonable proximity and the limits that they're
24 putting on septage spreading suggested there's a lot of room to
25 maneuver, but I don't think your language really changes that.

1 MR. SCHAEFER: Just -- I think this is just a simple
2 thing, but on the first construction material removal, the
3 first sentence on the proposal is allow for forest management
4 activities and road maintenance. I assume by not addressing it
5 in the second column that that is allowed?

6 MR. KREISMAN: Yes, we were not proposing to change
7 in any way the construction materials removal. The open
8 endedness of the construction material removal, that's tied to
9 forest practices and that could be additional road building or
10 road repair, repairing a culvert that needs gravel as opposed
11 to --.

12 The issue in the testimony was really focused on the
13 provisions that were fairly open ended for other uses.

14 MS. KURTZ: Ron, is there a sense that the definition
15 of nearby communities or there should be a list of nearby
16 communities?

17 MR. KREISMAN: Yes, there is that sense. We agree
18 with you, Commissioner Kurtz. That's why we had suggested that
19 attached to the easement we would -- our recommendation is that
20 you authorize staff to develop a map and attach it to the
21 easement so that it's not a qualitative term but it's really
22 mapped in terms of a census statistical area probably.

23 Evan, you can comment on that.

24 MR. RICHERT: We thought in terms of a very local
25 labor market area. Those are well established boundaries in

1 the state and would be representative of the communities that
2 are tied together by some kind of economic interconnection,
3 let's say, in Greenville or to Jackman, and those would become
4 very finite number of communities.

5 MS. KURTZ: I am not as familiar, thankfully, with
6 septic or septage spreading as --

7 MR. WIGHT: Run for selectman.

8 MS. KURTZ: No, thank you. Are there regulations, is
9 it already within this that the holder would be notified of
10 septage spreading or is that --?

11 MR. KREISMAN: Let me look at the easement.

12 MR. WIGHT: The area would require a permit I would
13 imagine.

14 CHAIRMAN HARVEY: This can't be done without a DEP
15 permit.

16 MR. KREISMAN: Let me read you the provision. The
17 pages of the balance easement are not numbered, but it's under
18 Section I paragraph one, two, three -- five. This is the
19 balance easement now.

20 "Septic field activities means up to 100 acres at any
21 given time of areas where septic tank waste generated from
22 surrounding communities, including newly developed areas, are
23 disposed of from spreading the land, provided, however, that
24 grantor shall minimize the impact on the conservation values of
25 the conservation easement to the extent reasonably practical

1 when siting any such septage field activity."

2 This is what you're getting at. Holder approval of
3 the siting shall be required, which consent will not be
4 unreasonably held.

5 This is the one place and hence the difference of the
6 language of our recommendations where holder approval -- not
7 just holder notice -- but holder approval is required, and
8 we're not recommending a change unless the language that
9 Commissioner Wight was proposing, that we bring in the same
10 language that I understood him saying for construction
11 materials and water extraction, be imposed.

12 In these activities right now on this list, this is
13 the singular and strongest role for the holder. The other
14 roles for the holder in other activities are holder notice,
15 holder opportunity to comment, and that's as far as they go.

16 MR. LAVERTY: I -- I'm pleased to see that the
17 terminology relating to don't adversely affect easement values,
18 and again the way I am thinking about this goes -- it's a
19 continuing thread of public accountability in that the
20 applicant is requesting extraordinary development opportunities
21 and in a sense compensation or a balance of that is offering
22 extraordinary conservation opportunities, and therefore this is
23 a regulatory easement and the public values associated with --
24 the public benefits associated with these easements must be
25 maintained.

1 Initially as I approach this whole idea of what
2 should be allowed within the easement, I think I -- and I think
3 many other people, at least as I gleaned from the testimony at
4 the hearing -- were looking at this as they're already pretty
5 much management zones out there that the area that's
6 encompassed by the easement, and therefore what kind of
7 activities are allowed, and should we modify those in some way.

8 What emanated from the existing activities that are
9 allowed in management zones, the logic for allowing those
10 activities, while did include sort of a public benefit wasn't
11 directly related to the public benefit notion.

12 I looked at this as sort of deductively -- not so
13 much as emanating -- but what's allowed in the management zone
14 and how we tinker with those; but looking at it from another
15 direction, and that is in terms of the important public values
16 that are represented here and the need for a public
17 accountability, it seems to me that in terms of the activities
18 we allow, the easement holder in some fashion -- and again I'm
19 not trying to wordsmith this at all -- in some fashion needs to
20 be able to comment -- at a minimum to comment on the extent to
21 which the proposed, the specific activity proposed, how it
22 affects or does not affect the conservation values, the values
23 of the conservation easement.

24 So I, in looking at this, from the public
25 accountability, public benefit, as opposed to what's in a

1 management zone and should we -- how do we tinker with those, I
2 don't know if that's making any sense. This is sort of how I
3 put my head around this.

4 So I think that, again, it's the accountability, not
5 so much what's allowed and what's not allowed, but I think the
6 easement holder needs to be able to enter the dialogue and say
7 to what extent is this specific activity consistent with or
8 enhances or adversely impacts the values that are contained
9 within the conservation easement.

10 MR. WIGHT: I think you're right, Ed. I think the
11 primary job of the easement holder is to act as the steward and
12 ensure that the terms of the easement are upheld, and that's
13 particularly important in this stewardship activity.

14 CHAIRMAN HARVEY: Okay. Any other questions? Are we
15 satisfied on septic field and how that's going to be handled?

16 MS. HILTON: Wind?

17 CHAIRMAN HARVEY: You've got a question on wind
18 power?

19 MS. HILTON: Yes. What amount -- what are we
20 allowing here, or what are we recommending here with respect to
21 wind power? Are we recommending that, you know, any size wind
22 farm is okay within the easement areas?

23 MR. KREISMAN: No, I think we're recommending --
24 well, we're not predetermining that question is how I would
25 answer it.

1 What staff is recommending here is that the question
2 of not whether -- we're not recommending that wind power be
3 prohibited. That's point No. 1.

4 What we are recommending in addition is that the
5 judgment from the holder's point of view -- and remember, there
6 is a statutory independent role that LURC will play which has
7 changed some by law that just passed that may or may not be
8 worth some discussion with Jerry and me in a backup holder
9 role -- but -- so we're neither recommending nor do we have any
10 authority to recommend change in whatever statutory role you
11 would play outside of the easement, okay.

12 A wind power facility will still have to come before
13 LURC for approval. The terms and conditions of that can change
14 somewhat from the law.

15 What we are recommending in terms of consistency with
16 the purposes of the easement is that wind power be put through
17 the same screen, shall we say, pushed through the same screen
18 as you're pushing through some other things here which is does
19 a particular project of a certain size, location, visibility,
20 in a particular area in the judgment of the holder, is it
21 consistent with the conservation values that are listed in the
22 easement, and that's a decision in the context of the easement
23 that the holder would have to make.

24 Now, you could have a situation where the holder,
25 whomever you decide that should be, says, no problem,

1 consistent with the conservation values in the easement, and
2 this could come before LURC, and that decision is in no way
3 binding on you.

4 You then decide from a permitting point of view as if
5 there were no easement, or you may be informed by the judgment
6 in the easement or not as you decide whether that wind facility
7 should go forward.

8 So you are not making -- in what you decide here, you
9 are not making a praetorian decision that's in any way
10 affecting or waiving regulatory authority. That's how I
11 interpreted it.

12 Jerry you should weigh in here.

13 MR. REID: The new statute on wind power I haven't
14 totally committed to memory, but it does, essentially, three
15 things: It maps the state and makes certain areas eligible for
16 preferred treatment, so to speak, under the new statute; it
17 sets up an expedited process for approval of applications for
18 projects within that mapped area; and thirdly, it changes the
19 substantive criteria that you will apply to applications for
20 projects in that area, and it makes them easier for you to
21 approve.

22 So in essence it removes some of your discretion not
23 to approve projects in the mapped area. So one way of looking
24 at the significance of that statute in the context of the
25 current discussion is if you're concerned that a wind project

1 within an easement area might be inconsistent with conversation
2 values that are important to you in that easement, it's
3 important that you address that within the terms of the
4 easement because this may be your best opportunity to control
5 the outcome.

6 You're going to have less discretion to do that under
7 the statute later. The easement is silent on the issue.

8 MR. KREISMAN: Or alternatively, if you don't want to
9 a priori right now in perpetuity, we're prepared to take any
10 wind power development off the table, you don't make a judgment
11 that eliminates wind and you set up a set of criteria, whether
12 it's this or whatever, that the easement holder would have to
13 apply in addition to what would be in whatever statute is in
14 effect at the time.

15 MS. HILTON: I think if we decided it is appropriate,
16 I think we would have to give the holder, easement holder, some
17 guidance and there would need to be some criteria.

18 MR. KREISMAN: What we're suggesting here,
19 Commissioner Hilton, is not that you make a determination that
20 wind power is appropriate.

21 We're suggesting that you make a determination that
22 wind power may be appropriate and that vis-a-vis the easement
23 interaction with that question, this language or something
24 roughly close to it be inserted.

25 You're not making a decision that -- you're really

1 making three decisions in our recommendation, and I want to
 2 kind of break it apart.
 3 No. 1 is that wind power is not, per se -- wind power
 4 is not prohibited for all time; No. 2, wind power may be
 5 appropriate depending on the location, the scale, what may be
 6 in place a hundred years from now for wind turbines, you know,
 7 who knows; and No. 3, that if it is appropriate, the holder's
 8 role is to determine whether it's consistent with the
 9 conservation balance values which is what I think is in the
 10 recommendation.

11 MS. HILTON: Okay, I'm comfortable with that.
 12 MR. WIGHT: And I would add, it would be foolish to
 13 say that it was in no way possible holding future generations
 14 to that in perpetuity.

15 I think it's best to take things on a case-by-case
 16 basis based on technology available at the time and concerns of
 17 the community and with the understanding that the holder has to
 18 agree to it.

19 MR. LAVERTY: I absolutely agree with that. It makes
 20 me think beyond the activities listed. We've got in a sense a
 21 laundry list. I wouldn't want to open this up to all the
 22 activities in the world.

23 If some activity that we don't even contemplate
 24 arises as critical to public interest or private enterprise in
 25 the future, it seems to me this is for perpetuity. Do we need

1 an elastic clause here, Ron?

2 MR. KREISMAN: My recommendation is that when we get
 3 to the wording of the amendments, when amendments are allowed,
 4 you look very carefully at that and you give us instructions,
 5 to the best you're able, as to the kind of future
 6 considerations you would like -- the kind of room, breadth you
 7 would like, and that discussion I can predict is going to cut
 8 in two ways.

9 On one hand you want to be able to address what you
 10 and Commissioner Wight just discussed because times are
 11 changing.

12 On the other hand you don't want it so open ended
 13 that the very clear mitigation and other values that you want
 14 here can be upended 20 years from now, 30 years from now.
 15 That's the tension in that.

16 But it's really the amendment place that is where my
 17 view -- Jerry may obviously have different views as to where
 18 this, you know, what are we doing here 30 years, 40 years, 50
 19 years from now.

20 Jerry and I have said repeatedly, in perpetuity is a
 21 really long time.

22 MR. SCHAEFER: Just on that note, in the discussions
 23 we've had with easements and this is a word I don't want
 24 brought up again, I just want to be recognized, is eminent
 25 domain and it trumps everything. I'll leave it at that. It

1 did come up in discussion, though. If there's a severe public
 2 need, easements go out the window.

3 CHAIRMAN HARVEY: Are you at this point satisfied,
 4 Ron?

5 MR. KREISMAN: I'm satisfied if you are. I'm really
 6 in a responsive capacity.

7 CHAIRMAN HARVEY: Are we satisfied at this point?
 8 You're comfortable with the discussion at this point?

9 MR. LAVERTY: I'm comfortable in concept but, I mean,
 10 the devil's in the details here. I think Ron --

11 Mr. Kreisman -- makes an important point, and that is that you
 12 need to make sure that this isn't so open ended that it
 13 disrupts the conservation balance -- it seems to allow
 14 flexibility and how we strike that balance.

15 CHAIRMAN HARVEY: I think that --

16 MR. LAVERTY: What's necessary and proper, I mean,
 17 all of a sudden --

18 MR. KREISMAN: I'll give you an example --

19 MR. LAVERTY: -- a loophole that you could drive a
 20 tractor trailer truck through in terms of federal power.

21 MR. KREISMAN: If you read the renewable energy
 22 literature, you will see that there's huge efforts to figure
 23 out commercially viable and non disruptive ways to tap into
 24 geothermal power.

25 You may face a situation in this area 30 years from

1 now where geothermal power is very efficiently tapped and very
 2 nonintrusive and could provide enough power, both heating and
 3 running turbines in non easement areas, that would power this
 4 whole area.

5 That's the kind of thing that -- I'm not saying it
 6 should be approved or not approved, but in my personal way of
 7 thinking, you would want not so locked down here and not
 8 subject with respect to Commissioner Schaeffer by eminent
 9 domain because it may not be a State interest that wants to do
 10 it; it may be a private party that wants to do it, and you
 11 could have a very self sustained clean energy situation with
 12 absolutely no impact or, you know, totally de minimis impact.

13 So that's where this amendment law becomes incredibly
 14 critical.

15 MR. LAVERTY: I think in concept I absolutely buy
 16 what you're saying. I go for it.

17 The issue is with specific language. I think you're
 18 absolutely right. I think the amendment process, when we get
 19 to that point, we need to be cognizant of the need to allow
 20 these types of amendments.

21 Again, I think that how you strike this balance is
 22 going to be absolutely critical.

23 CHAIRMAN HARVEY: Somewhere in here I think there's a
 24 recommendation that we direct the staff to write -- to review
 25 all of that, including this --

1 MR. KREISMAN: We did flag --
 2 CHAIRMAN HARVEY: -- as a sum -- I think it's close
 3 to the end there somewhere, Ron.
 4 MR. KREISMAN: We did flag specifically this
 5 amendment language -- thank you, Aga -- on Page 92.
 6 CHAIRMAN HARVEY: I think it would be important that
 7 this be part of whatever we send out for public comment.
 8 I think we need to hear from everybody about whether
 9 they share our concerns about what goes on in the future here.
 10 I'm sure we will.
 11 MR. LAVERTY: This is a major public policy, it seems
 12 to me, major public policy implications and I feel -- I feel a
 13 little uncomfortable about the seven of us making this decision
 14 in isolation. I think it really deserves debate.
 15 CHAIRMAN HARVEY: It may be a legislative issue in
 16 the long haul.
 17 MR. KREISMAN: There was one point on the bottom of
 18 Page 83 that I wanted to draw your attention to, not really
 19 because where it's listed but as one of the reasons for why we
 20 think there should be one holder, why we're recommending, and
 21 why these two easements to be managed as one, and that's the
 22 last paragraph under the recommendations. This is really just
 23 by way of example.
 24 We're recommending that you grant rights to BPL for
 25 trail building, hut building, campgrounds, and other related

1 activities, and that language would have to be worked on.
 2 It is more than entirely possible; it is likely that
 3 BPL, working with Plum Creek, is going to want to establish
 4 trails that are going to cross between the balance easement and
 5 the legacy easement. They're not going to get to the boundary
 6 of the legacy easement and then loop back.
 7 If you look at the east side of the lake, for
 8 instance, in the highlands, you can have a trail head that
 9 might be at the Lily Bay Road and that would walk up to Lily
 10 Bay Mountain, Baker Mountain, whatever.
 11 That's going to cross through most likely both the
 12 balance easement and the legacy easement. So the thought of
 13 having two different easement holders, different terms, makes
 14 no sense to us whatsoever. It should be an integrated holistic
 15 piece.
 16 That doesn't mean there can't be two easements; but
 17 it makes those kinds of cross boundary issues here.
 18 So I just wanted to point that out, it's a very
 19 particular example that's really the kind of thing that's
 20 emanating in the earlier recommendation you made.
 21 CHAIRMAN HARVEY: Okay. I think we need to talk a
 22 little bit about the subdivision parcelization issue where they
 23 made some substantive recommendations, which are substantially
 24 different, perhaps, from what the proposal was having to do
 25 with limiting the number of subdivisions that would be allowed

1 in the balance and legacy easement areas and essentially
 2 combined them into one number, one range of numbers, and they
 3 left it for us to decide what that number ought to be.
 4 MR. LAVERTY: Could you give us some context for this
 5 recommendation?
 6 MR. KREISMAN: Sure. And here's another place that I
 7 think we're dealing with limited record evidence, and that's
 8 really spelled out in the footnote.
 9 If the Commission accepts the recommendation that
 10 this easement -- these two easements be essentially handled as
 11 a whole, the context is how many subdivisions can occur before
 12 integrated -- the kind of integrated landscape management that
 13 you heard about from IF & W, for instance, and MNAP and some of
 14 the parties becomes next to impossible because you have 25
 15 potential landowners of 5,000 acres or more with very competing
 16 needs, competing personalities, competing -- attendance to
 17 meeting schedules, et cetera, et cetera.
 18 There was a fair amount of testimony, including
 19 testimony from Plum Creek witnesses, concerned about
 20 parcelization and the effects of parcelization on forest
 21 practices, on impacting the forest wood supply, and what would
 22 be possible.
 23 Plum Creek's approach in the easement was to deal
 24 with that by prohibiting any parcelizations of 5,000 acres or
 25 less. So the minimum that could be subdivided here was 5,000

1 acres.
 2 So recommendation No. 1 here, which is embedded in
 3 this, which really doesn't go to the number, is that you break
 4 down this now artificial boundary -- not artificial because of
 5 Plum Creek, but artificial if you accept the staff/consultant
 6 recommendation for managing these two easements together -- in
 7 that the balance easement allows five subdivisions and the
 8 legacy easement allows 20 subdivisions and acknowledge that
 9 there may be subdivisions that make perfect sense across
 10 boundaries because of a particular market condition.
 11 So regardless of how many numbers you choose, and you
 12 could choose 25, saying that there can be five within the
 13 balance easement but it's got to stop at the balance easement
 14 border, even if there are 100 acres within the legacy that a
 15 particular buyer wants, it doesn't make any sense to us.
 16 So then you get to the number -- the question of how
 17 many subdivisions across this 360,000-acre land mass is
 18 appropriate, and I think there are two competing considerations
 19 here, or maybe three.
 20 One is that there is real economic business value to
 21 the landowner in being able to subdivide and sell off pieces of
 22 property for business market reasons, and that's a
 23 consideration that I think has to be factored into this.
 24 We have no record evidence right now as to where that
 25 number is and why and what justifies that number. That's

1 consideration No. 1.
 2 Consideration No. 2 is integrated landscape
 3 management, and our view is that up to ten subdivisions in that
 4 range if it's subdivided is not going to threaten the type of
 5 integrated wildlife, somewhat recreation land management that
 6 we're talking about. As we noted in this footnote you'll still
 7 have some very large parcels in this.

8 So our recommendation for that would go up to ten
 9 parcels, maybe more, for that kind of integrated land
 10 management.

11 I think the issue becomes whether it's a private
 12 holder or a public holder how many different competing, or not
 13 competing, very consistent landowners can be dealt with by the
 14 holder in terms of monitoring, in terms of enforcement, in
 15 terms of this management advisory team, et cetera, et cetera,
 16 and still have a functioning integrated system.

17 Plum Creek attempts to address that question in --
 18 and if you look at Page 80, which discusses the terms of
 19 stewardship funding, the fourth bullet -- and whether this
 20 amount is correct or incorrect, I think one should focus on the
 21 concept -- proposes an additional contribution in recognition
 22 of more than one landowner.

23 So if there's more than one landowner, the
 24 Stewardship Fund would be increased to take account of the
 25 additional obligations that it would face.

1 I don't think we have record evidence right now of
 2 whether that \$5,000 is sufficient either in the balance
 3 easement or certainly I think we do have record evidence from
 4 TNC that that and other parts of the Stewardship Fund are not
 5 sufficient if it's a 360,000-acre parcel.

6 So that's as far as we're able to go I think. In
 7 terms of sticking with the record and what is a manageable
 8 number of different landowners each with their own management
 9 plan, each with separate abilities, I think you can imagine as
 10 we said in the footnote under ten landowners in which four are
 11 conservation owners and they're not involved in forestry or any
 12 other activities, and in that case having ten parcels to manage
 13 wouldn't present any greater problem than five.

14 I think you can imagine a situation if you have ten
 15 landowners who are all involved in very different cutting
 16 practices where it may or may not. So that's about the limits,
 17 I think, Mr. Chair, of what we can glean from record evidence
 18 here.

19 MS. HILTON: I think that all of what you say makes a
 20 lot of sense, and I am wondering if we might not want to, to
 21 kind of put this recommendation out the way you have it with a
 22 limit to no more than five to ten subdivisions and see what
 23 kind of feedback we get before we attempt to try to pick a
 24 number.

25 MR. LAVERTY: I think that may be the way to handle

1 this. I guess -- this is under recommendations regarding
 2 balance easement.

3 Now, I know we're maintaining the distinction between
 4 the balance easement and the legacy easement for a number of
 5 reasons, not the least of which it appears to be sort of
 6 instrumental legal purposes which allow sale of the legacy
 7 easement and certain tax advantages to Plum Creek realized from
 8 that and the ability of the easement holder who is making that
 9 purchase to access public funds, legacy funds; but what we're
 10 talking about here is, in terms of activities, as you pointed
 11 out with regard to trails is in a sense an artificial
 12 distinction I think.

13 And so are we talking about this recommendation as
 14 applying solely to the balance easement and when we get to the
 15 legacy easement we're going to have another recommendation?
 16 MR. KREISMAN: Right, I understand your question.
 17 Turn, Commissioner Laverty, to Page 101. This is the
 18 discussion of the same issue in the legacy easement.

19 MR. LAVERTY: Would it be appropriate to deal with
 20 this issue now as it applies to both the legacy and the balance
 21 easement?

22 MR. KREISMAN: Yes, I think it would. My
 23 introductory comments were suggesting that without being
 24 inappropriately directive.

25 But we say there for the balance and legacy easement

1 combined, limit no more than five to ten subdivisions.
 2 Commission decide the exact number of no less than 5,000 acres.
 3 Subdivision boundaries can cross over the boundaries of the two
 4 easements.

5 And then the same footnote.

6 MR. LAVERTY: Shouldn't this be the recommendation
 7 that is sent out as opposed to the one on Page 84 of --

8 CHAIRMAN HARVEY: I think that they both say the same
 9 thing.

10 MR. LAVERTY: Yeah, I just -- it's a little
 11 confusing, I think, to maintaining this distinction. There may
 12 be some importance to maintaining this distinction.

13 CHAIRMAN HARVEY: What, between the balance and the
 14 legacy?

15 MR. LAVERTY: Yes.

16 CHAIRMAN HARVEY: I think the distinction is because
 17 of our --

18 MR. LAVERTY: Right. In terms of --

19 MR. KREISMAN: I understand. I think your issue
 20 could be put out to comment.

21 The record does not suggest competing considerations
 22 that may surface in this 30-day period, as Jerry would remind
 23 you, as to why allowing the holder -- the landowner to reach
 24 across, for instance, the balance boundaries and bring in some
 25 land to sell off in the legacy would either jeopardize certain

1 tax or other financial interests that they have or of the
 2 holder.
 3 It's not something that's arisen, but it's something
 4 that may come up. So I take your point.
 5 MR. LAVERTY: And I would just as soon not explore
 6 those unless they're immediately relevant to our regulatory
 7 decisions.
 8 MR. WRIGHT: Ron, could I just ask, while we're on
 9 this subject about stewardship funding. We have three-quarters
 10 of a million dollars here, and it's to be put against, what,
 11 just 91,000 acres?
 12 MR. KREISMAN: That's right, Commissioner Wight. It
 13 was proposed in a letter offered by Plum Creek in January.
 14 There was then testimony on it by Plum Creek and the Forest
 15 Society of Maine as the proposed balance easement holder that
 16 this would be in the Forest Society of Maine's view sufficient
 17 to do funding, stewardship funding, of the -- hang on, let me
 18 make a couple points here -- of the balance easement, although
 19 there was equivocation, I would say, as to whether that amount
 20 was sufficient to do with enforcement under the balance
 21 easement.
 22 There was no equivocation from TNC's part as to
 23 whether this amount of funds would be appropriate to also --
 24 would be expandable -- or sufficient is the right word -- to
 25 also cover monitoring of both easements.

1 MR. WIGHT: That was my point. That's about \$8 an
 2 acre and I was wondering if that was some sort of standard
 3 somebody had.
 4 MR. KREISMAN: We don't know. You'll remember that
 5 Alan Stearns from BPL was also on that panel. I inquired of
 6 Alan as to whether they thought it was sufficient, and I think
 7 Alan's testimony was they're just getting into the business of
 8 big easement monitoring and their experience of the sufficiency
 9 of funds is really related to much smaller easements.
 10 MR. WIGHT: That's an interesting question. Small
 11 agencies tend to gather a war chest against the day when you
 12 may have to defend the easement in court, but at least as a
 13 small land trust, we struggle with the annual monitoring
 14 requirement and how you pay for that.
 15 MR. KREISMAN: The issues you're raising are exactly
 16 why staff and consultant recommendations for this issue -- it
 17 replicates itself pretty much under the legacy easement -- are
 18 for further information on this issue, and then staff
 19 consultants coming to you with the recommendation as to what
 20 the funding should be.
 21 I think the record is not "what" yet on this issue.
 22 CHAIRMAN HARVEY: Were we complete on our discussion
 23 of the subdivision question?
 24 MS. HILTON: On Page 84 there's a recommendation,
 25 it's the second paragraph down, limit significantly the size of

1 any one parcel making up part of the 50 acres.
 2 The idea there was what, to spread --?
 3 MR. KREISMAN: Let me explain. If you look at under
 4 the middle column, the second paragraph, in the sections of the
 5 easement, of the balance easement, that deals with
 6 subdivisions, there is language that allows a gift -- for
 7 selling of no more than 50 acres in the aggregate to a
 8 governmental or quasi governmental entity; it then essentially
 9 gets removed from conservation value consistency.
 10 The purpose of that is the testimony reflected was if
 11 the Town of Greenville needs to establish a transfer station
 12 someplace on the Lily Bay Road near development and it's in the
 13 easement, given the extent of this easement, they don't want to
 14 preclude, you know, are governmental or quasi governmental
 15 functions that if they came to you, Commissioner Hilton would
 16 say, of course, what are we wasting time on this one-acre
 17 transfer station on the Lily Bay Road right next to the
 18 development. Can you please get on with it, the Commission's
 19 busy.
 20 However, the way this language is written right now,
 21 it allows not just, you know, fifty one-acre pieces but one
 22 50-acre piece someplace; and it doesn't define what kind of
 23 governmental or quasi governmental function should be allowed.
 24 So our recommendation is just to tighten this up a
 25 bit.

1 Aga was just pointing out to me that this is a
 2 different provision than what you're going to see under the
 3 additional plan benefits, which is 50 acres of land being
 4 provided to BPL for specific recreation premises.
 5 The 50 acres is the same number but it's going in
 6 different directions.
 7 MR. WIGHT: This doesn't have anything to do with the
 8 next paragraph about ensuring acreage for BPL?
 9 MR. KREISMAN: No, that is carried through someplace
 10 else, right.
 11 MS. HILTON: So in that last paragraph, I mean,
 12 wouldn't we want to include water access there or boat?
 13 MR. KREISMAN: I think you want to deal with that
 14 under additional plan benefits, but the way additional plan
 15 benefits gets operationalized is within easement language,
 16 because that BPL 50 acres is going to be utilized, most
 17 likely -- although not exclusively -- in the easement areas.
 18 There may be public areas in Greenville where
 19 there's -- did you want to say something?
 20 MR. LAVERTY: Just a -- this might be minutia, but
 21 the language used here is -- again, it's in regard to the 50
 22 acres -- is located near development areas.
 23 MR. KREISMAN: Right.
 24 MR. LAVERTY: Do we -- in perpetuity do we need to be
 25 more specific about the language in terms of term of art? I

1 mean, I just see endless discussions of what is near
 2 development.
 3 MR. KREISMAN: Yeah, I don't -- if that is your
 4 desire, I think Jerry can apply his brilliance to how to take
 5 the qualitative term and apply some quantitative metrics to it.
 6 MR. LAVERTY: I see this as also reflecting the
 7 discussion we had earlier where we want to allow -- you'd like
 8 to have some specificity because it is one of these terms that
 9 is frayed with different meaning depending upon which side of
 10 the fence you're on, but by the same token what constitutes our
 11 concept of near development may be substantially different in a
 12 hundred years than it is today.
 13 So, again, the need for specificity yet evolution of
 14 that specificity.
 15 MR. KREISMAN: I understand.
 16 MR. WIGHT: You can tell when Ron says Jerry will
 17 figure it out.
 18 MR. KREISMAN: I revert back to the oft repeated
 19 notion, I suspect by many people in this room, that these
 20 landscape forest easements in perpetuity are a new approach and
 21 the issues you're raising are all about, you know, we're in at
 22 best the second decade or towards the end of the first decade
 23 of figuring out the interaction between dynamism and statis all
 24 in perpetuity.
 25 CHAIRMAN HARVEY: Okay. If there's nothing left

1 there, structures and improvements. We can work that one a
 2 little bit.
 3 The next big issue, I guess, is the -- moving into
 4 the forest management activities. I assume there's a question
 5 or two here.
 6 Steve.
 7 MR. SCHAEFER: Yeah, the management advisory team,
 8 what's the thinking behind excluding the landowner from the
 9 team?
 10 MR. KREISMAN: The thing -- let me say what's not
 11 intended. What's not intended is to eliminate consultation and
 12 a collaborative process if possible between the landowner and
 13 the management advisory team.
 14 As IF & W has testified, the intent of the management
 15 advisory team is to be independent and it's to independently
 16 make suggestions to comment on suggestions on what needs to be
 17 looked at by auditors, maybe a comment on the results of an
 18 audit.
 19 The way this is written right now, you have
 20 Plum Creek smack dab in the middle of that. It wouldn't just
 21 be Plum Creek, because if there are ten subdivisions, you then
 22 would have ten landowners on the management advisory team.
 23 So I think there are plenty of ways,
 24 Commissioner Schaeffer, to have Plum Creek as a non voting
 25 member in some sort of ex officio capacity so they're there at

1 the table to make sure this isn't a divisive process; but I'm
 2 not sure of the theory of having the landowner on a management
 3 advisory team that's advising the landowner, if you get what
 4 I'm saying.
 5 But the intent was not to set up disagreements, but
 6 it was to kind of purify the functions of each. To the extent
 7 that you're interested in ensuring that Plum Creek is very much
 8 there in a collaborative advisory capacity with the management
 9 team and other landowners, I think that would be perfectly
 10 appropriate.
 11 But the way it's written right now, they're in the
 12 thick of it, other landowners would be in the thick of it, and
 13 in fact the way it's written right now, there's some openings
 14 on the management team, which the landowner, or landowners, are
 15 part of deciding who else is on it.
 16 So I think -- and this is not about Plum Creek, it's
 17 about the natural course of events. You have a structure right
 18 now that may not fulfill the function that I think was intended
 19 here.
 20 MS. HILTON: I assume that the reason you have
 21 recommended that IF & W is responsible for its operations and
 22 functioning has to do with because they're key players and
 23 wildlife habitat management.
 24 BPL is another agency that comes to mind because of
 25 their focus on recreation.

1 What were your thoughts along those lines?
 2 MR. KREISMAN: First of all, our thought here was not
 3 to make IF & W running the show as the top dog, it was simply
 4 who calls the meetings and who keeps the notes and that kind of
 5 thing. You'll have people on this from the university and
 6 other agencies and other parts of State, local, and federal
 7 government, things like that. That's Point No. 1.
 8 Point No. 2 is that I think you're right on in our
 9 thinking that the management advisory team was proposed and is
 10 written to basically be an outside advisor on kind of new
 11 developments and forest management and those kinds of issues.
 12 It was never proposed -- and I'm not sure there's
 13 any -- I don't believe there's any, in my personal opinion,
 14 there's any need to have a recreation advisory capacity here.
 15 The recreation pieces here are very important but
 16 they're quite narrow in this easement. It's campsites, it's
 17 trails, it's public access. Pretty cut and dry things in which
 18 my vision is that BPL will meet with Plum Creek and say, gee,
 19 we think of a trail from your low-impact resort area on
 20 Lily Bay highlands up to Baker Mountain would work as long as
 21 there's public access and everything else, and Plum Creek likes
 22 the idea and they figure that out.
 23 That's very different than evolving thinking about
 24 how special management areas should be harvested in order to
 25 retain economic value but retain ecological things and new type

1 of thinking is to protecting stands, et cetera, et cetera.
 2 MS. PINETTE: And just to quickly add to that, the
 3 staff and consultants here are viewing the management advisory
 4 team structure and function as really being the critical
 5 component of this easement for the focuses of wildlife
 6 mitigation.

7 So that is what we see as the central role this team
 8 would serve in this easement, and the recreation mitigation
 9 components are different from that and separate really.

10 THE CHAIR: Any -- go ahead.

11 MR. LAVERTY: I was going to suggest we take a very
 12 brief break.

13 CHAIRMAN HARVEY: Let's take 15 minutes and we'll
 14 come back around 25 after 10. Thank you.

15 (There was a break in the deliberation at 10:12 a.m.
 16 and the deliberation resumed at 10:35 a.m.)

17 CHAIRMAN HARVEY: Are we all ready to go? When we
 18 left off we were in the middle of the management advisory team
 19 recommendations.

20 Is there any additional comments or concerns we want
 21 to voice on that recommendation? I guess the substance of that
 22 one was to assign a specific entity to be kind of the
 23 operational director of the group and to exclude the landowners
 24 from direct membership on the team.

25 I think that's the substance, other than some

1 language changes there to allow how the input to the management
 2 advisory team was given to the holder or the landowner.

3 MR. WIGHT: Bart, there was some talk about the
 4 landowners being -- sometimes it was couched as nonvoting
 5 members of the team and at some points they were called
 6 advisers. We probably need to tie up that relationship
 7 somehow.

8 CHAIRMAN HARVEY: Okay. Rebecca?

9 MS. KURTZ: I have a question for the staff and the
 10 consultants. On the top of 7, Exhibit 7, it talks about
 11 established right of holder to remove prequalifying program and
 12 that's with regard to certification programs.

13 Can you speak to that section?

14 MR. KREISMAN: Sure. And there are really two
 15 recommendations kind of the flip side of maybe the same coin.

16 The way the easement is written now, there are three
 17 certification programs that we use the term of prequalified.
 18 FSC, SFI, and American Tree Farm.

19 With two of those programs we're not recommending any
 20 changes to the prequalification except for that a mechanism be
 21 in place, put in place in the easement, that they not be
 22 prequalified in perpetuity.

23 For instance, you have an SFI program that to my
 24 understanding didn't exist 20 years ago, and there is the way
 25 we read the language of the easement, I believe the way Jerry

1 reads this -- and I have discussed this -- is that there's no
 2 mechanism in the easement that if either FSC or SFI take a turn
 3 for the worse or don't, you know, times change -- again in
 4 perpetuity is a really long time -- there's no ability with an
 5 appropriate process, and you don't want a process where the
 6 easement holder can just wake up on the wrong side of the bed
 7 and say I don't like SFI anymore. There would have to be a
 8 process and some give and take and we can work out the language
 9 of that.

10 But you don't want an in-perpetuity easement that
 11 prequalifies in memorial for all time. So that's the first
 12 part.

13 The second part is there is not only,
 14 Commissioner Kurtz, no record evidence that the American Tree
 15 Farm system certification program is appropriate for
 16 large-landscape-scale easement certification, but the only
 17 record evidence on this is that it's not.

18 Now, there is also record evidence that for, you
 19 know, lots of 5- or 10,000 acres, it seems perfectly fine. So
 20 to the extent that you chose not to eliminate it but wanted to
 21 make it a lot smaller as to where it could be used, that would
 22 capture the same intent as eliminating it.

23 However, I want to note that eliminating something
 24 from precertification, prequalification of a certifying
 25 program, doesn't mean that there's a specific provision in

1 there at the end of these prequalifications that gives the
 2 holder the right to bring in new programs or existing programs
 3 if they meet the same standards.

4 So we're not recommending any change to that
 5 language. That's the basis for all of that.

6 MS. KURTZ: So the alternative, though, on that model
 7 which allows the holder to approve an independent third party
 8 certification, one seems to say you can eliminate, one says
 9 that you can add, but is there a way to have them -- is it
 10 explicit in that that they can do both?

11 MR. KREISMAN: Well, the LMF model is really a
 12 different approach. The LMF model, we leave it to the holder
 13 to decide if they want to certify, and if so, who should be the
 14 certifying party. And that, the LMF model, also requires that
 15 that decision be rethought approximately every three years, or
 16 be revisited every three years.

17 We're not proposing here -- we wanted to apprise you
 18 of that alternative, but we're not proposing moving away from
 19 the model that Plum Creek is proposing here, which is that you
 20 have certain precertified programs as long as there's an
 21 opportunity, which I think is part of what Plum Creek is
 22 proposing is important I would guess to them in this
 23 certification process, but we are proposing a process where
 24 that prequalification can be revisited.

25 Again, under the LMF model the easement does not

1 specify a certification; it's left up to the holder to decide.
 2 And certification really there fills the function of
 3 eliminating certain monitoring duties of the holder. It's
 4 holder initiated in those situations.

5 But if you are uncomfortable with any
 6 precertification program, that would be the model that LMF is
 7 landed upon.

8 The model LURC easement terms do not really get into
 9 this issue, in fact, they don't get into this issue.

10 MS. KURTZ: I guess the concern I have with the first
 11 paragraph -- I may still be confused on this -- is the right of
 12 the holder to remove a prequalified program.

13 Let's say over time both SFI and FSC fail to carry
 14 out the responsibilities, or in your words, sort of just fail.
 15 What are we left with?

16 MR. KREISMAN: I understand. I think the easement
 17 addresses that.

18 First of all, the easement doesn't require a
 19 landowner to have certification. So that's point No. 1. The
 20 worse we're left with is maybe there's no certifying agents at
 21 all. You know, certification for whatever reason in a hundred
 22 years is passe or not economic or whatever, so the easement is
 23 an easement. No certification is required.

24 The holder does monitoring, there's no protections
 25 given to -- there's no protection given to the landowner by

1 certain certification findings. It's just not done. That can
 2 happen today. Under this easement, even if there's only one
 3 landowner, Plum Creek may decide that it doesn't want to
 4 certify and that it's a dialogue exclusively between them and
 5 the holder.

6 Secondly, what I think would happen is after, you
 7 know, a full and fair process of deciding that FSC and SFI
 8 don't work, if a landowner isn't working or is inadequate, if a
 9 landowner still wanted certification, I assume there would be
 10 another certifying entity or amendment that emerged, and that
 11 would be worked into an amended management plan, so it would
 12 come forth.

13 So I don't think you have a system that falls apart.

14 MS. HILTON: Just a thought. Does the Commission
 15 have any role in any of this, in any kind of decisions that are
 16 made, any changes over time that occur within these easements?

17 MR. KREISMAN: Not -- the Commission is given certain
 18 roles in the easement. The Commission has to approve a new
 19 holder if there is an assignment to a different holder.

20 I'll have to go back. I believe the Commission has
 21 to approve amendments to the easement itself, what we were
 22 talking about earlier. The issue of certification is not one
 23 that I believe the Commission's any way involved in under
 24 what's written now. This is not written now as role that the
 25 Commission is involved.

1 MS. PINETTE: Just to elaborate on that a little bit,
 2 the staff is not recommending that the Commission have a role
 3 in that process.

4 Because we -- these recommendations, as you will see,
 5 sort of decouple the certification process from the management
 6 advisory team role, and that is the function that we see as
 7 important to the wildlife mitigation component; and to the
 8 extent that the landowner wishes to use a certification program
 9 as evidence to the management advisory team that it is
 10 fulfilling certain functions -- or to the holder, that is,
 11 fulfilling its wildlife management obligations -- we see that
 12 as a perfectly appropriate approach.

13 But, you know, we're really decoupling those two.

14 MR. KREISMAN: I would just say, Commissioner Hilton,
 15 that the recommendations on Page 87 in terms of the certifying
 16 program itself are really quite narrow. It will just allow for
 17 change and either eliminate or if you want to very much limit
 18 based on record evidence where the American Tree Farm
 19 certification program can be used starting from the get-go.

20 There aren't those limitations that are proposed
 21 under either FSC or SFI.

22 CHAIRMAN HARVEY: Anything else?

23 MR. LAVERTY: I feel -- I would just like to say, I'm
 24 not all that concerned about the certification one way or the
 25 other. I think it was advanced by the applicant, and I think

1 for all the reasons I mentioned before, I think certification
 2 programs, I don't think in terms of the public benefit,
 3 assuring public here, that a certification in and of itself is
 4 going to carry the water.

5 I think that many of these -- again, I'm not
 6 directing this at Plum Creek or the easement holders or the
 7 certification mechanism, it's across the board as I mentioned,
 8 academic programs may be certified, all kinds of things meeting
 9 certain standards.

10 Quite frankly, much of that is for marketing reasons
 11 rather than operating standards reasons, not to say that there
 12 isn't an impact on that. So I'm willing to place my faith, if
 13 you will, in the management as opposed to spending a tremendous
 14 amount of time on certification.

15 CHAIRMAN HARVEY: The real thing is the holder will
 16 play the key role, and then we go into the next piece here,
 17 which is the impact of the third party certification. That's
 18 what the nuts and bolts of it are in terms of who really is
 19 going to have the responsibility to make sure the easement
 20 terms are enforced.

21 Certification, obviously, is an important piece of
 22 that, and as Ron has pointed out, it serves as an important
 23 point for the holder in providing a lot of information about
 24 what's happening and documents the process.

25 A lot of these certification systems are as much

1 about doing the paperwork right as they are about what actually
2 happens based on my experience. There's lots and lots of
3 paperwork involved.

4 MR. SCHAEFER: It is about marketing. It's required
5 to raise the value of your product, I think, in the forest
6 industry to be certified, and it's not cheap. Certification is
7 not cheap, and it brings another entity in because quite a few
8 of the certifications are held by another party. I think it's
9 a good thing.

10 CHAIRMAN HARVEY: It's a huge obligation on the
11 owners and very expensive.

12 MS. HILTON: If I'm following this correctly, does
13 this mean that certification in and of itself has no value to
14 the easement and what we are doing here?

15 MR. KREISMAN: No. As Chair Harvey suggested, this
16 is really -- Page 88, what I understood Chair Harvey saying is,
17 okay, if you're in agreement, we've dealt with the issues of
18 who's allowed to do the certifying and now we're into the issue
19 of what does it all mean.

20 Here we are proposing what I believe to be, or
21 recommending to you, a significant language change. It's also
22 a language change that I would note has been endorsed in their
23 briefs by the Forest Society of Maine and TNC.

24 Unlike in other easements of which we're aware,
25 there's a provision here that gives certification -- it really

1 very presumptively means -- it presumptively may even be mild
2 given the language that I'll read to you -- presumptively means
3 that once this certification is -- once a piece of land is
4 certified, even with all kind of caveats, once that good
5 housekeeping seal is stamped down, the holder has very little
6 opportunity under the language here to say, excuse me, but we
7 disagree in this particular area.

8 That's the language we cited here in which that
9 presumption -- well, so long as grantor maintains the third
10 party certification with the protected properties managed in
11 accordance with the qualifying forestry recertification
12 programs, then there shall be a rebuttable presumption the
13 grantor is in full compliance with said forestry principles and
14 the management plan.

15 That presumption shall be overcome only in the event
16 that evidence shows that the third party certification was
17 based on a material mistake of fact or a material
18 misapplication of the standards of the qualifying forest
19 certification program.

20 Then it goes on to say, in order to rebut that
21 presumption, owner shall first seek resolve in compliance with
22 the grantor, which we're not recommending be changed, and then
23 they have to go through the appeals process.

24 So you have a situation, as we said here, going to,
25 okay, you've got the certified party, what's the impact, where

1 you could have a certification that grants certification but
2 finds problems and issues with wildlife management or with how
3 special management areas were cut.

4 Unless it meets this very high standard, in my
5 view -- and again I invite Jerry to comment -- it's quite
6 unique in what we've seen in other easements.

7 MS. HILTON: But I understand that. I guess what I
8 thought I heard you say was -- or someone say here -- that the
9 certification, it could be a situation where there is -- that
10 we're not requiring certification?

11 MR. KREISMAN: Right. In which case that language
12 wouldn't apply.

13 MS. HILTON: So that was -- there could be -- what
14 you're proposing is that it would be possible not to have any
15 certification?

16 MR. KREISMAN: That's in the easement right now. If
17 there's no certification, there's no rebuttable presumption as
18 what certification means, and you're -- the holder then sends a
19 letter to Plum Creek, or whomever the landowner is, saying
20 based on our annual monitoring we find the following problems
21 and we'd like to meet and discuss with you, and there's no
22 intervening party certifying and no weight given to it because
23 it doesn't exist.

24 So it can go down two different tracks.

25 CHAIRMAN HARVEY: Jerry, do you have something?

1 MR. REID: Well, I agree with what Ron has said,
2 again, because we've been working on this together.

3 To get at Commission Hilton's question, the point is
4 that there are great benefits to the landowner going through
5 the certification process, so great that they really have the
6 effect of severely limiting the holder's option in the face of
7 certification if the holder believes there are underlying
8 problems despite the certification.

9 So that's what the recommendation is designed to
10 address.

11 MS. HILTON: Good.

12 CHAIRMAN HARVEY: Any other comments on that issue?

13 MR. LAVERTY: Well, I just would note that there is
14 evidence in the record, there's testimony in the record, to the
15 effect that while Plum Creek was granted certification and
16 retained certification, it was also subject to some of the
17 largest fines in the State of Maine for cutting in deer yards.

18 So if certification is positive and not presumptive,
19 then that wildlife, the wildlife values associated with the
20 easement would be jeopardized.

21 So, I mean, it seems to me, again, there ought to be
22 a presumption associated with certification. I think it's
23 important but it shouldn't be dispositive in terms of whether
24 or not the values of the easement are being complied with.

25 CHAIRMAN HARVEY: I think that's what the recommended

1 language proposes to address that issue --

2 MR. LAVERTY: I agree.

3 CHAIRMAN HARVEY: -- such that the holder becomes
4 clearly in charge. I guess that's what it amounts --

5 MR. LAVERTY: I guess I was responding to Gwen's --
6 that's the way I --.

7 MR. KREISMAN: Certification then becomes evidence of
8 compliance.

9 MR. LAVERTY: Right, evidence.

10 CHAIRMAN HARVEY: If we agree with the staff, that's
11 what they're recommending --

12 MR. LAVERTY: I agree with staff.

13 CHAIRMAN HARVEY: -- subject to comment.

14 MR. LAVERTY: Subject to comment.

15 CHAIRMAN HARVEY: I don't suspect we'll get much on
16 this issue.

17 Anything else on the third party certification
18 process? If not, we're going to move on to the management
19 plan, which is another important part of this process. I would
20 think, particularly in the absence of any certification
21 process, the management plan takes on added significance if
22 that were to be the case. I don't think that's going to happen
23 here.

24 Any -- do you want to give us any background on this,
25 Ron?

1 MR. KREISMAN: Just briefly. I think it's pretty
2 much captured here. There are really two points.

3 The middle paragraph on the recommendation, move
4 language and management team advisors structure place that if
5 the easement, that's just really a legal housekeeping thing to
6 make sure that that role is clear and the easement doesn't
7 depend on a particular management plan.

8 As written the multi-resource management plan first
9 contained inconsistencies with the easement and you didn't have
10 to go any further than the page beyond the cover sheet to see
11 those inconsistencies.

12 Where it talked about intents and purposes of the
13 plan, of the management plan, that were either inconsistent
14 with or not completely encompassing of the purposes in the
15 easement, in fairness I suspect that this language was written
16 and there are suggestions in it that references the forest
17 legacy funding program. It was probably written for a
18 different purpose or whatever.

19 But there are inconsistencies, and so there's --
20 another example of an inconsistency is at the end of the
21 management advisory plan, the management advisory plan can be
22 amended between the holder and the landowner under the easement
23 in Section 5.D(i) the management plan can only be amended with
24 consent as well as the third party holders.

25 So there is a fair amount of housekeeping, that's

1 No. 1, and that goes to that.

2 There are provisions in the management plan that lift
3 up whole cloth language in the easement and apply it to the
4 management plan -- and drop it in the management plan, but it's
5 not the whole story; so there are places in there where parts
6 are put in without any clear reason as opposed to the whole. I
7 think these are very easy, I want to say, to clean up.

8 There's language in here that can be read as the
9 holder endorsing Plum Creek's forest practices, endorsing SFI,
10 that it's not clear why you would want if and certainly our
11 recommendation is that you don't want it in the management
12 plan.

13 Our view of the management plan is that it sets up --
14 the management plan should have a single purpose, which is to
15 set out, in their words, the programs and practices by which
16 this land will be managed that will then be the guide that the
17 auditor will use, the holder will use, that Plum Creek will
18 use, and there's a lot of legal surplusage right now in this
19 management plan that can be eliminated.

20 So that's really recommendation No. 1. I suspect
21 that that will be easy.

22 The third recommendation, there is a fair amount of
23 testimony, including quite specific testimony from Inland
24 Fisheries & Wildlife in their November 20th comments,
25 significant detailed testimony from Maine Audubon Society,

1 NRCM's forester, and Rob Ryan, who also is involved in
2 certification, that the programs and practices listed are
3 either incomplete, that it's a subset of the whole, and I think
4 that would be a fair characterization of part of IF & W's
5 November 20th testimony, that they're incomplete, they don't
6 cover everything that they should or the language is so vague
7 that, as we said here, that it doesn't contain standards of
8 conduct that can be measured and enforced.

9 We are not suggesting here that this language be so
10 detailed and prescriptive that evolving knowledge that comes
11 from MAT or Plum Creek or whatever landowner lock them in to
12 2008 as opposed to 2028 and 2048, et cetera, et cetera.

13 But the comments that we've received from IF & W,
14 particularly, but other parties, is that there should be
15 another look at some of this language to make sure that the
16 programs and practices necessary to assure sufficient
17 mitigation for wildlife are achieved.

18 That's what that recommendation is about. It's
19 really to allow -- it's a directive from you to staff,
20 consultants, and the attorney general's office to go back and
21 see if there are any changes that need to be made both for
22 completeness and particularly to ensure that the language
23 contains "standards of conduct" that can be measured and
24 enforced.

25 It may end up that we come back to you and say that

1 based on further review, we respectfully disagree with IF & W
2 and other parties and it is right on the money down to the
3 period.

4 CHAIRMAN HARVEY: I agree, Ron, with you, in respect
5 to be overly prescriptive because given the dynamic nature of
6 what you're dealing with, we've got to be awful careful about
7 tying our hands because we'll end up with a bad result for
8 sure.

9 MR. KREISMAN: And just to complete that, on the
10 bottom of Page 89, Paragraph 6, there are attached to the
11 management plan, and apparently incorporated therein, as we
12 say, these documents, two documents, one titled Plum Creek
13 Maine and New Hampshire Environmental Action Plan, and second
14 being Maine Forest Products Council Conservation Strategy for
15 the Canada Lynx in Maine.

16 Jerry's and my legal judgment -- again, I'll take the
17 lead and he can pull my leash -- is that at best the role of
18 these documents and the many, many statements made therein, the
19 role that these documents play legally in the management plan
20 is unclear and that at worst these two documents contain
21 additional programs and practices, and so our recommendation is
22 eliminate -- and the documents contain many, many other things.
23 They contain a description of where Plum Creek operates and
24 where their headquarters in Maine is and all those kinds of
25 things.

1 So what I'm -- staff is recommending -- I believe is
2 Jerry's recommendation -- is that these documents be
3 eliminated. You have a management plan. And that whatever
4 appropriate standards need to be pulled in from them are pulled
5 in as standards, as programs and practices, and that they don't
6 kind of hang there in this unclear status at best.

7 MR. LAVERTY: I think these are wise recommendations;
8 I agree.

9 MS. HILTON: I agree as well. I do -- but I do have
10 a question on Page 90.

11 In the recommendations for the baseline
12 documentation, the use of the terms rare exemplary unique
13 ecological characteristics as being the areas that are to be
14 documented and mapped, those are very specific, aren't they? I
15 mean, in our Maine natural resource laws, they're referring to
16 things very specifically identified.

17 Is that correct and -- I guess what I'm wondering is
18 whether is that everything that we want to be in that baseline
19 documentation.

20 MR. KREISMAN: These terms were pulled from either
21 language in the easement or from comments of IF & W or Maine
22 Natural Areas Program.

23 I will confess that although as part of this process
24 I did review MNAP's governing statute, it was a while ago. I
25 have not gone back and kind of cross-correlated these terms to

1 that particular language, and I have done none of that review
2 for IF & W statutory.

3 So if I can get a better sense of what kind of
4 directive you want to give to us, I think Jerry -- I'm
5 volunteering Jerry -- would then go back and do his usual
6 thorough and copious review of those terms to see either
7 whether they're too inclusive or not inclusive enough given
8 where you want to go with this, Commissioner.

9 MS. HILTON: Okay, I think being clear on what we're
10 asking to be included in the baseline documentation is
11 important, what's included in those things. I guess that's
12 something that I would just like clarification on at some
13 point.

14 MR. KREISMAN: Okay, got it.

15 Is everybody clear on Page 90 on what we are and we
16 are not seeing on the public access provision? I'm not trying
17 to get discussion going, but just want to make sure that if
18 there is some desire in that that we understand that we satisfy
19 that.

20 MR. WIGHT: Are you suggesting as we normally do that
21 the State law governing recreation on private lands by the
22 public is sufficient?

23 MR. KREISMAN: Well, let me first suggest and then I
24 want to quickly on this one -- because I feel Jerry's stare
25 even without looking at him -- let me be specific as to what

1 we're suggesting be removed if I can quickly find it, which is
2 what I think the attorney general's office believes is an
3 overly broad provision that says as follows -- this is in the
4 end of Paragraph 7, Public Access and Easement -- and that's
5 what this recommendation seeks to remove.

6 Any use of the protected property by the public is at
7 the public's sole risk and liability, and any use of the
8 protected property shall be deemed a waiver of any and all
9 liability of the grantor, successors, and assigns for injury,
10 loss, or damage therein from such use.

11 MR. REID: It's fine. One place in the easement the
12 document invokes the current landowner liability law and then
13 in there are amendments there are two as applying, which is
14 fine.

15 What is not fine is for the easement to purport to
16 fix or to freeze into place in perpetuity certain provisions
17 governing liability.

18 That is the equivalent of making law in the easement
19 which we have no authority to do.

20 So whatever changes the legislature may see fit to
21 make governing liability on this land or any other land is
22 completely within their ability to do. We have no authority to
23 freeze into place in this easement provisions covering that.

24 That's a simple thought of the principle that we're
25 trying to respect here.

1 MR. WIGHT: Are you saying that you would hang your
2 hat on the public liability law as amended from time to time?

3 MR. REID: That's fine. Whatever law is in place
4 governs. But we can make up our own law and freeze it into
5 place through the easement.

6 CHAIRMAN HARVEY: Everybody comfortable or clear with
7 that? I guess we don't have -- according to Jerry, we don't
8 have any choice. I like it. I suspect there will be some
9 arguments on that issue.

10 MR. REID: I know there to be some differences of
11 opinion on this, and we may get some comments which we'll take
12 into account, but the principle that I tried to describe is
13 something that I feel pretty strongly about, and there may be
14 some ways to work around the edges of it. But freezing into
15 place liability provisions in the easement I think is something
16 that is problematic for a number of reasons.

17 CHAIRMAN HARVEY: In any event, landowners in the
18 state of Maine do have some liability protection. It may not
19 be as absolute or complete as the landowner's lawyer would like
20 it. It is there.

21 MR. WIGHT: But it's actually known to be some of the
22 best in the country.

23 CHAIRMAN HARVEY: What, Steve?

24 MR. WIGHT: It's known to be some of the best
25 liability protection in the country.

1 CHAIRMAN HARVEY: I'm not aware of that but that's
2 good.

3 MR. KREISMAN: The only reason I raised this is I
4 wanted to make clear that by eliminating what I believe and I
5 believe Jerry believes is an overreach of the provision of
6 liability, it does not mean that we're suggesting that
7 Plum Creek be denied the rights that are provided now just like
8 any other landowner provides public access, those rights.

9 CHAIRMAN HARVEY: All right. Enforcement, this has
10 to do with the ability of the holder to enforce the purpose of
11 the easement. It gets back -- obviously it gets back to
12 certification process I suppose and other things.

13 Again, we're proposing here a number of fairly, I
14 would take it, depending on your point of view, fairly
15 significant language changes to the easement to affect how that
16 enforcement activity might take place.

17 Do you have any questions?

18 MR. KREISMAN: If there a no questions, I'm happy to
19 let it go.

20 MR. WIGHT: I'll ask a question for the sake of
21 hearing from you. I don't know how you can eliminate the
22 ability of the holder to gain remedy.

23 MR. KREISMAN: Well, this provision to be clear --
24 and Jerry may want to jump in quickly here -- did not eliminate
25 the ability of the holder to have a remedy. It eliminated the

1 ability of the holder to obtain monetary penalties in
2 appropriate situations. It could be, I think, a fair meeting
3 would be that.

4 So to the extent that there was conduct that, you
5 know, could in tortious situation constitute gross negligence
6 and should be penalized, there is not -- and disincentivised,
7 so to speak -- there was not that ability.

8 That was not a provision that I'm aware of in your --
9 there was significant testimony that that was a provision that
10 was inconsistent with your model easement terms. It's a
11 provision that I'm not aware of as in the LMF easement as well.

12 Jerry you may want to jump in on that.

13 MR. REID: All these recommendations on enforcement
14 are designed to make sure that you can have the most beautiful
15 easement in the world, but if it's not enforceable in a
16 meaningful and practical way, it doesn't do any good. So Ron
17 and I have taken a hard look at this.

18 It's an area that's uniquely important to me given my
19 position in my office, and the changes we're recommending are
20 simply designed to make sure that the holder, whoever it is, is
21 fully capable of enforcing the terms.

22 CHAIRMAN HARVEY: Okay, I don't see any other
23 questions or concerns being raised. Again, I assume you'll
24 receive comments concerning this.

25 Modification of easement boundaries.

1 MR. KREISMAN: The issue here, just because -- I'm
2 going to offer something here because it's related to, or it
3 may be thought of, as a subset of the discussion that you were
4 having earlier on amendments.

5 One type of amendment that may be appropriate or not
6 is the modification of easement boundaries. That is different
7 than an amendment that might allow geothermal use.

8 What staff is recommending here, staff and
9 consultants are recommending, is to redraft to eliminate the
10 possibility of major land swaps that undermine this
11 Commission's intent for certain eased land. I think it's
12 perfectly appropriate to allow boundary modifications for ease
13 of boundary identification or other narrow administrative
14 purposes.

15 But the way this is written now, swaps are allowed;
16 but I do want to note the last sentence, holder and approval by
17 LURC is required here for the purpose of protecting important
18 conservation values.

19 So the possibility legally that is allowed with this
20 language is that a Commission 20 years from now decides that it
21 has certain conservation lands in mind that are different, that
22 Plum Creek or subsequent landowners own, that are different
23 than what you had in mind and it approves that.

24 That may or may not be the kind of latitude that this
25 Commission wants to give, but I'm just flagging that issue.

1 CHAIRMAN HARVEY: Ron, in your recommendation, is
2 what you said about it requiring joint approval apply to the
3 recommendation that you have? Is that what you're saying?

4 MR. KREISMAN: Yes, that applies. I don't think the
5 issue is LURC doesn't have any control of a major land swap.
6 The answer is this Commission, judging this offset provisions,
7 very well may not have control, and you may say, that's okay,
8 we trust our sisters and brothers 20 years from now or you may
9 say, no, we understand this and we're happy for the boundary
10 modifications and all kinds of administrative things, but we
11 don't want to see 30,000 acres pulled out here and put in
12 there. That's the issue we're raising.

13 CHAIRMAN HARVEY: I thought we argued that we did
14 trust our successors in this business. Just on the other
15 issues. That was before, right.

16 Well, I think we'll, unless you suggest otherwise,
17 I'll let this recommendation go as it is and see what kind
18 of -- if others share our optimism about future LURC
19 Commissioners.

20 But I do think the idea of management the boundaries
21 as an administrative manner is probably an important one that
22 we should be able to deal with in a straightforward practical
23 way. There probably will be boundary issues that need to be
24 resolved.

25 I think we've discussed the addition of lands to the

1 balance easement in the development quite a bit in the
2 development discussion we had yesterday.

3 MR. KREISMAN: This is the exact same issue.

4 CHAIRMAN HARVEY: Amendments to the easement. We had
5 some discussion about that prior. Is there anything more you
6 want to deal with here?

7 MR. KREISMAN: No. You know, I would note the last
8 sentence under the concept plan proposal that one safeguard, it
9 may be a significant safeguard, is that LURC must approve
10 amendments.

11 Having said that, will LURC be around 30 years from
12 now or 70 years from now or 100 years from now? I don't think
13 anyone is pressing enough to know the answer to that.

14 As this is written -- and I think I'll just emphasize
15 it very much cuts both ways in this dynamic versus static
16 conundrum -- the holder's broad discretion to accept amendments
17 that involve uses of proposed improvements not contemplated by
18 or are addressed, so long as holder determines amendments are
19 consistent with the purposes of this easement and does not
20 materially increase adverse impacts.

21 So to the extent that you're comfortable with the
22 holder authority, one can look at that language as being about
23 as good a balance as you can get, and we're not suggesting --
24 you know, our recommendation here in the language and it was
25 quite intentional that direct staff and the legal counsel --

1 because he's the one who's going to resolve this, that's why
2 that was in there -- to the Commission to evaluate whether this
3 degree of latitude to amend provisions is appropriate as should
4 be allowed to approve it.

5 This language may be right on the money given what
6 you're trying to balance. Our -- Jerry's and my purpose in
7 giving this a separate box, a separate table, is to draw your
8 attention to this issue and to take any direction you may want
9 to give us on this.

10 CHAIRMAN HARVEY: I'm not sure we have any better
11 look into the future than you do.

12 MR. LAVERTY: I think we've talked about this.

13 MR. KREISMAN: We'll just go back and look at this
14 language again and come back to you with refinement if you
15 think a refinement is appropriate.

16 MR. LAVERTY: Do you feel you lack guidance given our
17 previous discussion in this area? In terms of intent of the
18 Commission, guidance, it may be difficult to address this
19 issue.

20 MR. KREISMAN: I think the intent is, if I may try to
21 summarize what I've heard from the Commission, is to preserve
22 the integrity and the purpose of what you potentially are going
23 to vote on but not presume that you have omnipotence or
24 prescience to eliminate potential uses that would not be
25 inconsistent with those conservation values and what you're

1 trying to achieve.

2 It may be that this wording right here is as good as
3 anybody can get.

4 There are other issues besides the standard itself,
5 which is who decides. Right now it's the holder and LURC must
6 approve. Again, that may be just right.

7 CHAIRMAN HARVEY: If you're comfortable at this
8 point, Ed.

9 MR. LAVERTY: I think we've been given about as much
10 direction as we can get.

11 CHAIRMAN HARVEY: Right. In that case, the
12 assignment of holder rights to another holder.

13 MR. KREISMAN: This issue is quite a narrow one.
14 Under the balance easement language, the grantor is required --
15 or is allowed -- or is given the authority to approve or not
16 approve the transfer of the holdership from one holder to
17 another.

18 We're suggesting that that kind of right of rejection
19 refusal may not be appropriate. I think what could very well
20 be appropriate is grantor consultation in that hearing grantor
21 objections to that.

22 You know, you may have a situation where you have a
23 particularly on-top-of-it aggressive holder who for reasons
24 that I can't predict 50 years from now wants to transfer to
25 another holder, or a holder that's not being aggressive and the

1 third party's insisting that it gets transferred to a more
2 aggressive or more on-top-of-it holder; and I'm not sure
3 ultimately the grantor should be able to deny that decision on
4 who the holder should be.

5 I think the grantor has a stake in commenting on it.
6 That's really what I'm saying.

7 CHAIRMAN HARVEY: Who is going to? That kind of begs
8 who is going to say that's okay to do that.

9 MR. KREISMAN: A lot of this discussion is going to
10 depend on who you decide the holder should be, for instance, if
11 you have a nonprofit as the holder and the State agency is the
12 third party, you could do what is written now, which is the
13 third party has to approve the grant so that if nonprofit X
14 decides to give it to nonprofit Y, it has to be shown in the
15 competence, track record, and experience, and third party
16 approval with comment by the grantor and the ability to object
17 and all those kinds of things.

18 This is really quite a narrow point.

19 MR. WIGHT: So normally in a relationship where the
20 development rights have been transferred out through a
21 conservation easement, does the grantor generally have any
22 further discussions with the holder of the easement?

23 MR. KREISMAN: As to who should be the holder?

24 MR. WIGHT: Yeah.

25 MR. KREISMAN: Yeah, I think you do see those

1 provisions. I'm not suggesting that this provision is
2 inconsistent with other easements.

3 I am suggesting going back to one of the themes that
4 given the public rights here in the enforcement that you may
5 want to have a slightly different lens in looking at what
6 otherwise is a fairly standard provision. That's all I'm
7 saying.

8 CHAIRMAN HARVEY: Okay. We can move on then.

9 I guess it looks like the final recommendation on the
10 balance easement has to do with language, but just giving the
11 staff an ability to review all of the language and making sure
12 that it's consistent. This is consistent with several of the
13 other recommendations I think at this point.

14 MR. KREISMAN: This is a narrow point, but I gave you
15 an example where the management plan allows the holder and the
16 landowner to agree to amendments, the easement requires the
17 third party.

18 There's an example I pulled out where in the second
19 whereas clause where an exemplary natural communities are part
20 of the conservation values where they're referred to in
21 Paragraph 5(C)i as unique natural areas.

22 This is a complicated document that is going to live
23 in perpetuity and which has both benefit and potentially
24 suffered from many revisions over time to try to meet needs,
25 and my experience in having put together those documents --

1 often I come back to them a year later and I'm slightly
2 embarrassed by that not because I didn't try hard but after a
3 certain amount of time you've burned out the neural framework
4 that's looking at those words and the neural framework has to
5 be -- I think that is what's going on here.

6 So it's a narrow recommendation that if this other
7 stuff, your recommendations, you should just go back and really
8 scrub this thing because in perpetuity is a really long time.

9 CHAIRMAN HARVEY: I think we -- I think we all agree
10 with that it's safe to say. We're going to wait a year to do
11 it, Ron, is that what you're saying?

12 MR. KREISMAN: No. I think this would be a direction
13 that Jerry would jump into full force right away. My
14 suggestion is that the weeks he has blocked out for summer
15 vacation would be a perfect time to rid himself of family
16 distractions and get deeply involved in this drafting issue.

17 CHAIRMAN HARVEY: All right, we'll leave it at that
18 then. Thank you, Ron.

19 The conservation framework I guess involves the
20 legacy easement, the Roaches, and No. 5 Bog. I think just to
21 preface this, I believe that many of the changes, the things
22 we've discussed on the legacy easement, also apply to the
23 balance easement, the major policy issues associated with the
24 language and all that sort of stuff.

25 There were minor differences, I think Gwen had

1 questions about wind power. Wind power is allowed in the
2 balance easement -- the legacy easement, the construction of
3 the towers themselves, whereas the legacy easement simply was
4 the supporting infrastructure. I don't know if there's
5 concerns in that regard.

6 MR. KREISMAN: Yeah, let me just clarify that. As
7 the Chair said, in the balance easement roads, transmission
8 lines to wind was allowed; in the legacy easement, as the Chair
9 said, the actual turbines or towers were allowed.

10 I think that was more reflection of where there may
11 be viable wind resources in that they exist in certain portions
12 of the legacy easement but not the balance easement, but in
13 order to tie into the system, et cetera, you'd have to pass
14 through balance easement.

15 Our recommendation is to eliminate that distinction
16 and just say wind power and pertinent activities are allowed
17 subject to no adverse impact on the conservation values.

18 And again, looking into the future 40 years from now,
19 you may have a new vertical wind turbine that doesn't operate
20 that way, that operates that way, that can operate at very low
21 wind speeds, it's a micro turbine, blah-blah, blah and there's
22 no inherent reason why it shouldn't be placed in the balance
23 easement if it's not inconsistent with the conservation values.

24 MR. WIGHT: It's wireless.

25 MR. KREISMAN: It's wireless, that's right.

1 MR. LAVERTY: It may not happen. There could be
 2 location limitations because of current technology.
 3 CHAIRMAN HARVEY: Well, okay, that being said.
 4 MR. LAVERTY: Mr. Chairman, again, as you mentioned
 5 earlier, a lot of the discussion on the balance easement bled
 6 into the legacy easement.
 7 Would it be possible, rather than sort of going down
 8 through each one of those suffer redundancies, not to give this
 9 discussion short shrift, but would it be useful or appropriate
 10 if you could highlight perhaps the areas of where there are
 11 unique issues raised in this section?
 12 MR. KREISMAN: There are none that we haven't
 13 covered. Our recommendation is that the only difference other
 14 than what we've talked about already between the balance and
 15 the legacy easement is that to the extent that there are
 16 certain construction materials, septage spreading, gross limits
 17 on how much can be done, that because of the scale of the
 18 legacy easement that that limitation may be either different in
 19 the legacy easement or it may be one lump sum number.
 20 But other than that --
 21 MR. LAVERTY: Do you see any logic that would dictate
 22 two different numbers?
 23 MR. KREISMAN: I see logic that would dictate a gross
 24 number and figure it out. That might be a wording situation
 25 where Jerry looks at it two months from now on Day 2 of his

1 vacation and says we need two separate numbers.
 2 MR. LAVERTY: So once again it's up to Jerry?
 3 MR. KREISMAN: That is my intent and the staff
 4 consultant recommendation.
 5 CHAIRMAN HARVEY: I think we did discuss yesterday
 6 the idea of the fact that the legacy easement proposed, this is
 7 a sale, that sale had to close within a certain time frame,
 8 that you specified here. Are you comfortable? Is everybody
 9 here comfortable with that? That was disposed of?
 10 MR. LAVERTY: Not only comfortable, but again, as we
 11 talked about yesterday, I think this is an integral part.
 12 CHAIRMAN HARVEY: Right.
 13 MR. KREISMAN: I do want to note, this is not a
 14 difference between the two easement, in response to
 15 Commissioner Laverty's question, but this is a difference on
 16 what's been presented as funding on Page 100, the Stewardship
 17 Fund, Plum Creek proposed and FSM endorsed Plum Creek providing
 18 a monitoring Stewardship Fund for the balance easement.
 19 In questioning of TNC when the Commission asked what
 20 happens for the legacy easement, the response that's noted
 21 here, Footnote 93 from TNC was that -- well, what TNC stated
 22 its agreement with Plum Creek at the time of purchase and sale
 23 agreement was that TNC would be responsible for raising the
 24 funds needed for monitoring and stewardship.
 25 What we are saying in the recommendations is that

1 using Evan's words from yesterday, the staff is agnostic as to
 2 where the money comes from.
 3 What we're strongly recommending to you is that
 4 through this process in the right-hand column that a sufficient
 5 stewardship and monitoring fund enforcement fund be developed
 6 for both easements and in place.
 7 But that's not a difference between them, it's just
 8 knitting them together.
 9 MR. WIGHT: Do you have any thoughts on the size of
 10 that fund?
 11 MR. KREISMAN: Well, whatever my thoughts are, the
 12 record evidence is incomplete, which goes back to why this
 13 recommendation is what it is.
 14 We have record evidence that what's proposed by
 15 Plum Creek is sufficient and quite likely more than sufficient
 16 to cover the balance easement.
 17 We have record -- from Forest Society of Maine, we
 18 have record evidence from TNC that what's proposed they don't
 19 believe is sufficient for the entire legacy easement as it is.
 20 Overarching this is that the proposal as to what
 21 would constitute the Stewardship Fund, Commissioner Wight, the
 22 terms of it came in two hours before the testimony was supposed
 23 to start on that issue in January, and so there was not what I
 24 think of as the normal process we established for the parties
 25 to see what the proposal was, and therefore to be the full fall

1 to comment on it, which I expressed at the time was
 2 frustrating.
 3 So what we're recommending here is a process to kind
 4 of back up and kind of figure that out.
 5 CHAIRMAN HARVEY: I don't see anything else here that
 6 we haven't talked about.
 7 If you want to talk about -- I don't want to dismiss
 8 the legacy easement, it's the biggest one there is. I think
 9 we've worked it.
 10 The Roaches property, there's a number of -- I think
 11 there's a number of significant things here that we need to
 12 make sure we understand in terms of timing. The actual
 13 exclusion of this from the concept plan I think is one of the
 14 major issues we need to make sure we understand why, and the
 15 fact that the imposition on the potential new owners, I guess
 16 there's some requirements on the easement that we haven't even
 17 seen yet.
 18 Can you talk to us about that, Ron?
 19 MR. KREISMAN: Sure. The issue of the timing you've
 20 already discussed yesterday. The staff recommendation is that
 21 it come in at the same time for the reasons that are proposed
 22 in Footnote 100, Page 106. I don't think that requires any
 23 more discussion, or if it does, please engage me.
 24 This -- back on Page 104, we're not recommending any
 25 changes at all to the size and location of this in terms of

1 meeting recreation mitigation needs under the statute for no
2 undue adverse impact, particularly the testimony of Mr. Daigle
3 and Anderson were quite clear on this and really quite
4 satisfied.

5 There is in the recommendation on the top table,
6 there's record evidence that there may be desires, as we say
7 there, that there be a very minor land swap of the top portion,
8 the road, in which there would be enhanced motorized access.

9 AMC may not have the desire to be involved in that,
10 BPL may very much have a desire for that enhanced motorized
11 access for providing to/from Nahmakanta both for recreation and
12 for getting wood out of that area into the west. That's the
13 State's wood by the way.

14 And then in return for BPL providing to AMC certain
15 isolated acreage adjoining property, but that's record evidence
16 and I don't think -- I don't know that that's a controversial
17 provision but that's the only -- and that would be subsequent
18 to this.

19 The issue of whether the Roaches property should be
20 part of the concept plan boundaries, meaning the P-RP
21 subdistrict, is something that staff consultants gave a fair
22 amount of thought to.

23 Our view is that it serves no useful practical
24 purpose, no necessary legal purpose, and could have some quite
25 subsequent unexpected unintended consequences to involve the

1 Roaches, which would be owned by AMC in the P-RP subdistrict,
2 principally related to the fact that any amendments to the P-RP
3 subdistrict that AMC may need would have to go through
4 landowner approval, maybe multiple landowner approvals,
5 depending on the mechanism and could be quite confounding.

6 You can imagine a situation where AMC owns the land
7 where any easement that's applied to it as part of our
8 recommendation, AMC desires to do something very minor, add
9 some additional huts or whatever, that might require a change
10 in the plan amendment, and then they have to trundle off to
11 Plum Creek or maybe a group of landowners and say, please, can
12 we do this, and then get approval from LURC.

13 It really made no sense to us why it should be put
14 through that process. There's nothing in our view -- Aga
15 should probably comment on this first -- that having it as part
16 of the P-RP subdistrict adds to what you are getting and any
17 protections that you want to ensure that the promise and stated
18 purpose of it can be achieved by an easement that's put on that
19 land is a much more direct way of doing it than having run
20 through -- you know, the amendment process makes sense in some
21 ways under lands that are going to be developed with
22 Plum Creek.

23 MS. PINETTE: In fact, just to supplement that, our
24 view is that actually having this property and the intent of
25 this property to serve a primitive recreation mitigation role

1 could be challenged by having it in the P-RP subdistrict
2 because of the complexities associated with the plan amendment
3 process, which we will get into in a few pages.

4 So our sense is that the better way to achieve that
5 mitigation and that purpose, the primitive recreation purpose,
6 is to take this plan -- take the Roaches' property out of the
7 P-RP subdistrict and provide whatever assurances the Commission
8 wishes to have on that land and through a conservation
9 easement.

10 MR. KREISMAN: Okay, if there are no further
11 questions on that. Really as a follow through, the last table
12 or row on Page 104 of the land use zoning, it would be, you
13 know, your normal M-GN zone like any other number of other
14 lines.

15 Purchasers, we're now recommending a change. I think
16 you understand this assignment provision. Purchase price.
17 Under the timing and sale, it's the discussions we've had and
18 our recommendation is to ensure -- I'm using that word
19 intentionally -- ensure that it not just go to TNC but that it
20 goes to AMC.

21 Then I think we're up to Page 107. Here's the issue
22 that we're presenting to you in this recommendation in a
23 nutshell.

24 Unlike the proposal that Plum Creek made, which goes
25 to a question -- unlike the proposal that Plum Creek made in

1 the legacy and balance easement to the probably first or second
2 question which is, okay, you intend for these conservation
3 lands to have these purposes, how does the Commission know that
4 there will -- that you will walk the talk. The answer
5 Plum Creek provided is here's the legal easements, here's the
6 easement that bind us to do so.

7 It may be that there are terms you want to change,
8 but the legal mechanism that Plum Creek offered and TNC offered
9 for the legacy lands to ensure that the conservation values are
10 protected that they walk the talk was these easements.

11 There is not a parallel offer in to date in the
12 record by either TNC, or particularly by AMC, that the purposes
13 that they testified that they would use the land for would
14 indeed stay with you.

15 And in their brief they addressed this issue square
16 right on, square, and they said essentially AMC is a
17 100-year-old organization with a long and reliable history and
18 therefore trust us.

19 We're taking the position, which is trust but verify.
20 In the same way, we're asking Plum Creed to walk the talk,
21 we're asking AMC to walk the talk here.

22 We're not suggesting substantive provisions that go
23 in our view one iota beyond the talk of what they testified,
24 orally and in writing. That's reflected on Page 107 in the
25 Footnote 101. But we are suggesting, however speculative,

1 however unlikely, that the Commission could be in the position
2 that five years after AMC acquires this property for reasons
3 that we can't predict, they need to sell it, they need to use
4 it for other purposes, et cetera, et cetera, and in that case
5 the recreational mitigation for which this property we believe
6 needs to be secured and provided would no longer be met.

7 So that's why the recommendation that immediately
8 after AMC acquires this property, a pretty narrow easement.
9 This is not an easement where we're suggesting there have to be
10 all the things we were just talking about in forestry. We're
11 not suggesting that it's regulatorily required to secure this
12 property for wildlife reasons and therefore forest practices
13 are implicated. There's no record evidence of that.

14 So these guaranteed terms through the easement go to
15 the type the recreation mitigation, assuring it, that
16 Messrs. Daigle and Anderson testified as necessary primitive
17 non motorized recreation and that's the purpose of it.

18 MR. LAVERTY: In general, hopefully not in this
19 context, but in general the whole question of limiting public
20 access in terms of motorized access is a major hot button issue
21 in the place I come from, it's a big issue.

22 While I support this recommendation, I think that
23 there's a place for primitive non motorized recreation and that
24 it must be somehow provided for in these easements.

25 I think it's important to point out I did some

1 calculations, and I'm just asking if they seem reasonable, of
2 the 360,000 acres that's being set aside for conservation, the
3 Roaches constitute approximately 29,000 acres, which means
4 that --

5 MR. KREISMAN: Not to interrupt but that's not a
6 correct calculation --

7 MR. LAVERTY: It's not --?

8 MR. KREISMAN: Because the 360,000 acres is the
9 easement lands.

10 If you add the lands that we think are total
11 regulatorily required leaving aside the 45,000 acres of No. 5
12 Bog, you have to add to the 360,000 the 29,000 acres of the
13 Roaches, so you're really at 390,000.

14 MR. LAVERTY: So 390,000. Of that 390,000,
15 approximately 360,000 -- or 361,000 -- provide for motorized
16 recreation.

17 This constitutes less than 10 percent, if I'm
18 calculating correctly, of restricted motorized recreational
19 opportunity?

20 MR. KREISMAN: I think the broad point you're making
21 is correct and indicative of our thinking. Evan, when we get
22 to it or now, can talk about the motorized access to the
23 360,000 is really guaranteed through the road easements.

24 MS. PINETTE: As well as through the snowmobile
25 easements.

1 MR. KREISMAN: Snowmobile easements, that's right.

2 MR. LAVERTY: I would hate to see a head line that
3 says, LURC eliminates motorized access, because my neighbors
4 would hang me. I wouldn't go that far but they certainly would
5 not be pleased. I would have to move.

6 I think it's an important point. Primitive
7 recreation, non motorized recreational opportunities, are
8 important because there are so few of them and they're
9 endangered, but yet they shouldn't dominate in the
10 jurisdiction.

11 I think people need to be assured that the vast
12 acreage that's being set aside here does not prohibit motorized
13 recreation. For some reason I think that needs to be made
14 clear.

15 MR. SCHAEFER: I think it's time to ask this
16 question, but even more important than motorized access, all of
17 these lands are subject to Fish & Wildlife laws for hunting,
18 fishing, and trapping. That's not written into anything.

19 MR. KREISMAN: Jerry can comment on this, but the
20 only way that your concerns, I believe -- I want to think about
21 this maybe over a break -- but I think the only way your
22 concerns are even touched on in the easements is through access
23 right, and there is no -- the public is provided access as
24 specified in those easements, so there's no limitation in any
25 way there.

1 In terms of the Roaches property, public access by
2 foot, except where in narrow one corridor limit, is also being
3 granted in full.

4 We haven't seen the language of that which goes to my
5 earlier point that it's being -- it's a descriptor that's in
6 the written testimony of AMC and their oral testimony before
7 you.

8 I think to the extent that it is critical, and I
9 haven't heard any intention otherwise, that those rights be
10 protected, that can be in it.

11 There was record evidence discussion of bear baiting,
12 and this is where I'm trying to be careful because I'm trying
13 to keep a lot in my head here. There was record evidence of
14 bear baiting.

15 There was discussion, I believe, in cross-examination
16 potentially by George Smith or Walter Graff about the limits on
17 bear baiting that were put in the KIW easement that AMC had.
18 That is the only thing off the top of my head,
19 Commissioner Schaeffer, that comes to mind in terms of express
20 limits on fish and game that I'm aware of. But I can go back
21 and look more carefully. But maybe -- yeah, I think that's
22 right.

23 MR. SCHAEFER: My point is in reference to Ed, if you
24 want to hunt and fish on the Roaches, you can't do that,
25 although it's on foot, but I just think we have to reassure the

1 public that overlaying this huge amount of acreage that the
2 State of Maine will enforce and treat fish and wildlife laws as
3 they do everywhere else. Given access, we will be able to
4 participate in those according to State law.

5 I don't know if that needs to be included or it's
6 inferred. Maybe Jerry can help us out there.

7 MR. REID: Well, it doesn't need to be stated here.
8 You're exactly right, the laws that generally apply to Maine
9 are going to apply to all the land that we're talking about,
10 including the Easton areas, the Roaches, and everything else.

11 As Ron says, really the way this becomes relevant is
12 through potential limits on access, not on substantive
13 restrictions on hunting or fishing or trapping.

14 MR. KREISMAN: Although in the Roaches, what I'm
15 saying off the top of my head, is that -- and I agree with
16 Jerry -- but I want to say we have not seen any language. It's
17 all a general statement in the testimony and a general
18 representation from AMC.

19 There may be language on limitations on bear baiting
20 activities, and I'm not sure if there are limitations on other
21 particular types of hunting activities. That's the only one
22 that comes to mind.

23 But I think generally there is no -- I didn't
24 understand their testimony as having any intent to prohibit, to
25 post land generally. And this may be a subject for which you

1 put out your wishes and your recommendations and you get 30
2 days of comment here.

3 I'm also going back to the balance easement --

4 MR. REID: I think there's language in the balance
5 easement about reserving the right to charge a fee for bear
6 baiting. Does that ring a bell for you, Ron?

7 MR. KREISMAN: It doesn't but it could be there. Is
8 the grantor's intent and objective -- I'm reading from
9 Section 7, Commissioner Schaeffer, under the balance
10 easement -- I'm now going back to the balance easement, we're
11 off the Roaches. Sorry, I didn't mean to skip around.

12 Is the grantor's intent and objective to allow
13 noncommercial, non motorized public access on and across the
14 use of protected property for traditional low intensity
15 recreational uses (including by way of example and without
16 imitation, hunting, fishing, trapping, picnicking, swimming,
17 boating, nature observers, cross-country skiing, snowshoeing,
18 and enjoyment of open space) and to maintain opportunities for
19 such uses in the protected property.

20 Grantor reserves the right to make reasonable rules
21 and regulations for different types of public uses and to
22 control or temporarily prohibit by posting and other means any
23 use by the public, including, without limitation, night use --
24 open fire, motorized vehicle, use of equipment, and nearest
25 access for purposes of protecting public safety, protecting

1 conservation values of the protected property, ensure
2 compliance.

3 Grantor reserves the right to allow motorized
4 recreational use of protected property, including snowmobiling
5 at the sole discretion of grantor, and that gets into the road
6 easements that we talked about.

7 I can't immediately pull up, Jerry, the language on
8 bear baiting. Oh, I see, thank you, Aga.

9 It is in the next paragraph that deals with the
10 ability to charge fees. Grantor reserves the right to charge
11 public fees in the amount of grantor's reasonable estimate. It
12 will recompense grantor for the costs . . . notwithstanding any
13 other provision hereof. Grantor expressly reserves the right
14 to acquire a permit and charge fees for bear baiting.

15 MR. SCHAEFER: Which is common now.

16 MR. LAVERTY: Just in the interest for the full
17 discussion here, absent that language, the landowner could
18 prohibit hunting under the easement.

19 I think we need to be clear about that. It's up to
20 the landowner. I'm not advocating that we build in in
21 perpetuity the right for the public to hunt on private
22 property.

23 But nonetheless, I think we all need to recognize
24 that unless there is explicit language -- again, subject to
25 your advice -- but unless there's explicit language that says

1 that hunting, leg hold trap, bear baiting, unless there's
2 specific language that says that would be allowed, if that's
3 absent in the easement, then the landowner has the right to
4 post the land and limit those activities; is that not correct?

5 MR. REID: Yes.

6 CHAIRMAN HARVEY: I thought what Ron just read said
7 that they had provided for it in the language in the easement.

8 MR. LAVERTY: But it does not apply to the Roaches.

9 CHAIRMAN HARVEY: The Roaches -- my view is the
10 Roaches is an entirely different situation.

11 MR. LAVERTY: I'm just trying to be clear. I'm not
12 arguing with you.

13 CHAIRMAN HARVEY: What they put in their easement I
14 guess remains to be seen. That property -- we've been
15 responsive to some degree to the concerns expressed by the
16 motorized people and the access -- the State's request for
17 access has been granted, so they can get to the Nahmakanta
18 property and the trail system.

19 But it's always been clear that -- AMC has certainly
20 made it clear on their policies on their existing property to
21 me points the way to what they want to do. I'm not sure that
22 it's within our purview to say that they can't do that.

23 We may not agree with it or whatever, but that's
24 certainly within -- as a landowner that's their objective. We
25 need to respect that.

1 MR. LAVERTY: I agree.

2 CHAIRMAN HARVEY: If they don't want to have bear
3 baiting, then they don't have to have bear baiting.

4 MR. WIGHT: In what way would they prohibit that, by
5 posting?

6 CHAIRMAN HARVEY: Bear baiting? You just don't allow
7 it.

8 I think there's a State law now that requires people
9 to seek affirmative landowner permission to do bear baiting, so
10 that's why these programs have become charged programs because
11 they post administrative role off to the landowner as well as
12 the person wanting to do it. It's a matter of State law that
13 they have to have landowner permission to do it.

14 MR. SCHAEFER: That would be my preference is to see
15 the easements to comply with State law so they don't have to
16 worry about setting limits proximally, that sort of thing.

17 The State overlies the entire area and uses their
18 management expertise and their enforcement, the warden service,
19 et cetera, so that it is given. It does allow for limiting
20 bear baiting, that's part of State law. That's what I'm
21 saying.

22 It would be easier just to use the State. If it has
23 to be put into the wording, I think it should be referred to as
24 complying with current State fish and game.

25 MR. WIGHT: I would agree with that. None of those

1 would fly in the ointment. We have a fellow up our way who is
2 guiding photographers to bait sites. Somebody figures that
3 out.

4 MR. SCHAEFER: In effect, hiking -- I mean, foot
5 access only just physically limits bear baiting except around
6 the perimeter. I don't know where they're coming from, but if
7 it's within State law, that's fine. I just think it should
8 apply to the whole.

9 MR. KREISMAN: I understand.

10 MS. HILTON: So there's nothing in the easement
11 language, is there, that restricts the landowner from limiting
12 motorized vehicle access in certain areas of the land -- what
13 I'm thinking about is motorized, ATVs in particular, it seems
14 like the landowner should be able to limit where they're able
15 to go, on trails that are designed for ATVs as opposed to
16 off-trail exploration.

17 MR. KREISMAN: The basic structure -- we're back to
18 the balance easement now and the legacy easement of the
19 Roaches -- the basic structure is the public access rights, the
20 non motorized public access rights, are granted in the balance
21 easement, and then there are a series of road easements that
22 haven't been talked about that grant motorized access to
23 particular identified locations.

24 MR. LAVERTY: And snowmobile trails.

25 MR. KREISMAN: And snowmobile. I apologize. So

1 we're really looking at three different documents.

2 MS. PINETTE: And so as sense, Commissioner Hilton,
3 the remainder of the balance easement and the legacy easement,
4 the use by the public of those lands for vehicular or motorized
5 purposes is at the landowner's discretion.

6 MS. HILTON: Okay.

7 MR. REID: The grantor reserves the right to make
8 reasonable rules and regulations governing most of these
9 activities, including motorized access in the balance easement.

10 MR. KREISMAN: Motorized access in the balance
11 easement is not prohibited, it's just not explicitly granted to
12 the public or to the holder and the third party holder to
13 enforce. As Jerry said, it's reserved except for snowmobile
14 easements, motorized, or the specific road easements that we'll
15 get to in the additional staff comments.

16 Does that clarify?

17 MS. HILTON: Yes.

18 MR. LAVERTY: I don't know whether it's worth noting,
19 but in our lakes management plan we designate, we have
20 classifications of water bodies based on resource values and
21 development potential.

22 One of those classifications is remote ponds, and
23 they are accorded the greatest protection. One of the
24 conditions of the classification as a remote pond is no
25 motorized access.

1 I think one of the things we can think about is
2 mandating motorized access even in the balance easement. I
3 think we need to look at that in terms of its impact in the
4 other regulatory scheme, are we giving up our ability to
5 preserve the values of remote ponds by maybe -- I'm not
6 expressing this well but --

7 MR. KREISMAN: No, I understand your point, and I'm
8 certain Jerry understands your point to be what is the
9 interplay between what the easement might give up and the
10 current LURC zoning and other regulatory restrictions on
11 certain access in different places.

12 MS. PINETTE: My sense is -- and we'll certainly look
13 back at this -- that neither of the vehicular road access
14 easements being offered or the snowmobile easements infringe
15 upon any remote pond protections, but we can certainly confirm
16 that.

17 MR. KREISMAN: But those remote pond protections
18 obviously are not granted in perpetuity; they're granted until
19 LURC changes its approach, if it does.

20 MR. LAVERTY: And not granted in perpetuity, but also
21 in designation of a pond that is not now designated as a remote
22 pond might conceivably in the future be so designated. But if
23 you provide motorized access today, under our current
24 regulatory scheme, do you preclude that designation?

25 MR. KREISMAN: We'll go back and check. The road

1 easements that are being granted --

2 MR. LAVERTY: My point is really on the head of a
3 pin --

4 MR. KREISMAN: No, you're not. But I think it's a
5 good point that the road easements that are being granted are
6 essentially, in most cases -- and Evan and Aga have studied
7 this more -- are arterial, they're not into the little pieces.

8 Evan, you may want to comment on that.

9 MR. RICHERT: That is for the most part true. These
10 are the backbone roads, logging roads. There are a couple of
11 branches that go down to the primitive camp siting areas at --
12 I think at Lily Bay, a branch also at Spencer Bay.

13 CHAIRMAN HARVEY: Okay. Back to the Roaches, I
14 guess, is what we parted from.

15 Are we clear on what's being recommended there? Are
16 you comfortable with it, that basically the removal of Roaches
17 property from the P-RP zone so it's a stand-alone property but
18 that it is going to close simultaneous with the rest.

19 Presumably we can move ahead here that it would close and there
20 will be easements in place to protect the property and the
21 values we believe are critical to the whole concept plan.

22 MR. LAVERTY: And I think it's important to make it
23 explicit that non motorized recreation in that area is
24 mitigation --

25 CHAIRMAN HARVEY: Right.

1 MR. LAVERTY: -- for adverse impact on primitive
2 recreational opportunities under our regulatory scheme.

3 Is that fair, Jerry?

4 MR. REID: Yes, most certainly.

5 CHAIRMAN HARVEY: Okay. Bog properties. I don't
6 know as we need to say a lot about this. It's not part of the
7 concept plan, the way I think you said, Ron.

8 MR. KREISMAN: It's not zoned as part of the P-RP.

9 CHAIRMAN HARVEY: Someday I would like to know how
10 you get \$10 million for a bog.

11 MR. WIGHT: It's a very valuable bog. Given that,
12 what part does it play in these proceedings?

13 MR. KREISMAN: I'm going to make two comments. From
14 a regulatory point of view staff recommendation that it doesn't
15 play a part, not because that's our personal view but because
16 there's no record evidence that we're aware of, none, like
17 zero, that we're aware of, that says that No. 5 Bog fulfills --
18 the acquisition of the No. 5 Bog fulfills a regulatory purpose
19 that we've identified for conservation offsets.

20 Having said that, what I said yesterday was there's a
21 purchase and sale agreement which we had no objection to or
22 opinion about in which TNC has offered and Plum Creek has
23 accepted to purchase the No. 5 Bog properties and some of the
24 purchases front-ended a little bit as we noted in Footnote 103,
25 on Page 108, Commissioner Wight, within a five-year period,

1 provided the funds; and we're not in any way suggesting the
2 Commission involve itself to endorse or upset the apple cart,
3 so to speak.

4 As far as we understand, it's an existing legally
5 binding contract between two private parties.

6 MR. WIGHT: A contract that just happens to be
7 simultaneous with these other things that are going on.

8 MR. KREISMAN: It doesn't have to be simultaneous
9 under the way --

10 MR. WIGHT: Within the five years but I mean -- so
11 are you saying that it we can take it out of the book?

12 MR. KREISMAN: I'm suggesting that you don't change
13 anything, you leave well enough alone.

14 MR. WIGHT: Something about sleeping bags.

15 MR. KREISMAN: That the history may be interpreted as
16 being that Plum Creek was prepared to offer for sale this No. 5
17 Bog as, in its view, part and parcel of this entire concept
18 plan being approved.

19 That may be the condition in which Plum Creek was
20 prepared to offer it and the position of which TNC was prepared
21 to accept it. That doesn't have to be an opinion or regulatory
22 requirement of this Commission. That's what we're saying.

23 MR. WIGHT: Back to your recommendation of
24 indifference.

25 CHAIRMAN HARVEY: Okay, additional plan elements,

1 which look like the trail, the snowmobile trails that we had
2 talked about, the peak-to-peak trail easement. That's an
3 interesting one. The hut-to-hut trail.

4 MS. PINETTE: We've laid out our recommendations
5 here, and I can go through a brief overview if you like or just
6 respond to questions.

7 CHAIRMAN HARVEY: I guess just a little bit of a
8 comment on the trail, the peak-to-peak trail thing, on where
9 you really kind of made an interesting change on how you might
10 view that in terms of converted with the total land area as
11 opposed to a description of the linear and why you just chose
12 to do that.

13 MS. PINETTE: Sure, I'd be happy to talk about that.

14 Our sense from reviewing the record was that there
15 was very little evidence that the peak-to-peak trail as was
16 being proposed to be configured in this plan served a
17 regulatory purpose, and in fact there was a lot of concern
18 expressed by a number of parties and witnesses as to the
19 feasibility and functionality of the trail easement as was
20 being proposed.

21 What staff is recommending -- first of all, we are
22 acknowledging that hiking trails and hiking trail easements are
23 an important mitigating element that becomes part of the
24 recreation mitigation package here, and instead what we are
25 suggesting is taking that 67 linear miles offered by 15-foot

1 wide easement offered by Plum Creek and providing some
 2 flexibility in terms of how that is placed on the landscape in
 3 the future and what function and purpose it should serve and
 4 allowing BPL, in coordination with the landowner, to make
 5 decisions about what needs exist in the future with respect to
 6 hiking trails, whether those needs are, you know -- they could
 7 very well identify and find down the road that the need does
 8 exist for a peak-to-peak-type trail that involves extended
 9 overnight hikes and use it in a way -- there's nothing here
 10 that would preclude BPL or Plum Creek from reaching an
 11 agreement and using those 67 miles or the equivalent square
 12 footage in the manner being proposed right now.

13 We're simply offering some flexibility here for --
 14 should BPL and Plum Creek find that other needs arise with
 15 respect to hiking trails and that a series of day loops better
 16 serve the needs of the area, that that opportunity and that
 17 ability is built in here.

18 So that -- that's really the basis, or the underlying
 19 rationale, for converting these 67 miles into a total square
 20 footage of that hiking trail easements being located as one
 21 easement or a series of easements in the region, and again,
 22 either in the balance easement or the legacy easement lands
 23 with BPL taking the lead but working in conjunction with the
 24 landowner to locate and determine what the need is in the
 25 region.

1 MS. HILTON: Aga, do you have -- I really like what
 2 you've proposed here. I am wondering about the timing, or --
 3 it seems kind of open ended unless I'm missing something here
 4 with respect to how we know that it would happen, how would it
 5 be implemented.

6 MS. PINETTE: We haven't gotten to that level of
 7 detail in these recommendations but that's a great point and we
 8 will certainly come back to that if you direct us to come up
 9 with the implementation mechanism to make sure that this does
 10 happen.

11 My sense is that at the very least a provision ought
 12 to be in place to ensure that kind of a use-it or lose-it
 13 provision for BPL to ensure that those trails are cited within
 14 the 30-year term of the plan. That's just an idea.

15 It's something that we would certainly want to come
 16 back to and work out an implementation mechanism that is
 17 meaningful.

18 MR. KREISMAN: I'll just add, I'm just thinking about
 19 this on the fly, Commissioner, even take the same kind of
 20 approach that's being recommended for the road easements that
 21 when a certain number of units are developed in a certain area,
 22 a certain number of trails, roughly without being too locked
 23 in, to keep progress on this issue going forward.

24 MR. LAVERTY: The record, if I recall correctly,
 25 there were concerns expressed about the design, the width, a

1 number of things regarding the peak-to-peak trail.

2 I think this is a -- barring complications that we
 3 are yet unaware of, and there again underscoring the importance
 4 of the comment period here, this seems to be related and very
 5 useful recommendation in terms of how we address that rather
 6 than locking ourselves into that peak-to-peak trail 15 feet
 7 wide.

8 MR. WIGHT: I certainly agree with that. If this --
 9 yeah, if we can convince people that this is the way to go, I
 10 think it's a much more beneficial use of recreational property,
 11 that there are a lot of trails in the area.

12 I didn't hear any convincing talk at the hearings
 13 about the trail being of great value except in somebody's mind
 14 it would be nice to go from one mountain and walk to the top of
 15 the other mountain, but I really liked the idea -- trying to
 16 figure out what it was -- got some thousand acres or something
 17 like that to deal with here.

18 MR. SCHAEFER: I think the intent was well founded,
 19 it just didn't --

20 MR. LAVERTY: Yes.

21 MR. SCHAEFER: -- so this is a great way to honor
 22 that intent I think.

23 CHAIRMAN HARVEY: I think we would be guided a lot by
 24 whatever comments we get back on this one.

25 MS. PINETTE: Yeah, my sense is we would, in

1 particular, want to hear from BPL on their thoughts on what
 2 kind of limitation mechanism would be workable here.

3 CHAIRMAN HARVEY: Okay. Any other comments on that?
 4 If not, the hut-to-hut trail easement, there's no changes
 5 recommended there.

6 MR. SCHAEFER: Can I ask one quick question about the
 7 hut-to-hut?

8 CHAIRMAN HARVEY: Yes.

9 MR. SCHAEFER: It's supposedly going to end at
 10 Moosehead, that's the intent. If it's an overriding success
 11 and they want to extend it out of the concept plan towards
 12 Katahdin, is there an allowance for that, or is it the end of
 13 the road pretty much?

14 MR. WIGHT: It comes out of the area in other
 15 directions.

16 MS. PINETTE: You mean across on the east side --

17 MR. SCHAEFER: Yes.

18 MS. PINETTE: -- of the balance easement?

19 MR. SCHAEFER: Yes.

20 MR. KREISMAN: No, there isn't right now. What the
 21 balance and legacy easements are recommending is -- and I'm not
 22 saying this is good -- but are recommending some limited rights
 23 of BPL to establish trails working with the landowners in
 24 moving west from Rockwood, potentially, whatever; but to the
 25 extent that in the testimony Larry Warren or the person who is

1 the executive director of the trails, hut-to-hut, Dave
 2 Herring -- expressed some interest in moving the trail beyond,
 3 I think you would have to -- if it's extensive, if it's a wide
 4 easement as it is, I think you'd have to look to the amendment
 5 process, and that may be something that you may direct us to
 6 look at to preserve the possibility or just use the amendment
 7 process.

8 It would be -- there would be some costs to the
 9 landowner from that and you may want to -- I could go back and
 10 look at whether there are sale options that are there, but I
 11 don't think so. That would be pretty open ended.

12 MR. SCHAEFER: We could do that with every single
 13 thing that's going on. Let's just trust the amendment process,
 14 I think.

15 MS. PINETTE: We could also look back at the terms of
 16 the balance and legacy easements and see whether -- you know,
 17 my sense is that much of that kind of a trail system might
 18 already be implicitly a permitted use because of the underlying
 19 zoning, so, for example, building a trail I think would be --
 20 correct me if I'm wrong here, Ron -- is a permitted use under
 21 the terms of the balance and legacy easements, and there are
 22 some provisions in those easements to allow for back country
 23 huts.

24 MR. KREISMAN: Let's take this under advisement. I
 25 think we're getting into a very, very gray zone right here.

1 MR. SCHAEFER: I didn't mean to do that.

2 MR. KREISMAN: No, I think it's a good point. It's a
 3 good point for both for this specific issue and it's another
 4 angle or data point to think about the amendment issue, another
 5 aspect of it.

6 And the conundrum of freezing in time things that,
 7 you know, meaning to organically develop that would be
 8 perfectly appropriate.

9 MR. LAVERTY: It just occurs to me, again, thinking
 10 off the top of my head here, that proposals for activities or
 11 changes that enhance the values of the conservation easement
 12 and they're not objected to by the easement holder or the
 13 property owner, could there be a facilitated amendment process
 14 or something?

15 In other words, the activities that we think that
 16 everyone mutually agrees should be encouraged, can the approval
 17 of those activities be facilitated somehow so that you don't
 18 create this disincentive for positive change?

19 MR. KREISMAN: I take your point, and Jerry's really
 20 good at drafting.

21 MR. WIGHT: Day 7 of his vacation.

22 CHAIRMAN HARVEY: All right. Did we discuss to your
 23 satisfaction the vehicular road access easements? I think we
 24 just covered those at a couple of other points in time.

25 MR. SCHAEFER: I have one question. That's 24 -hour

1 road access? Good. That's it.

2 MR. WIGHT: Does that BPL needs to maintain those
 3 roads?

4 CHAIRMAN HARVEY: No, I don't think so. The
 5 landowner is still stuck with that --

6 MR. RICHERT: Let us make sure what the --

7 MR. LAVERTY: There are two or three conversations
 8 going on and I'm having a hard time.

9 CHAIRMAN HARVEY: We had a question about the roads
 10 being open 24 hours.

11 MR. RICHERT: Let us make sure what the answer to
 12 this is.

13 CHAIRMAN HARVEY: It's 25 after 12. I think we'll
 14 take a break here. We'll be back at about quarter past 1 to
 15 pick it up and hopefully we can finish. We're on Page 115.
 16 Hopefully there's a few blank pages between there and 127.

17 (There was a luncheon break in the deliberation at
 18 12:36 p.m. and the deliberation resumed at 1:16 p.m.)

19 CHAIRMAN HARVEY: All right. Ron, are you still up?
 20 Are you eating?

21 MR. KREISMAN: No, I'm not eating. Are we on the
 22 Community Stewardship Fund, or are we on the vehicular road
 23 access easement?

24 CHAIRMAN HARVEY: I think we agreed that we covered
 25 the road access easement question other than the question that

1 Steve Schaefer had regarding the timing. We did a search of
 2 the easement, I think, at lunchtime.

3 MR. RICHERT: Yes, the wording in the easement says,
 4 at all reasonable times.

5 MR. WIGHT: I had a question regarding whether or not
 6 we were sure that ATVs were included in things that were
 7 allowed on the road, and the easement, again, did say
 8 recreational vehicle access, so however you interpret that.

9 CHAIRMAN HARVEY: I think as a matter of law ATVs
 10 aren't allowed on the road.

11 MR. WIGHT: Not allowed on public roads.

12 CHAIRMAN HARVEY: And the landowner has the right to
 13 post private roads for no ATV use, as well.

14 MR. WIGHT: That was why the question as to whether
 15 this easement included ATVs or not. I guess it's still open to
 16 interpretation.

17 CHAIRMAN HARVEY: I would not think that we would
 18 want to require that they be open to ATV use. The landowner is
 19 responsible -- if there are any environmental consequences, we
 20 hold them responsible, not the user, so if we're going to hold
 21 them responsible for any damage, they have to have the right to
 22 decide who gets to use their roads for what purpose.

23 MR. WIGHT: The other issue is safety in all parts of
 24 the ATV trails.

25 MR. Nadeau: Can we have clarity? Where is the ATV

1 access trails?
 2 MR. RICHERT: We will find out. I understand the
 3 issue and we will have to talk to BPL as to how they are
 4 reading this.
 5 MR. Nadeau: Thank you.
 6 MR. LAVERTY: Are we on the Community Stewardship
 7 Fund?
 8 CHAIRMAN HARVEY: Pardon me?
 9 MR. LAVERTY: Are we on the Community Stewardship
 10 Fund?
 11 CHAIRMAN HARVEY: Yes, please go ahead.
 12 MR. KREISMAN: I'm happy to answer any questions.
 13 I'm not sure --
 14 CHAIRMAN HARVEY: Well, Ron, you've made a fairly
 15 significant departure here from what was discussed and the idea
 16 of breaking this fund up three different ways and the
 17 administration of it.
 18 You might want to offer something to refresh now for
 19 that.
 20 MR. KREISMAN: There were two purposes for what staff
 21 consultants were recommending. I think the jumping off point
 22 of this is on Page 115, Note 104.
 23 Plum Creek's plan description states that Plum Creek
 24 recognizes that there are social, educational, recreational,
 25 and community needs in the region that are not funded or not

1 adequately funded, taxes, fees, charities, and other revenue
 2 sources, therefore Plum Creek will establish a Moosehead
 3 Community Regional Stewardship Fund to help address these
 4 needs.
 5 Staff consultants -- point No. 1, staff consultants
 6 believe that the three needs listed here are the only three
 7 that meet the -- from record evidence -- are the only three
 8 that meet the twin requirements of related to regulatory
 9 criteria, CLUP goals, et cetera, and are testified to as needs
 10 in the record.
 11 So, for example, affordable housing fund is the only
 12 one in which there's real record evidence as to social,
 13 educational, recreational community needs in terms of public
 14 infrastructure or quasi public infrastructure needs.
 15 Recreation, we've talked a lot about. There was
 16 record evidence, in fact, Plum Creek witnesses were talking
 17 about certain wildlife mitigation for loons, for invasive
 18 species, that they were recommending that the agencies work but
 19 there's no provision in any funding providing that. So one
 20 purpose is that type of connection.
 21 The second is that from an organizational
 22 implementation point of view, our humble judgment is that what
 23 was being proposed was an organizational nightmare in which you
 24 would have a nonprofit that had very ambiguous, very open ended
 25 charge membership that was unclear how it would get there, and

1 we saw the potential for substantial disagreement, gridlock so
 2 that something was accomplished.
 3 So to the extent that you agree that you want an
 4 organizational structure that works, then the question is well,
 5 for what should it work. Our recommendation is that it should
 6 work for these three purposes for which there's record evidence
 7 in support.
 8 There's -- that's the basic answer, Mr. Chairman.
 9 And then the question becomes, if you agree with that -- and
 10 I'm not saying you do but just to give you a sense of our
 11 thinking proceeding from there -- the question then becomes
 12 tying down the specific purposes, recreation is a broad
 13 category, how much money and to whom should it go. I think
 14 that's it.
 15 Taking them one by one, on the Moosehead Recreation
 16 Fund, there was a lot of discussion in the record of the need
 17 for -- or the desire for -- some kind of broad scale recreation
 18 management of the area.
 19 We didn't think that was going to work. There was a
 20 lot of -- when that discussion came up, there was a lot of
 21 comparison to areas that had public ownership and management
 22 plans were recommended for recreation, how those management
 23 plans would be changed and everything, and that may work just
 24 dandy in a public forest, in a National Park, but in a
 25 situation here where you would have a private landowner whose

1 charge was not recreation management and maybe any number of
 2 private landowners, we couldn't really see how a unified
 3 recreation management plan was going to work, where the
 4 enforcement would be, where the authority would be, nor did we
 5 think the record evidence in our view supported the need for
 6 that kind of recreation management.
 7 What we did think the record supported very clearly
 8 is the specific areas where we are suggesting the Moosehead
 9 Recreation Fund go towards hiking/biking trails, related needs,
 10 signage, et cetera, BPL-operated campsites and campgrounds --
 11 there's a lot of testimony and Commission concern on that
 12 issue -- and public boat launches all in the concept plan area.
 13 And then we tried to provide -- and this could be
 14 obviously changed or refined at your wishes -- who should be
 15 making these decisions with some mix of State recreational
 16 interests and local recreational interests, and the landowner
 17 deciding that.
 18 So that was, without going on, the rationale. I'll
 19 save the funding allocation suggestion.
 20 On the affordable housing fund --
 21 MR. WIGHT: Before you leave that, are you suggesting
 22 that a committee be formed to manage that piece of the fund?
 23 MR. KREISMAN: What we're saying is that it's
 24 administered by BPL, administered with a small a.
 25 MR. WIGHT: The fund goes to BPL?

1 MR. KREISMAN: The fund would go to BPL and would be
2 governed by a board made up of --

3 MR. WIGHT: Oh, okay.

4 MS. HILTON: Is there any reason why you left out
5 Beaver Cove or would there be a reason to include them on your
6 list there of representatives of the board?

7 MR. RICHERT: We tried to make sure that communities
8 that had recreational services and infrastructure could be
9 impacted by the demands that were represented.

10 I'm not aware that Beaver Cove has those
11 infrastructure facilities. It doesn't mean they shouldn't be
12 there.

13 MS. HILTON: And I haven't given a lot of thought to
14 this, it's just sort of a reaction, just because they sort of
15 represent the other side of the lake, the east side of the
16 lake, or otherwise we don't have --

17 MR. RICHERT: Sure, good point.

18 MR. LAVERTY: In terms of the governing structure
19 that you set forth, it occurs to me that the same issue in
20 regards here, landowner representation -- here it specifically
21 designates Plum Creek, but obviously that will be changed in
22 the future, and as you pointed out, if the land's disaggregated
23 you may end up with a number of landowners, and therefore it
24 would be very substantial representation of landowners on this
25 governing board.

1 I'm not sure that's necessarily bad but I just raise
2 that for your comment.

3 MR. KREISMAN: Well, if you desire us to limit that
4 to one landowner, we can certainly put that in the
5 recommendation.

6 MR. LAVERTY: I'd like to think that through.

7 MS. PINETTE: Or alternatively what may be a solution
8 to that is come up with a fractional approach where should
9 there be more than one landowner in the future, they get a
10 quarter vote.

11 MR. LAVERTY: I think we want to make sure that the
12 landowners' voices are heard, but the extent by way we
13 constitute this government mechanism should sort of legally
14 dominate, I think, depends on the authority that's being
15 accorded them and what's sort of the purpose of the government
16 body.

17 MR. KREISMAN: Yeah, I hear what you're saying. I
18 think we ought to keep in mind that it's highly likely that the
19 trails and the trailheads and the parking areas are all going
20 to be in balance or legacy easement lands, and working together
21 as to how those should be sited and everything else is going to
22 be critical.

23 MR. WIGHT: Another approach might be to create a
24 fund that was a grant giving fund where towns, governments, or
25 trail groups or voting groups or whatever could apply for

1 grants to do the projects, and then you would have this
2 committee that would meet that would decide the grants.

3 MR. LAVERTY: I think that's a great idea, but I
4 would like to present that as an option, not as sort of the
5 exclusively mechanism for the dispensation of these monies.

6 It just seems to me that there are responsibilities
7 under the easement that need to be met, again, in order to meet
8 our regulatory requirements to mitigate for adverse impacts,
9 and I think we need to be assured somehow that the expenditures
10 in this fund are related to that in some sense.

11 MR. KREISMAN: The hear that. The other thing,
12 Commissioner Wight, that I was thinking of is that -- and there
13 may be comments on this in 30 days -- but it wouldn't surprise
14 me if Plum Creek strongly wanted to limit how many parties they
15 were dealing with and might be operating trails and camp
16 campgrounds in the easement lands, and that's why our
17 recommendation was it's BPL, BPL could subcontract that out as,
18 I suppose, with some kind of permission.

19 But in the same way that it's very important in
20 forestry running forward to have as much as a collaborative
21 relationship as can occur, I think having BPL as the people who
22 are going to figure out campsites and having Plum Creek having
23 one person, one entity, go to that campsite, that campsite's a
24 mess, you're not monitoring, it's causing us all kinds of
25 trouble, clean up your act.

1 MR. WIGHT: I understand that, but I got the sense
2 from the hearings that people had been given to understand that
3 no matter what they wanted, they could get it from any fund,
4 and so everybody was hoping to tap into the community fund for
5 something.

6 It's fine, you know, if BPL administrators it, but I
7 think there's a presumption on the part of the community in the
8 Greenville area that they'll see some benefit from this not
9 only on the easements lands --

10 MR. KREISMAN: No, I couldn't agree with you more
11 that there was the -- you know, it's Christmas in May for
12 everybody, and we're specifically recommending against that
13 because we think it will lead to not getting some things
14 accomplished that are related to this proceeding and it could
15 be accomplished.

16 MR. WIGHT: Okay, so do you feel then that the
17 purpose of the Community Stewardship Fund is to put
18 recreational facilities, in this case, on the easement lands
19 specifically?

20 MR. KREISMAN: Good question. First of all, we don't
21 think there should be a Community Stewardship Fund. We think
22 there should be three funds created per Page 115, with the
23 first one being the Moosehead Recreation Fund that is important
24 for narrow purposes.

25 And whether those purposes are fulfilled, a boat ramp

1 that might supplement what Greenville has right now may be
2 fine, so it wouldn't necessarily have to be on the easement
3 lands. It would be up to this group of people to determine the
4 best use of that money. That's what we're recommending there.

5 MR. WIGHT: I just thought that some of it had to do
6 with compensation for pain and suffering or something, calming
7 down the natives or whatever. It sounds like you're going in
8 the right direction.

9 MR. KREISMAN: Those are your words, not mine. Both
10 parts of your sentence.

11 CHAIRMAN HARVEY: Steve has a way of stirring the pot
12 occasionally as you know.

13 MR. KREISMAN: I think we discussed the affordable
14 housing fund yesterday. I'd be happy to answer any questions.

15 MR. WIGHT: There's part of this is going to become
16 an affordable housing fund, but there's also, later on in this
17 section, there's talk about a CEI grant.

18 MR. KREISMAN: Let me explain my understanding.

19 The state of the world for affordable housing, as the
20 record reflects, is that fortunately or unfortunately you've
21 got to pull together a number of subsidies to make it work.

22 One subsidy is the cost of land, which is being
23 donated up to 100 acres by Plum Creek. One of it is the
24 subsidy for the subsidized loan itself, or some cheaper money,
25 so to speak.

1 But both CEI in Mike Finnegan's testimony and Maine
2 State Housing Authority were very clear that not any particular
3 project, particularly rental unit, multi-family rental unit,
4 that additional subsidies are going to have to be there to
5 really make it work. I mean, that doesn't mean there isn't one
6 project that could, but generally the additional subsidies are
7 going to have to be there.

8 So this would be proposed -- and Maine State Housing
9 Authority, through various subsidies that apparently are not as
10 available as they once were, generally provides those
11 subsidies -- is quite involved in providing certain subsidies,
12 pass-through money from the federal government, et cetera, in
13 particular projects.

14 So the notion here is that -- and I don't think we're
15 talking about we ransom very rough assumption-based numbers,
16 but the idea is the Maine State Housing Authority would
17 administer this money as it does other subsidies to worthy
18 projects which could very much be sponsored by CEI.

19 MR. WIGHT: That's --

20 MR. KREISMAN: I don't have any sense that it
21 wouldn't work together. Whether it's efficient or not is quite
22 another question.

23 The last piece, Mr. Chair, is the funding allocation,
24 45-45-10. There's no magic here. It's really reflection of
25 what we think the record supports in relative funding demands.

1 We have record evidence that a mile of trail costs
2 15,000 a mile to build. The subsidies that would be required
3 for affordable housing are quite significant. Whereas, for
4 putting modest dollars on a lot related to constructing loons'
5 nests or written education materials, some monitoring --
6 Commissioner Kurtz may be able to fill in a lot of the details
7 on this -- that the wildlife and invasives is potentially of a
8 lesser magnitude.

9 But I want to hasten to say that the record on this
10 issue, too, was not as mature or ripe as we wanted, and so I
11 think that comment on whether this allocation makes sense or
12 whether we're way off base would be appropriate.

13 MR. LAVERTY: Also, it raises the perpetuity issue
14 again in that this allocation may make sense in terms of
15 today's perceived needs, but as some of those needs are met,
16 some of them may be ongoing, some of them may be met, there may
17 be new needs arise and I would assume, then, that that would
18 require an amendment to the concept plan.

19 Again, might argue for some -- in instances where
20 these amendments are relatively noncontroversial in which there
21 is general consensus, we have a facilitated amendment process
22 that would not unduly burden the progressive evolution of this
23 fund.

24 MR. KREISMAN: Part of this is going to be driven by
25 a limited and probably tapering amount of money because --

1 MR. LAVERTY: That's true.

2 MR. KREISMAN: -- you'll remember that the initial
3 slug of money, which is 2 percent, comes with initial lot
4 sales. After those initial lot sales are done, it's one-half a
5 percentage on resale.

6 It's very difficult to know if resales are going to
7 occur every three years or every seven years. I guess we
8 understand there will be some broad average, or more, so I
9 don't think we're talking here about millions of dollars to be
10 floating around in lots of years on this one.

11 MR. WIGHT: We also talked yesterday about whether or
12 not 2 percent would be applied to single-family home units at
13 resorts.

14 MR. KREISMAN: We can put that up again.

15 If there's no questions on that, there's one other
16 funding provision I'm going to draw your attention to when
17 you're ready.

18 MS. HILTON: Ron, on what you just handed out, the
19 last, on the right-hand column, No. 2 there, the long-term plan
20 demonstrates that a resort and these units will not contribute
21 to the needs that these three funds are addressing.

22 I just read through this quickly.

23 MR. KREISMAN: Right. What does that mean.

24 MS. HILTON: Yes.

25 MR. KREISMAN: Well, here's a for instance. Let's

1 say a resort at Big Moose within the zone and at the resort
2 owner's -- the resort developer's expense, because they see the
3 amenities, provides an extensive network of hiking trails that
4 might also be open to the public. I think there's a fair
5 argument that says we have paid our dues on this, thank you
6 very much. That argument could be made.

7 Similarly, wildlife -- continue -- this is just very
8 conceptual, okay, but there's been a lot of discussion in the
9 record of how resorts and the applicant intends, for instance,
10 intends -- there's not a mechanism on wildlife mitigation and
11 invasive species.

12 You could see a situation where for many, many units
13 they were a program in place that for all the resort-owned
14 units where people when they come in are given materials on
15 invasive species control, if they had their boats -- I'm
16 exaggerating here just to make a point -- but they're all
17 required to go through a five-minute video on safe boating and
18 cleaning your boat, et cetera, et cetera; where an argument can
19 be made that because of this controlled nature of a resort that
20 they're really doing their part.

21 I'm not saying they will, but I think we have to
22 acknowledge that possibility and not saying automatic. As
23 opposed to 55 individual landowners on Long Pond who aren't
24 part of a legal and financial structure that's building as part
25 of a resort fee that they might have to pay equivalent to a

1 condominium fee, you know, 55 individual landowners of Long
2 Pond may not be contributing to a pool of money that does all
3 of these things.

4 If there are, that should at least be open for
5 discussion, but it would have to be vetted pretty carefully in
6 the long-term plan. That's the only point we're making.

7 MR. LAVERTY: I understand that, but might the
8 reverse be the case also? I mean, what's good for the goose is
9 good for the gander.

10 If we determine by BPL -- or by LURC -- that the
11 nature of the development such that it imposed in additional
12 impacts, that an additional assessment could be undertaken?

13 MR. KREISMAN: I'm not sure I would go that far.

14 MR. LAVERTY: You're talking about reducing the
15 assessment.

16 CHAIRMAN HARVEY: You're talking about either not
17 having one or imposing it as it's proposed here, the 2 percent.

18 MR. LAVERTY: Right. What I'm saying is, if we find
19 that -- or the Commission finds -- that these conditions have
20 been met, then the assessment doesn't apply; correct?

21 If we determined that the nature of the resort or the
22 subdivision was such that it would impose additional burdens in
23 that regard, should there be a mechanism to allow for an
24 additional assessment?

25 I'm just doing this logically.

1 MR. WIGHT: It seems to me it's an impact fee and you
2 use it for purposes stated. If it's not needed for invasive
3 plants, then you use it for lynx habitat.

4 MR. LAVERTY: I'm just wondering if we want to get
5 into that adjusting --

6 CHAIRMAN HARVEY: No.

7 MR. LAVERTY: -- up or down.

8 CHAIRMAN HARVEY: I guess -- well, it says here --
9 just to be fair to everybody that's listening to us, we were
10 given a new page for our book that dealt strictly with funding
11 of CSF activities, and it basically clarified the definition of
12 residential dwelling units as being what Plum Creek proposal
13 had to charge 2 percent of the sale of residential dwelling
14 units, and then it added some language on how to deal with
15 resort accommodation units that are individually owned
16 basically saying that we would apply the same funding mechanism
17 to those units unless the long-term development plans for the
18 resort proposal -- the long-term development plan for the
19 resort proposes and the Commission approves.

20 MR. REID: This page is an omission which I believe
21 staff identified yesterday morning at the outset?

22 MR. LAVERTY: It's more than an omission. This is
23 brand new. The omission that was read to us and then reflected
24 in our changes that we made ourselves dealt only with the
25 extension of that assessment fee to resort units that were not

1 dedicated to temporary occupancy.

2 This now --

3 MR. KREISMAN: No, this is the same thing you saw
4 yesterday.

5 MR. LAVERTY: It says --

6 MS. PINETTE: You're absolutely right.

7 MR. LAVERTY: This language right here (indicates).

8 MR. KREISMAN: No, no, no, it's not in your packet.

9 It's the same as -- I'm sorry, I was misunderstanding. It is
10 new. It was read yesterday but presented to you today.

11 MR. REID: Do we have copies for the parties?

12 MS. PINETTE: We can make copies for the parties.

13 MR. LAVERTY: I'd like to think about it I guess.

14 MR. KREISMAN: I understand. And the only thing I
15 would say is -- and Aga just pointed this out to me -- that
16 when any development proposal in the resort is approved, you're
17 going to have to find no undue adverse impact on recreation or
18 wildlife, so that's a starting point.

19 You're going to be approving a long-term development
20 plan where they're going to have to make certain showings of
21 recreation use within the resort, et cetera, et cetera, so I
22 think leaving this open the other way, there are some
23 safeguards to the issues that you're raising at the front end
24 and leaving this open with an unknown fee that could be
25 assessed may be --

1 MR. LAVERTY: I guess -- let me tell you what my
 2 point is. This is the first time I've seen this.
 3 MR. KREISMAN: I understand and I apologize.
 4 MR. LAVERTY: No, we need to do this organically and
 5 it needs to evolve.
 6 What I'm saying is I just haven't seen this. I can
 7 neither endorse this nor object to it. I need to think about
 8 it.
 9 If we get to the point of deciding what we're going
 10 to send out for comment, I suppose we better comment. Now I
 11 can't.
 12 MR. KREISMAN: Look, I take your point. If
 13 everything were perfect you would have had it Tuesday night on
 14 the Internet.
 15 MS. KURTZ: Can I jump in on the formulation of 45
 16 percent, 45 percent, 10 percent?
 17 I think my initial reaction is that probably it's
 18 based on the record and the analysis of the staff and
 19 consultants, and I'm pretty comfortable with that.
 20 But I think what I want to point out is that at this
 21 point, as I understand it, there are not any invasive plants in
 22 the project area, nor are there invasive zebra mollusk or any
 23 of those other species, although I do understand there is bass.
 24 At the prevention level, the costs of prevention are
 25 actually quite small relative to the cost of treating any of

1 the invasive species, so I would like to see that built in.
 2 I'm not sure that it has -- Ed was talking about a
 3 facilitative amendment. I'm wondering if the language could be
 4 written upfront rather than requiring an amendment that the
 5 formula can be changed or that somehow you're not left with --
 6 I don't know if it's a slush fund -- but you're left with a
 7 fund and one of the funds is over funded and one of the others
 8 is under funded and it takes months to rectify that.
 9 I think particularly with invasive species, the
 10 sooner you get on the stick to address them, the easier it is
 11 to try to mitigate or minimize their impacts.
 12 I'm wondering legally -- maybe Jerry can jump in on
 13 it -- but having that flexibility to deal with something if
 14 there actually is an infestation rather than just simply a
 15 prevention effort.
 16 MR. KREISMAN: I take your point. I think the issue
 17 that we'll face and it may require reaggregating these
 18 functions is that our recommendation -- and we hadn't thought
 19 of the issues that you or Commission Laverty are raising -- is
 20 why this kind of Commissioner involvement is so critical.
 21 If you have three separate funds with fixed monies,
 22 how they get repooled is a little tricky, so it may be that
 23 this gets put back together with three specific purposes and
 24 something else and it may be -- the only thing I would caution
 25 is that you not over structure this given the amount of money

1 that, you know, our guess is it's going to be involved and it's
 2 just a guess. We're not talking about the Bill and Melinda
 3 Gates' Foundation here.
 4 We may be talking -- may be talking -- it's all based
 5 on approximations. We can give you our very hypothetical -- we
 6 may be talking a couple hundred thousand dollars a year.
 7 I take your point and we can think about it, or if
 8 you have comments in that 30-day period.
 9 I did want to raise another funding issue just to
 10 note it, Page 116. In a filing made by Plum Creek, they have
 11 entered into a proposed arrangement with Florida Power & Light
 12 in terms of allocating recreational -- allocating financial
 13 responsibilities for meeting additional recreation
 14 infrastructure needs that may be created as a result of the
 15 developments that FPL now bears and essentially simplifying it.
 16 I think doing it justice, it says that Plum Creek
 17 will pick up those additional recreational costs for an
 18 expanded boat launch, or secondary boat launch, things like
 19 that that may be caused by this development. They then are
 20 proposing that the Community Stewardship Fund pay for that.
 21 There is no limit proposed for those obligations. We
 22 are proposing that that gets stripped out because -- not
 23 necessarily because no money should be provided to that,
 24 although I think an argument can be made that this is one of
 25 the costs of development, but because it's a completely

1 open-ended obligation that on the one hand you could
 2 hypothesize in any one year could take a significant chunk of
 3 money that would otherwise be available. We just don't know.
 4 So I just wanted to draw that to your attention. I
 5 think there are two issues the Commission would be dealing with
 6 there. One is the cost of development and therefore not
 7 appropriate for the Community Stewardship Fund, or it could be
 8 argued that the Community Stewardship Fund should play a role
 9 in it because it goes to increase recreational use for everyone
 10 and it's really no different in some ways than what we're
 11 proposing for the recreation fund, whether you want to put any
 12 kind of limits on that, so that, you know, 5,000 bucks a year,
 13 something like that, if that's where you want to go.
 14 I just wanted to draw that to your attention.
 15 CHAIRMAN HARVEY: Any other questions on that fund?
 16 MR. KREISMAN: That's the end of the fund.
 17 Catherine's passing out copies of what we just got.
 18 All right, land donations to BPL for certain public
 19 uses.
 20 MR. KREISMAN: Right. This, again, was a formatting
 21 error and not part of the Community Stewardship Fund.
 22 Plum Creek is proposing to donate up to 50 acres to
 23 BPL. And then we make a specific suggestion how that 50 acres
 24 would be used that we think is consistent with everything we've
 25 been talking about.

1 This isn't meant in any way to limit that. I think
2 there could be an arrangement where Plum Creek would be allowed
3 to sell additional acreage to BPL for these purposes in the
4 easement consistent with conservation values, but it's simply
5 identifying how this money would be used.

6 So I think that's pretty straightforward. BPL can
7 comment on that if there's any problems.

8 CHAIRMAN HARVEY: Are you going to explicitly write
9 that in that recommendation? It's not there; right?

10 MR. KREISMAN: The sale issue?

11 CHAIRMAN HARVEY: Yes.

12 Affordable housing, did we cover that, Steve, enough?
13 Or is there anything, Ron, you want to add?

14 MR. KREISMAN: You may have further comments, but I
15 think we've talked about that through the colloquy that we had
16 yesterday and then further today.

17 CHAIRMAN HARVEY: Okay. Concept plan, governing plan
18 amendments. Ability to amend the concept plan. I guess we've
19 had a fair amount of discussion on that already.

20 Are you comfortable at this point that you have what
21 our thoughts are on that? Or is the Commission comfortable
22 that they have imparted their thoughts?

23 MR. WIGHT: I don't know as we've talked about how
24 we're going to amend it. We talked several times about places
25 where it might need to be amended.

1 MS. PINETTE: This section is really looking at the
2 issue more holistically. I've heard dialogue about the issue
3 of the plan amendment in the context of the Roaches, which I
4 think we have gotten some feedback on; however, with respect to
5 the development areas within the plan -- and we've also
6 discussed at length the plan amendment provisions within the
7 easements, or the amendment provisions within the easements,
8 excuse me.

9 This section on Page 120 is really addressing our
10 views of how the Commission should approach concept plan
11 amendments as a whole, including amendments to the development
12 side of the equation.

13 CHAIRMAN HARVEY: On the amendments following the
14 sale of the lot, as I recall that discussion, we got into what
15 potentially was an extremely convoluted process.

16 Is it your recommendation here that you're basically
17 saying that we should not allow Plum Creek to distribute that
18 out to some kind of super human effort and association?

19 MS. PINETTE: No, we're not making that
20 recommendation. Plum Creek -- on Page 119 we summarize our
21 understanding of several approaches that Plum Creek has
22 proposed with respect to the plan amendment issues here.

23 Basically what our recommendation is with respect to
24 plan amendment, aside from the Roaches property because of this
25 pulled out of the P-RP subdistrict, is that the Commission

1 should understand that plan amendment will be very -- a
2 LURC-initiated plan amendment could be very challenging, if not
3 impossible, regardless of what structure Plum Creek chooses to
4 create for the homeowners association and what kind of
5 assignment it wishes to make with respect to its successors.

6 We want to highlight to the Commission that because
7 of that, it should proceed based on the assumption that this
8 plan cannot be amended.

9 But we are not making any specific recommendations as
10 to how Plum Creek should address the issue. We do feel that is
11 in their interest to look at this very carefully and to come up
12 with a mechanism that satisfies their needs in the future
13 should they wish to approach the Commission for a plan
14 amendment.

15 The one thing that I also want to add to that is at
16 the bottom of Page 120 in the last row, it is recommending that
17 whatever approach Plum Creek chooses here that that
18 description, a detailed description of those assignments
19 provisions, be presented to the Commission for its review and
20 approval.

21 CHAIRMAN HARVEY: Comments? Questions? Would this
22 be -- I guess the only question, is this something we would
23 expect to be done at the time of the potential approval of the
24 plan or some subsequent time?

25 MS. PINETTE: I would expect that this would need to

1 be done as part of the implementation phase of the concept plan
2 if it goes there.

3 CHAIRMAN HARVEY: Okay. Moving on, I guess the
4 concept -- the pocket part, some parts of that we've talked
5 about, and I guess we have some more to talk about through the
6 balance of this.

7 I think we've -- this last item on the Roach
8 property, have we talked about that at this point? Are we
9 clear on that?

10 MR. LAVERTY: I think -- haven't we generally agreed
11 moving toward some consensus here that that's appropriate to
12 talk about, what the plan --

13 CHAIRMAN HARVEY: Right, I think that's true. This
14 had to do with the amendment, the ability to amend --

15 MR. LAVERTY: This would fall --

16 CHAIRMAN HARVEY: Right. I just wanted to make sure
17 we take care of it.

18 MR. KREISMAN: If I could just make a general point
19 on our thinking here.

20 To the best of our abilities, I think it's fair to
21 say that Jerry, Aga, Evan, and I have thought long and hard
22 about how important is this amendment issue, what role will
23 amendment play, how much stock should the Commission place in
24 it, and I would invite the three of them to correct me.

25 I think it's fair to summarize the thinking as it is

1 highly unpredictable whether this plan can in practicality be
2 amended and how, and therefore -- that's not necessarily
3 anything wrong with it because there are distinct advantages to
4 the Commission of not having a plan that can be amended
5 willy-nilly, so I'm just trying to make as much a factual
6 observation as we can.

7 And therefore -- and it may be that the approach
8 Plum Creek proposes of either retaining amendment rights as
9 long as they want to will work very well or it may not; it may
10 be that the approach they're alternatively proposing, signing
11 out certain rights to more of a parliamentary system will work
12 very well or not.

13 I think it is beyond your dedicated
14 staff/consultant/counsel's ability to know the answer to that.
15 Therefore, our approach has been that for things that we
16 believe strongly should not be part of this unknown process,
17 e.g., the Roaches, to deal with it like that, and for issues
18 that we're certain of, as much as we can be with any foresight,
19 need to be in it, we do that, and then within the terms of the
20 document to allow flexibility without having to go through a
21 formalistic concept plan amendment process.

22 That's really the thinking behind when you see, at
23 least from my point of view, in the last couple of pages. So
24 things that shouldn't be part of the amendment process that
25 don't have any place in it because they don't really -- it's

1 apples and oranges, get them out. Get it as right as you can,
2 build flexibility into it through the subdivision approval
3 process, through the long-term development iteration process
4 where there can be a dialogue back and forth.

5 That's about as best as you can do. That's not
6 necessarily a good answer or bad answer, it's just trying to
7 reflect what our thinking is. Jerry, I don't know if you want
8 to add anything to that.

9 MR. REID: In theory the concept plan can be amended
10 very easily but it requires the consent of the landowner and
11 that's a big if.

12 So you have actually no assurance that you can amend
13 it, and we just want you go into this with your eyes wide open
14 on that. Don't count on your ability to come back and amend
15 this because it may not be possible.

16 MR. LAVERTY: I appreciate that. I think what we're
17 doing -- I think the applicant here has pointed out that we're
18 getting the assurances of our end of the deal up front.
19 Theirs, while we hope we're getting assurances through the
20 process we set forth for subdivision and resort review in the
21 future, the result of those review processes are uncertain.

22 I think that we strike the deal, we strike the deal.
23 I think there's a certain ethical integrity involved here, not
24 just a matter of law on this issue.

25 But -- and also, I think amending this plan coming to

1 me, personally, as it's coming together as a whole and to
2 tinker with one part of it in my view would almost necessarily
3 raise issues with regard to another part of it. It can be
4 extremely complex and I'm concerned about that.

5 However, I'm just wondering if -- hopefully we've
6 done our homework and you people have done appropriate analyses
7 and can be implemented -- but if we all of a sudden woke up the
8 day after this plan were submitted and approved and found out
9 that there's some major issue, either inhibited its
10 implementation or led to an implementation in a way that nobody
11 anticipated, I mean I think there's got to -- rather than have
12 no plan, there's got to be something there.

13 Ron suggests building in some flexibility in the
14 plan. It sounds nice; I'm a little concerned about that given
15 that I view this as sort of a holistic --

16 MR. KREISMAN: I appreciate that. When I say
17 flexibility, I think there's just inherent flexibility in the
18 process.

19 When a long-term development plan comes in that has
20 four elements --

21 MR. LAVERTY: I appreciate that. What I'm saying is
22 I appreciate that and I think we ought to strive for that, but
23 I'm just saying myself use caution in doing that.

24 So I guess what I'm saying is there's got to be some
25 way that the whole thing isn't going to work, certainly as a

1 detriment to everybody, we need to be able to go back in and
2 amend this. It should be very difficult to do. I think that
3 the presumption should be against that for a number of reasons
4 that I've expressed.

5 MR. KREISMAN: I think that's what de facto,
6 Commissioner, you have in the provision that's being proposed.

7 MR. LAVERTY: That's why I -- let them propose. Let
8 the landowner propose an amendment process or not.

9 MR. KREISMAN: There has to be mutual agreement
10 between the Commission and the landowner that are assembled
11 into a single vote.

12 MR. LAVERTY: And how that's done --

13 MR. KREISMAN: How it's done is -- Plum Creek has
14 made a proposal, these are our recommendations for it.

15 MR. REID: The only thing that's uncertain about how
16 it's done is how Plum Creek may assign its rights --

17 MR. LAVERTY: Right.

18 MR. REID: -- to consent to amendment.

19 MR. LAVERTY: And I remember there was some testimony
20 about that in cross-examination with regard to that on the
21 record that I think pointed out the potential complexity here.

22 I think your admonition -- I don't think this is
23 going to be easy. I don't think -- I think I've stated my
24 case.

25 MS. HILTON: You know, it just occurs to me that this

1 is sort of a two-way street. Plum Creek may find out at some
2 point that there is something that they would want to have
3 amended and they come to the Commission and seek the
4 Commission's -- it actually could work both ways. So there
5 might be some room for negotiation.

6 MR. LAVERTY: I think, though, what I was referring
7 to is the fact -- and this is for Jerry and Ron -- is the
8 assignment here.

9 If you've got homeowners associations all around the
10 place, you've disaggregated some of the easement territory,
11 you're going to have -- potentially have many, many landowners
12 who have to consent.

13 MS. HILTON: Which may be a reason not to have many
14 landowners.

15 MR. LAVERTY: I think that Plum Creek is in the best
16 position to propose a mechanism for how that consent would be
17 advocated.

18 MS. HILTON: Oh, I agree.

19 MR. KREISMAN: Plum Creek is also -- I can't pull
20 immediately where it is in the record -- Plum Creek, it's my
21 understanding that their intent is to retain this amendment
22 right even if they sell off lands for as long as they think
23 it's appropriate to keep control of their interests.

24 MR. LAVERTY: I hope I don't sound offensive, but the
25 testimony that was present, the proposal presented initially by

1 Plum Creek subject to the hearing in the complexity of that, it
2 appeared to me that that was kind of thrown together at the
3 last minute, and this might be an opportunity to go back and
4 really think that through.

5 MR. KREISMAN: I think in fairness to Plum Creek,
6 they didn't make a proposal. Mr. Kraft and Hempelmann were
7 responding to questions that I was asking --

8 MR. LAVERTY: I stand corrected --

9 MR. KREISMAN: -- so I take the blame on what happens
10 when you start selling off to other landowners and you don't
11 have a singular landowner, and they said, one way this could be
12 solved is as it is addressed in other places, and they
13 subsequently filed material which suggested some of those
14 provisions in several other places, not exactly enforcement.

15 So they weren't necessarily proposing a change. They
16 were proposing how one way it could be addressed, and that's
17 where it was.

18 MR. LAVERTY: I stand corrected.

19 CHAIRMAN HARVEY: Okay. One way or the other we'll
20 give out amendments, anyway.

21 Can we move back to the CCR portion?

22 MR. RICHERT: I'll handle this.

23 CHAIRMAN HARVEY: Okay, Evan. Is there anything
24 specific you'd like to hear, Commissioners, concerned about?

25 MR. WIGHT: I know I should have -- what are the CCRs

1 attached to? Are they attached to deeds to lots?

2 MR. RICHERT: These will be -- this will be a
3 document that will be attached to subdivision approvals and
4 will be the document that -- one of the governing documents --
5 as to how homeowners will work with each, the rules that they
6 have to live by within that subdivision.

7 What we have is a sample, and the applicant will be
8 submitting a set of covenants, conditions, and restrictions
9 with each subdivision application for the Commission's approval
10 but we would expect that this template will be something that
11 essentially you will use.

12 MR. WIGHT: How would somebody researching the county
13 registry find that this set of rules is in existence?

14 MR. RICHERT: These are actually recorded with a
15 subdivision plat, so anybody going in can see whether the
16 declaration is by which all owners would have to live.

17 MR. WIGHT: So there's no need to attach it to the
18 individual deeds since it's already registered as part of the
19 plat?

20 MR. RICHERT: Yes.

21 MR. WIGHT: Thank you.

22 CHAIRMAN HARVEY: Evan, the first couple of items
23 there you talk about don't need to be restated in Chapter 10
24 but then there's a comment that Chapter 10 needs to be amended
25 when you talk about Section 2.2.11. What are you referring to?

1 I was confused by that. Are you saying these items are not
2 going to be in Chapter 10?

3 MR. RICHERT: That's right. These two items will not
4 be in Chapter 10, but we are saying they must appear in every
5 CCR.

6 CHAIRMAN HARVEY: Right.

7 MR. RICHERT: Because they are essential to the
8 functioning of the enforceability of the subdivision and to
9 standards.

10 Now, the inspection reporting requirement is one that
11 Plum Creek has proposed. We have made a couple of suggested
12 modifications, as you can see.

13 One is that this is something that would be an
14 approval or enforceable provision by the Commission. The
15 report's got to meet the quality standard that the Commission
16 would have for the report.

17 The inspector's qualification would have to be
18 subject to the Commission's approval. It can't just be
19 somebody who was looking for a part-time summer job. It would
20 have to be somebody who understands, a forester, geologist,
21 professional engineer, somebody who's qualified to look at the
22 questions of vegetative clearing and water quality, which are
23 the two items that these inspections are going to, and also we
24 are suggesting that this occur annually and not bi-annually by
25 which Plum Creek's intent is being once every two years.

1 The other item we're saying should be -- must be in
2 the CCRs but will not be in Chapter 10 because it's a good
3 piece of guidance. It gets into architectural design, and our
4 judgment is that architectural designs are beyond the custom
5 and practice typical skills of Commission staff prescribed, but
6 there are some good suggestions there that would in fact help
7 reduce visual impacts and that it's important guidance to the
8 homeowners and so it should be a required element of the CCRs.

9 Did that answer your question, Mr. Chair?

10 CHAIRMAN HARVEY: Yes.

11 MR. RICHERT: There are then a couple of elements
12 that can stay in the CCRs if the applicant wants but they need
13 to be in the pocket part of Chapter 10.

14 Remember that CCRs are primarily a document intended
15 to protect one homeowner against the other homeowner.

16 To the extent that there are provisions that are
17 needed to protect the public interest, as opposed to private
18 interim homeowner association interests, then those items
19 should be in Chapter 10, and there are two of those items which
20 we have referred to earlier as part of the scenic standards
21 that will become part of -- the pocket part -- of Chapter 10,
22 and they relate to the materials and colors of siding and
23 building materials and, of course, to the whole vegetative
24 clearing standards.

25 So those things must go into the pocket part and also

1 appear in the CCRs -- it would be a good idea if they did or at
2 least have reference -- but they would have to exactly
3 duplicate the language of Chapter 10.

4 And then there are three items that appear in the
5 sample CCR that are already included, or would be included, in
6 Chapter 10 and the language in the CCR must be consistent with
7 the language in Chapter 10, and those relate to the actual
8 building height, the docks, the limitation on docks, and to
9 some design of walking trails in the shore area.

10 MR. WIGHT: Is there any change there from the
11 existing Chapter 10 as we know?

12 MR. RICHERT: Only the docks, there are specific
13 limitations we've discussed on the number of docks and the
14 colored material of docks, so that would be a pocket part. The
15 building height is already a part of Chapter 10 and the
16 requirement of walking trails is already a part of Chapter 10.

17 We're also suggesting that relative amendments be
18 subject to your approval and that the homeowners association as
19 a whole could be liable for violations of common property
20 within the development. That would be the section that we
21 address.

22 CHAIRMAN HARVEY: Everybody okay with that?

23 MR. RICHERT: Aga has pointed out on 125 there is
24 this catch-all that we want to again add one last bite of the
25 apple and make sure that we're catching everything this

1 required, minimally required CCR elements consistent with all
2 the other recommendations.

3 CHAIRMAN HARVEY: If you want to add one more thing
4 to your list you're welcome to.

5 MS. PINETTE: This is really not intended to add
6 anything to the list as much as to make sure that the title of
7 these CCRs in the sample nature isn't inadvertently interpreted
8 down the road as discretionary and subject to change at the
9 subdivision review, and rather what we would like to see is a
10 document that is indeed a template and that includes the
11 minimum required elements as we have presented them here and
12 makes clear that those provisions must be included in each
13 subsequent CCRs, homeowners association CCR, and that, of
14 course, additional subdivision-specific conditions could also
15 be added to that document. That's what this is intended to
16 capture.

17 CHAIRMAN HARVEY: Okay, Steve.

18 MR. SCHAEFER: Just one quick question on 124, 227,
19 docks. The provision will be amended so there will be a finite
20 number of common docks with no individual docks for each
21 development area, or where there are development areas where
22 there will be. So this is just applied to certain -- okay.

23 CHAIRMAN HARVEY: I don't see any other questions on
24 that issue.

25 If not, that takes us to the second tier of issues,

1 which you recommended we don't talk about. Is that a good
2 summary of that one?

3 MS. PINETTE: More or less, yes.

4 We recognize that as the dialogue has occurred there
5 have been a number of these implementation-type issues that
6 have arisen, and we are certain that there are many, many more
7 that go to kind of the devil-in-detail category that we see as
8 very important, but we feel that they shouldn't -- either
9 cannot or should not be addressed at this stage until we get
10 direction from the Commission on the other -- the key -- what
11 we see as the core elements of the plan.

12 MR. LAVERTY: In this context, generally, there are
13 issues that aren't directly related to the concept plan but are
14 implementation issues, and that is the impact on LURC
15 administratively in implementing this proposed concept plan
16 should it come to fruition.

17 Again, the number of subdivision resort applications
18 that are presented, the sequencing of those, it could impose a
19 very substantial burden on the Commission, and I know we now
20 have provisions that for certain types of extraordinary
21 applications the fee is adjustable, but if we're dealing with,
22 for example, a proposal for a resort in the Lily Bay, up in the
23 boonies there, I just think we need to look at, someone needs
24 to look at at some point what the impact is going to be on the
25 Maine Land Use Regulation Commission and its staff and how

1 that's going to be addressed.
2 I'm not suggesting that it should fall completely on
3 the applicant. Maybe some of that. I think we need to be
4 aware of that upfront because this is all great, but if we
5 don't have the capacity to implement, oversee, then it seems to
6 me that we really dropped the ball here.

7 I think at the least the legislature and the
8 governor's office should be aware of potential implications,
9 fiscal limitations and resource implications here. I don't
10 know how I feel about that but I just raised that.

11 MR. RICHERT: It's a very important point. It falls
12 in the category of a number of the community services and this
13 is a community service.

14 We -- we asked the applicant in their analysis and
15 plan decisions to address this, and Eastern Maine Development
16 Corporation. They interviewed at some length staff at LURC,
17 enforcement staff. So some of the needs have actually been
18 quantified in those reports, personnel and dollars.

19 In the end, I don't know all there is to know about
20 the special application fee. My guess is that that would not
21 apply to individual subdivision applications that would come in
22 as a result of this; but if so, in the end it will be a matter
23 of the Commission and the Department of Conservation making its
24 case to the legislature that some of the dollars that will have
25 been raised as a result of this development should flow back to

1 the Commission to fund these services.

2 It's not a great answer but it's the same thing that
3 Maine Forest Service and Bureau of Public Lands and other
4 agencies are going to be affected by this scale of development
5 and have to face.

6 MR. LAVERTY: I'm not sure what the solution is but
7 obviously --

8 MS. PINETTE: Just to supplement that, we have given
9 this a lot of thought, and to the extent that we have been able
10 to infuse the design of the concept plan and the enforceability
11 of these standards, we have tried to do so in the
12 recommendations that have been made.

13 One of those in particular that I think will be of
14 significant value to the Commission to its permitting and
15 enforcement staff is Plum Creek's proposal to require on a
16 regular basis a third party self enforcing mechanism for
17 vegetation clearing and water quality discussed in CCRs.

18 I personally think that that is a very creative and a
19 critical means by which LURC can be informed of any violations
20 so that it can take necessary actions to resolve them.

21 That may not necessarily address the permitting
22 burden that will be faced by this agency, but I think Evan's
23 reflection on the flow of dollars, the record evidence that
24 there will be adequate funds; however, the flow of dollars may
25 pose some challenges. We feel that it's each individual

1 agency's responsibility to make the case to its legislative
2 board.

3 MR. LAVERTY: I think it would be sad if we sort of
4 constructed the crystal palace and couldn't sweep the floors,
5 do you know what I mean?

6 MR. SCHAEFER: I think it has to be preemptive
7 because the application fees will cover some of it, but we need
8 the staff to look at the applications. They have to be on
9 board before the wave of applications hit. That's the case, I
10 think that we have to make.

11 MS. KURTZ: I -- I'm pleased to see the solution
12 that's been proposed having the annual inspections and having
13 an entity that would report to LURC about compliance or
14 enforcement issues.

15 But the problem is right now our staff has its hands
16 full just with permitting. It can't even address the
17 enforcement. I'm not saying it can't, but it's overburdened
18 already, and it may be getting these reports of
19 enforcement/compliance issues, but it still may not be able to
20 address them.

21 So it's nice that notice will be made and
22 notification will come forward, but we still don't have the
23 manpower to address those.

24 We haven't -- as Ed said, we can't sweep the floor.
25 I think it's been one of my overarching concerns is that so

1 much effort has been put into this plan to present what would
2 be sort of a best-case scenario with the regulations and the
3 standards and trying to ensure minimum impacts to recreation
4 and wildlife, scenic values, but all of those things will come
5 to nothing if we can't enforce those regulations and those
6 standards.

7 So I urge whatever efforts that can be made to ensure
8 that the funding to make this plan go forward the way it's been
9 proposed is put in place.

10 I don't know all the mechanisms, but it just seems
11 like we're spending three years doing all of this and wouldn't
12 it be a shame if it all came crumbling down if we couldn't make
13 it come to fruition.

14 CHAIRMAN HARVEY: You probably will have a chance to
15 testify before the legislature appropriations committee on that
16 issue. That's where it ultimately rests.

17 MR. KREISMAN: Just on this issue, for our limited
18 purposes staff and consultants hearing changes that you want,
19 I'm not hearing -- and I'm not saying this to provoke anything,
20 I'm just saying I want everyone to be clear -- we are not
21 taking back from this discussion, which I totally understand,
22 again, that there is a proposed addition to recommendations
23 that essentially Plum Creek self fund this twin permitting and
24 enforcement issues that you've raised.

25 MR. LAVERTY: Certainly not. I wouldn't want to

1 propose that being a part of a very big mix, I mean, through
2 fees and things like that.

3 I don't think any of us are proposing that the entire
4 cost -- there is a public benefit here and the public has to
5 step forward and I think shoulder the responsibility to a
6 certain extent in return for the public benefit.

7 So, no, I don't think any of us are proposing that.

8 MR. WRIGHT: Let's not get caught in the trap of
9 thinking that all this is going to happen in the next year.
10 This is a 30-year plan.

11 MR. KREISMAN: My narrow point is the concept plan
12 approval process as opposed to changes in the statute to allow
13 fees or additional staffing which is outside the zoning
14 petition that you have in front of you. There's no changes
15 here.

16 MR. SCHAEFER: Right. I don't think that's
17 Plum Creek's responsibility. I think it's up to the State of
18 Maine to take care of some of these thing.

19 MR. LAVERTY: For my part, I prefaced my remarks by
20 saying I think this is outside the concept plan.

21 CHAIRMAN HARVEY: That being said, have we made it
22 through, Aga?

23 MS. PINETTE: Yes, we have, congratulations and thank
24 you.

25 I do want to highlight for you a couple of topics

1 that I wrote down as areas that the Commission seemed to wish
2 to circle back to.

3 On my short list I have continue discussion on
4 Lily Bay and potentially the total number of units, although I
5 was unclear about that; and also a discussion or revisit of the
6 subdivision design standards and maybe some illustrations to
7 show you on that.

8 CHAIRMAN HARVEY: I think you asked for some -- Ed,
9 you were asking for some specific on design standards.

10 MR. LAVERTY: Again, if I'm the only one that has
11 this concern, maybe we want to spend some time on it, but my
12 concern was the proposal to reduce the shoreline requirements
13 and -- I understand the logic behind that rests on this notion
14 of good planning, I forget the term however you used it. Good
15 planning concepts --

16 MS. PINETTE: Good planning, yes.

17 MR. LAVERTY: Okay, good planning. I just want to
18 make sure that those good planning standards are in place with
19 some kind -- other than just sort of general advisory and that
20 is then directly linked to the reduction in the shorefront
21 requirement, and when I went back and looked at the exact
22 language -- does anybody know what page that's on -- when I
23 looked at the language in here --

24 MS. PINETTE: Page 62.

25 MR. LAVERTY: Page 62. Thank you, Aga.

1 The Commission directs staff and consultants to
2 develop additional detailed concept plan amendment language,
3 but I think what I read here, I have no objection to.

4 It's just I would like -- in our little dialogue
5 yesterday, I wasn't clear on the extent to which these design
6 standards -- let me back up.

7 We begin with the idea that ring around the lake in
8 certain areas is prohibited by the very construction of the
9 concept plan itself or from existing conservation easements or
10 limitations on development.

11 And, therefore, some of the concerns about shore
12 frontage or allowing concentrated shore frontage are to a
13 certain extent mitigated; but I'm still concerned about linear
14 development along the shoreline.

15 And, again, my reason for that is that LURC,
16 throughout its entire history, has in a sense battled this
17 issue. Now, again, absent the idea that a good portion of a
18 lake or water body is going to be protected, so I think that
19 what we need to do is we need to make sure that any reduction
20 in required shore frontage is tied to certain design standards
21 and --

22 MS. PINETTE: I think I understand your point. My
23 view -- and I think what is represented in staff
24 recommendations on this issue -- both embedded and in the
25 recommendation on Page 62, as well as the long-term development

1 plan objectives and review criteria, which are outlined on
2 Page 58, will achieve that design.

3 I do -- I do want to say, however, that -- and
4 perhaps this is where we differ in our views -- that linear
5 development design is a problem in LURC jurisdiction for very
6 specific reasons, and it's not a problem, per se, to have a
7 stretch of shoreline developed, particularly if it's developed
8 in a manner that has the broader outlook on good planning
9 principles.

10 MR. LAVERTY: As long as we're assured that that is
11 the case, because to me, again, the whole shoreland frontage
12 issue is akin to our principle of adjacency.

13 It was a fallback measure that we use as sort of a
14 surrogate to address a number of issues, and while it may have
15 outlived it's purpose in terms of specific application within a
16 concept plan, to imply that we're giving that up would be in my
17 view to imply we're giving up adjacency as a general criteria
18 for rezoning.

19 So you see what I mean? I just want to be very clear
20 that the reason we're doing this is because the nature of the
21 concept plan itself and the conservation easements that are
22 provided, and also design characteristics of individual
23 subdivision or resorts, because I have yet to see, while I've
24 heard us talk about that connection in the past, I have yet to
25 see it.

1 MS. PINETTE: We are in agreement on that. Evan and
2 I pulled out some illustrations that might -- if you're
3 interested, we could share with you to kind of indicate what we
4 have in mind as what might be necessary to achieve the
5 objectives that are embedded in our recommendations.

6 MR. LAVERTY: Sure.

7 MS. PINETTE: I'm going to ask Evan to take the lead
8 on explaining this piece.

9 These illustrations -- these illustrations came from
10 the 2006 concept plan proposal from Plum Creek. They are part
11 of the record. They were filed as part of Plum Creek's 2006
12 proposal as illustrative designs of some subdivisions.

13 MR. WIGHT: As we look at these and we talk about
14 what is a good planning concept, I think we need to think about
15 the answers that we'll give to the next subdivision planner who
16 comes along and says, how come I have to use 200 feet of
17 shoreline, those guys only used X.

18 MR. LAVERTY: That's the point.

19 CHAIRMAN HARVEY: I think if you -- that's
20 specifically acknowledged, as I read it, in the language that
21 they wrote in here that they say that in the context of this
22 concept plan, Purpose 3, which was the lakeshore protection,
23 was effectively achieved through the conservation easement that
24 prohibit development on a lot of lakeshores.

25 MR. LAVERTY: I don't completely buy that. This is

1 where I think there's a slightly different opinion.

2 I think you can have a well-preserved lakeshore but
3 then have concentrated ghetto-ized lots that in terms could
4 have a concentrated impact on a number of resource values.

5 So I think we need to look at not just the general
6 requirement that a concept plan or some kind the conservation
7 easement be in place, but actually look at the design
8 characteristics and natural resource value, site-specific
9 natural resource value impacts.

10 If I could be assured that that was the case -- where
11 I got a little bug in my saddle was over -- an implication the
12 design requirements were advisory not -- I think if I saw the
13 logical nexus between the reduction of shore frontage and the
14 minimization of natural resource site-specific impacts through
15 some kind of design characteristics, I would feel much more
16 comfortable.

17 Again, not just in the context of this concept plan,
18 but the next person that comes in here and wants to know why or
19 why they are not being accorded that same kind of collapse of
20 the -- I just don't want this to be a camel's nose under the
21 tent to go back to, you know, the old days when we were lot,
22 lot, lot, lot, lot and no back lots and I think a terrible
23 misuse of land and the amenity aspect of enjoying the resource,
24 at the same time minimizing adverse impacts on it.

25 MR. RICHERT: I think we completely understand your

1 point and agree with it.

2 The fact that there's a concept plan with a lot of
3 conserved shore frontage does not mean that the remaining shore
4 frontage is a free --

5 MR. LAVERTY: A free fire zone.

6 MR. RICHERT: A free fire zone. It's one of the
7 reasons that we suggesting the language of 10.25,Q,3, be
8 reinstated to include some of those design elements, but on the
9 other hand at the same time we do want to acknowledge that
10 there is a lot of conserved shoreline that one of the answer
11 when the next subdivider comes in is, sure, give us 10,000 feet
12 of shoreline and you get some of the same consideration.

13 But given that, that conservation, we think that that
14 warrants looking at some flexibility of design that will not do
15 an injustice to the remaining shoreline, and we need to think
16 that through.

17 MR. LAVERTY: I don't mind flexibility in design at
18 all, but I think the standards that are applied to evaluate the
19 appropriateness of that flexibility I want to make sure are
20 explicit.

21 MR. SCHAEFER: I think there's a precedent here. In
22 recent times we looked at higher density than normal situation
23 on Monhegan, and we determined that they had no other place to
24 go and that technology had grown enough so that more people
25 could live on one piece of land without affecting it, but

1 actually we should have been thinking that this technology will
2 improve.

3 I think the same case can be made for the lakefront
4 where they're constrained by conservation. As long as the
5 development fits the LURC standards, which the Monhegan where
6 we kind of altered the standards, to adapt to a smaller land
7 mass.

8 MR. LAVERTY: I thought we --

9 MR. SCHAEFER: You know, it's different to put 10
10 people in a row or 10 people in a circle, as long as the septic
11 system, the water system, the infrastructure can handle it.

12 There have been tremendous advances in capacity over
13 the last few years.

14 MR. LAVERTY: I agree.

15 MR. SCHAEFER: So it's not out of character to
16 consider something like this with all those safeguards in
17 place.

18 MR. LAVERTY: It's the safeguards in place. I agree.

19 MR. RICHERT: So here are some examples. These come
20 from the department record, they come from the 2006 plan when
21 Plum Creek was providing some of the templates that they were
22 considering for different parts of their development areas.

23 I emphasize at this point that these are not part of
24 the current concept plan, but I think that it may be that if
25 this recommendation that the Commission direct us to develop

1 additional detailed language to operationalize some of these
2 objectives with respect to the form, function, and purpose
3 10.25,Q and if the efficient use of land, that some additional
4 templates or new templates would emerge from that.

5 This is an example of a plan that would meet your
6 current -- a portion of -- your current standard that says that
7 subdividers, to avoid the sharp-tooth kind of layout, and
8 employ breaks so that no more than 1,320 feet broken by 500
9 feet would occur along the shoreline, and here is an example of
10 where there is that kind of design.

11 MS. PINETTE: I just want to point out, this is a
12 reference to 10.25,Q,3 where this is the alternative option if
13 a developer cannot meet the community service standard.

14 If for practical -- there's a definition in there --
15 for practical purposes they cannot meet the preferred design
16 element, this would be the fallback, and this is kind of
17 characterized by developments that predated 2004 rules.

18 MR. RICHERT: So I don't think -- I think it's pretty
19 obvious what the elements there are, the main access road,
20 logging road, and a private road coming down to serve the lots,
21 and then a single-loaded road with the lots running between the
22 road for their driveways down to the water, but with 100-foot
23 setbacks that you require and so forth.

24 Amy, let's try this one first. Then I may want to
25 come back to it for another description.

1 Here's an example -- this actually meets the 10.25,R
2 standards for a clustered development in which the idea is --
3 there is a specific requirement that at least 50 percent of the
4 developable area has to be an open space, at least 50 percent
5 of the developed shoreline has to be undeveloped.

6 But here you can see the idea of a focal point or
7 what Chapter 10 refers to as a community center where the No. 4
8 is located.

9 You can also see open space to the left and to the
10 right, which is community open place. It includes a common
11 trail for shore access and recreation, and it includes two
12 tiers of lots, some on the shore and some -- the second tier on
13 the other side of this focal point, this community space.

14 And I want to come back and talk about why that
15 works, why it's important in a minute.

16 MS. PINETTE: I do want to highlight that this is a
17 perfect example of what a typical subdivision might look like
18 or what an approvable design might look like on a Class 4 lake
19 like Upper Wilson under current LURC standards where we would
20 require a set-aside of 50 percent of the shoreline.

21 And here the recommendation that we're making with
22 respect to Upper Wilson would modify this design to allow for
23 that remaining 50 percent of open space to be developed into
24 shorefront lots.

25 That doesn't mean that preservation of the shorelines

1 wouldn't exist or wouldn't have to be included, because to the
2 extent that my natural resources existed, like, for example,
3 the wetland, the presence of wetlands shown in the light green,
4 or other sensitive resources, those clearly would have to be
5 avoided and would need to be taken into considering into the
6 design.

7 MR. LAVERTY: I clearly buy the rationale that some
8 of the additional space here, the requirement, I forget how
9 many acres --

10 MS. PINETTE: It's a percentage.

11 MR. LAVERTY: -- can be met by the conservation
12 around the lake.

13 MS. PINETTE: Right.

14 MR. LAVERTY: I don't have any problem with it. I
15 just would like to see this made explicit.

16 MR. WIGHT: Where's your lake access point?

17 MR. RICHERT: If you see the No. 6, there's actually
18 to the left of that there's actually a winding trail that comes
19 down from the road, which is common access.

20 MR. WIGHT: Both side are open space as well?

21 MR. RICHERT: That's right.

22 MR. WIGHT: So the 50 percent is in the center, and
23 you're still pulling out the two wetland areas?

24 MR. RICHERT: That's right, yes; because it's
25 clustering 50 percent of buildable area.

1 If we go to the third one, which is more of what
2 Plum Creek has styled as a neighborhood kind of design that
3 might occur in a larger-scaled development where there is more
4 than one subdivision, you can see what one design might look
5 like.

6 It is a combination of hillside lots, larger lots,
7 shoreline lots, and back lots with common space or focal point
8 space or community space, however you might want to call it,
9 and common access points. In this example there are breaks
10 between the subdivisions which might be governed -- might have
11 come in at different times in applications but under our
12 style -- under our recommendation would have to be part of a
13 long-term development plan showing how circulation connects.
14 You can see an interconnection with the circulation system and
15 how open space connects.

16 This is not a recommendation, this is an example,
17 what they presented as part of their 2006 plan.

18 MR. LAVERTY: I understand -- I guess -- I don't want
19 to go any further because I think you understand what my
20 concerns are here.

21 I want to be very clear. I am not in any way
22 implying that Plum Creek is going to have some kind of
23 incentive to go in there and do this shark-tooth thing. I'm
24 more concerned about the precedent we're setting and its
25 application, as Steve suggests, the next person that comes in

1 the door.

2 MR. WIGHT: This is a good answer to that.

3 MR. LAVERTY: It's a good answer, but what I'm
4 wondering, to what extent are the 6s -- see the 6s in there --
5 if they weren't there and that was all condensed, would that
6 still be approvable? It would be; right?

7 MR. WIGHT: Back lots -- shore frontage --

8 MS. PINETTE: The only way that that scenario would
9 be approvable would be if you found at the long-term planning
10 phase and then each subsequent subdivision phase that there was
11 no need to protect existing natural resources on the shoreline,
12 such as wetland, there was no need within a development area to
13 provide for on-site recreation facilities, there was no need to
14 provide for habitat considerations like wildlife corridor
15 protections.

16 If that area had no natural resource constraints and
17 for some reason needed no recreational facilities or on-site
18 amenities, which in my opinion is highly unlikely for any these
19 areas, then I guess theoretically you could get a proposal in
20 where every foot of shoreline within a development area is
21 proposed for development, and you would have to assess that
22 against the long-term development plan criteria that we are
23 recommending, if you choose to accept those, as well as the
24 current LURC established design standards under 10.25,Q.

25 MR. WIGHT: Aga, what the date of 10.25,Q? When does

1 that --

2 MS. PINETTE: Those rules were adopted in, I believe,
3 April of 2004.

4 MR. WIGHT: But we have not seen any proposals like
5 this.

6 MS. PINETTE: I can't speak to what has been approved
7 at the subdivision phase since then. I know that the
8 Commission or the staff, depending on who made this decision,
9 did have to make a finding that the design standards of 10.25,Q
10 were met as part of the review.

11 MR. WIGHT: I take that back. I guess Burnt Jacket.

12 MR. LAVERTY: We haven't seen the actual subdivision
13 approval. I haven't seen the approved layout.

14 I know it was approved in concept at the rezoning
15 stage and there were some issues. We were assured that they
16 would be addressed at the subdivision review, and I'm sure they
17 were, but I haven't seen that.

18 It may be just in 2004 we just haven't had a lot of
19 subdivision proposals.

20 MR. WIGHT: This is very exciting. For a lot of
21 years I sat here and said let's do this, and real estate agents
22 would say everybody wants his own docks so he could put his
23 feet in the water on their own land, so no, we're not going to
24 do that, and we said, oh, okay.

25 If we had teeth to hold to this, this is great.

1 MR. LAVERTY: And I agree.

2 MR. RICHERT: I think that's it. We hear what you
3 said, and we do continue to think that we need to work to
4 assure that as 10.25,Q,3 is reinstated that we have the
5 opportunity to create some -- to look at the mental
6 requirements that might be associated with this particular
7 concept plan in view of the big picture that has been
8 presented.

9 CHAIRMAN HARVEY: Okay. I think what I want to do
10 now is give Lisa a little break and ourselves. We'll take 15
11 minutes. When we come back, we'll spend a few minutes more --
12 I think maybe we want to talk a little bit about Lily Bay again
13 maybe total units.

14 MS. PINETTE: One other item that I would like to add
15 to the list in response to Commissioner Kurtz' information
16 request.

17 We did locate some information about the FPL response
18 to what could and could not occur within the FERC easement
19 areas.

20 CHAIRMAN HARVEY: That would be good. I think
21 following that we'll go through the table of contents. I'm
22 just going to ask you to kind of see if there's anything left
23 on the table that you're uncomfortable with so that the staff
24 is clear on what they have to do next.

25 After we consult with the staff, we'll try to

1 determine before we leave here tonight, we want to be able to
2 tell ourselves and everybody what it is we're going to do next
3 and when we're going to do it, more than what we're going to
4 do.

5 Let's take 15 and come back at quarter past 3,
6 please.

7 (There was a break in the deliberation at 3:01 p.m.
8 and the deliberation resumed at 3:29 p.m.)

9 CHAIRMAN HARVEY: Already, we said we would circle
10 back to a couple of items that we thought deserved a little
11 more discussion on the questions that were posed. I guess
12 Lily Bay is one of them, obviously, an area of some concern.

13 Gwen, you indicated you had some things you wanted to
14 ask about there.

15 MS. HILTON: I guess -- I guess it's not news that
16 Lily Bay is an area that a lot of concern certainly raised
17 within the record and also I think on the part of Commissioners
18 in general.

19 For me in looking at this proposal at this point in
20 time I guess is perhaps one of the primary areas where I still
21 have concerns about the intensity, even though we've scaled it
22 back or the proposal was scaled back considerably, which I
23 think is a tremendous improvement to the development area, what
24 we have there, the 400 units give me a little bit of concern
25 just because of the amount of activity that it brings to an

1 area where there's an existing -- maybe 100 or so units -- if I
2 have the information correct there.

3 So the impact on this area is -- I'm trying to gauge
4 that impact and how significant that is in this proposal and
5 how that relates to what we're getting with respect to
6 conservation land. It's one that I've had to think about a lot
7 over the last day in particular.

8 Some of my concerns are respect to its impact on
9 Lily Bay State Park, which I think is a gem, one of our gems in
10 that region, impacts on the amount of traffic in Lily Bay; and
11 so I think that perhaps it warrants a little more discussion
12 with respect to some of these issues, and I guess I'm
13 interested in hearing if anybody else, Commissioners, have any
14 concerns with respect to that or whether you feel that it's
15 been addressed.

16 I do think that the language that's been developed to
17 require that at a certain point -- I think it's 185 units --
18 that there needs to be some studies done to determine what the
19 wildlife impacts are of that amount of development based on
20 actual data as opposed to protections, I think that's a really
21 good thing and it gives me some level of comfort.

22 I guess that's all I wanted to say for right now.

23 CHAIRMAN HARVEY: Does staff want to make any
24 comments concerning, particularly perhaps this development
25 relative to what's already there or what its position relative

1 to the park traffic issues?

2 MR. RICHERT: We can certainly talk about what we
3 know from the record, and the record perhaps isn't as complete
4 as we had hoped it would be in some ways.

5 What we do know from the record is that Lily Bay
6 State Park is a very important recreational facility for this
7 region.

8 If we were to characterize that, again, trying to do
9 what I described yesterday, which was take an arm's length view
10 and try to describe the character in some accepted objective
11 term, the recreation opportunity spectrum is possibly
12 particularly appropriate for a State park to do that.

13 The area described by those using this, the experts
14 using this measure as a rural setting, you recall that on the
15 spectrum it goes from primitive to semi-primitive, a couple
16 flavors, from rural natural to rural developed to
17 urban/suburban, this is in the rural part. So it's kind of in
18 the middle of the types of settings that managers manage for
19 for recreation.

20 It's got improved road access, it's got man-made
21 facilities very specific to providing amenities for the variety
22 of visitors there and so forth.

23 MR. WIGHT: Specifically the park you're talking
24 about?

25 MR. RICHERT: The park itself, yes. That's one piece

1 of information that we have at our disposal. It is not as
2 primitive campsite as you might find up in Spencer Bay, for
3 example, or Collins Bay. It's a campground designed for
4 families and the like.

5 That's one piece of information we have.

6 The second piece of information that we have, there's
7 broad agreement from the experts that it is visually relatively
8 isolated from Lily Bay. There are a couple of exceptions to
9 that.

10 Sugar Island would have a direct view of some of the
11 development on Lily Bay. Some of the Sugar Island campsites
12 are oriented north and away from where the Lily Bay development
13 is proposed, but some of it is aimed right at the Lily Bay
14 development, and that would have an effect. Sugar Island is an
15 area that was characterized on the recreation opportunity
16 spectrum as semi primitive.

17 CHAIRMAN HARVEY: Sugar Island is not part of Lily
18 Bay State Park, though. It's a separate entity.

19 MR. RICHERT: It's separate, yes, thank you.

20 There is a small camping area that has some view of
21 the Lily Bay development area that most of Lily Bay State Park
22 does not have. So that's another piece of information.

23 The third piece of information is that Plum Creek had
24 proposed that there be some exemptions to the noise standards,
25 particularly in the resort districts, and we have recommended,

1 as you know, that those be pulled out.

2 A fourth piece of information had to do with traffic.
3 The traffic, the modelled traffic projections at full build-out
4 in the vicinity of the Lily Bay State Park intersection with
5 Lily Bay Road, full build-out, would be about 3,500 vehicles
6 per day.

7 That falls off once you pass the Lily Bay development
8 intersection and go to Kokadjo. There are disputes, as we
9 know, to the numbers, but the Gorrill projections, which are
10 accepted by Maine DOT, are a little over 1,000 per day AADT,
11 average annual daily traffic.

12 A fifth piece of information that's on the record,
13 it's not a strong analytical piece, is that the demographics of
14 the resort area -- or the Lily Bay development -- versus the
15 campground area there, the presence of the resort might
16 increase some visitorship to the park. There is strong
17 evidence in the record that it would, that most people going to
18 the resort would be at the resort and wouldn't be going in
19 order to camp at the park. As long as there are some water
20 access facilities provided in the development, they would not
21 necessarily put in a lot of additional pressure on the boating
22 facilities at the park.

23 I think that the record suggests in not very
24 quantifiable ways but certainly suggest in impressionistic ways
25 that boating activity in Lily Bay will increase and that will

1 likely have an effect on others that are already boating there.
2 By our calculations this area doesn't exceed the LURC
3 guidelines for areas that would have surface water use
4 conflicts. The number of units per acre surface of waters in
5 this area, certainly Lily Bay proper but especially if you
6 include the other areas that bound Lily Bay Township, are
7 within the limits.

8 So those are some of the things that are on the
9 record about Lily Bay State Park.

10 I can also talk a little bit more about what 404
11 units might actually mean as a level of density or intensity to
12 an area.

13 Four hundred four sounds like a big number and it is
14 a big number. It's a big number for this area, it's a big
15 number for almost any development in Maine in almost any town
16 or city. It's a very legitimate concern.

17 It will be -- just -- as I have thought about this
18 and put it into some perspective, that might be useful to you
19 and it might not and that would be fine, too.

20 Lily Bay Township, if you thought of it as a
21 community, as a town, it's a township of about 22,000 acres. I
22 estimated that almost 20,000 acres are in Plum Creek's
23 ownership. There's a little bit of land that's not in their
24 ownership, but let's just say it's 22,000 acres.

25 There are something over 100 structures in Lily Bay

1 Township today, and 404 units are being proposed. We don't
2 know how many of those will be hotel units and how many of
3 those would be townhouse/timeshare-type units, and how many
4 will be single-family homes.

5 But if we said that all 404 were freestanding
6 structures -- single-family homes -- that attitude, the number
7 that Plum Creek has documented as being structures with at
8 least \$1,500 of a set value, which suppose could be a garage or
9 a shed, but they incorporated that, and looked at the overall
10 density usually as one unit per 40 to 50 acres of land in that
11 Township.

12 That would be akin, if this helps at all -- sometimes
13 it's easier to try to visualize numbers when you can relate to
14 something -- but that would be akin to the Town of Perry in
15 Washington County, which has about 22,000 acres and about that
16 same number, 500-some-odd units, homes.

17 It would be akin to St. Agatha in Aroostook; it would
18 be akin to the Town of Troy north of here in Kennebec County.

19 At that level Lily Bay Township would then become
20 larger than what those communities are as of the year 2000, and
21 my sense is that those places are very rural communities, but
22 it would be different, and it would be different because
23 instead of as in the case of Troy and St. Agatha, and so forth
24 where many of the homes are simply spotted along existing
25 roadways, former farms or existing farms or simple homes of

1 people living there and working someplace else, and therefore
2 kind of evenly spread across the Town's roadways taking
3 advantage of road frontages, here you have those units at about
4 1 unit per 3 acres in a very confined 1,500-plus-or-minus-acre
5 area and then you have zero units per acre across the other
6 20,000 acres.

7 That is the nature of clustering. That is the nature
8 of developing -- of activity centers and conserving the rest as
9 open place.

10 They will look and feel different when you're in the
11 middle. When you're in Perry, you're not in the middle of
12 something. Here you're in the middle of a development and ten
13 minutes later you're in the middle of the forest.

14 So I don't know if that helps at all to put what 404
15 might mean, and, of course, some of these 404 might be hotel
16 units, we don't know. That would be a little less.

17 So I don't say these things to convince you one way
18 or the other but just to help you put things in perspective.
19 Sometimes it's nice to know that an acre is a football field.
20 When you say 1 unit per acre, what does that mean? If you say
21 1 acre per football field, oh, now I get it. So this might
22 help create a picture in your mind. I think Ron wanted to add
23 something about Lily Bay State Park.

24 MR. KREISMAN: It wasn't Lily Bay State Park.
25 Commissioner Hilton -- and I may have been

1 misinterpreting a different issue -- a relationship between our
2 recommendation for 404 units with the studies in this acreage
3 and conservation and maybe I'm over reading, but my sense is
4 there may have been some belief on your part that we were
5 attracted by the conservation and therefore the number of units
6 didn't bother us.

7 I want to say quite clearly, if I created that
8 impression in my response to a question you asked yesterday, I
9 regret that because this was not in any way a desired result in
10 search of a rationale. This was exactly the opposite, and we
11 feel that quite strongly, that we are very comfortable with the
12 appropriate development, and that is where you look first and
13 foremost.

14 If we weren't comfortable with this level of
15 development, with studies in this acreage, we would never get
16 to conservation.

17 Having reached that level of comfort, as Aga and I
18 discussed yesterday, there is a significant waiver of adjacency
19 that comes with that level of comfort, approximately 300 units,
20 which directly and immediately invokes comparable conservation.

21 If you do not have this development and therefore
22 this waiver of adjacency and therefore -- and as well as undue
23 adverse impacts that could otherwise result -- then as I
24 responded to you yesterday, I believe -- and I think Evan and
25 Aga believe -- that the conservation would have to be

1 rethought.

2 But it doesn't work. We want to say quite
3 emphatically in the reverse order. And I don't know as I said
4 whether I was over reading your statement, but I just wanted to
5 make that really clear from our point of view.

6 MS. HILTON: Thank you for clarifying. It wasn't --
7 it wasn't and isn't the way that I was thinking. It's good to
8 hear you restate that.

9 CHAIRMAN HARVEY: Anybody else? Comments on
10 Lily Bay?

11 MR. LAVERTY: Mr. Chairman, I was quite vocal
12 yesterday. I think I'm on the record.

13 CHAIRMAN HARVEY: I think you are. I think you made
14 the paper.

15 MS. KURTZ: All of these decisions are very difficult
16 and I listened very carefully to Mr. Richert's explanation and
17 I do share Gwen's concerns.

18 I mean, 404, as I look at the total on Page 45, I
19 believe that's the largest amount in any one zone, I think, or
20 in one area.

21 It's sort of 1 unit every 3 acres as a possibility
22 within the context of I think 22,000. I am struggling with it
23 but I'm also, in the back of my mind, I'm thinking about this
24 Open Space Institute report and the potential for development
25 and the potential, or lack thereof, of conservation, and I'm

1 trying to balance those two pieces.

2 I'm not saying -- I guess I have concerns but within
3 the context of the whole project and all of the -- all of the
4 pieces -- and I had them listed so I wouldn't forget any of
5 them -- that I think the 404 is acceptable but it's only when
6 taken within the context of this whole, you know, the
7 proposals, and the recommendations contained in this entire
8 document.

9 If there was a piece missing, you know, if the
10 easements didn't go into effect within 45 days, and if Long
11 Pond and Upper Wilson, those sections were not proposed to be
12 removed and on and on and on, I think my heartburn over 404
13 would be much greater. But it's sort of tempered by all these
14 other pieces when taken as a whole.

15 CHAIRMAN HARVEY: Thank you, Rebecca. Anybody else?

16 MS. HILTON: Can I just follow that?

17 CHAIRMAN HARVEY: Go ahead.

18 MS. HILTON: Rebecca, I think you stated that very
19 well and that -- that reasoning, I guess, is what gives me some
20 comfort in the total number of units that are being proposed
21 here.

22 This is a package and we've -- there's a potential
23 for getting a lot of conservation land out of this,
24 particularly when you combine both the offset or balance
25 conservation easement with the framework and all the

1 recommendations that go along with that and what's being
2 proposed here.

3 So I think there's a potential of getting a lot of
4 benefit from this, and I think these recommendations have
5 looked at many different ways or many different tools that can
6 be used to design development and locate it such that it will
7 have minimal negative impacts and hopefully the region will
8 also benefit from the -- and economic impacts and quality life
9 impacts that this development may offer.

10 I guess that's -- that's sort of the big picture for
11 me in looking at this proposal and these recommendations.

12 I'll be interested -- I'm very interested to hear
13 what some of the comments -- are and reactions that we get to this
14 over the next 30 days or once the comment period starts because
15 we're still in this process and -- anyway, that's all I have to
16 say.

17 CHAIRMAN HARVEY: Okay, thank you, Gwen.

18 I guess what I would like to do now is just look --
19 referencing the table of contents, just to make sure that the
20 staff is adequately comfortable with what we've discussed, that
21 there aren't any holes here, we go through that not
22 topic-by-topic but major heading.

23 MR. WIGHT: Was someone concerned about total number
24 of units?

25 CHAIRMAN HARVEY: I thought you talked about that.

1 MS. KURTZ: I sort of did. I talked about the 404 in
2 Lily Bay but I guess I don't -- I guess I could extend that
3 same rationale out there. I want to reiterate for myself, I'm
4 going through this in my mind, that all of these pieces, if
5 we're going to look at 975 residential and over 1,000 potential
6 resort, my mind is only set at ease when I look at the fact
7 that what this recommendation is calling for is within 45 days
8 the legacy and the balance and the Roaches are going to be
9 within finalization of the plan, that we know that this
10 question of maybe if in the five years it may happen, that this
11 is a condition that has to be met.

12 That's extremely important and again these issues of
13 Upper Wilson and Long Pond, the funding mechanisms for the
14 recreation management, for the wildlife, and all of the
15 standards and all of the thought that's been put into
16 minimizing impacts that it makes the whole thing -- in my mind
17 nobody's going to get everything that they want, but this
18 proposal seems to provide the most benefit for every entity
19 concerned, but it has to be taken as a whole.

20 You could take one piece out in the whole. What is
21 that, you pull the little blocks out. You pull out the wrong
22 block and one block and perhaps the whole thing crumbles.

23 I want to make that absolutely clear that whether
24 it's Lily Bay and 404 units or 975 for the entire project that
25 it's a package deal.

1 CHAIRMAN HARVEY: Okay. I think we've all said that
2 basically.

3 Gwen.

4 All right. You wanted me to go through each one of
5 the major headings, right, Aga?

6 MS. PINETTE: Yeah, it would be very helpful to the
7 staff to circle back maybe through the use of the headers and
8 the table of contents and get a sense from the Commission as a
9 whole whether you would like to specifically amend any of the
10 recommendations within those categories.

11 Maybe as a starting point I can list what the staff
12 has for comments that I'm assuming may evolve into
13 recommendation amendments, and then if you could let me know
14 whether that is the wish of the Commission it would be very
15 helpful to us to develop the document of these deliberations.

16 CHAIRMAN HARVEY: Okay.

17 MS. PINETTE: So with respect to caretaker manager
18 housing, Commissioner Hilton had commented that that language
19 should be tightened up so that that would not become a loophole
20 for expanding the actual total number of units within the plan
21 area, and I believe suggested that a definition be added; we
22 agree with that, we understand the objective here, and we would
23 recommend that we would come up with a definition to be
24 determined at the second phase, or the second tier phase, of
25 the review here or set of recommendations.

1 Did I capture that right?

2 MS. HILTON: (Indicates yes.)

3 MS. PINETTE: Commissioner Schaefer, with respect to
4 Blue Ridge and Rockwood commented on or had asked a question
5 about documents on the stretch of Rockwood/Blue Ridge
6 development area that is facing -- that is part of the Brassua
7 Lake shoreline, and we're going to look back at the record on
8 that and return to you if we feel that a modified
9 recommendation is necessary on that piece.

10 Then with respect to the hierarchy of the scale of
11 commercial uses, there were several comments, one by
12 Commissioner Hilton, suggesting that there would be some better
13 worded choices in describing neighborhood scale.

14 And Commissioner Wight, making the suggestion that
15 perhaps there should be two residential zones to make it very
16 clear what commercial uses are permitted where.

17 And so we will plan on addressing those with a
18 refined recommendation as part of our write-up.

19 Those were the notes that I had but I would certainly
20 welcome anything that I've missed here.

21 CHAIRMAN HARVEY: I don't see anybody offering any.

22 MS. HILTON: I'm a little confused. Is this just
23 under Beaver Cove?

24 MS. PINETTE: I understood that as a broader request
25 on your part to make sure that there's no unattended loophole

1 with respect to manager/caretaker housing in each development
2 area, as well as the commercial uses. That was also with
3 respect to all the zones, not just Beaver Cove.

4 Were there any other modifications that the
5 Commission would like to make to either the development,
6 area-specific recommendations, or the land use zoning standards
7 recommendations?

8 Okay.

9 On the conservation side, Commissioner Hilton, you
10 had highlighted the question as to whether with respect to
11 certain uses -- construction removal, septic, water -- whether
12 there should be a requirement or language added to make sure
13 that the development looks in the development areas as part of
14 the no alternative siting recommendation.

15 I'm not sure if I made that clear.

16 MR. KREISMAN: I think, Commissioner Hilton, you and
17 I were in a discussion of this where you -- where this came up
18 whether if a gravel pit, for instance, were located in a place
19 that affected adversely conservation values in addition to
20 whether there should be some additional requirement of looking
21 in the development areas, as well, to see if those needs could
22 be met.

23 I frankly expressed some concern, or what might be
24 concern there, and I think we said we would see about some
25 language on that. I'm not sure what we'll come back with.

1 MS. HILTON: That's fine. Use your judgment on that.
2 Just something I think more for you to consider than a -- just
3 a small recommendation. How's that?

4 MS. PINETTE: Okay, thank you.

5 Commissioner Wight, you had in the context of Plum
6 Creek's role on the management advisory team had suggested
7 nonvoting membership for advisory role for Plum Creek, or I
8 think you said that that relationship needs to be figured out
9 and tied up somehow. We'll look into that and how that
10 recommendation --

11 MR. WIGHT: Those were words that Ron used as we went
12 through the packet, and I just wondered where we were with it.

13 MS. PINETTE: We'll make sure to clarify that
14 recommendation. Our intent was not to exclude Plum Creek from
15 that dialogue.

16 MR. WIGHT: I'm still trying to sort out what happens
17 when the landowner turns over the easement, which is really a
18 conservation easement, removing the development rights couched
19 in some sort of language.

20 Certainly the landowner still retains the rest of the
21 rights that he hasn't given away. With that regard, I would
22 think that we would want to stay cognizant of what was
23 happening. I think that's a way to make that happen.

24 MR. REID: I'll interject here, as you're going
25 through these individual Commissioner suggestions for changes

1 and recommendations, if other Commission members disagree with
 2 the suggestion that's coming from one Commission member, it's
 3 really important that they speak up at this point because we
 4 don't want staff coming back with changes made at the request
 5 of one Commission member and having six others say, I don't
 6 like it.

7 MS. PINETTE: That would be much appreciated.

8 So going down the list of my notes on the
 9 conservation side, Commissioner Hilton, you had also asked for
 10 some clarification on what we would be asking to be included in
 11 the baseline documentation with respect to the terms rare,
 12 exemplary, and unique, and we'll look into that.

13 A question really for Commissioner Nadeau. There was
 14 a dialogue, an exchange related to ATV usage in the Roaches
 15 area and I think throughout the plan perhaps -- I'm sorry, with
 16 respect to the road easements, and I wasn't quite sure whether
 17 you were asking us to just clarify or check into whether the
 18 landowner can restrict at its option under those easements --
 19 can restrict ATV use under exception?

20 MR. Nadeau: I guess my question was where are the
 21 ATV trails?

22 MS. PINETTE: Currently on the ground?

23 MR. Nadeau: Right, currently on the ground; and
 24 where are they proposed, if any?

25 MS. PINETTE: We can certainly provide you with the

1 information that is on the record. I'm not sure if there is a
 2 map. There may be one with the Daigle testimony. We can look
 3 into that and in terms of what is being proposed.

4 Aside from this question of the vehicular easements
 5 and whether or not ATV usage would be part of that recreational
 6 vehicle language, which we will look into, I don't believe
 7 there are any legal grantings proposed here for ATV usage.

8 MR. WIGHT: I think that was the issue -- at least it
 9 was my issue -- as to whether -- we were talking about the 57
 10 miles of roads that were going to be -- somebody was going to
 11 be given an easement on those roads, and as we looked at the
 12 easement language -- although it wasn't in our language here --
 13 it just said vehicular access or vehicular use in this.

14 In the easement language it said, recreational
 15 vehicular use, but it still left open the question of what is a
 16 recreational use.

17 MS. PINETTE: So we'll check. We will check whether
 18 ATVs are included.

19 MR. WIGHT: I think there are two sides to that. One
 20 is, obviously, people wanting to travel by ATV; the other is a
 21 safety issue because other vehicles will be using these roads
 22 as well, including logging trucks and things.

23 MR. RICHERT: Did we understand correctly that at
 24 least some of the Commissioners wanted to make sure the
 25 landowner continues to have the right to regulate the use of

1 ATVs on those roads or no?

2 CHAIRMAN HARVEY: Yes.

3 MR. Nadeau: Yes, just need it cleared up.

4 CHAIRMAN HARVEY: Maybe clarified. But I think
 5 that's certainly the landowner prerogative to have it because
 6 they have the liability for that.

7 MS. PINETTE: Commissioner Hilton, your suggestion to
 8 add Beaver Cove to the representation on the recreation fund.
 9 Unless we hear objections, we will suggest modifying that
 10 recommendation to add the Town of Beaver Cove to that list.

11 Commissioner Laverty, you had raised a concern to
 12 make sure that there is landowner representation that's not
 13 necessarily legally dominating the decision making with respect
 14 to that recreation fund, and we'll look into that as well and
 15 come back with any changes that we feel are necessary to make
 16 sure that objective is reached.

17 MR. KREISMAN: I'm sorry, I'm just looking at Aga's
 18 screen and I realize in our listing we missed a related one,
 19 which is the whole amending the purposes of these funds and
 20 look into how we can think about that that both you,
 21 Commissioner Laverty and Commissioner Kurtz, raised. I'm
 22 sorry.

23 MS. PINETTE: I think that's the only thing we have
 24 other than just to respond to a comment from
 25 Commissioner Wight -- or just a suggestion -- that the

1 recreation fund have a grant-giving component, and our sense is
 2 that there would be nothing to stop that board from
 3 entertaining that option for the intended purpose of recreation
 4 mitigation.

5 MR. WIGHT: That's fine. I gather that the purpose
 6 here is to populate the board and then the board will decide
 7 how it's going to deal with the --

8 MS. PINETTE: How it's going to allocate that
 9 funding, and part of that could be through grant giving.

10 MR. WIGHT: All right.

11 MS. PINETTE: I believe that's all I have on my list
 12 on the conservation recommendations.

13 Was there anything that I missed?

14 MR. LAVERTY: Just -- just, Aga, I think a lot of
 15 comments -- many of mine and others -- were addressing sort of
 16 the context in which these recommendations are made, and many
 17 instances it says direct the staff to additional money, and I
 18 think we tried to give some guidance on what we thought that
 19 language would look like.

20 I wouldn't want -- the absence of that -- those
 21 concerns not represented in a laundry list, I'm assuming that
 22 they would be reflected somehow in the language changes that
 23 you're going to come up with.

24 MS. PINETTE: Yes.

25 MR. LAVERTY: I wouldn't want -- I mean, I might have

1 some concerns about those recommendations if I saw language
2 that departed from I think some of your concerns that I
3 mentioned.

4 MS. PINETTE: Absolutely, and that goes to really the
5 second tier level of detail that we referred to.

6 MR. KREISMAN: I think that's a really good
7 interchange that I think we may have neglected to say as a
8 setup to this piece, which when we come back with the written
9 document capturing this, you may see some specific language,
10 but you say see, as Aga just -- and I think you were saying,
11 Commissioner -- you may see language that asks, as it does
12 already in this book, that asks staff to develop specific
13 language after the 30-day comment period to address this issue,
14 which you will get another.

15 So we're not representing on all of these things,
16 certainly, for instance, on the easement holder, two easement
17 holders, the language will be a direct reflection of what you
18 all agree to, but some of these, like how the funds might
19 change over time, will be a directive to explore and come back
20 to us -- come back to you with language.

21 MR. LAVERTY: I just want to make sure that I was
22 understanding correctly, that is -- you are cognizant of those
23 concerns expressed -- not just me but others -- that although
24 they weren't recommendation for specific changes, they were, I
25 think, recommendations for certain direction and that type of

1 wording. I'm not being specific.

2 MR. KREISMAN: Yes, and you would evaluate the
3 wording to see if it meets your needs. If on reflection it
4 doesn't work, or some amendment to specific language is
5 required.

6 MS. PINETTE: Process-wise, just to clarify -- I want
7 to make sure everybody understands that -- that level of detail
8 will come after the 30-day comment period whereby you will have
9 had an opportunity to review comments from the parties and the
10 applicant on these recommendations and not the level of detail
11 that we're just discussing.

12 I did not have any -- in my notes I did not make any
13 reference to changes to the recommendations on any of the
14 additional plan elements or the implementation mechanisms other
15 than what I just listed here on the recreation fund.

16 Is that accurate?

17 CHAIRMAN HARVEY: Anybody want to correct that
18 notion?

19 MR. LAVERTY: On the recreation?

20 MS. PINETTE: On any other additional --

21 CHAIRMAN HARVEY: Anything else. I think we've
22 covered it.

23 MR. SCHAEFER: We did cover the Fish & Wildlife law
24 book issue, overlay. That's part of the easement we figured
25 out.

1 MS. PINETTE: Right.

2 CHAIRMAN HARVEY: Aga, given that, what does that
3 mean now for your group as far as the next step?

4 MS. PINETTE: As far as the next step what we will
5 do, you know, sort of track changes format, make the
6 modifications that I just identified to the recommendations in
7 this document and bring that back to you with a request to post
8 that to public comment.

9 And given the list I have, I think it's reasonable to
10 say that we could, with Catherine Carroll's agreement, I would
11 like to put that on the June agenda for your consideration next
12 week.

13 CHAIRMAN HARVEY: The June agenda is a meeting next
14 Wednesday; right?

15 MS. PINETTE: Right. So we would bring the red-lined
16 document with us in hand and walk you through these
17 modifications as I have just described them to make sure that
18 the write-up captures --

19 CHAIRMAN HARVEY: I don't have any objection to it.
20 I don't have to do it, either. I admire your willingness to
21 take that on. This certainly will make the process go much
22 quicker, keep us 30 days.

23 MR. WIGHT: When you have a volunteer --

24 MR. LAVERTY: Mr. Chair, my assumption is that what
25 you're attempting to do is to summarize comments here and

1 present them to us next Wednesday.

2 What I'm concerned about is next Wednesday sort of
3 reinventing the wheel and going through each one of these
4 things all over again, and my assumption is we won't do that.
5 We'll look at the document as a whole and determine whether
6 it's consistent with our thoughts at this stage and maybe take
7 some action on that document or at least approve that document
8 for actual review.

9 CHAIRMAN HARVEY: It can go out to public comment.

10 MR. LAVERTY: I guess I'm speaking, also, quite
11 frankly, to myself.

12 CHAIRMAN HARVEY: I don't intend to engage in another
13 two-days discussion.

14 MR. LAVERTY: Gavel me down.

15 CHAIRMAN HARVEY: Yes. I'd be happy to do that.

16 MR. WIGHT: Aga, could I ask, do you intend to bring
17 back a draft recommendation, a draft document for -- you won't
18 bring this back again, you'll be bringing a recommendation
19 document?

20 MS. PINETTE: We will bring a version of this
21 document that captures the amendments to the recommendations as
22 I have just laid them out, which will be our representation of
23 what the Commission -- the Commission's view is, needs to
24 change to the concept plan, that we would then ask you to post
25 to public comment and seek responses from the parties on these

1 elements.

2 MR. REID: You said this would be in red-lined format
3 so the Commission could quickly identify where the changes are?

4 MS. PINETTE: That's right.

5 CHAIRMAN HARVEY: Other than that, it's going to look
6 just like this format-wise, we'll do the same format?

7 MS. PINETTE: Yes, if that is helpful we would prefer
8 to --

9 CHAIRMAN HARVEY: I would assume that -- for me it
10 would be nice. I assume the parties would find it helpful
11 since it would look pretty much like something that they have
12 already seen.

13 MS. PINETTE: We will change the cover to say
14 Commission.

15 CHAIRMAN HARVEY: Right, result of the Commission.
16 Is that clear to everyone?

17 MS. HILTON: I just have one request that has to do
18 with formatting in here.

19 There were a couple of places where it was a little
20 confusing as to whether what in the concept plan proposal was
21 still part of the recommendation, I think when we went through
22 this. Bart, there were a couple there.

23 If you could somehow make that just a little more
24 clear. Do you follow what I'm --

25 MS. PINETTE: Can you give me an example of that? It

1 would be very helpful.

2 MR. KREISMAN: Let me just say, because I can't
3 remember what it was, Commissioner, you and I had a dialogue on
4 this, the operating principle in this is that if we don't say
5 anything about what's in the concept plan, it's fine.

6 MS. HILTON: Yeah, just be clear about that. I found
7 that I was having -- I didn't realize it was happening.

8 CHAIRMAN HARVEY: I think what Gwen was referring to,
9 if you say, it's columns, one says concept plan proposal and
10 one says recommendation, and in some cases you are saying they
11 were the same. You jumped across.

12 MS. HILTON: No, I read the recommendation, and I
13 thought the recommendation was completely replacing what was in
14 the proposal.

15 MR. KREISMAN: Here's -- it's only taken me a month
16 of working on this.

17 The concept plan recommendation, the things that are
18 listed there, are I think generally intended for you only those
19 pieces -- not the concept plan -- the concept plan proposal
20 that is listed there are only those pieces of maybe a larger
21 proposed zone in that particular area where we are recommending
22 changes.

23 So to the extent that a concept plan is proposing
24 eight elements on something and there are only three of them
25 that we're recommending to you changes, it is generally a

1 statement of what's in the concept plan on those three elements
2 that's in the middle column, and then our proposed changes in
3 the right-hand side.

4 MS. PINETTE: If you find something that is unclear
5 with respect to the recommendations in terms of formatting,
6 please don't hesitate to let me know and I will try to add
7 them.

8 MS. KURTZ: I have a suggestion, I'm sorry, I hate to
9 create more work for you.

10 A lot of the footnotes say, see recommendations,
11 planning design in development areas. I wondered if there
12 would be a way to put the page number, sort of keep the stream
13 of thought going rather than digging around and go right to it.

14 MS. PINETTE: That's doable.

15 MS. KURTZ: As I said, I hate to create more work for
16 you but it would make life easier.

17 MS. HILTON: Having made these suggestions, I think
18 this is great and very easy to work through and really
19 appreciate all the work that you put into it.

20 MS. PINETTE: Thank you.

21 MR. LAVERTY: Aga, the meeting where we're going to
22 address consideration of this next Wednesday.

23 MS. PINETTE: Right.

24 MR. LAVERTY: We're going to get the packets today, I
25 understand they've just been delivered, so we can prepare for

1 that meeting.

2 I realize the time constraint, but I'd be a little
3 concerned about walking into the meeting and getting this thing
4 cold.

5 When do you anticipate getting the draft of these
6 recommendations to us?

7 MS. PINETTE: I will make it available as soon as
8 possible but I'm not sure I can guarantee that you won't get it
9 the morning of the meeting.

10 If you're concerned about that --

11 MR. LAVERTY: Electronically.

12 MS. PINETTE: There should be nothing in that
13 document that comes as I surprise to you. The items that I
14 just listed off are what we will be adding to this document,
15 and they will be red-lined, and I don't think it will take that
16 long for us to highlight that on the fly.

17 MR. LAVERTY: I don't -- I know this wasn't intended.
18 I don't want to be caught with language that I've never seen
19 before.

20 MS. PINETTE: I understood.

21 MR. KREISMAN: Why don't we -- if I were in your
22 situation I would share your concern.

23 Why don't we say this. We think we can do it, that's
24 what our intent is. Our hope would be to get this to you --
25 our expectation would be to get this to you 24 hours

1 electronically, as well as to the parties, in advance, and if
2 we can't meet that expectation and you get it and the
3 Commission or other Commissioners are not comfortable, you can
4 make a judgment then whether you're prepared to go forward or
5 you need another month.

6 We're just trying to move this along in ways that few
7 think we can meet.

8 MR. LAVERTY: I agree. I think it's in everyone's
9 interest to move this along as quickly as possible; but at the
10 same time I think we want to make sure -- I think the process
11 so far -- this is an editorial on my part -- has been very
12 effective in terms of providing information, and I like the
13 idea that these recommendations remain on the record.

14 So I think just continue sort of the integrity of the
15 process but at the same time move forward to the next stage as
16 quickly as possible, again, a balancing act.

17 MS. PINETTE: We'll do our best.

18 CHAIRMAN HARVEY: I guess, Ron, what you said, you
19 will e-mail us just the specific language changes you're
20 proposing?

21 MS. PINETTE: We will e-mail you the entire document.
22 That will be easier.

23 CHAIRMAN HARVEY: Because I think it is very
24 important that we keep this process moving along, because I
25 don't know about the rest of you, but it's kind of wearing and

1 I'm sure it is for the applicant as well as all the other
2 participants. I think we need to move this along. I think we
3 have a good process going and we need to keep it moving.

4 MR. KREISMAN: Mr. Chair, what we can do -- and I'm
5 only responding to a wince that I saw from Commissioner
6 Hilton -- we will e-mail you the entire document red-lined
7 tracked changes, and then -- with Aga reserving the right to
8 kick me brutally under the table -- we will excerpt or excise
9 those pages in which there are changes, so you can follow them
10 exactly with the page numbers and create a separate document
11 that just has document with those changes.

12 MR. RICHERT: This is from somebody who does not know
13 how to paginate.

14 MS. PINETTE: We will do our damndest to make that
15 happen, and I'll make sure that Ron does it.

16 CHAIRMAN HARVEY: Well, I think, Aga, if anybody can
17 do it, you can, given what we've seen so far in this whole
18 process.

19 MR. SCHAEFER: Kudos to you guys, especially Aga,
20 you've been working overtime. I appreciate it.

21 CHAIRMAN HARVEY: All right. Is there anything else
22 that we need to?

23 MS. PINETTE: No, I think the staff has gotten the
24 direction it needs. Thank you very much.

25 Counsel.

1 MR. REID: Nothing further, your Honor.

2 CHAIRMAN HARVEY: I'm not going to ask the
3 Commission.

4 With that, I appreciate the participation of all
5 Commissioners. I think we had a fairly robust discussion of
6 all the issues that were critical.

7 As with anything we do, I'm sure that we didn't
8 please everybody but that's a virtually impossible task. I've
9 given up on that long ago.

10 As I reiterated, I hope that all of you will stick
11 with the process. It's a struggle for everybody, but now that
12 we're this far along, I'd like to see it to completion.

13 Our next meeting is in Orono at the Black Bear Inn.
14 And the other issue was the transcript that Lisa is working on
15 will be available -- I asked her to have that available next
16 week, I believe, within a week of the time we're here. Maybe
17 she'll do it quicker, but we gave her the goal of a week.

18 Is that going to work for you.

19 MS. PINETTE: I'm sorry, I was not paying attention.
20 With respect to the transcript?

21 CHAIRMAN HARVEY: Yes. Basically, we were asked -- I
22 said, hopefully we can have it within a week. That would
23 coincide with our meeting and then coincide with the review
24 period going forward, and people, if they want to review what
25 we had to say, they would have that transcript to do so.

1 MS. PINETTE: Yes, we can structure the start of the
2 comment period in such a way to coincide with the availability
3 of the transcript.

4 That would make sense.

5 CHAIRMAN HARVEY: Okay. Then I guess the meeting is
6 adjourned. Thank you very much.

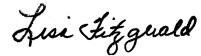
7 (The deliberation was adjourned on May 28, 2008 at
8 4:23 p.m.)

CERTIFICATE

I, Lisa Fitzgerald, a Notary Public in and for the State of Maine, hereby certify that on May 27 and 28, 2008, a deliberation was held regarding ZP 707; and that this deliberation was stenographically reported by me and later reduced to typewritten form with the aid of computer-aided transcription; and the foregoing is a full and true record of the testimony given by the staff, consultants, and Commission.

I further certify that I am a disinterested person in the event or outcome of the above-named cause of action.

IN WITNESS WHEREOF, I subscribe my hand and affix my seal this June 3, 2008.



LISA FITZGERALD, NOTARY PUBLIC
Court Reporter

My commission expires: May 10, 2011