



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

AMANDA E. BEAL  
COMMISSIONER

JANET T. MILLS  
GOVERNOR

JUDY C. EAST  
EXECUTIVE DIRECTOR

**COMMISSION DECISION  
IN THE MATTER OF**

**Weyerhaeuser Company and Weyerhaeuser NR Company**

**Findings of Fact and Decision**

**AMENDMENT B TO ZONING PETITION ZP 707**

The Maine Land Use Planning Commission (LUPC or Commission), at a meeting of the Commission held virtually via Microsoft Teams on July 15<sup>th</sup> 2020, after reviewing the draft land use guidance maps, the petition and supporting documents submitted by the Weyerhaeuser Company and Weyerhaeuser NR Company (collectively “Weyerhaeuser” or “Petitioner”) for Amendment B to Zoning Petition ZP 707, review agency and staff comments, and other related materials on file, and pursuant to 12 M.R.S. Sections 681 et seq. and the Commission’s standards and rules, finds the following facts:

1. *Petitioner:* Weyerhaeuser Company and Weyerhaeuser NR Company  
C/O: Luke Muzzy, Senior Land Asset Manager  
PO Box 297  
Greenville Junction, ME 04442
2. *Date of Completed Petition:* March 9, 2020
3. *Location of Proposal:* The proposal includes all of Weyerhaeuser’s (formerly Plum Creek’s) land holdings currently regulated by the *Concept Plan for the Moosehead Lake Region*. Specifically, the proposal includes land holdings within the following twenty-six minor civil divisions in Somerset and Piscataquis Counties:

Beaver Cove, Piscataquis County  
Big Moose Township, Piscataquis County  
Big W Township, Somerset County  
Bowdoin College Grant West Township, Piscataquis County  
Brassua Township, Somerset County  
Chase Stream Township, Somerset County  
Days Academy Grant Township, Piscataquis County  
Elliottsville Township, Piscataquis County  
Frenchtown Township, Piscataquis County

Indian Stream Township, Somerset County  
Lily Bay Township, Piscataquis County  
Long Pond Township, Somerset County  
Misery Gore, Somerset County  
Misery Township, Somerset County  
Rockwood Strip Township T1 R1 NBKP, Somerset County  
Rockwood Strip Township T2 R1 NBKP, Somerset County  
Sandbar Tract Township, Somerset County  
Sandwich Academy Grant Township, Somerset County  
Sapling Township, Somerset County  
Soldiertown Township, Somerset County  
Spencer Bay Township, Piscataquis County  
Squaretown Township, Somerset County  
T1 R13 WELS, Piscataquis County  
Taunton and Raynham Academy Grant Township, Somerset County  
Thorndike Township, Somerset County  
West Middlesex Canal Grant Township, Somerset County

4. *Affected Waterbodies:* Long Pond  
Brassua Lake  
Moosehead Lake  
Burnham Pond  
Indian Pond  
Upper Wilson Pond
5. *Current Zoning:* Resource Plan Protection Subdistrict (P-RP)
6. *Proposed Zoning:* General Management Subdistrict (M-GN)  
Accessible Lake Protection Subdistrict (P-AL)  
Fish and Wildlife Protection Subdistrict (P-FW)  
Flood Prone Protection Subdistrict (P-FP)  
Great Pond Protection Subdistrict (P-GP)  
Mountain Area Protection Subdistrict (P-MA)  
Recreation Protection Subdistrict (P-RR)  
Soils and Geology Protection Subdistrict (P-SG)  
Shoreland Protection Subdistrict (P-SL1 and 2)  
Wetland Protection Subdistrict (P-WL1, 2, and 3)  
Recreation Facility Development Subdistrict (D-RF)

## **Background and Administrative Matters**

7. *Property Location.* The lands covered by the *Concept Plan for the Moosehead Lake Region* (the “Concept Plan” or the “Plan”) include holdings in 26 minor civil divisions in the Moosehead Lake region; in western Piscataquis County and eastern Somerset County (see #3 above). The total acreage is approximately 380,074 acres, and includes water frontage on six major waterbodies, dozens of smaller waterbodies, and numerous minor flowing waters. The

Concept Plan was initiated and approved under the ownership of Plum Creek Timberlands LLC and subsidiaries. The current landowner, Weyerhaeuser Company and Weyerhaeuser NR Company, acquired the subject property in 2016 and 2017, through a series of mergers between Plum Creek subsidiaries and Weyerhaeuser subsidiaries.

8. *Zoning Petition ZP 707*. On September 23, 2009, after more than four years of review and significant public interest, the Commission approved Zoning Petition ZP 707, to rezone 380,074 acres to a P-RP Subdistrict and make effective the *Concept Plan for the Moosehead Lake Region*. It was and remains the largest and most complex concept plan in the agency's history. The P-RP Subdistrict designation and the Concept Plan became effective on October 8, 2009. The terms and conditions of the original Plan were valid for 30 years, with an expiration date of October 8, 2039. Many public benefits of the Plan were permanent, the most significant of which is the permanent conservation of over 390,000 acres. A detailed summary of the Concept Plan is included below.
9. *Amendment A to ZP 707*. In March of 2010, staff discovered that the P-RP Subdistrict within Lily Bay Township erroneously included lands that were not within the Petitioner's ownership. Staff notified Plum Creek, and Plum Creek conducted a review of all maps and descriptions associated with the Concept Plan. Plum Creek submitted the results of its review to staff on June 17, 2010. Upon reviewing Plum Creek's submittal, staff determined that corrections to the P-RP Subdistrict designation and the Concept Plan were necessary and initiated Amendment A to Zoning Petition ZP 707 that proposed such corrections. The proposed boundary corrections were approved by the Commission on August 8, 2010.
10. *Concept Plan Overview*. The Concept Plan approved in Zoning Petition ZP 707, and as amended by ZP 707-A, included:
  - A. *Existing Development*. Thirty-three inholding lots existed at the time the Plan area was adopted, 29 of which included structural development and 4 of which had no structural development. These existing lots were all surrounded by the Moosehead Region Conservation Easement. See Schedule 8 of the materials submitted with this Petition to Terminate and Appendix V of the Plan for locations and details of each of the pre-existing lots.
  - B. *Development Subdistricts*. The Plan included ten approved development areas, totaling approximately 16,910 acres, and allowing a maximum total of 2,025 dwelling units to be constructed. Development areas were divided into five subdistricts with unique allowed uses, created specifically for the Concept Plan (See Sub-Chapter II of the *Concept Plan for the Moosehead Lake Region* for full subdistrict definitions):
    - i. Residential Development Zone (D-MH-RS1); 8,886 acres.
    - ii. Residential/Resort Optional Zone (D-MH-RS2); 1,014 acres.
    - iii. Primitive Resort Development Zone (D-MH-PR); 162 acres.
    - iv. Resort Development Zone (D-MH-RT); 5,656 acres.
    - v. Commercial Industrial Zone (D-MH-CI); 94 acres.

These acreage totals do not include protection zones and No Disturbance Areas within development areas. As of the filing date of this Petition to Terminate, no new development has occurred in any of the development areas.

- C. *Protection Subdistricts.* The Plan included protection subdistricts established by the Commission in accordance with existing subdistrict definitions in Chapter 10 of the Commission's *Land Use Districts and Standards*. The protection subdistricts outside the development areas have evolved through time with increased accuracy of resource mapping and updated definitions of LUPC protection subdistricts. In contrast, a total of 398 acres of protection subdistricts within development areas were "frozen" in place with the Plan's adoption and have not been updated over the past decade. The subdistricts included Fish and Wildlife Protection (P-FW), Great Pond Protection (P-GP), Accessible Lake Protection (P-AL), Mountain Area Protection (P-MA), Recreation Protection (P-RR), and Shoreland Protection (P-SL).
- D. *Conservation Easements.* The Plan included extensive conservation elements, several of which are required to remain in perpetuity. The total area required to be placed under permanent conservation easement was approximately 392,500 acres and included lands within and abutting the P-RP. The main conservation elements of the Plan include (See Sub-Chapter I, Sections E,2 and 3 of the *Concept Plan for the Moosehead Lake Region* for a detailed description of all conservation elements):
- i. Moosehead Region Conservation Easement, Multi-Resource Management Plan, and Stewardship Fund. This element of the Plan established a requirement for 363,000 acres within the Plan area to be permanently placed under a conservation easement, and established management plan and stewardship funding requirements. The easement is held by the Forest Society of Maine with the Maine Bureau of Parks and Lands as a third party.
  - ii. Roaches Pond Tract Conservation Easement and Stewardship Fund. This element of the Plan required 29,500 acres of permanent conservation easement to be established adjacent to the P-RP boundaries in T1 R12 WELS, Shawtown Township, and Bowdoin College Grant East. This requirement was accomplished via a sale of the tract to the Appalachian Mountain Club of Maine in 2009 and the encumbrance of the tract under a conservation easement held by the Maine Bureau of Parks and Lands.
- E. *No Disturbance Areas.* Approximately 700 acres of "No Disturbance Areas" were designated within the development areas, to avoid fragmenting the development areas while providing protection for identified natural and scenic resources.
- F. *Additional Public Benefits.* The Plan also included requirements for public road access, snowmobile access, and public trailhead easements. Additionally, mitigation funds were required to be established for affordable housing, outdoor recreation, and wildlife and invasive species (See Sub-Chapter I, Sections E,3 of the *Concept Plan for the Moosehead Lake Region* for a detailed description of all additional elements).

These elements had various thresholds for when, or whether, they had to be implemented. Since no development has occurred, provisions for certain public benefits contingent on development were not required to be implemented. See 15,F below for more information.

11. *Expiration of the Concept Plan.* The terms and conditions of the original Plan were valid for 30 years, with a planned expiration date of October 8, 2039. The Petitioner has now requested early termination of the Plan via this Petition to Terminate (Amendment B to Zoning Petition ZP 707).
12. *Termination of the Concept Plan.* This Petition to Terminate, which incorporates both Plan termination and proposed replacement zoning, represents the first time the LUPC has considered a request to terminate a Concept Plan. As described in Appendix C of the Comprehensive Land Use Plan (CLUP), concept plans are intended to encourage long-term planning that is customized to the location and resource as an alternative to haphazard, incremental development. The CLUP (Appendix C) states that proposals to terminate concept plans are subject to the mutual agreement of the landowner and the Commission and that the Commission will be conservative in exercising this option. The Plan (Section I,D,2) states that termination may not occur without written consent from both the landowner and the Commission and following public notice and an opportunity to comment. That section of the Plan goes on to state that petitions to terminate the Plan will not be granted by the Commission until the Commission designates replacement zoning for the Plan area. Because termination of the Plan cannot occur before replacement zoning is in place, the Commission elected to process both the Plan termination and the adoption of replacement zoning together.

## **Proposal**

13. *Petitioner Proposal.* The Petitioner seeks to terminate the Plan and rezone the entire Resource Plan Protection (P-RP) Subdistrict currently applied to the approximately 380,074 acre Plan area. Due to unforeseen impacts from the economic recession of 2008-2009, none of the anticipated development has occurred. The Petitioner feels that the proposed development is no longer feasible or beneficial to the region and seeks to remove the custom zoning and revert the area to the applicable and appropriate LUPC zoning. Draft zoning maps of the proposed zoning for the affected area accompany this decision document.
14. *Supporting Elements of the Petition to Terminate the Concept Plan.* In the cover letter accompanying their Petition to Terminate, Weyerhaeuser stated that, should the region and the LUPC desire, they would be supportive of a community planning process focused on lands that are not in conservation in the region. The Commission anticipates that, because of the termination of the Plan, the Commission will undertake a regional planning process with the cooperation of area residents and stakeholders and in keeping with the goals and policies outlined in the Commission's CLUP. Should the community desire, this process will allow some areas to be prospectively zoned for certain types of development in a comprehensive way and provide adequate protections for resources of importance to the community. To facilitate any such regional planning, the Petitioner has decided to restrict certain activities on

lands formerly within the Plan's development areas between the termination of the plan and December 31, 2022. Specifically, the Petitioner will not:

- A. Undertake development that would require a permit from the LUPC
- B. File any zoning petitions
- C. Create any clearcuts, as defined by Maine Forest Service (except those created as a result of a natural disaster, to stop the spread of disease, or to control an insect infestation)

These unilateral commitments are described in a restrictive covenant included as an amendment to the Petition to Terminate materials. The Petitioner will sign the restrictive covenant upon termination of the Plan and will record it in the registry of deeds. The restrictive covenant will apply during the term of the covenant regardless of who owns that land.

#### 15. *Overview of Plan Termination.*

- A. *Existing Development.* All lots that existed at the time the Plan was adopted remain in existence today, and one additional lot has been described in the application materials (See schedule 8 of Petition to Terminate for location, size, and ownership of each lot). The parcel boundaries and uses on these lots remain unchanged since prior to the adoption of the original Concept Plan. The additional lot described in ZP 707-B is located in Big Moose Township and includes an office building and garage owned by Weyerhaeuser. The structures were pre-existing when the plan was adopted but were not previously included in the list of development due to being located within a proposed development area. Thirty-three of the 34 lots described are now surrounded by the Moosehead Region Conservation Easement, with the exception of the Weyerhaeuser office property located in the Moose Bay Development Area, on Route 15. All 34 lots are proposed to be rezoned in accordance with current LUPC subdistrict definitions and Chapter 10 Land Use Districts and Standards, which includes primarily the M-GN subdistrict and appropriate, updated protection subdistricts for any resources identified. The only exception is the proposed designation of an approximately 3-acre Recreational Facility Development (D-RF) subdistrict to appropriately accommodate an existing pre-Commission sporting camp facility.
- B. *Concept Plan Development Subdistricts.* The Plan included ten approved development areas, totaling approximately 16,910 acres, with subdistricts created specifically for the Concept Plan (See Sub-Chapter I,H of the *Concept Plan for the Moosehead Lake Region* for maps of the development areas, and Sub-Chapter II for subdistrict definitions). As of the filing date of this Petition to Terminate, no new development has occurred in any of the development areas since the adoption of the Plan. The Petitioner proposes to terminate the plan, removing all development areas identified in the Plan, and rezone these areas in accordance with current LUPC

subdistrict definitions and Chapter 10 Land Use Districts and Standards. The proposal includes rezoning the majority of the former development areas to the M-GN subdistrict (15,524 acres), and designating appropriate, updated protection subdistricts for any resources identified (1,349 acres).

- C. *Concept Plan Protection Subdistricts.* Within the development areas, the Plan included 398 acres of designated protection subdistricts, established in accordance with existing subdistrict definitions in Chapter 10 of the Commission's *Land Use Districts and Standards*. The current proposal would expand the acreage zoned in protection subdistricts to 1,349 acres. The increase in acreage proposed for protection subdistrict zoning is a reflection of the increased accuracy of wetland and waterway mapping, updated definitions of LUPC protection subdistricts, and the rezoning of the No Disturbance areas (discussed further in 15,E below).
- D. *Concept Plan Conservation Easements.* No changes are proposed to the permanent conservation easements, including the Moosehead Region Conservation Easement, and the Roaches Pond Tract Conservation Easement. These conservation easements will continue in perpetuity.
- E. *No Disturbance Areas.* The approximately 700 acres of "No Disturbance Areas" are proposed to be rezoned to a combination of General Management subdistrict and the appropriate, updated protection subdistricts.
  - i. *Shorelands and Wetlands.* All but one of the No Disturbance Areas were put in place to protect natural resources, both shoreland (Burgess Brook, Lily Bay Township; and Misery Brook, Taunton & Raynham Township) and wetlands (a wetlands in Taunton & Raynham Township and Big Moose Township). The No Disturbance Areas were put in place to additionally protect areas that were not practical to include in the Conservation Easement. With the termination of the Plan and the removal of the development areas, the appropriate, updated protection subdistricts are proposed to protect these natural resources.
  - ii. *Blue Ridge.* The Plan also includes a 290 acre No Disturbance Area on Blue Ridge in Taunton & Raynham Township. It was put in place to protect the scenic resource of the ridgeline as viewed from Brassua Lake, Moosehead Lake, and, importantly, from Mt. Kineo. The visual assessment analysis completed for the Commission in 2007 by Dr. James Palmer as part of the review of ZP 707, described the visual impact that would occur from development or timber harvesting on the ridgeline. This report recommended that some protection from significant visual change on the ridgeline may be appropriate. The Petitioner proposes to re-zone the Blue Ridge No Disturbance Area to the General Management Subdistrict (M-GN).

16. *Additional Concept Plan Elements.* Weyerhaeuser has completed the establishment of 121 acres of permanent hiking trail easements and a \$1 million-dollar donation to the Bureau of

Parks and Lands for trail creation and maintenance on the easements. Weyerhaeuser has also completed the grant of 81 miles of permanent snowmobile trail easement along the Interconnected Trail System. Finally, Weyerhaeuser has completed a donation of 25 acres to Coastal Enterprises Inc. for affordable housing. Weyerhaeuser and the Bureau of Parks and Lands have a signed purchase and sale agreement for the Plan's required 50 acre donation. These lands will be used for public trailheads, and associated access easements.

Due to the absence of any development occurring after adoption of the Plan, some elements were not required to be implemented, and are not proposed to be completed. These included requirements for establishing public road access once 200 units had been conveyed in a given development area; establishment of the Affordable Housing Fund; establishment of the Moosehead Recreation Fund and incorporation of the Moosehead Recreation Fund Corporation; and establishment of the Wildlife and Invasive Species Fund. (See Sub-Chapter I, Sections E,3 of the *Concept Plan for the Moosehead Lake Region* for a detailed description of all additional elements).

17. *Proposed replacement zoning.* The P-RP Subdistrict will be replaced by the following subdistricts: General Management (M-GN), Accessible Lake Protection Subdistrict (P-AL), Flood Prone Protection Subdistrict (P-FP), Fish and Wildlife Protection Subdistrict (P-FW), Great Pond Protection Subdistrict (P-GP), Mountain Area Protection Subdistrict (P-MA), Recreation Protection Subdistrict (P-RR), Soils and Geology Protection Subdistrict (P-SG), Shoreland Protection Subdistrict (P-SL1 and 2), Wetland Protection Subdistrict (P-WL1, 2, and 3), and Recreation Facility Development Subdistrict (D-RF). The definition and purpose of each subdistrict, in accordance with the Commission's current rules, are summarized below:

- A. *General Management Subdistrict (M-GN).* In accordance with the Commission's rules, Chapter 10, Section 10.22,A,1, the purpose of the M-GN Subdistrict is to "permit forestry and agricultural management activities to occur with minimal interferences from unrelated development in areas where the Commission finds that the resource protection afforded by protection subdistricts is not required." The M-GN Subdistrict will be applied to all Concept Plan areas not otherwise zoned for protection or development, covering areas that do not need special protection and that are appropriate for agriculture or forestry. All townships within the Concept Plan area include proposed M-GN subdistricts; please see draft township maps for subdistrict boundaries.
- B. *Accessible Lake Protection Subdistrict (P-AL).* In accordance with the Commission's rules, Chapter 10, section 10.23,A,1, the purpose of the P-AL Subdistrict is to "maintain and protect the existing natural values of the accessible, undeveloped, high value lakes within the Commission's jurisdiction. This is the class of lakes described as Management Class 2 lakes in the Commission's Comprehensive Land Use Plan. It is the intent of this subdistrict to restrict development." In accordance with the Commission's rules, Chapter 10, section 10.23,A,2, the P-AL Subdistrict includes "[a]reas surrounding bodies of standing water classified as Management Class 2 Lakes (Accessible, Undeveloped, High Value Lakes). The protection subdistrict shall

extend 500 feet from and around the water body measured from the normal high water mark.” P-AL Subdistricts have been designated in the following townships, within the Concept Plan area:

Spencer Bay Township, Thorndike Township.

- C. *Flood Prone Protection Subdistrict (P-FP)*. In accordance with the Commission’s rules, Chapter 10, section 10.23,C,1, the purpose of the P-FP Subdistrict is to “regulate in all flood prone areas, including areas of special flood hazard, certain land use activities in order to minimize the human, environmental, and financial costs of floods and flood cleanup programs, by protecting on-site, adjacent, upstream and downstream property from flood damage; and by minimizing danger from malfunctioning water supply and waste disposal systems in flood prone areas; and to comply with the cooperative agreement between the Land Use Planning Commission and the Federal Emergency Management Agency (FEMA) regarding the regulation of land use according to the requirements of 44 CFR Part 60.3 of the National Flood Insurance Program, so that flood insurance can be made available to persons in flood prone areas.” In accordance with the Commission’s rules, Chapter 10, section 10.23,C,2, the P-FP Subdistrict includes “[a]reas located within the 100-year frequency floodplain, also known as areas of special flood hazard, as identified by the Commission after consideration of relevant data including, without limitation, areas determined to be flood prone by state or federal agencies, including the Flood Insurance Studies and accompanying Flood Insurance Rate Maps, Flood Boundary and Floodway Maps or Flood Hazard Boundary Maps prepared by the Federal Emergency Management Agency, historical data, and the National Cooperative Soil Survey. The areas identified by FEMA as areas of special flood hazard (Zones A, AE, A1-30, VE) on Flood Insurance Rate Maps, Flood Boundary and Floodway Maps or Flood Hazard Boundary Maps for townships, plantations, or towns qualify as flood prone areas appropriate for protection within this subdistrict. ... In any case where the boundaries of the P-FP subdistrict on the Commission map differ from the boundaries of the FEMA zones, the FEMA boundaries shall apply. The FEMA zones shall be regulated according to the provisions of the P-FP subdistrict.” P-FP Subdistricts have been designated in the following townships, within the Concept Plan area:

Brassua Township, Elliottsville Township, Long Pond Township, Soldiertown Township, Thorndike Township, West Middlesex Canal Grant Township.

- D. *Fish and Wildlife Protection (P-FW)*. In accordance with the Commission’s rules, Chapter 10, section 10.23,D,1, the purpose of the P-FW Subdistrict is to “conserve important fish and wildlife habitats essential to the citizens of Maine because of their economic, recreational, aesthetic, educational or scientific value.” In accordance with the applicable subsections of the description of a P-FW Subdistrict in the Commission’s rules, Chapter 10, section 10.23,D,2, P-FW Subdistricts have been designated in the following townships, within the Concept Plan area:

Beaver Cove, Big Moose Township, Brassua Township, Elliottsville Township, Indian Stream Township, Lily Bay Township, Misery Gore Township, Rockwood Strip Township T2 R1 NBKP, Sandwich Academy Grant Township, Sapling Township, Soldiertown Township, Spencer Bay Township, T1 R13 WELS, Thorndike Township, West Middlesex Canal Grant Township.

- E. *Great Pond Protection (P-GP)*. In accordance with the Commission's rules, Chapter 10, section 10.23,E,1, the purpose of the P-GP Subdistrict is "to regulate residential and recreational development on Great Ponds to protect water quality, recreation potential, fishery habitat, and scenic character." In accordance with Section 10.23,E,2, of the Commission's rules, the P-GP Subdistrict includes "[a]reas within 250 feet of the normal high water mark, measured as a horizontal distance landward of such high water mark, of those bodies of standing water 10 acres or greater in size." All townships within the Concept Plan area include proposed P-GP subdistricts; please see draft township maps for subdistrict boundaries.
- F. *Mountain Area Protection Subdistrict (P-MA)*. In accordance with the Commission's rules, Chapter 10, section 10.23,G,1, the purpose of the P-MA Subdistrict is to "regulate certain land use activities in mountain areas in order to preserve the natural equilibrium of vegetation, geology, slope, soil and climate in order to reduce danger to public health and safety posed by unstable mountain areas, to protect water quality, and to preserve mountain areas for their scenic values and recreational opportunities." In accordance with the Commission's rules, Chapter 10, section 10.23,G,2,a and b, the P-MA Subdistrict includes "[a]reas above 2,700 feet in elevation, except where the Commission determines from substantial evidence presented to it that designation otherwise would not jeopardize significant natural, recreational or historic resources and where such other designation would be consistent with the purpose, intent and provisions of the Comprehensive Land Use Plan and 12 M.R.S.A. §206-A"; and "[m]ountain areas the Commission identifies below 2,700 feet in elevation when vegetative cover, geology, degree of slope, soil type, and climatic conditions indicate the need to protect such areas in order to achieve the purpose of the P-MA subdistrict." P-MA Subdistricts have been designated in the following townships, within the Concept Plan area:

Beaver Cove, Frenchtown Township, Lily Bay Township.

- G. *Recreation Protection Subdistrict (P-RR)*. In accordance with the Commission's rules, Chapter 10, section 10.23,I,1, the purpose of the P-RR Subdistrict is to "provide protection from development and intensive recreational uses to those areas that currently support, or have opportunities for, unusually significant primitive recreation activities. By so doing, the natural environment that is essential to the primitive recreational experience will be conserved." In accordance with the Commission's rules, Chapter 10, section 10.23,I,2, the P-RR Subdistrict includes "[t]rails, and areas surrounding bodies of standing and flowing water and other areas which the Commission identifies as providing or supporting unusually significant opportunities for primitive recreational experiences. Bodies of standing water so classified include,

but are not limited to, those found to meet the definition of Management Class 1 or Management Class 6 Lakes. . . . The river segments within the Commission's jurisdiction identified as meriting special protection in the Governor's Executive Order on Maine Rivers Policy, issued July 6, 1982, based upon the 1982 Maine Rivers Study of the Department of Conservation, shall qualify as flowing water appropriate for protection within this subdistrict." P-RR Subdistricts have been designated in the following townships, within the Concept Plan area: Beaver Cove Township, Bowdoin College Grant West Township, Chase Stream Township, Elliottsville Township, Frenchtown Township, Misery Township, Rockwood Strip Township T2 R1 NBKP, Soldiertown Township.

- H. *Soils and Geology Protection (P-SG)*. In accordance with the Commission's rules, Chapter 10, section 10.23,K,1, the purpose of the P-SG Subdistrict is to "protect areas that have precipitous slopes or unstable characteristics from uses or development that can cause accelerated erosion, water sedimentation, mass movement, or structural damage, all of which could cause public danger or threaten public health." In accordance with the Commission's rules, Chapter 10, section 10.23,K,2, the P-SG Subdistrict includes "[a]reas, 10 acres or more in size, identified by the Commission as having average slopes greater than 60 percent, or areas, 10 acres or more in size, identified by the Commission as having unstable soil which, due to a combination of slope, vegetation, soil type and underlying geology, are subject to accelerated erosion or mass movement." P-SG Subdistricts have been designated in the following townships, within the Concept Plan area:

Beaver Cove, Big Moose Township, Bowdoin College Grant West Township, Chase Stream Township, Rockwood Strip Township T1 R1 NBKP, Taunton and Raynham Academy Grant Township.

- I. *Shoreland Protection (P-SL1 and P-SL2)*. In accordance with the Commission's rules, Chapter 10, section 10.23,L,1, the purpose of the P-SL Subdistrict is to "regulate certain land use activities in certain shoreland areas in order to maintain water quality, plant, fish and wildlife habitat and in order to protect and enhance scenic and recreational opportunities." In accordance with Section 10.23,L,2, of the Commission's rules, the P-SL1 Subdistrict includes "[a]reas within 250 feet of the normal high water mark, measured as horizontal distance landward of such high water mark, of (a) coastal wetlands, and (b) flowing waters downstream from the point where such waters drain 50 square miles or more." The P-SL2 Subdistrict includes "[a]reas within 75 feet, measured as a horizontal distance landward, of (a) the normal high water mark of flowing waters upstream from the point where such channels drain 50 square miles; (b) the upland edge of those freshwater wetlands identified in Section 10.23,N,2,a,(1),(c) and (2), and (3); and (c) the normal high water mark of bodies of standing water less than 10 acres in size, but excluding bodies of standing water which are less than three acres in size and which are not fed or drained by a flowing water." All townships within the Concept Plan area include proposed P-SL subdistricts; please see draft township maps for subdistrict boundaries.

- J. *Wetland Protection (P-WL1, 2 & 3)*. In accordance with the Commission's rules, Chapter 10, section 10.23,N,1, the purpose of the P-WL Subdistrict is to "conserve coastal and freshwater wetlands in essentially their natural state because of the indispensable biologic, hydrologic and environmental functions which they perform." In accordance with the description of a P-WL Subdistrict in the Commission's rules, Chapter 10, section 10.23,N,2, all wetland areas meeting the definition, in particular those wetland depicted on the National Wetland Inventory map for the Concept Plan area, will be zoned P-WL1, 2, or 3 Subdistrict, as applicable. All townships within the Concept Plan area include proposed P-WL subdistricts; please see draft township maps for subdistrict boundaries.
- K. *Recreation Facility Development Subdistrict (D-RF)*. In accordance with the Commission's rules, Chapter 10, Section 10.21,L,1, the purpose of the D-RF Subdistrict is to "allow for development of moderate intensity recreation facilities in locations that would not be suitable for other types of commercial development. ... [w]here a D-RF subdistrict petition is granted, subsequent development in that subdistrict shall not provide the basis for subsequent redistricting of the area to another development subdistrict, nor shall it serve to satisfy those requirements for redistricting surrounding areas to development subdistricts pursuant to Section 10.08." In accordance with the Commission's rules, Chapter 10, Section 10.21,L,2, the D-RF Subdistrict shall include "[a]reas that contain existing recreation facilities that meet the purpose and other provisions of the Subdistrict."

The proposed 3-acre D-RF Subdistrict is located in Big Moose Township and encompasses a facility that has operated continuously in the location since prior to the Commission's inception. The facility has obtained permits from the Commission for various activities since 1979. The current use of the property is consistent with the description of the D-RF subdistrict.

### **Public Notice and Comment**

18. Public notice of the Petition for Rezoning was provided pursuant to 5 M.R.S.A. §8053 and Ch. 4.05(4) of the Commission's rules, and included notice by publication in Moosehead Matters on January 17, 2020 and the Bangor Daily News beginning on January 11, 2020 and running for two weeks, by directly contacting landowners affected by the proposed rezoning, and by certified mail to interested parties from ZP 707. The draft maps and petition materials were posted on the Commission's website, which included instructions for submitting comments or requesting additional information. Also, on March 25, 2020, the LUPC sent out a GovDelivery email notice soliciting public comments and requests for hearings to everyone on the list compiled for ZP 707.
19. Written permission was obtained from the three landowners whose property is directly affected by the proposed rezoning (by letters dated January 8, 2020). These landowners include Scott and Alison Snell, Brookfield White Pine Hydro, LLC, and the Appalachian Mountain Club.

20. The Commission received written comments from the Department of Inland Fisheries and Wildlife (IF&W), the Maine Natural Areas Program (MNAP), the Maine Geological Survey (MGS), and the Natural Resources Council of Maine (NRCM); and did not receive any comments from private citizens. No requests for public hearing were received; therefore, a public hearing on this proposal was not held.

A. IF&W Comments:

The Department of Inland Fisheries and Wildlife (IF&W, or the Department) reviewed the proposal and recommended that resource-based zoning be administered consistent with other areas of the Unorganized Territories and did not request special zoning in the former Plan area beyond what the Petitioner proposes.

LUPC Response:

The Commission's current practice is to consult with IF&W while reviewing pending permit applications to identify potential adverse impacts to wildlife habitat. The LUPC will continue this practice in the area proposed for rezoning. Any potential adverse impacts to fisheries, wildlife, or critical habitat can be addressed during permitting by incorporating recommendations and permit conditions that limit potentially harmful development or other activities.

B. MNAP Comments:

The Maine Natural Areas Program (MNAP) reviewed the proposal and identified two locations with known rare plant populations. These included a population of slender rush (*Juncus subtilis*), located on the shoreline of Long Lake in an area proposed to be zoned as Great Pond Protection subdistrict (P-GP). The second resource identified was a population of lesser wintergreen (*Pyrola minor*), located along a stream course near Big Moose Mountain and proposed to be zoned as Shoreland Protection subdistrict (P-SL2). MNAP commented that the population of slender rush was unlikely to be harmed by the proposed P-GP zoning, but that the lesser wintergreen may be vulnerable to clearing outside the protected 75-foot P-SL2 buffer zone. MNAP recommended that if more precise location data are needed, field surveys could be conducted by a qualified field biologist to ensure that no undocumented rare botanical features are inadvertently harmed by development or clearing. In an addendum to their original comments, MNAP stated that the proposed P-SL2 shoreland protection subdistrict should adequately protect the lesser wintergreen in Big Moose Township.

LUPC Response:

The Commission's current practice is to consult with MNAP while reviewing development permit applications to identify potential adverse impacts to rare or unique plant communities, and the LUPC will continue this practice in the area proposed for rezoning. LUPC expects that any potential adverse impacts to rare botanical features may be addressed during permitting, by incorporating

recommendations and permit conditions that limit potentially harmful development or other activities.

C. MGS Comments:

The Maine Geological Survey (MGS) reviewed the proposal and provided comments and recommendations regarding development activities with regard to geologic resources. These included recommended best management practices (BMPs) for erosion and sedimentation control, wastewater system installation, well installations, fuel storage and refilling, and work in areas underlain by sand and gravel aquifers. Additionally, MGS recommended that access ways to gravel pits and log landing areas be gated when not in use.

LUPC Response:

LUPC staff appreciate the comments submitted by MGS. It is expected that the recommended BMPs and procedures will be considered and addressed at the development permitting stage. The LUPC will continue to consult with MGS on an as-needed basis.

D. NRCM Comments:

NRCM commented that the termination of the Plan presented a positive opportunity to engage stakeholders and the community in the rezoning process and find a way to balance development and conservation goals in the region. NRCM applauded the permanent conservation measures that had been implemented as a result of the Plan and supported the landowner's commitment to prohibit clearcutting, development permit applications, and zoning petitions until July 1, 2022. However, due to the restrictions presented by the COVID-19 pandemic, NRCM requested that the proposed timeline should be extended through July 1, 2023 to allow for more public and in-person participation in the regional planning process.

NRCM reiterated their comments from the time of the initial Concept Plan approval regarding several development areas, emphasizing that they believe the areas of Lily Bay, the west side of Moose Mountain, and Blue Ridge are more appropriate for conservation than development. Additionally, NRCM highlighted the areas of Harford's Point, the ski area at Moose Mountain Resort, and the towns of Rockwood and Greenville as areas that would be suitable for development and could benefit from additional development.

Lastly, NRCM strongly advocated for excluding several areas from the Commission's primary and secondary development locations, via incorporation into Section 10.08-A,C,5 of the Commission's *Land Use Districts and Standards*. NRCM believes that the townships of Lily Bay and T2R6 BKP EKR, as well as formerly approved Plan development areas in Taunton and Raynham Academy Grant and Rockwood Strip (T1 R1 NBKP) should be excluded from primary and secondary locations. These

areas were not evaluated as part of the adjacency rule making process due to the existence of the Concept Plan, and NRCM believes these locations would have warranted analysis and inclusion in Section 10.08-A,C,5.

LUPC Response:

The Commission appreciates the positive feedback and constructive comments from NRCM, and agrees that the termination of the Concept Plan presents a unique opportunity to engage the stakeholders and the regional community in the planning process. Taking into account the commitments the Petitioner has made with regards to development, zoning petitions, and clearcutting, the Commission has chosen to separate the Plan termination process from the regional planning process, allowing the Petitioner to propose 'interim zoning' at this stage. The COVID-19 pandemic has presented challenges this summer and the Commission appreciates NRCM's concern that an inclusive and in-depth regional planning process not be rushed. The Petitioner has agreed to extend their commitments relating to development, zoning petitions, and clearcutting from July 1, 2022 to December 31, 2022. This will allow two full summer seasons (2021 and 2022) for regional planning followed by the fall and early winter of 2022 to complete the administrative and rulemaking tasks associated with implementation. The Commission finds that this timeframe is reasonable and sufficient.

Regarding NRCM's specific comments on the need for additional conservation measures in the areas of Lily Bay, the west side of Moose Mountain, and Blue Ridge, the Commission finds that these comments are appropriate to consider during the regional planning process. The Commission agrees that the Plan's No Disturbance Area on Blue Ridge represents an important scenic resource. The Commission finds that the Petitioner's time-limited commitments not to develop, pursue rezoning, or create clearcuts are sufficient to adequately protect this scenic resource during the regional planning process. The Commission has adopted new hillside and subdivision development standards since the Plan went into effect, which, absent any specific zoning, would protect the scenic resource if development is proposed on Blue Ridge in the future. If, during the regional planning process, the community and stakeholders determine that the scenic resource on Blue Ridge warrants additional protections from development and timber harvesting activities, the Commission could consider adoption of a protection zone for Blue Ridge at that time.

Similarly, discussions about customizing the Commission's location of development criteria in the region by removing specific townships or areas from the primary and secondary locations is a topic that is best suited to the regional planning process. Because the area within the Plan was not specifically considered during the adjacency rulemaking process, it makes sense to seek out input from the community and stakeholders on this topic and make changes if warranted.

## Commission Review Criteria

### 21. *Criteria for Concept Plan Termination*

A. *Comprehensive Land Use Plan (CLUP) Lake Management Program, Concept Plans.* Appendix C, Section D, of the Commission's CLUP, *Plan Amendment and Termination*, includes the following:

- i. "To adapt to changing circumstances, plans can be amended or terminated at any time subject to mutual agreement between the landowner(s) and the Commission and following public notice of the proposed Amendment. While proposals for amendment or termination may be initiated by either party, the Commission will be conservative in exercising this option."
- ii. "Upon the plan's termination, the Commission will, in conformity with its comprehensive plan, statutes, and standards, designate appropriate zoning which is consistent with zoning of equivalent areas."

B. *Concept Plan for the Moosehead Lake Region.* Part 1, Section D, 2 of the Plan, "Amendment," states in part:

"Except as otherwise specifically provided for herein, during the 30-year term of the Concept Plan neither the Commission nor Plum Creek may amend, supplement, terminate, alter or modify (collectively, "amend") the Concept Plan in whole or in part without the written consent of the other party, and following public notice and opportunity to comment on any proposed amendment. Petitions to terminate the Concept Plan will not be granted by the Commission until the Commission designates replacement zoning for the Concept Plan area. Such replacement zoning shall be designated by the Commission in accordance with the statute, the Comprehensive Land Use Plan and the Commission's *Land Use Districts and Standards*, as may be in effect at that time."

C. *Resource Plan Protection (P-RP) Subdistrict.* Pursuant to Chapter 10, Section 10.23,H,8 of the Commission's Standards, "[a]t the termination of a plan, the Commission will, in conformity with its comprehensive plan, statutes, and standards, designate appropriate zoning which is reasonably consistent with zoning of equivalent areas. Any variation from existing regulations or development occurring as a result of a resource plan cannot be used to justify a subsequent re-zoning, to meet adjacency requirements, or to otherwise change the zoning on property either within or outside the resource plan area upon its expiration.

In the event that a plan is terminated, all transactions initiated as a component of the plan, including without limitation, the granting of conservation easements or restrictive covenants on subdivided lands will continue to apply to the extent that they are covered by legal contract, deeded covenants, permit or other legal requirements."

22. *Criteria for Adoption or Amendment of Land Use District Boundaries*

- A. The Commission's statute, 12 M.R.S. §685-A (1), provides that "the Commission, acting on principles of sound land use planning and development, shall determine the boundaries of areas within the unorganized and deorganized areas of the State that fall into land use districts and designate each area in one of the following major district classifications: protection, management and development."
- B. The Commission's statute, 12 M.R.S. §685-A (8-A), and Section 10.08,A of the Commission's *Land Use Districts and Standards*, provide that "a land use district boundary may not be adopted or amended unless there is substantial evidence that:
  - (1) The proposed land use district is consistent with the standards for district boundaries in effect at the time, the comprehensive land use plan and the purpose, intent and provisions of this chapter; and
  - (2) The proposed land use district has no undue adverse impact on existing uses or resources, or a new district designation is more appropriate for the protection and management of existing uses and resources within the affected area."

23. *Comprehensive Land Use Plan (CLUP) Goals and Policies relating to the adoption of replacement zoning.* Chapter 1, Section 1.2, Subsections I and II of the Commission's CLUP include goals to:

- A. Conserve, protect and enhance the forest resource in a way that preserves its important values, including timber and fiber production, ecological diversity, recreational opportunities, as well as the relatively undeveloped remote landscape that it creates. (Section 1.2,II,F)
- B. Conserve the natural resources that are fundamental to maintaining the recreational environment that enhances diverse, abundant recreational opportunities. (Section 1.2,II,I)
- C. Preserve, protect and enhance the quality and quantity of surface waters and groundwater. (Section 1.2,II,K)
- D. Conserve and protect the ecological functions and social and economic values of wetland resources. (Section 1.2,II,L)

24. The facts are otherwise as represented in Amendment B to Zoning Petition ZP 707 and supporting documents.

**Based on the above information and supporting documents, the Commission makes the following findings and conclusions:**

1. *Findings and conclusions related to concept plan termination*

- A. Allowing the termination of a concept plan is a discretionary decision on the part of the Commission. Both the CLUP and the Plan make clear that the Plan may be terminated only upon mutual agreement and written consent of both the Commission and the landowner. This action by the Commission accomplishes two separate but related matters: it terminates the Plan and it applies replacement zoning to the former Plan area. Because the Plan itself specifies that it may not be terminated until replacement zoning is designated, the Commission elected to process both the Plan termination and the adoption of replacement zoning together.
  - B. In evaluating the proposal for the Plan termination, the Commission fully considered the implications and the need to be conservative in exercising the option. A key factor in weighing its decision was the time-limited commitments the Petitioner has made not to undertake development, petition for rezoning, or create clearcuts. These commitments allow a window of time for a regional planning process to happen before development, landowner-initiated rezoning, or the visual impacts of clearcutting can occur. Therefore, the Commission concludes that allowing the termination of the Plan prior to the completion of the regional planning process and the adoption of prospective zoning is appropriate and conservative.
  - C. The Plan termination and proposed zoning is consistent with Appendix C, Section D of the Commission's Comprehensive Land Use Plan and with Part 1, Section D,2 of the Concept Plan for the Moosehead Lake Region, in that the Commission and the landowner mutually agree to the termination, appropriate replacement zoning is designated, public notice was provided, and there was an opportunity for public comment.
2. *Findings and conclusions related to the adoption or amendment of land use district boundaries*
- A. The proposed zoning is consistent with the purpose, intent, and provisions of 12 M.R.S., Chapter 206-A, §685-A (1) and (8-A).
  - B. The proposed zoning is consistent with Section 10.23,H,8 of the Commission's *Land Use Districts and Standards*, criteria for termination of a P-RP Subdistrict, in that the zoning will revert to the M-GN Subdistrict, and the Protection Subdistricts P-AL, P-FP, P-FW, P-GP, P-MA, P-RR, P-SG, P-SL1, P-SL2, P-WL1, P-WL2, and P-WL3, all of which previously applied to the Concept Plan area and are appropriate for the protection and management of existing uses and resources in the absence of the P-RP Subdistrict. The proposed subdistricts are consistent with the zoning of equivalent areas throughout the Commission's service area.
  - C. The proposed D-RF Subdistrict in Big Moose Township is consistent with the purpose of that subdistrict to allow for development of moderate intensity recreation facilities in locations that would not be suitable for other types of commercial development; and the definition of that subdistrict includes areas that contain existing recreation facilities that meet the purpose and other provisions of the subdistrict.

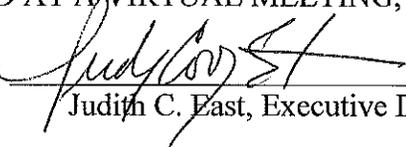
3. *Findings and conclusions relating to the CLUP Goals and Policies*

- A. The rezoning, as proposed, carries out the policies of the Commission's *Comprehensive Land Use Plan*, in that the subdistricts, as applied, have as their purpose the appropriate utilization of land and water resources and the protection subdistricts, as applied, have as their purposes the conservation of land and water resources warranting protection. The D-RF development subdistrict is designated around existing recreational lodging development that predates the Concept Plan.

**Therefore, the Commission approves the petition of Weyerhaeuser Company and Weyerhaeuser NR Company to terminate the *Concept Plan for the Moosehead Lake Region* and replace the Resource Plan Protection Subdistrict with other appropriate zoning in the 26 minor civil divisions affected, per the accompanying maps.**

In accordance with 5 M.R.S. §11002 and Maine Rules of Civil Procedure 80C, this decision by the Commission may be appealed to Superior Court within 30 days after receipt of notice of the decision by a party to this proceeding, or within 40 days from the date of the decision by any other aggrieved person. In addition, where this decision has been made without a public hearing, any aggrieved person may request a hearing by filing a request in writing with the Commission within 30 days of the date of the decision.

DONE AND DATED AT A VIRTUAL MEETING, THIS 15<sup>th</sup> DAY OF JULY, 2020.

By:   
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Judith C. East, Executive Director

These changes in subdistrict boundaries shall be effective on July 30, 2020.