

**STATE OF MAINE
DEPARTMENT OF CONSERVATION
LAND USE REGULATION COMMISSION**

IN THE MATTER OF:

PLUM CREEK MAINE TIMBERLANDS, LLC)	
MOOSEHEAD LAKE CONCEPT PLAN)	
)	APPALACHIAN MOUNTAIN
PISCATAQUIS AND SOMERSET COUNTIES,)	CLUB’S COMMENTS ON
STATE OF MAINE)	PROPOSED AMENDMENTS TO
)	CONCEPT PLAN
ZONING PETITION ZP 707)	

I. INTRODUCTION

The Commission-generated amendments to Plum Creek Maine Timberland LLC’s (“Plum Creek”) Moosehead Lake Concept Plan (“Concept Plan”) reflect a thoughtful attempt to apply the LURC standards for rezoning and concept plan approval (“LURC Standards”) to this Concept Plan of unprecedented complexity and geographic area. Rather than repeat arguments previously made, Intervenor Appalachian Mountain Club (“AMC”) stands by its testimony and argument previously submitted regarding amendments to the Concept Plan necessary to satisfy the LURC Standards.

AMC appreciates this opportunity to comment on the Commission-generated amendments (as issued on June 4, 2008). As with previous filings, AMC will not be commenting on *all* the proposed changes to the Concept Plan, but instead limits its comments to its areas of expertise as previously noted. First, AMC will elaborate on its prior testimony regarding what type of development may be appropriate at Lily Bay. AMC also takes this opportunity to reiterate its testimony regarding elimination of development on the shore of Indian Pond and to suggest some alternative shorefront resort scenarios that may generate less adverse effects. Then, AMC will briefly applaud the Commission’s adoption of some of those

amendments that are in line with AMC's prior recommendations and identify elements that require further clarification in subsequent 'second tier' stages of the Concept Plan review. Lastly, AMC takes this opportunity to present its reaction to the proposed imposition of a conservation easement on the Roaches Property.

II. REVISIONS TO THE LILY BAY DEVELOPMENT ZONE DEGRADE THE CONCEPT PLAN'S ABILITY TO SATISFY LURC STANDARDS.

AMC has major concerns with the Commission-generated amendments for the Lily Bay area. While the significant reduction in the area allowed for development is a very positive step, the extent and nature of development that would be allowed are incompatible with the protection of this sensitive region. In one important way, the Commission-generated amendments represent a significant step in the wrong direction.

There is no doubt that the eastern side of Moosehead Lake, from the head of Lily Bay to Day's Academy Grant, represents the wildest and least developed part of Moosehead Lake – an ecological, recreational and scenic resource of irreplaceable value to the region. Testimony of Dr. Publicover, 12/6/07, vol. I at 14:10-12. The State has invested considerably in the conservation of this portion of the Moosehead Lake shoreline because of its value to the people of Maine.

The Concept Plan proposed a resort development zone and two extensive residential use zones over 4,300 acres of this area. During the hearings, some parties called for complete elimination of all of these development zones. In contrast, AMC testified in favor of eliminating the residential zones and associated uses, but allowing a low-impact, nature-based resort on the shore of Lily Bay. The Commission-generated amendments move in the opposite direction: although they significantly shrink the acreage available for development (a laudable improvement), they allow residential use at the same intensity as initially proposed by Plum

Creek while stripping the development of its nexus to unique recreational opportunities by not requiring development of a resort core. This level and character of development would alter and degrade the natural character of this region, undermine the State's efforts to conserve this part of Moosehead Lake, and be contrary to LURC's mandate to protect the principle values of the jurisdiction.

Through Dr. David Publicover and Heather Clish, AMC testified that a low-impact nature-based resort, focused on providing visitors the opportunity to experience this spectacular landscape, could be an appropriate use in this area.

The [Lily Bay] resort itself, if designed in a manner that is in keeping with the landscape and if its amenities are such that they're dependent on the very nature of the natural offerings of the area may, in fact, help to diversify the recreational offerings in the area, the types of lodging that people might have. However, we felt that the residential areas didn't contribute to the goals in that manner and, therefore, we couldn't support them as a facet of the recreational resources – recreational resource issues. ... you look at the residential use and think, okay, is that enhancing transient use, for instance? And not really. They're probably going to be second homes. So when we looked at the areas together, we thought, well, the resort may be acceptable, but we don't find the residential areas acceptable in the context of the grander landscape in keeping the character at the edge of that grander landscape.

Testimony of Ms. Clish, 12/12/07, vol. I at 104:18 – 105:13. *See also*, Testimony of Dr. Publicover, 12/6/07, vol. I at 30-34. Thus there are benefits to be gained by a low-impact resort that depends upon the natural values of the area, and it is these benefits that justify any development intruding into this sensitive area. *See*, Testimony of Dr. Publicover, 12/6/07, vol. I at 57:13 – 58:10, 60:14-18. By eliminating the resort and allowing all the proposed residential development, any potential benefit is lost and the harms are magnified. Testimony of Dr. Publicover, 12/6/07, vol. I at 27:21 – 28:4 (“having a large residential development in that area [Lily Bay], I think, would be an inappropriate intrusion of the wild character on that part of the region.”)

The proposed zone would promote the wrong type of development. Specifically, the proposed residential/resort-optional development zone (D-MH-RS2) does not require that a nature-based resort *ever* be built. Instead, all 404 units could be single-family housing on 3-acre lots sprawled across the 1,300-acre development zone, without providing any public accommodations. This zone allows public civic facilities and neighborhood-scale commercial facilities, and so will essentially create a new town or service center. Rather than providing a center for publicly-accessible nature-based tourism, this type of development would privatize access to this region. This is contrary to one of the core principles for the development set forth by AMC. Testimony of Mr. Graff, 8/31/07, at 5 (noting one of AMC's eight core principles for assessing the Concept Plan as "The public must be able to access and enjoy the natural, scenic and recreational assets of the region. Development must not lead to privatization of these resources.") This privatization will unduly affect the existing recreational uses and values of the Lily Bay area. LURC Standards, § 10.08.

As Dr. Publicover testified, if Plum Creek's economic model requires residential development with or without a resort at Lily Bay, then either the model must be changed or the location must be changed. Testimony of Dr. Publicover, 12/6/07, vol. I. at 60:14-18 ("If the economic model [for the resort] requires the inclusion of inappropriate uses [such as residential], then either you should adopt a different model or move the resort to a less sensitive location.") If the model is being changed to focus principally on the inappropriate residential use, as proposed in the Commission-generated amendments, then Lily Bay is the wrong location. The resort-optional zone proposed for Moose Bay is a far more appropriate site for that economic model.

AMC recommends that the Commission strike the amendment creating a resort-optional zone at Lily Bay and replace it with a new low-impact, nature-based resort zone for the

approximately 1,300 acres that does not allow residential use and corresponds with AMC's prior testimony regarding permissible resort uses at Lily Bay.¹

III. DEVELOPMENT ON THE SHORE OF INDIAN POND DEGRADES THE CONCEPT PLAN'S ABILITY TO SATISFY LURC STANDARDS.

AMC recognizes that primitive resort accommodations with water views and water access are an important economic component of the Concept Plan and agrees that it can be an appropriate use within the Concept Plan area. However, Indian Pond is simply the wrong location for such development.

Because the Indian Pond shoreline is owned by FPL and regulated by FERC, the resort development zone proposed for its shores faces two insurmountable hurdles. First, in accordance with the FERC Settlement Agreements, the resort will lack private water access. Testimony of Dr. Kimball, 8-31-07; Testimony of Mr. Clark, 12/11/07, vol. II at 239:16-19. AMC questions the logic of locating this resort in close proximity to a water body but without the dock facilities and private access that would be expected by users of such a facility. This sets the stage for unavoidable enforcement problems, as guests to the resort will be expecting direct water access, and it is impractical to expect them readily to drive inland over the resort roads to access the Pond at the public landing. Testimony of Dr. Kimball, 12/11/07, vol. II at 235:2-10.

Because the FERC Settlement Agreement provides for *public* pedestrian access, the guests will go directly to the Pond by creating multiple, ad-hoc access points. *See, e.g.,*

¹ The Lily Bay resort zone may be more intensive than the proposed primitive resort zone (D-MH-PR), but should be less intensive than the resort zone (D-MH-RT) proposed for Big Moose Mountain. The Commission-generated amendments regarding resort development in the "resort-optional" zones are an improvement from the original Concept Plan. They do state that nature-based resort related commercial facilities and uses should be "compatible - in terms of type, scale and design - with the character, natural and cultural values of the surrounding area." Commission-Generated Amendments at 48. They also reduce the maximum building height for non-residential structures to 60 feet, and impose a "no visibility" standard on the primitive resort facility on Lily Bay Mountain. Commission-Generated Amendments at 63 and 65.

Testimony of Mr. Kraft, 12/11/07, vol. II at 233:10-13 (noting that resort guests will be walking directly to the water). More likely than not, guests may land their boats on the shore and, over the course of their stay, repeatedly drag them to and from the Pond in locales out of the sight of the resort caretakers and without regard to the boundary between the development and restrictive covenant areas. Absent dock or boardwalk infrastructure, such improvised access points are likely to degrade the quality of the shoreline. FPL Letter, 1/9/08 (private docks and boardwalks prohibited); Testimony of Dr. Kimball, 12/11/07, vol. II at 228:4-15. Such access points will be aimed at convenience rather than compliance with LURC regulations, and inevitably will become unmanageable, chronic sources of conflict with the FERC Settlement Agreement. Because LURC cannot legally grant Plum Creek this private access, the best solution is to eliminate the proposed development area.²

Second, this development is contrary to the spirit and intent of the FERC Settlement Agreement in which the State and twenty-seven other parties identified as a principal goal protecting the undeveloped character of Indian Pond. Testimony of Mr. Wiley, 12/11/07, vol. II at 238:13-18 (“when the settlement was negotiated, it was with the intent of being a back-country experience.”) The proposed shorefront resort zone would disrupt the extensive undeveloped shoreline between the more developed southern end of the lake and the northern end, where use pressures will be increased due to the proximity of the Big Moose Mountain resort. Prohibiting shorefront development on this mid-lake area preserves the remote character of the lake for those users who enter the lake at the northern public launch and are willing to paddle farther to escape the growing crowds associated with the loop trails at the northern end of the Pond. *See, e.g.,*

² Should the Commission decline to eliminate the Indian Pond resort zone then, at a minimum, some provision should be made to require notice to future owners and resort guests of the FERC Settlement Agreement and conservation easement requirements. *See, AMC Post-Hearing Reply Brief at 4 (footnote 3), and Exhibit A to Plum Creek’s 3/12/08 Letter.*

Testimony of Dr. Kimball, 12/11/07, vol. II at 229:11-230:3 (noting that the linear and narrow characteristics of Indian Pond exacerbate recreation management concerns). Allowing this resort zone will eliminate that more remote paddling experience by interrupting this stretch of undeveloped shoreline, and so will compromise the FERC Settlement Agreement contrary to LURC's policy to recognize the value of cooperative approaches to resource management. CLUP at 143.

However, AMC does believe that this type of facility is appropriate within the Concept Plan area, and, if properly located, can be a valuable addition to the nature-based tourism infrastructure of the region. In addition to the Moose Bay and Lily Bay sites already identified by the Commission as locations possibly suitable to waterfront resorts,³ AMC suggests the following areas (*See Exhibit 1, attached hereto*) as examples of places within the Concept Plan area that are more suitable locations for this type of primitive waterfront resort facility:

- The eastern side of Brassua Lake, originally proposed as D-RS3M zone. Residential units proposed for this area could be relocated to other development zones within the Brassua Lake region.
- Brassua Peninsula, at the northeastern tip. Any residential units now proposed for this area could be relocated to other locations within the proposed Brassua Peninsula development.
- The southeastern corner of Long Pond to the outlet of the Moose River, presently occupied by Balance Easement lands.

Considered in relation to existing and proposed development, none of these sites constitute development "sprawl" to the extent that the proposed site on Indian Pond does (though they could be located with sufficient separation from residential development to maintain the appropriate experience). And unlike Indian Pond, where restrictions on shoreline access are

³ The 'resort optional' zoning proposed for Moose Bay and Lily Bay (D-MH-RS2) allows a more intensive resort use than the primitive resort being relocated off Indian Pond (D-MH-PR). If the economic model favors a primitive resort, Plum Creek should have the option for that use in either of these two areas.

already in place, a low-impact resort subject to the 10,000 square foot area limitation in one of these locations could provide the water access that would be expected with this type of facility. The Moosehead Lake and Long Pond options provide guaranteed water access for a primitive resort accommodation because Plum Creek actually owns the shorefront. And on Brassua Lake, where the shorefront is owned by the Dam Owners, the shore is not yet restricted by ‘no development’ conservation easement requirements under the ongoing FERC relicensing process.

These alternative sites would have less adverse impact on other recreational users. They also would not decrease the amount of Balance Easements lands because the Moosehead Lake and Brassua Lake options are already within development zones. In the case of the Long Pond option, a swap between the proposed resort development zone on Indian Pond and the Balance Easement acreage on the southeast shore of Long Pond would result in a neutral effect on, or slight increase of, the total Balance Easement acreage. *See Exhibit 1.*

AMC recommends that the Commission further amend the Concept Plan by eliminating the resort development zone on the shore of Indian Pond. Should the Commission and Plum Creek determine that the economic model requires a primitive waterfront resort development, AMC recommends that it consider allowing primitive resort development as a permissible use in one of the locations identified above.

IV. MANY OF THE COMMISSION-GENERATED AMENDMENTS HAVE THE POTENTIAL TO IMPROVE THE CONCEPT PLAN’S ABILITY TO SATISFY LURC STANDARDS.

In contrast to the significant concerns raised by the development proposed at Lily Bay and on Indian Pond, the remainder of the Commission-generated amendments include many significant improvements that are worthy of note. Some of these improvements show great promise, subject to being properly made manifest in final language at the ‘second tier’ stage of the Concept Plan review process. These improvements deserve some mention.

Removal of Development Zones at Long Pond and Brassua Peninsula.

The removal of development along the north shore of Long Pond and along the northwestern shore of the Brassua Peninsula is a critical amendment that significantly reduces the adverse impact on existing recreational values in the Plan Area.⁴ Commission-Generated Amendments at 37, 40, 42.

Reduction of Development Area at Big Moose Mountain.

AMC applauds the Commission for recognizing the importance of certain areas within the proposed Big Moose Mountain development zone, in particular by adopting the recommendations of MDIFW to remove certain sensitive wildlife areas from development zones and protect them as part of the Balance Easement. Commission-Generated Amendments at 16.

AMC recommended reducing the size of this resort zone by removing from development those portions of Big Moose Mountain that are most directly in the viewshed of Indian Pond. Testimony of Dr. Publicover, 8/31/07 at 35 (Exhibit B identifying viewshed) and 37 (Exhibit C identifying area of resort zone proposed for protection.) While recognizing the importance of the Indian Pond viewshed, the Commission instead proposes incentivizing Plum Creek to locate its resort development outside of this viewshed. Commission-Generated Amendments at 19, Footnote 29. As an incentive, Plum Creek will be released from the sequencing requirement for development at Big Moose Mountain.⁵ Although this is an improvement from the Concept Plan

⁴ In rezoning Brassua, the Commission-generated amendments imposed limits on the number of docks on the south peninsula, but not elsewhere. Commission-Generated Amendments at 39. While this is a significant improvement, AMC's prior recommendation to require notice of the FERC licensing requirements – as manifested in a draft notice agreed-to by Plum Creek and the Dam Owners – is an important detail to facilitate the Commission's intent at the 'second tier' stage of review and it affects the entire shore of Brassua Lake. AMC Post-Hearing Reply Brief at 3-4, Exhibit A of AMC's Post-Hearing Brief at ¶ 9; Exhibit B of Plum Creek's 3/12/08 Letter.

⁵ The Commission-generated amendments propose requiring (a) an initial 1:4 ratio of short-term accommodation units to other resort units, and (b) build-out of 160 short-term resort accommodation units

as proposed by Plum Creek, protection of the Indian Pond viewshed should not be at the option of the developer, but instead should be a requirement. No development should be located within the viewshed of Indian Pond and, in return, it would be appropriate to release Plum Creek from the sequencing requirement.

Balance and Legacy Easement Terms.

AMC concurs with and supports the proposed amendments to the Balance and Legacy conservation easements, because they will provide greater protection to the public values that the easements are intended to conserve. Of particular importance is the Commission's recognition of two major concerns raised by AMC.

First, the amendments propose ensuring that third-party certification does not substitute for the easement holder's final authority to determine easement compliance. Commission-Generated Amendments at 86. The amendments clearly indicate that, while certification may be considered in determining compliance, it should not create a presumption of compliance that must be challenged by the holder. Testimony of Dr. Publicover, 11/20/07 at 7-8. Second, the amendments recognize the need to ensure that the multi-resource management plan sets forth standards of performance that are specific and enforceable. Commission-Generated Amendments at 87; Testimony of Dr. Publicover, 8/31/07 at 22-23. For both of these issues, the development of final, detailed language executing the proposed amendments at the 'second tier' stage will determine whether the intent of the Commission-generated amendments is satisfied.

Peak-to-Peak Trail Modifications.

The amendments to the former Peak-to-Peak Trail Easement providing flexibility in the location and width of the trail segments will allow for the design and construction of a trail

(subject to the ratio) prior to allowing the transfer of residential units from other zones. Commission-generated Amendments at 19, footnote 29.

system that meets the recreational opportunities and needs of the region. By requiring that a process and timeline for locating the trail easements, trailheads and parking lots be included in the final Concept Plan, the proposed amendments also help ensure timely follow through on Plum Creek's commitment to provide 67 miles of actual trail. Commission-Generated Amendments at 112-113. The final language detailing these amendments will be necessary to determine the extent to which the Commission's intent will be met. AMC believes that BPL is the appropriate entity to hold the trail easement because providing and managing public outdoor recreation is at the core of its mission. AMC looks forward to being a collaborative partner in working with BPL, Plum Creek, local communities, and other local recreational interests to identify the trail easement locations and priorities.

Division of the Community Stewardship Fund into Three Discrete Funds

AMC approves of the division of the former Community Stewardship Fund into three discrete funds focusing upon (1) recreation, (2) wildlife, and (3) affordable housing. Commission-Generated Amendments at 116-117. Segregating the administration of these funds will minimize time and financial resources spent on allocation decisions between these equally important goals. AMC also applauds the Commission for prohibiting Plum Creek from tapping into that funding source to satisfy obligations under its agreement with the Dam Owners. AMC Post-Hearing Reply Brief at 4-6 Commission-Generated Amendments at 117.

As to the Moosehead Recreation Fund, AMC approves the proposed description of its purpose to fund construction and maintenance of state and municipal operated hiking and bicycle trails and public boat launches, and state operated campgrounds within the Concept Plan Area. This provides a funding source to support a more diverse array of human-powered recreational activities –on bikes, in canoes, in tents, or walking in flatlands, as well as hiking up mountains as

would be provided by the Peak-to-Peak Trail. However, the Commission may wish to give further consideration to the makeup of the fund's governing board. Presently it is proposed to include two representatives of BPL, one representative each from Plum Creek, the Town of Greenville and Rockwood Village, and only one local representative of "outdoor recreational interests." In light of the diversity of outdoor recreational interests to be benefitted by the Fund (hiking, biking, camping, boating), the board should accommodate at least two local representatives of these recreational interests.

Chapter 10 and other Administrative Changes

Focusing primarily on the General Management (M-GNM) zone that would apply to the Balance and Legacy Easement areas,⁶ the Commission-generated amendments contain two important improvements. First, the proposed amendments reinstate campgrounds as an allowed use in the M-GNM zone, and correspondingly propose revisions to the conservation easement language to allow, but more tightly restrict, campground development.⁷ Commission-Generated Amendments at 51 and 80. Second, the M-GNM regulations were clarified to allow backcountry huts as a use allowed by special exception, subject again to more tight limitations via the easement language. Commission-Generated Amendments at 51 and 83. Both of these changes are critical to ensuring that a diversity of recreational experiences can occur across the vast area covered by the Concept Plan.

However, the language reinstating backcountry huts as an allowed use in the M-GNM appears to limit the huts to those proposed only as part of the Moosehead-to-Mahoosucs trail.

⁶ For comment on the positive changes to the resort zones, see footnote 1, above. For comment on further changes needed for the residential zone at Brassua Peninsula, see footnote 4, above. Beyond those comments, AMC has refrained from commenting on changes to the various proposed development zones.

⁷ The Balance and Legacy Easements will allow campgrounds "so long as size is limited, locations are determined by BPL, and campgrounds are operated by BPL or its agent."

Commission-Generated Amendments at 51. In fact, that trail covers only a small geographic area relative to the entire area covered by the Balance and Legacy Easements, where other trail easements most likely will be located. The Balance and Legacy Easement terms presently impose limits on the number of permissible backcountry huts that may be built within the Plan Area.⁸ Needlessly limiting the location and context of those huts would fail to accomplish the Commission's intended purpose of providing opportunities for diverse recreational experiences throughout the Plan Area. AMC recommends that, at the 'second tier' stage of drafting, the Commission clarify that this special exception use is permissible throughout the Concept Plan Area, and that such huts need not necessarily be associated with the Moosehead-to-Mahoosucs trail.

Lastly, the proposed amendments remove the Roaches Property from the Concept Plan Area and its M-GNM zone, and subject that land to the traditional M-GN subdistrict, as it may be amended from time to time. Commission-Generated Amendments at 104. As noted in AMC's Post-Hearing Brief, AMC supports this change as it will facilitate the protection and use of the Roaches Property's unique primitive recreation resources.

V. AMC WILL ACCEPT THE IMPOSITION OF A CONSERVATION EASEMENT ON THE ROACHES PROPERTY THAT EMBODIES THE INTENT OF THE COMMISSION'S FOOTNOTE 95.

AMC joined the Conservation Framework with the express intent to further conservation of the region and purchase a critical conservation tract that provides for an unparalleled

⁸ It is unclear whether the Commission proposes amending the easement language to eliminate the strict limitation on number of huts in each easement. See Commission-Generated Amendments at page 83. AMC would support such an amendment, but absent such a change, the easements prohibit more than six huts (3 in each easement) within the entire 300,000+ acres of easement lands. The BPL has also expressed a preference for less restriction on the of backcountry huts permissible in the easements. Comments of the Bureau of Parks and Lands, 11/20/07 at 8 ("We are somewhat disappointed that recent easement revisions reduce the number of allowed huts [from 5 to 3]. We would encourage retention of generous allowance of huts to accommodate hikers and other recreationists.")

ecological and recreational corridor in the 100 Mile Wilderness. The Roaches Property has been a high priority for conservation to AMC and the State for many years.

AMC is fully committed to manage the Roaches Property in line with both the Commission's intent and AMC's public testimony: to offer primitive backcountry recreational experiences, and guarantee permanent public non-motorized access. AMC does not intend to engage in commercial or industrial operations on the property beyond that necessary to support recreation and forestry uses. Most importantly, AMC does not intend to sell all or any portion of the property for residential use or kingdom lots. After purchasing the Property, AMC had intended to encumber the land with conservation easements to restrict these types of activities permanently, as it recently did on the Katahdin Ironworks parcel.⁹ Although relinquishing the financial benefit of selling such easements presents additional costs that AMC had not anticipated,¹⁰ nevertheless, if the Commission believes that an immediate donation of an easement on the Roaches Property is required to secure its protection, AMC will accept that outcome.

The Roaches Property's primary value in the context of the Concept Plan is to reduce the adverse impact on primitive recreation uses and resources presented by the increased development to a point where those impacts are no longer "undue." LURC Standards § 10.08;

⁹ Having testified at the hearings with the expectation of obtaining the Roaches Property unencumbered, AMC only *indirectly* enunciated its intention to pursue the sale of conservation easements. Graff Testimony, 12/12/07, vol. II at 31:25-32:23 (noting that, similar to the KIW easement protecting an ecological reserve area, there is a potential to create an ecological reserve on the Roaches Property but that will not be finally determined until after the land planning process); 109:14-19 (noting that AMC was contemplating imposing an easement that would make adequate provision for traditional sporting camp uses).

¹⁰ Selling the easement rights, as was done at KIW, would enable AMC to remain fiscally conservative in managing its non-cash assets so that it can best accomplish its charitable conservation mission. AMC's intent was to commit the proceeds derived from such easement sales to further AMC's conservation and recreation programs in Maine.

AMC's Post Hearing Brief at 30-34, 39. AMC understands that the Commission also deems the conservation easement necessary to provide adequate and permanent protection for lakeshores.

In total, AMC understands the following to be the principal aims of the Roaches Conservation Easement:

- 1) Provide public non-motorized access and eliminate the risk of privatization of the landscape;
- 2) Protect the scenic integrity of the lakes and shorefront resources;
- 3) Provide opportunity for diverse yet compatible recreation facilities, ranging from traditional commercial sporting camps to primitive backcountry sites;
- 4) Preserve the remote backcountry experience by protecting these recreational resources from negative impacts of motorized recreation and commercial, industrial and residential development;
- 5) Allow uses and structures necessary to facilitate the principal recreation and forestry uses of the property.

AMC shares the Commission's commitment to these goals for the Roaches Property.

AMC understands that the Commission's intent is to permit on the Roaches Property the uses and activities that AMC testified to in the public hearings, and the Commission's staff have put significant thought into outlining proposed conservation easement terms to make that possible. However, in the absence of having a full resource assessment available for the Roaches Property (a task AMC expects to undertake once it owns the parcel¹¹), the consideration of specific easement terms is made more difficult. Nevertheless, AMC has begun to give thought to the express terms of a Roaches Conservation Easement as outlined in the five bullet points in Footnote 95 on page 107 of the Commission-Generated Amendments.

¹¹ See, e.g., Graff Testimony, 12/12/07 vol. II at 80:15 – 81:7 (explaining AMC's planning process to identify resources prior to making management decisions); at 133:6-11 (explaining that AMC needs to do a management plan before making any guarantees on specific land management issues.)

A. AMC Endorses the Easement Terms Proposed in the First Three Bullets in Footnote 95.

Of those bullet points identifying general provisions of the Roaches Conservation Easement, AMC is in full agreement with the first three in principle. As noted above, in the absence of a thorough resource inventory identifying the key locations where tighter restrictions may best benefit the purposes of the easement, it is difficult to commit to detailed restrictions on the land. Nevertheless, AMC is confident that, assuming satisfactory easement details can be agreed upon, it can acquire the Roaches Property subject to a conservation easement with the following basic terms:

Bullet #1. AMC is in total accord with the requirement that the entire Roaches Property be open to non-motorized public access and agrees that the Property should be protected and managed for primitive, non-motorized backcountry recreation. Of course, the ITS snowmobile trail and segment of ATV trail circumnavigating First Roach Pond would remain open to public access under the terms included in the original Conservation Framework PSA.

Bullet #2. AMC agrees with the requirement that all residential, industrial and commercial use and development be prohibited on the Roaches Property except for (1) development and maintenance of non-motorized trails, primitive campsites and shelters, self-service cabins, backcountry huts, and sporting camps, (2) forestry, and (3) structures and uses associated with these recreational and forestry uses. In particular, AMC would need to reserve the right to construct structures associated with building and maintaining trails (for example, equipment storage facilities and seasonal trail crew and volunteer facilities) and other backcountry recreational infrastructure, and also the right to extract gravel for road and trail

maintenance.¹² AMC believes that the permitting requirements of the M-GN subdistrict will adequately protect the values of the property whenever these uses are proposed.¹³

Bullet #3. AMC also endorses the goal of protecting the remote backcountry experience, including protection of scenic values, from harvesting and other activities on trails and public waters by imposition of buffers or other appropriate protective mechanisms. AMC does note, however, that many of these protections are more appropriately designed *following* completion of the resource inventory and management plan.

B. AMC Has Substantial Concerns Regarding the Easement Terms Proposed in the Last Two Bullets in Footnote 95.

Bullet # 4 proposes elimination of all subdivisions of the Roaches Property, with a limited exception to allow for a possible land-swap between AMC and BPL as mentioned during the hearings. Bullet #5 proposes a prohibition on sale of the Roaches Property to any buyer “who does not have the demonstrated capability and stated intent to manage the parcel consistent with the purposes of the easement and its restrictions.” Because these closely-related items impose burdens on AMC that may impede its management flexibility without correspondingly increasing the conservation value of the easement, AMC respectfully requests the Commission to reconsider whether they must be imposed, and whether the intent of these provisions can be accomplished through alternative means.

¹² Under the Conservation Framework PSA, Plum Creek reserved the right (with some limits) to extract gravel from an existing gravel pit on the property. Because the conservation easement may not impede this right, it may be more suitable to exclude that pit from the easement area. Such details may be the subject of final language negotiations.

¹³ Under Chpt. 10.27,C (M-GN subdistrict regulations) some of these uses are permissible without a LURC permit (forest management, primitive recreation and trails); uses with slightly greater impacts are permissible subject to LURC standards (gravel pits under 5 acres, land management roads); and the more intensive of these uses require a permit and the corresponding LURC oversight (*i.e.*, commercial sporting camps, backcountry huts, gravel pits greater than 5-acres).

Bullet #4. AMC requests that the Commission consider limiting, rather than eliminating, subdivision of the Roaches Property. In addition to providing for future land trades with BPL and *de minimus* boundary adjustments, any easement should allow for limited subdivision of the parcel to preserve some flexibility in AMC's ability to maximize the forestry and recreation values of the property. Notably, the LURC Model Easement language anticipates the possibility of limited subdivisions. LURC Model Easement – Rev 2004 at ¶ 1 (providing for subdivisions that are either (a) specific in number of lots or exact locations, or (b) subject to holder approval.)

Without *some* ability to sell portions of the land, AMC's long-term management flexibility is hampered. By way of an example of flexibility to further forestry values of the land, AMC in the future may wish to convey timber rights on a portion of the property to a timber management organization. Such a sale or lease typically would be considered a prohibited "subdivision" unless the easement language expressly noted such an exception. Some forms of subdivision also provide flexibility to ensure the preservation of the Property's recreation values. If, in the distant and very unlikely future, AMC should decide to cease operating sporting camps, the world of buyers willing to pay for a 30,000-acre sporting camp property are infinitesimally small. In contrast, if AMC were able to offer 500 acres together with a commercial sporting camp, that would be a more marketable asset. Without the ability to make either of these sales over the long term, AMC's flexibility to maximize the recreation and forestry values of this land could put at risk the values that the Commission now seeks to protect.

Of course, in any instance, the restrictions and obligations of the conservation easement will remain appurtenant to the subdivided parcel. Because public non-motorized recreational access will be guaranteed and residential use will be prohibited, the risks of privatization associated with 'kingdom lots' will not materialize with these types of subdivision. As proposed

in the LURC Model Easement, imposing a conservative maximum number of permissible subdivisions or requiring holder approval of any division eases the enforcement concerns arising from multiple owners. The five principal conservation values to be furthered by the Roaches Conservation Easement are not hampered by a limited number of subdivisions where the lots will remain subject to the terms of the easement.

Bullet #5. Lastly, AMC questions the need for and workability of restricting the qualities of a future purchaser of the Roaches Property, regardless of whether the sale is of a subdivided parcel or the Property as a whole. Any concerns that address issues not covered in the easement terms proposed within the first three bullets of Footnote 95 should be expressly articulated and embodied in the easement in objective terms (whether restrictive or affirmative covenants) to obviate the need for this requirement.

This provision relates closely to the provision to prohibit subdivisions. If it is permitted for AMC to convey a portion of the Property – for example, 500 acres associated with a sporting camp, or 10,000 acres on which the timber rights are leased to a timber company – then the management capacity or intent of the entity acquiring those interests will presumably differ in important ways from the capacity or intent of AMC. Should AMC be in a position to sell or lease some of the land for a commercial sporting camp or forestry operations, this provision would unduly hamper its ability to do so.

Further, AMC has substantial concerns about how the terms in the fifth bullet would be implemented. It is unclear who would determine the suitability of a potential buyer – would LURC approval of the purchaser’s “capability” and “intent” to manage the land be required as a term of the easement? Whether an entity has the “stated intent to manage” the land *beyond compliance with the terms of the easement* is a very subjective analysis. AMC questions whether

an easement containing prohibitions on transfer that turn on such subjective considerations as the intent of the transferee may constitute an unreasonable restraint on alienation that may be unenforceable. *Low v. Spellman*, 629 A.2d 57, 59 (Me.1993) (restraints on alienation must be reasonable in the circumstances of the case). Note that the LURC Model Easement does not include any provision regulating the character of potential purchasers of the fee interest in the land.¹⁴

Any future purchaser – despite their good or bad intentions – will acquire the land subject to the easement and will be legally bound to carry out its terms.¹⁵ The restrictive covenants that will be imposed through the conservation easement (particularly the prohibitions on residential use and commercial activities), together with affirmative covenants to allow public non-motorized access and maintain protection of recreational and lakeshore resources, are adequate to meet the five principal goals of the Roaches Property, as outlined above.

Under the first three of the proposed easement terms, the only possible purchasers are those with forestry or recreational interests (not putative kingdom lot owners), and the risks associated with sales can be further reduced by imposing a conservative limitation on the number of allowed subdivisions. With well-drafted easement language, the risk that a sale of all or a part of the Roaches Property will degrade that Property's contribution to reducing the adverse effects on recreation generated by development under the Concept Plan is insignificant.

For these reasons, AMC respectfully requests the Commission to decline to impose a complete prohibition on subdivision of the parcel and decline to impose a subjective requirement

¹⁴ In contrast, the LURC Model Easement's requirement for approval by the Third-Party for assignment of the *Holder's* rights to a new holder serves to maintain compliance with *objective* statutory requirements for conservation easement holders. LURC Model Easement – Rev 2004 at ¶ 12.E.

¹⁵ The holder, with the Attorney General as back-up, will have enforcement authority should a future purchaser be lax in its compliance. 33 M.R.S.A. § 478(1).

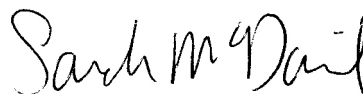
that the property only be sold to entities with certain ‘intent.’ Instead of those restrictions, AMC requests the Commission to impose a limit on the number of permissible subdivisions and articulate objective easement provisions should the Commission deem any further terms to be necessary to satisfy the LURC Standards.

VI. CONCLUSION

The Commission-generated amendments recognize the potential of Plum Creek’s Concept Plan to satisfy the LURC Standards and benefit the people and environment of the Moosehead Lake Region. AMC is confident that, with the changes suggested above, the ‘second tier’ stage of drafting language to embody the amendments can capture the Commission’s intent to protect public recreational resources and values while achieving Plum Creek’s goals as a private landowner.

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Respectfully submitted,



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