

STATE OF MAINE  
DEPARTMENT OF CONSERVATION  
LAND USE REGULATION COMMISSION

IN THE MATTER OF

PLUM CREEK MAINE TIMBERLANDS, LLC )  
MOOSEHEAD LAKE CONCEPT PLAN )  
PISCATAQUIS AND SOMERSET ) PRE-FILED TESTIMONY  
COUNTIES, MAINE ) APPALACHIAN MOUNTAIN CLUB  
ZONING PETITION ZP 707 ) DR. KENNETH D. KIMBALL

This testimony is submitted on behalf of the Appalachian Mountain Club to supplement my original pre-filed testimony of August 31, 2007 and addresses amendments to Plum Creek's Concept Plan incorporated after that date. As a general comment, and as outlined in Dr. Publicover's testimony, many of the amendments to the Concept Plan are beneficial. However the amendments to the Concept Plan still fail to address our major concerns regarding the location and nature of proposed development on Indian Pond and Brassua Lakes. This testimony focuses on the area addressed in my original testimony: the appropriateness of rezoning and development on Indian Pond and Brassua Lake.

**I. RIGHT, TITLE OR INTEREST AND CONFLICT WITH THE  
COMPREHENSIVE LAND USE PLAN AS IT RELATES TO SHORELANDS  
ON INDIAN POND AND BRASSUA LAKE**

Mr. Kraft's pre-filed testimony of Aug 31, 2007 (Part 5) corrects the original Application's assertion that Plum Creek owns the shorelines of Indian Pond and Brassua Lake

(“*Plum Creek’s title to land in the vicinity of Brassua Lake extends to the 1076 foot contour elevation. Similarly, Plum Creek’s title to land in the vicinity of Indian Pond extends to 960 foot contour elevation. Plum Creek’s title, therefore, does not extend to the high water line of either water body. No development on these lands can or will occur without written consent or agreement from the owners of the shorefront property.*”). However, the October amendments to the Concept Plan, and the related maps, do not appear to incorporate the intent of Mr. Kraft’s Aug. 31, 2007 filing or address the concerns raised in our original testimony regarding the appropriateness of requesting rezoning of the shorefront lands on these two waterbodies. We also note that the proposed rezoning and development on these waterbodies fail to meet LURC’s adjacency criteria as outlined in the staff analysis<sup>1</sup>.

Specifically the Plan is still at odds with **12 M.R.S.A § 681-B(2). Application for approval state:** “*The application forms for approval, as provided by the commission, must be completed and signed by the applicant and must be accompanied by the following: D. Evidence of sufficient right, title or interest in **all** [emphasis added] of the property that is proposed for development or use.*” The Applicant’s Plan is also at odds with the Land Use Regulation Commission (LURC) criteria **Rules and Regulations, Chapter 4: Rules of Practice, 4.03 General Provision** state at:

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<sup>1</sup> *A Comparison of Development Elements of Plum Creek’s Moosehead Lake Region Concept Plan Proposal to the Commission’s Adjacency Principle*, November 5, 2007.

*“(3) Title, Right or Interest: Unless otherwise provided by law, prior to acceptance of an application for a permit or zone change for processing, an applicant shall demonstrate to the Commission’s satisfaction sufficient title, right or interest in all the property proposed for development or use.*

*(e) When the applicant has either a valid preliminary permit or a notification of acceptance for filing of an application for a license from the Federal Energy Regulatory Commission for the site which is proposed for development or use, a copy of that permit or notification must be supplied;”*

Though Plum Creek owns a portion of the lands zoned P-GP on Indian Pond and Brassua Lake, it is unclear in their Concept Plan’s proposed ‘development zones’ whether they are requesting a rezoning of i) the Plum Creek P-GP owned lands minus the other landowners’ properties (the actual shorefront lands are owned by FPL and the dam owners to a specified elevation above the high water mark of the lakes), or ii) the entire P-GP zoned lands right up to the waterline. The former is problematic since the request would leave only a narrow corridor of P-GP zoned land. And the latter interpretation is problematic because as described above, there is a portion of the P-GP lands that Plum Creek does not own and they have not provided evidence that they have the right to propose rezoning of these lands. And in the case of Indian Pond, such rezoning would also conflict with LURC’s Comprehensive Land Use Plan [page139, *“Wildlife and Fisheries Resources, Goal: Conserve and protect the aesthetic, ecological, recreation, scientific, cultural, and economic values of wildlife and fisheries resources.*) *Policy 5.: Encourage cooperative agreements between landowners and public agencies which further the Commission’s policies and goals and, when appropriate, modify the Commission’s zoning to*

*facilitate the execution of such agreements.”]* due to the Indian Pond Settlement as noted in my original testimony.

## **II. CONCLUSION**

The Concept Plan should be revised to remedy the apparent facts that Plum Creek does not own the shorelines of Indian Pond and Brassua Lake, and the proposed rezoning in the Concept Plan is in conflict with past and ongoing FERC hydroelectric licenses and processes and Settlement Offers. As described in our original filing, we believe the Indian Pond shorefront development component of the Plan should be eliminated and these lands included as part of the Balance Conservation Easement. Any commercial development in this area would be inconsistent with the terms of the FERC settlement agreement for Indian Pond to which the State of Maine was a party and which is intended to maintain the undeveloped character of Indian Pond. The fact that this zone is now limited to Low Impact Resort Accommodations does not change our original position.

We believe that the ongoing Brassua Lake FERC relicensing process does offer opportunity to consider some potential development on the Brassua Peninsula under the following conditions:

- the Balance Easement is extended to include the northwestern side and northern tip of the Brassua Peninsula to protect the more remote Little Brassua Lake area;
- the shorefront development is appropriately sized and clustered, and not linear in nature;
- the buildings are appropriately screened to avoid undue aesthetic and scenic impacts;

- sensitive resources such as loon nesting areas are protected;
- limited community docks, rather than a string of individual docks, are permitted as part of the development (With the large drawdown allowed on this reservoir, individual docks by nature would likely have to be quite extensive in size.
- any such agreements for the Brassua Lake peninsula development would need to be a part of and approved of as part of the Brassua Lake FERC relicensing process.)

The Concept Plan should also be modified to bring it in alignment with ongoing efforts to protect the West and East Outlet backcountry recreational opportunities and resources. AMC's proposed modifications to the Concept Plan included in Heather Clish's and Dave Publicover's testimony would help to resolve some of these outstanding issues.

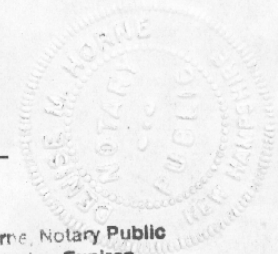
VERIFICATION

Kenneth D. Kimball  
Signature of Witness: Kenneth D. Kimball

November 13, 2007

Before me appeared Kenneth D. Kimball, who, being duly sworn, did testify that the foregoing testimony was true and correct to the best of his knowledge and belief.

Denise M Horne  
NOTARY PUBLIC



**Denise M Horne, Notary Public**  
**My Commission Expires**  
**April 4, 2012**