

# APPENDIX

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## 1. LAND-USE STANDARDS

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Following are the land-use standards that apply within the Concept Plan area, i.e., the Resource Plan Protection Subdistrict (P-RP).

**All references to the Commission's Rules and Standards herein shall mean those rules and standards in effect as of January 24, 2002, copies of which are attached hereto as Exhibit A.**

### ***FIRST ROACH POND RESOURCE PLAN PROTECTION SUBDISTRICT (P-RP)***

#### **1. Purpose**

The purpose of the First Roach Pond Resource Plan Protection subdistrict is to provide for the efficient and effective management of the subdistrict and to provide for the protection of those resources in the subdistrict in need of protection.

#### **2. Description of Subdistrict**

This subdistrict covers 1463 acres of land which surrounds most of First Roach Pond (including the North Inlet portion of the pond), a pond wholly within Frenchtown Township, lying to the east of Moosehead Lake and north of Greenville, Maine. This subdistrict includes 11.7 miles of shoreline, at least 500 feet back from the Normal High Water Mark of First Roach Pond, and is depicted on the Concept Plan Map 11.

#### **3. Land Use Standards**

##### **3.1 Uses Allowed Without a Permit**

Subject to the requirements and limitations set forth herein, all applicable deed restrictions, if any, and the Commission's regulations, the following uses are permitted in this subdistrict without a permit from the Commission:

- a. For all those areas within the subdistrict except those areas designated Wetland Protection (P-WL) or Shoreland Protection (P-SL) on Map 10 of the Concept Plan:
  - (1) Forest management activities, including the operation of machinery used primarily for forest management activities, provided that such activities are in compliance with Section 3.7, herein.
  - (2) Land management roads, in accordance with Section 10.17.A.4. of the Commission's Rules and Standards;
  - (3) Primitive recreational uses, including fishing, hiking, hunting, wildlife study and photography, wild crop harvesting, trapping, horseback riding, tent and shelter camping, canoe portaging, cross country skiing, and snowshoeing;
  - (4) Motorized vehicular traffic on roads and trails, and snowmobiling;
  - (5) Wildlife and fishery management practices;

- (6) Level A mineral exploration activities, including associated access ways in accordance with Section 10.17.A.3. of the Commission's Land Use Regulations and Standards;
  - (7) Mineral extraction operations, provided that such operations are set back at least 250 feet from the normal high water mark and affect an area less than 2 acres in size;
  - (8) Portable mineral processing equipment such as rock screening equipment, provided that such equipment is not used for more than 30 days per year and provided it is set back at least 250 feet from the normal high water mark;
  - (9) Surveying and other resource analysis;
  - (10) Signs, but only "for sale" signs and signs identifying camps or camp owners, provided that such signs are in accordance with any applicable deed restrictions and/or homeowners association by-laws, rules and regulations and/or declaration of covenants and restrictions;
  - (11) Level A road projects;
  - (12) Trails, provided they are constructed and maintained so as to reasonably avoid sedimentation of water bodies;
  - (13) Service drops;
  - (14) Emergency operations conducted for the public health, safety or general welfare, such as resource protection, law enforcement, and search and rescue operations;
  - (15) Non-permanent docking or mooring structures,
  - (16) Water crossings of minor flowing waters;
  - (17) Filling and grading in accordance with Section 10.17.A.6. of the Commission's Rules and Standards; and
  - (18) Driveways associated with residential uses in accordance with Section 10.17.A.4. of the Commission's Rules and Standards;
- b. For all those areas within the subdistrict designated as Wetland Protection (P-WL) on Map 10 of the Concept Plan:
- (1) Primitive recreational uses, including fishing, hiking, hunting, wildlife study and photography, wild crop harvesting, trapping, horseback riding, tent and shelter camping, canoe portaging, cross country skiing, and snowshoeing;
  - (2) Motorized vehicular traffic on roads and trails, and snowmobiling;
  - (3) Wildlife and fishery management practices;
  - (4) Mineral exploration to discover or verify the existence of mineral deposits, including the removal of specimens or trace quantities, provided such exploration is accomplished by methods of hand sampling, including panning, hand test boring and digging and other non-mechanized methods which create minimal disturbance and take reasonable measures to restore the disturbed area to its original condition;
  - (5) Level A road projects;
  - (6) Surveying and other resource analysis;
  - (7) Forest management activities; provided timber harvesting is conducted in accordance with Section 3.7, herein;
  - (8) Land management roads in forested wetlands (designated P-WL3) other than water crossings, and land management roads in areas designated as P-

WL1 or P-WL2 subdistricts on Map 10 of the Concept Plan and on the approved subdivision plats, other than water crossings, that alter less than 43,560 square feet of such subdistricts;

- (9) Water crossings of minor flowing waters;
- (10) Emergency operations conducted for the public health, safety or general welfare, such as resource protection, law enforcement, and search and rescue operations;
- (11) Trails, provided they are constructed and maintained so as to reasonably avoid sedimentation of water bodies;
- (12) Filling, grading, draining, dredging or otherwise altering less than 4,300 square feet of area designated as wetlands on the approved subdivision plats and plans, provided such activity is in accordance with Section 10.17A.6. of the Commission's Rules and Standards;
- (13) Signs, but only "for sale" signs and signs identifying camps or camp owners, provided such signs are in accordance with any applicable deed restrictions and/or homeowners association by-laws, rules and regulations and/or declaration of covenants and restrictions;
- (14) Non-permanent docking or mooring structures;
- (15) Service drops for telephone or electrical service, including associated vegetative clearing, provided:
  - (a) the line extension does not cross or run beneath a coastal wetland, river, stream, or brook;
  - (b) the placement of wires or installation of utility poles is located entirely upon the premises of the customer requesting service, upon an established utility line easement, upon a roadway right-of-way, or, in the case of telephone service, on existing utility poles; and
  - (c) the total length of the extension is less than 2,000 feet; and
- (16) Driveways associated with residential uses in accordance with Section 10.17.A.8. of the Commission's Rules and Standards.

c. For all those areas within the subdistrict designated as Shoreland Protection subdistricts (P-SL) on Map 10 of the Concept Plan:

- (1) Primitive recreational uses, including fishing, hiking, hunting, wildlife study and photography, wild crop harvesting, trapping, horseback riding, tent and shelter camping, canoe portaging, cross country skiing, and snowshoeing;
- (2) Motorized vehicular traffic on roads and trails, and snowmobiling;
- (3) Wildlife and fishery management practices;
- (4) Service drops;
- (5) Level A mineral exploration activities, including associated access ways;
- (6) Emergency operations conducted for the public health, safety or general welfare, such as resource protection, law enforcement, and search and rescue operations;
- (7) Surveying and other resource analysis;
- (8) Signs, but only "for sale" signs and signs identifying camps or camp owners, provided such signs are in accordance with any applicable deed restrictions and/or homeowners association by-laws, rules and regulations and/or declaration of covenants and restrictions;

- (9) Forest management activities; provided timber harvesting is conducted in accordance with Section 3.7, herein, and in compliance with applicable deed restrictions, if any, homeowners' association declaration of covenants, if any, and conservation easements, if any;
- (10) Land management roads, and water crossings of minor flowing waters;
- (11) Level A road projects;
- (12) Trails, provided they are constructed and maintained so as to reasonably avoid sedimentation of water bodies;
- (13) Driveways associated with residential uses in accordance with Section 10.17.A.8. of the Commission's Rules and Standards; and
- (14) Filling and grading in accordance with Section 10.17.A.6. of the Commission's Rules and Standards.

### **3.2 Uses Requiring a Permit**

Subject to the requirements and limitations set forth herein, all applicable deed restrictions, if any, and the Commission's regulations, the following uses may be allowed within this subdistrict upon issuance of a permit from the Commission pursuant to 12 M.R.S.A. Section 685-B:

- a. For all those areas within the subdistrict except those areas designated Wetland Protection (P-WL) or Shoreland Protection (P-SL) on Map 10 of the Concept Plan:
  - (1) Water crossings of minor flowing waters which are not in conformance with the standards for such activities in Section 10.17.A.4. of the Commission's Rules and Standards, and water crossings of standing waters and of major flowing waters;
  - (2) Residential single-family detached dwellings and residential subdivisions;
  - (3) Utility facilities (other than service drops) serving residential uses authorized under these standards or under the Concept Plan;
  - (4) Campsites with outhouses, excluding tent trailers, pickup campers, and recreational vehicles;
  - (5) Shoreland alterations, excluding marinas, permanent docking facilities, water-access ways, trailered ramps, hand-carry launches, and water crossings of minor flowing waters;
  - (6) Land management roads which are not in conformance with Section 10.17.A.4. of the Commission's Rules and Standards;
  - (7) Level B and C road projects, except for water crossings as provided for in Section 3.1.a., above;
  - (8) Filling and grading except as provided for in Section 3.1.a., above, and draining, dredging, and alteration of the water table or water level for other than mineral extraction;
  - (9) Level A mineral exploration activities, including associated ways, which are not in conformance with the standards for such activities in Section 10.17.A.3. of the Commission's Rules and Standards;
  - (10) Level B mineral exploration activities;
  - (11) Private, non-commercial, hand-carry boat launches;
  - (12) Home occupations, except those that display goods, products or merchandise or that generate traffic;
  - (13) Driveways associated with residential uses and structures, which are not in conformance with Section 3.9, below;

- (14) Other structures, uses or services that are essential to the uses listed in Sections 3.1.a and 3.2.a, above, provided such activity is in accordance with these standards; and
  - (15) Other structures, uses, or services which the Commission determines are consistent with the purposes of this subdistrict and the Comprehensive Land Use Plan and are not detrimental to the resources or uses they protect.
- b. For all those areas within the subdistrict designated as Wetland Protection (P-WL) on Map 10 of the Concept Plan:
- (1) Land management roads which are not in conformance with Section 10.17.A.4 of the Commission's Rules and Standards or which will alter 43,560 sq. ft. or more of an area designated as P-WL1 or P-WL2 on Map 10 of the Concept Plan;
  - (2) Level B road projects, other than crossings of minor flowing waters as provided in Section 3.1.b., above;
  - (3) Water crossings of minor flowing waters which are not in conformance with the standards for such uses in Section 10.17.A.4. of the Commission's Rules and Standards and water crossings of tidal waters, standing waters, and of major flowing waters;
  - (4) Shoreland alterations, excluding, marinas, permanent docking facilities, water access ways, trailered ramps, hand-carry launches, and water crossings of minor flowing waters;
  - (5) Filling, grading, and dredging, other than for riprap associated with water crossings and except as provided for in Section 3.1.b., above;
  - (6) Other structures, uses or services that are essential to the uses listed in Sections 3.1.b. and 3.2.b., above, provided such activity is in accordance with these standards;
  - (7) Private, non-commercial, hand-carry boat launches;
  - (8) Driveways associated with residential uses and structures, which are not in conformance with Section 3.9, below; and
  - (9) Other structures, uses or services which the Commission determines are consistent with the purposes of this subdistrict and the Comprehensive Land Use Plan and are not detrimental to the resources or uses which they protect.
- c. For all those areas within the subdistrict designated as Shoreland Protection (P-SL) on Map 10 of the Concept Plan:
- (1) Forest management activities which are not in conformance with the standards for such activities in Section 3.7, below;
  - (2) Land management roads, and water crossings of minor flowing waters which are not in conformance with the standards for such activities in Section 10.17.A.4. of the Commission's Rules and Standards, water crossings of standing waters and of major flowing waters;
  - (3) Campsites without outhouses, excluding tent trailers, pickup campers, and recreational vehicles;
  - (4) Level A mineral exploration activities, including associated access ways, which are not in conformance with the standards for such activities in Section 10.17.A.3. of the Commission's Rules and Standards;
  - (5) Level B mineral exploration activities;

- (6) Level B and C road projects, other than crossings of minor flowing waters which are allowed without a permit;
- (7) Private, non-commercial, hand-carry boat launches;
- (8) Driveways associated with residential uses and structures, which are not in conformance with Section 3.9, below;
- (9) Other structures, uses or services that are essential to the uses listed in 3.1.c. and 3.2.c., above, provided such activity is in accordance with these standards; and
- (10) Other structures, uses or services which the Commission determines are consistent with the purposes of this subdistrict and the Comprehensive Land Use Plan and are not detrimental to the resources or uses which they protect.

### **3.3 Prohibited Uses**

All uses not expressly allowed, with or without a permit, shall be prohibited.

### **3.4 Clearing**

Except as otherwise provided herein, or as restricted by applicable deed restrictions, if any, conservation easement and/or conservation covenant provisions, if any, and homeowners association declaration of covenants, if any, Section 10.17.A.2. of the Commission's Rules and Standards shall apply to all clearing within this subdistrict.

### **3.5 Mineral Exploration and Extraction**

Except as otherwise provided herein, or as restricted by applicable deed restrictions, if any, conservation easement and/or conservation covenant provisions, if any, and homeowners association declaration of covenants, if any, Section 10.17.A.3. of the Commission's Rules and Standards shall apply to all mineral exploration and extraction within this subdistrict.

### **3.6 Roads and Water Crossings**

Except as otherwise provided herein, or as restricted by applicable deed restrictions, if any, conservation easement and/or conservation covenant provisions, if any, and homeowners association declaration of covenants, if any, Section 10.17.A.4. of the Commission's Rules and Standards shall apply to all roads and water crossings in this subdistrict.

### **3.7 Timber Harvesting**

Except as otherwise provided herein, or as restricted by applicable deed restrictions, if any, and conservation easements, if any, the following standards shall apply to all timber harvesting within this subdistrict:

- a. Timber harvesting operations within 100 feet of the normal high water mark of First Roach Pond and North Inlet Pond shall be conducted in the following manner:
  - (1) No clearcutting shall be allowed and harvesting operations shall be conducted in such a manner that a well-distributed stand of trees is retained so as to maintain the aesthetic and recreational value and water quality of the area and to reasonably avoid sedimentation of surface waters.
  - (2) Harvesting shall not remove, in any ten year period, more than 40 percent of the volume on each acre involved of trees 6 inches in diameter and larger measured at 4½ feet above ground level. Removal of trees less than

6 inches in diameter, measured as above is permitted if otherwise in conformance with these regulations. For the purpose of these standards, volume may be determined as being equivalent to basal area.

- (3) No accumulation of slash shall be left within 50 ft. of the normal high water mark of First Roach Pond or North Inlet Pond. At distances greater than 50 ft. from the normal high water mark of such waters, all slash larger than 3 inches in diameter shall be disposed of in such a manner that no part thereof extends more than 4 ft. above the ground.
- (4) Skid trails and other sites, where the operation of machinery used in timber harvesting results in the exposure of mineral soil, shall be located such that an unscarified filter strip of at least the width indicated below is retained between the exposed mineral soil and the normal high water mark of the ponds:

| Average Slope of Land<br>Between Exposed Mineral<br>Soil and Normal High Water<br>Mark (Percent) | Width of Strip<br>Between Exposed Mineral Soil and<br>Normal High Water Mark (Feet<br>Along Surface of the Ground) |
|--|--|
| 0  | 25   |
| 10   | 45   |
| 20   | 65   |
| 30   | 85   |
| 40   | 105  |

- (5) The provisions of subsection 3.7.a.(4) apply only on a face sloping toward the water, provided, however, no portion of such exposed mineral soil on a back face shall be closer than 25 feet; the provisions of subsection 3.7.a.(4) do not apply where skid roads cross such waters;
- (6) Timber harvesting operations shall be conducted in such a manner that slash is not left below the normal high water mark of standing waters, or below the normal high water mark of stream channels downstream from the point where such channels drain 300 acres or more;
- (7) Except when surface waters are frozen, skid trails and skid roads shall not utilize stream channels bordered by streams designated as P-SL2 Protection subdistricts on Map 10 of the Concept Plan except to cross the same by the shortest possible route; unless culverts or bridges are installed in accordance with Section 10.17.A.4.(b) and (e) of the Commission's Rules and Standards, such crossings shall only use channel beds which are composed of gravel, rock or similar hard surface which would not be eroded or otherwise damaged;
- (8) Skid trail and skid road approaches to stream channels shall be located and designed so as to divert water runoff from the trail or road in order to prevent such runoff from directly entering the stream;
- (9) Harvesting operations in areas designated as P-SL2 Protection subdistricts on Map 10 of the Concept Plan along stream channels downstream from the point where they drain 300 acres or more and along standing bodies of water shall be conducted in such a manner that sufficient vegetation is retained to maintain shading of the surface waters;
- (10) Written notice of all timber harvesting operations shall be given to the Commission prior to the commencement of such activity. Such notice

shall conform to the requirements of Section 10.20 of the Commission's Rules and Standards;

- (11) In addition to the foregoing minimum requirements, provision shall otherwise be made in conducting timber harvesting operations in order to reasonably avoid sedimentation of surface waters; and
- (12) No land management road shall be located within 100 feet of the normal high water mark, provided a reasonable alternate location, beyond this distance from the shore, can be found and used. All land management roads must be in compliance with Section 10.17.A.4. of the Commission's Rules and Standards.

b. Timber harvesting operations between 100 feet and 250 feet of the normal high water mark of First Roach Pond and North Inlet Pond shall be conducted in the following manner.

- (1) Harvesting activities may not create single openings greater than 14,000 square feet in the forest canopy. In such areas single canopy openings of over 10,000 square feet shall be no closer than 100 feet apart.
- (2) Harvesting shall not remove, in any ten year period, more than 40 percent of the volume on each acre involved of trees 6 inches in diameter and larger measured at 4½ feet above ground level. Removal of trees less than 6 inches in diameter, measured as above is permitted if otherwise in conformance with these regulations. For the purpose of these standards, volume may be determined as being equivalent to basal area.
- (3) All slash larger than 3 inches in diameter shall be disposed of in such a manner that no part thereof extends more than 4 ft. above the ground.
- (4) Except as provided in subsection (9) of this section, skid trails, land management roads, and other sites, where the operation of machinery and trucks used in timber harvesting results in the exposure of mineral soil, shall be located such that an unscarified filter strip of at least the width indicated below is retained between the exposed mineral soil and the normal high water mark of surface water areas:

| Average Slope of Land<br>Between Exposed Mineral<br>Soil and Normal High Water<br>Mark (Percent) | Width of Strip<br>Between Exposed Mineral Soil and<br>Normal High Water Mark (Feet<br>Along Surface of the Ground) |
|--|--|
| 0  | 25   |
| 10   | 45   |
| 20   | 65   |
| 30   | 85   |
| 40   | 105  |

- (5) The provisions of subsection 3.7.b.(4) apply only on a face sloping toward the water, provided, however, no portion of such exposed mineral soil on a back face shall be closer than 25 feet; the provisions of this subsection 3.7.b.(4) do not apply where skid roads cross such waters;
- (6) Timber harvesting operations shall be conducted in such a manner that slash is not left below the normal high water mark of standing waters, or below the normal high water mark of stream channels downstream from the point where such channels drain 300 acres or more;

- (7) Except when surface waters are frozen, skid trails and skid roads shall not utilize stream channels bordered by P-SL2 Protection subdistricts except to cross the same by the shortest possible route; unless culverts or bridges are installed in accordance with Section 10.17.A.4.(b) and (e) of the Commission's Rules and Standards, such crossings shall only use channel beds which are composed of gravel, rock or similar hard surface which would not be eroded or otherwise damaged. The requirements of this subsection (7) may be modified according to the provisions of subsection (9) of this section;
  - (8) Except as provided in subsection (9) of this section, skid trail and skid road approaches to stream channels shall be located and designed so as to divert water runoff from the trail or road in order to prevent such runoff from directly entering the stream;
  - (9) Timber harvesting operations, in areas designated as P-SL2 Protection subdistricts along stream channels upstream from the point where they drain 300 acres or less and in areas designated as P-WL Protection subdistricts on Concept Plan Map 10 adjacent to such streams, may be conducted in a manner not in conformity with the requirements of the foregoing subsections 3.7.b.(4), (5), (7) and (8) provided that such operations are conducted so as to avoid the occurrence of sedimentation of water in excess of 25 Jackson Turbidity Units as measurable at the point where such stream channel drains 1 square mile or more. Jackson Turbidity Units are a standard measurement of the relative amount of light that will pass through a sample of water compared with the amount of light that will pass through a reference suspension; the Jackson Turbidity Unit measurement for water without turbidity is 0;
  - (10) Harvesting operations in areas designated as P-SL2 Protection subdistricts along stream channels downstream from the point where they drain 300 acres or more and along standing bodies of water shall be conducted in such a manner that sufficient vegetation is retained to maintain shading of the surface waters;
  - (11) Written notice of all timber harvesting operations shall be given to the Commission prior to the commencement of such activity. Such notice shall conform to the requirements of Section 10.20 of the Commission's Rules and Standards and shall state whether or not such operations will be conducted according to the provisions of subsection (9) of this section; and
  - (12) In addition to the foregoing minimum requirements, except as provided for in subsection (9), provision shall otherwise be made in conducting timber harvesting operations in order to reasonably avoid sedimentation of surface waters.
- c. Except as otherwise provided by the Concept Plan or applicable laws, timber harvesting operations beyond 250 feet of the normal high water mark of First Roach Pond and North Inlet Pond in areas designated M-GN on Map 10 of the Concept Plan shall not be subject to harvesting restrictions.

### **3.8 Filling and Grading**

Except as otherwise provided herein, or as restricted by applicable deed restrictions, if any, conservation easement and/or conservation covenant provisions, if any, and homeowners association declaration of covenants, if any, Section 10.17.A.6. of the

Commission's Rules and Standards shall apply to all filling and grading within this subdistrict.

**3.9 Driveways Associated with Residential Structures and Uses**

Except as otherwise provided herein, or as restricted by applicable deed restrictions, if any, conservation easement and/or conservation covenant provisions, if any, and homeowners association declaration of covenants, if any, Section 10.17.A.8. of the Commission's Rules and Standards shall apply to all driveways associated with residential structures and uses within this subdistrict. Section 10.17.A.4.(c) of the Commission's Rules and Standards shall also apply to driveways constructed through wetlands within this subdistrict

**4. Dimensional Requirements**

Except as otherwise provided herein, or as restricted by applicable deed restrictions, if any, conservation easement and/or conservation covenant provisions, if any, and homeowners association declaration of covenants, if any, the dimensional requirements contained in Section 10.17.B.1. of the Commission's Rules and Standards shall apply to this Subdistrict.

**5. Nonconforming Uses and Structures**

Except as otherwise provided herein, or as restricted by applicable deed restrictions, if any, conservation easement and/or conservation covenant provisions, if any, and homeowners association declaration of covenants, if any, existing nonconforming uses and structures within this Subdistrict shall be governed by the standards contained in Section 10.11. of the Commission's Rules and Standards.

Notwithstanding anything to the contrary contained herein, the existing, leased campsites/campground located southeast of the state-owned campsites and east of the County Road on the South Shore East section of First Roach Pond (as depicted on Concept Plan Map 11), and the two leased lots located between the North Shore Center and North Shore East sections, and on the Peninsula section of First Roach Pond (as depicted on Concept Plan Map 11) are existing, grandfathered uses under 12 M.R.S.A. § 685-A(5).

**6. Duration**

The duration of this subdistrict shall be twenty (20) years from the effective date hereof.

**7. Extension**

Prior to its expiration, the Plan may be renewed and extended upon approval of the Commission and the applicant. The applicant must provide the Commission with written notice of whether it intends to extend or renew the Plan one (1) year prior to the expiration of this Plan. If the Plan is proposed for renewal, the renewed Plan must be substantially complete and submitted to the Commission six (6) months prior to the current Plan's expiration date. If the applicant or the Commission do not wish to renew the Plan, or cannot agree upon the terms of a renewal, the Commission will, in conformity with its Comprehensive Land Use Plan, statutes, and standards, designate appropriate zoning subdistricts for those areas encompassed by this Plan to become effective upon expiration of this Plan.

**8. Effective Date**

The effective date of this Subdistrict shall be the date of approval of the Concept Plan by the Land Use Regulation Commission. All references to the Commission's Rules and Standards herein shall mean those rules and standards in effect as of the date of approval of the Concept Plan, copies of which are attached hereto as Exhibit A.



## Exhibit A

### Existing Maine Land Use Regulation Commission Rules and Standards, as of January 9, 2002

#### § 10.11. Non-conforming Uses and Structures.

##### A. Purpose and Scope

This section governs structures, uses and lots that were created before the Commission's rules or laws were established, but which do not meet the current rules or laws. This section also governs structures, uses and lots that met the Commission's rules or laws when built or created, but no longer are in conformance due to subsequent revisions to those rules or laws.

In accordance with 12 M.R.S.A. § 685-A(5), legally existing nonconforming structures, uses and lots will be allowed to continue. Renovations of these structures, and the construction of certain accessory buildings, are allowed without a permit. However, 12 M.R.S.A. § 685-B(7) authorizes the Commission to regulate or prohibit extensions, enlargement, or movement of nonconforming uses and structures. This section clarifies which activities are allowed with a permit, without a permit, or are prohibited in the modification of a legally existing nonconforming structure, use or lot.

##### B. General

- 1. Criteria for Approval.** Permits are required for all expansions, reconstructions, relocations, changes of use, or other development of nonconforming structures, uses and lots, except where specifically provided in this section 10.11. In order to obtain a permit, the applicant must meet the approval criteria in 12 M.R.S.A. § 685-B(4) and demonstrate that:
  - a. the project will not adversely affect surrounding uses and resources: and
  - b. there is no increase in the extent of nonconformance, except in instances where a road setback is waived by the Commission in order to increase the extent of conformance with a waterbody setback.
- 2. Extent of Nonconformance with Respect to Setbacks.** Section 10.17 of these rules establishes minimum setbacks from waterbodies, roads and property boundaries. Where legally existing, nonconforming structures do not meet these setbacks, an existing setback line will be established. The existing setback line will run parallel to the waterbody, road or property boundary at a distance equal to the closest point of the existing principal structure (including attached decks or porches) to the feature from which the setback is established. This is shown graphically below in Figure 1.

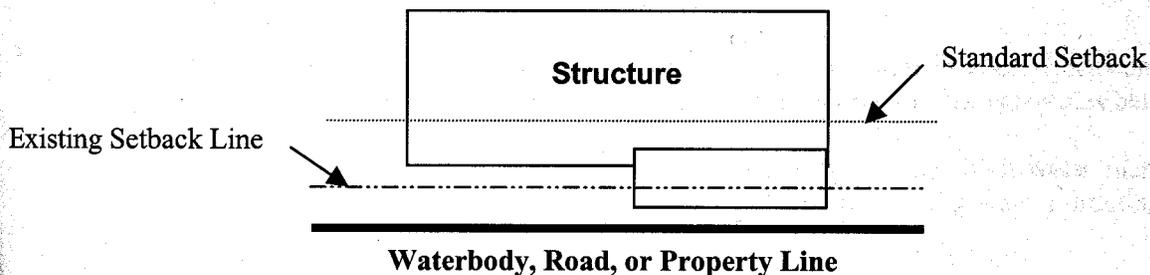


Figure 1. Determination of setback

Subject to the other requirements in this section, a nonconforming structure may be expanded up to the existing setback line without being considered to be more nonconforming than the original structure. Expansions between the existing setback line and the waterbody, road or property boundary will be considered to increase nonconformity, and will not be allowed.

3. **Transfer of Ownership.** Legally existing, nonconforming structures, uses, and lots may be transferred, and the new owner may continue the nonconforming use or continue to use the nonconforming lot or structure as before, subject to the provisions of the Commission's rules.
4. **Normal Maintenance and Repair.** A permit is not required for the normal maintenance and repair of legally existing nonconforming structures, structures associated with nonconforming uses, or structures on nonconforming lots.
5. **Renovation.** A permit is not required for the renovation of legally existing nonconforming structures, structures associated with nonconforming uses, or structures on nonconforming lots.
6. **Waiver of Road Setbacks.** To allow a structure to become either conforming or less nonconforming to the waterbody setback, the Commission may reduce the road setback to no less than 20 feet in cases of reconstruction or relocation of legally existing structures or construction of new accessory structures on developed, legally existing nonconforming lots.
7. **Conformance with Maine Subsurface Waste Water Disposal Rules.** All changes to legally existing nonconforming structures, structures for nonconforming uses or structures on nonconforming lots must comply with the Maine State Subsurface Waste Water Disposal Rules (144A CMR 241), including changes that do not require a permit under this rule.
8. **Conflicting Requirements.** In cases where two or more provisions of this section apply to a particular structure, use or lot, the more restrictive provision shall control.

### C. Nonconforming Structures

1. **Expansion.** A permit is required for the expansion of a nonconforming structure. In addition to meeting permit requirements, expansions must also comply with the following limitations. These limitations do not apply to water dependent uses as defined in section 10.02.
  - a. **Certain Expansions Prohibited.** If any portion of a structure is located within 25 feet, horizontal distance, of the normal high water mark of a waterbody, expansion of that portion of the structure is prohibited. That portion beyond 25 feet may be expanded provided the size limitations in section C,1,b are met.
  - b. **Size of Structures Near Waterbodies Limited.** The maximum size of expansions of nonconforming structures is limited within areas described by either of the categories below:
    - (1) The area within 100 feet, horizontal distance, of the normal high water mark of standing bodies of water 10 acres or greater in size or flowing waters draining 50 square miles or more.
    - (2) The area within 75 feet, horizontal distance, of the normal high water mark of tidal waters or standing bodies of water less than 10 acres in size

(but excluding standing bodies of water less than three acres in size not fed or drained by a flowing water).

Legally existing, principal and accessory structures located within these areas may be expanded subject to the other requirements of this section, provided that lot coverage limitations and other applicable land use standards are met. The maximum height of all structures within these areas shall be 25 feet, or existing structure height, whichever is greater. The maximum combined floor area for all structures within these areas may not exceed the limits in Table 1.

Table 1. Limitations on size of Structures Near Waterbodies

| <b>Closest Distance of Expansion from Waterbody</b>                                 | <b>Maximum Combined Floor Area for all Structures not Meeting Waterbody Setbacks</b> |
|---|--|
| Greater than 25 and less than 50 feet   | 1,000 square feet  |
| Between 50, and 75 feet   | 1,500 square feet  |
| Greater than 75 and less than 100 feet (if applicable setback is more than 75 feet) | 2,000 square feet  |

- c. **Enclosure of Decks and Porches.** The complete or partial enclosure of legally existing decks and porches is considered an expansion, and is allowed if the provisions of C,1,a and C,1,b are met.
2. **Reconstruction or Replacement.** A legally existing, nonconforming structure may be reconstructed or replaced with a permit, provided that the permit application is completed and filed within two years of the date of damage, destruction or removal, and provided that the structure was in regular active use within a two year period immediately preceding the damage, destruction, or removal.
  - a. **Meeting Setbacks to the Greatest Extent Possible.** Reconstruction or replacement must comply with current minimum setback requirements to the greatest possible extent. In determining whether the proposed reconstruction or replacement meets the setback to the greatest possible extent, the Commission may consider the following factors:
    - size of lot,
    - slope of the land,
    - potential for soil erosion and phosphorus export to a waterbody,
    - location of other legally existing structures on the property,
    - location of the septic system and other on-site soils suitable for septic systems,
    - type and amount of vegetation to be removed to accomplish the relocation,
    - and,
    - physical condition and type of existing foundation, if any.
  - b. **Reconstruction of Attached Decks.** Decks attached to a legally existing, nonconforming structure may be reconstructed in place with a permit, except that replacement of any portion of a deck that extends into or over the normal high water mark is prohibited.

- c. **Permanent Foundations.** The addition of a permanent foundation beneath a legally existing, nonconforming structure constitutes a reconstruction subject to the provisions in section 10.11,C,2,a.
  - d. **Boathouses.** Except in a (D-MT) Maritime Development Subdistrict, boathouses shall not be reconstructed or replaced. Normal maintenance and repair, and renovation of a legally existing boathouse is allowed without a permit.
  - e. **Sporting Camps.** A legally existing, nonconforming structure within a commercial sporting camp may be reconstructed in place, provided that the reconstruction occurs within 2 years of damage, destruction or removal and the Commission issues a permit (see 12 M.R.S.A. Section § 685-B(7-A)). The Commission may, consistent with public health, safety and welfare, waive standards that made the original structure nonconforming. The reconstructed structure must replicate the original structure and use to the maximum extent possible and it must be in the same location and within the same footprint as the original structure. Minor modifications to dimensions may be allowed provided the total square footage of the structure is not increased.
3. **Relocation.** In order to make it conforming or less nonconforming, a legally existing, nonconforming structure may be relocated within the boundaries of the lot upon the issuance of a permit. Cleared openings created as part of a relocation shall be stabilized and revegetated. Relocated structures that are altered such that they meet the definition of reconstruction shall meet the requirements of 10.11,C,2.
  4. **Change of Use of a Nonconforming Structure.** The use of a nonconforming structure shall not be changed without permit approval.
  5. **New, Detached Accessory Structures.** New, detached accessory structures associated with pre-1971 residences and operating farms are allowed without a permit if they meet all setbacks, do not cause lot coverage requirements to be exceeded and otherwise conform with the Commission's rules. Permits are required for all other new detached accessory structures.

The construction of new, detached accessory structures that do not meet waterbody setbacks is allowed with a permit only if the structure cannot be physically sited on the lot to meet the waterbody setback requirement. In this case, the new accessory structure shall not be located closer to the normal high water mark than the principal structure, shall not be located within 25 feet of the normal high water mark, and shall be of a size and height that, when combined with legally existing principal buildings will not exceed the size and height requirements of section 10.11,C,1,b.

#### **D. Nonconforming Uses**

1. **Expansion of Use.** Extension, enlargement or expansion of nonconforming uses requires a permit.
2. **Change in Use.** A nonconforming use may not be changed to another use without a permit.
3. **Resumption of Use.** A nonconforming use shall not be resumed if it has been discontinued or abandoned for a period exceeding two years, or if it has been superseded by a conforming use.

4. **Special Exceptions.** Any use granted a special exception permit shall be deemed a conforming use (see 12. M.R.S.A. section 685-A(10)).

**E. Nonconforming Lots**

1. **Expansion of Structures.** Structures on nonconforming lots may not be expanded without a permit.
2. **Creation of Nonconforming Lots.** A lot which has an established use or structure to which dimensional standards apply may not be divided or altered in a manner that makes the lot, or any structure or use, nonconforming or more nonconforming.
3. **Pre-1971, Unimproved, Nonconforming Lots.** An unimproved, nonconforming lot, legally existing as of September 23, 1971, may not be developed unless the Commission grants a variance to those standards that make the lot nonconforming. However, if a lot is at least 20,000 square feet in size, has at least 100 feet of shore frontage, and is not a contiguous lot as described in section E,5 below, the Commission may allow for development by waiving, to the minimum extent necessary, the requirements that make the lot nonconforming. In this case a variance is not required. This waiver may only be granted if the proposed development would meet the shoreline setback requirements in section 10.17.
4. **Development of Other Nonconforming Lots.** When a lot was lawfully created after September 23, 1971, in conformity with LURC dimensional requirements applicable at the time, the Commission may waive, to the minimum extent necessary the current dimensional requirements. Waived setbacks shall not be reduced below those in effect at the time of creation of the lot.
5. **Contiguous Lots.** Two or more contiguous lots in the same ownership that individually do not meet dimensional requirements shall be combined to the extent necessary to meet the dimensional requirements, except where:
  - a. such lots are part of a subdivision approved by the Commission, or
  - b. each lot has a legally existing dwelling unit that conformed to the Commission's rules at the time each lot was developed.

Under these two circumstances the lots may be conveyed separately or together.

6. **Expansion of Septic Systems.** The conversion from primitive to combined septic systems on legally created and developed lots is allowed without a permit provided authorization is obtained from the local plumbing inspector or from the Department of Human Services, Division of Health Engineering and provided there are no limitations on combined septic systems established by prior permit conditions.

**§ 10.17.A.2. Clearing.**

The following shall apply to vegetation clearing for any purpose other than road construction, road reconstruction and maintenance, wildlife or fishery management, forest management, agricultural management, public trailered ramps or hand-carry launches:

- a. A vegetative buffer strip shall be retained within:
  - (1) 50 feet of the right-of-way or similar boundary of any public roadway,

- (2) 75 feet of the normal high water mark of any standing body of water less than 10 acres in size, or any tidal water or flowing waters draining less than 50 square miles, and
  - (3) 100 feet of the normal high water mark of a standing body of water 10 acres or greater in size or flowing water draining 50 square miles or more.
- b. Within this buffer strip, vegetation shall be maintained as follows:
- (1) There shall be no cleared opening greater than 250 square feet in the forest canopy as measured from the outer limits of the tree crown. However, a footpath is permitted, provided it does not exceed six (6) feet in width as measured between tree trunks, and, has at least one bend in its path to divert channelized runoff.
  - (2) Selective cutting of trees within the buffer strip is permitted provided that a well- distributed stand of trees and other woody vegetation is maintained. No more than 30% of the total volume of trees four (4) inches or more in diameter, measured at 4 1/2 feet above ground level, may be removed in any ten (10) year period.
  - (3) In order to protect water quality and wildlife habitat, existing vegetation under three (3) feet in height and other ground cover shall not be removed and the soil shall not be disturbed, except to provide for a footpath or other permitted use.
  - (4) Pruning of tree branches is prohibited, except on the bottom 1/3 of the tree provided that tree vitality will not be adversely affected.
  - (5) In order to maintain a buffer strip of vegetation, when the removal of storm-damaged, diseased, unsafe, or dead trees results in the creation of cleared openings in excess of 250 sq. ft., these openings shall be established with native tree species.
- c. At distances greater than one hundred (100) feet, horizontal distance, from the normal high water mark of a standing body of water greater than 10 acres, no more than 40% of the total volume of trees four inches or more in diameter, measured at 4 1/2 feet above ground level, may be removed in any ten (10) year period, except to allow for the development of permitted uses. In no instance shall cleared openings exceed, in the aggregate, 10,000 square feet, including land previously cleared. These provisions apply to within 250 feet of all standing bodies of water greater than ten (10) acres, and to the full depth of the P-AL zone.
- d. Cleared openings legally in existence as of June 7, 1990 may be maintained, but shall not be enlarged except as permitted by these regulations.

In all subdistricts where natural vegetation is removed within the required vegetative buffer strip of a flowing or standing body of water, tidal water, or public roadway, it shall be replaced by other vegetation (except where the area cleared is built upon) that is effective in preventing erosion and retaining natural beauty.

### **§ 10.17.A.3. Mineral Exploration and Extraction.**

The following requirements for mineral exploration and extraction activities shall apply in all subdistricts except as otherwise hereinafter provided:

- a. Mineral Exploration: The following requirements shall apply to mineral exploration activities:

- (1) All excavations, including test pits and holes, shall be promptly capped, refilled or secured by other equally effective measures so as to reasonably restore disturbed areas and to protect the public health and safety;
- (2) Mineral exploration activities or associated access ways where the operation of machinery used in such activities results in the exposure of mineral soil, shall be located such that an unscarified filter strip of at least the width indicated below is retained between the exposed mineral soil and the normal high water mark of surface water areas:

| Average Slope of Land<br>Between Exposed Mineral<br>Soil and Normal High Water<br>Mark (Percent) | Width of Strip<br>Between Exposed Mineral Soil and<br>Normal High Water Mark (Feet<br>Along Surface of the Ground) |
|--|--|
| 0  | 25   |
| 10   | 45   |
| 20   | 65   |
| 30   | 85   |
| 40   | 105  |
| 50   | 125  |
| 60   | 145  |
| 70   | 165  |

The provisions of this subsection (2) apply only on a face sloping toward the water, provided, however, no portion of such exposed mineral soil on a back face shall be closer than 25 feet; the provisions of this subsection do not apply where access ways cross such waters;

- (3) Except when surface waters are frozen, access ways for mineral exploration activities shall not utilize stream channels bordered by P-SL2 Protection Subdistricts except to cross the same by the shortest possible route; unless culverts or bridges are installed in accordance with Section 10.17, A, 4, b and e, such crossings shall only use channel beds which are composed of gravel, rock or similar hard surface which would not be eroded or otherwise damaged;
  - (4) Access way approaches to stream channels shall be located and designed so as to divert water runoff from the way in order to prevent such runoff from directly entering the stream;
  - (5) In addition to the foregoing minimum requirements, when conducting mineral exploration activities and creating and maintaining associated access ways, provision shall be made to effectively stabilize all area of disturbed soil so as to reasonably avoid soil erosion and sedimentation of surface waters. These measures shall include seeding and mulching if necessary to insure effective stabilization.
- b. Mineral Extraction: The following requirements shall apply to mineral extraction activities in all subdistricts:
- (1) No portion of any ground area disturbed by the extraction activity on a face sloping toward the water, shall be closer to the normal high water mark of a flowing, standing, tidal body of water, or wetland identified as a P-WL1 Subdistrict than is indicated by the following table provided, however, no portion of such ground area on a back face shall be closer than 50 feet:

| Average Slope of Land<br>Between Exposed Mineral<br>Soil and Normal High Water<br>Mark or Upland Edge<br>(Percent) | Width of Strip<br>Between Exposed Mineral Soil and<br>Normal High Water Mark or<br>Upland Edge (Feet Along Surface<br>of the Ground) |
|--|--|
| 0  | 55   |
| 10   | 90   |
| 20   | 130  |
| 30   | 170  |
| 40   | 210  |
| 50   | 250  |
| 60   | 290  |
| 70   | 330  |

- (2) No portion of any ground area disturbed by the extraction activity shall be closer than 250 feet from any public roadway, or 250 feet from any property line in the absence of the prior written agreement of the owner of such adjoining property;
- (3) Within 250 feet of any water body the extraction area shall be protected from soil erosion by ditches, sedimentation basins, dikes, dams, or such other control devices which are effective in preventing sediments from being eroded or deposited into such water body. Any such control device shall be deemed part of the extraction area for the purposes of Subsection (1), above;
- (4) A natural vegetative screen of not less than 50 feet in width shall be retained from any facility intended primarily for public use, excluding privately owned roads; and
- (5) If any mineral extraction operation located within 250 feet of any property line or public roadway or facility intended primarily for public use, excluding privately owned roads, is to be terminated or suspended for a period of one year or more, the site shall be rehabilitated by grading the soil to a slope of 2 horizontal to 1 vertical, or flatter.

**§ 10.17.A.4. Roads and Water Crossings.**

The following road and water crossing requirements shall apply to such activities in P-WL1, P-WL2, P-SL, P-FP, P-GP Protection and all Development Subdistricts:

- a. The following requirements shall apply to construction and maintenance of roads:
  - (1) All cut or fill banks and areas of exposed mineral soil outside the roadbed within 75 feet of a flowing, standing or tidal body of water or a wetland shall be revegetated or otherwise stabilized so as to prevent erosion and sedimentation of water bodies or wetlands;
  - (2) Road banks shall have a slope no steeper than 2 horizontal to 1 vertical;
  - (3) Drainage ditches shall be provided so as to effectively control water entering and leaving the road area. Such drainage ditches will be properly stabilized so that the potential for unreasonable erosion does not exist;
  - (4) In order to prevent road surface drainage from directly entering water bodies or wetlands, roads and their associated drainage ditches shall be located, constructed, and maintained so as to provide an unscarified filter strip, of at least the width indicated below, between the exposed mineral soil of the road and the normal high water mark of a surface water body or upland edge of a wetland:

| Average Slope of Land<br>Between Exposed Mineral Soil and<br>Normal High Water Mark<br>(Percent) | Width of Strip<br>Between Exposed Mineral Soil and<br>Normal High Water Mark<br>(Feet Along Surface of the Ground) |
|--|--|
| 0  | 25   |
| 10   | 45   |
| 20   | 65   |
| 30   | 85   |
| 40   | 105  |
| 50   | 125  |
| 60   | 145  |
| 70   | 165  |

This requirement shall not apply to road approaches to water crossings or wetlands.

- (5) Drainage ditches for roads approaching a water crossing or wetland shall be designed, constructed, and maintained to empty into an unscarified filter strip, of at least the width indicated in the table set forth in subsection (4) above, between the outflow point of the ditch and the normal high water mark of the water or the upland edge of a wetland. Where such filter strip is impracticable, appropriate techniques shall be used to reasonably avoid sedimentation of the water body or wetland. Such techniques may include the installation of sump holes or settling basins, and/or the effective use of additional ditch relief culverts and ditch water turnouts placed so as to reasonably avoid sedimentation of the water body or wetland;
- (6) Ditch relief (cross drainage) culverts, drainage dips and water turnouts will be installed in a manner effective in getting drainage onto unscarified filter strips before the flow in the road or its drainage ditches gains sufficient volume or head to erode the road or ditch.
  - (a) Drainage dips may be used in place of ditch relief culverts only where the road grade is 10% or less;
  - (b) On roads having slopes greater than 10%, ditch relief culverts shall be placed across the road at approximately a 30 degree angle downslope from a line perpendicular to the center line of the road;
  - (c) Ditch relief culverts, drainage dips and water turnouts shall direct drainage onto unscarified filter strips as required in paragraph (4) and (5) above;
  - (d) Ditch relief culverts shall be sufficiently sized and properly installed in order to allow for effective functioning, and their inlet and outlet ends shall be stabilized with appropriate materials; and
  - (e) Ditch relief culverts, drainage dips and associated water turnouts shall be spaced along the road at intervals no greater than indicated in the following table:

| Road Grade<br>Percent | Spacing<br>Feet |
|-----------------------|-----------------|
| 0-2                   | 500-300         |
| 3-5                   | 250-180         |
| 6-10                  | 167-140         |
| 11-15                 | 136-127         |
| 16-20                 | 125-120         |
| 21+                   | 100             |

b. The following requirements shall apply to water crossings when surface waters are unfrozen:

- (1) Bridges and culverts shall be installed and maintained to provide an opening sufficient in size and structure to accommodate 10 year frequency water flows or with a cross-sectional area at least equal to 2 1/2 times the cross-sectional area of the stream channel.
- (2) Culvert and bridge sizes may be smaller than provided in paragraph (1) if techniques are employed such that in the event of culvert or bridge failure, the natural course of water flow is reasonably maintained and sedimentation of the water body is reasonably avoided; such techniques may include, but are not limited to, the effective use of any or all of the following:
  - (a) removing culverts prior to the onset of frozen ground conditions;
  - (b) using water bars in conjunction with culverts; or
  - (c) using road dips in conjunction with culverts.
- (3) Culverts utilized in water crossings shall:
  - (a) be installed at or below stream bed elevation;
  - (b) be seated on firm ground;
  - (c) have soil compacted at least halfway up the side of the culvert;
  - (d) be covered by soil to a minimum depth of 1 foot or according to the culvert manufacturer's specifications, whichever is greater; and
  - (e) have a headwall at the inlet end which is adequately stabilized by rip-rap or other suitable means to reasonably avoid erosion of material around the culvert.

c. The design and construction of land management road systems through wetlands, other than those areas below the normal high water mark of standing or flowing waters, must avoid wetlands unless there are no reasonable alternatives, and must maintain the existing hydrology of wetlands.

To maintain the existing hydrology of wetlands, road drainage designs shall provide cross drainage of the water on the surface and in the top 12 inches of soil in wetlands during both flooded and low water conditions so as to neither create permanent changes in wetland water levels nor alter wetland drainage patterns. This shall be accomplished through the incorporation of culverts or porous layers at appropriate levels in the road fill to pass water at its normal level through the road corridor. Where culverts or other cross-drainage structures are not used, all fills shall consist of free draining granular material.

To accomplish the above, the following requirements apply:

- (1) Road construction on mineral soils or those with surface organic layers up to 4 feet in thickness:

- (a) Fill may be placed directly on the organic surface compressing or displacing the organic material until equilibrium is reached. With this method, culverts or other cross-drainage structures are used instead of porous layers to move surface and subsurface flows through the road fill material.
    - (i) For road construction on mineral soils or those with surface organic layers less than 16 inches in thickness, culverts or other cross-drainage structures shall be appropriately sized and placed at each end of each wetland crossing and at the lowest elevation on the road centerline with additional culverts at intermediate low points as necessary to provide adequate cross drainage. Culverts or other cross-drainage structures shall be placed at maximum intervals of 300 feet;
    - (ii) For road construction on surface organic layers in excess of 16 inches but less than 4 feet in thickness, cross drainage must be provided by placing culverts at each end of each wetland crossing and at the lowest elevation on the road centerline with additional culverts at intermediate low points as necessary to provide adequate cross drainage. Culverts or other cross-drainage structures shall be placed at maximum 300-foot intervals. Culverts shall be a minimum of 24 inches in diameter, or the functional equivalent, and buried halfway below the soil surface.
    - (iii) Where necessary to maintain existing water flows and levels in wetlands, ditches parallel to the road centerline shall be constructed along the toe of the fill to collect surface and subsurface water, carry it through the culvert(s) and redistribute it on the other side. Unditched breaks shall be left midway between culverts to prevent channelization.
  - (b) Alternatively, a porous layer may be created to move surface and subsurface flows through the road fill materials. If a porous layer is used, geotextile fabric must be placed above and below fill material to increase the bearing strength of the road and to preserve the bearing strength of fill material by preventing contamination with fine soil particles.
- (2) Road construction on soils with organic layers in excess of 4 feet in thickness:
- (a) Such construction shall only take place under frozen ground conditions.
  - (b) Geotextile fabric shall be placed directly on the soil surface. Road fill or log corduroy shall then be placed on the geotextile fabric.
  - (c) Cross drainage shall be provided by either a continuous porous layer or appropriate placement of culverts or other cross-drainage structures and ditching as specified below:
    - (i) A continuous porous layer or layers shall be constructed by placement of one or more layers of wood corduroy and/or large stone or chunkwood separated from adjacent fill layers by geotextile fabric placed above and below the porous layer(s) such that continuous cross drainage is provided in the top 12 inches of the organic layer; or

- (ii) Cross drainage culverts or other cross-drainage structures shall be placed at points where they will receive the greatest support. Culverts or other cross-drainage structures shall be a minimum of 24 inches in diameter, or the functional equivalent, and buried halfway below the soil surface. Where necessary to maintain existing water flows and levels in wetlands, ditches parallel to the roadbed on both sides shall be used to collect surface and subsurface water, carry it through the culvert(s) and redistribute it on the other side. Such ditches shall be located three times the depth of the organic layer from the edge of the road fill. Unditched breaks shall be left midway between culverts to prevent channelization.
- d. Ditches, culverts, bridges, dips, water turnouts and other water control installations associated with roads shall be maintained on a regular basis to assure effective functioning.
- e. Maintenance of the above required water control installations shall continue until the road is discontinued and put to bed by taking the following actions:

(1) Water bars shall

- (a) be constructed and maintained across the road at intervals established below:

| Road Grade Percent | Distance Between Water Bars Feet |
|--------------------|----------------------------------|
| 0-2                | 250                              |
| 3-5                | 200-135                          |
| 6-10               | 100-80                           |
| 11-15              | 80-60                            |
| 16-20              | 60-45                            |
| 21+                | 40                               |

- (b) be constructed at approximately 30 degrees downslope from the line perpendicular to the center line of the road;
  - (c) be constructed so as to reasonably avoid surface water flowing over or under the water bar; and
  - (d) extend sufficient distance beyond the traveled way so that water does not reenter the road surface.
- (2) Any bridge or water crossing culvert in such road shall satisfy one of the following requirements:
- (a) it shall be designed to provide an opening sufficient in size and structure to accommodate 25 year frequency water flows;
  - (b) it shall be designed to provide an opening with a cross-sectional area at least 3 1/2 times the cross-sectional area of the stream channel; or
  - (c) it shall be dismantled and removed in a fashion so as to reasonably avoid sedimentation of the water body.

- f. Provided they are properly applied and used for circumstances for which they are designed, methods including but not limited to the following are acceptable to the Commission as means of calculating the 10 and 25 year frequency water flows and thereby determining crossing sizes as required in paragraphs b and e of this Section:
  - (a) The USDA Soil Conservation Service (SCS) Methods; specifically: "Urban Hydrology for Small Watersheds," June 1986 Soil Conservation Service Technical Release #55.
  - (b) The United States Geological Survey (USGS) Methods; specifically: U.S. Geological Survey. 1975. "A Technique for Estimating the Magnitude and Frequency of Floods in Maine." Open- file Report 75-292.
- g. Extension, enlargement or resumption of use of presently existing roads, which are not in conformity with the provisions of this Section, are subject to the provisions of Section 10.11 of this chapter.
- h. Publicly owned roads may be constructed in a fashion that is not in strict conformity with the provisions of this section, provided that other measures are applied that are effective in reasonably avoiding sedimentation of surface waters.
- i. Except that subsection j below always applies, trail crossings of minor flowing waters shall be exempt from the standards of this section, provided such crossings are constructed in a manner that causes no disturbance to the stream bed, and no substantial disturbance to the banks or shoreland areas in the vicinity of the crossing, and provided such crossings do not impede the flow of water or the passage of fish. If properly undertaken, acceptable methods may include but not be limited to the laying of logs from bank to bank, or placement of bed logs and stringers with decking. This exemption shall not extend to the construction of abutments or piers.
 

Trail crossings not so exempted shall be subject to the water crossing standards of this section, including specifically subsections 10.17, A, 4, b, d, e, f, j and k.
- j. In addition to the foregoing minimum requirements, provision shall otherwise be made in the construction and maintenance of roads and water crossings in order to reasonably avoid sedimentation of surface waters.
- k. Written notice of all road and water crossing construction activities, except level A road projects and exempt trail crossings as provided in subsection i above, shall be given to the Commission prior to the commencement of such activities. Such notice shall conform to the requirements of Section 10.20 of this chapter and shall state the manner in which the water crossing size requirements of this section will be satisfied.

#### **§ 10.17.A.6. Filling and Grading.**

The following requirements for filling and grading shall apply in all subdistricts except as otherwise provided herein. The purpose of this section is to allow minor filling and/or grading of land without a permit, provided the performance standards set forth below are met. If the standards are not met, a permit is required.

These standards do not apply to filling or grading activities which constitute forest or agricultural management activities, the construction, reconstruction and maintenance of roads, or the

construction of public trailered ramps, hand-carry launches, or driveways. Such activities are separately regulated.

- a. Within 250 feet of water bodies and wetlands, the maximum size of a filled or graded area, on any single lot or parcel, shall be 5,000 square feet. This shall include all areas of mineral soil disturbed by the filling or grading activity; and
- b. Beyond 250 feet from water bodies, the maximum size of filled or graded areas, as described above, shall be 20,000 square feet, except that there shall be no limit to the size of filled or graded areas in M-GN General Management Subdistricts which are greater than 250 feet from water bodies and wetlands. In such General Management Subdistrict areas, the provisions of subsections 4 and 6 of this section shall apply; and
- c. Clearing of areas to be filled or graded is subject to the Clearing Standards of Section 10.17, A, 2; and
- d. Imported fill material to be placed within 250 feet of water bodies shall not contain debris, trash, rubbish or hazardous or toxic materials. All fill, regardless of where placed, shall be free of hazardous or toxic materials; and
- e. Where filled or graded areas are in the vicinity of water bodies or wetlands such filled or graded areas shall not extend closer to the normal high water mark of surface water bodies or upland edge of wetlands identified as P-WL1 Subdistrict than the distance indicated in the following table:

| Average Slope of Land<br>Between Exposed Mineral Soil and<br>Normal High Water Mark or Upland Edge<br>(Percent) | Width of Strip<br>Between Exposed Mineral Soil and<br>Normal High Water Mark or Upland Edge<br>(Feet Along Surface of the Ground) |
|---|---|
| 0   | 25  |
| 10  | 45  |
| 20  | 65  |
| 30  | 85  |
| 40  | 105   |
| 50  | 125   |
| 60  | 145   |
| 70  | 165   |

- f. All filled or graded areas shall be promptly stabilized to prevent erosion and sedimentation.

Filled or graded areas, including all areas of disturbed soil, within 250 feet of water bodies and wetlands, shall be stabilized according to the Guidelines for Soil Stabilization contained in Appendix B of this chapter.

**§ 10.17.A.8. Driveways Associated with Residential Structures and Uses.**

- a. **Applicability:** The following requirements apply to the construction of driveways for single family and two family dwelling units in all subdistricts where driveways associated with residential uses are allowed without a permit. These standards may be used as guidance in processing an application for driveways to be located in those subdistricts where driveways require a permit from the Commission.

- (1) Other Permits: If a permit has been issued for the development of the lot to be served by the driveway or if the lot is part of a subdivision for which a permit has been issued, conditions of the building permit or subdivision permit regarding construction of driveways supersede provisions of this subsection.
  - (2) Length: If the length of a proposed driveway is greater than 1000 feet, it is regulated as a road and requires a permit from the Commission unless it qualifies as a land management road.
- b. Waterbody Setback:
- (1) Minimum Setback: The minimum water body setback for a driveway which accesses an undeveloped lot or a lot having residential structures is:
    - (a) 100 feet from the nearest shoreline of a flowing water draining 50 square miles, and a body of standing water greater than 10 acres in size;
    - (b) 75 feet from the nearest shoreline of a tidal water; and
    - (c) 50 feet from the upland edge of minor flowing waters and mapped P-WL1 wetlands.
  - (2) Exceptions to Waterbody and Wetland Setback Requirements:
    - (a) The water body and wetland setback requirements do not apply to approaches to waterbody or wetland crossings.
    - (b) A lesser setback may be allowed with a permit in the following instances provided no other reasonable alternative exists and appropriate techniques are used as needed to prevent sedimentation of the waterbody:
      - (i) In the case of legally existing nonconforming structures located in the shoreland area, the driveway may extend to the portion of the principal structure farthest from the normal high water mark of the waterbody, but in no case closer than 50 feet from the normal high water mark of the waterbody; or
      - (ii) To allow access to permitted facilities located nearer to the shoreline due to an operational necessity as described in Section 10.17,B,1,g,(5).
- c. Property Line Setback:
- (1) Minimum Setback: The minimum property line setback for a driveway is 15 feet.
  - (2) Exceptions to Property Line Setback:
    - (a) A shared driveway need not meet the minimum setback.
    - (b) The minimum setback standard does not apply to authorized approaches to and crossings of property lines or to crossings along easements or rights of way established in deed or lease.
    - (c) A lesser setback may be allowed with a permit upon written permission of the abutting landowner.
- d. Road Frontage: The lot to be served by the driveway must have a minimum of 100 feet of road frontage.
- e. Entry onto Roadways, including State Highways: The entry must not be located on a curve and must be placed so as to allow adequate line of sight for safe entry onto the roadway. If a driveway is to enter directly onto a state or state-aid highway, the person wishing to construct the driveway must first obtain written permission from the Maine Department of Transportation.

- f. Crossings of Flowing Waters: If a driveway will cross a flowing water, the crossing must be accomplished in accordance with the standards for installation of water crossings set forth in Section 10.17,A,4,b.
- g. Wetlands Alteration: The driveway must not alter any portion of a mapped P-WL1 Wetland Protection Subdistrict or more than 4,300 square feet of a mapped P-WL2 or P-WL3 Wetland Protection Subdistrict without a permit.
- h. Maximum Slope: The driveway must not have a sustained slope of more than 8%.
- i. Erosion and Sedimentation Control:
  - (1) The driveway must be located, designed and constructed so that:
    - (a) It will not erode or create any undue restriction or disruption of existing surface water drainage ways;
    - (b) It will divert runoff to a vegetated buffer strip so as to prevent it from directly entering a water body, mapped P-WL1 wetland, or roadway.
  - (2) Except for the travel surface of the driveway, all areas of disturbed soil must be promptly reseeded and mulched to prevent soil erosion.
- j. Fill Material: Fill material used in the construction of a driveway must not contain demolition debris, trash, rubbish, or hazardous or toxic materials.

**§ 10.17.B.1. Dimensional Requirements**

The following dimensional requirements apply to all lots on which structural development is proposed unless otherwise provided by subsection g:

- a. Minimum Lot Size
  - (1) Residential Uses
 

The minimum lot size for residential uses is 40,000 square feet per dwelling unit except where each dwelling unit is to use a common or community sewer and not on-site subsurface waste water disposal, the minimum lot size shall be 20,000 square feet per dwelling unit.
  - (2) Commercial, industrial, and other nonresidential uses
 

The minimum lot size for commercial, industrial, and other nonresidential uses involving one or more buildings is 40,000 square feet.
- b. Minimum Shoreline Frontage
  - (1) For lots fronting on a flowing water draining more than 2 square miles but less than 50 square miles, a body of standing water less than 10 acres in size, or a tidal water, the minimum shoreline frontage shall be:
    - (a) 150 feet per dwelling unit for residential uses, and
    - (b) 200 feet for commercial, industrial, and other non-residential uses involving one or more buildings;
  - (2) For lots fronting on a body of flowing water draining 50 square miles or more or a body of standing water 10 acres or greater in size, the minimum shoreline frontage shall be:
    - (a) 200 feet per dwelling unit for residential uses, and
    - (b) 300 feet for commercial, industrial, and other non-residential uses involving one or more buildings.
  - (3) In the case of a lot which borders more than one water body, the shoreline frontage requirement must be met on each water body bordered by the lot.

- (4) Frontage shall be measured in a straight line between the points of intersection of side lot lines with the normal high water mark of the shoreline.
- (5) The shoreline frontage may be waived to no less than 200 feet for public boat launches where the applicant demonstrates there will be no undue adverse impact to surrounding uses.

c. Minimum Road Frontage

- (1) The minimum road frontage shall be:
  - (a) 100 feet per dwelling unit for residential uses, and
  - (b) 200 feet for commercial, industrial, and other non-residential uses involving one or more buildings;
- (2) These requirements apply to any privately or publicly owned road that is used for public access, including roads used by the public for which a toll is paid.
- (3) Where the lot is located at the end of a road or on a circular turnaround with an outside diameter of less than 25 feet, the road frontage requirements shall not apply.
- (4) Frontage shall be measured along the traveled portion of the road between the points of intersection of side lot lines with the traveled portion of the road.
- (5) In the case of a lot which borders more than one road, the road frontage requirement must be met on at least one road bordered by the lot.

d. Minimum Setbacks

- (1) The minimum setbacks for structures, other than those described in Subsection 10.17,B,1,d,(2) and except as provided in Subsection 10.17,B,1,g are:
  - (a) 75 feet from the nearest shoreline of a flowing water draining less than 50 square miles, a body of standing water less than 10 acres in size, or a tidal water, and from the upland edge of wetlands designated as P-WL1 Protection Subdistricts;
  - (b) 100 feet from the nearest shoreline of a flowing water draining 50 square miles or more and of a body of standing water 10 acres or greater in size;
  - (c) 50 feet from the traveled portion of all roadways except as provided for in subsection (d) below;
  - (c) 50 feet from the traveled portion of all roadways except as provided for in subsection (d) and (e) below;
  - (d) 75 feet from the traveled portion of the following roadways: Routes 1, 2, 2A, 4, 9, 27, 163, 201, 161 from Caribou to Fort Kent, 157 in TA R7 (Penobscot County), and 6 in Orneville Township (Piscataquis County);
  - (e) 20 feet from the traveled portion of all roadways on coastal islands; and
  - (f) 15 feet from side and rear property lines.

These setbacks also apply to parking areas for trailered ramps or hand-carry launches and those structures within a sporting camp complex constructed solely for the housing of guests.

- (2) The minimum setbacks for multi-family dwellings and commercial, industrial, and other nonresidential principal and accessory structures are:
  - (a) 100 feet from the nearest shoreline of a flowing water draining less than 50 square miles, a body of standing water less than 10 acres in size, or a tidal water, and from the upland edge of wetlands designated as P-WL1 Protection Subdistricts;

- (b) 150 feet from the nearest shoreline of a flowing water draining 50 square miles or more and a body of standing water 10 acres or greater in size;
- (c) 75 feet from the traveled portion of the nearest roadway except as provided for in (d) below;
- (d) 20 feet from the traveled portion of all roadways on coastal islands; and
- (e) 25 feet from the side and rear property lines.

Except as provided for in subsection d.(1) above, these setbacks also apply to all other structures within a sporting camp complex, including, but not limited to, a main lodge, dining area, workshop and parking area.

- (3) These requirements apply to any privately or publicly owned road that is used for public access, including roads used by the public for which a toll is paid.
- (4) Campsites shall be set back such that the area designed for camping, including cleared or graded areas, fire rings, tables, and related construction, is at least 75 feet from shoreline, 50 feet from roads, and 25 feet from property lines. Remote campsites shall be set back at least 50 feet from roads, 25 feet from property lines, and 25 feet from shorelines, except that the Commission may require a greater setback from shorelines for remote campsites where necessary due to site conditions in order to avoid accelerated soil erosion or sedimentation of surface waters.

e. Maximum Lot Coverage

- (1) The maximum lot coverage shall be 30% for all uses involving one or more buildings.
- (2) "Coverage" shall be calculated by determining the percentage of lot area covered by all structures including paved driveways, sidewalks, parking lots and other impervious surfaces.

f. Maximum Building Height

- (1) Except as provided for in (2) below, the maximum building height shall be:
  - (a) 75 feet for residential uses; and
  - (b) 100 feet for commercial, industrial, and other non-residential uses involving one or more buildings.
- (2) Structures within 500 feet of the normal high water mark of a standing body of water 10 acres or greater shall be no higher than the screening vegetation or 25 feet, whichever is greater. The Commission may apply this provision at greater distances from the normal high water mark of standing bodies of water having significant or outstanding scenic values where there is the likelihood that such structures would have an adverse impact on scenic values. Standing bodies of water having such scenic values are shown in Appendix C.
- (3) Features of buildings which contain no floor area such as chimneys, towers, ventilators and spires may exceed these maximum heights with the Commission's approval.

g. Exceptions to Dimensional Requirements

- (1) The Commission may reduce dimensional requirements for individual buildings in a cluster development, provided that, in the aggregate, dimensional requirements are met within the development. The Commission may approve a cluster development on land that could be developed under normal applicable standards provided that the cluster development provides for the efficient use of

land and the protection of a significant amount of open space, in accordance with the following:

- (a) Cluster development within the shoreland area shall provide for the protection of developable shorefront as open space through the creation of individual lots with reduced shore frontage or through clusters of dwellings on commonly-owned land. To the extent practicable, open space provided shall be in a contiguous block and shall be located adjacent to other areas protected by conservation measures or protective zoning.
  - (b) Open space shall be dedicated as a separate lot of record with no further subdivision or conversion of use of that lot allowed. Such lot shall be shown on the subdivision plat with a notation on the face thereof to indicate that no further subdivision or conversion of use is allowed.
  - (c) If any or all of the common open space is to be reserved for ownership by the residents of the subdivision, the by-laws of the proposed homeowner's association shall specify maintenance responsibilities. Such by-laws shall be submitted to the Commission as part of the subdivision application.
  - (d) To avoid unsafe conditions resulting from direct access to public roads, no individual lot or dwelling unit for which road frontage has been reduced as provided above shall have vehicular access directly onto a public road existing at the time of development.
  - (e) Notwithstanding Section 10.17,B,1,g,(1) above, the Commission may waive the provision that dimensional requirements for individual dwellings in a cluster development be met, in the aggregate, where the following conditions are satisfied:
    - i) dimensional requirements, in the aggregate, are not waived by more than 50%;
    - ii) site conditions are suitable for increased density;
    - iii) increased density would not adversely affect resources; and
    - iv) the specific benefits afforded by the cluster approach will prevent the loss of important natural features.
- (2) The dimensional requirements applicable to D-PD Development Subdistricts shall be established by the Commission pursuant to the provisions of Section 10.14, C, provided that the shoreline setback requirements hereof shall not be reduced.
- (3) Notwithstanding other provisions of these rules, in a proposed subdivision or area that has or is likely to have relatively dense development, the Commission may increase the minimum lot size when the Commission determines that:
- (a) A larger lot size is required to provide sufficient area of suitable soil to accommodate the principal building and accessory structures, and subsurface waste water disposal, including a replacement system; and
  - (b) The density of development in the vicinity of the proposed site is likely to cause nitrate or other contaminant levels in ground water to exceed public drinking water standards at any public or private well or at the property boundary. The Commission may require a nitrate study to estimate likely nitrogen levels in ground water as part of a subdivision application.

- (4) Where development would otherwise have an undue adverse impact on existing uses, scenic character or natural and historic resources in the area likely to be affected by the proposal, the Commission may impose additional or more protective standards with respect to clearing, frontage and setback requirements, waste water disposal, and other aspects of the development to reasonably assure that undue adverse impact is avoided.
- (5) An exception may be made to the shoreline, road, and or property line setback requirements for structures where the Commission finds that such structures must be located near to the shoreline, road, or property line due to the nature of their use. Structures which must be located near to the shoreline include structures which require direct access to the water as an operational necessity, such as piers, docks, retaining walls, and structures necessary for commercial fishing activities or water dependent uses within a D-MT Maritime Development Subdistrict. This provision shall not apply to boat houses or float plane hangars not included within a D-MT Maritime Development Subdistrict.
- (6) An exception may be made to the minimum extent necessary to the shoreline frontage and lot size requirement on tidal waters for structures necessary for commercial fishing activities or water dependent uses within a D-MT Maritime Development Subdistrict where such reduction would better serve the purpose of this subdistrict.
- (7) Where development is proposed in the vicinity of a water quality limiting lake, the Commission may vary the applicable dimensional requirements in accordance with Section 10.16, D, 3, e.
- (8) To the extent consistent with 12 MRSA, Section 685-B, 4, the Commission may reduce the minimum lot size required for a structure whose sole purpose is to house a public utility facility or to function as a public utility, provided that:
  - (a) the size, height, and bulk of the facility is of a scale that permits such a reduction without adverse effect on surrounding properties; and
  - (b) the facility is sited and buffered to fit harmoniously into the surrounding environment.
- (9) The Commission may apply the dimensional requirements for residential uses to single outpost camps operated by commercial sporting camps, except in cases where such a camp is likely to have a greater impact than a residential use.
- (10) Notwithstanding the provisions of Section 10.11 of this chapter, structures necessary for disabled persons to gain access to buildings may be located less than the standard setback distance from a shoreline, road and property line to the minimum extent necessary when the following criteria are met:
  - (a) A person with a disability as defined in 5 M.R.S.A. § 4553 resides in or regularly uses the dwelling or facility;
  - (b) The encroachment into the standard setback distance applies only to the installation of equipment or construction of structures necessary for access to or egress from the dwelling or facility by the person with the disability;
  - (c) The access structure is necessary to create an accessible route;
  - (d) The access structure cannot reasonably or feasibly be created without encroachment into the standard setback distance; and
  - (e) The design of the access structure minimizes the need for encroachment into the standard setback distance.

SUMMARY OF SHORELINE  
FRONTAGE, SETBACK AND CLEARING REQUIREMENTS  
FOR SINGLE FAMILY DWELLINGS

|                             | Tidal,<br>Flowing<br>water <50 sqmi,<br>Lakes <10 ac | Lake<br>Mgnt<br>Class<br>2 | Flowing<br>water >50 sqmi<br>Other<br>lakes >10 ac |
|-----------------------------|--|----------------------------|--|
| FRONTAGE                    | 150'   | 200'a                      | 200'   |
| SETBACK                     | 75'  | 100'a                      | 100'   |
| CLEARING FOR<br>DEVELOPMENT | 75' (30%)  | 100'(30%)<br>400'(40%)     | 100'(30%)<br>150'(40%)                             |

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a: Density limitation of an average of 1 dwelling unit per shore mile on Management Class 2 lakes.

*Note: This summary of shoreline dimensional requirements is provided only as a guide to the frontage, setback, and clearing standards of Section 10.17 for single family dwellings. See text of Section 10.17 for complete requirements.*

**§ 10.20 Notification Format**

Where a written notification is required by this chapter, such notification must be submitted in advance of the date on which the activity, which is the subject of the notification, is commenced. Except as provided in Section 10.17,B,6, such notification must state the:

- A. Location of the proposed project by use of an official Commission Land Use Guidance Map of the area;
- B. Nature of the proposed project; and
- C. Time period of the proposed project;

Such notification must also state that the activity or project will be accomplished in conformance with the applicable minimum standards of Section 10.17 of this chapter and must be signed by a duly authorized person who shall be responsible for the execution of the activity.

## 2. PRELIMINARY PHOSPHORUS EVALUATION FOR FIRST ROACH POND

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### *Introduction*

DeLuca-Hoffman Associates, Inc. has completed a preliminary phosphorus evaluation of the First Roach Pond watershed. The purposes of this evaluation were as follows:

- To determine a per-acre phosphorus allocation for the watershed that may be used in computing a maximum permitted increase in phosphorus export (PPE) for a proposed subdivision.
- To evaluate estimated phosphorus export increases from a conceptual level subdivision plan.

The estimated phosphorus export increases were computed based on conceptual level plans and available data from the Maine Department of Environmental Protection.

LURC subdivision permit guidelines require that an unacceptable increase in phosphorus concentration shall not occur due to the proposed development for projects located in a Lake Watershed.

Lot and roadway data used for computing estimated phosphorus export levels were based on the First Roach Pond Concept Plan, prepared for the Plum Creek Land Company by Kent Associates, Planning & Design Consultants, Gardiner, Maine.

### *Methodology*

In accordance with Exhibit Q of the LURC Subdivision Application, this evaluation has been based on a publication titled, "Phosphorus Control in Lake Watersheds: A Technical Guide to Evaluating New Development, Maine Department of Environmental Protection, September, 1992." This guide is divided into two parts. The first part involves the determination of a per-acre phosphorus allocation, which is the maximum allowable increase in the amount of phosphorus exported per acre of land that to which new developments within the watershed should be limited. The second part of the evaluation consists of an individual project review for determining the estimated phosphorus export increase from a proposed project.

### *First Roach Pond Watershed Data*

In a memorandum dated March 5, 2001, the Maine Department of Environmental Protection (MeDEP) provided LURC with the following phosphorus data for First Roach Pond.

|   |   |                  |
|---|---|------------------|
| Frenchtown's Direct Drainage Area (DDA) | : | 8,517 acres      |
| Phosphorus Coefficient (F)              | : | 196.5 lbs/ppb/yr |
| Water Quality Category                  | : | Good             |
| Level of Protection                     | : | High             |

### *Per-Acre Phosphorus Allocation*

In order to determine a per-acre phosphorus allocation for the watershed, the lake's water quality category and desired level of protection were needed. Information provided by the MeDEP

indicates First Roach Pond has a water quality category of “Good” and a “High” level of protection. A water quality category of “Good” means that First Roach Pond has a greater than average water quality. The MeDEP suggests that the level of protection for First Roach Pond should be high due to its cold-water fishery (i.e., trout and salmon). Based on these criteria, an acceptable increase in lake phosphorus concentration (c) is 1.0 part per billion (ppb).

The future area that is likely to be developed within the watershed over the next 50 years is also needed to compute the per-acre phosphorus allocation. This is typically accomplished by applying a growth factor to the developable area within the watershed. Since practically all of the watershed is under Plum Creek Maine Timberlands ownership and there are no plans for further development (other than forest management activities) outside the Concept Plan area, the future area that is likely to be developed was taken as the sum of the following areas:

|   |   |                    |
|---|---|--------------------|
| • Proposed Subdivision (Roads & Lots)                   | : | 325.8 acres        |
| • Anticipate Future Forest Management Roads (20’ Width) | : | 38.9 acres         |
| • 50% of Non-Plum Creek Land in Kokadjo Area            | : | 17.8 acres         |
| • Developable Non-Plum Creek Shore Lots                 | : | <u>1.8 acres</u>   |
| <b>Total</b>  | : | <b>384.3 acres</b> |
| <b>Total Acreage of Concept Plan</b>                    |   | <b>1445 acres</b>  |

As shown above, the future area that is likely to be developed was computed to be 384.3 acres. The remaining Plum Creek lands within Frenchtown’s share of the direct drainage area that are not part of any proposed subdivision will be limited to forest management uses and were not considered to be a source of increased phosphorus. These considerations are consistent with the Technical Guide.

The per-acre phosphorus allocation was computed for Frenchtown’s share of the direct drainage area to be 0.511 lbs/acre/year. Computations for the per-acre phosphorus allocation are contained in a separate document, prepared by DeLuca-Hoffman Associates, Inc., which is available upon request.

### ***Permitted Phosphorus Export (PPE) Increase from the Proposed Development***

The permitted phosphorus export increase from the proposed development is determined by multiplying the per-acre phosphorus allocation by the acreage of the development site. The development components including lots and roadways are summarized for each of the five conceptual “Development Areas” as follows:

| <b>Table 1: Components of the Proposed Development Site</b> |                                 |                    |                 |
|---|---------------------------------|--------------------|-----------------|
| <b>Development Area #</b>                                   | <b>Approximate Area (Acres)</b> |                    |                 |
|   | <b>Lots</b>                     | <b>Roadways</b>    | <b>Total</b>    |
| 1   | 88.0 ac                         | 14.2 ac            | 102.2 ac        |
| 2   | 48.0 ac                         | 0.0 ac             | 48.0 ac         |
| 3   | 70.0 ac                         | 5.2 ac             | 75.2 ac         |
| 4   | 54.5 ac                         | 3.5 ac             | 58.0 ac         |
| 5   | 40.0 ac                         | 2.4 ac             | 42.4 ac         |
| <b>Total</b>  | <b>300.5 ac</b>                 | <b>25.3 new ac</b> | <b>325.8 ac</b> |

As shown, the development size is estimated to be approximately 325.8 acres. A medium intensity soil survey was conducted for approximately 80% of the development area by S. W. Cole Engineering, Inc. Based on this survey, about 16% of the area mapped within the site contains hydric soils. The acreage of the proposed development area was therefore reduced by 16% to a net area of 273.7 acres.

Based on the per-acre phosphorus allocation and conceptual acreage of the development area, the permitted phosphorus export increase from the development (PPE) was computed to be 139.9 lbs/year. In accordance with the phosphorus guide, if the PPE is more than 25% of the phosphorus allocation for the overall watershed, then an alternate procedure for computing the PPE may be required. This is so that a single large development cannot use up all the watershed's phosphorus allocation. For this project, a phosphorus allocation for the watershed was computed to be 196.5 lbs/year. Although the PPE computed for this project is more than 25% of the watershed's phosphorus allocation, the alternate procedure was not used since Plum Creek owns the vast majority (>99%) of the undeveloped land within the watershed. Computations for permitted phosphorus export increase are contained in the aforementioned separate document.

### ***Estimated Phosphorus Export Increase from Development***

Estimated phosphorus export increases were computed for the development of the building lots, roads and driveways. Lot data used for determination of phosphorus export rates are as follows:

| <b>Table 2: Lot Data</b>   |                       |  |   |  |
|--|-----------------------|--|---|--|
| <b>Approximate Lot Size</b>  | <b>Number of Lots</b> | <b>Predominant Hydrologic Soil Group</b> | <b>Assumed Clearing Area Per Lot (sf)</b> | <b>Phosphorus Exports Per Lot <sup>(1)</sup> (lbs)</b> |
| <b><u>AREA #1</u></b>  |                       |  |   |  |
| 2 ac lots  | 26                    | C  | > 15,000                                  | 0.58   |
| 3 ac lots  | 3                     | B  | > 15,000                                  | 0.49   |
| 3 ac lots  | 9                     | C  | > 15,000                                  | 0.58   |
| <b><u>AREA #2</u></b>  |                       |  |   |  |
| 3 ac lots  | 14                    | C  | > 15,000                                  | 0.58   |
| 3 ac lots  | 2                     | D  | > 15,000                                  | 0.62   |
| <b><u>AREA #3</u></b>  |                       |  |   |  |
| 10 ac lots   | 1                     | B  | > 15,000                                  | 0.49   |
| 10 ac lots   | 5                     | C  | > 15,000                                  | 0.58   |
| 10 ac lots   | 1                     | D  | > 15,000                                  | 0.62   |
| <b><u>AREA #4</u></b>  |                       |  |   |  |
| 2-3 ac lots  | 6                     | C  | > 15,000                                  | 0.58   |
| 2-3 ac lots  | 5                     | D  | > 15,000                                  | 0.62   |
| 2-4 ac lots  | 9                     | C  | > 15,000                                  | 0.58   |
| <b><u>AREA #5 <sup>(2)</sup></u></b>   |                       |  |   |  |
| 2 ac lots  | 5                     | Assumed C                                | > 15,000                                  | 0.58   |
| 5 ac lots  | 6                     | Assumed C                                | > 15,000                                  | 0.58   |
| Notes: <sup>(1)</sup> Phosphorus export values are based on the assumption that 40% of the site's timber volume has not been harvested within the past five years. |                       |  |   |  |
| <sup>(2)</sup> A hydrologic soil group of 'C' was assumed due to the lack of soils information in Area #5.   |                       |  |   |  |

Road and driveway lengths used in the phosphorus computations are summarized for each of the development areas as follows:

| <b>Development Area #</b> | <b>Approximate Road Length (ft)</b> | <b>Approximate Driveway Length Contributing Phosphorus (ft)</b> |
|---------------------------|-------------------------------------|---|
| 1                         | 12,420'                             | 3,800'  |
| 2                         | 0'                                  | 1,600'  |
| 3                         | 4,500'                              | 2,450'  |
| 4                         | 3,020'                              | 2,000'  |
| 5                         | 2,080'                              | 1,100'  |
| <b>Total</b>              | <b>22,020'</b>                      | <b>10,950'</b>  |

Driveway lengths were assumed to be 500' for 10-acre lots and 250' for all other lots. Driveways in excess of 150' in length per lot are considered to contribute phosphorus export increases in addition to the lot contribution. Existing roads that may need to be improved as part of the proposed subdivision were included in the determination of approximate road length.

Estimated phosphorus export increases computed for the proposed conceptual development are summarized as follows:

| <b>Location</b> | <b>Lots</b>  | <b>Driveways</b> | <b>Roads</b> | <b>Total</b>  |
|-----------------|--------------|------------------|--------------|---------------|
| Area #1         | 21.77        | 3.65             | 33.78        | 59.20         |
| Area #2         | 9.36         | 1.54             | 0.00         | 10.90         |
| Area #3         | 4.01         | 2.35             | 12.24        | 18.60         |
| Area #4         | 11.80        | 1.92             | 8.21         | 21.93         |
| Area #5         | 6.38         | 1.06             | 5.66         | 13.10         |
| <b>Total</b>    | <b>53.32</b> | <b>10.52</b>     | <b>59.89</b> | <b>123.73</b> |

As shown in the preceding table, the total phosphorous export (TE) from the development is 123.73 lbs/year. In accordance with the methodology the TE is adjusted by a multiplication factor of 0.5 to yield a total phosphorous available for algal production (TPA) of 61.87 lbs/year. Computations for phosphorus export are contained in the aforementioned separate document.

## ***Conclusions***

The permitted phosphorus export increase (PPE) and total phosphorus available for algal production (TPA) computed in this evaluation are as follows:

$$\begin{aligned} \text{PPE} &= 139.9 \text{ lbs/year} \\ \text{TPA} &= 61.87 \text{ lbs/year} \end{aligned}$$

Based on the methodology, since the TPA is less than PPE, no additional phosphorus controls are required for the proposed project. The TPA was computed based on no specific phosphorus control measures being implemented for the proposed subdivision. Given that Plum Creek Maine Timberlands has indicated that it intends to limit its land to forest management uses only (i.e., all Plum Creek Maine Timberlands land within Frenchtown's direct drainage area that is not part of a proposed subdivision), phosphorus exports were computed to be at acceptable levels. Permanent erosion control measures such as ditch lining and ditch turnouts will, however, be incorporated into the proposed subdivision designs.

## 3A OPTION AGREEMENT

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OPTION AGREEMENT made and entered into as of the 30th day of July, 2001, by and between PLUM CREEK MAINE TIMBERLANDS, L.L.C., a Delaware limited liability company, formerly known as SDW Timber II, L.L.C., whose address is 999 Third Avenue, Suite 2300, Seattle, Washington 98104, hereinafter referred to as “Seller,” and PLUM CREEK LAND COMPANY, a Delaware corporation whose address is 999 Third Avenue, Suite 2300, Seattle, Washington 98104, hereinafter referred to as “Purchaser.”

### RECITALS

A. Seller is the owner of certain real property located in Frenchtown Township, Piscataquis County, Maine, located approximately as shown on the map attached hereto as Exhibit “A” and incorporated herein by this reference as though fully set forth (the “Property”). The Property is delineated on Exhibit A as all property described as “Proposed Shore Lots,” “Proposed Back Lots,” “Conservation Area A,” Conservation Area B,” and “Conservation Area C.”

B. Purchaser is desirous of acquiring an option to purchase a portion of the Property in fee and conservation easements over portions of the Property as hereinafter described, and Seller is desirous of granting such an option.

NOW, THEREFORE, in consideration of FIFTEEN THOUSAND DOLLARS (\$15,000.00) and other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, Seller and Purchaser agree as follows:

1. **Option.** Seller grants to Purchaser an irrevocable exclusive option to purchase the following interests in the Property upon the terms and conditions set forth in this Agreement (the “Option”):

a. That portion of the Property identified on Exhibit “A” as “Proposed Shore Lots,” “Proposed Back Lots,” and “Conservation Area “A” (hereinafter collectively referred to as the “Fee Property”) to be acquired in fee by the Purchaser. The Fee Property contains approximately 434 acres.

b. Conservation Easements as described in Paragraph 7, forms of which are attached hereto as Exhibits “B” and “C,” on that portion of the Property identified on Exhibit “A” as “Conservation Area B” and “Conservation Area C” (hereinafter collectively referred to as the “Conservation Property”). The Conservation Property contains approximately 1,010 acres. The option to purchase the Conservation Easements on the Conservation Property shall be exercised by Purchaser directing Seller to convey the Conservation Easements directly to a designated third party, in such phases as the Purchaser shall direct.

c. Easements for ingress, egress and utilities located approximately as shown on Exhibit “A” (hereinafter referred to as the “Access Easements”).

d. Seller and Purchaser acknowledge and agree that the final legal descriptions for the Fee Property, the Conservation Property and the Access Easements will be determined by an approved subdivision plat.

2. **Term.** This Option shall be effective as of the date hereof and shall terminate on December 31, 2006 (the "Option Term"), if the Option is not exercised prior to such date pursuant to the terms and conditions herein contained.

3. **Purchase Price; Payment Terms; Phased Closings.**

(a) The purchase price for the Fee Property and the Conservation Easements shall be the value as determined by the appraisal prepared by Dick Martin, MSF, CF, RPRA dated March 8, 2001 (the "Fee Property Purchase Price" and the "Conservation Easement Purchase Price"). The Fee Property Purchase Price shall be reduced by the stumpage value of timber harvested, if any, between the date of the appraisal and the date of closing as to each phase.

(b) The Fee Property Purchase Price and the Conservation Easement Purchase Price shall be payable in full in cash upon the closing of each of the phases described herein.

(c) The Fee Property and the Conservation Easements may be purchased by Purchaser in one or more phases during the Option Term as determined in Purchaser's sole discretion. As to each phased purchase, Seller shall grant to Purchaser such Access Easements as are reasonably necessary for access to that portion of the Property being purchased in such phase.

(d) The Option Payment shall be credited to the Purchase Price upon the purchase of the final phase. In the event Purchaser exercises its option and closes on less than the entire Fee Property and Conservation Property, Purchaser shall forfeit the Option Payment.

4. **Exercise of Option; Identification of Property.** In the event Purchaser elects to exercise its Option with respect to any or all of the Property, it shall do so by giving notice to Seller in accordance with the provisions of Paragraph 20 hereof within the Option Term. Such notice shall include legal descriptions for each of the Fee Property, the Conservation Property and any Access Easements that are to be acquired.

5. **Time and Place of Closing; Escrow.** The parties shall deposit this Agreement, and such other documents as are required hereby into escrow established with Jensen, Baird, Gardner and Henry, Portland, Maine (the "Escrow Agent"). Closing of each phase shall take place at the offices of the Escrow Agent within thirty (30) days of Purchaser's exercise of the Option for any such phase.

6. **Condition of Title and Title Insurance.**

(a) Purchaser may, at its sole cost and expense, inspect Seller's title to the estate to be conveyed. In the event the Purchaser discovers a flaw or defect in the title to such estate, the Purchaser shall so notify Seller. Upon receipt of Purchaser's notice of its intent to purchase any of the Property, Seller shall provide Purchaser with a list and copies of any lease, license, permit, option or right of first refusal which affects such Property or any portion thereof, which will not be terminated by closing. Purchaser must notify Seller within ten (10) business days of Purchaser's objections to any such matters. Seller shall have ten (10) business days from receipt of Purchaser's notice to cure such defect or flaw (the "Title Cure Period"). If Seller is unable to cure such defect within the Title Cure Period, Purchaser may either cancel this Option or waive its objection to title and purchase the Fee Property and the Conservation Easements upon the terms and conditions herein set forth subject to such flaw or defect. In the event Seller is unable to cure any such title defect, Purchaser may terminate this Agreement whereupon the Option Payment will be refunded to Purchaser.

(b) From the date of this Agreement through expiration of the Option Term or termination of this Agreement, whichever is earlier, the Seller shall not encumber the Property without the prior written consent of Purchaser.

7. **Conservation Easements.** At Closing or at such subsequent time as the Purchaser shall designate, the Conservation Easements shall be conveyed to a third party designated by Purchaser, in accordance with the terms of Paragraph 1 (b) above in the forms attached hereto as Exhibit “B” (Conservation Area “B”) or Exhibit “C” (Conservation Area “C”).

8. **Seller’s Preclosing Covenants.** Seller shall not do any of the following without the prior written consent of Purchaser:

(a) make or allow to be made, extend or allow to be extended any leases, contracts, options or agreements whatsoever affecting the Property; provided, however, that Seller may cause timber to be harvested from any portion of the Conservation Property or the Fee Property pursuant to the terms of Paragraph 10(d) below;

(b) cause or permit any lien, encumbrance, mortgage, deed of trust, right, restriction or easement to be placed upon the Property; or

(c) permit any mortgage, deed of trust or other lien to be foreclosed upon due to Seller’s actions or omission, including failure to make a required payment.

9. **Seller’s Representations and Warranties.** Seller makes the following representations and warranties:

(a) Seller has full power and authority to enter into this Agreement (and the persons signing this Agreement for Seller have full power and authority to sign for Seller and to bind it to this Agreement), has full power and authority to sell, transfer and convey all right, title and interest in and to the Property in accordance with this Agreement.

(b) Within Seller’s knowledge, there is no suit, action, arbitration, legal, administrative or other proceeding or inquiry pending or threatened against the Property, or any portion thereof, or pending or threatened against Seller which could affect Seller’s title to the Property.

(c) Within Seller’s knowledge, there are no:

(i) Intended public improvements or private rights which will result in the creation of any liens upon the Property or any portion thereof.

(ii) Uncured notices which have been served upon Seller from any governmental agency notifying Seller of any violations of law, ordinance, rule or regulation which would affect the Property or any portion thereof.

(iii) Actual or impending mechanics liens against the Property or any portion thereof.

(d) Within Seller’s knowledge, except for normal silvicultural practices in accordance with applicable state and federal law, there is no condition at, on, under or related to the Property presently or potentially posing a significant hazard to human health or the environment, and there has been no production, use, treatment, storage, transportation, or disposal of any Hazardous Substance, as hereinafter defined, on the Property nor any release of any Hazardous Substance, pollutant or contaminant in excess of that allowed under applicable environmental laws into, upon, or over the Property or into or upon ground or surface water at the Property. Within Seller’s knowledge, no Hazardous Substance is now or ever has been stored on the Property in underground tanks, pits or surface impoundments and there are no asbestos-containing materials. Except as specifically provided in this Paragraph 9(d), Purchaser releases Seller from all costs, losses, liabilities, obligations and claims, of any nature whatsoever,

known and unknown, that Purchaser may have against Seller or that may arise in the future based in whole or in part upon (a) Seller's failure to comply with any applicable environmental laws, or (b) the presence, release or disposal of any hazardous substance, solid waste, or any other environmental contamination on, within, or from the Property before, as of, or after the date of closing. As used in this Paragraph, the term "applicable environmental laws" shall mean all state, federal, or local laws, statutes, ordinances, rules, regulations or orders pertaining to health or the environment, including, without limitation, the Comprehensive Environmental Response, Compensation, and Liability Act of 1980 ("CERCLA") and the Resource Conservation and Recovery Act of 1976 ("RCRA"), as each may be amended from time to time. As used herein, the terms "hazardous substance" and "release" have the meanings specified in CERCLA, and the terms "solid waste" and "disposal" (or "disposed") have the meanings specified in RCRA. If either CERCLA or RCRA is amended to broaden the meaning of any term defined thereby, the broader meaning shall apply to this Paragraph 9(d) after the effective date of the amendment. Moreover, to the extent that Maine law establishes a meaning for "hazardous substance," "release," "solid waste," or "disposal" that is broader than that specified in either CERCLA or RCRA, the broader meaning shall apply. In addition, this Paragraph 9(d) shall survive the date of closing for all purposes and shall not be deemed to have merged into any of the documents executed or delivered at closing.

(e) Neither the grant nor the exercise of the Option will constitute a breach or default under any agreement to which Seller is bound and/or to which the Property is subject.

Each of the above representations and warranties is material and is relied upon by Purchaser. Each of the above representations shall be deemed to have been made as of the date of closing. If, before the closings described above, Seller discovers any information or facts that would materially change the foregoing representations and warranties, Seller shall immediately give notice to Purchaser of those facts and information. The Seller must cure monetary encumbrances. If any of the foregoing representations and warranties cease to be true before closing of escrow, Seller shall use its reasonable efforts to remedy the problem before the close of escrow. If the problem is not remedied before close of escrow, either Seller or Purchaser may elect to either (x) terminate this Agreement in which case Purchaser shall have no obligation to purchase the Property; (y) agree to defer the closing date to a mutually agreed upon later date; or (z) mutually agree upon credit to Purchaser at the close of escrow the amount reasonably necessary to remedy the problem.

10. **Inspection; Condition of Property; Subsequent Acts.**

(a) The Purchaser agrees that full inspection of the Property has been made or will be made prior to Purchaser's exercise of the Option and that neither the Seller nor its agents, officers, employees, affiliates or assigns shall be held to any covenant respecting the condition of the Property or any improvements thereon nor shall the Seller or Purchaser or the assigns of either be held to any covenant or agreement for alterations, improvements or repairs unless the covenant or agreement relied on is contained herein or is in writing and attached to and made a part of this Agreement.

(b) At any time during the term hereof, Purchaser, and its consultants, employees, agents and contractors, shall have the right to go upon the Property to inspect the Property and to perform any reasonable tests. Purchaser shall indemnify, defend and hold harmless Seller from any and all demands, claims, causes of action, losses, costs, damages or liabilities resulting to, imposed on, or incurred by Seller as a result of any act or omission of Purchaser, or any of Purchaser's agents, consultants, contractors, or employees in connection with an entry on or investigation or examination of the Property prior to the date of closing. The

indemnification obligation of Purchaser with respect to this Paragraph shall survive the date of closing or the termination of this Agreement.

(c) Purchaser specifically acknowledges and agrees that (1) other than as specifically described above, Seller does not make any representations or warranties of any kind whatsoever, either express or implied, with respect to the Property (or any related matters), and (2) the Property is sold to Purchaser in an "as is" and "with all faults" condition as of the date of closing, including, without limitation, the stability of soils, suitability for any construction or development, encroachment or boundary questions, drainage, availability of utilities, zoning, access and similar matters. Purchaser assumes the risk that adverse physical conditions may not have been revealed by its investigation.

(d) Seller shall have the right to harvest timber on or to sell timber harvest rights to other entities which shall have the right to harvest and remove timber from the Property or any portion thereof during the Option Term; provided that such harvesting activities are conducted pursuant to applicable state and federal law; and provided further that Seller must have prior approval from Purchaser of the harvest plans for any operations to be conducted on the Fee Property, which approval shall not be unreasonably withheld.

(e) The Purchase Price for the Fee Property shall be adjusted to reflect acts of God such as natural disaster or fire. Seller shall provide Purchaser and an Appraiser evidence that is reasonably available of the stumpage affected by such events. The Appraiser shall determine the stumpage value of the timber so affected and the Purchaser Price shall be adjusted accordingly.

11. **Risk of Loss.** All risk of loss shall remain with Seller until title passes to Purchaser at closing. In the event the Property is destroyed or damaged after Purchaser has exercised the Option and prior to close of escrow, Purchaser may rescind this Agreement.

12. **Condemnation.** In the event of the taking of all or any part of the Property by eminent domain proceedings, or the commencement of such proceedings prior to closing, Purchaser shall have the right, at its election to terminate this Agreement by written notice to Seller. If Purchaser does not so terminate this Agreement, then Purchaser may, at its election, either (a) proceed to close with the Purchase Price reduced by the total of any awards or other proceeds received or to be received by Seller as a result of such proceeds, or (b) proceed to close with an assignment by Seller of all Seller's right, title and interest in and to any and all such awards and proceeds. Seller shall notify Purchaser in writing of any eminent domain proceedings affecting the Property within five (5) business days after Seller learns of such proceedings.

13. **Closing Costs.**

(a) Seller shall pay the following costs and expenses in connection with this transaction:

- i. Seller's attorney fees, if any;
- ii. All accrued real property taxes constituting a lien prorated to date of closing,
- iii. All special assessment installments and local improvement district assessment installments against the Property that are due and accrue prior to date of closing;
- iv. One-half of escrow fees;
- v. One-half of real estate transfer tax.

(b) Purchaser shall pay the following costs and expenses in connection with this transaction:

- i. One-half of escrow fees;

- ii. Compensating or roll-back taxes which may be due as the result of removing the Property from tree growth tax designation;
- iii. One half of real estate transfer tax;
- iv. Purchaser's attorney fees, if any;
- v. Recording fee for each of the conveyancing documents; and
- vi. Title insurance premium, if any.

14. **Commission.** Each party warrants and represents to the other that no real estate brokerage commission is or will be payable by such party as a result of the transaction herein provided for, or, if any such commission is payable, the warranting party shall pay the same and hereby indemnifies such other party of, from, and against any and all claims for any real estate brokerage commission that may arise as a result of any acts of the warranting party.

15. **Conveyance.** Seller agrees, upon receiving full payment of the Fee Property Purchase Price (or, if the Fee Property is to be conveyed in phases, upon receiving full payment of the Purchase Price designated for a particular portion of the Fee Property), to execute and deliver to Purchaser a Quitclaim Deed With Covenant to the Fee Property (or applicable portion thereof) in the form attached hereto as Exhibit "D" and incorporated herein by this reference. Further, Seller agrees, upon receiving full payment of the Conservation Easement Purchase Price (or, if the Conservation Easements are to be conveyed in phases, upon receiving full payment of the Purchase Price designated for a Conservation Easement over a particular portion of the Conservation Property), to execute and deliver to such third party as shall be designated by the Purchaser the applicable Conservation Easements as are described in the attached Exhibits "B" or "C."

16. **Possession.** Unless a different date is provided for herein, the Purchaser, subject to the easements, encumbrances, exceptions, restrictions, and reservations set forth above, shall be entitled to possession of the Property on the date of closing.

17. **Default.** If either party defaults in its contractual performance herein, the non-defaulting party shall be entitled to exercise all rights and remedies available to it at law or equity, including but not limited to specific performance pursuant to the terms of this Agreement, damages or rescission.

18. **Attorney's Fees.** If either party hereto retains an attorney to bring suit or seek arbitration to enforce any provision of this Agreement, each party shall bear their own costs and expenses associated therewith, regardless of which of the parties prevails in any such suit or dispute.

19. **Applicable Law.** This Agreement shall be interpreted, construed and enforced according to the laws of the State of Maine.

20. **Notices.** Any notices required or permitted by law or under this Agreement shall be in writing and shall be delivered or sent by facsimile transmission, personally by hand, courier service or Express Mail, or by first class mail, postage prepaid, at the address set forth below. Either party may change such address for notice. All notices which are so addressed and paid for shall be deemed given when personally delivered, or, if mailed, when deposited in the mail, or if transmitted by facsimile, shall be deemed given when transmitted when confirmation is received. The addresses are as follows:

If to Seller: Plum Creek Maine Timberlands, L.L.C.  
999 Third Avenue, Suite 2300  
Seattle, WA 98104

Attn: William R. Brown, Executive Vice  
President and CFO  
Facsimile Number: 206-467-3790

with a copy to:

Plum Creek Timberlands, L.P.  
999 Third Avenue, Suite 2300  
Seattle, WA 98104  
Attn: Sheri L. Ward, Director Corporate and  
Real Estate Transactions  
Facsimile Number: 206-467-3799

If to Purchaser:

Plum Creek Land Company  
999 Third Avenue, Suite 2300  
Seattle, WA 98104  
Attn: Michael Yeager  
Facsimile Number: 206-467-3794

21. **Time of Performance.** Time is of the essence of this Agreement and of all acts required to be done and performed by the parties hereto, including, but not limited to, the proper tender of each of the sums required by the terms hereof to be paid.

22. **Paragraph Headings.** The word or words appearing at the commencement of paragraphs and subparagraphs of this Agreement are included only as a guide to the contents thereof and are not to be considered as controlling, enlarging or restricting the language or meaning of those paragraphs or subparagraphs.

23. **Invalidity.** In the event any portion of this Agreement should be held to be invalid by any court of competent jurisdiction, such holding shall not affect the remaining provisions hereof unless the court's ruling includes a determination that the principal purpose and intent of this Agreement are thereby defeated.

24. **Legal Relationships.** The parties to this Agreement execute the same solely as a seller and a purchaser. No partnership, joint venture or joint undertaking shall be construed from these presents, and except as herein specifically provided, neither party shall have the right to make any representation for, act on behalf of, or be liable for the debts of the other. All terms, covenants and conditions to be observed and performed by either of the parties hereto shall be joint and several if entered into by more than one person on behalf of such party, and a default by any one or more of such persons shall be deemed a default on the part of the party with whom said person or persons are identified. No third party is intended to be benefited by this Agreement.

25. **Assignment; Successors.** Purchaser may not assign its interest in this Agreement without the prior written consent of Seller. Subject to the restrictions contained herein, the rights and obligations of the Seller and Purchaser shall be binding upon their respective successors, successors-in-trust and assigns.

26. **Entire Agreement; Modification.** All understandings and agreements previously existing between the parties, if any, are merged into this Agreement, which alone fully and completely expresses their agreement, and the same is entered into after full investigation, neither party relying upon any statement or representation made by the other not embodied herein. This Agreement may be modified only by a written amendment executed by both parties.

27. **Interpretation.** This Agreement has been reviewed by both parties. No stricter construction or interpretation of the terms hereof shall be applied against either party as the drafter hereof.

28. **Counterparts.** This Agreement may be executed in counterparts, each of which when executed shall constitute a fully executed Agreement.

29. **Facsimile Delivery.** Delivery of an executed counterpart original of this Agreement by transmission to the facsimile machines for the other party identified shall be sufficient delivery hereunder. After such delivery the executing party shall send the executed counterpart original by U.S. Postal Service or overnight courier to the other party.

30. **Memorandum of Option.** The parties may cause a Memorandum of Option to be duly recorded in each county in which the Property is located.

IN WITNESS WHEREOF, the parties have signed this Agreement as of the date and year first hereinabove written.

SELLER:

PLUM CREEK MAINE TIMBERLANDS, L.L.C.  
by Plum Creek Timberlands, L.P.  
its Sole Member

Attest:

By: \_\_\_\_\_  
Name: \_\_\_\_\_  
Title: \_\_\_\_\_

\_\_\_\_\_  
Sheri L. Ward, Assistant Secretary

PURCHASER:

PLUM CREEK LAND COMPANY

By: \_\_\_\_\_  
Name: \_\_\_\_\_  
Title: \_\_\_\_\_

## **3B AMENDMENT TO OPTION AGREEMENT**

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This AMENDMENT TO OPTION AGREEMENT (the "Amendment") is made and entered into as of the \_\_\_\_ day of January, 2002, by and between PLUM CREEK MAINE TIMBERLANDS, L.L.C., a Delaware limited liability company, formerly known as SDW Timber II, L.L.C., whose address is 999 Third Avenue, Suite 2300, Seattle, Washington 98104 (the "Seller,"), and PLUM CREEK LAND COMPANY, a Delaware corporation whose address is 999 Third Avenue, Suite 2300, Seattle, Washington 98104 (the "Purchaser").

WHEREAS, Seller and Purchaser entered into a certain Option Agreement (the "Agreement") dated July 30, 2001, with respect to certain real property located in Frenchtown Township, Piscataquis County and State of Maine, as more particularly described in "Exhibit A" to the Agreement (the "Property"), by which Purchaser acquired an option to purchase a portion of the Property in fee and the right to require Seller to grant conservation easements over other portions of the Property; and

WHEREAS, Seller and Purchaser desire to amend the Agreement to comply with requirements of the Maine Land Use Regulation Commission in connection with that certain Application to the Maine Land Use Regulation Commission for a Concept Plan for First Roach Pond, submitted by Purchaser to said Commission on or about August 2001, as subsequently amended and revised (the "Concept Plan"), which Concept Plan affects the Property.

NOW THEREFORE, for good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, Seller and Purchaser agree as follows:

1. Recital A of the Agreement is hereby amended to read as follows:

Seller is the owner of certain real property located in Frenchtown Township, Piscataquis County, Maine, located approximately as shown on the map attached hereto as Exhibit "A" and incorporated herein by this reference as though fully set forth (the "Property"). The Property is delineated on Exhibit A as all property described as "Proposed Shore Lots", "Proposed Back Lots", "Deed Restriction", "Conservation Easement", and "Conservation Covenant".

2. Recital B of the Agreement is hereby amended to read as follows:

Purchaser is desirous of acquiring an option to purchase a portion of the Property in fee and easements over portions of the Property as hereinafter described, and Seller is desirous of granting such an option.

3. Section 1(a) of the Agreement is hereby amended to read as follows:

That portion of the Property identified on Exhibit "A" as "Proposed Shore Lots", "Proposed Back Lots", and "Deed Restriction" (hereinafter collectively referred to as the "Fee Property") to be acquired in fee by the Purchaser. The Fee Property contains approximately 435 acres.

4. Section 1(b) of the Agreement is hereby amended to read as follows:

Easements (in the form of conservation easements and/or conservation covenants/negative easements, and hereinafter referred to collectively as the "Easements") as described in Paragraph 7, forms of which are attached hereto as Exhibits "B" and "C", on that portion of the Property identified on Exhibit "A" as "Conservation Easement" and "Conservation Covenant" (hereinafter collectively referred to as the "Conservation Property"). The Conservation Property contains approximately 1019 acres. The option to purchase the Easements on the Conservation Property shall be exercised by Purchaser directing Seller to convey the Easements directly to a designated third party, or to Purchaser, in such phases as the Purchaser shall direct.

5. The terms "Conservation Easements", "Conservation Easement" and "Conservation Easement Purchase Price" are hereby changed to "Easements", "Easement" and "Easement Purchase Price", respectively, in Sections 3(b), 3(c), 6(a), and 15 of the Agreement.

6. Section 3(a) of the Agreement is hereby amended to read as follows:

The purchase price for the Fee Property and the Easements shall be the value as determined by the appraisal prepared by Dick Martin, MSF, CF, RPRA dated March 8, 2001, or by a mutually agreed upon amendment, supplement or replacement to or of said appraisal (the "Fee Property Purchase Price" and the "Easement Purchase Price"). The Fee Property Purchase Price shall be reduced by the stumpage value of timber harvested, if any, between the date of the appraisal and the date of closing as to each phase.

7. Section 7 of the Agreement is hereby amended to read as follows:

**Easements.** At Closing or at such subsequent time as the Purchaser shall designate, the Easements shall be conveyed to a third party designated by Purchaser, or to Purchaser, in accordance with the terms of Paragraph 1(b) above in the forms attached hereto as Exhibit "B" (Conservation Easement) or Exhibit "C" (Conservation Covenant/Negative Easement).

8. Seller hereby appoints Purchaser as its duly authorized representative and agent for purposes of the proposed rezoning of the Property (or any portions thereof), and other areas, as contemplated pursuant to the Concept Plan, and Seller hereby waives any objections to such rezoning of the Property or portion thereof.

9. Exhibits A, B and C to the Agreement are replaced with Exhibits A, B and C, respectively, attached to this Amendment. All references in the Agreement to Exhibit A, B or C, as the case may be, shall be construed so as to refer to the corresponding exhibit attached to this Amendment.

10. Except as set forth in this Amendment, all provisions of the Agreement shall remain unchanged and in full force and effect, and the parties hereby ratify and confirm all of the terms of the Agreement, as hereby amended.

IN WITNESS WHEREOF, the parties have signed this Agreement as of the date and year first hereinabove written.

SELLER:

PLUM CREEK MAINE TIMBERLANDS, L.L.C.  
by Plum Creek Timberlands, L.P.  
its Sole Member

Attest:

By: \_\_\_\_\_  
Name: \_\_\_\_\_  
Title: \_\_\_\_\_

\_\_\_\_\_  
Sheri L. Ward, Assistant Secretary

PURCHASER:

PLUM CREEK LAND COMPANY

By: \_\_\_\_\_  
Name: \_\_\_\_\_  
Title: \_\_\_\_\_

### ***Exhibit A***

Please refer to Map 11 in Part IV of this Concept Plan for First Roach Pond document.

### ***Exhibit B***

See Conservation Easement language (p. 60 of the Appendix).

### ***Exhibit C***

See Conservation Covenants/Negative Easement language (p. 52 of the Appendix).

## 4. DEED FROM PLUM CREEK TO THE HOMEOWNERS ASSOCIATION

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### QUITCLAIM DEED WITH COVENANT

(Maine Statutory Short Form)

KNOW ALL BY THESE PRESENTS, that **PLUM CREEK LAND COMPANY**, a corporation organized and existing under the laws of the State of Delaware and having an address of 999 Third Avenue, Suite 2300, Seattle, Washington 98104, for consideration paid, GRANTS to \_\_\_\_\_, whose mailing address is \_\_\_\_\_, \_\_\_\_\_ ("Grantee"), with QUITCLAIM COVENANTS, all that certain real estate located in Frenchtown Township, County of Piscataquis and State of Maine, which is more particularly described in Exhibit A attached hereto and made a part hereof (the "Premises").

BEING a portion of the premises conveyed to Plum Creek Land Company from Plum Creek Maine Timberlands, L.L.C. by deed dated \_\_\_\_\_, 2002, recorded in the Piscataquis County Registry of Deeds in Book \_\_\_\_\_, Page \_\_\_\_\_.

TOGETHER WITH the rights, appurtenances and privileges contained in that certain instrument entitled "Declaration of Conservation Covenants and Deed of Negative Easement" from Plum Creek Maine Timberlands, L.L.C. to Plum Creek Land Company dated \_\_\_\_\_, 2002, and recorded in the Piscataquis County Registry of Deeds in Book \_\_\_\_\_, Page \_\_\_\_\_, as the same may be supplemented and amended from time to time.

ALSO TOGETHER WITH the easements and rights of way for access and utilities more particularly described in Exhibit B attached hereto and made a part hereof.

SUBJECT TO the covenants, restrictions and conditions contained in that certain General Declaration of Covenants and Restrictions of the First Roach Pond \_\_\_\_\_ Homeowners Association, dated \_\_\_\_\_, 2002 and recorded in Book \_\_\_\_\_, Page \_\_\_\_\_ of the Piscataquis County Registry of Deeds, as the same may be amended from time to time.

FURTHER SUBJECT TO the standards and regulations contained in the Concept Plan for First Roach Pond, as approved by the Land Use Regulation Commission on January 9, 2002, as the same may be amended from time to time (the "Concept Plan").

FURTHER SUBJECT TO the following covenants and restrictions:

1. Single Family. The Premises may only be used for single family residential housing, or for single family seasonal camping. Only one single family dwelling shall be permitted on the Premises.

2. Commercial Use. No commercial or business use, whether for profit or non-profit, may be made of the Premises or any structures thereon, except that rental of the

Premises is allowed for single family housing or for single family seasonal camping. No home occupations that display goods or generate traffic shall be permitted on the Premises.

3. Signs. No signs or advertisements, other than "for sale" signs and signs identifying the cabin or residence may be erected or permitted on the Premises. No sign permitted hereunder, whether on buildings or posts, or nailed to trees, may exceed 12" X 24" if such sign is visible from First Roach Pond or from any road used in common with other lots in this subdivision. All signs permitted hereunder must comply with the sign standards as set forth in the Concept Plan.

4. Limited Right of Way. Use of the rights-of-way and easements granted herein, or applicable to this subdivision is for the sole and express purpose of ingress and egress by Grantee, its successors, heirs and assigns, and their guests and invitees.

5. Weather Tight Buildings. All buildings on the Premises must be maintained in a weather tight condition.

6. Building Permits. No building or other such construction may be undertaken on the Premises without first obtaining an approved Building Permit from the Maine Land Use Regulation Commission, in accordance with 12 M.R.S.A. §§ 681 through 689, as the same may be amended from time to time.

7. Set Backs. All structures must be set back a minimum of 100 feet from the normal high water mark of all water bodies, a minimum of 50 feet from all access roads and rights-of-way, and a minimum of 20 feet from all other property boundary lines, and as further restricted under the Concept Plan. No utility lines are allowed within the 100-foot normal high water mark set back area.

8. Temporary Structures. No structure of a temporary character, including, without limitation, a trailer, shack, single or double wide mobile home, lean-to, garage, bunkhouse or other outbuilding may be used at any time as a residence or other habitation.

9. Siding and Roofing Materials. All new or replacement exterior roofing materials shall be of non-combustible material and shall be a dark, natural-looking color; black, brown, and charcoal gray are preferred. All exterior materials, including window frames, trim, chimneys, and screen doors, shall be unobtrusive in color and texture and shall not be reflective. Natural, earth tones are preferred.

10. Exterior Lighting. Exterior lights facing the shore are not allowed. Other exterior lights shall be equipped with full cut-off features and shall be shaded to prevent glare beyond the Premises. Spotlights are prohibited.

11. Nuisances. No noxious or offensive activities or nuisances shall be permitted or carried on upon the Premises. "Noxious or offensive activities" shall include any activity or behavior which is inconsistent with both the reasonable pleasurable use of the adjacent property by neighboring lot owners and their guests and their reasonable expectations of quiet enjoyment of their property, free from excessively noisy behavior, significantly loud electronic music or other audio distractions, or other similar behavior or activity.

12. Property Maintenance. The Premises and all buildings and improvements thereon shall be kept and maintained by the Grantee, its successors, heirs and assigns, in a neat, clean, safe, attractive, and sightly condition and in good repair. No portion of the Premises shall be used or maintained as a dumping site for rubbish or other refuse. Trash, garbage and other waste shall be kept in proper, sanitary containers. All trash, garbage and other waste shall be removed regularly in a timely manner and shall be transported off-site to the Lily Bay/Frenchtown solid waste transfer station, or otherwise disposed of off-site in accordance with applicable laws and regulations.

13. Sewage Disposal and Water Supply Systems. No sewage disposal system (including, without limitation, septic tanks) or water supply system (including, without limitation, wells) may serve, or be shared by, any property other than the Premises. Any sewage disposal system and/or water supply system installed and/or maintained on the Premises must comply with applicable laws and regulations.

14. Maximum Height. No structure may exceed in height the greater of (i) 25 feet above ground level; or (ii) the height of any screening vegetation.

15. Chimneys. All new or replacement chimneys must be of brick or tile construction or stove pipe, and shall be installed and maintained under the applicable building and fire codes.

16. Clearing. Clearing of vegetation for paved and graveled driveways, parking areas and structures and the creation of impervious surfaces shall be limited so as to minimize phosphorus export. For areas located between 100 feet and 250 feet from the normal high water mark of First Roach Pond, the extent of impervious surface shall be no more than 10,000 square feet. Additionally, not more than 20% of the Premises may be cleared in any ten (10) year period. Clearing on the Premises shall meet or exceed the standards for clearing as set forth in the Concept Plan.

17. Property Lines. All property lines shall be kept free and open and no fences, hedges, or walls shall be permitted thereon, and no fences, hedges, or wall shall be permitted in the 20-foot property line setback area.

18. Accessory Outbuildings. The total, aggregate footprint of all accessory buildings may not exceed 600 square feet and no accessory building may exceed 15 feet in height. The footprint of an accessory building shall be determined by calculating the square footage of the area contained within the external dimensions of such building.

19. Walking Trails. Walking trails may be created on the Premises, provided that any such trails located within the 100-foot shore buffer area do not exceed 3 feet in width, and further provided that the topsoil is not disturbed in creating such trails, and no part of the trail has a sustained grade of over 10%. All walking trails permitted hereunder must also comply with the clearing standards as set forth in the Concept Plan.

20. Docks. No permanent docks may be built on the Premises; provided, however, that temporary seasonal docks shall be permitted in accordance with applicable state and local laws, rules and regulations.

21. Reconfiguration; Subdivision. The boundaries of the Premises shall not be further reconfigured without the written approval of the Maine Land Use Regulation Commission in accordance with 12 M.R.S.A. § 681, et seq., and applicable requirements of the Maine Land Use Regulation Commission, including those regulations set forth in the Concept Plan. Further subdivision or division of the Premises is prohibited.

NOTE: Clearing standards set forth herein and in the Concept Plan are cumulative, and may include clearing already undertaken on the Premises.

IN WITNESS WHEREOF, PLUM CREEK LAND COMPANY has caused this instrument to be executed on its behalf by its duly authorized undersigned representative, this \_\_\_ day of \_\_\_\_\_, 20\_\_.

SIGNED, SEALED AND DELIVERED  
IN THE PRESENCE OF:

PLUM CREEK LAND COMPANY

\_\_\_\_\_  
Witness

By: \_\_\_\_\_  
Printed Name:  
Its:

STATE OF \_\_\_\_\_  
County of \_\_\_\_\_, SS. \_\_\_\_\_, 20\_\_

Then personally appeared the above-named \_\_\_\_\_,  
\_\_\_\_\_ of Plum Creek Land Company and acknowledged the  
foregoing instrument to be his/her free act and deed in his/her said capacity, and  
the free act and deed of said Plum Creek Land Company.

Before me,

\_\_\_\_\_  
Notary Public/Maine Attorney-at-Law  
Printed Name: \_\_\_\_\_

## ***EXHIBIT A***

### PROPERTY DESCRIPTION

All that lot or parcel of land located in Frenchtown Township, Piscataquis County, State of Maine, being more particularly described as follows:

Lot #\_\_\_\_, as shown on that certain plan entitled " \_\_\_\_\_ Subdivision Within the First Roach Pond Resource Plan Area, Frenchtown Township, Piscataquis Co., ME.", prepared by Kent Associates and Deluca-Hoffman Associates, Inc., with assistance from S.W. Cole Engineering, Inc. and Pickett Land Survey, Inc., dated \_\_\_\_\_, 2001, as revised, and recorded in the Piscataquis County Registry of Deeds in Book \_\_\_\_\_, Page \_\_\_\_\_, being bounded and described as follows:

***[INSERT METES AND BOUNDS DESCRIPTION]***

Lot #\_\_\_\_ is part of a subdivision approved pursuant to the Maine Land Use Regulation Commission Subdivision Permit SP 3272 which is recorded in the Piscataquis County Registry of Deeds. Use of this lot is subject to applicable conditions of that Subdivision Permit approval and of the *Concept Plan for First Roach Pond* referred to therein.

## ***EXHIBIT B***

### ***Access and Utility Easements and Rights of Way***

## **5. DECLARATION OF CONSERVATION COVENANTS AND DEED OF NEGATIVE EASEMENT**

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THIS DECLARATION OF CONSERVATION COVENANTS AND DEED OF NEGATIVE EASEMENT (the "Easement"), is made by and between **PLUM CREEK MAINE TIMBERLANDS, L.L.C.**, a limited liability company organized and existing under the laws of the State of Delaware, formerly known as SDW TIMBER II, L.L.C., and having a mailing address of 999 Third Avenue, Suite 2300, Seattle, WA 98104 ("Grantor"), and **PLUM CREEK LAND COMPANY**, a corporation organized and existing under the laws of the State of Delaware, the mailing address of which is 999 Third Avenue, Suite 2300, Seattle, WA 98104 ("Grantee").

### **PURPOSE**

The purpose of this Easement is to preserve and maintain the Protected Property forever in its present primarily undeveloped condition, to provide for protection of its natural values and continued public access for recreational purposes, reserving forestry uses and the right to conduct forest management activities to the Grantor as herein set forth, and to prevent further development of the Protected Property, all subject to the terms and conditions hereinafter described, and the terms and conditions of the Concept Plan. It is the intent of this Easement that, subject to the reserved right of the Grantor to engage in forest management activities in accordance with the terms of this Easement, the Protected Property will be forever preserved and protected in its undeveloped, scenic and natural condition, and that it be available, to the extent that Grantor wishes to manage for this purpose, for legally permitted forest management activities. It is also the intent of this Easement that the Protected Property be available for traditional recreational activities by the general public.

WHEREAS, Grantor has agreed to place the Protected Property (defined below) (including any additional land added to the Protected Property by amendment hereto) in permanent protection as a condition to approval by the Maine Land Use Regulation Commission ("LURC") of a certain Lake Concept Plan approved by LURC on January 9, 2002, (the "Lake Concept Plan," incorporated herein by reference) and related subdivisions; and

WHEREAS, the Protected Property consists of Four Hundred Ninety-Four (494) acres of land and approximately Thirteen Thousand Six Hundred Ten (13,610) linear feet of shoreline that remains in a substantially undeveloped wooded natural state; and

WHEREAS, the Protected Property is in close proximity to the Moosehead Lake region, an area of unique public interest; and

WHEREAS, certain portions of the Protected Property represent significant shoreland having natural, wildlife, open space and aesthetic values in its present state, all of great importance to the People of the State of Maine; and

WHEREAS, this Easement makes the Protected Property available to the public for traditional recreational activities consistent with the terms hereof, while allowing Grantor to continue its forest management activities on the Protected Property.

NOW THEREFORE, Grantor, for consideration paid, hereby grants and conveys to Grantee, with QUITCLAIM COVENANTS a NEGATIVE EASEMENT over and upon all that real estate located in Frenchtown Township, County of Piscataquis and State of Maine, which is more particularly described in Exhibit A attached hereto and made a part hereof (the "Protected Property"), such Easement consisting of the following CONSERVATION COVENANTS which shall run with and bind the Protected Property in perpetuity, and shall benefit and be appurtenant to other land conveyed by the Grantor herein to Grantee by deed dated January \_\_\_\_, 2002 and recorded in the Piscataquis County Registry of Deeds in Book \_\_\_\_\_, Page \_\_\_\_\_ (the "Dominant Estate"), and also for the benefit of the public and the State of Maine (Grantee, its successors and assigns, any association(s) of owners of portions of the Dominant Estate, the public and the State of Maine are collectively referred to herein as "Benefited Parties" and individually as a "Benefited Party"):

**1. SUBDIVISION AND LAND USE:** The Protected Property may not be divided, subdivided, partitioned or otherwise separated into parcels or lots provided, however, that the entire Protected Property may be conveyed subject to the restrictions and easement herein contained; and further provided that any sale or other conveyance of non-shoreland portion or portions of the Protected Property to abutting landowners shall not be a violation of this prohibition against division, subdivision, partition or other separation; provided, however, that (i) all such sales or other conveyances are for the sole purpose of bringing the applicable abutting lot into compliance with applicable LURC standards regarding sewage disposal; (ii) no buildings or structures may be constructed on any land so conveyed; (iii) no such conveyance may cause any resulting lot to exceed 40,000 square feet; (iv) the aggregate land area of all such sales and/or conveyances shall not exceed 15 acres; (v) Grantor shall provide notice to LURC no less than thirty (30) days prior to any such sale or conveyance; (vi) any portion or portions of such land so sold or conveyed shall be adjacent to the backland boundary (i.e. the boundary opposite the shoreline) of the applicable lot; and (vii) this Easement shall cease to apply to any such land so sold or conveyed. Furthermore, no portion of the Protected Property may be used to permit increased density of development, under applicable zoning or other regulation, on land not subject to this Easement.

All forms of structural development, including without limitation commercial, residential, industrial, energy generation, quarrying, mining, landfill, and waste disposal activities, are prohibited on the Protected Property, except as permitted below.

Grantor, for itself, its successors and assigns, and all agents, contractors and authorized third parties, reserves all rights accruing from ownership of the Protected Property except as prohibited or restricted herein, including, without limitation, the affirmative right to conduct forest management activities on the Protected Property and to undertake and maintain uses that are allowed under the terms of this Easement, all in accordance with the terms of this Easement and all applicable legal requirements. The Grantor's reserved rights shall include the right to place on the Protected Property temporary structures, logging and chipping equipment, vehicles and other forestry equipment, as any of such uses or structures are reasonably required to conduct forest management activities permitted hereunder. Also expressly reserved is the right to use all existing roads on the Protected Property (as shown on Exhibit B) for access by vehicle

and for utilities serving the Protected Property and other lands of the Grantor, and to grant others similar rights of access in such roads.

**2. STRUCTURES:** As of the date of this grant, there are no structures on the Protected Property except for boundary markers, trails, land management roads and related improvements, and public roads, all as depicted on Exhibit B. Except as otherwise permitted herein, no additional structures, temporary or permanent, are allowed on the Protected Property, except that Grantor reserves the right to locate, use, remove from or maintain on the Protected Property the following: 1) fences and boundary markers; 2) benches, walkways, nature observation blinds, public boat launches, and small, unlighted, interpretive and directional signs, provided that these structures are constructed of materials that blend in with the natural surroundings; and 3) rustic campsites and temporary tents for non-commercial camping.

**3. SURFACE ALTERATIONS:** As of the date of this grant, there are no surface alterations except land management roads and other structures described in Section 2 above located as depicted on Exhibit B. No filling, drilling, excavation or alteration of the surface of the earth, no removal of soil or minerals, and no changes in the topography, surface or subsurface waters are allowed on the Protected Property, except that Grantor reserves the right to: 1) establish and maintain public footpaths in a manner and location that minimizes disturbance to wetlands and siltation of adjacent water bodies; 2) undertake forest management activities as authorized in this Easement; 3) excavate small, select portions of the Protected Property for ecological studies or archeological purposes, subject to the prior written approval of LURC, which may be granted only if such activities will be conducted according to generally accepted professional practices and standards and in a manner consistent with the conservation purposes of this grant; and 4) maintain existing roads and structures and to improve the same in compliance with applicable regulations. Without limitation of the other restrictions and prohibitions herein, no new roads may be constructed or installed within the Protected Property, except with LURC's prior written approval; provided, however, that LURC's prior written approval shall not be required to construct, maintain and/or repair those new roads authorized by the LURC pursuant to its approval of the Lake Concept Plan and related subdivision applications. The prohibition on new roads in this paragraph includes without limitation land management roads, but does not include winter haul roads, or skid roads or trails used for forwarding logs to roads or landings located outside the Protected Property or to existing roads shown on Exhibit B.

**4. FOREST MANAGEMENT ACTIVITIES:** No standing timber may be cut or removed from the Protected Property except as is necessary to (i) the accomplishment of the conservation, habitat management, or non-commercial outdoor recreational uses of the Protected Property or (ii) Grantor's conduct of forest management activities in accordance with the terms of this Easement, all applicable legal requirements and the Lake Concept Plan. In the event of any conflict between applicable legal requirements, the Lake Concept Plan during the term thereof, and the terms of this Easement, the most restrictive standard shall apply.

**5. ECOLOGICAL AND WATER QUALITY PROTECTION:** In order to assure the preservation of the high quality natural, scenic, open space and ecological character of the Protected Property, the following specific restrictions, subject to any more restrictive local, state, and federal laws and regulations, are imposed on the Protected Property:

A. Discharges of treated or untreated wastewater into surface waters on or about the Protected Property is prohibited.

B. It is forbidden to dispose of or store rubbish, garbage, debris, abandoned vehicles or equipment, parts thereof, or other unsightly, offensive, hazardous or toxic waste material on the Protected Property, except that organic compost, blowdowns, and organic and routine by-products of on-site forest management activities may be used or disposed of on the Protected Property in a manner consistent with the conservation purposes of this Easement, and other waste generated by allowed uses on the Protected Property may be stored temporarily in appropriate containment for removal at reasonable intervals, all subject to all applicable legal requirements. Recreational users of the Protected Property will be instructed to carry out their trash as part of any rules published by Grantor.

C. The use of herbicides, insecticides, fungicides, fertilizers or other potentially harmful substances must be controlled and used only for permitted uses herein, including forest management activities, provided that all such uses shall comply with applicable legal requirements.

**6. PUBLIC RECREATIONAL EASEMENT:** The public shall have the right to enter upon the Protected Property for all traditional recreational activities, subject to the reserved right of Grantor (upon reasonable opportunity to comment by LURC, except in the case of an emergency) to establish reasonable rules, regulations and restrictions on public use for the safety of the public, and the conservation and protection of the Protected Property and reserved uses of the Grantor hereunder. Subject to the above, Grantor agrees to take no action to prohibit or discourage traditional recreational activities by the public on the Protected Property. Subject as aforesaid, Grantor's reserved right to make reasonable rules and regulations shall include the right, without limitation, to control, limit or prohibit, at any specified locations within the Protected Property, by posting and other reasonable means, any of the following: night use, camping, loud activities, open fires, use of motor vehicles other than on public roads, access by domesticated animals or pets or bicycles, if Grantor reasonably determines that any such activities interfere with the purposes of this Easement or the reserved uses of the Protected Property by Grantor.

Grantor, all Benefited Parties, and LURC claim all of the rights and immunities against liability to the fullest extent of the law under Title 14 M.R.S.A., Section 159-A, et seq. as amended and any successor provisions thereof, (Maine Recreational Use Statute), and Title 14 M.R.S.A. Section 8101, et seq. as amended and any successor provisions thereof, (the Maine Tort Claims Act), and under any other applicable provision of law.

## **7. DEFINITIONS**

**Normal High Watermark:** The term "normal high watermark" means that line which is evident from visible markings, changes in the character of soils due to the prolonged action of the water or changes in vegetation, and which distinguishes between predominantly aquatic and predominantly terrestrial land. In places where the shore or bank is of such character that the high watermark cannot be easily determined (rockslides, ledges, rapidly eroding or slumping banks), the normal high watermark will be estimated from places where it can be determined by the above method. Setbacks from the normal high watermark will be determined by horizontal measurement to the nearest point of the structure or activity.

**Traditional Recreational Activities:** The term “traditional recreational activities” means non-motorized public recreational activities, including fishing, hiking, hunting, wildlife study and photography, picnicking, trapping, horseback riding, tent and shelter camping except in areas prohibited by Grantor, canoe portaging, cross country skiing, snowshoeing, wild crop harvesting and other, similar public uses that are non-intensive, non-structural, non-destructive and non-motorized; provided, however, that snowmobiles and ATVs on trails designated for this purpose shall be permitted in connection with such uses, except in areas prohibited by Grantor.

**Forest Management Activities:** The term “forest management activities” means timber cruising and other forest resource evaluation activities, pesticide and fertilizer application, timber stand improvement, pruning, timber harvesting and other forest harvesting, regeneration of forest stands, and other similar or associated activities, but not the construction or creation of land management roads nor the application or storage of septage, sludge or other residuals. Forest management activities permitted hereunder shall be subject to the restrictions on such activities set forth in the Lake Concept Plan, as the same may be amended from time to time.

**Timber Harvesting:** The term "timber harvesting" means the cutting and removal of trees from their growing site, and the attendant operation of mobile skid trails, skid roads, and winter haul roads, but not the construction or creation of land management roads.

**8. NOTICES:** Any notices or requests for the consent of LURC, required or contemplated hereunder, must include, at a minimum, sufficient information to enable LURC to determine whether proposed plans are consistent with the terms of this Easement and the conversation purposes hereof. Notices to any party must be in writing and will be sufficient if served personally or sent by certified mail, return receipt requested, addressed as follows:

|            |  |
|------------|--|
| To Grantor | President<br>Plum Creek Maine Timberlands, L.L.C.<br>999 Third Avenue<br>Suite 2300<br>Seattle, WA 98104 |
|------------|--|

|          |  |
|----------|--|
| To LURC: | Director<br>Maine Land Use Regulation Commission<br>State House Station #22<br>Augusta, ME 04333 |
|----------|--|

or to such other authorized person as any party may from time to time designate by written notice to the others, subject to the irrevocable appointment of the Maine Land Use Regulation Commission as Benefited Parties' agent, pursuant to Section 12, below.

**9. COSTS AND TAXES, RESPONSIBILITY:** Grantor is responsible to pay and discharge when due all property taxes and assessments lawfully imposed and to avoid the imposition of any liens that may affect the rights hereunder of Grantee, any Benefited Party, or LURC.

Grantor acknowledges that neither Grantee, LURC nor any Benefited Party has any possessory rights in the Protected Property, nor any responsibility or right to control, maintain, or keep up

the Protected Property. Grantor is responsible for all costs and responsibility of ownership, control, operation, maintenance, and upkeep of the Protected Property, and will hold harmless the Grantee, LURC and all Benefited Parties from any claims for damages which arise therefrom, except for harm proximately caused by their negligent act or misconduct, or as may arise out of their workers' compensation obligations.

#### **10. BENEFITED PARTIES' AFFIRMATIVE RIGHTS:**

A. All Benefited Parties, jointly and severally, and LURC have the right to enforce this Easement by proceedings at law and in equity, including the right to prevent any activity on or use of the Protected Property that is inconsistent with the purpose of this Easement, and to require the restoration of any area or feature damaged by such inconsistent activity to a condition in compliance herewith. Any Benefited Party(ies) (or LURC) exercising such rights shall provide Grantor with thirty (30) days prior notice of and reasonable opportunity to cure any breach, except where emergency circumstances require enforcement action without such delay. Neither LURC nor any Benefited Party may bring an enforcement action against Grantor for injury to or change in the Protected Property resulting from changes beyond the control or responsibility of Grantor, such as fire, flood, storm, and earth movement, or from any prudent action taken by Grantor under emergency conditions to prevent, abate, or mitigate significant injury to the Protected Property resulting from such causes. If, pursuant to an action brought and maintained by LURC, a Court (or other decision maker chosen by mutual consent of the parties) determines that this Easement has been breached, Grantor will reimburse LURC for any reasonable costs of enforcement, including court costs, reasonable attorney's fees, out-of-pocket costs and any other payments ordered by the Court or decision maker. No other party is entitled to such costs of enforcement. No party is entitled to punitive, consequential or incidental damages.

B. All Benefited Parties, jointly and severally, have the right to enter the Protected Property for inspection and enforcement purposes, at a reasonable time and in a reasonable manner that is consistent with the conservation purposes hereof and Grantor's reserved rights, and subject to any rules and regulations affecting the Protected Property established by Grantor. LURC has the right to enter the Protected Property for inspection and enforcement purposes, at a reasonable time and in a reasonable manner that is consistent with the conservation purposes hereof and Grantor's reserved rights.

#### **11. GENERAL PROVISIONS**

A. Enforcement of the terms of this Easement shall be at the sole discretion of the Benefited Parties and LURC. The failure or delay of LURC or of any Benefited Party, for any reason whatsoever, to enforce this Easement shall not constitute a waiver of its rights and Grantor hereby waives any defense of laches, prescription or estoppel (but not defenses of res judicata). Nothing herein shall be construed as to relieve Grantor from compliance with any federal, state or local law, regulation, rule or ordinance applicable to the Protected Property.

B. Grantor agrees to notify LURC at least thirty (30) days prior to any transfer of its interest in the Protected Property. A party's rights and obligations under this Easement shall terminate when such person or entity ceases to have any interest in the Protected Property or this Easement, except that liability for acts or omissions occurring prior to transfer shall survive transfer.

C. If any provision of this Easement or the application of any provision to a particular person or circumstance is found to be invalid, the remainder of this Easement and the application of such provision to any other person or in any other circumstance, shall remain valid.

D. Interpretation and performance of this Easement shall be governed by the laws of the State of Maine. Should uncertainty arise in its meaning, this Easement should be interpreted in favor of conserving the Protected Property for the purposes stated herein.

E. The Protected Property may be used to secure the repayment of debt, provided that the right of LURC and the Benefited Parties to enforce the terms, restrictions and covenants created under this easement shall not be extinguished by foreclosure of any mortgage or any publicly or privately placed lien. The restrictions of this Easement, and LURC's and the Benefited Parties' right to enforce them, shall be superior to any mortgage or lien.

F. Notwithstanding anything in this Easement to the contrary, any rights reserved by Grantor hereunder, and any actions taken by Grantor with respect to the Protected Property, shall be carried out in accordance with all applicable legal requirements.

## 12. AMENDMENT

Each Benefited Party herein, jointly and severally, irrevocably appoints the Maine Land Use Regulation Commission as its duly authorized representative and agent for the purposes of negotiating and executing any amendments, modifications, supplements, or any other alterations to and of this instrument, and no such amendment, modification, supplement or other alteration shall be effective unless in writing and executed by Grantor and by LURC, and each and every Benefited Party, jointly and severally (and on behalf of its successors, heirs and/or assigns), waives any objection to the same. This appointment shall be binding upon all owners and/or holders of any interest in any portion of the Dominant Estate, and their respective successors, heirs and assigns. This Easement may only be amended to the extent that all changes are consistent and in compliance with the Concept Plan. Any amendment hereto shall not be effective until recorded in the applicable Registry of Deeds.

IN WITNESS WHEREOF, Grantor has caused this Easement to be signed in its corporate name, and its corporate seal to be hereto affixed, by Rick R. Holley its President, hereunto duly authorized, this \_\_\_\_ day of January, 2002.

Signed, Sealed and Delivered  
in the presence of:

WITNESS

GRANTOR:  
PLUM CREEK MAINE TIMBERLANDS, L.L.C.

By: \_\_\_\_\_  
Printed Name: Rick R. Holley  
Its: President



## 6. CONSERVATION EASEMENT

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KNOW ALL BY THESE PRESENTS, that **PLUM CREEK MAINE TIMBERLANDS, L.L.C.** (formerly known as SDW TIMBER II, L.L.C.), a limited liability company organized and existing under the laws of the State of Delaware and having a mailing address of 999 Third Avenue, Suite 2300, Seattle, WA 98104, (hereinafter referred to as the “Grantor,” which word is intended to include unless the context clearly indicates otherwise, the above-named Grantor and its successors and assigns and any future owners or successors in interest to the Protected Property, and their agents, executors, administrators and legal representatives) GRANT(s) to **THE STATE OF MAINE** acting by and through the Department of Conservation, Bureau of Parks and Lands, with a mailing address of 22 State House Station, Augusta, ME 04333 (hereinafter referred to as the “HOLDER,” which word shall, unless the context clearly indicates otherwise, include the Holder’s successors and/or assigns), with QUITCLAIM COVENANT, in perpetuity, the following described Conservation Easement on land located in Frenchtown Township, Piscataquis County, Maine, hereinafter referred to as the PROTECTED PROPERTY, and described on Exhibit A, attached hereto, and on Map 11 (Exhibit B), both made a part hereof by reference;

### PURPOSE

The purpose of this Conservation Easement is to preserve and maintain the Protected Property forever in its present primarily undeveloped condition, to provide for protection of its natural values and continued public access for recreational purposes, reserving forestry uses and the right to conduct forest management activities to the Grantor as herein set forth, and to prevent further development of the Protected Property, all subject to the terms and conditions hereinafter described. It is the intent of this Conservation Easement that, subject to the reserved right of the Grantor to engage in forest management activities in accordance with the terms of this Easement, the Protected Property will be forever preserved and protected in its undeveloped, scenic and natural condition, and that it be available, to the extent that Grantor wishes to manage for this purpose, for legally permitted forest management activities. It is also the intent of this Easement that the Protected Property be available for traditional recreational activities by the general public.

WHEREAS, Grantor has agreed to place the Protected Property (including any additional land added to the Protected Property by amendment hereto) and certain additional properties (such additional properties and the protection measures placed thereon being more particularly described in the Lake Concept Plan, defined below) near and along First Roach Pond in said Frenchtown Township in permanent protection as a condition to approval by the Maine Land Use Regulation Commission (“LURC”) of a certain Lake Concept Plan dated \_\_\_\_\_, 200\_\_, and approved by LURC on January 9, 2002, (the “Lake Concept Plan,” incorporated herein by reference) and related subdivisions; and

WHEREAS, the Protected Property consists of Five Hundred Twenty-Five (525) acres and approximately Thirty-Eight Thousand Nine Hundred Eighty (38,980) linear feet of shoreline that remains in a substantially undeveloped, wooded natural state; and

WHEREAS, the Protected Property is in close proximity to the Moosehead Lake region, an area of unique public interest; and

WHEREAS, this Conservation Easement makes the Protected Property available to the public for traditional recreational activities consistent with the terms hereof, while allowing Grantor to continue its forest management activities on the Protected Property; and

WHEREAS, the Protected Property represents significant shoreland having natural, wildlife, open space and aesthetic values in its present state, all of great importance to the People of the State of Maine; and

NOW THEREFORE, the Grantor and Holder have established a Conservation Easement affecting the Protected Property consisting of the following terms, covenants, restrictions and affirmative rights, which shall run with and bind the Protected Property in perpetuity:

## **TERMS, COVENANTS AND RESTRICTIONS**

### **1. SUBDIVISION AND LAND USE**

The Protected Property may not be divided, subdivided, partitioned or otherwise separated into parcels or lots provided, however, that the entire Property may be conveyed subject to the restrictions and easement herein contained. Furthermore, no portion of the Protected Property may be used to permit increased density of development under applicable zoning or other regulation, on land not subject to this Conservation Easement.

All forms of structural development, including without limitation commercial, residential, industrial, energy generation, quarrying, mining, landfill, and waste disposal activities, are prohibited on the Protected Property, except as permitted below.

Grantor, for itself, its successors and assigns, and all agents, contractors and authorized third parties, reserves all rights accruing from ownership of the Protected Property except as prohibited or restricted herein, including, without limitation, the affirmative right to conduct forest management activities on the Protected Property and to undertake and maintain uses that are allowed under the terms of this Easement, all in accordance with the terms of this Easement and all applicable legal requirements. The Grantor's reserved rights shall include the right to place on the Protected Property temporary structures, logging and chipping equipment, vehicles and other forestry equipment, as any of such uses or structures are reasonably required to conduct forest management activities permitted hereunder. Also expressly reserved is the right to use all existing roads on the Protected Property (as shown on Exhibit B) for access by vehicle and for utilities serving the Protected Property and other lands of the Grantor.

### **2. STRUCTURES**

As of the date of this grant, there are no structures on the Protected Property except for boundary markers, trails, land management roads and related improvements, and public roads, all as depicted on Exhibit B. Except as otherwise permitted herein, no additional structures, temporary or permanent, are allowed on the Protected Property, except that Grantor reserves the right to locate, use, remove from or maintain on the Protected Property the following: 1) fences and boundary markers; 2) benches, walkways, nature observation blinds, public boat launches, and small, unlighted, interpretive and directional signs, provided that these structures are

constructed of materials that blend in with the natural surroundings; and 3) rustic campsites and temporary tents for non-commercial camping.

### **3. SURFACE ALTERATIONS**

As of the date of this grant, there are no surface alterations except land management roads and other structures described in Section 2 above located as depicted in Exhibit B. No filling, drilling, excavation or alteration of the surface of the earth, no removal of soil or minerals, and no changes in the topography, surface or subsurface waters are allowed on the Protected Property, except that Grantor reserves the right to: 1) establish and maintain public footpaths in a manner and location that minimizes disturbance to wetlands and siltation of adjacent water bodies; 2) undertake forest management activities as authorized in this Easement, 3) excavate small, select portions of the Protected Property for ecological studies or archeological purposes, subject to the prior written approval of Holder, which may be granted only if such activities will be conducted according to generally accepted professional practices and standards and in a manner consistent with the conservation purposes of this grant; and 4) maintain existing roads and structures and to improve the same in compliance with applicable regulations. Without limitation of the other restrictions and prohibitions herein, no new roads may be constructed or installed within the Protected Property, except with the Holder's prior written approval. The prohibition on new roads in this paragraph includes without limitation land management roads and winter haul roads, but does not include skid roads or trails used for forwarding logs to roads or landings located outside the Protected Property or to existing roads shown on Exhibit B.

### **4. FOREST MANAGEMENT ACTIVITIES**

No standing timber may be cut or removed from the Protected Property except as is necessary to (i) the accomplishment of the conservation, habitat management, or non-commercial outdoor recreational uses of the Protected Property or (ii) Grantor's conduct of forest management activities in accordance with the terms of this Easement, all applicable legal requirements and the Lake Concept Plan. In the event of any conflict between applicable legal requirements, the Lake Concept Plan during the term thereof, and the terms of this Easement, the most restrictive standard shall apply.

### **5. ECOLOGICAL AND WATER QUALITY PROTECTION**

In order to assure the preservation of the high quality natural, scenic, open space and ecological character of the Protected Property, the following specific restrictions, subject to any more restrictive local, state, and federal laws and regulations, are imposed on the Protected Property:

A. Discharges of treated or untreated wastewater into surface waters on or about the Protected Property is prohibited.

B. It is forbidden to dispose of or store rubbish, garbage, debris, abandoned vehicles or equipment, parts thereof, or other unsightly, offensive, hazardous or toxic waste material on the Protected Property, except that organic compost, blowdowns, and organic and routine by-products of on-site forest management activities may be used or disposed of on the Protected Property in a manner consistent with the conservation purposes of this Easement, and other waste generated by allowed uses on the Protected Property may be stored temporarily in

appropriate containment for removal at reasonable intervals, all subject to all applicable legal requirements. Recreational users of the Protected Property will be instructed to carry out their trash as part of any rules published by Grantor.

C. The use of herbicides, insecticides, fungicides, fertilizers or other potentially harmful substances must be controlled and used only for permitted uses herein, including forest management activities, provided that all such uses shall comply with applicable legal requirements.

## 6. PUBLIC RECREATIONAL EASEMENT

The public shall have the right to enter upon the Protected Property for all traditional recreational activities, subject to the reserved right of Grantor (upon reasonable opportunity to comment by Holder, except in the case of an emergency) to establish reasonable rules, regulations and restrictions on public use for the safety of the public, and the conservation and protection of the Protected Property and reserved uses of the Grantor hereunder. Subject to the above, Grantor agrees to take no action to prohibit or discourage traditional recreational activities by the public on the Protected Property. Subject as aforesaid, Grantor's reserved right to make reasonable rules and regulations shall include the right, without limitation, to control, limit or prohibit, at any specified locations within the Protected Property, by posting and other reasonable means, any of the following: night use, camping, loud activities, open fires, use of motor vehicles other than on public roads, access by domesticated animals or pets or bicycles, if Grantor reasonably determines that any such activities interfere with the purposes of this Easement or the reserved uses of the Protected Property by Grantor.

Grantor and Holder claim all of the rights and immunities against liability to the fullest extent of the law under Title 14 M.R.S.A., Section 159-A, et seq. as amended and any successor provisions thereof, (Maine Recreational Use Statute), and Title 14 M.R.S.A. Section 8101, et seq. as amended and any successor provisions thereof, (the Maine Tort Claims Act), and under any other applicable provision of law.

## 7. DEFINITIONS

**Normal High Watermark:** The term "normal high watermark" means that line which is evident from visible markings, changes in the character of soils due to the prolonged action of the water or changes in vegetation, and which distinguishes between predominantly aquatic and predominantly terrestrial land. In places where the shore or bank is of such character that the high watermark cannot be easily determined (rockslides, ledges, rapidly eroding or slumping banks), the normal high watermark will be estimated from places where it can be determined by the above method. Setbacks from the normal high watermark will be determined by horizontal measurement to the nearest point of the structure or activity.

**Traditional Recreational Activities:** The term "traditional recreational activities" means non-motorized public recreational activities, including fishing, hiking, hunting, wildlife study and photography, picnicking, trapping, horseback riding, tent and shelter camping except in areas prohibited by Grantor, canoe portaging, cross country skiing, snowshoeing, wild crop harvesting and other, similar public uses that are non-intensive, non-structural, non-destructive and non-motorized; provided, however, that snowmobiles and ATVs on trails designated for this purpose shall be permitted in connection with such uses, except in areas prohibited by Grantor.

**Forest Management Activities:** The term “forest management activities” means timber cruising and other forest resource evaluation activities, pesticide and fertilizer application, timber stand improvement, pruning, timber harvesting and other forest harvesting, regeneration of forest stands, and other similar or associated activities, but not the construction or creation of land management roads nor the application or storage of septage, sludge or other residuals. Forest management activities permitted hereunder shall be subject to the restrictions on such activities set forth in the Lake Concept Plan, as the same may be amended from time to time.

**Timber Harvesting:** The term "timber harvesting" means the cutting and removal of trees from their growing site, and the attendant operation of mobile skid trails and skid roads, but not the construction or creation of land management roads or winter haul roads without the written permission of Holder.

## 8. NOTICES

Any notices or requests for the consent of Holder, required or contemplated hereunder, must include, at a minimum, sufficient information to enable Holder to determine whether proposed plans are consistent with the terms of this Conservation Easement and the conservation purposes hereof. Notices to any party must be in writing and will be sufficient if served personally or sent by certified mail, return receipt requested, addressed as follows:

|            |  |
|------------|--|
| To Grantor | President<br>Plum Creek Maine Timberlands, L.L.C.<br>999 Third Avenue<br>Suite 2300<br>Seattle, WA 98104 |
|------------|--|

|            |   |
|------------|---|
| To Holder: | Director<br>Maine Bureau of Parks and Lands<br>State House Station #22<br>Augusta, ME 04333 |
|------------|---|

|                 |  |
|-----------------|--|
| With a copy to: | Director<br>Maine Land Use Regulation Commission<br>State House Station #22<br>Augusta, ME 04333 |
|-----------------|--|

or to such other authorized person as any party may from time to time designate by written notice to the others.

## 9. COSTS AND TAXES, RESPONSIBILITY

Grantor is responsible to pay and discharge when due all property taxes and assessments lawfully imposed and to avoid the imposition of any liens that may affect Holder's rights hereunder.

Grantor acknowledges that Holder has no possessory rights in the Protected Property, nor any responsibility or right to control, maintain, or keep up the Protected Property. Grantor is responsible for all costs and responsibility of ownership, control, operation, maintenance, and upkeep of the Protected Property, and will hold harmless the Holder from any claims for damages which arise therefrom, except for harm proximately caused by their negligent act or misconduct, or as may arise out of their workers' compensation obligations.

## **10. HOLDER'S AFFIRMATIVE RIGHTS**

A. Holder has the right to enforce this Conservation Easement by proceedings at law and in equity, including the right to prevent any activity on or use of the Protected Property that is inconsistent with the purpose of this Conservation Easement, and to require the restoration of any area or feature damaged by such inconsistent activity to a condition in compliance herewith. Holder shall provide Grantor with thirty (30) days prior notice of and reasonable opportunity to cure any breach, except where emergency circumstances require enforcement action without such delay. Holder may not bring an enforcement action against Grantor for injury to or change in the Protected Property resulting from changes beyond the control or responsibility of Grantor, such as fire, flood, storm, and earth movement, or from any prudent action taken by Grantor under emergency conditions to prevent, abate, or mitigate significant injury to the Protected Property resulting from such causes. If a Court (or other decision maker chosen by mutual consent of the parties) determines that this Conservation Easement has been breached, Grantor will reimburse Holder for any reasonable costs of enforcement, including court costs, reasonable attorney's fees, out-of-pocket costs and any other payments ordered by the Court or decision maker. No party is entitled to punitive, consequential or incidental damages.

B. Holder has the right to enter the Protected Property for inspection and enforcement purposes, at a reasonable time and in a reasonable manner that is consistent with the conservation purposes hereof and Grantor's reserved rights.

## **11. CONSERVATION EASEMENT REQUIREMENTS UNDER MAINE LAW**

A. This Conservation Easement is created pursuant to The Uniform Conservation Easement Act at Title 33, Maine Revised Statutes, 1989, Sections 476 through 479-B, inclusive, as amended, and shall be construed in accordance with the laws of the State of Maine.

B. The Holder is qualified to hold conservation easements pursuant to Title 33, M.R.S.A., 1988, §476(2)(A), as amended.

C. This Conservation Easement is assignable by Holder upon thirty (30) days prior written notice to Grantor, and only to an entity that satisfies the requirements of §476(2) of Title 33 of the Maine Revised Statutes Annotated (1989), as amended (or successor provisions thereof), and that agrees, as a condition of transfer, to uphold the conservation purposes of this grant.

D. Grantor agrees to notify Holder prior to undertaking any activity, other than exercising any expressly reserved right herein, that may have a material adverse effect on the conservation purposes of this grant.

E. Grantor has provided an inventory in a form reasonably acceptable to Holder of the present condition of the Protected Property and its natural resources so as to permit Holder to

monitor properly future uses of the Property and assure compliance with the terms hereof (the "Baseline Data").

F. The Protected Property may be used to secure the repayment of debt, provided that the right of the Holder to enforce the terms, restrictions and covenants created under this easement shall not be extinguished by foreclosure of any mortgage or any publicly or privately placed lien. The restrictions of this Conservation Easement, and the Holder's right to enforce them, shall be superior to any mortgage or lien.

G. This Conservation Easement constitutes a property right owned by the Holder. Notwithstanding that this Conservation Easement is an obligation, and not a financial asset, should it be extinguished, which may be accomplished only by court order or eminent domain proceeding, Holder is entitled to a share of the proceeds of any sale, exchange or involuntary conversion of the Protected Property, according to Holder's proportional interest in the Protected Property as of the date of this grant and will not include value attributable to improvements to the Protected Property made after the date of this grant. Holder will use such proceeds for its conservation purposes.

H. Notwithstanding anything in this Easement to the contrary, any rights reserved by Grantor hereunder, and any actions taken by Grantor with respect to the Protected Property, shall be carried out in accordance with all applicable legal requirements.

## **12. GENERAL PROVISIONS**

A. Enforcement of the terms of this Conservation Easement shall be at the sole discretion of the Holder. The failure or delay of the Holder, for any reason whatsoever, to enforce this Conservation Easement shall not constitute a waiver of its rights and Grantor hereby waives any defense of laches, prescription or estoppel. Nothing herein shall be construed as to relieve Grantor from compliance with any federal, state or local law, regulation, rule or ordinance applicable to the Protected Property.

B. Grantor agrees to notify Holder at least thirty (30) days prior to any transfer of its interest in the Protected Property. A party's rights and obligations under this Conservation Easement shall terminate when such person or entity ceases to have any interest in the Protected Property or this Easement, except that liability for acts or omissions occurring prior to transfer shall survive transfer.

C. Grantor and Holder have the right to amend this Conservation Easement to the extent that changes are not inconsistent with the purpose of this grant, by written and recorded agreement of the Grantor and Holder.

D. If any provision of this Conservation Easement or the application of any provision to a particular person or circumstance is found to be invalid, the remainder of this Conservation Easement and the application of such provision to any other person or in any other circumstance, shall remain valid.

E. Interpretation and performance of this Conservation Easement shall be governed by the laws of the State of Maine. Should uncertainty arise in its meaning, this Conservation Easement should be interpreted in favor of conserving the Protected Property for the purposes stated herein.



**THE STATE OF MAINE** acting by and through  
the Department of Conservation, Bureau of Parks  
and Lands

By: \_\_\_\_\_

Its: \_\_\_\_\_

State of Maine

County of Kennebec, ss

\_\_\_\_\_, 2002

Personally appeared \_\_\_\_\_, hereunto duly authorized, and acknowledged the foregoing instrument to be his free act and deed in his said capacity as Commissioner of the Maine Department of Conservation.

Before me,

\_\_\_\_\_  
Notary Public

Printed Name: \_\_\_\_\_

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**NOTE: IF THERE ARE ANY DEEDED RIGHTS OF WAY, MORTGAGES OR OTHER OUTSTANDING DEEDED INTERESTS IN THE PROTECTED PROPERTY, STATE LAW REQUIRES THE OWNERS OF THESE INTERESTS TO CONSENT TO THIS EASEMENT OR BE UNAFFECTED BY IT.**

## ***Exhibit A (A metes and bounds description of the Protected Property)***

Three parcels or lots of land located in Frenchtown Township, Piscataquis County and State of Maine, being bounded and described as follows:

### **Parcel One:**

A strip of land five hundred (500) feet wide, following the mean high water mark of the so-called North Inlet of First Roach Pond and extending 500 feet inland therefrom, beginning at a point on the western shore of said North Inlet, said point being North 42° 40' 28" West of the northeastern corner of Lot 1 as depicted on that certain subdivision plan entitled "Peninsula Subdivision Within the First Roach Pond Resource Plan Area, Frenchtown Township, Piscataquis County, ME., Exhibit G, Subdivision Plan -- West" prepared by Kent Associates and Deluca-Hoffman Associates, Inc., with assistance from S. W. Cole Engineering, Inc. and Pickett Land Survey, Inc., dated August 2001, as revised, recorded in the Piscataquis County Registry of Deeds in Book \_\_\_\_\_, Page \_\_\_\_\_, and approved by the Maine Land Use Regulation Commission on January 9, 2002, and extending 500 feet inland therefrom; said 500-foot strip thence running along said high water mark in a northerly direction (being bounded by said high water mark on the east); thence turning and following said high water mark in an easterly and southeasterly direction (being bounded by said high water mark on the south); thence turning southwesterly and continuing along said high water mark (being bounded by said high water mark on the west); thence turning westerly and continuing along said high water mark (being bounded by said high water mark on the northeast, north and northwest) and also being bounded on the southwest by the northeast side of a certain road built, or to be built, as depicted on the aforesaid plan recorded in the Piscataquis County Registry of Deeds in Book \_\_\_\_\_, Page \_\_\_\_\_, and also being bounded on the southwest by the northeasterly side of Lot 1 as depicted on said plan. The above-described land does not include any title or interest in said road. Said Parcel One containing approximately 187 acres of land, and approximately 17,080 linear feet of shoreline.

### **Parcel Two:**

A strip of land, five hundred (500) feet wide, following the mean high water mark of the easterly shore of First Roach Pond and extending 500 feet inland therefrom, beginning at the southeasterly boundary of Lot 7, as depicted on that certain subdivision plan entitled "Peninsula Subdivision Within the First Roach Pond Resource Plan Area, Frenchtown Township, Piscataquis County, ME., - Exhibit G, Subdivision Plan - East" prepared by Kent Associates and Deluca-Hoffman Associates, Inc., with assistance from S. W. Cole Engineering, Inc. and Pickett Land Survey, Inc., dated August 2001, as revised, recorded in the Piscataquis County Registry of Deeds in Book \_\_\_\_\_, Page \_\_\_\_\_, and approved by the Maine Land Use Regulation Commission on January 9, 2002; thence running along said high water mark in a southeasterly direction (being bounded by said high water mark on the west) to the inlet stream at the southeast end of said First Roach Pond; thence crossing said inlet stream, and continuing along said high water mark in a generally northwesterly direction (being bounded by said high water mark on the northeast) to land now or formerly of the State of Maine. Said Parcel Two containing approximately 248 acres of land, and approximately 18,500 linear feet of shoreline.

### **Parcel Three:**

All that land located on the western portion of the south shore of First Roach Pond being bounded on the north by said First Roach Pond, on the east by an unnamed stream and the westerly boundary of a parcel of land depicted as "Deed Restriction" and as containing "Wetland 'B'" on that certain subdivision plan entitled "South Shore West Subdivision Within the First Roach Pond Resource Plan Area, Frenchtown Township, Piscataquis Co., ME." prepared by Kent Associates and Deluca-Hoffman Associates, Inc., with assistance from S. W. Cole Engineering, Inc. and Pickett Land Survey, Inc., dated August 2001, as revised, recorded in the Piscataquis County Registry of Deeds in Book \_\_\_\_\_, Page \_\_\_\_\_, and approved by the Maine Land Use Regulation Commission on January 9, 2002; on the south by the northerly side of County Road, so-called; and on the west by Lagoon Brook, so-called. Said Parcel Three containing approximately 90 acres of land, and approximately 3,400 linear feet of shoreline.

The above-described parcels being all that land depicted as "Conservation Easement" on that certain map entitled "Concept Plan Map 11" contained in that certain Concept Plan for First Roach Pond approved by the Maine Land Use Regulation Commission on January 9, 2002.

### ***Exhibit B***

Refer to Map 11, Part IV, depicting the Protected Property and showing approximate locations of features identified in the text of the Easement.

# **7. HOMEOWNERS ASSOCIATION GENERAL DECLARATION OF COVENANTS AND RESTRICTIONS**

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## ***GENERAL DECLARATION OF COVENANTS AND RESTRICTIONS of the FIRST ROACH POND \_\_\_\_\_ HOMEOWNERS ASSOCIATION***

THIS DECLARATION, made this \_\_\_\_ day of January, 2002, by Plum Creek Land Company (herein called "Declarant").

### **1. DECLARATION PURPOSES.**

1.1 General Purposes. Declarant is the Owner of certain real property located at or in Frenchtown Township, Piscataquis County, Maine known as the \_\_\_\_\_ Subdivision, (hereinafter, the "Subdivision"), and desires to create therein a rural residential/recreational community. Declarant desires to provide for the perpetual maintenance of the private roads as specifically delineated herein to, from and within the Subdivision, to provide for the perpetual maintenance of common areas within the Subdivision, and to protect the Subdivision from any commercial development.

1.2 Declaration. To further the general purposes herein expressed, Declarant, for itself, its successors and assigns, hereby declares that all real property hereinafter described in Article 3 as the "Properties," whether or not referred to in any deed of conveyance of such properties, at all times is and shall be held, transferred, sold, conveyed and occupied subject to the covenants, restrictions, easements, charges and liens (sometimes referred to as "Covenants and Restrictions") hereinafter set forth.

2. DEFINITIONS. The following words and terms, when used in this Declaration (unless the context indicates otherwise), shall have the following meaning:

2.1 "Association" means the First Roach Pond \_\_\_\_\_ Homeowners Association, a Maine non-profit corporation with a place of business in Piscataquis County, Maine.

2.2 "Board" or "Board of Directors" means the duly elected Board of Directors of the Association.

2.3 "Common Area" means all interests in real property (including any improvements thereto) held by the Association for the common use of its members.

2.4 "Concept Plan" means that certain Concept Plan for First Roach Pond approved by the Maine Land Use Regulation Commission on January 9, 2002, as the same may be amended from time to time.

2.5 "Lot" means and refers to the individual Lots indicated on the Plans (as hereinafter defined) and shall include any buildings located thereon.

2.6 "Owner" shall mean and refer to the record owner(s), whether one or more persons or entities, of the fee simple title, or that estate or interest which is most nearly equivalent to a fee simple title, to any Lot situated upon the Properties, but shall not mean or refer to any mortgage holder thereof unless and until such holder has acquired title pursuant to foreclosure or any proceeding in lieu of foreclosure.

2.7 "Plans" means those plans and any amendments thereto (as more particularly described in Section 3.1, below) which show the Lots in the Subdivision.

2.8 "Properties" means and refers to all such existing properties, and additions thereto, as are subject to this Declaration.

2.9 "Roads" means and refers to all private roads and proposed private roads providing access to and within the Subdivision; provided, however, that the term "Roads" shall not include private driveways providing access to individual Lots.

### 3. PROPERTIES.

3.1 Properties. The real property which is and shall be held, transferred, sold, conveyed and occupied subject to this Declaration, is located in Frenchtown Township, Piscataquis County, State of Maine, and is depicted on that certain Plan entitled " \_\_\_\_\_ Subdivision Within the First Roach Pond Resource Plan Area, Frenchtown Township, Piscataquis Co., ME." prepared by Kent Associates and Deluca-Hofman Associates, Inc., with assistance from S.W. Cole Engineering, Inc. and Pickett Land Survey, Inc., dated August 2001, as revised, and recorded in the Piscataquis County Registry of Deeds in Book \_\_\_\_\_, Page \_\_\_\_\_.

### 4. RESTRICTIVE COVENANTS. The following restrictive covenants shall apply to all Lots:

4.1 Single Family. Lots within this Subdivision may only be used for single family residential housing, or for single family seasonal camping. Only one single family dwelling shall be permitted on each Lot.

4.2 Commercial Use. No commercial or business use, whether for profit or non-profit, may be made of a Lot or any structures thereon, except that rental of Lots is allowed for single family housing or for single family seasonal camping. No home occupations that display goods or generate traffic shall be permitted on any Lot.

4.3 Signs. No signs or advertisements, other than "for sale" signs and signs identifying a cabin or residence may be erected or permitted on any Lot. No sign permitted hereunder, whether on buildings or posts, or nailed to trees, may exceed 12" X 24" if such sign is visible from First Roach Pond or from any road used in common with other Lot Owners. All signs permitted hereunder must comply with the sign standards as set forth in the Concept Plan.

4.4 Limited Right of Way. Use of the Roads over which Lot Owners have been granted a right-of-way or easement is for the sole and express purpose of ingress and egress by

Owners and their invitees. Such Limited Rights of Way shall be appurtenant to and run with the Lots.

4.5 Weather Tight Buildings. All buildings must be maintained in a weather tight condition.

4.6 Building Permits. No building or other construction may be undertaken on any Lot without first obtaining an approved Building Permit from the Maine Land Use Regulation Commission, in accordance with 12 M.R.S.A. §§ 681 through 689, or any subsequent regulatory body having jurisdictional authority.

4.7 Set Backs. All structures must be set back a minimum of 100 feet from the normal high water mark of all waterbodies, a minimum of 50 feet from all access roads and rights-of-way, and a minimum of 20 feet from all other property boundary lines, and as further restricted under the Concept Plan. No utility lines are allowed within this setback area.

4.8 Rules and Regulations. In order to assure the peaceful and orderly use and enjoyment of the Properties, Declarant, or, after transfer of control pursuant to paragraph 5.3 hereof, the Board of Directors, may from time to time adopt, modify, and/or revoke in whole or in part, such reasonable rules, and regulations, to be called "Rules and Regulations", governing the conduct of persons on the Properties as it may deem necessary or desirable, including, but not limited to methods and procedures for enforcing compliance with the Declaration. Such Rules and Regulations upon adoption, and every amendment, modification, and revocation thereof, shall be delivered promptly to each Owner and the Association and shall be binding upon all Owners.

4.9 Temporary Structures. No structure of a temporary character, including, without limitation, a trailer, shack, single or double wide mobile home, lean-to, garage, bunkhouse or other outbuilding may be used at any time as a residence or other habitation.

4.10 Siding and Roofing Materials. All new or replacement exterior roofing materials shall be of non-combustible material and shall be a dark, natural-looking color; black, brown, and charcoal gray are preferred. All exterior materials, including window frames, trim, chimneys, and screen doors, shall be unobtrusive in color and texture and shall not be reflective. Natural, earth tones are preferred.

4.11 Exterior Lighting. Exterior lights facing the shore are not allowed. Other exterior lights shall be equipped with full cut-off features and shall be shaded to prevent glare beyond the Lot. Spotlights are prohibited.

4.12 Nuisances. No noxious or offensive activities or nuisances shall be permitted or carried on upon any Lot. "Noxious or offensive activities" shall include any activity or behavior which is inconsistent with both the reasonable pleasurable use of the Properties by neighboring Lot Owners and their guests and their reasonable expectations of quiet enjoyment of their Lot, free from excessively noisy behavior, significantly loud electronic music or other audio distractions, or other similar behavior or activity.

4.13 Property Maintenance. All Lots and all buildings and improvements on the Lots and Properties shall be kept and maintained by the Owner of such Lot in a neat, clean, safe,

attractive, and slightly condition and in good repair. No Lot, or portion thereof, may be used or maintained as a dumping site for rubbish or other refuse. Trash, garbage and other waste shall be kept in proper, sanitary containers. All trash, garbage and other waste shall be removed regularly in a timely manner and shall be transported off-site to the Lily Bay/Frenchtown solid waste transfer station, or otherwise disposed of off-site in accordance with applicable laws and regulations.

4.14 Sewage Disposal and Water Supply Systems. No sewage disposal system (including, without limitation, septic tanks) or water supply system (including, without limitation, wells) may serve, or be shared by, more than one Lot. Any sewage disposal system and/or water supply system installed and/or maintained on any Lot must comply with applicable laws and regulations.

4.15 Maximum Height. No structure may exceed in height the greater of (i) 25 feet above ground level; or (ii) the height of any screening vegetation.

4.16 Chimneys. All new or replacement chimneys must be of brick or tile construction or stove pipe, and shall be installed and maintained under the applicable building and fire codes.

4.17 Clearing. Clearing of vegetation for paved and graveled driveways, parking areas, and structures and the creation of impervious surfaces shall be limited so as to minimize phosphorus export. For areas located between 100 feet and 250 feet from the normal high water mark of First Roach Pond, the extent of impervious surface shall be no more than 10,000 square feet. No more than 20% of any Lot may be cleared in any ten (10) year period. Clearing on all Lots shall meet or exceed the standards for clearing as set forth in the Concept Plan.

4.18 Property Lines. All property lines shall be kept free and open and no fences, hedges, or walls shall be permitted thereon, and no fences, hedges, or walls shall be permitted in the 20 foot property line setback area.

4.19 Accessory Outbuildings. The total, aggregate footprint of all accessory buildings on any one Lot may not exceed 600 square feet and no accessory building shall exceed 15 feet in height. The footprint of an accessory building shall be determined by calculating the square footage of the area contained within the external dimensions of such building.

4.20 Walking Trails. Shorefront Lot Owners may create walking trails upon their Lots, provided that any such trails located within the 100-foot shore buffer area do not exceed 3 feet in width, and further provided that the topsoil is not disturbed in creating such trails, and no part of the trail has a sustained grade of over 10%. All walking trails permitted hereunder must also comply with the clearing standards as set forth in the Concept Plan.

4.21 Docks. No permanent docks may be built on any Lot; provided, however, that temporary seasonal docks shall be permitted in accordance with applicable state and local laws, rules and regulations.

4.22 Common Areas. Common Areas shall be left in their natural state in perpetuity subject to the provisions of Paragraph 6 herein, Common Area shall remain in their natural state and as open space (as that term is defined in 36 M.R.S.A. § 1102(6)), and shall not be further

developed, divided or partitioned. In connection therewith, clearing on the Common Areas shall be limited so as to preserve the scenic resources thereof, subject to, and in accordance with, the Concept Plan; provided, however, that the Association may take such actions as are necessary to maintain the Common Areas in a manner to promote public health and safety.

## 5. MEMBERSHIP AND VOTING RIGHTS IN THE ASSOCIATION.

5.1 Membership. Prior to the conveyance of any Lots by Declarant to Lot Owners, Declarant shall cause the Association to be formed. Every Owner shall be a member of the Association, provided that any person or entity who holds an interest in any Lot merely as a security for the performance of an obligation shall not be a member.

5.2 Voting Rights. Each Lot shall entitle its Owner(s) to one (1) vote. When more than one person or entity holds an interest or interests in any Lot, all such persons or entities shall be members, and the single vote for such Lot shall be exercised as they among themselves determine by majority vote, but in no event shall more than one vote be cast with respect to any such Lot. Declarant shall also have one vote for every Lot Declarant owns.

5.3 Declarant Control. Notwithstanding the foregoing, Declarant shall have the right to appoint, remove and replace the directors of the Board until the first meeting of members following the conveyance of 50% of the Lots. Declarant shall call a meeting within 120 days of such conveyance.

## 6. MAINTENANCE OF ROADS AND SIGNS.

6.1 Roads. The Association shall, for the common benefit of the Owners, maintain the Roads. Unless otherwise voted by members of the Association in an Amendment pursuant to Article 8, the Roads shall be maintained in accordance with the standards contained in paragraph 6.1.1 below. The Association will not be responsible for any plowing of the Roads unless and until the Association expressly assumes that obligation pursuant to an Amendment to this Declaration as provided in Article 8. Declarant shall not be responsible for maintenance of Roads, including any plowing of the Roads.

### 6.1.1 Road Maintenance Standards.

(a) The Association will maintain Roads such that the Roads are kept open and free of debris during all snow free times for the safe passage of vehicles.

(b) The Association will ensure that all culverts and cross drainages are kept open and free of debris such that the passage of water is unrestricted. The Association will ensure that all damage to culverts or cross drainages are repaired promptly. The foregoing notwithstanding, in the event the Roads are used by Declarant in its commercial timber harvesting operations, Declarant shall be responsible at its expense to repair any damage caused to the Roads as the result of such timber operations.

6.2 Extent of Members' Easements. The rights and easements of enjoyment created hereby and in the deeds to Owners shall be subject to the rights of Declarant, its successors and assigns as herein reserved, as reserved in the deeds to Owners, and as set forth in the Concept Plan.

6.3 Rights Reserved by the Declarant. Declarant, for itself, its successors and assigns, reserves for the benefit of Declarant or any properties of Declarant or any successor or assign of Declarant, which need not include the Properties, the following rights in any properties transferred to the Association or the Owners:

(a) Unless expressly waived by Declarant, Declarant reserves exclusively unto itself, its successors and assigns, a perpetual (notwithstanding paragraph 9.1), alienable and releasable utility easement and right in, on, over and under the Roads and Common Areas.

(b) Declarant reserves, for the benefit of Declarant, its successors, assigns, employees and licensees an easement for the unobstructed use at all times of all Roads and Common Areas for all lawful purposes, including without limitation for all usual commercial forest and land management activities.

6.4 No Affirmative Obligation Unless Stated. Any reservation or right of Declarant which is stated in or implied from these covenants shall not give rise to any affirmative obligation or duty on the part of Declarant unless expressly stated in these covenants.

## 7. COVENANT FOR MAINTENANCE ASSESSMENTS.

### 7.1 Assessments By Declarant and The Association.

7.1.1 Creation of the Lien and Personal Obligation of Assessments. Each Owner of a Lot, by acceptance of a deed therefor (whether or not it shall be so expressed in any such deed) shall be deemed to covenant for himself, his heirs, representatives, successors and assigns, to pay the Association, following such conveyance, assessments and charges as provided herein. All such assessments and charges shall be fixed, established and collected from time to time as hereinafter provided. All such assessments and charges, together with such interest thereon and cost of collection thereof, as hereinafter provided shall be a charge on the land or dwelling with respect to which such assessments and charges are made and shall be a lien against such land or dwelling. Each such assessment and charge, together with the interest thereon and costs of collection thereof, also shall be the personal obligation of the member who is the Owner of such assessed Lot at the time when the assessment fell due.

7.1.2 Purpose of the Assessment. The assessments may be levied against the Lots for the purpose of establishing the necessary reserves and for raising funds in order to provide for maintenance of all Roads and Common Areas within the Subdivision, subject to the provisions of Paragraph 7.1.3 below.

7.1.3 Computation of Operating Budget and Assessments. It shall be the duty of the Board at least thirty (30) days prior to the Association's annual meeting to prepare a budget covering the estimated costs of maintaining the Roads and Common Areas during the coming year; provided, however, that the Declarant will establish three or more "blocks" comprised of specific Lots within the Subdivision based upon Roads appurtenant to or within such block and the assessments to be levied shall be determined, in part, on the amount of road maintenance, if any, required by any such block. Any Lot that does not have the benefit of Roads appurtenant to or through such block shall not bear any cost of road maintenance. The Board shall cause the budget and the proposed assessments to be levied against each Lot for the following year, to be delivered to each member at least twenty-one (21) days prior to the meeting. The budget and

assessments shall be deemed ratified and approved unless disapproved at the annual meeting by a vote of seventy-five percent (75%) of the total votes cast at the meeting. In the event the budget is disapproved, the budget last approved by the members shall be continued until such time as the members approve a subsequent budget proposed by the Board.

The Board shall determine the total amount required, including the operational items such as insurance, repairs, reserves, maintenance and other operating expenses, as well as charges to cover any deficits from prior years and capital improvements approved by the Board. The total annual requirements and any supplemental requirements shall be allocated between, assessed to and paid by the Members as follows:

Except as provided above, each Lot shall be assessed, and the Owner thereof shall pay, a fraction of said requirements, the numerator of which shall be one (1) and the denominator of which shall be equal to the number of Lots on the Properties subject to this Declaration. The maximum annual assessment for an Owner of a single Lot shall not exceed \$100 unless so approved by 75 percent of all votes of the Association at an annual or special meeting. The Declarant's obligation for such assessments on unsold Lots subject to this Declaration will be limited to the difference between the actual operating costs of the Association, including reserves, and the assessments levied on Owners other than Declarant. In no event, however, will Declarant be required to make a deficiency contribution in an amount greater than it would otherwise be liable for if it were paying assessments on unsold Lots. The sum due the Association from each individual Owner shall constitute an assessment of the Board of Directors and unpaid assessments shall constitute liens on the individual Lots, subject to foreclosure as hereinafter provided.

7.1.4. Due Dates; Duties of the Board of Directors. All assessments shall be payable annually in advance on the day ordered by the Board. The Board shall fix the date of commencement and the amount of the assessment against each Lot and shall prepare a roster of the Lots and assessments applicable thereto which shall be kept in the office of the Association and shall be open to inspection by any member. Upon the written request of a member or his mortgagee, the Board shall promptly furnish such member or his mortgagee with a written statement of the unpaid charges due from such member.

7.1.5 Notice of Meeting.: Written notice of any meeting called for the purpose of taking any action authorized under Section 7.1.3 of this Article 7 shall be sent to all members not less than twenty-one (21) days in advance of the meeting. Upon written request of any institutional holder of a first mortgage, that holder shall be entitled to written notice of any such meeting and shall be permitted to designate a representative to attend and observe the meeting.

7.2 Effect of Non-Payment of Assessment or Other Charges; the Personal Obligation of the Owner; the Lien; Remedies. If any assessment or any other charges payable pursuant to this Declaration are not paid on the date when due as provided herein, then such assessments and charges shall become delinquent and shall, together with interest of 10% annually thereon and cost of collection thereof as provided hereinafter, thereupon become a continuing lien upon the property against which such assessments are made and shall bind such property in the hands of the then Owner, his heirs, devisees, personal representatives, successors and assigns. Such lien shall be prior to all other liens except: (a) tax or assessment liens on the Lot by the taxing subdivision of any governmental authority, including but not limited to State, County, Town and School District taxing agencies; and (b) all sums unpaid on any first mortgage of record

encumbering the Lot. The personal obligation of the then Owner to pay such assessment or charges shall remain his personal obligation for the statutory period and shall not pass to his successors in title unless expressly assumed by them.

If any assessment or charges are not paid within thirty days after the due date, Declarant or the Association, whichever is applicable, may bring an action at law against the person personally obligated to pay the same or to foreclose the lien against the property, and there shall be added to the amount of such assessment or charges the costs of preparing and filing the complaint in such action, and in the event a judgment is obtained, such judgment shall include interest on the assessment or charges as above provided and a reasonable attorney's fee to be fixed by the court, together with the costs of the action.

8. Amendment. Subject to the other provisions of this Declaration and the Bylaws, this Declaration may be amended as follows:

8.1 Notice. Notice of the subject matter of a proposed amendment shall be included in the notice of any meeting of the Board of Directors in which a proposed amendment is considered, and shall be served upon all Owners in the U.S. Mail at the address last furnished to the Board of Directors.

(a) Resolution. An amendment may be proposed by either the Board of Directors or by Owners holding in the aggregate no less than twenty percent (20%) of the votes in the Association. No such resolution of the Board of Directors adopting a proposed amendment or proposal by Owners holding the required percentage of votes in the Association shall be effective unless it has been adopted at a meeting of the Association duly called and held in accordance with the Bylaws by the affirmative vote of at least sixty-seven percent (67%) of the votes in the Association, whether or not the Owners casting such votes are present at such meeting, and then executed and recorded as provided in paragraph 8.1(d) of this Article.

(b) Agreement. In the alternative, an amendment may be made by an agreement signed by the Owners of the Lots to which at least sixty-seven percent (67%) of the votes in the Association are allocated in the manner required for the execution of a deed and acknowledged by at least one of them, and such amendment shall be effective when recorded.

(c) Certain Amendments. No amendment of this Declaration shall make any change in the requirements of Section 4 or Section 6, or in any of the rights, privileges, powers and options of the Declarant, its successors or assigns, unless the Declarant or its successors or assigns shall join in the execution of such amendment.

(d) Execution and Recording. A copy of each amendment shall be attached to or included with a certificate, certifying that the amendment was duly adopted, which certificate shall be executed and acknowledged by such officer or officers of the Association and/or member or members of the Board of Directors designated for that purpose in the Bylaws. The amendment shall be effective when such certificate and copy of the amendment are recorded in the Piscataquis County Registry of Deeds.

(e) Notice and Challenge. No action to challenge the validity of an amendment to this Declaration adopted by the Association pursuant to this Article may be brought more than one year after such amendment is recorded. After each amendment to this

Declaration adopted pursuant to this Article has been recorded, notice thereof shall be sent to all Owners at the address last furnished to the Board of Directors, but failure to send such notices shall not affect the validity of such amendment. The Association shall make copies of the Declaration and all amendments thereto available for inspection at reasonable times upon reasonable request for such inspection.

8.2 Land Use Regulation Commission Approval: No amendment to this Declaration shall become effective until and unless the same is approved by the Maine Land Use Regulation Commission.

## 9. GENERAL PROVISIONS.

9.1 Duration. The covenants and restrictions set forth in this Declaration shall run with and bind the land, for the benefit of all property owned by Declarant and shall inure to the benefit of and be enforceable by Declarant, the Association or the Owner of any land subject to this Declaration, their respective legal representatives, heirs, successors and assigns, for a term of 20 years from the date this Declaration is recorded, after which time said covenants shall be automatically extended for successive periods of five years unless an instrument signed by the then Owners of 75% of the Lots has been recorded agreeing to change said covenants and restrictions in whole or in part; provided, however, that no such agreement of change shall be effective unless made and recorded three years in advance of the effective date of such change, and unless written notice of the proposed agreement is sent to every Owner at least ninety days in advance of any action taken.

9.2 Notices. Any notice sent or required to be sent to any Owner under the provisions of this Declaration, unless otherwise provided herein, shall be deemed to have been properly given when mailed, postage prepaid, to the last known address of the person who appears as an Owner on the records of Declarant or the Association at the time of mailing. Each Owner shall have the affirmative duty and obligation to inform Declarant or the Association, whichever is applicable, in writing of any change of ownership of the properties, the Owner's current address, and any failure of the Owner to receive any information from Declarant or the Association at the correct address of the Owner.

9.3 Enforcement.: Enforcement of these covenants and restrictions shall be by any proceeding at law or in equity against any person or persons violating or attempting to violate any covenant or restriction contained herein. Such action may be either to restrain violation or to recover damages, or against the land, to enforce any lien or right created by these covenants. Failure by Declarant, the Association or any Owner to enforce any covenant or restriction herein contained in no event shall be deemed a waiver of the right to do so thereafter.

9.4 Modification. Prior to the formation of the Association, by recorded supplemental declaration, Declarant may modify any of the provisions of this Declaration or any Supplemental Declaration for the purpose of clarifying any such provisions, provided no such modification shall change the substantive provisions of any such document or materially alter the rights of any Owner established by any such document.

9.5 Severability. Invalidation of any of the provisions of this Declaration by judgment or court order in no way shall affect any other provisions, which shall remain in full force and effect.

9.6 Arbitration. All claims, disputes and other matters in question between Declarant on the one hand, and the Association or any Owners, on the other, arising out of, or relating to this Declaration or the breach thereof, except for claims which specific provision is made herein for enforcement by court proceedings, and except for assessments and collection and enforcement of same, shall be decided by arbitration in accordance with the Construction Industry Arbitration Rules of the American Arbitration Association then in effect unless the parties mutually agree otherwise. This agreement to arbitrate shall be specifically enforceable under the prevailing arbitration law. The award rendered by the arbitrators shall be final, and the judgment may be entered upon it in accordance with applicable law in any court having jurisdiction thereof.

Notice of the demand for arbitration shall be filed in writing with the other parties and with the American Arbitration Association. The demand for arbitration shall be made within a reasonable time after the claim, dispute or other matter in question has arisen, and in no event shall it be made after the date when institution of legal or equitable proceedings based on such claim, dispute or other matter in question would be barred by the applicable statute of limitations.

9.7 Construction. Whenever the singular number is used, the same shall include the plural, use of the plural shall include the singular and the masculine, feminine and neuter genders shall include each other, as the context may require.

9.8 Beneficiaries of Easements, Rights and Privileges. The easements, licenses, rights and privileges established, created and granted by this Declaration shall be for the benefit of, and restricted solely to, the Association, the Owners, and Declarant; and any Owner may also grant the benefit of such easement, license, right or privilege to his tenants and guests and their immediate families for the duration of their tenancies or visits, subject in the case of the Common Areas to the Rules and Regulations of the Board, but the same is not intended to create nor shall it be construed as creating any rights in or for the benefit of the general public.

9.9 Declarant's Rights. Declarant may at any time or from time to time delegate some or all of its rights under this Declaration to the Association by a written instrument recorded in the Piscataquis County Registry of Deeds. If Declarant ceases to exist or for any reason becomes legally unable to exercise its rights and duties hereunder, such rights and duties may be exercised by the Association.

IN WITNESS WHEREOF, the foregoing instrument has been executed on the day and year first above written.

ATTEST

PLUM CREEK LAND COMPANY

By: \_\_\_\_\_  
Name: \_\_\_\_\_  
Assistant Secretary

By: \_\_\_\_\_  
Name: \_\_\_\_\_  
Title: \_\_\_\_\_



## 8. HOMEOWNERS ASSOCIATION BYLAWS

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### *BYLAWS of the FIRST ROACH POND \_\_\_\_\_ HOMEOWNERS ASSOCIATION*

#### ARTICLE I. ASSOCIATION OF OWNERS

Section 1. Membership. The members shall consist of all Lot Owners of the First Roach Pond \_\_\_\_\_ Subdivision, (the "Subdivision") a property governed by a General Declaration of Covenants and Restrictions dated January \_\_, 2002 and recorded in the Piscataquis County Registry of Deeds in Book \_\_\_\_, Page \_\_\_\_\_ (the "Declaration") and located in Frenchtown Township, Piscataquis County, Maine. Membership shall be in accordance with the Declaration and with these Bylaws. The membership of each Owner terminates upon a sale, transfer or other disposition of his/her ownership interest in his/her Lot (as defined in the Declaration) whereupon the membership and any interest in the funds of the Association shall automatically transfer to and be vested in the successor in ownership. A conveyance in mortgage of the Lot, however, shall not operate to transfer membership until the mortgage is foreclosed or the Lot is sold in lieu of foreclosure.

Section 2. Meetings. The first meeting of the members shall be held at the call of Plum Creek Land Company, (hereinafter the "Declarant") after not less than 50% of all Lots in the subdivision have been sold.

Section 3. Subsequent meetings. Subsequent meetings of the members may be held at any time upon the call of the President or upon the call of the Owners of a minimum of three Lots. Upon receipt of the call, the Secretary shall send out notices of the meeting to all members of the Association.

Section 4. Notice of meetings. A written or printed notice of every meeting of the Association shall be given by the Secretary or the person or persons calling the meeting at least thirty (30) days before the date set for the meeting. Such notice shall be given to each member as indicated in the records of the Association by mailing it, postage prepaid, addressed to the member at his address as it appears on the records of the Association. If notice is given pursuant to provisions of this section, the failure of any member to receive actual notice of the meeting shall in no way invalidate the meeting or any proceedings at such a meeting.

Section 5. Waiver of notice. The presence of all the members at any meeting shall render the same a valid meeting.

Section 6. Quorum. The presence at any meeting of the Association of Owners whose aggregate voting rights constitute more than 25% of the total voting rights shall constitute a quorum. At any meeting at which a quorum is present, the affirmative vote of a majority of those present shall decide any question except the election of Directors presented to the meeting, unless a greater percentage vote is required by law, by the Declaration or by these Bylaws. In the election of Directors, those receiving the greatest number of votes, though less than a majority, shall be elected.

Section 7. Voting. Any person, firm, corporation, trust, or other legal entity or a combination thereof, owning any Lot other than as a mortgagee duly recorded in his or its name, the ownership whereof shall be determined by the records of the Piscataquis County Registry of Deeds, shall be a member of the Association, and entitled to vote for each Lot so owned at all meetings of the Association. Co-owners or joint owners shall be deemed one Owner. The authority given by a member to another person to represent such member at meetings of the Association shall be in writing, signed by such member or if a Lot is jointly owned then by all joint owners, or if such member is a corporation, by the proper officers thereof, and shall be filed with the Secretary, and unless otherwise stated therein, such authority shall terminate after eleven months. An executor, administrator, guardian, or trustee may vote at any meeting of the Association with respect to any Lot owned or held by him in such a capacity, whether or not the same shall have been transferred to his name by a duly recorded conveyance. In case such Lot shall not have so been transferred to his name, he shall satisfy the Secretary that he is the executor, administrator, guardian, or trustee holding such Lot in such capacity. Whenever any Lot is owned by two or more owners jointly according to the records of said Registry, the owners thereof may designate in writing one or more of the owners to cast the vote for all such owners, and such designation, unless otherwise limited by its terms, shall be valid once filed with the Secretary until revoked by any such owner by notice in writing filed with the Secretary. The Declarant may exercise Declarant's voting rights pertaining to any Lot owned by the Declarant.

Any specified percentage of Owners refers to the aggregate voting rights and not to the number of owners.

Section 8. Adjournment. Any meeting of the Association may be adjourned from time to time to such place and time as may be determined by majority vote of the members present, whether a quorum be present or not.

## ARTICLE II. BOARD OF DIRECTORS

Section 1. Number and qualification. Until the first meeting, the affairs of the Association shall be governed by the Declarant or three persons appointed by the Declarant, who need not be Lot Owners. Thereafter, the affairs of the Association shall be governed by a Board of Directors elected by the members, initially composed of three persons, and as increased or decreased at any annual meeting by a majority vote of persons present at the meeting. Each such Director shall be the Owner or the spouse of an Owner of a Lot; or if an Owner shall be a corporation, partnership, trust or estate, then an officer, partner, trustee or beneficiary thereof.

Section 2. Powers and duties. The Board of Directors shall have the power and duties necessary for the administration of the affairs of the Association and may do all such acts and things as are not by law or by these Bylaws directed to be exercised and done by the Owners.

Section 3. Other duties. In addition to other duties imposed by these Bylaws or by resolutions of the Association, the Board of Directors shall be responsible for the following:

- (a) Care, upkeep, and surveillance of all roads, common areas and facilities within the subdivision.
- (b) Determination and collection of the annual assessments from the Owners.

(c) Employment of the personnel necessary for the maintenance of all roads, common areas, and facilities.

(d) Procurement and payment of appropriate insurance coverage.

(e) Enforcement of the Declaration.

Section 4. Election and term of office. From and after the first meeting, the Directors shall be elected by the Owners. The term of office shall be fixed for three years. There is no limit on the number of terms a Director may serve.

Section 5. Vacancies. Vacancies in the Board of Directors caused by any reason other than the removal of a Director by a vote of the members shall be filled by vote of the majority of the remaining Directors, even though they may constitute less than a quorum; and each person so elected shall be a Director until a successor is elected at the next annual meeting of the Association.

Section 6. Removal of Directors. At any regular or special meeting duly called, any one or more of the Directors may be removed with or without cause by a vote of the majority of the members and a successor may then and there be elected to fill the vacancy thus created. Any Director whose removal has been proposed by the members shall be given an opportunity to be heard at the meeting.

Section 7. Compensation. No compensation shall be paid to Directors for their services as Directors. No remuneration shall be paid to a Director for services performed by him for the Association in any other capacity, unless a resolution authorizing such remuneration shall have been adopted by the Board of Directors before or after the services are undertaken.

Section 8. Annual Meeting. The annual meeting of the Board of Directors shall be held immediately following the annual meeting of the Association and at the same place, and no notice shall be necessary in order legally to constitute such meeting, providing a majority of the whole Board shall be present.

Section 9. Regular and Special Meetings. Regular and special meetings of the Board of Directors may be held at such time and place as shall be determined, from time to time, by a majority of the Directors. Notice of regular and special meetings of the Board of Directors shall be given to each Director, personally or by mail, addressed to his or her residence, or by telephone, at least three days prior to the day named for such meeting.

Section 10. Waiver of notice. Before or after any meeting of the Board of Directors, any Director may, in writing, waive notice of such meeting and such waiver shall be deemed equivalent to the giving of such notice. Attendance by a Director at any meeting of the Board shall be a waiver of notice by him or her of the time and place thereof. If all the Directors are present at any meeting of the Board, no notice shall be required and any business may be transacted at such meeting.

Section 11. Quorum. At all meetings of the Board of Directors, a majority of the Directors shall constitute a quorum for the transaction of business.

Section 12. Unanimous action. Unless otherwise provided by law, the Declaration, or these Bylaws, any action which may be taken at a meeting of the Directors may be taken without a meeting if all of the Directors sign written consents, setting forth the action taken or to be taken, at any time before or after the intended effective date of such action. Such consents shall be filed with the minutes of Directors meetings and shall have the same effect as a unanimous vote.

Section 13. Bonds. The Board of Directors may require that any member of the Association handling or responsible for corporate funds shall furnish adequate bonds. The premiums on such bonds shall be paid by the Association.

Section 14. Committees. The Board of Directors may establish such standing or other committees, with such powers and duties, as it deems advisable.

### ARTICLE III. OFFICERS

Section 1. Designation. The Board of Directors of the Association shall elect a President, Treasurer, and a Secretary at the annual meeting of the Board. The term of office shall be one year. There is no limit on the number of terms an officer may serve; provided, however, that officers must be members of the Board of Directors.

Section 2. President. The President shall be the chief executive officer of the Association, and shall preside at all meetings of the Association and of the Board of Directors. In his or her absence, a chairman pro tempore may be chosen by the members or Directors, as the case may be, to preside at a meeting. The President shall have all of the general powers and duties which are usually vested in the office of president of an association, including but not limited to the power to appoint ad hoc committees from among the Owners or their spouses from time to time as the President may in his or her discretion decide is appropriate to assist in the conduct of the affairs of the Association.

Section 3. Treasurer. The Treasurer shall have the responsibility for Association funds and securities and shall be responsible for keeping full and accurate accounts of all receipts and disbursements in books belonging to the Association.

Section 4. Secretary. The Secretary shall have the responsibility to provide notices of meetings to members, manage and respond to any correspondence to or from the Association, and keep minutes and records of Association meetings.

Section 5. Compensation. The Board members shall receive no compensation for their services except as expressly provided by a resolution duly adopted by the members.

Section 6. Auditor. The Board of Directors may appoint some person, firm or corporation engaged in the business of auditing to act as auditor of the Association and to audit the financial statements of the Association.

Section 7. Removal of an Officer. At any regular or special meeting duly called, any one or more of the Officers may be removed with or without cause by a vote of the majority of the Directors and a successor may then and there be elected to fill the vacancy thus created.

## ARTICLE IV. FISCAL MANAGEMENT

Section 1. Accounting. Books and accounts of the Association shall be kept under the direction of the Treasurer and in accordance with customary accounting principles and practices. Within 90 days after the close of each fiscal year, the Association shall furnish its members with a statement of the income and disbursements for such prior fiscal year and a balance sheet as of the close of that year.

Section 2. Assessments. With respect to each fiscal year, the Board shall estimate the amount required by the Association to meet its expenses for such year, including but not limited to the following items:

- (a) Management and administration expenses;
- (b) The estimated cost of maintenance;
- (c) The amount of such reserves as may be reasonably established by the Board, including general operating reserves, reserves for contingencies, and reserves for maintenance and replacements; and
- (d) Such other expenses of the Association as may be approved by the Board of Directors including operating deficiencies, if any, for prior periods.

Not less than 30 days before the Annual Meeting of Members, the Board shall cause an estimated annual budget to be prepared based on its estimations of annual expenses, and copies of such budget shall be furnished to each member. Unless at that meeting 75% or more of the Owners vote to reject the budget, the budget shall be deemed ratified, whether or not a quorum is present at the meeting. In the event the budget is rejected, the budget last ratified by the members shall be continued until such time as the Owners ratify a subsequent budget proposed by the Board.

If any member shall fail or refuse to make payment of his assessed fee, or any other amount payable to the Association when due, the amount thereof shall bear interest at a rate per annum, not exceeding 10%, established from time to time by the Board of Directors and, together with such interest, shall constitute a lien on the Lot of such member. The Association and the Board shall have the authority to exercise and enforce any and all rights and remedies provided in the Declaration or these Bylaws, or otherwise available at law or in equity for the collection of all unpaid amounts including the right to accelerate payment on the full assessment for the year and, if necessary to foreclose upon a lien in accordance with Section 7 of this Article.

Section 3. Revised and emergency assessments. If at any time prior to or during the course of any fiscal year the Board shall deem the amount of the membership assessments to be inadequate by reason of a revision in its estimate of either expenses or other income, the Board shall prepare and cause to be delivered to the members a revised estimated annual budget for the balance of such fiscal year and shall call a meeting of the members to ratify such budget in the same manner as for an annual budget. After ratification, monthly assessments shall be determined and paid on the basis of such revision.

The Board may, upon finding that an emergency exists which requires immediate assessment of the members, make an emergency assessment not to exceed an amount equal to the then current annual assessment for each Lot, which shall be due and payable when communicated to the members.

Section 4. Maintenance and repair. All road maintenance and repair shall be performed at the direction of the Board of Directors, and shall be a common expense pursuant to the provisions of the Declaration. Vouchers for the payment of maintenance and repair costs shall be approved by the President before payment.

Section 5. Rules and regulations. In order to assure the peaceful and orderly use and enjoyment of the Lots and common areas and facilities, the Board of Directors may from time to time adopt, modify, and revoke in whole or in part, such reasonable rules, and regulations, to be called Rules and Regulations, governing the conduct of persons within the subdivision as it may deem necessary, including, but not limited to, methods and procedures for enforcing compliance with the Declaration and Bylaws. Such Rules and Regulations adoption, and every amendment, modification, and revocation thereof, shall, upon adoption be delivered promptly to each Owner and shall be binding upon all members of the Association and occupants of the property.

Section 6. Foreclosure of lien. In any action to foreclose the lien against any Owner of a Lot, the Association may represent itself through its manager or Board of Directors in like manner as any mortgagee of real property. The manager or Board of Directors acting on behalf of the Lot Owners shall have the power to bid and acquire such Lot. Suit to recover money judgment for unpaid common expenses shall be maintainable with all costs and reasonable attorney's fees without foreclosing or waiving the lien securing the same.

#### ARTICLE V. EXECUTION OF INSTRUMENTS

Section 1. Instruments generally. All checks, drafts, notes, bonds, acceptances, contracts, deeds, and all other instruments shall be signed by the President or the Secretary/Treasurer or Clerk, or by such other officer or employee as the Board of Directors may designate.

#### ARTICLE VI. LIABILITY OF OFFICERS

Section 1. Exculpation. No Director of the Association shall be liable for acts or defaults of any other officer or members or for any loss sustained by the Association or any member thereof, unless the same has resulted from his own willful misconduct or gross negligence.

Section 2. Indemnification. Every Director, officer, and member of the Association shall be indemnified by the Association against all reasonable costs, expenses, and liabilities (including counsel fees) actually and necessarily incurred by or imposed upon him in connection with any claim, action, suit, proceeding, investigation, or inquiry of whatever nature in which he may be involved as a party or otherwise by reason of his having been an officer or member of the Association whether or not he continues to be such Director, officer or member of the Association at the time of the incurring or imposition of such costs, expenses, or liabilities, except in relation to matters as to which he shall be finally adjudged in such action, suit,

proceeding, investigation or inquiry to be liable for willful misconduct or gross negligence toward the Association in the performance of his duties, or in the absence of such final adjudication, any determination of such liability by the opinion of the legal counsel selected by the Association. The foregoing right of indemnification shall be in addition to and not in limitation of all rights to which such persons may be entitled as a matter of law and shall inure to the benefit of the legal representatives of such person.

#### ARTICLE VII. FISCAL YEAR

Section 1. Fiscal year. The fiscal year of the Association shall be established by the Board of Directors.

#### ARTICLE VIII. BYLAWS

Section 1. Amendment. These Bylaws may be amended, modified, or revoked in any respect from time to time by vote of the members of the Association whose aggregate vote constitutes 75 percent of all votes, at a meeting duly called for the purpose.

Section 2. Conflict. In the event of any conflict between these Bylaws and the provisions of the Declaration the latter shall govern and apply.

DATED this \_\_\_\_ day of \_\_\_\_\_, 2002.

# 9. DEFINITIONS

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## CHAPTER 10 LAND USE DISTRICTS AND STANDARDS

### 10.02 DEFINITIONS

The following definitions apply to the following terms as they appear in this chapter, the other chapters of the Commission's rules, and the Commission's statute (12 M.R.S.A., Chapter 206-A):

1. Accessory Use or Accessory Structure:  
"A use or structure subordinate to a permitted or conditional use or structure and customarily incidental to the permitted or conditional use of the structure." 12 M.R.S.A., § 682.
2. Agricultural Management Activities:  
Land clearing if the land topography is not altered, tilling, fertilizing, including spreading and disposal of manure, liming, planting, pesticide application, harvesting or cultivating crops, pasturing of livestock, minor drainage and maintenance of drainage, and other similar or related activities, but not the construction, creation or maintenance of land management roads, nor the land application of septage, sludge and other residuals and related storage and composting activities.
3. Alteration:  
Dredging; bulldozing; removing or displacing soil, sand, vegetation or other materials; draining or dewatering; filling; or any construction, repair or alteration of any permanent structure.  
  
On a case-by-case basis and as determined by the Commission, the term "alteration" may not include:
  - a. An activity disturbing very little soil such as installing a fence post or planting shrubs by hand;
  - b. The addition of a minor feature to an existing structure such as a bench or hand rail; and
  - c. The construction, repair or alteration of a small structure with minimal impact such as a nesting box, pasture fence, or staff gauge.
4. Aquatic Vegetation:  
Plants that usually grow on or below the surface of the water for most of the growing season in most years.
5. Boathouse:  
A structure that extends over or beyond the normal high water mark into which boats are directly maneuvered without leaving the waterbody. Boathouses are distinct from boat storage buildings, which require the boat to be removed from the water for entry.
6. Boat ramp:  
See commercial trailered ramp, private trailered ramp, or trailered ramp.

7. **Body of Standing Water:**  
A body of surface water that has no perceptible flow and is substantially permanent in nature. Such bodies of water are commonly referred to as man-made or natural lakes or ponds.
- 8 **Building:**  
“Any structure having a roof or partial roof supported by columns or walls used or intended to be used for the shelter or enclosure of persons, animals or objects regardless of the materials of which it is constructed.” 12 M.R.S.A. § 682. The Commission finds that a temporary camping tent constructed of fabric or similar materials is not considered a building.
- 9 **Bulk Sampling of Mineral Deposits:**  
The removal of samples of mineral deposits for the purpose of testing to determine the feasibility, method or manner of extraction and/or processing of minerals. Such testing may include metallurgical analyses, milling or grinding tests and/or pilot plant and processing tests. Methods of bulk sampling may include, but not be limited to drilling and boring, the digging of shafts and tunnels, or the digging of pits and trenches.
- 10 **Campground:**  
Any area, other than a camp site, designed for transient occupancy by camping in tents, camp trailers, travel trailers, motor homes or similar facility designed for temporary shelter.
- 11 **Campsite:**  
A “camping location without access to a pressurized water system that contains a maximum of 4 camping sites for transient occupancy by 8 or fewer people per site on which may be located a tent, a tent trailer, a pickup camper, a recreational vehicle, a registered trailer that is 28 feet or less in length or other similar device used for camping A camping location that contains permanent structures other than outhouses, fireplaces, picnic tables, lean-tos or hand-operated water pumps is not a campsite.” 12 M.R.S.A. § 682(15). For the purposes of the application of the Commission’s rules, the statutory limits of “8 or fewer people per site” and of a “trailer that is 28 feet or less in length” are interpreted as design standards rather than incidental use standards; and a “campsite” may include tent platforms and picnic tables with shelters.
- 12 **Capacity Expansions of Utility Facilities:**  
The addition of new telephone or electric wires or similar equipment to existing electric or telephone transmission and distribution poles for the purpose of increasing the capacity thereof.
- 13 **Checkpoint Building:**  
A structure on land under forest management which is used primarily for control of access to private roads or trails, provided it does not include more than one residence.
- 14 **Cluster Development:**  
A compact form of development that results in buildings being located in a group such that a significant amount of open space is preserved.
- 15 **Coastal Nesting Island:**  
An island used for nesting by sea birds during their breeding period.

16 Coastal Wetlands:

Tidal and subtidal lands, including all areas below any identifiable debris line left by tidal action; all areas with vegetation present that is tolerant of salt water and occurs primarily in a salt water or estuarine habitat; and any swamp, marsh, bog, beach, flat or other contiguous lowland which is subject to tidal action during the maximum spring tide level as identified in tide tables published by the National Ocean Service. Coastal wetlands may include portions of coastal sand dunes.

17 Combined Floor Area:

The total floor area of all principal and accessory structures on a lot.

18 Combined Septic System:

A disposal system designed to dispose of waste and waste water on or under the surface of the earth that includes but is not limited to: septic tanks; disposal fields; or any other fixture, mechanism, or apparatus used for this purpose.

19 Commercial Fishing Activities:

Activities directly related to commercial fishing and those commercial activities commonly associated with or supportive of commercial fishing, such as the manufacture or sale of ice, bait and nets and the sale, manufacture, installation or repair of boats, engines and other equipment commonly used on boats.

20 Commercial Mineral Extraction:

Mineral extraction other than Mineral Extraction for Road Purposes.

21 Commercial Sporting Camp:

A “building or group of buildings devoted primarily to the offering of lodging facilities for a fee to persons primarily in pursuit of primitive recreation or snowmobiling.” 12 M.R.S.A. § 682(14). In addition, for the purposes of the application of the Commission’s rules, the term “commercial sporting camp” shall be construed according to the following: A facility which functions primarily as a destination for the above activities rather than a transient lodging facility or a base of operations for activities in another location, such as whitewater rafting. A sporting camp is usually located in a remote location and may typically consist of, but not necessarily include, all of the following: a number of cabins for the housing of guests including housekeeping cabins; a main lodge for serving of meals and socializing for the guests; outbuildings for housing of the owners, guides, and other workers; workshop, woodsheds, laundry, equipment storage, and other utility buildings as needed. Outpost cabins are considered a part of the commercial sporting camp. A resident, on-site attendant must be available on a full-time basis to meet the needs of guests. Such a facility shall have a total floor area no greater than 10,000 square feet for all principal buildings associated with the facility.

22 Commercial trailered ramp, hand-carry launch, or dock:

A trailered ramp, hand-carry launch, or dock, including an associated parking area and access road, that is privately owned and operated, and open to all members of the public, with or without a fee, but not meeting the definition of a public trailered ramp, hand-carry launch, or dock.

23 Commercial Use:

The use of lands, buildings or structures the intent or result of which is the production of income from the buying or selling of goods and/or services. Commercial use does not include a home occupation or the rental of a single dwelling unit on a single lot or forest management activities where such activities are otherwise exempt from review.

24 Commission:

The Maine Land Use Regulation Commission.

25 Compatible Use:

A land use which is capable of existing in harmony with other uses or resources situated in its immediate vicinity because that use does not adversely affect such other uses or resources.

26 Compensation:

Replacement of a lost or degraded wetland function with a function of equal or greater value.

27 Creation:

An activity bringing a wetland into existence at a site where it did not formerly occur.

28. Critically Imperiled Natural Community (S1):

An assemblage of plants, animals and their common environment that is extremely rare in Maine or vulnerable to extirpation from the state due to some aspect of its biology. An example of an S1 community that occurs in freshwater wetlands is the Outwash Plain Pondshore community.

29. Cross-Sectional Area:

The cross-sectional area of a stream channel shall be determined by multiplying the stream channel width by the average stream channel depth. The stream channel width is the straight line distance from the normal high water mark of one side of the channel to such mark on the opposite side of the channel. The average stream channel depth shall be the average of the vertical distances from a straight line between the normal high water marks of the stream channel to the bottom of the channel.

30. Deer Wintering Areas:

Areas used by deer during winter for protection from deep snows, cold winds, and low temperatures.

31. Development:

Any land use activity or activities directed toward using, reusing or rehabilitating air space, land, water or other natural resources, excluding, however, such specific uses or classes and categories of uses which by the terms of this chapter do not require a permit.

32. Development Unit:

A single family dwelling unit or nonresidential use containing a total of no more than 8,000 square feet of gross floor space for all principal buildings concerned. Multiple family dwelling units and larger nonresidential uses shall be counted as an equivalent multiple number of development units.

33. Direct Watershed:

That portion of the land area which drains surface water directly to a body of standing water without such water first passing through an upstream body of standing water.

34. Docking Structure:

A structure placed in or near water primarily for the purpose of securing and/or loading or unloading boats and float planes, including but not limited to docks, wharfs, piers, and associated anchoring devices, but excluding boat houses and float plane hangars. When associated with this phrase, the term “permanent” shall mean a structure in place for longer than 7 months in any calendar year or which is so large or otherwise designed as to make it impracticable to be removed on an annual basis without alteration of the shoreline.

35. Driveways

A vehicular access-way, other than a land management road, less than 1000 feet in length serving two or fewer lots.

36. Dwelling Unit:

A structure or any part thereof that is intended for use or is used for human habitation, consisting of a room or group of rooms designed and equipped for use primarily as living quarters, including any home occupations, for one family. Accessory structures intended for human habitation that have plumbing are considered separate dwelling units. Dwelling units do not include buildings or parts of buildings used as a hotel, motel, commercial sporting camp or other similar facility which is rented or leased on a relatively short term basis; provided, however, the term shall include a tourist home that qualifies as a home occupation.

37. Emergent Marsh Vegetation:

Plants that are erect, rooted and herbaceous; grow in saturated to permanently flooded areas; and do not tolerate prolonged inundation of the entire plant (e.g., cattails, burreed, tussock sedge, rice cut grass, phragmites, pickerel weed, arrowhead and bulrush).

38. Enhancement:

An activity increasing the net value of a wetland.

39. Excursion Service:

A water-borne transport service established to ferry tourists and other persons non-resident to the place of destination. This term shall also include sight-seeing and other recreational cruises such as "whale-watchers" where there may be no specific point of destination.

40. Expansion of a Structure:

The increase in the floor area of a structure, including attached decks and porches, the increase in the height of a structure, or the enclosure or partial enclosure of legally existing decks, porches or other open areas.

41. Family:

One or more persons occupying a premises as a single housekeeping unit.

42. Fishery Management Practice:

Activities engaged in for the exclusive purpose of management of freshwater and anadromous fish populations by manipulation of their environment for the benefit of one or

more species. Such practices may include but not be limited to the construction of traps and weirs, barrier dams, stream improvement devices, fishways, and pond or stream reclamation, provided that any such activities are specifically controlled and designed for the purpose of managing such species and are conducted or authorized by appropriate state or federal fishery management agencies in compliance with the water quality standards contained in 38 M.R.S.A. §465.

43. Floodplain Wetland:

Wetlands that are inundated with flood water during a 100-year event based on site specific information including, but not limited to, flooding history, landform, and presence of hydric, alluvial soils, and that under normal circumstances support a prevalence of wetland vegetation typically adapted for life in saturated soils.

44. Floor Area:

The sum of the horizontal areas of the floor(s) of a structure, excluding basements, measured by their exterior dimensions. Floor area shall include, but not be limited to, all stories and lofts, decks, garages, porches and greenhouses.

45. Flowing Water:

A surface water within a stream channel that has a perceptible flow and is substantially permanent in nature. Such waters are commonly referred to as rivers, streams, and brooks.

46. Forest:

A plant community predominantly of trees and other woody vegetation growing more or less closely together.

47. Forest Management Activities:

Forest management activities include timber cruising and other forest resource evaluation activities, pesticide or fertilizer application, timber stand improvement, pruning, timber harvesting and other forest harvesting, regeneration of forest stands, and other similar or associated activities, but not the construction, creation, or maintenance of land management roads, nor the land application of septage, sludge and other residuals and related storage and composting activities.

48. Forest Product:

Any raw material yielded by a forest.

49. Forested Wetland:

Freshwater wetlands dominated by woody vegetation that is 6 meters tall, or taller.

50. Freshwater Wetland:

Freshwater swamps, marshes, bogs and similar areas that are inundated or saturated by surface or groundwater at a frequency and for a duration sufficient to support, and which under normal circumstances do support, a prevalence of wetland vegetation typically adapted for life in saturated soils and not part of a great pond, coastal wetland, river, stream or brook.

51. Gatehouse:

See checkpoint building.

52. Hand-carry Launch:

A shoreland alteration, including, but not limited to, a landing area (that portion of the launch at or below the normal high water mark), a launch area (that portion of the launch immediately adjacent to and above the normal high water mark) any associated parking area, access pathway and/or road, and other similar related facilities to allow an item, including but not limited to a boat, personal watercraft, or dock float, to be moved by hand to or from the surface of a waterbody. Unless otherwise specified by permit condition, boat trailers or dollies designed to be moved by hand may be used at such facilities provided no special site design is required to accommodate such devices.

53. Home Occupation:

Any business, occupation or profession which is carried on in a dwelling unit or structure accessory to a dwelling unit by a member of the family residing in the dwelling unit. The conduct of such business, occupation or profession must be clearly incidental and secondary to the use of the dwelling unit for residential purposes, and must occupy no more than 25 percent of all floor area of the dwelling unit or of the total combined floor area of the dwelling unit and accessory structure in which the occupation is carried out.

54. Imperiled Natural Community (S2):

An assemblage of plants, animals and their common environment that is rare in Maine or vulnerable to further decline. Examples of S2 communities that occur in freshwater wetlands are Atlantic White Cedar Swamp, Alpine Bog-Meadow, Circumneutral Fen, Maritime Slope Bog, and Coastal Plain Pocket Swamp.

55. Land Management Road:

A route or track consisting of a bed of exposed mineral soil, gravel, or other surfacing material constructed for, or created by, the repeated passage of motorized vehicles and used primarily for agricultural or forest management activities, including associated log yards but not including skid trails, skid roads, and winter haul roads.

56. Land Use Subdistrict:

The area located within the boundaries of air, land or water delineated vertically or horizontally by the Commission to provide for distinct categories of uses or resources.

57. Lean-to:

A three-sided, roofed structure used for transient occupancy and commonly constructed for campsites.

58. Level A Mineral Exploration Activities:

Mineral exploration activities engaged in for purposes of determining the location, extent and composition of mineral deposits, provided that such activities are limited to test boring, test drilling, hand sampling, the digging of test pits having a maximum surface opening of 100 square feet, or other test sampling methods which cause minimum disturbance to soil and vegetative cover. Level A mineral exploration activities shall not include bulk sampling of mineral deposits.

Access ways for Level A mineral exploration activities shall include only access ways the creation of which involves little or no recontouring of the land or ditching, and does not

include the addition of gravel or other surfacing materials. Clearing of the vegetative cover shall be limited to the minimum necessary to allow for the movement of equipment.

59. Level B Mineral Exploration Activities:

Mineral exploration activities involving the bulk sampling of mineral deposits, or any mineral exploration activities which exceed those defined as Level A mineral exploration activities and which are not defined as Level C metallic mineral exploration activities.

60. Level C Mineral Exploration Activities:

Metallic mineral exploration activities involving the disturbance of a site, by excavation, of more than two (2) acres of surface area or the excavation or removal of more than ten thousand (10,000) cubic yards of soil, overburden, ore or other earthen materials from the site of exploration.

61. Level A Road Projects:

Reconstruction within existing rights-of-way of public or private roads other than land management roads, and of railroads, excepting bridge replacements. Examples of such activities include, without limitation, culvert replacements, resurfacing, ditching, and bridge repair. When there is no existing layout of right-of-way, the right-of-way should be assumed to extend 33 feet on either side of the existing centerline.

62. Level B Road Projects:

Minor relocations, and reconstructions, involving limited work outside of the existing right-of-way of public roads or private roads other than land management roads and of railroads; bridge reconstruction and minor relocations whether within or outside of existing right-of-way of such roads; "Minor relocations" as used herein may not exceed 300 feet in horizontal displacement of centerline. "Reconstruction" as used herein may involve widening of existing rights-of-way not to exceed 50 feet on either side.

63. Level C Road Projects:

Construction of new roads, and relocations or reconstruction of existing roads, other than that involved in level A or level B road projects; such roads shall include both public and private roadways excluding land management roads.

64. Lot Coverage:

The total footprint area of all structures, which includes, but is not limited to, buildings, parking lots, and driveways.

65. Maintenance:

Activities required to assure continuation of a wetland or the accomplishment of project goals after a restoration or creation project has been technically completed, including, but not limited to, water level manipulations and control of non-native plant species.

66. Major Flowing Water:

A flowing water downstream from the point where such water drains 50 square miles or more.

67. Management Class 1 Lake:

Lake also referred to as a "Least Accessible, Undeveloped, High Value Lake", which meets the following criteria:

- a. Relatively undeveloped: As of November 17, 1988, having less than one development unit per shore mile within 250 feet of the normal high water mark, taken as an average over the entire lake shore. The shoreline is measured by following the shoreline of the lake, including all the shoreline irregularities, on the Commission's Land Use Guidance Map.
- b. Relatively inaccessible: As of November 17, 1988, having no road passable during summer months with a two-wheel drive vehicle within 1/4 mile of the normal high water mark of the lake.
- c. High resource value(s): Found to have one or more outstanding resource values according to the Commission's Wildlands Lake Assessment as shown in Appendix C of these regulations.

Such lakes are designated as MC1 on the Commission's Land Use Guidance Maps. All lakes included in the Wildlands Lake Assessment are listed in Appendix C to these regulations with their Management Class noted.

68. Management Class 2 Lake:

Lake, also referred to as an "Accessible, Undeveloped, High Value Lake", which meets the following criteria:

- a. Relatively Undeveloped: As of November 17, 1988, having less than one development unit per shore mile within 250 feet of the normal high water mark, taken as an average over the entire lake shore. The shoreline is measured by following the shoreline of the lake, including all the shoreline irregularities, on the Commission's Land Use Guidance Map.
- b. Relatively Accessible: As of November 17, 1988, having a road passable during the summer months with a 2-wheel drive motor vehicle within 1/4 mile of the normal high water mark of the lake.
- c. High Resource Value: Having at least two of the following outstanding resource values according to the Commission's Wildlands Lake Assessment:
  - (1) An outstanding rating for fisheries
  - (2) An outstanding rating for scenic value
  - (3) An outstanding rating for shore character
  - (4) An outstanding rating for wildlife when the rating was due to exceptional concentration and/or diversity of wildlife species.

Such lakes are designated as MC2 on the Commission's Land Use Guidance Maps. All lakes included within the Wildlands Lake Assessment are listed in Appendix C to these regulations with their Management Class noted.

69. Management Class 3 Lake:

Lake, also referred to as "Potentially Suitable for Development" which through a consideration of existing water quality, potential water quality impacts, location, access, conflicting uses, available shoreline, water level fluctuation, regional considerations, and special planning needs is found by the Commission to be a potentially suitable location for shoreland development. Such lakes are more specifically defined in the Commission's Comprehensive Land Use Plan.

Such lakes are designated as MC3 on the Commission's Land Use Guidance Maps encompassing such lakes. All lakes included within the Wildlands Lake Assessment are listed in Appendix C to these regulations with their Management Class noted.

70. Management Class 4 Lake:

Lake, also referred to as a "High Value, Developed Lake", which meets the following criteria:

- a. Two or more "outstanding" resource values as identified in the Maine Wildlands Lake Assessment;
- b. Relatively accessible: As of November 17, 1988, accessible to within 1/4 mile of the normal high water mark of the lake by 2-wheel drive motor vehicle during summer months;
- c. Relatively developed: As of November 17, 1988, having an average of more than one development unit per mile of shore within 250 feet of the normal high water mark of the lake. The shoreline is measured by following the shoreline of the lake, including all the shoreline irregularities, on the Commission's Land Use Guidance Map; and
- d. Not meeting the criteria for Management Class 3 Lakes.

Such lakes are designated as MC4 on the Commission's Land Use Guidance Maps. All lakes included within the Wildlands Lake Assessment are listed in Appendix C to these regulations with their Management Class noted.

71. Management Class 5 Lake:

Lake, also referred to as a "Heavily Developed Lake", which meets the following criteria:

- a. As of November 17, 1988, having more than one development unit per 10 acres of lake surface area; or
- b. As of November 17, 1988, having more than one development unit per 400 feet of shore frontage, taken as an average around the entire lake shore. The shoreline is measured by following the shoreline of the lake, including all the shoreline irregularities, on the Commission's Land Use Guidance Map.

Such lakes are designated as MC5 on the Land Use Guidance Maps. All lakes included within the Wildlands Lake Assessment are listed in Appendix C to these regulations with their Management Class noted.

72. Management Class 6 Lake:

Lake, also referred to as a "Remote Pond", which meets the following criteria:

- a. having no existing road access by two-wheel drive motor vehicles during summer months within 1/2 mile of the normal high water mark of the body of water,
- b. having existing buildings within 1/2 mile of the normal high water mark of the body of water limited to no more than one non-commercial remote camp and its accessory structures, and
- c. supporting cold water game fisheries.

Such lakes are designated as MC6 on the Commission's Land Use Guidance Maps. All lakes included within the Wildlands Lake Assessment are listed in Appendix C to these regulations with their Management Class noted.

73. Management Class 7 Lake:

All lakes which are not otherwise classified in one of the other six lake management classes.

74. Metallic Mineral Mining Activity:

"Metallic mineral mining activity" means any activity or process that is for the purpose of extraction or removal of metallic minerals, and includes processes used in the separation or extraction of metallic minerals from other material including, but not limited to: crushing, grinding, beneficiation by concentration (gravity, flotation, amalgamation, electrostatic, or magnetic); cyanidation; leaching; crystallization; or precipitation; mine waste handling and disposal; and processes substantially equivalent, necessary, or incidental to any of the foregoing. Metallic mineral mining or metallic mineral mining activity does not include Level A, B or C exploration activities, or thermal or electric smelting.

75. Mineral Deposit:

Any deposit of peat, sand, gravel, rock, topsoil, limestone, slate, granite, coal, gems, metallic or non- metallic ores or other minerals.

76. Mineral Extraction:

Any extraction of a mineral deposit, other than peat extraction, metallic mineral mining activities or Level A, B, or C, exploration activities.

77. Mineral Extraction for Road Purposes:

Mineral extraction where at least 75% by volume of the minerals extracted over any three year period are used for the purposes of construction or maintenance of land management or other roads.

78. Mineral Processing Equipment:

Equipment used to process minerals following extraction including, but not limited to, rock crushers and batch plants. The term does not include equipment used to remove, sort or transport minerals, such as front-end loaders, screens or trucks.

79. Mineral Soil:

Soil material in which inorganic (mineral) constituents predominate.

80. Minor Flowing Water:

A flowing water upstream from the point where such water drains less than 50 square miles.

81. Mitigation:

Actions taken to offset potential adverse environmental impact. Such actions include the following:

- a. Avoiding an impact altogether by not taking a certain action or parts of an action;
- b. Minimizing an impact by limiting the magnitude or duration of an activity, or by controlling the timing of an activity;
- c. Rectifying an impact by repairing, rehabilitating, or restoring the affected environment;
- d. Reducing or eliminating an impact over time through preservation and maintenance operations during the life of the project; and
- e. Compensating for an impact by replacing affected resources or environments.

82. Mitigation Banking:

Wetland restoration, enhancement, preservation or creation for the purpose of providing compensation credits in advance of future authorized impacts to similar resources.

83. Mooring:

A structure for securing a vessel or aircraft that consists of a line and buoy attached to a weight which rests on the bottom of a waterbody.

84. Motorized Recreational Gold Prospecting:

Operation of small-scale, motorized equipment for the removal, separation, refinement, and redeposition of sediments and other substrates occurring below the normal high water mark of a stream, for the noncommercial, recreational discovery and collecting of gold specimens. This includes, but is not limited to, the operation of a motorized suction dredge, sluice, pump, rocker box, or winch, individually or together.

85. Multi-family Dwelling:

A building containing three or more dwelling units.

86. Nonconforming Lot:

A preexisting lot which, upon the effective date of adoption or amendment of these rules, does not meet the area, frontage or other dimensional requirements for a legally existing or proposed use.

87. Nonconforming Structure:

"A structure, lawfully existing at the time of adoption of district regulations or subsequent amendment made thereto, that does not conform to the district regulations." 12 M.R.S.A., § 682. More specifically, a nonconforming structure is legally existing, but does not meet one of the following dimensional requirements: setback, lot coverage, or height requirements.

88. Nonconforming Use:

"A use of air, land, water or natural resources or a parcel of land, lawfully existing at the time of adoption of district regulations or subsequent amendments made thereto, that does not conform to the district regulations." 12 M.R.S.A., § 682. More specifically, a nonconforming use is a legally existing use of buildings, structures, premises, lands, or parts thereof which would not be allowed to be established under current regulations in the subdistrict in which it is situated.

89. Non-Permanent Docking Structure:

Docking structures which are in place for less than seven months during any calendar year upon or over submerged lands and which are of such a size or design that they can be removed on an annual basis without requiring alteration of the shoreline.

90. Non-Tidal Waters:

All waters or portions thereof which do not customarily ebb and flow as the result of tidal action.

91. Normal High Water Mark of Non-Tidal Waters:

That line on the shores and banks of non-tidal waters which is discernible because of the different character of the soil or the vegetation due to the influence of surface water. Relative to vegetation, it is that line where the vegetation changes from predominantly

aquatic to predominantly terrestrial (aquatic vegetation includes but is not limited to the following plants and plant groups - water lily, pond lily, pickerel-weed, cat tail, wild rice, sedges, rushes, marsh grasses; and terrestrial vegetation includes but is not limited to the following plants and plant groups - upland grasses, aster, lady slipper, wintergreen, partridge berry, sasparilla, pines, cedars, oaks, ashes, alders, elms, spruces, birches, beeches, larches, and maples.) In places where the shore or bank is of such character that the normal high water mark cannot be easily determined (as in the case of rock slides, ledges, rapidly eroding or slumping banks) the normal high water mark shall be estimated from places where it can be determined by the above method.

92. Normal High Water Mark of Tidal Waters:

That line on the shore of tidal waters reached by the shoreward limit of the rise of the medium tides between the spring and the neap. This line may be identified where appropriate by discerning the debris line left by tidal action.

93. Normal Maintenance and Repair:

Unless otherwise provided, any work necessary to maintain an improvement or structure in its original or previously improved state or condition. This includes general upkeep, such as painting, fixing portions of the structure that are in disrepair, or the replacement of sill logs, roofing materials, siding, or windows, as long as there is no expansion of the nonconforming structure and less than 50 percent of the building is replaced. In-kind and in-place replacement of decking or exterior stairs is considered as normal maintenance and repair. Normal maintenance and repair shall not include reconstruction, or change in design, change in structure, change in use, change in location, change in size or capacity.

94. On Premise Sign:

A sign which is located upon the same lot or parcel of real property where the business, facility, or point of interest being advertised is located.

95. Peatland:

Freshwater wetlands, typically called bogs or fens, consisting of organic soils at least 16" deep, predominantly vegetated by ericaceous shrubs (heath family), sedges, and sphagnum moss and usually having a saturated water regime.

96. Permanent Foundation:

A supporting substructure that either extends below the frost line or is designed to permanently withstand freeze-thaw conditions. Permanent foundations include full foundations, basements, slabs and frost walls. For the purposes of this definition "sonotubes" or posts installed with augers are not considered permanent foundations.

97. Person:

"An individual, firm, association, organization, partnership, trust, company, corporation, state agency or other legal entity." 12 M.R.S.A., § 682.

98. Personal Watercraft:

"Any motorized watercraft that is 14 feet or less in hull length as manufactured, has as its primary source of propulsion an inboard motor powering a jet pump and is capable of carrying one or more persons in a sitting, standing or kneeling position. 'Personal watercraft' includes, but is not limited to, a jet ski, wet bike, surf jet and miniature

speedboat. 'Personal watercraft' also includes motorized watercraft whose operation is controlled by a water skier." 12 M.R.S.A. §7791, sub-§11-A.

99. Pesticide:

A chemical agent or substance employed to kill or suppress pests (such as insects, weeds, fungi, rodents, nematodes or other organisms) or intended for use as a plant regulator, defoliant or desiccant.

100. Piped Water:

Water supplied to a building by means other than hand pump or hand carry.

101. Portable Mineral Processing Equipment:

Mineral processing equipment that is not fixed to a location on the ground but rather is designed to be readily moved from one mineral extraction operation to another.

102. Practicable:

Available and feasible considering cost, existing technology and logistics based on the overall purpose of the project.

103. Preservation:

The maintenance of a wetland area or associated upland areas that contribute to the wetland's functions so that it remains in a natural or undeveloped condition. Preservation measures include, but are not limited to, conservation easements.

104. Primitive Recreation:

Those types of recreational activities associated with non-motorized travel, including fishing, hiking, hunting, wildlife study and photography, wild crop harvesting, trapping, horseback riding, tent and shelter camping, canoe portaging, cross country skiing, and snowshoeing.

105. Primitive Septic System:

A septic system that uses an alternative toilet, such as a pit privy, compost, chemical, recirculating, incinerating, and vacuum types and a minimal disposal field designed to treat gray waste water that originates from a non-pressurized water supply.

106. Principal Building:

A building which provides shelter for the primary use of a parcel. On a single parcel, all buildings related to forest or agricultural management activities, including dwellings of the owner or lessee and employees, are considered one principal building.

107. Principal Use:

A use other than one which is wholly incidental or accessory to another use on the same premises.

108. Private trailered ramp, hand-carry launch, or dock:

A trailered ramp, hand-carry launch, or dock that is privately owned and operated, and not open to all members of the public.

109. Projecting Sign:

A sign which is attached to a wall of a building and extends more than 15 inches from any part of the wall.

110. Property Line:

Any boundary between parcels of land owned or leased by different persons or groups of persons.

111. Public Road or Roadway:

Any roadway which is owned, leased, or otherwise operated by a governmental body or public entity.

112. Public trailered ramp, hand-carry launch, or dock:

A trailered ramp, hand-carry launch, or dock, including associated facilities, that is owned, leased, or operated by a public entity and made available with or without a fee. Such entities include owners of federally licensed hydropower projects within the resource affected by the hydropower project for use by all members of the public.

113. Rapidly Permeable Outwash Soils:

Such soils shall include Colton, Hinckley, Adams, Windsor, Merrimac, Agawam, Stetson, Allagash, Duane, Crogham, Deerfield, Sudbury, Ninigret, Machias, Madawaska, Skowhegan and such other soils as may be included in this category by the National Cooperative Soil Survey in Maine.

114. Reclamation:

The rehabilitation of the area of land affected by mineral extraction, including but not limited to, the stabilization of slopes and the creation of safety benches, the planting of vegetation including grasses, crops, shrubs, and/or trees, and the enhancement of wildlife and aquatic habitat and aquatic resources.

115. Reconnaissance Soil Survey:

A soil survey in which most of the mapping units are phases of soil associations at the series level, or above, in the taxonomic system. Identification is made by field examination, but soil boundaries need not be plotted in the field throughout their course but may follow major topographic features.

116. Reconstruction:

The addition of a permanent foundation or the rebuilding of a structure after more than 50 percent by area of its structural components, including walls, roof, or foundation, has been destroyed, damaged, demolished or removed. Leaving one or two walls or the floor of a structure in place, while rebuilding the remaining structure, is considered reconstruction, not normal maintenance and repair or renovation.

117. Remote Camp:

A dwelling unit consisting of not more than 750 square feet of gross floor area, that is not served by any public utilities, except radio communications.

118. Remote Campsites:

Campsites which are not part of commercial campgrounds and which are characterized by their remoteness, limited scale, dispersed nature, and limited usage. More specifically, remote campsites include sites which:

- a. are designed to be accessible and generally are only accessible by water or on foot;
- b. are comprised of not more than four individual camping areas designed for separate camping parties, and are designed for a total of not more than 12 overnight campers;
- c. have permanent structures limited to privies, fireplaces or fire rings, picnic tables, and picnic table shelters consisting of a roof without walls; and
- d. require no other construction or grading and only minimal clearing of trees.

119. Remote Rental Cabin:

A building used only as a commercial lodging facility on a transient basis by persons primarily in pursuit of primitive recreation or snowmobiling in an isolated and remote setting. A remote rental cabin cannot be larger than 750 square feet in gross floor area; cannot be served by any public utilities providing electricity, water, sewer, or telephone services; cannot have pressurized water; and cannot have a permanent foundation.

Placement of these buildings does not create a lot for subsequent lease or sale.

A remote rental cabin cannot be located within 1000 feet of any public road or within 1000 feet of any other type of residential or commercial development.

See Section 10.17, B, 8, A “Subdivision and Lot Creation” to determine how such buildings are counted for purposes of subdivision.

120. Renovation:

Restoring or remodeling a structure. Renovation includes interior modifications, and the installation of new windows, floors, heating systems, or other features, as long as there is no expansion of the nonconforming structure and less than 50 percent of the building's structural components are replaced. The introduction of plumbing to a structure may constitute a change in use that requires a permit.

121. Residential:

Pertaining to a dwelling unit.

122. Residential Directional Sign:

An off-premise sign erected and maintained by an individual or family to indicate the location of his or its residence.

123. Residual:

“Residual means solid wastes generated from municipal, commercial or industrial facilities that is suitable for agronomic utilization. These materials may include: food, fiber, vegetable and fish processing wastes; dredge materials; sludges; dewatered septage; and ash from wood or sludge fired boilers.” DEP Rules, Chapter 400, § 1.

124. Restoration:

An activity returning a wetland from a disturbed or altered condition with lesser acreage or fewer functions to a previous condition with greater acreage or function.

125. Roadway:

A public or private road including any land management road.

126. Roof Sign:

A sign which is attached flat to, painted on, or pinned away from the roof of a building.

127. Septage:

”Septage means waste, refuse, effluent, sludge, and any other materials from septic tanks, cesspools, or any other similar facilities.” 38 M.R.S.A. § 1303-C “Septage is defined as a mixture of liquids and solids derived from residential sanitary wastewater, and includes sanitary wastewater from tanks connected to commercial and institutional establishments which have inputs similar to residential wastewater. Septage also includes wastes derived from portable toilets.” DEP Rules, Chapter 420, § 1

128. Service Drop:

Any utility line extension which does not cross or run beneath any portion of a body of standing water provided that:

a. in the case of electric service

1. the placement of wires and/or the installation of utility poles is located entirely upon the premises of the customer requesting service or upon a roadway right-of-way; and
2. the total length of the extension within any 5 year period is less than 2,000 feet.

b. in the case of telephone service

1. the extension, regardless of length, will be made by the installation of telephone wires to existing utility poles; or
2. the total length of the extension within any 5 year period, requiring the installation of new utility poles or placed underground, is less than 2,000 feet.

129. Setback:

The minimum horizontal distance from the lot line, shoreline, upland edge of a wetland, or road to the nearest part of the structure or other regulated area such as a driveway or parking area.

130. Shallow Soils Over Fractured Bedrock:

Such soils shall include Thorndike, Mapleton, Linneus, Bensen and such other soils as may be included in this category by the National Cooperative Soil Survey in Maine.

131. Shoreland Alteration:

Any land use activity, which alters the shoreland area, either at, adjacent to or below the normal high water mark, of any surface water body, including but not limited to:

- a. dredging or removing materials from below the normal high water;
- b. construction or repairing any permanent structure below the normal high water mark.

For purposes of this subsection, permanent structure shall mean any structure, including but not limited to, causeways, wharfs, piers, docks, concrete or similar slabs, bridges, hand-carry launches, trailered ramps, water-access ways, piles, marinas, retaining walls, riprap, buried or submarine utility cables and lines, permanent docking structures, mooring structures, and water lines. A structure which is not fixed in or over the water or below the normal high water mark for more than 7 months in a calendar year shall not be a permanent structure;

- c. depositing any dredged spoil or fill below the high water mark; and
- d. depositing dredged spoil or fill, or bulldozing, scraping or grading, on land adjacent to a water body in such a manner that the material or soil may fall or be washed into the water body, except that filling and grading or water crossings which do not require a permit as specified in Section 10.17, A, or other provisions of these rules shall not constitute shoreland alteration.

Activities which cause additional intrusion of an existing structure into or over the water body, are also considered shoreland alterations.

132. Shoreline:

The normal high water mark of tidal water, a standing body of water, flowing water, or stream channel.

133. Sign:

Any structure, display, logo, device or representation which is designed or used to advertise or call attention to any thing, person, business, activity, or place and is visible from any roadway or other right-of-way. It does not include the flag, pennant, or insignia of any nation, state or town.

Visible shall mean capable of being seen without visual aid by a person of normal visual acuity.

The size of a ground, roof, or projecting sign shall be the area of the smallest square, rectangle, triangle, circle, or combination thereof, which encompasses the facing of a sign, including copy, insignia, background and borders; the structural supports of a sign are to be excluded in determining the sign area; where a supporting structure bears more than one sign, all such signs on the structure shall be considered as one sign, and so measured; only one face of a double-faced sign is included as the area of such sign. The area of a wall or window sign shall be the area of a regular geometric form enclosing a single display surface or display device containing elements organized, related, and composed to form a unit; where matter is displayed in a random manner without organized relationship of elements, or where there is reasonable doubt about the relationship of elements, each element shall be considered to be a single sign.

134. Significant Wildlife Habitat:

The following areas to the extent that they have been identified by the Department of Inland Fisheries and Wildlife: habitat, as determined by the Department of Inland Fisheries and Wildlife, for species appearing on the official state or federal lists of endangered or threatened animal species; deer wintering areas and travel corridors as determined by the Department of Inland Fisheries and Wildlife; high and moderate value water fowl and wading bird habitats, including nesting and feeding areas as determined by the Department of Inland Fisheries and Wildlife; critical spawning and nursery areas for Atlantic sea run salmon as determined by the Atlantic Sea Run Salmon Commission; shorebird nesting, feeding and staging areas and seabird nesting islands as determined by the Department of Inland Fisheries and Wildlife; and significant vernal pools as defined and identified in specific locations by the Department of Inland Fisheries and Wildlife.

135. Sludge:

“Sludge means non-hazardous solid, semi-solid or liquid waste generated from a municipal, commercial or industrial wastewater treatment plant, water supply treatment plant, or wet process air pollution control facility or any other such waste having similar characteristics and effect. The term does not include industrial discharges that are point sources subject to permits under Section 402 of the Federal Water Pollution Control Act, as amended.” DEP Rules, Chapter 400, § 1

136. Spaghetti-lot:

“A parcel of land with a lot depth to shore-frontage ratio greater than 5 to 1. Shore frontage means land abutting a river, stream, brook, coastal wetland, or great pond as these features are defined in 38 MRSA, § 480-B.” 12 M.R.S.A. § 682(13)

137. Sporting camp:

See commercial sporting camp.

138. Stream Channel:

A channel between defined banks created by the action of surface water and characterized by the lack of terrestrial vegetation or by the presence of a bed, devoid of topsoil, containing waterborne deposits or exposed soil parent material or bedrock.

139. Structure:

“[A]nything constructed or erected with a fixed location on or in the ground, or attached to something having a fixed location on or in the ground, including, but not limited to, buildings, mobile homes, retaining walls, billboards, signs, piers and floats.” 12 M.R.S.A. § 682.

140. Structure Height:

The vertical distance between the original grade at the downhill side of the structure and the highest point of the structure.

141. Subdivision:

"Subdivision" means a division of an existing parcel of land into 3 or more parcels or lots within any 5-year period, whether this division is accomplished by platting of the land for immediate or future sale, or by sale of the land by metes and bounds or by leasing. The term also includes the division, placement or construction of a structure or structures on a tract or parcel of land resulting in 3 or more dwelling units within a 5-year period. (12 MRSA § 682)

Refer to Section 10.17, B, 9, “Subdivision and Lot Creation” for additional criteria on types of lots that are included or are exempt from this definition.

142. Subsurface Waste Water Disposal System:

“Subsurface waste water disposal system means:

- A. Any system for the disposal of waste or waste water on or beneath the surface of the earth including, but not limited to:
  - (1) Septic tanks;
  - (2) Drainage fields;
  - (3) Grandfathered cesspools;
  - (4) Holding tanks; or

- (5) Any other fixture, mechanism or apparatus used for these purposes; but
- B. Does not include:
- (1) Any discharge system licensed under Title 38, section 414;
  - (2) Any surface waste water disposal system; or
  - (3) Any municipal or quasi-municipal sewer or waste water treatment system.” 30-A M.R.S.A. §4201(5).

143. Subsurface Waste Water Disposal Rules:

The Maine Subsurface Waste Water Disposal Rules, 144A CMR 241, administered by the Department of Human Services.

144. Tidal Waters:

All waters or portions thereof which customarily ebb and flow as the result of tidal action.

145. Timber Harvesting:

The cutting and removal of trees from their growing site, and the attendant operation of mobile or portable chipping mills and of cutting and skidding machinery, including the creation and use of skid trails, skid roads, and winter haul roads, but not the construction or creation of land management roads.

146. Traffic Control Sign or Device:

A route marker, guide sign, warning sign, sign directing traffic to or from a bridge, ferry or airport, or sign regulating traffic, which is not used for commercial or advertising purposes.

147. Trail:

A route or path other than a roadway, and related facilities, developed and used primarily for recreational activities including but not limited to hiking, backpacking, cross-country skiing and snowmobiling, which passes through or occurs in a natural environment. Related facilities may include but not be limited to subsidiary paths, springs, view points, and unusual or exemplary natural features in the immediate proximity of the trail which are commonly used or enjoyed by the users of the trail.

148. Trailered Ramp:

A shoreland alteration, including, but not limited to, an associated parking area, access road, and other similar related facilities to allow a trailer to be backed below the normal high water level of a waterbody in order to load or unload an item, including but not limited to a boat, personal watercraft, float plane, or dock float.

149. Transient Occupancy:

“Occupancy for 14 or fewer days in any 30-day period.” 12 M.R.S.A. § 682(18).

150. Unorganized and Deorganized Areas:

“Unorganized and deorganized areas includes all unorganized and deorganized townships, plantations that have not received commission approval under section 685-A, subsection 4 to implement their own land use controls, municipalities that have organized since 1971 but have not received commission approval under section 685-A, subsection 4 to implement their own land use controls and all other areas of the State that are not part of an organized municipality except Indian reservations.” 12 M.R.S.A., § 682.

151. Utility Facilities:

Structures normally associated with public utilities, including without limitation: radar, radio, television, or other communication facilities; electric power transmission or distribution lines, towers and related equipment; telephone cables or lines, poles and related equipment; municipal sewage lines; gas, oil, water, slurry or other similar pipe lines or above ground storage tanks.

152. Wall Sign:

A sign which is attached flat to, painted on or pinned away from the wall of a building and does not project more than 15 inches from such wall.

153. Water Bar:

An obstruction placed across a roadway which effectively diverts surface water from and off the road.

154. Water-access Ways:

A structure consisting of a pair of parallel rails, tracks, or beams extending from above the normal high water mark to below the normal high water mark of a waterbody, and designed as the conveying surface from which an item, including but not limited to a boat, personal watercraft, float plane, or dock float, with or without a support cradle, is launched into or removed from the waterbody.

155. Water Crossing:

A roadway or trail crossing of any body of standing or flowing water (including in its frozen state) by means of a bridge, culvert, or other means.

156. Water-Dependent Uses:

Those uses that require for their primary purpose, location on submerged lands or that require direct access to, or location in, coastal waters and which cannot be located away from these waters. These uses include commercial and recreational fishing and boating facilities, finfish and shellfish processing, fish storage and retail and wholesale marketing facilities, waterfront dock and port facilities, boat building facilities, navigation aides, basins and channels, uses dependent upon water- borne transportation that cannot reasonably be located or operated at an inland site and uses which primarily provide general public access to marine or tidal waters.

157. Water Impoundment:

Any body of water created, or elevation of which is raised, by man through the construction of a dam.

158. Wetland Functions:

The roles wetlands serve which are of value to society or the environment including, but not limited to, flood water storage, flood water conveyance, ground water recharge and discharge, erosion control, wave attenuation, water quality protection, scenic and aesthetic use, food chain support, fisheries, wetland plant habitat, aquatic habitat and wildlife habitat.

159. Wetland Value:

The importance of a wetland with respect to the individual or collective functions it provides.

160. Wildlife:

All vertebrate species, except fish.

161. Wildlife Management District (WMD):

A geographic area identified by the Maine Department of Inland Fisheries and Wildlife to facilitate the management of wildlife. For purposes of these regulations, the boundaries of Wildlife Management Districts are as shown on Map 10.16-1 and the area of a Wildlife Management District is based on land and water acreage within LURC jurisdiction.

162. Wildlife Management Practices:

Activities engaged in for the exclusive purpose of management of wildlife populations by manipulation of their environment for the benefit of one or more species. Such practices may include, but not be limited to, harvesting or removal of vegetation, controlled burning, planting, controlled hunting and trapping, relocation of wildlife, predator and disease control, and installation of artificial nesting sites, provided that such activities are specifically controlled and designed for the purpose of managing such species. This term does not include impounding water.

163. Winter Haul Road:

A route or travel way that is utilized for forest management activities conducted exclusively during frozen ground conditions. Winter haul roads must have the following characteristics:

- a. they are constructed with no significant soil disturbance;
- b. they do not make use of fill or surfacing material; and
- c. they are substantially revegetated by the end of the following growing season and are maintained in a vegetated condition.