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20 MR. PRITTS: Yes, Your Honor. May it  
21 please the Court, my name is Matt Pritts and this  
22 is my associate, Justin Simmons, and we're from  
23 Roanoke and we represent Appalachian Power  
24 Company. Has the Court had an opportunity to read

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1 the submissions that we sent to your office?

2 THE COURT: I have read the vast majority  
3 of it. I can honestly say I don't think that I  
4 read in full the Shoreline Management Plan; I'm  
5 not sure that I would have understood it had I  
6 tried to read too much of it, but in terms of the  
7 pleadings, I have read all of them

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18 THE COURT: Is the Shoreline Management  
19 Plan part of the chain of title as well?

20 MR. PRITTS: It is not part of the chain of  
21 title, Your Honor.

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9 THE COURT: Counsel, let me begin by  
10 stating how much I appreciate the clarity of the  
11 pleadings and submissions on behalf of both  
12 sides.

20 As I noted in my comments, I am very  
21 sympathetic with the plight of private property  
22 owners in cases like this. It is -- it is clear  
23 to me that when the lake was first established,  
24 that individuals were essentially allowed to build

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1 whatever structures, according to the building  
2 code. They went to the local county of their  
3 residence and those requests were almost  
4 universally granted with little to no  
5 modification, and frankly, little to no concern on  
6 behalf of Appalachian Power.

7 It's also clear that the Flowage Easement  
8 in this case as -- certainly as contrasted with  
9 that in the Lake Anna situation is far broader in  
10 its grant to Appalachian, and I'm certain that, at  
11 the time it was done, there was not the  
12 expectation of federal insertion and regulation of  
13 private property rights that we deal with on a  
14 daily basis now, particularly where waters are  
15 concerned and wetlands are concerned, and I don't  
16 know whether the winds from Washington, once they  
17 start blowing one way, it's often hard to get them  
18 turned a different way, but -- I don't know  
19 whether that is going to happen, but we all must  
20 recognize that the ability of Appalachian Power to

21 operate the project in this case that created  
22 Smith Mountain Lake is pursuant to a federal  
23 license.

24 That federal license requires Appalachian

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1 to manage the project in such a way as to minimize  
2 environmental disruptions, damages to wetlands; it  
3 limits the ability to conduct certain operations  
4 during certain times of year, as well as  
5 generally, and it is the Court's opinion that the  
6 grant to Appalachian by the property owners in  
7 terms of the Flowage Easement is broad enough that  
8 the -- that it is applicable to this situation,  
9 and accordingly, the Court believes that it must  
10 sustain the demurrer in these cases as to the  
11 Pressls.

12 I don't think that -- and I hope it doesn't  
13 end the story; I think Mr. and Mrs. Pressl have  
14 every right to want to enjoy their property, and  
15 it sounds to me, at least, as though Appalachian  
16 is willing to try to help them do that, to the  
17 extent that they can do so within the confines of  
18 the Shoreline Management Plan, and since that is a  
19 document which you must, in this circumstance,  
20 govern Appalachian's conduct, I find that it is a  
21 reasonable restriction and that Appalachian does  
22 have the power to require permitting and approval  
23 on a preconstruction basis, again, if for no other  
24 reason than it does not make economic sense

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1 otherwise.

2 If individuals could simply construct what  
3 they want and then say, oh, by the way, we've done  
4 this, then Appalachian would go in and have to  
5 tear it down, Number 1, it is a tremendous  
6 economic waste, and Number 2, it's probably going  
7 to do more damage to deconstruct, and then if you  
8 then have to reconstruct, you've got -- it just  
9 makes no sense, so I'm going to sustain the  
10 demurrer. I will note the Plaintiffs' exception  
11 to the Court's ruling.

12 MR. WANDREI: And Your Honor, would the  
13 Court entertain -- if I file a Motion to Amend,  
14 would the Court entertain an amendment to the  
15 pleadings?

16 THE COURT: I will take that under  
17 consideration at this time. I need to study that  
18 more. I know that the objection of the  
19 Defendants, and I know I really need to study that  
20 more. I'm not prepared to rule on that at this  
21 time.