



Maine Environment



Natural Resources
Council of Maine
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REPORT INSIDE

NRCM Files Appeal of LURC's Approval of Plum Creek Development for Moosehead

In our ongoing effort to protect the North Woods from unplanned, sprawling development, on October 22, 2009, the Natural Resources Council of Maine (NRCM) filed a lawsuit in Maine Superior Court to appeal the Land Use Regulation Commission's (LURC's) decision approving the huge development proposed for the Moosehead Lake region.

About a month earlier, on September 23, LURC approved Seattle-based Plum Creek's rezoning application over objections from a record number of Maine people and in the face of experts who gave caution about the inappropriateness of the developments. The proposal—the largest that Maine has ever seen—calls for more than 2,000 new residential units, including three resorts and other development in 10 different development zones around Moosehead Lake.

Inventing a Process

NRCM staff and lawyers spent countless hours reviewing LURC's decision. After careful deliberation and extensive legal analysis, NRCM's Board of Directors voted to authorize the appeal.

"We believe LURC violated established laws governing how the agency was required to conduct this proceeding," said Brownie Carson, NRCM's executive director. "After consulting with legal counsel, our board concluded that the violations are of sufficient significance that the Court



It's as if a jury at a trial decided not to return a verdict, opting instead to rewrite the plaintiff's claims."

- NRCM Executive Director Brownie Carson

determined that Plum Creek's October 2007 Zoning Petition did not satisfy all of the regulatory requirements for concept plan approval."¹

But rather than denying the application, as LURC was required to do by its own rules, the Commission instead initiated an unprecedented, unauthorized, and unlawful procedure. "LURC staff and consultants drafted Plum Creek's final plan for them. This is not allowed under Maine law," says Carson. "It's as if a jury at a trial decided not to return a verdict, opting instead to rewrite the plaintiff's claims."

Violation of Principles

NRCM plans to take its case to the Superior Court, and the Law Court if necessary. LURC's rules and regulations exist to ensure fairness, due process, and predictability to all interested parties. The approach that was taken here violated each of those principles. "LURC's unlawful processing of the Plum Creek proposal cannot be allowed to stand," says Carson. "Doing so would introduce complete uncertainty about LURC's role and what rules it will apply when considering future applications."

"How would an applicant respond if the reverse had taken place?" notes Cathy Johnson, North Woods Project Director and Senior Staff Attorney. "What if," she points out, "LURC found that the applicant had met all legal requirements but in order to reject the application, asked its staff to

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1 Commission Decision in the Matter of Zoning Petition ZP 707, p.4.



NRCM Executive Director Brownie Carson and legal counsel Russ Pierce of Norman, Hanson, and DeTroy, file NRCM's appeal at the Kennebec County Court House.

should overturn LURC's decision."

For Plum Creek's proposal, NRCM believes LURC invented a process for which there is no legal basis and approved a final concept plan that was substantially written by its own staff and consultants, who acted as advocates for the plan. Elements of that plan, NRCM believes, never would have been approved had LURC not exceeded its legal authority.

The breakdown of LURC's process began in early 2008 when, following the close of several weeks of hearings, the Commission concluded that Plum Creek's plan did not meet the regulatory requirements necessary for approval. As summarized in its final decision, LURC wrote, "The Commission

EPA To Issue Strict Rules for Power Plant Mercury

Thanks in part to a lawsuit by NRCM and several other groups, Maine—and the nation—will soon be able to breathe a little easier. In a recent decision by the EPA, new air pollution rules for coal- and oil-fired power plants will cut mercury emissions by 90 percent. Although Maine does not have any such power plants, the ruling will have a big impact on our state. Maine's rivers, lakes, and streams have high levels of mercury because of pollutants from power plants west of the state, particularly in the Midwest. Children and pregnant women are especially vulnerable to these toxics, which can cause neurological disorders and other health problems. Under the agreement filed in U.S. District Court for the District of Columbia, the EPA is scheduled to adopt the new rules by November of 2011.



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• VIEW FROM MY WINDOW •

Taking a Stand for Moosehead

Given NRCM's extraordinary efforts over nearly five years to get the Moosehead Lake region from Plum Creek's massive development plan, filing an appeal may have seemed an obvious step after LURC's decision to approve it. But we spent considerable time carefully analyzing and discussing the merits, policy options, and alternatives.

Appeals of this type are an uphill battle. Courts often defer to an administrative agency, like LURC, and do not like to overturn a decision made by a government entity unless absolutely necessary. One of the first questions a judge might ask is, "Was this decision arbitrary and capricious?" In this case, LURC's approval of Plum Creek's plan was so egregious that, despite the odds, we felt we had no choice but to appeal.

In an unprecedented and unlawful move, LURC made up its own process in order to approve the proposal. This process included assisting Plum Creek in the work of developing the Moosehead region by directing LURC staff and consultants to rewrite Plum Creek's plan.

Needless to say, the public was excluded from this rewrite. LURC's formal written decision of September 23rd, nearly 200 pages long, acknowledges that the plan was legally deficient at the close of the public hearings. The case should have ended there—unless Plum Creek had appealed its denial.

LURC strayed from its mission by its blatant disregard for concerns raised by thousands of Maine people, from every county in the state—an outpouring of public sentiment rarely seen in Maine. Thirty-eight years ago, LURC was established to safeguard the North Woods, to ensure that this ten million acres of forest would be protected from the ravages of fragmentation and development. Simply put, LURC failed to uphold its responsibility, and to keep the public trust. We cannot let such action go unchallenged.

As we forge ahead with the long, hard work of this appeal, we can look back at NRCM's history. Maine's most significant environmental victories—like passing the bottle bill and billboard laws, removing the Edwards Dam and restoring the Kennebec River, and creating the Caribou-Speckled Wilderness Area—have been extraordinarily difficult. Important victories of past years were made possible by the unwavering dedication of Maine people, and the determined efforts of this organization. Defending the special character of Moosehead Lake is no less difficult, but we must once again—together—show that we are up to the task.

As always, the commitment of NRCM members is at the heart of our efforts. Your words of encouragement, your generous financial support, and—most importantly—your passion for Maine's environment, are at the core of our work. Thank you for all you do for Maine. —*Brownie Carson, Executive Director*



• NRCM IN ACTION •

A glimpse at where NRCM staff have been working in communities around Maine.



In October, **Dylan Voorhees, clean energy project director**, spoke at a workshop on energy efficiency at the Androscoggin Chamber of Commerce in October. The workshop gave businesses in the Lewiston-Auburn area some practical advice about getting started with energy efficiency and alternative energy ideas. Dylan shared NRCM's new efficiency guide for businesses and talked about Maine's plans to significantly expand its energy efficiency programs for Maine homes and businesses.



NRCM Staff Scientist Nick Bennett was part of a panel discussion sponsored by Kennebec Estuary Land Trust in Bath. Other panelists represented Chewonki and Riverbank Power Corp (which seeks to develop a huge underground power storage plant in Wiscasset that, as proposed, would threaten fisheries in the Back River and Sheepscot River estuaries). Nick spoke about NRCM's multi-decade effort to restore native Kennebec River fisheries through the appropriate use of fish passage and dam removal. He emphasized the need to balance energy generation with healthy fisheries.



NRCM has been holding community discussions and house parties throughout the past month all across the state to discuss federal climate change legislation. "This has been a very effective way to engage communities from Portland and Bangor to more rural parts of the state. I have seen a lot of familiar faces at these discussions, but also a lot of new activists that are learning more about NRCM and the work that we do," said **Clean Energy Outreach Coordinator Emmie Theberge**. If you are interested in hosting a community discussion in your town, please contact Emmie at emmie@nrcm.org or (207) 430-0105.



On September 23rd, **Advocacy Director Pete Didisheim** spoke on a panel at Bates College titled, "Dealing with Climate Change: The Debate Among Policy Makers." Pete provided an overview of progress made in Maine in recent years to reduce global warming and promote energy efficiency and renewable energy. Other panelists were Ted Koffman, executive director of Maine Audubon; Melissa Carey, climate change policy specialist with Environmental Defense Fund; and Tom Tietenberg, Professor Emeritus of Environmental and Natural Resource Economics at Colby College and NRCM board member.

NRCM Testifies at International Joint Commission Meeting, New Brunswick

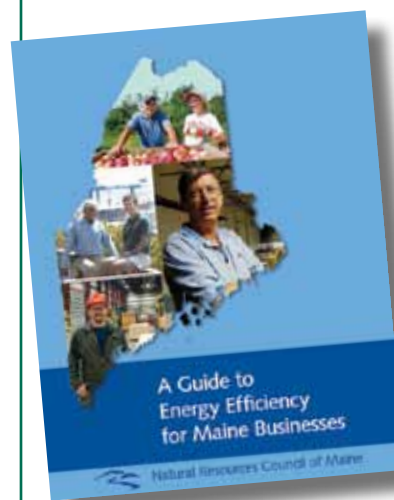


St. Croix River

In June, NRCM testified at a meeting of the International Joint Commission (IJC) in McAdam, New Brunswick. The petition by NRCM and its allies to restore alewives to the St. Croix River was the key item on the agenda. Many alewife supporters from both sides

of the border came to the meeting, resulting in record attendance for an IJC meeting in the region. As a result of the scientific strength of the case to restore alewives, and the public support for restoration on both sides of the border, the IJC has since written a letter to Governor Baldacci stating that alewife restoration is in the best interests of the St. Croix and is one of the IJC's top priorities. We are continuing to work to make sure this issue is resolved quickly enough so that alewives can start to reach their ancestral spawning grounds in the St. Croix again next spring. —*Nick Bennett, NRCM Staff Scientist*

NRCM Publishes Guide to Energy Efficiency for Businesses



NRCM's new *Guide to Energy Efficiency for Maine Businesses* as a way to provide a solutions-oriented resource to help businesses learn how to start saving energy and money right away. The guide offers valuable lessons to owners, managers, and decision-makers in industrial and manufacturing plants; small businesses; schools and health care facilities; food and lodging establishments; retail and office businesses, and other small to medium-sized businesses. Visit www.nrcm.org and click "Publications" to get your copy, or call (207) 430-0105.

Maine Environment

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Maine Environment is provided four times a year to more than 12,000 members and supporters of the Natural Resources Council of Maine. NRCM is a Maine-based nonprofit membership organization working to protect, conserve, and restore our land, air, wildlife, and water, now and for future generations. Membership starts at \$28/year. Join online at www.nrcm.org.

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Banner photo: Missing Lynx, Kennebec River


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reinterpret legal criteria to ensure the plan failed? The randomness introduced by this precedent could create major problems in the future.”

Also of concern to Johnson is that, at the conclusion of the Plum Creek proceeding, some Commissioners stated that the approach used could serve as a model for future concept plans. “From NRCM’s perspective, this would sanction a process that violates Maine law and LURC’s own rules,” she says, adding that it puts LURC staff in the position of representing the developer’s interests instead of the public interest.

Protecting Maine’s North Woods

One of NRCM’s responsibilities is to protect the integrity of the process by which environmental decisions are made by state agencies, including LURC, which is responsible for protecting and enhancing the principal values of more than 10 million acres of land. This land includes some of Maine’s most significant lakes, rivers, forests, and mountains. That is why a violation of law and administrative process like this is unacceptable.

Johnson explains that LURC was supposed to have developed a prospective zoning plan for the Moosehead Lake region, as called for by LURC’s 1997 Comprehensive Land Use Plan. It appears that LURC staff and consultants, and the Commission itself, came to believe that their improvised approach with regard to the Plum Creek application might somehow fulfill this neglected planning priority. But, she points out, the approach LURC used here violates the rules for a prospective planning effort—the Commission cannot pretend to develop a regional plan for the Moosehead Lake area when the process was entirely driven by the interests of only a single landowner.

“We are asking that the Court overturn LURC’s approval of Plum Creek’s plan that, by LURC’s own conclusion, was inconsistent with the laws and rules that protect the interests of Maine people, and the wildlife and environment of the region,” says Brownie Carson. “This court action should result in a better future for the Moosehead Lake region, through a true regional planning process initiated by LURC, or by a scaled back Plum Creek development proposal. Regardless, we cannot stand on the sidelines and let this decision go unchallenged.”

Moosehead Resident Speaks Out

LURC invented its own process in order to approve Plum Creek’s development at Moosehead. But it didn’t stop there. When its staff and consultants rewrote the Plum Creek proposal, it included development the company hadn’t even requested in its own proposal: a resort at Moose Bay. Here’s what an area resident had to say about it:



Frank Altimore, canoeing at Moosehead. Moose Mountain, the site of a huge resort just approved by LURC as part of Plum Creek’s proposal, is in the background.

“I am a resident of Piscataquis County and live in Moose Bay on Moosehead Lake. Many area residents are shocked and upset to be just now learning of the proposed resort at Moose Bay, which was not part of Plum Creek’s plan during the public hearings.

“To us, it is inexcusable for LURC to disregard the permitting process by suddenly adding a third resort at Moose Bay. How can we believe that this is a fair process without the opportunity for the public, affected residents, or wildlife and conservation professionals to evaluate and comment on the impact of this 11th hour additional development?”

“I do believe the area could benefit greatly from sensible planned development that meets state laws and guidelines and is balanced by real conservation of key unique natural resources. But a third resort in Moose Bay is not what is needed.” - Frank Altimore, Moosehead resident

Help Protect Maine’s Environment with a Gift from Your IRA!

Congress extends IRA rollover to allow charitable distributions until December 31, 2009

The U.S. Congress has extended a law making it possible for individuals 70½ or older to make a distribution from an Individual Retirement Account to non-profit organizations such as the Natural Resources Council of Maine. The IRA rollover law, extended this fall, allows the owner of a traditional or Roth IRA to distribute directly to a public charity up to \$100,000 in 2008 and 2009. The distribution will not be counted as taxable income, and the distribution will count toward the donor’s mandatory withdrawal amount.

To qualify for this IRA rollover, the donor must direct the IRA manager to transfer funds directly to a charity; planned giving vehicles such as trusts or annuities are not eligible. The donor must be at least age 70½, and the non-profit must be a tax-exempt organization to which deductible contributions can be made.

Talk to your financial advisor about how an IRA distribution to a qualifying non-profit can make sense for your tax bill. Or call Mathew Scease, NRCM’s major gifts director, at (800) 287-2345 ext. 230, or email him at matt@scease.org.

NRCM is a 501(c)(3) non-profit that harnesses the power of science, the law, and more than 12,000 supporters from across Maine and beyond. Together, we’re protecting the nature of Maine.

WASHINGTON WATCH

The federal energy and climate debate has moved to the Senate, where a bill was introduced in late September. Sponsored by Senators John Kerry and Barbara Boxer, the Clean Energy Jobs and Power Act builds upon the House of Representatives’ bill that passed in June. The Senate bill combines strong global warming pollution reduction goals with investments to create new, good-paying jobs; deploy clean, renewable energy, and save consumers money through energy efficiency. It also seeks to safeguard our natural resources and people from the impacts of global warming that are already occurring.

The bill sets a stronger mid-term cap than the House bill and maintains full EPA authority to regulate carbon emissions.

NRCM has continued to work with 20 partner organizations to bring attention to this issue in Maine, including through direct communications with the offices of Senator Snowe and Senator Collins. In addition to other media work, we recently held a press conference on new survey data we collected from clean energy businesses in Maine and their potential for creation of 7,800 new jobs from public investments like those advanced in the House and Senate bills. Sportsmen, farmers, veterans, clergy, health professionals, business owners,



Nan & Morgan Luck at Clean Energy rally in Bangor

and hundreds of other Maine citizens have come forward in the last few months to send a strong message to our Senators that Maine people want them to vote for climate and energy legislation.

The Senate bill has started to attract bi-partisan support. We need Maine’s Senators to join the effort by once again showing their commitment to protect Maine’s environment from catastrophic climate change and to boost Maine’s economy through the clean energy jobs that will be generated if Congress acts.

President Obama has signaled strong support for passing comprehensive climate and energy legislation. As leaders from around the world gather in Copenhagen in December to negotiate an international response to this global crisis, it is critical that we show the international community that America is ready to lead the way. Senators Snowe and Collins could cast the deciding votes. They need to hear from all of us. Please write your local Senate offices and ask the Senators to lead on the passage of energy and climate legislation. This is the most important environmental issue we will face in our lifetimes. We cannot afford to wait.

—Lisa Pohlmann, NRCM Deputy Director

Give the Gift of Maine's Environment



This holiday season, give the gift that will help ensure clean air, green energy, and spectacular forests. A gift membership to NRCM! Now through January 31, 2009, both you and your gift recipient will receive a free NRCM enviro-tote. Visit www.nrcm.org or contact Joyce at jgracie@nrcm.org.

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Third—and FINAL!—Brownie Points Drawing December 15!

This is your last chance! If you attended an NRCM event over this past year and haven't done so already, be sure to send us your name, address, phone numbers, and email, along with each event and activity you participated in. Each Brownie Point earns you a raffle entry for one of these great prizes:

- **L.L. Bean Manatee Deluxe Recreational Kayak** – Bean's best-selling solo kayak! Includes paddle, cockpit cover, and personal flotation device.



- **\$50 Gift Certificate to F.W. Horch Sustainable Goods & Supplies in Brunswick**
- **Patagonia Synch Vests** - Durable, lightweight double-faced recycled fleece. Women's large in light blue; men's medium in black.
- **Signed copy, *The Wilderness from Chamberlain Farm: A Story of Hope for the American Wild*, by Dean Bennett.**
- **Complementary copy of *Your Maine Lands: Reflections of a Maine Guide* by Tom Hanrahan.** Essays highlighting the recreational opportunities available on state-managed lands.
- **NRCM Gift Pack** – tote, mug, t-shirt, and cap – a great way to show your support for NRCM and Maine's environment!

Have you seen our 50th Anniversary Online Scrapbook?

www.nrcm.org/scrapbook.asp

Send Us Your "My Maine This Week"



"This photo was taken on Ripogenus Lake in Maine's North Woods. After four days of whitecaps on the lake, we were blessed with a mirror calm day. The weather was spectacular for us to spend the entire day celebrating our 44th wedding anniversary kayaking and exploring the small islands. The lake stayed this way the entire day (very unusual, we were later told.) We did not see another boat or person the entire time. We will always remember this special anniversary."
- Judy Gibbs, York, Pennsylvania

Do you have a photograph you'd like to share that shows your love for Maine? A poem? Send your submissions to beth@nrcm.org. Visit our website often at www.nrcm.org to see how others are enjoying Maine.



Got Your BAGS?

gotyourbagsmaine.org

On November 9th, NRCM helped roll out "Got Your Bags, Maine?" an important new initiative by Maine retailers, state government, and the environmental community to encourage us all to bring reusable shopping bags every time we shop. Mainers collectively use more than 700 million disposable shopping bags each year. Both paper and plastic bags have a significant impact on our environment through production (consumption of trees and natural gas) and improper disposal (litter, toxic chemicals that harm the environment and wildlife). Please remember to bring your reusable bag every time you shop!



Watch for Upcoming Movie Showings

If you haven't seen our movie, "Protecting the Nature of Maine," visit our website to find out where it's playing next. We think you'll be inspired by our film about Maine's most important environmental victories and the people that made them happen, including NRCM. View our movie trailer at www.nrcm.org/NRCMfilm.asp.

UPCOMING 50TH ANNIVERSARY EVENTS

Tuesday, December 8 Join us for Portland Greendrinks! Portland Greendrinks is part of the international Greendrinks network, an informal, volunteer-managed social networking group built around a common interest in the natural environment. It occurs on the second Tuesday of every month, starting around 5:30 pm. The goal is simple: good times shared among people working in, or interested in, environmental and sustainability issues. Location TBD – visit our website for updated info!



Thursday, December 31 Be Bold in the Cold with NRCM Staff! Join us at Portland's East End Beach at noon for our 2nd Polar Plunge. We ask all plungers to raise at least \$50 in support of our work to reduce global warming pollution. FMI: Stacie Haines at shaines@nrcm.org or (207) 430-0127.

NOW PLAYING AT THE INSIDER

Get the "inside scoop" from NRCM! Our short NRCM Insider videos take you to the front lines of environmental protection in Maine. Now showing:



See the Kibby Wind project now in operation! Once the entire project is complete, Kibby will be the largest wind power project in New England, producing more than 357 million kilowatt hours of clean, renewable energy per year—enough to power the equivalent of about 50,000 Maine homes.



Meet Evelyn Dunphy, "artistic ambassador" and this year's winner of NRCM's People's Choice Award! Be sure to tune in to our 2009 Environmental Awards winners, too: Russ Pierce, Esq. of the law firm of Norman, Hanson and DeTroy, for his work protecting the Moosehead Lake region, and Scott Hall, Richard Fennelly, and PPL Maine for their innovative efforts in restoring the Penobscot River.



To celebrate our 50th anniversary, NRCM and a small group of our members spent four days in September enjoying a special autumn adventure along the Penobscot's West Branch. Watch our Insider movie—the next best thing to being there!



Cloth Option. Cloth napkins add a nice touch to a Thanksgiving Day table, and are better for the environment than paper.

For a Tip of the Day every day, visit our website at www.nrcm.org. Have our tips sent directly to your home page through our RSS feed!