

Plum Creek Proceeding
Closing Argument
for
Natural Resources Council of Maine
and Maine Audubon
Delivered by Russell Pierce
Norman Hanson and DeTroy

Mr. Chairman, Commissioners:

Good afternoon: For the record, I am Russell Pierce; I'm an attorney with the law firm of Norman Hanson & DeTroy, and today I represent both the Natural Resources Council of Maine and Maine Audubon.

This has been a long, crucial, and challenging proceeding. We appreciate the extraordinary time and attention that you have given to this rezoning application, which represents the largest development proposal in Maine history. Your decisions in this matter will be precedent-setting, regardless of the outcome, and will determine the fate of an entire region of Maine for generations to come.

You have received thousands of pages of documents and heard hundreds of hours of testimony, on issues ranging from the fine details of view corridors in your Land Use District and Standards, to the big picture of regional planning designed to curb sprawl.

But when all is said and done, this proceeding ultimately comes down to just one basic question: it is a question of balance - balance between development and conservation.

Your Chapter 10 standards require that a concept plan "strikes a publicly beneficial balance between appropriate development and long-term conservation." That is the standard that you see in Chapter 10, at 10.23, it's the legal standard that applies here: Has the public's interest in this very special part of Maine's landscape been balanced correctly with Plum Creek's private interests as the developer?

It is that balance that right now is missing in this plan and in these recommendations from staff. But this imbalance can be fixed, so that you meet the "publicly beneficial" balance that the people of Maine not only deserve, but that they calling upon you to provide.

We do recognize the enormous hours that staff and consultants have devoted to this permitting process, but our conclusion at this juncture is that they have missed the big picture in one critical area: the proposed development at Lily Bay.

In page after page of analysis, the staff/consultant memo before you attempts to explain that construction of a resort at Lily Bay would be fine, no big deal. Or, in the words contained on page 5.17: "the proposed development will not unduly compromise the natural, undeveloped and in many instances remote character within which the development would sit."

Let's focus on these words "will not unduly compromise" and really think about what we are talking about here.

Today there does not exist a single resort of the scale that Plum Creek is seeking for Lily Bay anywhere in Maine's north woods. Creation of a resort with 404 accommodation units will be the equivalent of creating an entirely new town 12 miles north of Greenville. Your staff has acknowledged this.

When you arrive at the blinking yellow light in Greenville, right now you have a choice of heading left on Route 6/15, toward the more developed western side of Moosehead Lake, or right, on Lily Bay Road toward the more undeveloped eastern side of Moosehead Lake. The proposed resort at Lily Bay would absolutely, and permanently, alter the character of the eastern side of the lake.

According to the staff/consultant analysis, traffic would increase by more than 2,265 vehicles per day north of Lily Bay State Park. 2,265 additional cars per day directly due to the Concept Plan.

There are not many places in Maine like the east side of Moosehead Lake. There are not many places in the entire eastern United States like the eastern side of Moosehead Lake. The projected level of increased traffic on the eastern side of Moosehead Lake absolutely will compromise what exists there today, and unduly and unnecessarily so. We all understand that, in our gut; each of you know that, in your gut.

What is proposed for Lily Bay is wrong, it throws this proposal out of balance, and the people of Maine have been telling you this as best they can. Unfortunately, there is little evidence that they have been heard.

The LURC-approved amendments were put out for public comment in early June, and by the July 11th deadline you received **1,762** comments opposed to Plum Creek's proposal. Of these, **1,516** expressed specific opposition to development at Lily Bay. Only **7** people contacted LURC in support of Plum Creek's plan.

The letters opposing development at Lily Bay were sent by people living in 303 towns across the state, from all 16 Maine counties, and from 27 states. **List of Towns (1).**

The seven public comments in support of Plum Creek's proposal came from only five Maine towns: Augusta, Canaan, Orono, Wilton, and Winterport. **List of Towns (2).**

Not a single letter in support of the LURC-generated amendments was sent from a Maine resident living within 60 miles of Greenville. In contrast, comments opposing development at Lily Bay came from individuals living in the following areas near Moosehead Lake: Jackman, Rockwood, Greenville, Greenville Junction, Beaver Cove, Dexter, Garland, Dover-Foxcroft, Sangerville, Sapling Township, Abbott, Tomhegan Township, and Lily Bay Township, among others.

Maine people could not be more clear and emphatic in their conclusion that the development envisioned for Lily Bay would unduly compromise what exists on the entire eastern side of Moosehead Lake.

This should not be an exercise in just counting existing seasonal camps in Lily Bay Township in an attempt to claim that what Plum Creek proposes for Lily Bay might fit in just fine.

This should not be an exercise in just predicting when Canada lynx would start getting killed by the traffic heading to Plum Creek's Lily Bay resort. **Lynx Tracks.** And, as an aside, although staff on page 6.8 suggest there have been no documented sightings of lynx west of Lily Bay Road in or near the development area – here is a photograph submitted in the public comment record on March 14, 2008, by Sheila Kelly of Beaver Cove. Her letter describes where the tracks were found as “smack in the middle” of the area slated for resort and residential development on the Lily Bay Peninsula.

Nor should this be an exercise in just guessing how many new boats per acre will populate Lily Bay. This is about the permanent loss of the remote character of the eastern side of Moosehead Lake. This is a diminishing resource in our society, and the plan before you will diminish it further. That conclusion is obvious.

Your Comprehensive Land Use Plan says it so well: "Remoteness and the relative absence of development are perhaps the most distinctive of the jurisdiction's principal values, due mainly to their increasing rarity in the Eastern United States." **Satellite Photo.**

The eastern side of Moosehead Lake, and the Lily Bay region in particular, is an area that meets this definition of a "relative absence of development." The eastern side of Moosehead Lake, and the Lily Bay region in particular, without question is a resource of increasing rarity in the Eastern United States.

The balance test that you must apply needs to give special weight to this resource. You need to give weight to the opinions of Maine people who are urging you to protect Lily Bay.

Your staff and consultants concluded that Plum Creek had not offered sufficient conservation for the purpose of balancing the impacts that would be caused by the company's development plans. That is why staff recommended making mandatory some parts of the separately negotiated deal between Plum Creek and The Nature Conservancy – the so-called Conservation Framework.

Eight attorneys signed a joint letter to the Commission in July, submitted to you on the public comments record, urging you not to set the precedent of allowing a developer – Plum Creek in this instance – to get conservation-mitigation benefit for land for which it will also be paid \$35 million. Yet, in the same way that the 358-page staff/consultant memo gives short shrift to 1,700 public comments, there is no mention at all of this significant correspondence from eight attorneys with decades of experience in land use and conservation law. This letter, signed by a former Maine Attorney General, a former

Assistant Attorney General, and a former Chairman of Maine’s Board of Environmental Protection – among others – urged you to consider the negative precedent of allowing the intertwining of Plum Creek’s rezoning and the Conservation Framework. But mention of this letter didn’t even get a footnote.

If conservation land is truly required by this Commission to off-set or balance development under Chapter 10, then that conservation land must be donated by the developer, just as in every case that has ever come before this Commission previously. Changing that understanding now, to allow the developer to use a privately negotiated deal that pays the developer \$35 million to meet the developer’s requirements under LURC regulations has untoward consequences and sets troubling precedent – as the co-authors of this letter made clear.

The message that many are receiving from this process is that the public comment period was meaningless.

But you can add meaning back into this process, in a way that is responsive to public comment and designed to achieve the balance in this development plan that is required by law.

NRCM and Maine Audubon proposed an approach in July for achieving a plan that better achieves the balance test.

During the May deliberations, one of the LURC consultants explained that if the amount of development were to decrease, then the amount of conservation also would need to be “rethought.”¹

We accepted that invitation to rethink the amount of development and the amount of conservation needed to balance that development, and presented a proposal in detail in our joint comments of July 11th. Specifically, we propose that the Concept Plan be amended by removing proposed development at Lily Bay, reducing the overall number of accommodation units by 404, and reducing the amount of conservation land on the west side of Moosehead Lake, southwest of Rockwood, by 33,500 acres – (Exhibit: **Map depicting this amendment.**)

New information submitted by Plum Creek earlier this month adds further justification for removing development from Lily Bay. **Lily Bay Vernal Pools Map.** At least seven new vernal pools have been identified within the Lily Bay development zone that were not revealed during the technical hearings. Identification of these seven new vernal pools in relatively close proximity to one another clearly shows an unusually rich and complex vernal pool assemblage. This map shows the distances between those pools – demonstrating a complex and valuable system. This new data constitutes a qualitative change in the analysis of undue adverse impacts in the Lily Bay area and underscores that this is the wrong place for development.

¹ Transcript of Deliberations, p. 412, line 1 (Kreisman).

Back to Map of Saving Lily Bay (previous slide). Our proposed amendment to the Concept Plan would result in a balanced package of development and conservation that meets the test of being “publicly beneficial.”

By protecting the Lily Bay area, you would protect from development a large undeveloped block of matrix forest and wildlife habitat that The Nature Conservancy, Maine Department of Inland Fisheries and Wildlife, and U.S. Fish and Wildlife Service have all identified as important. This action also would create a continuous stretch of protected land from the east side of Moosehead Lake across the 100-Mile Wilderness, to Baxter State Park.

By adopting this change in the Concept Plan, you also would avoid setting the dangerous precedent that has alarmed attorneys who believe that it will haunt Maine’s regulatory process for decades to come. It would enable you to meet the "publicly beneficial balance" test, and demonstrate that you are not ignoring the 1,500 public comments urging you to protect Lily Bay.

Most importantly, this change in the plan before you would protect Lily Bay from being compromised, unduly, and unnecessarily, as the result of a major new resort being built where a resort does not belong.

(Point to aerial photo of Lily Bay). This is the place we are talking about. This is where the staff/consultant recommendations suggest building the equivalent of a new town. The evidence in this proceeding, and the overwhelming opinion of Maine people, urge you to not approve such an action. It fails to strike the right balance between conservation and development, and to protect the interests of the people of Maine who will live with this decision forever.

Your decision will determine the fate of Lily Bay. We know that you are weighing this decision carefully, as you should. As you must. We urge you, in the strongest possible terms, to consider rebalancing this package, restructuring the conservation and development, removing proposed development from Lily Bay, allowing Plum Creek to build resorts at Moose Mountain and Moose Bay, and reducing the conservation easement on the west side by 33,500 acres, as we have proposed.

The fate of Moosehead Lake is in your hands. Maine people are counting on you to do the right thing.