

**Internal Documents Show that Plum Creek Real Estate Investment Corp.
Violated Maine Laws and Destroyed Important Wildlife Habitat**

**NRCM Report
Based on Freedom of Access Act (FOAA) Analysis
of Documents in the Possession of
Maine's Natural Resource Agencies
November 15, 2006**

Seattle-based Plum Creek Real Estate Investment Corporation purchased 905,000 acres for less than \$200/acre in Maine in 1998, and claimed at the time – and repeatedly since – that the company would practice sustainable forestry and be a good corporate citizen. Over the past eight years, however, NRCM has heard from loggers, registered Maine guides, property owners, camp owners, and hunters that Plum Creek has logged in a very aggressive fashion. Some believed Plum Creek's logging practices were destroying important wildlife habitat and possibly violating Maine's laws for protecting our forests and environment.

To get a better understanding of Plum Creek's practices, NRCM utilized the Freedom of Access Act (FOAA) to request copies of internal documents concerning Plum Creek's forest practices that were in the possession of the Department of Conservation, Land Use Regulation Commission (LURC), Maine Forest Service (MFS), Department of Inland Fisheries and Wildlife (IF&W), and Department of Environmental Protection (DEP). NRCM requested information about Plum Creek's compliance with Maine's forestry laws, and we specifically requested information about Plum Creek's practices in relation to protection of deer wintering habitat – an issue that had been brought to our attention as a serious concern on Plum Creek lands.

What we learned, and what is captured in this report, is deeply troubling. We have documented a flagrant pattern of disregard by Plum Creek for Maine's forestry laws and protections for wildlife habitat. Plum Creek was fined \$57,000 for repeatedly violating Maine's Forest Practices Act, the largest such fine in Maine history. No prior violation has come close.¹ Plum Creek also has violated LURC standards that protect water quality, it developed a powerline corridor through forest lands without applying for a permit, and the company has consistently and defiantly ignored appeals by state agency biologists to refrain from destroying deer wintering habitat within Plum Creek's ownership.

Highlights of our investigation are provided below. All documents cited are attached in order of reference as appendices.

¹ According to an August 31, 2006 email from Don Mansius, Director of Forest Policy and Management at MFS to Diano Circo, Natural Resources Council of Maine, the next highest monetary penalty for Forest Practices Act violations was \$19,500.

1. Plum Creek Destroys Deer Yards

IF&W Commissioner Roland Martin has said that Maine's deer yards are in "crisis."² Deer yards are the places where deer can find shelter from Maine's harsh winters. The key ingredient to providing effective winter shelter for deer is leaving a sufficient number of mature, coniferous trees to give the deer protection from wind and cold. In the 1990s, IF&W began pursuing cooperative arrangements with landowners to preserve deer yards.³ The agency believed it would be easier to protect more land through voluntary agreements than through the LURC deer yard zoning process, which formalizes protections for deer yards but also limits the amount of area that can be zoned. In the past, this voluntary approach appears to have worked well with landowners who took a longterm perspective on forest management in Maine. However, with the drastic changes in forest ownership that have occurred over the past eight years,⁴ the voluntary agreement strategy seems to be failing. Companies such as Plum Creek, which are intent on maximizing revenues from both logging and development, are a case in point.

According to IF&W biologists, no major landowner in Maine has a worse record of protecting deer yards than Plum Creek. In an email dated January 20, 2006, Eugene Dumont, an IF&W wildlife biologist, stated that Plum Creek had a "feeble and dismal history to protect important DWAs."⁵ Probably the worse [sic] record of any major landowner in the State."⁶ These are some examples of that dismal history.

Pierce Pond Deer Yard Cut

In a June, 2005 memo, Charles Hulsey, IF&W's Regional Biologist for Region D, described Plum Creek's destruction of the deer yard between the Upper Pierce Ponds and the Dead River:

Five years ago MDIFW began negotiations with Plum Creek. At the time I met with a senior forester to show him a map of an important historic DWA [deer wintering area] between the Upper Pierce Ponds and the Dead River. Heavy browse lines, old records, firsthand observations Gary Cobb (Pierce Pond Camps) proved this was once a very important DWA... I asked Plum Creek to defer harvesting in this area until either an agreement was made between MDIFW and Plum Creek, or formally rejected. Plum Creek ignored this request and cut the area so heavily it will not be a functional DWA for another 30 years.⁷

Indian Stream Deer Yard Cut

In October 2005, IF&W biologists discovered that Plum Creek was harvesting in a deer yard in Indian Stream Township. Again, Charles Hulsey wrote concerning this harvesting that:

They are harvesting in the core area. This was a surprise to me. I was very clear with Plum Creek that MDIFW needed a written plan for this area, that both parties could agree on, before any harvesting was to be done. This summer I even received calls from both Rocco and Mark Doty [Plum Creek employees] to see if they could harvest that area as they had equipment across the road. I told them not until there was a plan. They agreed...I met twice with Rocco in the field, and once at their Greenville office on August 31... I believed I left Greenville with Plum Creek accepting of the 30% [volume of removal]. We both agreed that the volume removal would be entirely from hardwood species...

² *The Maine Sportsman*. Capitol Report by George Smith. P. 3. September, 2006.

³ Memorandum from Charles Hulsey, IF&W Biologist. P. 1. June 22, 2005.

⁴ Over 7 million acres in Maine's North Woods have changed hands since 1998.

⁵ DWA stands for deer wintering area. Used interchangeably with deer yard in this report.

⁶ Email from Eugene Dumont to other IF&W staff. January 20, 2006.

⁷ Memorandum from Charles Hulsey, IF&W Biologist. P. 4. June 22, 2005.

Upon inspection of their harvesting this past Saturday, it appears that the volume removal is at least 40% and they are targeting every dominant good spruce tree. We both agreed that the objective for the mixed wood stand was to increase the softwood component over time. The manner by which this stand is being harvested will have the opposite effect...

This is now the third time that the landowner has gone in and harvested wood, without a plan, contrary to what was agreed upon, and without notifying MDIFW. This DWA cannot continually experience this level of poor management and sustain wintering deer in this region now, or into the future.⁸

Lexington Township Deer Yard Cut

In Lexington Township, Plum Creek again refused to listen to IF&W requests to limit cutting of critical deer yards. Plum Creek cut a deer yard in this township in the winter of 2005/2006.

Describing harvesting on the different parts of the parcel, IF&W biologist Charles Hulsey wrote:

The operator did a very good job in the P-FW⁹ portion. [T]here is no longer any viable winter shelter remaining in the M-GN¹⁰ portion. By way of this operation, Plum Creek knowingly and contrary to my request, eliminated this shelter by removing 60-65% of the volume (eyeball estimate), almost entirely from dominant hemlock and spruce. Not only was valuable winter shelter lost but the long term effect of this harvesting will be to convert these softwood dominated stands to hardwood dominated stands. The difference in the two treatments in parcel 2 is so stark that one could use it as an effective teaching tool to show the difference between very good DWA management (P-FW area) and extremely poor DWA management.¹¹

Once again Plum Creek showed that it was unwilling to listen to the requests of IF&W biologists to limit cutting in valuable deer wintering habitat.

Plum Creek Ramps Up Deer Yard Cutting in 2006

Over the past year, Inland Fisheries and Wildlife staff members have continued to try to negotiate a means to curb Plum Creek's destruction of deer yards, but they have apparently failed. In fact, Plum Creek appears to have ramped up its plans for cutting deer yards.

On January 13, 2006, in an email to his superiors, IF&W biologist Douglas Kane expressed concerns, stating:

Ken, I'm still **very** [emphasis in original] concerned about the path we are taking with Plum Creek regarding DWA management. During our last 2 meetings in Bingham, it was obvious that Plum Creek's [sic] policy of 1500 acres per year and applying their BMPs [best management practices] to those chosen acres would be their best attempt at cooperating with us to manage DWAs. Regional and Augusta staff have agreed repeatedly that these BMPs will not sustain adequate shelter for deer during winter. I think it's critical that we meet ASAP to craft a strategy that will conserve important

⁸ Email from Charles Hulsey, IF&W biologist, to Eugene Dumont, IF&W biologist. October 12, 2005.

⁹ PFW stands for "Fish and Wildlife Protection Subdistrict" deer yard LURC zones some deer yards PFW, and this designation requires landowners to limit cutting.

¹⁰ MGN stands for "General Management Subdistrict" and does not require the same sorts of protection as land zoned as deer yard PFW.

¹¹ Email from Charles Hulsey, IF&W Biologist. February 06, 2006.

winter shelter for deer on Plum Creek's ownership. Each day that we wait, additional shelter will be cut. And, in Region E¹² at least, there is precious little left....¹³

Ten days later, after a meeting with Plum Creek, IF&W biologist Douglas Kane wrote to his superior, Ken Elowe, in Augusta:

Ken et. Al:

-- Additional stats from this last meeting:

-- 21 DWA areas identified by our office on Plum Creek's ownership managed out of their Greenville (i.e. eastern office) office.

-- Of the 21 they now have harvest plans for at least part of 12 of these during 2006.

-- In addition, 7 of the remaining ones with "so-called" no immediate plans are in the Bower/Sebec (their new purchase area) area with roads newly developed...

This is by far the greatest number of cutting plans for DWAs within a given year. ***Some might call this coincidence—it's obvious to me that it's strategy...*** [emphasis in original; strategy was to maximize the harvest of valuable softwood, which is plentiful in deeryards, before the State took action to curtail Plum Creek's harvesting].¹⁴

In an email at the end of January 2006, Douglas Kane wrote:

By the time each of you read this short email another important patch of DWA shelter in Region E will probably be on the ground. Bill Noble [an IF&W biologist] just radioed the HQ a short time ago and let me know that Plum Creek is operating in a DWA shelter area adjacent to the East Outlet [of Moosehead Lake]. According to the MFS general notification, it appears that this will be a part of a 10 or 16 acre clearcut (i.e., there will be 2 clearcut blocks separated by a 250 foot separation zone)...By DWA standards neither of these cuts alone would necessarily be bad. This area, however, is part of an important DWA complex that spans both sides of the East Outlet (a unique microclimate for wintering deer). Our agency identified and mapped this area quite a few years ago... To date Plum Creek has harvested timber in this area on several occasions (i.e. against our recommendations) including an area on the north side of the river recently and now again on the south side.

Chipping away at the shelter areas of these DWAs in a way that is not consistent with our goals, has greatly diminished their value to wintering deer. In fact, it is questionable what value these areas will have to deer once the snow is deep. The East Outlet Complex looks similar to the one in Bradstreet and the one in Beaver Cove/Lily Bay [both deer yards are on Plum Creek's land] – a greatly fragmented forest with very small patches of shelter left...

¹² Region E is the Moosehead Lake Region.

¹³ Email from Douglas Kane, IF&W Biologist to Ken Elowe, Director, Bureau of Resource Management, IF&W, et. al. January 13, 2006.

¹⁴ Email from Douglas Kane, IF&W Biologist, to Ken Elowe, Director, Bureau of Resource Management. January 23, 2006.

This long winded update is another step in expressing my frustration regarding DWA negotiations with Plum Creek. Our charge as a Department to identify and manage important winter shelter for deer as it relates to northern deer populations is clear. It's also clear that these deer populations are far below the goals and objectives identified by our deer management system. And, as we all know, our current deer population in the north is directly tied to the quantity and quality of winter shelter, or the lack thereof....

During the last 7 or 8 years Plum Creek has been in the area, from very early on to present, we have had many meetings discussing DWA management. Unfortunately, we have accomplished absolutely nothing in terms of conserving shelter for wintering deer on their ownership. In fact, as mentioned above and in prior correspondence we have lost important acres and continue to loose what little DWA shelter is left on their ownership in my region.¹⁵

Plum Creek's history of destructive harvesting in deer yards and the resulting frustration among IF&W biologists is clear from the above emails.

2. Plum Creek Breaks Forestry Laws to Receive Largest Penalties in Maine History; Breaks Maine Water and Development Laws Too

Plum Creek has also violated laws and regulations that LURC and MFS oversee. The company has developed land without a permit, polluted streams with sediment, and clearcut so heavily that they received the largest civil penalties in the history of the Maine Forest Practices Act (FPA).

Plum Creek Developed Power Line Corridor Without Permit

In 2003, Plum Creek violated LURC rules when it developed a 7,500footlong powerline corridor to the North Shore Subdivision of their First Roach Pond development without a permit. William Galbraith of LURC wrote strongly about Plum Creek's failure to obey the rules:

What is there [sic] excuse? The [Land Use Regulation] Commission's enforcement policies support the notion of seeking a penalty for not applying for a permit even if the atf [after the fact] development ultimately complies with the Commission's requirements...[S]uch negligence with no consequence is in fact a threat to the agency's ability to regulate. In fact, it is not possible to determine, let alone assure, that the development is/was benign until after the fact. This utility line may have crossed wetlands or other areas of special significance where the route and/or method of installation could have been a concern. I think at a minimum, a Notice of Violation is appropriate, and I would not oppose seeking a settlement here, but I would like to hear more bout the circumstances under which they "forgot" to get a permit.¹⁶

Clearly, Plum Creek is a large and sophisticated national corporation, and its construction of this power line without even applying for a permit must have been deliberate.

Plum Creek Pollutes Streams, Violates Water Quality Law

In June 2002, Plum Creek, LURC and MFS staff inspected Plum Creek forest haul roads in the West Middlesex Canal Grant in Somerset County. They found that:

¹⁵ Email from Douglas Kane, IF&W Biologist to Ken Elowe Director, Bureau of Resource Management, et. al. January 31, 2006.

¹⁶ Email from William Galbraith, LURC Staff, to Andrew Flint, LURC Staff. April 01, 2003.

Plum Creek had conducted land management road work in a manner not in compliance with the Commission's standards for such activities, including direct ditch terminations at a number of water crossings, which resulted in the siltation of a number of streams, which is a violation of Maine law 12 M.R.S.A. subsection 685-B (1) and of Section 10.17, A, 4 of the Commission's Rules...¹⁷

When he described Plum Creek's LURC violations, Don Mansius, MFS Director of Forest Policy and Management, wrote: "I have a CD-Rom full of pictures showing the LURC violations. I have seen such things before, but not such a concentration of them."¹⁸

Plum Creek Violates Logging Law, Receives Largest Monetary Penalty in Forest Practices Act (FPA) History

Plum Creek also violated the FPA, a violation that resulted in far and away the largest civil monetary penalty since the FPA rules were passed in 1990.

MFS first discovered these violations in West Middlesex Canal Grant in 2002, at the same time it discovered the high concentration of LURC water quality violations there. Plum Creek violated the FPA by harvesting too much, and it did so without appropriate plans. It also did not notify MFS of its extensive clearcuts, as required by law.

Initially, MFS imposed only a \$9,000 fine on Plum Creek for these violations on the condition that the company do an extensive survey to document and correct other similar areas that failed to comply with the FPA throughout its ownership.¹⁹ As a result of Plum Creek's surveys and MFS verification inspections, MFS found that Plum Creek had violated the FPA throughout its ownership and that many of the violations could not be remedied.

Therefore, MFS assessed Plum Creek the maximum monetary penalty allowed under the 2003 settlement agreement: \$57,000. MFS staff in fact calculated that penalties should have been over \$75,000,²⁰ but the 2002 settlement agreement allowed no more than \$57,000. Combined with the 2002 \$9000 penalty, MFS assessed Plum Creek \$66,000 in penalties for FPA violations. According to Don Mansius, the MFS Director of Forest Policy and Management, the next largest penalty for FPA violations was \$19,500.²¹

¹⁷ Letter from Robert McKee, Senior Compliance Investigator, LURC, to N. Lynn Wilson, Plum Creek Maine Timberlands, LLC. June 11, 2002. P. 1.

¹⁸ Email from Donald Mansius, Director of Forest Policy and Management, MFS, to William Galbraith, LURC staff. June 04, 2002.

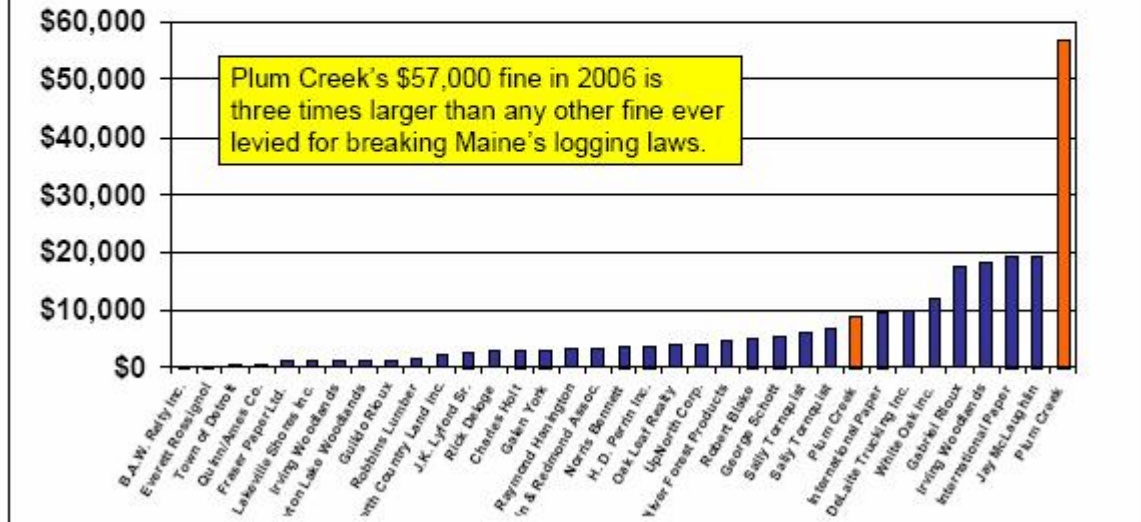
¹⁹ Administrative Settlement Agreement in the Matter of Plum Creek Timberlands, LLC. State of Maine, Department of Conservation, Maine Forest Service. April, 2003. P. 2.

²⁰ Email from Tim Post, MFS staff, to Donald Mansius, Director of Forest Policy and Management, MFS. December 6, 2005.

²¹ August 31, 2006 email from Donald Mansius, Director of Forest Policy and Management, MFS, to Diano Circo, NRCM.

Plum Creek Was Required to Pay the Largest Fine in Maine History for Timber Law Violations

(Penalties for Violating Maine's 1989 Forest Practices Act)



In addition to the fact that the monetary penalty against Plum Creek for FPA violations was three times larger than any other in the history of the FPA, another aspect of this incident stands out. MFS initially wanted to resolve the West Middlesex Canal Grant FPA and LURC violations in a three-party settlement agreement with LURC. That did not occur. Concerning this, Don Mansius of MFS wrote to MFS staffer Tim Post:

Catherine [Carroll, LURC Director] has decided not to pursue a joint settlement agreement on the Plum Creek FPA and LURC violations in West Middlesex. I have not had the benefit of her full thinking on this, but I can live with this as long as LURC pursues the violations, which she said she was going to do.²² I do find it unfortunate – and I told her this – that she did not communicate that decision to us, particularly when her staff knew you were meeting with them yesterday. She said that Doug [Dennico, Plum Creek Forester] did not speak the truth to you yesterday, that she did not say there was no violation. I will leave it to you to decide how to deal with people who lie during negotiations. In fact, she said she was meeting with Doug later this afternoon to tell him it was not in Plum Creek's (or LURC's) best interests to cover up the water quality violations, that they should go to the LURC commission and settle it."²³

It is clear Plum Creek attempted to avoid responsibility for the LURC violations and eventually succeeded. In addition, MFS decided not to let the public know about the extent of the penalty against Plum Creek. In its June 15, 2006 news release²⁴ on the "closeout" of the 2002 settlement

²² LURC eventually issued no monetary penalty to Plum Creek according to a November 2002 letter from Robert M. McKee, LURC Senior Compliance Inspector, to Paul Davis, Plum Creek Timberlands, LLC.

²³ Email from Donald Mansius, Director of Forest Policy and Management, MFS, to Tim Post, MFS staff, July 11, 2002.

²⁴ MFS News Release entitled "Maine Forest Service closes out settlement for Forest Practices Act Violations". June 15, 2006.

agreement, MFS made absolutely no mention of the extent of monetary penalties against Plum Creek, although drafts of the news release did.²⁵ If the Natural Resources Council of Maine had not reviewed MFS documents under Maine's Freedom of Access Act, we would never have known about the size of this penalty.

Another concern arising from Plum Creek's heavy cutting is its location in areas where the company proposes to develop house lots and resorts. According to a letter from Alec Giffen, MFS Director, to Catherine Carroll, Plum Creek appears to have clearcut areas that it proposes to develop as part of plans to build resorts on Moosehead Lake. This is illegal. The FPA requires that:

Clearcuts must be surrounded by a separation zone of forested land that meets specific tree size and density requirements, and that clearcut separation zones must be maintained until the clearcut has regenerated to trees of a certain size and density or at least 10 years have elapsed from the time the clearcut was created... [A]llowing development in areas set aside as separation zones would frustrate the purpose of the FPA.²⁶

In other words, Plum Creek cannot have it both ways: it cannot cut the maximum amount of timber possible from its land ostensibly for forest management purposes and then simply turn around and immediately develop that land. This is a critical issue for LURC to resolve as it considers Plum Creek's proposal to develop Moosehead Lake.

Conclusion

Based on a review of documents obtained from the state under Maine's Freedom of Access Act, Plum Creek has not been a responsible corporate citizen. It has ignored repeated requests to protect valuable deer yards, which provide critical habitat for deer during the winter. In Maine's cold winters, deer simply cannot survive without this habitat. Plum Creek also has violated water protection laws and ignored a requirement to get a permit before constructing a new powerline corridor. Plum Creek routinely violated the Maine Forest Practices Act, causing the Maine Forest Service to assess a record civil penalty against Plum Creek for these violations. The \$57,000 fine was three times higher than had ever been levied against another company for violations of Maine's Forest Practices Act.

Plum Creek currently is seeking approval for the largest development in Maine history, comprised of 975 house lots in 58 separate subdivisions in the Moosehead Lake Region, plus two resorts. NRCM believes that the impact on the Moosehead Lake Region could be very damaging and irreversible. Our level of concern is heightened further by this information about Plum Creek's poor timber practices, the company's total disregard for the protection of deer wintering habitat, and Plum Creek's failure to obey Maine's environmental laws.

²⁵ See attached undated News Release.

²⁶ Letter from Alec Giffen, MFS Director to Catherine Carroll, LURC Director. June 8, 2006. P.1.