

STATE OF MAINE
SAGADAHOC, SS.

BUSINESS AND CONSUMER COURT
Location: West Bath
DOCKET NO. BCD-WB-AP 09-37

FOREST ECOLOGY NETWORK, *et al*,

Petitioners

v.

LAND USE REGULATION
COMMISSION,

Respondent

And

PLUM CREEK MAINE TIMBERLANDS,
LLC., PLUM CREEK LAND COMPANY,
et al,

Intervenor

**AFFIDAVIT OF EVERETT "BROWNIE"
CARSON**

I, Everett "Brownie" Carson, being first duly sworn, depose and say as follows:

1. My name is Everett "Brownie" Carson.
2. I am a citizen, domiciliary, voter and property owner of the State of Maine, County of Cumberland. I currently reside at Harpswell, Maine.
3. I joined the Natural Resources Council of Maine ("NRCM") as a staff attorney and lobbyist in 1983. I was the Executive Director of NRCM for twenty six years – from 1984 to 2010.
4. I have also been a member of NRCM since 1986.
5. NRCM has always been an avid advocate of its members' personal interests in protecting the Moosehead Lake region. NRCM's membership also includes individuals and business owners who have commercial, business, or property interests in the region and in land abutting or impacted by the Plum Creek land holdings in issue. These individuals and business owners not only share the personal interests of NRCM members who visit the region for its unique high-value natural resources and natural character, but they also have pecuniary or property interests in the region that have been impacted by LURC's approval of the Plum Creek rezoning petition and concept plan. Throughout my time as Executive Director, and as a member of NRCM, I have had direct interaction and discussion with many of these individuals who have expressed deep concern over the elements of the Plum Creek proposal for development (especially resort development at Lily Bay, adjacent to Lily Bay State Park), and who have suffered adverse impacts to their interests in the region by LURC's approval of the Plum Creek rezoning petition

and concept plan.

6. By way of background, as NRCM set forth in its Petition for Rule 80C Appeal in this matter, and as we set forth in substantially the same fashion in the Joint Motion to Intervene (jointly filed with Maine Audubon in the underlying administrative proceedings before LURC), NRCM's statements addressing the issue of standing have never been challenged by LURC. NRCM is a not-for-profit tax-exempt corporation dedicated to the protection of Maine's environment and the wise use of the State's natural resources through a program of advocacy, legal defense, and education. NRCM has a membership and support base of about 17,000 individuals and families. NRCM members reside throughout the State of Maine. NRCM has members and supporters from Somerset and Piscataquis counties and throughout Maine who have a strong interest in protecting Maine's natural areas and wild, undeveloped character, particularly in the North Woods; who support responsible land development and sustainable forest practices that protect sensitive ecosystems and wildlife; and who use and enjoy for remote, low impact recreational experience the Moosehead Lake region, including Lily Bay State Park near a portion of the development zones approved in Plum Creek's Concept Plan and Rezoning Petition. As stated above, I have personal knowledge that NRCM's membership includes those who have property interests in the Moosehead Lake region and in areas most directly impacted by the current approval of Plum Creek's Concept Plan and Rezoning Petition.

7. NRCM has a well-established record of involvement in issues of conservation or development in the unorganized territories in Maine. NRCM has appeared as an Intervenor before the Maine Land Use Regulation Committee ("LURC") in many other matters since LURC was established in 1971, and also participated in previous hearings on the proposal by Plum Creek Land Company to rezone land on First Roach Pond in Frenchtown Township for development as part of an earlier Lake Concept Plan. NRCM has monitored, and continues to monitor, applications to LURC for rezoning and development, and the progress of potential development projects in Maine within LURC's jurisdiction.

8. Specific to the present matter, NRCM participated in pre-application conferences held relating to Plum Creek's Lands in the Moosehead Lake Region, and has been actively engaged in conferences relating to Plum Creek's Concept Plan and Rezoning Petition, including entering an appearance at the June 6, 2007 LURC meeting addressing the Provisional Pre-Hearing Schedule. I was the Executive Director of NRCM throughout the years that Plum Creek's Concept Plan and Rezoning Petition were being challenged and at the time it was approved. I am aware that on or about June 18, 2007, NRCM formally sought leave to intervene as a full participant in the proceedings on Plum Creek's Concept Plan and Rezoning Petition (Zoning Petition ZP 707), including cross-examination of the applicant's witnesses at the adjudicatory hearing, presentation of NRCM expert witnesses at the adjudicatory hearing, and submission of post-hearing statements or argument, and continued participation in any potential judicial review. I have personal knowledge that after LURC's ruling on July 11, 2007 to grant conditionally the petition to intervene, on August 10, 2007 the Chair of LURC by First Procedural Order granted formal Intervenor status to NRCM, under Rule 5.13 of the LURC's Rules for the Conduct of Public Hearings. The basis for granting Intervenor status was that NRCM will be "substantially and directly affected by the proceeding" (Rule 5.13) given its strong commitment, and the strong interest and commitment of its membership base, to the protection and wise use of Maine's

North Woods and remote recreation resources.

9. Thereafter, NRCM fully participated throughout the adjudicatory proceedings on Plum Creek's Concept Plan and Rezoning Petition as an Intervenor. Never once was there a challenge, or even the hint or intimation of a challenge, by LURC or by anyone to NRCM's interest in the proceedings or standing to participate. Suffice it to say that given NRCM's track record of leading advocacy and involvement in LURC proceedings in this and many other matters, the fact that LURC is now challenging NRCM's standing to appeal the Plum Creek rezoning decision is perceived by me and by other NRCM members – and by the greater environmental advocacy community – as an extraordinary, unprecedented affront. It is an argument that is fundamentally dispelled by decades of history of NRCM's involvement in LURC proceedings and other environmental administrative agencies in the State, as well as an argument dispelled by the law of standing as NRCM has argued in its brief.

10. NRCM as an organization is aggrieved by LURC's approval of Plum Creek's Concept Plan and Rezoning Petition. LURC's approval is based on "Commission-generated amendments" resulting from LURC's departure from lawful procedure. There was never any question when LURC granted NRCM full party status, as noted above, that LURC deemed NRCM to have standing to participate in the underlying proceedings and to appeal, if necessary, from an adverse ruling by LURC. In part in direct reliance upon the grant of full party status in the underlying proceeding, for over four years, NRCM incurred enormous expense and spent nearly countless resources as a participant challenging the Plum Creek development proposal and the several iterations or amendments that constantly rose throughout the review process of Plum Creek's petitions for rezoning and concept plans in the Moosehead Lake region. The expense in time, money, and resources for NRCM as a participant in this process was exacerbated and compounded by both the complexities of the Plum Creek proposals for rezoning and their impact on the unique resources of the region, but also by the seemingly ceaseless "work in progress" nature of Plum Creek's petition which underwent a series of changes and amendments; in my view, many amendments were the result of advocacy of NRCM members and others who spoke out against certain provisions and essentially required Plum Creek to alter those provisions that were doomed for failure.

A. For example, NRCM retained several expert witnesses for purposes of review and opposition to the Plum Creek proposals: an economist; a wildlife biologist on the topic of Canada lynx; two experts on the topic of adverse impact to fish (specifically native brook trout) and water resources in resort development zones; a world-renowned expert on the issue of sustainable eco-tourism development; and an expert on scenic impacts. These expert witnesses were paid. Many of these experts were asked to address specific issues that were directly raised or identified by LURC consultants during the review process. In addition, NRCM staff expended an extraordinary amount of time and resources in connection NRCM's role as an intervenor with full-party status in this matter. NRCM expended these resources and retained these expert witnesses in reliance on having been granted full-party status in these LURC proceedings.

B. Furthermore, early in the proceedings before Plum Creek's proposal was finalized, many NRCM members (including myself, as well as NRCM staff and board members)

and many residents of the Moosehead Lake region expressed an interest in advancing sound land use planning for the Moosehead Lake region, to include the whole region and not just Plum Creek's land (although Plum Creek had become the largest landowner in the region). In the early stages of these proceedings, NRCM members requested – and LURC, through its consultants, encouraged – the development and publication by NRCM of an alternative plan or “vision” for the region. That effort involved the input and consideration of many interests, including, of course, NRCM members and residents of the region, and that intensive effort led to NRCM's publication of “A Vision for the Moosehead Lake Region,” publicized early in the process and often used as a reference in further proceedings by NRCM members as well as by LURC consultants and other participants. A copy is attached to this affidavit as Exhibit A. (It was also made an Exhibit in the underlying proceedings: A.324B(13)(pdf pages 84-115.) NRCM spent approximately \$75,000 for developing and publishing this alternative prospective plan for the region.

C. Finally, I know that many of NRCM's 17,000 members and supporters have a financial interest in the outcome of this matter, merely by virtue of the financial support they have provided to NRCM. Many members expressed to me or to my staff how part of their donations were motivated by NRCM's review, analysis, and challenge of Plum Creek's Rezoning Petition and Concept Plan for the Moosehead Lake region. I personally attended many of the public hearings on Plum Creek's Concept Plan and Rezoning Petition, and witnessed hundreds of members and supporters – and hundreds of others who were not NRCM members – speaking out in overwhelming opposition to Plum Creek's development proposals and showing their affinity with NRCM's position on this matter. In my experience as Executive Director of NRCM, I would like the Court to be aware that the State of Maine has never seen such an overwhelming public response to an environmental issue pending before a state administrative agency as the public response in opposition to Plum Creek's development proposal. In the end, in addition to thousands of people who took time out of their weekends to attend one of four public full-day hearings (two in Greenville, one in Augusta, and one in Portland) and who opposed the Plum Creek rezoning for development, there were also literally hundreds and hundreds of written letters – *individually-written personal letters* that were *not* “form” responses or emails – submitted to LURC in opposition to this development. These eloquent, individually crafted, personal letters outnumbered only a smattering of written “supporters” of Plum Creek. All opponents expressed their deep concern about what was being proposed—and now approved— for rezoning for development of the Region. Many of these public responses (though by no means all) were from past or present members of NRCM.

11. Thus, NRCM as an organization, and NRCM members and supporters, are aggrieved by LURC's approval of Plum Creek's Concept Plan and Rezoning Petition. The approval of a *rezoning* for development, with new subdistrict boundaries in LURC jurisdiction, is the major, watershed event in allowing an unprecedented level of development of a scale and intensity that is inconsistent with LURC's Comprehensive Land Use Plan. The rezoning approval contravenes governing statutory and regulatory criteria for rezoning, and is the result of LURC's unlawful departure from established procedure in refusing to deny Plum Creek's admittedly deficient Concept Plan and Rezoning Petition, and its decision to instead embark upon an unauthorized and unlawful procedure for “Commission-generated amendments” to the admittedly faulty plan that was the subject of the adjudicatory proceedings.

12. NRCM and its members are also aggrieved by other significant provisions of Plum Creek's Concept Plan set forth in Attachment B to the subject Decision of LURC, and by the unlawful procedure employed to generate the Decision. Such provisions include but are not limited to the LURC's acceptance of a "Commission-generated amendment" that allows the applicant Plum Creek to meet mandatory conservation requirements to mitigate adverse impacts and provide comparable conservation measures, by selling conservation easements for a multi-million dollar profit to the applicant Plum Creek, when those regulatory requirements mandate, inter alia, a publicly beneficial balance between conservation and appropriate development. LURC's Decision has already had an adverse impact on NRCM and its members by serving as a faulty model or precedent for ongoing decision making in other cases by LURC.

13. My own personal interests, as well as the interests of many other NRCM members, include recreational use and aesthetic, scientific, and recreational interest in the land that is set aside for the public as part of the "conservation easement" component of the rezoning petition and concept plan. The "public use" components of LURC review criteria make this matter markedly different than other run-of-the-mill small development projects – this project both includes, and is adjacent to, *public* land: the "conservation easement" land, Lily Bay State Park, the Little Moose Public Lands Unit, and the waters of Moosehead Lake, Lily Bay, many other lakes and ponds, and rivers and streams in the region. As described in more detail below, I have a personal interest in continued use of these areas and their accessibility to the public, and a vast number of NRCM members share that interest.

14. Approval of Plum Creek's Concept Plan and Rezoning Petition has directly and adversely affected my own personal interests. I am sixty two years old, and I took my first canoe trip to the Moosehead Lake Region when I was twelve. Since then, I have personally visited nearly all of the key locations in issue in the proceedings, as well as adjoining land. I have personally developed an intimate familiarity and deep concern for the protection of the Moosehead Lake region and its unique, high-value natural resources and existing natural character. My own passion for protecting the region is reinforced by the many shared experiences and discussions I have had over the years with NRCM staff, board members, other NRCM members, and countless others. My passion and love for the region has already been adversely affected by the knowledge that LURC has approved multiple development zones throughout the region and that it is only a matter of time until the development begins.

15. I dedicated most of my adult life to fighting for the environment and conservation and ensuring that future generations of Maine people still have access to the same resources that I did when I was their age. I am personally aggrieved by LURC's approval of Plum Creek's Concept Plan and Rezoning Petition, because it adversely impacts my aesthetic, conservation and recreational interests in the Region. As a regular visitor to the Region in my capacity as a hiker, camper, canoeist and advocate for the environment, I say with unabashed certainty that this region is truly unique and irreplaceable for me and for many other people across Maine and the United States. The Moosehead Lake Region is a treasure of the State of Maine and of the United States, with the largest lake contained within the largest area of remaining undeveloped forest east of the Mississippi. The entire concept plan area is now designated at the federal level as critical habitat for a federally-listed endangered species, the Canada lynx. LURC's approval of

Plum Creek's Concept Plan and Rezoning Petition – as the approval of a *rezoning* to allow unprecedented development in overall scale, intensity, and location – directly and adversely impacts the Moosehead Lake region's unique and high-value natural character and natural resources. I have a personal interest, with all other NRCM members, in addressing these adverse impacts by challenging and appealing the LURC decision.

16. Finally, LURC's approval of Plum Creek's Concept Plan and Rezoning Petition goes against the very reasons why LURC was established. LURC by statute and regulation is charged with guarding the Region's "diverse, abundant and unique high-value natural resources and features, including lakes, rivers and other water resources, fish and wildlife resources, ecological values, scenic and cultural resources" and "the uniqueness of a vast forested area that is largely undeveloped and remote from population centers." Maine Land Use Regulation CLUP at 114 (1997). Based on its own enabling statute, LURC must "prevent inappropriate residential, recreational, commercial and industrial uses detrimental to the proper use or value of these areas." 12 M.R.S.A. § 681. By approving Plum Creek's Concept Plan and Rezoning Petition, LURC did exactly the opposite; LURC effectively rezoned the Moosehead Lake area for what is functionally the construction of two or more towns north of Greenville – with all of the increased human presence, traffic, pollution, noise, threatened or destroyed fish and wildlife habitat, and scenic/aesthetic deterioration, that such *rezoning* allows.¹ The rezoning paves the way for an irreversible change to the region. And once we lose this treasured, remote and undeveloped region, it will be gone forever.

17. I cannot emphasize enough how disturbing the approval of Plum Creek's Concept Plan and Rezoning Petition has been, considering that once the natural resources and natural character of the Region is gone, it is gone forever. As an individual who has made regular use of the Moosehead Lake Region for over fifty years, personally as a recreational user and advocate for its protection, and as long-time member and Executive Director of the Natural Resources Council of Maine, LURC's decision in this matter has gravely and directly affected my personal interests. It has also gravely and directly affected the personal and pecuniary interests of NRCM members, and NRCM's organizational pecuniary interests as well when one considers the enormous financial resources, time, and dedication NRCM has put into this process as an organization. These are all particularized injuries; LURC's rezoning of the region for massive, out-of-scale and wrongly-sited development has caused particularized injury to me, as to all who use and enjoy the region, to NRCM members, and to NRCM in its role as a full-party intervenor in these proceedings.

¹ As we stated in the NRCM Petition in this matter, the rezoning for development granted to Plum Creek includes Residential Development Zones in Beaver Cove, Upper Wilson Pond, Long Pond, and the Brassua Lake east shore; Residential Development Zones, including residential-scale commercial development, in Brassua Lake south peninsula, Route 6/15 Corridor, and Rockwood/Blue Ridge development areas; a new Residential/Resort Optional Development Zone, which accommodates residential development and residential scale-commercial development, and also provides the option for resort development (that had never been part of any landowner-submitted petition) in the Moose Bay development area; and Resort Development Zones in the Lily Bay and Big Moose Mountain development areas.

Dated:

Everett B. Carson
Everett B. Carson

STATE OF MAINE
Cumberland, ss.

February 18, 2011

Personally appeared the above-named Everett B. Carson and took the oath that the foregoing Affidavit signed by him is true to his own personal knowledge and that, to the extent that matters are asserted therein on information and belief, he believes such information to be true.

Before me,

Elizabeth A. Dimond 2/18/11
Notary Public

