

July 10, 2008

Bart Harvey, Chairman
Maine Land Use Regulation Commission
22 State House Station
Augusta, ME 04333

Dear Chairman Harvey:

We thought it might be of some value to both LURC staff and LURC Board members to know that a number of Maine attorneys, all of whom have been involved extensively in the formulation and application of Maine's environmental laws, are very concerned about staff recommendations and Board inclinations regarding Plum Creek's \$35 million sale of land and conservation easement to The Nature Conservancy.

We are all pleased that Plum Creek and The Nature Conservancy have reached this agreement. However, we all fail to see how this independently negotiated agreement has any bearing on the pending Plum Creek Moosehead development proposal. To us, The Nature Conservancy agreement is largely irrelevant and hugely prejudicial, and the direction of this proceeding appears to be demonstrating the improper influence that this private transaction is having within a rezoning process. Unfortunately, some staff members and apparently some Board members feel the Conservation Framework agreement should be considered in connection with Plum Creek's development proposal in determining whether the "publicly beneficial balance" test has been met.

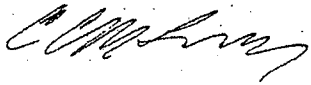
We are troubled by this interpretation and the evolution of the thinking that has led to this position. Initially Plum Creek's proposal to the State, and we simplify here, was: "This is our Moosehead application, provide us the rezoning, and we will then consummate an agreement with The Nature Conservancy." LURC's response seemed to be, appropriately: "Let's not confuse the two. Your application to LURC and your agreement with The Nature Conservancy are two independent propositions." Now the staff is recommending that the Moosehead application is not adequately mitigated unless The Nature Conservancy agreement is consummated. Insisting on the completion of this agreement does not make it any more relevant, from the perspective of ensuring a "publicly beneficial balance."

How can land and an easement, to be sold for \$35 million pursuant to an independently negotiated contract, be considered mitigation? By analogy, we consider the Natural Resources Protection Act. Certainly nothing in N.R.P.A. (38 M.E.S.A. § 480-A-Z, particularly § 480-D (3) and § 480-Z) anticipates such a double dipping where an applicant would get paid for mitigation required, and also receive a development permit. None of the signers of this letter consider such an interpretation justified by the Natural Resources Protection Act and we are very concerned that this interpretation of LURC law would set a precedent not just for future LURC projects, but also for state environmental laws with mitigation requirements, like N.R.P.A.

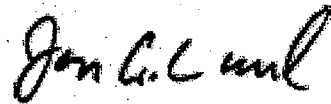
We believe that Plum Creek's dealing with The Nature Conservancy must be set aside and left outside the framework of LURC's rezoning decision. Whether or not the "publicly beneficial balance" requirement has been met should be determined by: 1) evaluating the applicant's proposed development, 2) ensuring that it not cause undue adverse impact, 3) considering the extent of harm to existing values and uses in the project area, 4) determining the extent of variance requested by the applicant from LURC standards such as the adjacency requirement, and 5) considering whether the donated conservation which is actually part of the pending application provides a "publicly beneficial balance."

Should the LURC Board hold in its final decision that the transfer of land and an easement to The Nature Conservancy for \$35 million in an appropriate consideration in the "publicly beneficial balance" test, we would be apprehensive that all the good work and energy both staff and Board members have brought to bear on this application would be jeopardized.

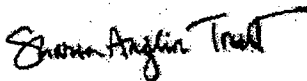
Sincerely,



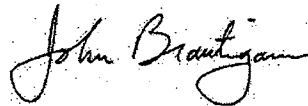
E. Christopher Livesay



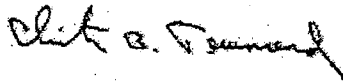
Jon Lund



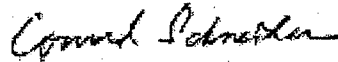
Sharon Treat



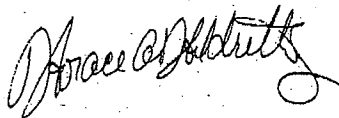
John Brautigam



Clinton B. Townsend



Conrad Schneider



Horace Hildreth



Dennis Harnish

Chris Livesay --is an attorney in private practice in Brunswick. A graduate of Wesleyan University and the Boston University School of Law, he served two terms in the Maine House of Representatives. Mr. Livesay is a former chair of the Maine Board of Environmental Protection. He is also a former member of the Inland Fish and Wildlife Commissioner's Non-Game Advisory Council.

Jon Lund -- is the publisher of the *Maine Sportsman*. He graduated from Bowdoin College and Harvard Law School before being elected Kennebec County Attorney, a position he held for four years. Following eight years in the Maine House of Representatives and Maine Senate, he served a term as Maine Attorney General. In 1998, he was the recipient of DownEast magazine's "Conservationist of The Year" award.

Sharon Treat -- is State Representative for House District 79 (Farmingdale, Hallowell, and West Gardiner), and formerly served three terms in the House and four terms in the Senate, where she served as Majority Leader. Sharon Treat has chaired the Natural Resources, Judiciary, and Human Resources Committees. She has taught environmental law at Colby, Bowdoin, UNE and the Maine Law School. She earned an AB from Princeton University and a JD from Georgetown University of Law Center.

John Brautigam -- is State Representative for House District 113 (Parts of Portland and Falmouth). He is self-employed attorney, has worked in the area of public interest law since 1991, and served as Assistant Attorney General when he successfully defended the Maine Rx program before the U.S. Supreme Court. He earned is JD from Stanford Law School, and was executive editor of the Stanford Law Review.

Clinton Townsend -- practices law with the firm of Perkins, Townsend, Shay and Talbot in Skowhegan. He served previously on Maine's Land Use Regulation Commission, the Land for Maine's Future Board, and as United States Commissioner to the North Atlantic Salmon Conservation Commission.

Conrad Schneider -- serves as Adjunct Lecturer in Environmental Law and Policy at Bowdoin College. He is the Advocacy Director for the Clean Air Task Force and formerly served as an attorney with the U.S. Department of Justice, and a law clerk for the Honorable Robert H. Hall, United States District Court for the Northern District of Georgia. He holds a JD from the University of Virginia School of Law.

Horace Hildreth -- is the Chairman of Diversified Communications. A graduate of Bowdoin College and the Columbia University Law School, he practiced law for over 20 years, specializing in environmental law. He served in the Maine Senate from 1966-1968, where he chaired the Natural Resources and the Legislative Research Committees. Mr. Hildreth currently is Chairman of the Board of Directors of the Island Institute. He is a former Chairman of Board of the Maine Outdoor Heritage Trust, and a former Trustee of the Maine Chapter of the Nature Conservancy and the College of the Atlantic.

Dennis Harnish -- Denny Harnish is an environmental lawyer who previously served as Assistant Attorney General for the State of Maine. Harnish received his JD from Cornell Law School.