

**TESTIMONY OF KEN SPALDING  
REGARDING ZP 707  
PLUM CREEK PETITION FOR REZONING  
MOOSEHEAD REGION**

**PRESENTED TO THE  
MAINE LAND USE REGULATION COMMISSION**

August 30, 2007

**INTRODUCTION**

My name is Ken Spalding. I live in Wayne, Maine.

I have been actively involved in land conservation and the development, construction, maintenance and use of trails for over 35 years. In 1972 I worked with the Bates Outing Club on constructing a relocation of the Appalachian Trail (A.T.) in Western Maine. The following year I joined the Executive Committee of the Maine Appalachian Trail Club and in 1973 and 1974 assisted the Club president in conducting field work to make site-specific recommendations to LURC for the initial interim zoning for LURC jurisdiction. As an individual, I researched, hiked, measured and took field notes on most of the mountain trails from Green and Big Spencer Mountains and south, and made zoning recommendations to LURC.

I have been assigned three sections of A.T. for maintenance, one as an individual and two as the leader of organizations. For eight years I had maintenance responsibility for two miles of a Maine Forest Service trail.

For 16 years I was Director of the Maine Conservation Corps (MCC). During that time the MCC annually built more non-motorized trails than any other organization in Maine. The MCC was the primary trail builder for Maine parks and public lands and constructed or reconstructed many miles of trail for the United States Forest Service, Acadia National Park, the Appalachian Trail, Baxter State Park, and scores of land trusts, municipalities, school districts and others. This trail building included the trails and campsites in the Little Moose Management Unit and Mt. Kineo, new trail systems on the Nahmakanta Public Lands Management Unit including on Turtle Ridge and the upper Debsconeag Ponds, reconstruction of the Moose Mt. trail, as well as work on trails on Blair Hill and Borestone Mountain.

In addition to my work related trails activities, I personally enjoy recreating on trails, including bicycling, cross-country skiing, ski backpacking and hiking. During the past 25 years I have hiked extensively in Maine and hiked in the majority of the United States and Canadian Provinces.

Much of my testimony is based on the trail easement document that Plum Creek has submitted as part of its Lakes Concept Plan rezoning application. For this reason, I would add that I am quite familiar with conservation easements as a founding board member of the Kennebec Land Trust and co-chair of its Lands Committee for a number

of years. I also have some training through completion of a real estate law course, a seminar specific to easements, and many years of attending workshops at the annual Maine Land Conservation Conference.

### **CONCERNS WITH PLUM CREEK'S PLAN RELATING TO THE PROPOSED "PEAK-TO-PEAK HIKING TRAIL EASEMENT"**

Because of a number of serious problems, the Commission cannot have faith that this easement is a bona fide, secure, public trail easement. Among other things, it is granted exclusively to a private corporation. There is no third-party holder of the easement, much less a third-party public entity. The easement expressly is not enforceable by the public or any public agency. The Grantor and the Holder, both private corporations, can amend the easement at any time by mutual consent, including to prohibit public access to and use of the trail. If anything happens to the private Grantee (such as going out of business) or if the Grantee simply does not make use of the easement or does not comply with it, then the easement will terminate as will any public opportunity to use it.

It is alarming that use of the easement is subject to:

- any rules and regulations or other uses that Plum Creek may want to impose or allow or take advantage of its business interests
- any restrictions and fees that the grantee (a private corporation) may want to impose
- the rights of any mortgage or other superior lien holder to foreclose upon or subordinate the easement
- Plum Creek's (or any future landowner's) right to terminate should there be any law change (including LURC rules) to enhance public use of the trail.

Although the stated "purpose of this Trail Easement is to allow the Grantee to construct, maintain, repair and utilize the Trail for a recreational hiking trail," oddly, hiking is not even included among the allowed uses, and it is unclear whether the allowed uses are intended to be exclusive.

The terms of the trail easement are wholly inadequate for a hiking trail. Although a fifteen foot corridor is ridiculously narrow for maintaining any kind of primitive experience, even that width is rendered meaningless because Plum Creek reserves the right to conduct any and all legal activities **on** and adjacent to the trail easement. In addition to the inadequate width and the allowance of incompatible uses such as logging and development across and on the trail corridor, there is no provision for protecting even the trail treadway from these uses. The investment in structures to prevent environmental degradation and enhance safety are totally at risk to activities by Plum Creek on the easement, such as cutting any or all trees in the corridor including those with trail blazes, and running skidders or building roads across the trail. In addition to the loss of the investment, the loss of the trail structures and blazing will result in increased erosion and the potential for hikers becoming lost.

In the recreation study “Impact of Plum Creek Petition for Rezoning and Concept Plan on Recreation Resources in the Plan Area,” Plum Creek consultant John Daigle writes:

“Research conducted by Hunt and associates (2006) along with existing hiking guidebooks of the area (Keene 2003) indicates that if the plan was not implemented, the rate of increase in primitive recreation opportunities on Plum Creek lands would be stagnant or at reduced levels of growth as compared to adjacent lands (Bureau of Parks and Lands and Appalachian Mountain Club) that are specifically managed for these outdoor activities. While in some cases logged areas creates (sic) welcome distant views, it also creates (sic) a landscape that is inconsistent with the natural conditions expected by some primitive recreation users. While public access is allowed in the working forest of Plum Creek, the existing recreation infrastructure is quite limited, as this is not the primary mission of the company. For example, sections of trail have become non-distinguishable once logging has occurred such as the case at Number Four Mountain (Keene 2003). The combination of primitive recreation opportunities combined with other traditional recreation opportunities such as snowmobiling and hunting and more recently ATV use may increase at a higher rate as compared to primarily managed adjacent areas for primitive recreation opportunities.”

So the consultant argues that the poor record of Plum Creek in providing and protecting primitive recreation opportunities will turn around if LURC approves the Concept Plan. The trail easement is one of the plan’s key elements for doing that. But the evidence is to the contrary. The trail easement provides for more miles of trail, but there is no evidence to suggest that Plum Creek won’t obliterate the new trail with logging operations or other allowed uses, just as it obliterated the Number Four Mountain trail, and it has done elsewhere (e.g., on Pierce Pond Mountain). Plum Creek is very clear about this in the easement. Although the easement says it is for “activities related to primitive recreational pursuits” and directs the Holder that “The Trail shall be generally left in a primitive state...” Plum Creek adamantly refuses in the easement to provide any concession to protecting that primitive state from its own activities. In numerous places in the easement it explicitly states that its activities will not be curtailed to benefit the trail, such as “This trail easement shall not be construed in any manner to create any obligation of Grantor to maintain a buffer strip, undisturbed forest land, view corridor, or other limitation on its forest management activities and other land uses permitted hereunder.” The “other land uses permitted” include development activities where the trail is in development zones.

If, even after the Concept Plan expires, LURC decides to provide zoning for a buffer for the trail, the terms of the easement consider this to be a material default, which entitles any or all of the future landowners to prohibit use of the trail.

The trail easement gives Plum Creek the right in its sole judgment to require that the trail be relocated. This includes the same right for all subsequent owners of the land, including owners of subdivided land in the proposed working forest (or “balance”) easement areas and any and all landowners of property that the trail crosses in the

proposed development zones. The trail easement says “Grantor’s reserved rights shall include, without limitation, the right on thirty (30) days advance written notice, or shorter periods in the event of an emergency, to close portions of the Trail and/or to require relocation of one or more Trail segments, on either a temporary or permanent basis, as Grantor may determine in its sole judgment as necessary...”

One could be tricked into thinking this won’t happen because the trail easement says in one section “Grantor does not intend to relocate, or require relocation, of the Trail Easement [but it goes on to say] except... to accommodate forest management activities and other reserved uses of Grantor...”

Forced relocation may be okay for some types of trails, but it doesn’t work for hiking trails. A hiking trail, responsibly built, requires structure, such as rock steps and waterbars, to prevent erosion. In my opinion, the best process for implementing erosion prevention and other protective trail structures is to build much of what is expected to be needed prior to opening the trail, but to not try to build structures, to take care of every anticipated problem. Take care of the problems anticipated to be the worst, then re-evaluate the trail for each of the next two or more years, building more structure as additional problems are identified. The total trail development is expensive and labor intensive. The initial construction alone, in the terrain of the Moosehead region, is liable to cost \$12,000 (excluding significant volunteer labor) to \$20,000 per mile, and subsequent years can add significantly to that cost. A trail maintainer cannot afford to make that investment and then have to relocate the trail. The trail easement says Plum Creek, or a subsequent landowner, would pay the costs of the relocation if they require it. But the costs of relocation are not defined. Would they really pay the entire costs of relocation, or just for clearing brush, the quickest and least expensive part of the trail construction? Even if the landowner did pay the full cost it would still be a monumental waste of hard-to-find labor.

When I served as director of the Maine Conservation Corps the construction of this trail would not have qualified for one of our projects. One of the criteria, to ensure that projects provided a public benefit, was that the work performed by the MCC had to be guaranteed to be available for public use for at least 10 years. Plum Creek’s proposal would not meet that criterion.

There is also no guaranteed access to the proposed trail. The easement doesn’t provide any rights of access to get to the trail nor for parking areas. The easement expressly states that it includes no public right of access over Plum Creek’s other lands nor any public right to use its roads to get to the trail. Based on Concept Plan maps, the purportedly 67 miles of hiking trail easement touches public roads on Plum Creek land in only 2 places, there is no provision for parking areas, and camping is “strictly prohibited,” yet the trail passes through the Lily Bay Mt resort area, the Moose Mt resort area and ends in the proposed commercial zone at Rockwood. The concept plan shows the trail going into Greenville, but that concept location is not on Plum Creek land and there is no indication in the easement that there will be any real ability for the trail to go into Greenville. Based on the difficulty of access for the public, but the ease of access from proposed development properties, it appears that the intent is for the proposed trail to serve primarily as an amenity for the resort developments.

This trail is being presented as a public benefit, and therefore a reason for approving a rezoning application. However, it seems really to be a commercial benefit, an extension of the development part of Plum Creek's plan. Plum Creek has chosen not to have a third party holder for the easement and the easement itself allows for amendment by mutual agreement of Plum Creek and the Holder. Under these terms the easement could easily be converted into an exclusive commercial venture by agreement of the parties. There is other evidence within the easement that supports this as well, such as the provision for the Holder to mortgage the easement and for the mortgager to become the Holder. Rather than a public benefit, the easement may more legitimately be considered a part of the development that should require additional conservation as balance.

The choice of the trail easement holder is bewildering. To the best of my knowledge Western Mountain Foundation (WMF) has never built a hiking trail, and at best has very minimal hiking trails experience. The stark contrast to organizations that could logically have been the holder makes the choice startling.

The Appalachian Mountain Club (AMC) has been building and maintaining hiking trails since at least 1879. I don't believe there is any organization in the country that has a longer tradition of high quality trail maintenance for the public. The AMC is already partnering with Plum Creek in the so-called conservation framework. It is an adjacent landowner with an existing and growing trail system that would tie into the proposed trail easement.

The Maine Bureau of Parks and Lands (BPL) manages over 500,000 acres of multiple-use lands in Maine. There are hiking trails on most or all of the larger units. BPL has decades of experience designing and managing hiking trails for the public use and benefit. The Bureau includes the Maine Conservation Corps, which is the agency that does the actual trail construction. For the past 20 years, the MCC has constructed and re-constructed more non-motorized trail in Maine than any other organization. MCC's trail work is under the leadership of Lester Kenway, the most experienced supervisor of hiking trail work in Maine and possibly the eastern U.S. He is known nationally for excellence and innovation. He trains trail supervisors for federal agencies and national non-profits across the country. BPL is an adjacent landowner with an existing trail system that would connect to the trail easement. BPL has partnered with Plum Creek as a third party for the balance easement. On April 3, 2007, Alan Sterns representing BPL sent an email to Plum Creek indicating that BPL would consider being the Holder of the trail easement and directly offering to become the third-party holder of the trail easement.

“You reported to us that Plum Creek has identified a likely holder of hiking trail easements. BPL has not rejected the possibility of being a primary holder of trail easements. BPL would accept the responsibility of becoming third-party holder of a hiking trail easement.”

## **CONCLUSION**

There are so many serious deficiencies with the proposed hiking trail easement in Plum Creek's concept plan that it is unworkable and should be rejected by the Commission.

The trail easement purports to provide a public benefit by enabling a primitive trail to benefit the public. In truth, it cannot be relied upon to provide either a primitive trail or a public benefit.

Resume  
**Ken Spalding**  
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August 30, 2007

## **EMPLOYMENT EXPERIENCE:**

**Maine Woods Project Coordinator** – RESTORE: The North Woods.  
October 2002 to Present.

**Director, Maine Conservation Corps** – Maine Department of Conservation then Maine Department of Labor. January 1987 to October 2002.

**Assistant to the Commissioner and Coordinator of Legislative Affairs** – Maine Department of Conservation. December 1983 to January 1987.

**Assistant Resource Administrator** – Bureau of Public Lands, Maine Department of Conservation. November 1981 to December 1983.

**Forest Watchman** – Maine Forest Service, Department of Conservation.  
May 1974 to October 1981, six months seasonally.

**Environmental Health Coordinator** – Maine Health Systems Agency.  
October 1980 to April 1981.

**Planning Assistant** – Bureau of Public Lands, Maine Department of Conservation.  
November 1979 to March 1980.

**Administrative Assistant to the Commissioner** – Maine Department of Mental Health and Corrections. October 1977 to May 1979, six months seasonally.

**Executive Director** – Friends of Bigelow. October 1974 to February 1975.

**Field Representative** – Congress of Lake Associations. August and September 1973.

**Land Survey Party Chief** – Russell Waldo, Land Surveyor and Engineer.  
Four months annually, 1969 to 1972.

## **EDUCATION:**

**Bachelor of Arts, Sociology, 1973.** Bates College, Lewiston, Maine.  
*Senior Thesis: The Role of the Courts in Protecting the Environment.*

**Continuing Education, 1974 to 1986.** University of Maine, Orono and Augusta. Real Estate Law, Silviculture, Forest Roads and Trails, Forest Measurements, and Business Writing.

**Maine Management Development Program, April and May, 1989.** Maine Management Institute.

**Principles and Techniques of Fund Raising, April 1995.** The Fundraising School, Indiana University Center on Philanthropy, Washington, D.C.

**EDUCATION** (continued):

**National Service Executives Program**, February to August, 1997. The Presidio Leadership Institute, San Francisco, California.

**Conferences, Seminars and Workshops**, 1981 to present. Topics include submerged lands management, general environmental, land trusts, conservation easements, municipal parks and recreation, service and conservation corps, forestry, high level nuclear waste disposal, voluntarism, fund raising, national service, supervisory practices, team building, personal growth, and growth management.

**VOLUNTEER SERVICE** (Conservation related):

**Friends of Baxter State Park**, 2003 to present. Board member and officer.

**Friends of Bigelow**, 1975 to 1986 and 2002 to present. Executive Committee member, officer, board member.

**Wayne Conservation Commission**, 1998 to present.

**Kennebec Land Trust**, 1988 to 2002. Founding board member, officer and advisory board member.

**Maine League of Conservation Voters**, 1983 to 1999. Founding board chair.

**Dirigo Alliance**, 1986 to 1992. Founding board member.

**Pocasset Lake Association**, 1990 to 1992. Officer.

**Sierra Club, Maine Group**, 1980 to 1989. Founding Executive Committee member. Chair.

**Baxter State Park**, 1987 to 1989 and current. Various committees. Trails Committee, current.

**Maine Appalachian Trail Club**, 1974 to 1988. Executive Committee, officer, Appalachian Trail maintainer.

**Natural Resources Council of Maine**, 1973 to 1984. Council member, Executive Committee, officer.

**Land Use Regulation Commission, Citizens Advisory Board**, 1974 to 1983. Member.

**Awards:**

**Environmentalist in Government Service Award**, 1992. Maine Group of the Sierra Club. Inaugural Environmentalist in Government Service Award.

**William Apring Award**, 2000. New England Training and Employment Council. For outstanding achievement in youth employment programs.

**Presidential Citation**, 2001. Unity College. For outstanding accomplishments as a steward of Maine's natural resources, as a career role model for Unity students, and service to Unity College.

**Restorationist Award**, 2002. RESTORE: The North Woods

State of Maine  
KENNEBEC, ss

Dated: 8/31/07

/s/Ken Spalding personally appeared before me and,  
after taking the oath, swore that the above statements are true.

/s/Cheryl C. Ramsay  
Notary Public/Attorney