

**TESTIMONY OF GERI VISTEIN
REGARDING ZP 707
PLUM CREEK PETITION FOR REZONING
MOOSEHEAD REGION**

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

August 28, 2007

INTRODUCTION

My name is Geri Vistein. I hold a Bachelor of Science Degree in Wildlife Biology and a Masters of Science in Natural Resources, focusing on Conservation Biology. In addition, I hold a Bachelor and a Masters Degree in Education. My interest in large carnivores has led me to involvement in research that includes a Grizzly Bear DNA Study in Northwestern Montana, and a study of the Impacts of Highways on Bobcat Movements in the Green Mountains of Vermont. I have also participated in the research of prey species that are vital to carnivores: an Elk Calf Mortality Study in Northwestern Montana, and a Snowshoe Hare Study in Yellowstone National Park, which is being conducted along with Canada Lynx research. In addition, I have been involved with a great deal of outreach within the human community educating people about carnivores, both here in the Northeast as well as in the West. At this time, I am a conservation biologist here in Maine, working collaboratively with diverse groups. My focus is the restoration and protection of large, native, mammalian carnivores.

Maine has been my home for 18 years, and I have been privileged to spend time in the wildlands around Moosehead Lake, notably the areas near Lily Bay, and the quiet, tranquil shores on the west side of the lake. It is a land beautiful and remote, a land mostly untouched by the world of today.

That is why I am in continued disbelief of Plum Creek's proposed development in this wildland. Even before any structures are built, it is hard for me to conceive of 77 miles of new roads, along with powerlines, wind turbines and cell towers, all of which will have a significant impact on wildlife and habitat. Plum Creek's proposal for 20,500 acres of development zones and accompanying 2,315 new residential accommodations plus 2 large resorts represents a serious threat to Maine's native large carnivores. Even more troubling, Plum Creek is seeking, as part of its massive development proposal, rezoning of much of the Somerset Wildlife Sanctuary abutting Moosehead Lake for the sole purpose of further development. I have attached information from Albert Manville, another wildlife biologist, to my testimony, regarding this issue.

In preparing my testimony, I have referred to the research by several noted research biologists (see references), Maine Inland Fisheries and Wildlife

Conservation Strategy, Maine Audubon Society, The Wildlands Project, Aldo Leopold, and Henry David Thoreau.

CONCERNS ABOUT PLUM CREEK'S MOOSEHEAD PROPOSAL

As a conservation biologist focusing on the restoration and protection of native mammalian carnivores, I have grave concerns regarding the immense development around Moosehead Lake proposed by Plum Creek. It is my opinion that this proposed development has no place here if we want to keep the wild character of the Moosehead Region. My following comments are an explanation for my professional opinion regarding Plum Creek's proposal.

Our North Woods are in need of a healthy predator population, which includes the whole host of our native carnivores. These large carnivores are essential in order for our North Woods to be fully biodiverse. They are referred to as "keystone" or "umbrella" species, for when healthy populations of these species that are protected from human exploitation, all other species of plants and animals are affected in a positive manner (Wilson 1988, Soule and Noss 1998), and the entire landscape returns to its former health.

Large mammalian carnivores that exist today in Maine, and those we are striving to restore, are at risk for an "extinction vortex" due to increased development in rural lands along with global warming and human exploitation by over(?) trapping (Carroll 2004). This holds true for both endangered and non-endangered carnivores. Several "keystone" species, namely wolves and mountain lions, are considered extirpated and are struggling to return. Recovering populations of these species move long distances and require large home ranges to establish populations successfully (Mladenoff et. al. 1999). Therefore, it is of immense importance to maintain connectivity throughout the wildlands of our North Woods. Habitat fragmentation greatly influences the persistence and resiliency of these carnivores and the resulting landscape biodiversity. Noss (1990 p. 241) stresses that there must be an increased emphasis on "maintaining physical habitat conditions and ecological processes; that is, ecosystem-level conservation."

In addition, the entire host of carnivores in Maine requires diverse habitats for their persistence, as indicated in the research of Carroll (2005). Understanding the habitat needs of diverse species of carnivores has led The Wildlands Project, a group of research scientists, to develop a Wildlands Network Design—a large scale conservation plan for the Northern Forests of New England. This is an overarching, science-based strategy for land protection (Noss 1992). Allowing wildlands to be altered by human development can dramatically change the numbers and types of wildlife that are present on the landscape, from the top down. An example of this is that roads can act as barriers, and populations can become isolated, causing species to be lost (Maine Audubon Society 2000).

Research by Dan Harrison (1998) from the University of Maine regarding habitat for endangered wolves, also underscores the need to protect wildlands. His research details areas in the Northeast that would be “core” wolf habitat (“core” meaning large areas that have little or no human use). His habitat criteria were based on factors that would enable human contact with wolves, thus creating a potential for human induced mortality of wolves (Harrison 1998). Harrison refers to the studies in Minnesota (Fritts and Mech 1981, Fuller 1989) that found wolf mortality was predominantly caused by humans due to access to wolf populations by roads. Thus, human access to wolf populations is a primary consideration for evaluating habitat suitability.

Researchers in the Great Lakes region found that wolf packs do not persist when road densities are more than 58 Km/Km² (Thiel 1985, Jensen et. al. 1986). Fuller reported that 86% of the wolf packs in Minnesota were located in towns having <0.75 Km/Km² of roads and < 4 humans/Km². So large contiguous landscapes, with minimal roads and limited human population, are needed for wolves to persist. Because wolves are a “keystone” species, whatever affects their persistence also affects the persistence of other plants and animals. That is why Harrison’s study is so relevant here.

Harrison (1999) found that the largest areas of potential “core” habitat for wolves in the Northeast is in Maine (44,196 Km²). These core areas have limited roads and small human populations. Moosehead Lake and the landscape surrounding it are central to this core area. Plum Creek’s proposed development would destroy the connectivity of this large landscape and cause future carnivore populations to be exposed to human caused mortality. In contrast to the limited development and human population present at this time in the Moosehead Region, Plum Creek’s proposal would affect vast, substantially intact habitats around a largely undeveloped northern lake. Severe impacts on wildlife would occur far beyond the pavement’s edge (Beginning with Habitat et. al. 2007).

As mentioned earlier, 77 miles of roads, along with powerlines, wind turbines and cell towers, is a serious threat to our large, native carnivores and to future restoration of wolves and mountain lions. In addition, the increased population of humans as a result of residential subdivisions and resorts would undeniably set up conflicts with carnivores, resulting in the death of many animals.

“Habitat” is the main focus of the Maine Inland Fisheries and Wildlife Conservation Strategy. The document quotes the Maine State Planning office (1997): “Habitats for wildlife in [southern] Maine have been seriously fragmented by development sprawl.” One example cited is a study of 8 towns in Southern Maine, which found that 76% of the wetlands were visible from or within 2,000 feet of a road.

The Conservation Strategy quotes Henry David Thoreau to suggest that, in contrast, the North Woods is much less fragmented: “From this elevation, just on the skirts of the clouds, we could overlook the country...for a hundred miles. There it was, the State of Maine...immeasurable forests for the sun to shine

on...no clearing, no houses. Countless lakes, Moosehead in the southwest...like a gleaming silver platter at the end of the table.” (Henry David Thoreau 1849)

The Maine Inland Fisheries and Wildlife Conservation Strategy correctly indicates the value of contiguous habitat across the large landscapes of Maine’s North Woods for wildlife conservation, now and in the future. LURC has an opportunity to turn those words into action.

CONCLUSION

In closing, Plum Creek’s proposal for development in the Moosehead region is in absolute contradiction to the value and nature of this wildland. It has no place there, now or in the future. Plum Creek, as a private landowner has an ethical responsibility to this wildland. They may “own” the land, but that does not give them license to destroy it. The fish and wildlife populations that live on this land now and in the future depend upon it to remain wild and unbroken. They depend upon us to keep it as intact ecosystems.

The LURC law says that the Commission should not allow zoning changes that would cause undue adverse impacts on existing uses or resources. The LURC Comprehensive Plan says that the Commission will “ensure the continued availability of outstanding quality water, air, forest, wildlife and other natural resource values.” The LURC standards for structures adjacent to lakes say that adequate provision has to be made to maintain the natural character of shorelands.

As a professional wildlife biologist, I urge you to deny Plum Creek’s Moosehead proposal because it will have undue adverse impacts on wildlife and habitat on an unprecedented scale in Maine history, because it will not ensure the continued availability of outstanding natural resource values, and because adequate provision has not been made to maintain the natural character of shorelands.

Thank you.

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To: “Aga Pinette” agnieszka.pinette@maine.gov
From: “Al Manville” albertsandy@verizon.net Albert_Manville@fws.gov, Resident, West Shore Road Association (WSRA), Somerset Game Sanctuary, Sapling Township, ME 04478, and recent Past President, WSRA

August 16, 2007

ISSUE: Plum Creek’s proposal to commercially develop in Somerset Game Sanctuary, Route 6/15 Corridor, Somerset County, Maine.

SUBJECT: Response to questions raised by Aga Pinette, Senior Planner, LURC, on August 7, 2007, to George Bakajza, resident and member of the West Shore Road Association, located within the Somerset Game Sanctuary, Somerset County.

QUESTION 2a: “Are you and/or others signing the petition intending to make a legal argument to LURC that LURC is legally barred by the 1933 law [Chapter 134, An Act Establishing a Game Sanctuary in Piscataquis and Somerset Counties, March 20, 1933, p. 265] from allowing the sanctuary property to be rezoned as requested by Plum Creek because the development there would constitute a de facto “killing” or “destruction” of any “wild animal or bird within the limits”? When will that legal argument be presented to LURC?”

Q. 2a RESPONSE: While I am a Federal wildlife biologist, I am submitting these comments as a private citizen. However, because this proposed development will almost certainly impact State and Federal trust species, LURC needs to be aware of legal wildlife issues that will be raised if they should allow Plum Creek to commercially develop within the Sanctuary.

Plum Creek’s preliminary proposal to develop within the Sanctuary at least 125 lots (of which 20 will be shorefront lots), and commercially develop at least 177 acres of forestland is extremely troubling. The development calls for such things as commercial boat launches, retail and convenience stores, gas stations, laundromats, offices, mineral exploration and processing (the Misery Quartzite Unit, Moose River Group of minerals is found within the Sanctuary, a potentially valuable resource), waste-water management facilities, a huge increase in housing, and other uses. If permitted, the development would clearly result in violation of the 1933 statute resulting from the unauthorized “take” of wildlife. The scale of the proposed development alone makes the impacts unavoidable. Since Maine has scant few wildlife preserves designated for wildlife protection, Plum Creek’s site selection for development is totally inappropriate.

Recognize that once Plum Creek gets development approval, they’ll only again return to LURC requesting further development approval until all their lands are eventually sold or developed into Plum Creek-owned “kingdom estates”/gated private communities. Their track record in the West is crystal clear on this issue.

In addition to the 1933 statute that protects wildlife from harm, there are 3 Federal statutes, 2 of which would almost certainly be violated if Plum Creek were allowed to extensively develop within the Sanctuary.

Regarding any nesting migratory birds protected by the Migratory Bird Treaty Act (MBTA; a strict liability statute where intent to “take” does not have to be shown), there are currently 836 bird species protected in the U.S., many of which reside or migrate through this Sanctuary. Any cutting of active nest trees, destruction of active nests, death or injury to chicks/nestlings/fledglings during the breeding and nesting season represents a “take” under MBTA and would be a criminal violation of the Act. The U.S. Fish and Wildlife Service (USFWS) does not issue “incidental or accidental take permits” under MBTA. There is no provision in the Act nor in the Congressional report language for “incidental take.” The permits issued by USFWS

for take – e.g., waterfowl hunting licenses (duck stamps), special purpose permits, rehabilitation permits, and scientific collecting permits, would not apply. Development of the scale being proposed by Plum Creek for this Sanctuary would almost certainly result in violation of the Act.

The USFWS's list of 2002 Birds of Conservation Concern (BCC), which is mandated by Congress, identifies those migratory and non-migratory avian species that, without additional conservation actions, are likely to become candidates for listing under the Endangered Species Act of 1973.

Based upon the habitat present within the Sanctuary and birds identified in the Greenville, Maine, Breeding Bird Survey Route, the following BCC species may be present within the Sanctuary: Olive-sided Flycatcher, Wood Thrush (I've identified this species), Chestnut-sided Warbler, Cape May Warbler, Bay-breasted Warbler, and Blackpoll Warbler. Conservation of these species should be a high priority putting Plum Creek's proposed development clearly at odds with these declining species. The proposed conversion of this woodland and wetlands habitat is also inconsistent with the goals of Partners in Flight (PIF) for this physiographic region. PIF is an international consortium of Federal, State, Provincial, private, industry, and conservation organizations that work to protect migratory birds and their habitats.

The Bald and Golden Eagle Protection Act (BGEPA), also a strict liability statute, prohibits the take of both species. Nests for both species cannot be removed anytime during the year whether they are active or inactive. In 2001, Plum Creek was cited for cutting down a tree with a Bald Eagle's nest on Spencer Pond, near Kokadjo, but was not prosecuted under BGEPA by USFWS law enforcement since the agent felt there was no "willful or malicious intent." However, a Spencer Pond Camp co-owner was quoted in the media as saying that Plum Creek's Action reflected a "callous attitude." When he asked Plum Creek to consider not cutting in the immediate future to give the Eagles a chance to rebuilt, "there was no response." Plum Creek's recent record \$57,000 fine involving 18 clearcuts in violation of Maine's Forest Practices Act, and their documented destructive deer-yard cutting practices, raise further troubling concerns.

The Endangered Species Act (ESA) has a much broader definition of "take" than does MBTA. Because there are or have been at least 4 Federally-listed species found in or moving through the Sanctuary, "take" under ESA could be difficult to avoid. If take were discovered by a private citizen, Section 11 of the Statute allows the filing of a citizen lawsuit against Plum Creek, and possibly even against LURC should they permit this development. Because Plum Creek does not possess a Section 10 Habitat Conservation Plan and "takings permit" under ESA for the Sanctuary, they could be liable. Were they in possession of such a permit, very limited take might be authorized.

USFWS special agents would generally visit this Sanctuary only if a Federally-protected "trust species" or Federally "threatened" or "endangered" species had been or was about to be taken. "Trust species" include any of 836 species of migratory birds, their eggs, nests, parts, or actual birds in someone's possession – dead or alive. Applicable Federally-listed species where they are "harassed, harmed, injured, or killed" include the eastern timber wolf, Canada lynx, eastern Mountain lion, and Bald Eagle (the latter in the process of being delisted, but still protected by BGEPA and MBTA) – all which have been documented in the Sanctuary by 2 or more residents. What most garners law Enforcement attention, in addition to willful or malicious intent, would be Plum Creek's lack of cooperation in working with State and Federal Officials to avoid or at least minimize take. The very nature of this proposed development makes this a huge challenge for Plum Creek.

In addition to the clear provisions of the Sanctuary Act, and the penalties of up to \$300 – considerable by 1933 standards, and/or 90 days imprisonment, Maine also provides protections for State-listed species through their List of Threatened and Endangered Species. Included are

the State-endangered Peregrine Falcon, Sedge Wren, Grasshopper Sparrow, Golden Eagle, and other avifauna. While I have not documented these species within the immediate boundaries of the Sanctuary, I have seen a breeding pair of Peregrine Falcons on Kineo cliffs and witnessed over-flights of migrating Golden Eagles. The Preserve may provide habitats used by the black racer, box turtle, and other State-endangered species. Threatened species I've actually seen within the Preserve include the Bald Eagle, Harlequin Duck, Upland Sandpiper, and possibly the spotted turtle in Forsythe Brook (that I could not validate). Maine's Inland Fish and Wildlife Division also designates "Important Wading and Water Bird Habitat" within the Sanctuary, located on both sides of Masterman Farm Road. Plum Creek's proposed development would almost certainly violate the State's threatened and endangered Species statute, let alone the Sanctuary law, and the protected designated wading and water bird habitat, resulting in take.

QUESTION 2b: "If this is your legal position, could you please further comment on whether any development by Plum Creek in the sanctuary is legal, and if some development by Plum Creek would be allowed, whether the issue is one of scale and related to a point at which development is established?"

Q. 2b RESPONSE: I will defer to attorneys who are familiar with Chapter 134 and similar statutes for their opinions on the legality of Plum Creek's proposed development. However, the Federal and State statutes protecting wildlife – listed above, are legally binding. Once LURC advises Plum Creek's counsel of these issues, Plum Creek will have legally been put on notice. Any future violations of the statutes where Plum Creek has failed to "avoid or minimize take" and/or where their intent has been shown to be "willful and malicious," could be construed as felony violations rather than misdemeanors by Federal and State law enforcement agents, based on their investigative and prosecutorial discretion, and in the case of Federal statutes, based on determinations made by Department of Justice prosecutors.

For example, the felony penalty under MBTA for individuals is \$250,000 per incident and for organizations such as Plum Creek, \$500,000 per incident, and/or 2 years in jail. Misdemeanors can result in fines for individuals and organizations of up to \$15,000 per incident and/or 6 months in jail.

The very degree of the proposed development within this Sanctuary will almost certainly completely change the character of the Preserve – and the surrounding area, destroying habitat and wildlife in the process.

Based on Plum Creek's track record in the West, whether they get approval for the entire Sanctuary proposal or approval for only a limited amount of development, once they get a foot in the door, Plum Creek – and other developers, will be requesting more development permits from LURC. While well known in the West, that information also became available when a Plum Creek representative let slip to several bystanders at the August 11-12, 2007, Forest Heritage Days booth in Greenville that Plum Creek will ask for much more development once the land is rezoned by LURC.

Until zoning and planning laws and ordinances are changed either by the State Legislature, and/or by the County Commissions to put breaks on uncontrolled growth, Plum Creek will continue to push for mega-development until they get their way. In Seeley Lake, Montana, ostensibly through the Missoula County Commission, local zoning ordinances are now being put into place that stipulate how land Plum Creek wants to sell can be developed. The Commission has identified critical habitat (not unlike the Sanctuary) and in these areas Plum Creek cannot develop, or can only develop at a density that is not conducive to profitable land sale (e.g., 1 building/ 160 acres).

Other areas are zoned for higher density where the habitat is not as critical or where homes fit into an existing plan for development (e.g., Rockwood, Greenville, and Jackman). Instead of maximizing profit, Plum Creek in Montana has now been compelled by local ordinances to play ball and negotiate in good faith. Maine desperately needs similar ordinances.

QUESTION 2c: “Further, if you do intend to make the legal argument that any further development in the sanctuary is prohibited, how should LURC think about the legality of existing residential development which has occurred in the sanctuary by others and subsequent to passage of the 1933 law?”

Q. 2c RESPONSE: Again, I cannot speak to the legal precedence and will have to defer to counsel for comment. However, most of the development within our Road Association took place back in the 1960s, but occurred only along the shorefront and only in a very limited way (i.e., 40 seasonal camps in total). The likelihood of any violations of Chapter 134 was minimal. Even today with camp upgrades and 3 new camps on existing lots, violations of the statute have been minimal – e.g., occasional amphibian deaths. The single lane, seasonal dirt roads into the Association camps and the 15 mph speed limits have helped minimize impacts to wildlife within the Sanctuary.

We make a point of encouraging all our Association members and their guests to obey the local laws, including the speed limits. That will all change if roads within the Sanctuary are widened and paved, traffic greatly increases, speed limits are increased, roads receive year-round use, and commercial development is allowed to occur as proposed under Plum Creek’s plan.

Our Road Association has been consistent in opposing development of more than 1 or 2 camps. In 2003 at a meeting I chaired, the Road Association unanimously opposed the Watson/Loon Enterprises permit development application in Lamb’s Cove. LURC, unfortunately, approved the application.

What Plum Creek is initially proposing would easily quadruple the number of camps in our area and it would increase several-hundred-fold the number of year-round residences. Such unprecedented expansion of residential development, and the potential negative impacts from the proposed commercial development within the Sanctuary are incalculable.

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Education:

Master of Science in Natural Resources
University of Vermont, Burlington, Vermont

Bachelor of Science in Wildlife Biology
University of Montana, Missoula, Montana

Master of Arts in Education
Kent State University, Kent, Ohio

Bachelor of Arts in Education
Ursuline College, Pepper Pike, Ohio

Field Experiences in Wildlife Biology:

Graduate Research My research was conducted for the National Park Service, as part of an Environmental Impact Statement in the controversy over hunting at Cape Cod National Seashore. My thesis researched inter-group conflict and the potential for consensus.

Intern with the Grizzly Bear DNA Study under the auspice of the U.S. Geological Survey, in and around Glacier National Park, N.W. Montana

I had experience collecting data points with GPS equipment, and mapping with ArcView GIS; interacted with ranchers who had active Grizzly Bear activity on their land, worked with the Kootenai-Salish Native Americans on their tribal lands; attended a course in backcountry medicine by Aerie.

Intern with the Elk Calf Mortality Study in the Blackfoot Clearwater Basin in northwestern Montana in conjunction with the University of Montana.

I assisted with the monitoring of elk calves using telemetry equipment, tracked calves registering mortality signals, and investigated the remains and the site. Since most of the study area was located on expansive ranches, I spent time interacting with ranchers and encouraging them to verbalize their attitudes regarding wildlife issues.

Intern with the Snowshoe Hare Study in Yellowstone National Park, in conjunction with the University of Montana

I participated in the trapping, DNA sampling and other data collection from each hare. I also took part in diverse vegetative habitat studies. This study was conducted along with that of the endangered Canada Lynx.

Research Assistant with Bobcat Study for the Vermont Cooperative Fish and Wildlife Research Unit out of the University of Vermont

I assisted in the tracking and trapping of bobcats in the Green Mountains of Vermont, in research directed at observing the impact of the highway system on bobcat movement.

Research Assistant for National Audubon Society for the Seabird Restoration Project on the Islands of Maine

I assisted with observations of tern colonies, banding of chicks, feeding studies, colonies counts, and monitoring of predator birds. It was also my role to interact with and educate any people who approached or landed on the islands, in order to protect the colonies from disturbance.

Other Wildlife Experiences:

Instructor for Living Earth Learning Program, Boston, Massachusetts

Taught in schools and colleges throughout New England regarding wolf myths of the past, and the wolf's return of today; other wildlife and ecological issues were also addressed.

Guest Speaker for Restore the North Woods and the Maine Audubon Society during Summer Lecture Series

Spoke on the history of the wolf in the United States and present day wolf recovery issues in the West and Upper Midwest, as well as plans for recovery in the Northeast.

Volunteered in Yellowstone National Park and the Wolf Education and Research Center in Idaho

Educated the visiting public regarding wolf issues in the west. Engaged in conversations with diverse people from ranchers in Wyoming to visitors from across the country.

Other Experiences as an Educator:

Taught Earth Science to students in Grades seven and eight. I created opportunities for the students to develop hands on projects that involved issues they could explore and find ways to resolve.

State of Maine
CUMBERLAND,
ss

Dated: 8/28/07_____

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

 /s/Chloeriva N. Craig_____

Notary Public/Attorney