

Maine Forest Guild Testimony on Plum Creek Balanced Easement

Submitted as testimony on December 15, 2007

Summary

The Forest Guild appreciates the opportunity to offer Maine’s Land Use Regulatory Commission comments on the Plum Creek proposed Balanced Conservation Easement submitted as mitigation for the development included in its larger Moosehead Lake Concept Plan. We have restricted our comments to the question of whether the easement and associated documents offer significant assurance that the forest conditions will be improved and whether that improvement can be used as a mitigating balance to the proposed development. ***Our conclusion is that Plum Creek is not offering an adequate level of assurance that the forest will be improved, mainly because the easement and associated plan fail to include clear, measurable goals and objectives that meet professional and scientific standards to ensure productive, multiple-use forest management.***

Our analysis reviews and explains how the language in the documents is mostly process oriented and incorporates only commitments to intentions and misses the opportunity to include commitments to tangible evidence that the forest will be improved. We offer specific examples of how such language could be included. In addition, we analyze and review critical gaps in the proposal that could lead to a degradation of the future forest condition.

Introduction

The Forest Guild is a national organization of foresters and allied professionals who practice and promote ecologically, economically, and socially responsible forestry—“excellent forestry”— as a means of sustaining the integrity of forest ecosystems and the human communities dependent upon them. The Guild engages in education, training, policy analysis, research, and advocacy to foster excellence in stewardship, support practicing foresters and allied professionals, and engage a broader community in the challenges of forest conservation and management.

Excellent forestry goes beyond meeting minimum best management practices and places the long-term viability of the forest above all other considerations. It uses nature as a model and embraces the forest’s many values and dynamic processes. Excellent forestry is different in each ecoregion, but is always guided by science, place-based experience, and continuous learning and discovery. Wherever it is practiced, excellent forestry recognizes the forest’s intrinsic value as well as human dependence on forest products.

We have 50 Forest Guild members in Maine. The expertise of our members regarding forest management is broad and particularly strong in forest management planning, progressive silviculture, wildlife habitat management and timber and other wood product

production. Our members helped develop and/or are involved in the leading certification systems, both regionally and nationally. More information about the Forest Guild can be found at: www.forestguild.org

Evaluating the Plum Creek Balanced Conservation Easement

We understand that LURC's obligation is to evaluate whether Plum Creek's offer of mitigating benefits in forest management is sufficient to balance the losses to the economic and biological values of the forest environment that will be caused by the proposed development. The Forest Guild acknowledges that a binding agreement to keep 91,000 acres out of development in perpetuity is a long term advantage to the region. We also understand that most of this land is back land and not currently under development pressure and LURC will have to evaluate the long term benefits of this portion of the proposal. We have not analyzed nor will comment on this potential benefit

We will keep our comments focused on how well the proposal assures, or does not assure, an improvement in forest health and productivity to balance the development losses. In this way we hope to be helpful to LURC in evaluating this critical issue that affects the people of Maine and the economy and well-being of the Moosehead Region. Our focus is on determining whether there will be improvement of the forest so that the improvements can be valued as mitigation for the development. **Maintaining the status quo of forest management is not a mitigating benefit for development, and the Plum Creek Balanced easement must be judged by this "assurance of improvement" criteria.** Other easements the Forest Guild is familiar with or has analyzed are not necessarily subject to this criteria; maintaining the status quo in other easements may be acceptable for reasons of price paid or acceptability of current management practices. The Plum Creek evaluation is different. The citizens of Maine should have a tangible and significant assurance that the forestland under this easement will undergo improvement in health, productivity of forest products, wildlife habitat, recreation and other forest amenities. Our investigation remained focused on whether the balanced conservation easement assures improvement in the forest.

The Forest Guild has investigated the development of working forest easements in Maine and reported the results in our 2006 publication *Ensuring Sustainable Forestry Through Working Forest Easements in the Northeast*. Our evaluation of case studies included an eleven step rating system that indicated rising levels of assurance of improvement. We used the rating system to evaluate the Balanced easement. (Table 1) Easements can mix and match and use a variety of these levels to build in the acceptable assurance of future conditions. In order, for the Balanced easement to meet the "assurance of improvement" test it would have to hit the mark on a least some of assurances provided in levels eight through eleven in our rating system. Our analysis will concentrate on those four levels. In addition, after reviewing the Plum Creek proposal and LURC's objectives we offer the following as a guide for what we believe LURC should require in order to find adequate assurance that the forest would be improved.

- I. An adequate baseline.
- II. Clearly defined goals and measurable objectives.
- III. Implementation plans to achieve the goals and objectives.
- IV. An adequate monitoring process.
- V. Adequate compliance/enforcement process.

We have reviewed Plum Creek's Balanced conservation easement proposal and understand that the documents related to this proposal are a package commitment from Plum Creek. We understand that the Legacy conservation easement proposal is essentially the same, but have kept our comments to the Balanced easement proposal which LURC is obligated to evaluate in terms of mitigation for development. To the degree the Balanced and Legacy easements are the same, our comments and concerns would apply to both easements. In order to consider the effectiveness of the Balanced conservation easement proposal it is important to consider the form and structure of the package itself in addition to the detail contained within. This package includes:

- I. an easement.
- II. a Multi Resource Management Plan.
- III. Plum Creek's Maine and New Hampshire Environmental Action Plan.
- IV. Plum Creek's SFI Indicators and Evidence Manual.
- V. related appendices, reports and forms.

Our first comment is that this package is unnecessarily complex; it is a hodgepodge of semi-related existing documents that are intended to present a case that better management is assured in the future. We are aware that documents were added late in the process in order to bolster the case for management. However, while it is helpful to have these documents, it is extremely difficult to relate them to each other and find answers to appropriate questions regarding improved and sustainable forest management. *If it is difficult to examine and understand this package during the proposal phase then how easy will it be for the Holder, Third Party or the public to evaluate performance during implementation?*

The proposal package lacks a forest management plan with clear measurable goals and objectives for forest improvement

Part of the difficulty begins with the documents themselves. Although at least one of the documents (Multi Resource Management Plan) purports to be a forest management plan, we find it is lacking in specific information to provide the level of assurance that LURC should require. LURC should require the easement and associated written plan to include clear statements of Plum Creek's short-term and long-term vision, goals, and objectives. The objectives, particularly in the plan, should be specific, achievable, and measurable. The plan, in its current form, does not offer objectives for specific or general improvements in the forest. What it does offer is a series of process-oriented measurable intentions embedded in a loose set of policies. This distinction is important

because it can cloud both the analysis of the plan and the evaluation of its ultimate utility and assurance in a mist of paperwork.

An analogy might be helpful. Let's consider someone now located in Augusta in possession of a wonderful object, with peculiar properties. The farther west the object is carried the greater the increase in well-being for the people and the environment of Maine. Maine pays this individual a large sum of public money to carry the object west. Bringing it to San Francisco would be optimum, Chicago good, Albany less so. A contract is negotiated and the people of Maine have to decide whether the movement west that will be achieved by this owner is worth the payment. They need to know how far west the object will be carried and over what time. But the contract only stipulates the would-be traveler will collect relevant maps, consult with expert travel advisers, report on the progress, have the progress monitored and certified and eventually develop an itinerary for each days travel. The closest thing to any assurance of progress west is an agreement in the contract that the traveler will "promote" movement in a westward direction. Only the intention of moving west is clearly articulated.

This leaves the people of Maine without any idea of how much progress west will actually be made. The traveler can do all of the above, still be in compliance with the agreement and never leave the Augusta city limits, let alone make it to Bethel. On the other hand, the traveler might make it all the way to the west coast, but there isn't any assurance in the contract that this will happen. To make matters more complicated this traveler's track record doesn't show a westward inclination. Ultimately, the people of Maine are left with no discernible, measurable goals and thus no assurance that there will be any significant progress west. Is this a good deal and is it worth the payment?

Examples of how to build in measurable goals to provide assurance of improvement

LURC should insist on clearly defined and measurable goals that provide the assurance that the forest is improving. Inclusion of such goals is common in forest management planning and absolutely necessary in this case. Examples of structure for such documents include Maine's WoodWise stewardship plan requirements for federal cost sharing or the Forest Stewardship Council's Forest Stewardship Standard for the Northeast Region (USA).

The eleventh and top level of the Guild's easement rating system involves prescribing practices in the easement or management plan that provide more specific assurances. Some argue that locking in these prescriptions could stifle effective silviculture in the future and hinder improvements. We want to be clear that although prescriptive practices are appropriate and have been used in some easements and would certainly help in the Plum Creek case, they are not essential in providing the necessary assurance to LURC. It is possible to use defined performance expectations (Level ten), defined components of a forest management plan (Level nine) and defined management goals (Level eight) to build in the assurance that positive improvements will take place on the land. In the traveler analogy above it is not necessary to prescribe how the object would be moved.

We may think rail travel is the best, but the traveler can move by car, plane, bicycle or foot or change the mode of transportation en route. What is important is a description and timeline for specific destinations- the achievement of specific measurable goals. Plum Creek has chosen not to do this and as a consequence has not yet met the assurance test.

It is possible to establish clear goals in the easement document and then provide the detail in the Management Plan (which is updated periodically and thus not “locked in”).

I. For example, the Easement could say (as one of several specific goals) “provide sufficient habitat at the stand and landscape scales to maintain healthy and well distributed populations of both young-forest and mature forest wildlife species, including those such as Canada lynx and American (pine) marten with large home range requirements.”

II. The Management Plan could then say: “Within two years Plum Creek will develop and begin implementing habitat plans for marten and lynx as umbrella species for mature and young-forest species, respectively. The plans will use the latest recommendations of agency and university scientists and will include maps, habitat acreage targets and other applicable objectives, estimate timelines for the next 25 years and a list of specific management activities and locations for the next 5 year planning cycle. The plans will be updated at minimum on a 5-year basis based in monitoring data, emerging research, and consultation with agency biologists.”

A complementary over-arching concern is the way in which future management will provide for healthy landscape-scale forest age, species composition and structure. In the current Plum Creek proposal the types of silvicultural systems utilized and the resultant stand development are not identified and are subservient to Plum Creek’s goals for a sustainable flow of forest products. Plum Creek indicates it will use Woodstock linear programming software to determine how much timber is available and where and when harvest operations could be scheduled. If the flow of products as determined by the Woodstock model is sustainable, then, unless countermanded by some wildlife objectives, the management is deemed “sustainable”. However, there is an extremely wide range of landscape management approaches and resulting forest structure and composition that can support product flow sustainability. But how Plum Creek chooses to manage for sustainable flow may not be an improvement over the current condition- which Plum Creek acknowledges was subject to much high-grading (a damaging harvest practice that takes the healthiest trees and leaves the rest). It would be possible to indicate improvement in this degraded forest by including some non-prescriptive goals and objectives such as:

I. The easement could say: The forest owner will maintain or restore a portion of the forest to the range and distribution of forest structures and species composition consistent with naturally occurring stand development patterns for the region.

II. The forest management plan could say: Plum Creek will use existing credible scientific information to set targets for structure and species composition and identify the silvicultural practices and harvest regimes to achieve them.

The Plum Creek Proposal does not establish clearly stated measurable goals for forest improvement.

1. Examples of how most of the goals in the current proposal are process oriented.

Most of the measurable goals included in the easement and associated documents are process oriented requirements. We want to be clear that these are not goals that provide assurances that there will be improvement in the forest and should not masquerade as such. Here are examples of process oriented language:

The heart of Plum Creek’s commitment to sustainable forestry is pegged to the SFI standards. Objective 13 reads as follows: “To promote continual improvement in the practice of sustainable forestry and to monitor, measure and report performance in achieving the commitment to sustainable forestry”. **Commentary:** To “promote” does not ensure performance. Imagine a salesperson receiving a salary for promotion of a product without salary tied to any increase in sales of that product.

The plan calls for a Management Advisory Team (MAT) to address issues such as significant wildlife habitat. **Commentary:** There is no stipulation that Plum Creek has to follow any recommendations once the MAT addresses them. The only performance measure is that the MAT addresses them.

The plan indicates that “travel corridors are considered in harvest design.” **Commentary:** This is not an on-the-ground performance measure. If Plum Creek says the corridors were considered then auditors would have to approve performance no matter what, if any, changes were made to the harvest design.

The plan indicates that “foresters are trained to implement the shifting mosaic.” **Commentary:** The measurement is focused on the training- not the implementation of the shifting mosaic approach. As long as the foresters were trained, auditors would have to grant compliance to the terms of the audit – no implementation of the shifting mosaic approach is required.

2. Examples of how the current proposal comes up short on clearly defined measurable goals that assure conditions in the forest are improving.

Riparian zones are provided protection and state regulations and best management practices are to be followed. **Commentary:** While these targets provide measurable goals, all forest landowners are required to follow state regulations and we must assume that best management practices are already guiding Plum Creek’s operations since these statements are included in plans and policies that Plum Creek currently has in place. These goals offer no significant improvement in the status quo. It is particularly important to note that there are no state standards or best management practices for silvicultural management of the broad range of forest stand conditions in this easement area. Excellence in silvicultural management lies at the core to improving forest productivity and value in order to balance the losses that will come from development. A

commitment above and beyond minimal state harvesting standards is required. Maine BMP's are entirely aimed at protecting water quality - not forest productivity or multiple-use values. These are the important public objectives and Plum Creek should make measurable commitments to meeting them.

Conduct operations during favorable conditions. **Commentary:** Under commonly accepted best management practices we would never expect operations to be conducted under unfavorable conditions. There is no net improvement signified here.

Keep yards and roads to a minimum size, minimize rutting. **Commentary:** These are good goals but again basically following standard best management practices. In order to demonstrate improvement there would have to be some standard on rutting and road size that Plum Creek agrees to follow.

The plan indicates that known patches of late successional forest are "selectively" retained. **Commentary:** Plum Creek is agreeing to maintain late successional forests for research purposes while they should be retained for landscape scale habitat requirements as well. So little late successional forest remains that probably none should be harvested and to show improvement there should be commitment to a plan to increase the overall amount for a broad range of habitat and economic improvements on the property. How would compliance be measured by auditors if Plum Creek is merely committing to selectively retain these units? It appears that any kind of performance would be compliant. Goals need to be specified for management that will produce clearly understood and demonstrable forest values.

Plan requires Plum Creek to not eliminate any habitat from the landscape.

Commentary: While this is a measurable goal it does not suggest that any particular balance or extent of the broad range of forest habitats will be maintained or enhanced in an amount necessary to sustain species of concern. Any minimal amount of a particular habitat will satisfy this element in the Plan. It is not a tangible improvement, just maintenance of the status quo at best, and, at worst a specification that permits a very broad range of conditions, including reductions in the amount of critical habitats.

Plum Creek will retain large snags trees and woody debris. **Commentary:** To demonstrate improvement Plum Creek would have to set targets for amounts that would be retained.

The documents indicate Plum Creek will apply special attention to existing older forest types. **Commentary:** These older forest types are increasingly rare, yet Plum Creek does not commit to maintaining them or restoring them, only that they will receive special attention. There is no on-the-ground measurable associated with this goal.

Plum Creek commits to exploring the feasibility of retaining important ecological features. **Commentary:** Important ecological features should be protected, yet Plum Creek only agrees to "exploring the feasibility" of protecting. Under this goal setting

Plum Creek could merely tell the auditor they explored the feasibility and the auditor would have to signal compliance whether the feature was maintained or destroyed.

The Plum Creek proposal does not integrate management of private forests and social impacts- the ultimate public test of improvement for forest easements on private lands.

The types of forest management that claim the term “sustainable” cover a broad spectrum of practices – all the way from short-rotation, intensive harvests of non-native, bio engineered tree plantations to wonderfully diverse, multi-aged, multi-species, older-aged forests managed for structural complexity as well as production of wood products. Requirements for better forestry push management toward the latter end of this continuum, and wildlife habitat and ecological guidelines are typically used as the parameters. Other than those wildlife directives and an expectation of a sustainable flow of products, private forest landowners are typically left to manage as they wish.

However, there is also a social and economic relationship between the people who live near private forests and the management of the private forest. The decisions on the types of management regimes that are utilized and the quality of timber and sequencing of harvest schedules have potentially great impacts on local resident’s quality of life far into the future. Citizens now understand that the current owners of large tracts may sell and give way to new owners in a few years, but the management practices will have already dictated the future forest. In addition, experience has demonstrated that an owner like South African Pulp and Paper Company can claim long term responsibility and sustainability, high grade much of the forest, and then suddenly turn it over in a degraded condition to the next landowner who also claims sustainability for the long term. Each successive owner gets their financial return while the keystone forest property is gradually degraded and its potential to support diverse local economies spirals downward.

As a consequence of this negative experience, stakeholders are now insisting that new assurances of social responsibility be designed into certification systems and easements where public financing is significant. It is clearly not enough of an assurance to have a landowner commit to a sustainable flow of forest products by some narrow definition of “sustainable” based on the landowner’s short-term economic interest, because, while that may benefit the landowner, it obviously is not enough of an assurance for the public interest. While the SFI objectives included in the Plum Creek proposal ensures long-term harvest levels it does not do so in the context of social impacts. The Forest Stewardship Council Principle #4 on Community Relations and Workers Rights requires management planning to incorporate the results of evaluations of social impacts. It also requires that community goals from regional and local plans be included in forest management decisions. This type of social impact indicator is critical to providing the assurance of a good deal for the citizens of the Moosehead region, and should be included with any management scheme that intends to balance out development. ***In order to centrally address the core requirement for this easement to provide balance for the losses that***

will result from development, it is essential that very clear economic and social goals that sustain the welfare of the affected region be incorporated. They are lacking in the current proposal.

There is no direct assurance that the Management Advisory Team process will lead to improved forest management.

The establishment of a MAT is a significant and positive step in the future management of this property. The Forest Guild believes that such dialogue will help facilitate improvement in forest management practices and build trust between stakeholders. In fact, as we asserted in our report on ensuring sustainable forestry in easements this dialogue “in and of itself, may do more to raise the bar than any specific prescription.”

However, while dialogue is an important factor in successful working forest easements, in this case it only offers hope, but no assurance of improved performance and therefore does not help the proposal meet the “assurance of improvement” criteria. The MAT does not provide oversight. Plum Creek is not bound by the agreement to implement any of its recommendations. As currently constructed it is merely a forum, which may only meet once a year, to discuss and share information. As with other goals this one stops at the consultation phase. What is needed is some commitment to practice in accordance with scientifically accepted analysis. The MAT can help identify the cutting edge science and the peer reviewed articles that set the management goals and Plum Creek could agree to abide by its consultation.

This lack of commitment is problematic in Plum Creek’s case because there have already been cases in which Plum Creek managers were not willing to follow the advice of similar outside experts. *The Forest Guild is aware that Plum Creek received recommendations by State Fish and Game wildlife experts on maintaining deer yards and did not follow them while they proceeded to cut deer yards. Why should anyone expect a different performance under the current MAT arrangements if there is not agreement in the proposal to actually follow the recommendations?*

It is essential that accountability to a third party which will act in accord with professional principles to manage the natural forest resource in both the private and the public interest be incorporated in the proposal.

Plum Creek’s process for landscape scale management is not clear.

Although the documents refer to a landscape scale assessments there is not a clear indication of how the Plum Creek management process can accommodate such an approach. There is no reference to the development or implementation of landscape scale plans. Harvest and silvicultural plans are expected to be developed for individual stands but there is no apparent process to tier or connect these isolated and localized activities to some overall assessment and planning.

Vernal pool guidelines are inadequate

Plum Creek allows clearcuts within 35 feet of vernal pools which would fall far short of the recommended habitat protection from Forest Management Habitat Guidelines for Vernal Pool Wildlife (Calhoun and deMaynadier, 2004). This is an example of some clearly written guidelines for management in this region which Plum Creek neglects to build into the agreement as a tangible outcome.

Lynx Habitat guidelines are inadequate

The Maine Forest Council's Conservation Strategy for The (sic) Canada Lynx which is attached to the management plan offers no measurable goals nor strategies that can be counted on to improve lynx habitat. Plum Creek does not propose to use USFWS lynx habitat guidelines for Maine. Pegging lynx habitat management to compliance with Maine Forest Practices Act only maintains a status quo and does nothing to assure improvement.

Plum Creek allows the introduction of "biotech" seed into the forest

The introduction of genetically modified organisms into our environment is a concern. The Forest Stewardship Council standards do not allow genetically modified organisms while the Plum Creek policy allows the introduction of "biotech" seed in the future. *The Forest Guild opposes the introduction of genetically modified trees in the natural environment.* These organisms pose a wide range of challenges and potential threats that remain unaddressed at present. Challenges and risks include

- I. Genetic drift and ecosystem disturbance.
- II. Obstacles to effective monitoring.
- III. Constriction of economic options for timber producers.
- IV. Regulatory inadequacy.

More information on the Forest Guild position on transgenic trees can be found at www.forestguild.org/transgenictrees.html

Plum Creek foresters are not required to be licensed

Plum Creek requires its foresters to have a B.S degree in forestry or a professional license or work under the supervision of a forester with one of these two credentials. *It would seem practical that under the terms of such an easement that all foresters should be licensed in the State of Maine.*

Using the Forest Guild Rating System to Evaluate the Plum Creek Balanced Conservation Easement

The eleven step rating system proposed in the Forest Guild 2006 publication *Ensuring Sustainable Forestry Through Working Forest Easements in the Northeast* is useful tool

in evaluating how an easement uses a variety of approaches to assure sustainable forestry. Since the various approaches can be mixed and matched in any order, or incompletely followed, the system does not lend itself to a rating based on a simple number grade. It does provide a useful framework for a more complex analysis such as the one we have performed for Plum Creek and which we encourage LURC to complete before making a final decision.

The Balanced easement successfully integrates levels 1, 2, 4, 5, 7. Level 6 is not utilized. Levels 3, 8, 9, 10 and 11 are only partially and inadequately utilized to meet the “assurance of improvement” criteria. See Table 1 for a representation of this analysis.

Table 1. An evaluation of the design approaches in the Balanced easement per Forest Guild 2006 report on sustainable forestry and conservation easements.

Level of Assurance		Balanced Easement and Management Plan
Level 11	Prescribed practices	Practices linked to deer wintering areas, eagle and lynx habitat, vernal pool protection are inadequate and status quo.
Level 10	Defined performance expectations	Other than process oriented measurable performance expectations the proposal fails to establish clear performance expectations for forest improvement.
Level 9	Defined components of forest mgmt. plan	A Multi Resource Management Plan is connected to the easement. This plan falls short of establishing clearly defined and measurable goals and objectives and does not indicate they will be included in plan revisions.
Level 8	Defined mgmt. goals	Process goals- consultation, assessments, and reports- are defined. Forest management goals are not defined.
Level 7	Defined mgmt.. principles	The easement lists seven principles and is tied to SFI's 13 Objectives which are basically broad principles.
Level 6	Reliance on professional forester association or certification	No mention of Forest Guild, Society of American Foresters, Wildlife Society, Society of Conservation Biology affiliations for Plum Creek foresters or in a review/advisory board.
Level 5	Reliance on management. certification . systems	Easement and plan pegged to SFI certification system
Level 4	Reliance on BMP's	Reference to BMP's for stand level prescriptions.
Level 3	Reliance on forester licensing programs	Timber harvest supervised by licensed forester (Sect. 5D (iii)) in easement but forestry operations can be supervised by non licensed foresters (5C in plan). A non-licensed forester can design silvicultural prescriptions.
Level 2	Reliance on definitions of "good forestry"	Management will be consistent with SFI standards and "sustainable forestry"
Level 1	Reliance on state, local and federal laws.	Management will follow Maine Forest Practices Act and other applicable state and LURC regulations.

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