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Land Use Planning on a Grand Scale: A Decision Maker's Perspective

by E. Bart Harvey III

On September 23, 2009, the seven members of the Land Use Regulation Commission (LURC) cast a unanimous vote to approve a nearly 400,000-acre concept plan for the Moosehead Lake region—the largest rezoning, and arguably the most controversial land use project, in Maine's history. (Figure 1 shows the area covered by the concept plan. The sidebar, page 72, provides further detail about LURC's four-year process to develop a concept plan for the Moosehead region.) In this commentary, I explain not only why I voted in favor of this plan, but also why I believe this approval was a good decision—for the Moosehead region, for Plum Creek and other landowners, for LURC, and for the people of Maine.

Land use decisions are by nature controversial since they usually involve a need to balance public and private interests. In this regard, concept plans bring the controversy front and center. LURC approval of a concept plan requires that the agency find, among other things, that the plan strikes a "reasonable and publicly beneficial balance" between appropriate development and long-term conservation.

In this case, LURC's task was to figure out to what extent Plum Creek's proposal to rezone its land in the Moosehead region for hundreds of vacation homes and two nature-based resorts would affect the vast, largely undeveloped, and resource-rich landscape and what the public would gain from the conservation that Plum Creek was required to offer in return for developing parts of this landscape.

Our thinking about these questions occurred against a backdrop that is anything but static. Pressure to develop the highest-value real estate in Maine's North Woods is ever present, and landowners have the ability to do so in a haphazard manner under the current statutes. Complicating the matter is a land ownership pattern that is in flux, bringing with it unclear management objectives of new owners. In sum, the future of the North Woods is rather unpredictable.

This unpredictable future has been a hallmark of the Moosehead region. An area of abundant natural and recreational resources, it is a valued place, which has faced development pressure for decades. When Plum Creek arrived on the scene in 1998, questions about the region's future took on new weight. Questions surfaced again in 2005 when the company filed its concept plan proposal with LURC.

In reviewing Plum Creek's proposal, the commission had the expertise of hundreds of witnesses at its disposal. Among them were witnesses representing the Open Space Institute who predicted that, under current laws and taking into account market conditions, Plum Creek could reasonably sell more than 600 real estate parcels in the area to vacation home buyers over the next 30 years, with little or no conservation as part of the bargain. Many of these homes would be placed on the shores of lakes and ponds and on so-called kingdom lots (large real estate parcels, ranging from a few hundred acres to thousands of acres in size, that are privately owned and often gated to prevent public access), and the homes

would be scattered piecemeal across the landscape. It was, therefore, not a matter of whether development would occur in the Moosehead region, but where and how it would happen.

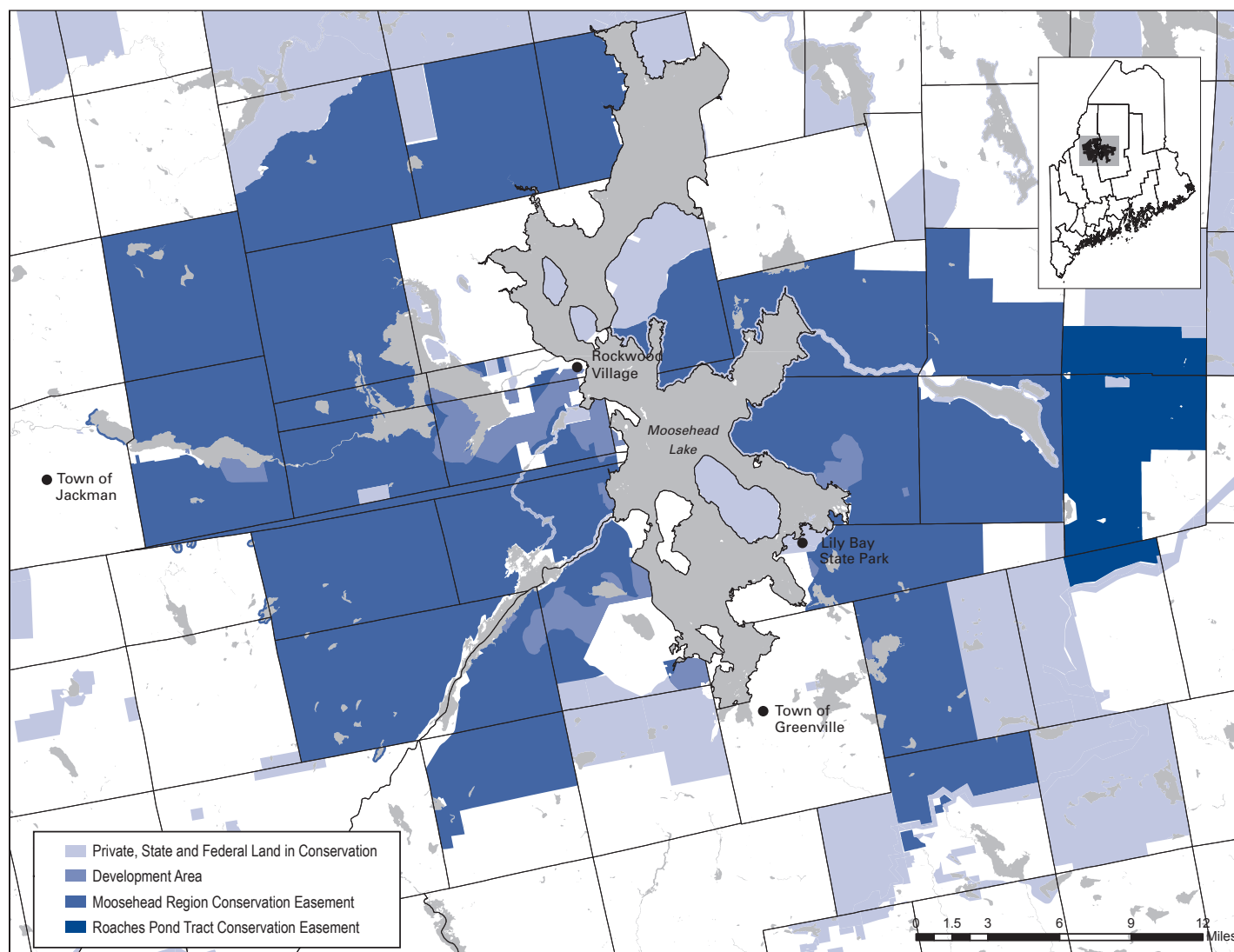
LURC had set forth an alternative to its traditional command-and-control approach to zoning in adopting the concept planning tool in 1990: a way for landowners to gain development rights above and beyond what traditional rules allow—if they did it right and if they offered up some significant benefits to the public—and a way for LURC to deal with the problems that come with haphazard growth and to bring a sense of much-needed predictability to land use planning. In other words, concept planning can offer a better way to achieve a North Woods' version of smart growth—well-planned development that will provide for a continuation of traditional ways of life, sustainable economic opportunities, and outdoor recreation for the people of Maine without compromising the area's unique natural resources and remote character—than mechanically applying LURC's traditional tools of zoning.

For more than four years, LURC administered a regulatory review that was at its core a conversation about the future of the Moosehead region. By all accounts, this conversation was as robust as any major resource debate in Maine. We endeavored to create a process that was fact-based, comprehensive, inclusive and fair—to the public, to Plum Creek, and to opponents and supporters of the proposal. The quantity and quality of participation was extraordinary, and many positive changes were made to the plan as a result. It was testament to the success of the process.

The approved plan is a complex 1,000-page document consisting of new land use zones and standards and many binding legal commitments. It allows well-planned residential and resort development on roughly

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FIGURE 1: **Concept Plan for the Moosehead Lake Region**



Source: Land Use Regulation Commission

16,000 acres of land near existing settlements such as Rockwood, Harford's Point, and Lily Bay, setting the regulatory groundwork for a strong nature-based tourism economy in the Moosehead region. In turn, the plan requires the permanent conservation of 392,500 acres of land for commer-

cial forestry, outdoor recreation, and the protection of natural resources—the keystone to a vast area of conserved land stretching from Moosehead to Mount Katahdin and beyond. (See map, Figure 1.)

Although not everyone agrees with the commission's conclusions (in fact,

three intervening parties have appealed the decision), our decision was solidly based on the evidence presented to us, and it followed both the letter and intent of the law. The commission operated within the scope of its authority to encourage well-planned, well-managed multiple use of

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Overview: Plum Creek's Concept Plan for the Moosehead Region

Moosehead Lake, located in northwestern Maine, is the state's largest lake, renowned for its fishing, outdoor recreation, and scenery. LURC's comprehensive land use plan identifies the Moosehead region as an area with special planning needs, where new approaches would be needed to balance development with protection of forest, wildlife and recreational resources. One such approach is a concept plan, which is a landowner-initiated, long-term (generally 20- to 30-year) plan for the development and conservation of large blocks of lake shores and related backlands.

Plum Creek, a timberland management company and real estate investment trust, first submitted a proposed 30-year concept plan for its Moosehead region holdings in 2005—an area roughly the size of half of Rhode Island. At that time, the plan proposed development of up to 2,025 vacation homes and resort units located throughout the area, including in Big W Township, in Lily Bay Township, and along the shores of 18 lakes and ponds, and offered approximately 11,000 acres of permanently conserved land to satisfy LURC's "publicly beneficial balance" criterion.

Plum Creek's proposal was unprecedented in its scale and complexity and in the level of interest in and attention it generated. The four-year process undertaken to review the proposal by the commission and its staff and

consultants was equally unprecedented. The commission held four weeks of hearings, received testimony from 170 expert witnesses representing 26 formal parties, and accepted more than 3,800 individual letters and e-mails from members of the public. Largely because of this participation, Plum Creek formally amended the plan three times. In June 2009, following a lengthy, multi-step process, LURC amended the concept plan based on information in the record, and Plum Creek accepted the amended plan as its own.

The final plan authorizes the same maximum number of units as originally proposed, but reduces the number of affected lakes and ponds from 18 to six, pulls development near existing settlements and infrastructure, cuts the number of lakeshore lots by nearly half, eliminates all development north of the Moose River, reduces the size of the contested Lily Bay resort zone by more than half, establishes funds for wildlife and invasive species, and recreation and affordable housing mitigation, and requires 392,500 acres of permanently conserved land with guaranteed public access.

The approved concept plan, the commission's decision document and additional information about the project can be found on LURC's Web site: (www.maine.gov/doc/lurc/reference/resourceplans/moosehead.html).

land and resources. It operated within the scope of its comprehensive land use plan, which identifies the Moosehead region as an area with special planning needs where new approaches would be necessary to balance development with protection of forest, wildlife, and recreational resources. And it operated within the scope of specific criteria for concept plans set forth in its rules.

The commission approved the plan because it met the letter and intent of the law. But we were not obligated to like it. Simply put, here is why I do: This plan strikes a balance between public and private interests that the commission would find difficult to achieve using any other regulatory vehicle at its disposal.

This kind of balance could not have been achieved absent two elements of

concept planning. First, because a concept plan is voluntary, it demands a partnership between the regulator and the regulated community. If the regulator is not satisfied, the plan is denied; if the landowner is not satisfied, the plan does not go forward. Second, because a concept plan must include both a long-range vision and the implementing elements (i.e., the zoning, land use standards, and legal documents)

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to make that vision happen, the outcome is not theoretical. In other words, the plan does not sit on the shelf collecting dust.

The outcome is nothing less than extraordinary.

The Moosehead region now has a plan that recognizes that neither conservation nor development alone can sustain a region, so offers a symbiotic mix of expansive conservation and guided, permanently bounded development that protects the region's valuable natural resources and sets the stage for much-needed economic growth. As Commissioner Steve Schaefer remarked just before casting his vote, this plan is a "tapestry for rural living."

Plum Creek has a plan that is feasible and financially attractive. Other landowners now have an unambiguous regulatory road map to follow if they wish to seek ways to reduce regulatory uncertainty. LURC has a plan that better achieves the commission's land use goals than its traditional zoning approach and establishes a working prototype for land use planning on a grand scale. And the public has a plan that brings much-needed predictability to the future of an ever-changing landscape, laying out where development may and may not go and guaranteeing that the recreational access people had become accustomed to over decades will not be threatened.

Few moments in a regulator's life are marked by dogged conviction that a good decision has been made. But given these results, and the integrity of the process that got us to this point, it is hard for me to think of our decision to approve the Moosehead concept plan as anything else. 🐟



E. Bart Harvey III, a resident of Greenville, retired from Great Northern Paper Company after a 31-year tenure with the company. In 2000, he joined the Land Use Regulation Commission, the governing land use planning and permitting agency for the 11-million-acre unorganized territory of Maine (about half of the state). He has served as chair of the seven-member volunteer board since 2003.