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# LURC's Challenge: Managing Growth in Maine's Unorganized Territories

by Jerry Bley



*Maine's Land Use Regulation commission (LURC) oversees an area covering roughly half the state. Plum Creek's Moosehead Lake Concept Plan has brought LURC into the spotlight. Jerry Bley presents the history of this unique agency, the lands under its jurisdiction, how it has managed development, and what may lie ahead. In developing its Comprehensive Land Use Plan update, LURC needs to seek common ground for solutions that preserve the unique qualities of the area in its jurisdiction, while providing landowners opportunities to realize the financial values of their lands. In his commentary, Mark W. Anderson notes that recognizing the strengths and limits inherent in what LURC does can bring more realism to how various "publics" seek to accomplish their goals for the North Woods. Mark Lapping's commentary outlines his view that LURC's mandate ought to be altered and enlarged so it can make more comprehensive plans to protect ecological assets of the region, while also working to stimulate economic development to benefit area people and communities. *

*The Commission may approve a Resource Plan and any associated redistricting only if it finds that the plan strikes a reasonable and publicly beneficial balance between appropriate development and long term conservation of lake resources.*

These weighty words, and their interpretation, analysis, and deliberation by seven Maine citizens may determine the fate of Plum Creek's proposed Moosehead Plan. This is the largest development proposal in the state's history as well as a quid pro quo conservation plan that, by most accounts, would be unprecedented in the nation. Many believe that the fate of the Plum Creek plan will play a critical role in shaping the future of the Maine's North Woods.

The controversy and magnitude of the Plum Creek decisions have shone a spotlight on the Land Use Regulation Commission, generally referred to by its sinister sounding acronym LURC, the planning and zoning agency for Maine's Unorganized Territories. Furthermore, it has raised the question of whether the agency is up to the challenge. The small state agency, which is housed in Maine's Department of Conservation, has a staff of about 30, with major decisions being made by a seven-member volunteer citizen commission.

LURC is one of a handful of planning agencies around the country that have direct planning and regulatory control over an expansive area. Some others include the Adirondack Park Agency (New York), Pinelands Commission (New Jersey), and Tahoe Regional Planning Authority (California/Nevada), though these other areas typically have a substantially higher percentage of public ownership within their jurisdictions. LURC has broad authority over matters that on one hand will determine the stewardship of some of Maine's most valued natural treasures and, on the other hand, affect the day-to-day lives of area residents and those who depend upon the region for their economic livelihood.

This article takes a broad look at this unique agency: its history, the lands under its jurisdiction, how it has handled the challenge of managing development, and what may lie ahead.

## LURC'S JURISDICTION

LURC oversees land use activities across lands encompassing 10.4 million acres, approximately half of the state of Maine, commonly referred to as Maine's Unorganized Territories. The area encompasses some 400 unincorporated townships, 39 organized towns and plantations, and a true treasure trove of spectacular natural resources including 2,600 lakes and ponds, 21,000 miles of rivers and streams, 300 coastal islands, rugged mountain ranges, and millions of acres of commercial forestland that support the state's forest products industry. This vast and diverse jurisdiction is described as follows in LURC's proposed update to its comprehensive plan (2007: 3-1):

The area arcs across northern Maine from the New Hampshire border in the western mountains to Canadian provinces in the north to the rocky shores of Downeast Maine. It also embraces a diverse collection of townships, towns and plantations in southern central Maine, including island communities, uninhabited islands, and an assortment of inland communities.

Known historically as Maine's wildlands, this vast landscape is the largest block of undeveloped forestland in the Northeast—larger than Massachusetts and Connecticut combined. While forestry and recreation remain the dominant uses, the jurisdiction is largely undeveloped and parts of it remain relatively inaccessible. It is largely free of the state routes and populous communities that intersperse the only comparable area, New York State's six million acre Adirondack Park.

LURC has broad authority over matters that... will determine the stewardship of some of Maine's most valued natural treasures and... affect the day-to-day lives of area residents and those who depend upon the region for their economic livelihood.

The jurisdiction is an extraordinarily unique area, distinguished from other places by its four principal values—diverse, abundant and unique natural resource values; the tradition of a working landscape; diverse and abundant recreational opportunities; and remoteness and the relative absence of development. These characteristics largely shape the area's uses and values. Although the regions and communities that comprise the jurisdiction are distinct from one another, these principal values collectively define the unique character of the jurisdiction as a whole.

Since its origins in the early 1970s, LURC has never been far from controversy.

### LURC'S ORIGINS AND EVOLUTION

LURC, in its present form, came into being in 1971. The "Report on the Wildlands," prepared by the State of Maine Legislative Research Committee in 1969 eloquently laid the foundation for the legislation that led to the creation of LURC:

Maine has always been proud of its wildlands—the Big Woods, land of Indian and trapper, of white pine tall enough for masts on His Majesty's ships, of mountain lion, moose, and eagle. Much of the wildness was still there when Thoreau went in by birchbark canoe, a little over a century ago. And much of it remains. There is spruce and fir, moose and beaver, lake and mountain and whitewater enough to satisfy generations of Americans. More and more, as the northeastern U.S. develops, the Maine woods are becoming an almost unparalleled resource, both for tree production and for recreational opportunity. But who is to come forward to say that this resource must not be squandered? Can we guarantee that the next generations will be

able to set out in a canoe and know that adventure is just around the bend?

Fred Todd, currently Manager of LURC's planning division, joined the agency in 1972 and, given his length of service, is considered to be in the best position to offer a historical look at the agency's evolution. Looking back, Todd recalls that the issues that gave rise to LURC 37 years ago remain the agency's priorities today: managing development and regulating forest practices in sensitive areas. "This state exhibited an incredible amount of foresight when it created LURC," Todd said. "There was nothing else quite like it at the time, no model to follow." Jym St. Pierre, a former LURC staffer and current Maine Director for RESTORE: The North Woods, a wilderness advocacy group, calls the creation of LURC a "grand experiment which largely succeeded."

In the beginning, the public's concern focused on unregulated development along lake shorelines, with camps being built right next to the water, and with logging operations that silted streams and lakes and damaged fisheries. While such practices no longer are permitted under LURC's regulations, development and timber management issues continue to dominate the debate about the Maine Woods.

At its core, LURC has not changed dramatically since its early days. However, like many environmental regulatory agencies created in the wake of the first Earth Day (1970), it has evolved and matured. Over the decades it has created zoning and regulatory programs to protect targeted high-value resources including remote ponds, deer-wintering areas, outstanding river segments, and lakes. It has had its share of landmark proposals, such as the Big A dam that tested the mettle of the agency, not only establishing important precedents, but defining LURC's character as a hard-nosed independent regulatory agency. Today, expansive development proposals, such as Plum Creek's, and a multitude of industrial-scale wind power proposals dominate LURC's agenda.

Since its origins in the early 1970s, LURC has never been far from controversy. Its detractors over time have included the forest products industry, private property rights advocates, and area residents. At least once every decade, there is a move to have

the Maine Legislature abolish or seriously weaken the agency, moves that have so far been rebuffed and at times have actually resulted in the strengthening of LURC through added staff and resources. At present, LURC is taking flak for the proposed update of its Comprehensive Land Use Plan (CLUP) from the Maine Forest Products Council, an industry group representing Maine's forest products industry. The organization's position paper on the subject calls the proposed CLUP, "a blueprint for a national park" (Maine Forest Products Council 2008: 2). It contends that the new CLUP shows a "remarkable bias" towards protecting the remote and primitive character of the jurisdiction, and "proposes massive changes that are not supported by sound information and will result in the unnecessary disruption of many lives" (Maine Forest Products Council 2008: 1).

Jeff Pidot, who served as LURC's director in the early 1980s and represented the agency as an assistant attorney general for 26 years (recently retired), believes that the type of intense political pressures LURC currently faces over the proposed CLUP often "bury" the key issues raised by LURC staff and result in "least common denominator" policies that hinder the agency's ability to fulfill its mission.

### HOW LURC MANAGES DEVELOPMENT IN THE UNORGANIZED TERRITORIES

LURC is often described as serving a comparable function as a municipal planning board, and in fact it is involved in the same primary tasks of zoning and permitting. However, there is one critical difference in how LURC accomplishes these tasks that sets it far apart from the operations of a local planning board. In most towns and cities, the municipality's land area has been zoned for specific uses such as commercial, industrial, residential, and rural, each with its own standards. Most proposed development projects are targeted to areas where such uses are permitted, and the planning board's review is largely limited to determining whether the proposed development meets a set of specified standards such as road construction, storm water management, or noise. Development proposals requiring zone changes generally are discouraged and can be difficult to achieve (in those Maine towns that still operate with

a town meeting form of government, zone changes generally require a vote of town residents).

Things, by and large, work differently in the Unorganized Territories that make up LURC's jurisdiction. With a few exceptions (most notably in the Rangeley area), the land base has not been zoned prospectively for future development. The existing development zones, by and large, are comprised of areas that are currently developed. There are a variety of reasons for this, not the least of which is the daunting task of trying to prospectively zone millions of acres of land with a limited staff. In addition, because of the size of large forest ownerships, many of which are tens or hundreds of thousands of acres in size, prospective zoning in certain regions of the jurisdiction could result in a predominance of development zones on one or few landownerships. Not only can this create extreme winners and losers, but it can also undermine the intent of the zoning plan if the owners of these lands zoned for development have no interest in developing their land.

So, if a landowner in LURC's jurisdiction wants to develop a residential subdivision, chances are he or she will need to have the land rezoned before obtaining a subdivision permit. In determining what land may be suitable for rezoning for residential development LURC has relied heavily upon its "adjacency principle," which the Commission has generally interpreted to mean that rezoning for development should be no more than a mile by road from existing compatible development. Under the adjacency principle, new development proposals are limited to a small fraction of the Unorganized Territories. Furthermore, the "compatible development" provision requires that new development not be out of scale with existing development, which provides a substantial limitation on the size of new subdivisions.

Over the years, LURC has recognized that the adjacency principle is a blunt tool that does not necessarily guide growth to the best locations. In an effort to expand its growth management toolbox beyond the adjacency principle, LURC has initiated other pathways for development planning including prospective zoning in the Rangeley area (the highest growth area within the jurisdiction) and lake concept plans, which is what Plum Creek's Moosehead proposal falls

under. Nonetheless, the adjacency principle remains a major factor in guiding growth and protecting Maine's wildlands.

While most observers agree that the adjacency principle is not the most sophisticated or effective means to plan for new development, it nonetheless has had a profound impact on limiting development in the Maine Woods. Furthermore, it has put a significant damper on land speculation by limiting the location, amount, and pace of development. Plum Creek's decision to seek approval for an expansive development and conservation plan under LURC's lake concept planning process is likely a result of the company's determination that development under LURC's more traditional scenario of adjacent subdivisions would not achieve the company's financial expectations. A financial analysis of Plum Creek's Moosehead Plan conducted by the Open Space Institute (2007) bore this out. Because the company's Moosehead proposal allows more development in a shorter period of time than would otherwise be permitted under LURC's standard rezoning procedures, it will provide a greater financial return to the company even when taking into account the company's commitment to preserving more than 91,000 acres of land.

With most substantial development proposals requiring a rezoning, the seven-member citizen commission is routinely faced with making decisions on controversial development proposals based upon a number of broad criteria that allow the commission members great discretion in rendering their judgments. The primary criteria that generally determine the fate of a proposed rezoning include finding that the proposal is consistent with the Comprehensive Land Use Plan, meets a demonstrated need in the community or area, and will have no undue adverse impact on existing uses or resources. Over the years, commission members, by and large, have earned a reputation of being independent-minded, judging each proposal on its merits rather than following personal ideologies or political pressures. A recent example of this trait is the commission's rejection of a proposed wind power project in Redington Township near the Appalachian Trail even after the developer had joined together with several environmental organizations to scale back the project to reduce its scenic and ecological impacts. The

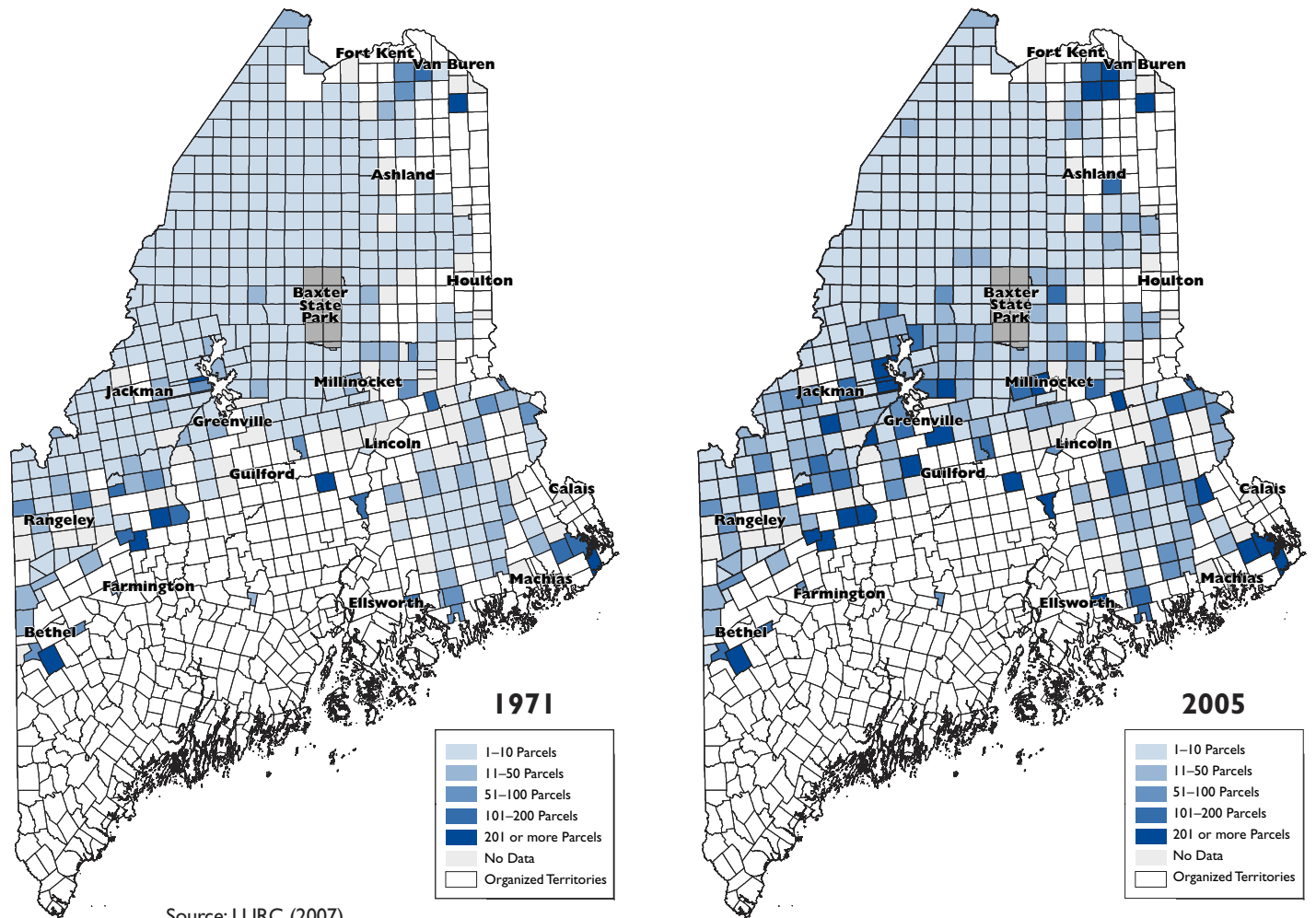
commission readily approved rezoning for several other wind power projects generally considered to have lesser scenic impacts.

### LURC'S SUCCESS AT MANAGING GROWTH AND DEVELOPMENT

After 37 years of operation, how effective has LURC been at planning and managing land use in the Unorganized Territories? When looked at from high above, it seems that LURC has managed to maintain the essential character of the region. On satellite imagery showing patterns of development across the United States, the LURC territories conspicuously stand out as perhaps the largest block of undeveloped land east of the Mississippi. (See maps in R. Baldwin et al. this issue.) Groups such as the Natural Resources Council of Maine continue to espouse the natural wonders of the Unorganized Territories as in the following excerpt from a recent action alert (2008: 1): "Maine's Unorganized Territories are home to beautiful undeveloped lakes, rivers, ponds, islands and mountains, and an amazing variety of plants, animals, and natural communities." Similarly, the industries that have always been important to the region, most notably forest products and tourism, continue to be mainstays for the regional economy. However, the relative lack of sprawl and far-flung development through LURC's territories cannot be attributed solely to the efforts of LURC. The retention of the state's wildlands can also be credited to their distance from population centers, voracious black flies, and a previous cadre of landowners who were focused more on producing paper and lumber and less on subdivision lots.

Digging a bit deeper, LURC's success at managing growth is a bit more complicated. According to statistics cited in LURC's (2007) proposed update of the Comprehensive Land Use Plan, 8,847 dwellings have been constructed in the jurisdiction since LURC was created. Of these, only 38 percent are located near service centers, with the rest being constructed in more remote locations. This has been due largely to the existence of several exemptions in LURC's statute that have allowed for residential development to occur outside of the rezoning and subdivision approval process. In fact, LURC reports that 72 percent of all

FIGURE 1: Number of Parcels in Maine's Unorganized Territories, by Minor Civil Division 1971 and 2005



residential dwellings built during its history occurred on lots created outside this process. The largest of these exemptions, the so-called 40-acre lot loophole was eliminated by the Legislature. However, there remains an exemption that allows landowners to create two lots every five years without subdivision approval (known as the “two-in-five” exemption). The exploitation of such exemptions is largely due to LURC’s adjacency requirement for new residential subdivisions, which greatly limits the location of new development, causing many landowners to seek out ways to circumvent the rezoning and subdivision process. The maps in Figure 1 show the extent of “parcelization” that has occurred between 1971 and 2005 in the Unorganized Territories.

LURC planner Fred Todd believes that a landowner’s ability, through such exemptions, to create residential lots almost anywhere in the jurisdiction without LURC review has been the single greatest weakness in the agency’s history, leading to a slow, but continuous erosion of the values that make the jurisdiction unique. St. Pierre agrees, stating that LURC has been quite successful in improving the quality of development, but far less successful at influencing the quantity and location of development. He also points to the construction of a vast network of logging roads, up to 30,000 miles by some estimates, which has fundamentally changed the character of the wildlands since the 1970s. These woods roads, initially built to haul timber

from the woods after the log drives on Maine rivers were halted, have increasingly been used to access subdivisions and seasonal and year-round residences.

### THE CHANGING LANDSCAPE

Most agree that examining LURC's effectiveness over the past 37 years is likely to be a poor predictor of what the future may hold, as the Maine Woods landscape is in the midst of a remarkable change. Over the past 15 years there have been two dramatic shifts in landownership that are likely to have profound implications for LURC in the years ahead. The first is the well-documented divestiture of forestland by industrial landowners and the purchase of these lands by either timber contractors, real estate investment trusts (REITs) such as Plum Creek, or a new breed of timber investors generally referred to as timber investment management organizations (TIMOs) largely comprised of institutional investors. According to LURC's own research (2007), 93 transactions of 10,000 acres or more took place in Maine between 1990 and August 2005, involving a total of 17.4 million acres. These sales resulted in a drop of industrial ownership from 60 percent of the Maine Woods to 15 percent. Many lands were sold more than once, changing hands several times during this 15-year period. LURC's analysis, as presented in the draft Comprehensive Land Use Plan (2007: Chapter 4-5), suggests that "this wholesale restructuring of landownership has been driven by a variety of factors, including corporate lending practices, changing corporate and real estate tax laws, and industry need for capital."

The shift from industrial landowners to the new generation of owners is not simply a case of new names and new players—it is far more fundamental than that. When the paper companies owned the majority of this land, their principal objective was to supply raw material to the mills where their profits were made. The companies did not see the lands as a profit center and generally viewed subdivision and development of their lands as either a sideline to their primary business, or as interfering with that business. With REITs and TIMOs, the forestland itself is the profit center and the owners are looking for every

available opportunity to squeeze maximum value from those lands. Plum Creek, in its 2006 annual report to shareholders, drives this point home, "One thing that is clearly understood by each employee is that our job is to 'maximize the value of every acre'" (Plum Creek 2007: 4). The development value of the Maine Woods is no longer an afterthought; it is front and center in the landowner's mind.

The second quantum shift that has occurred, and continues to occur, in the Maine Woods has been the dramatic increase in conservation lands, most notably due to landscape-level projects creating working-forest conservation easements, several of which encompass hundreds of thousands of acres. Ten years ago, the total amount of conservation acreage in the state stood at less than a million acres. Today, that number has tripled, with the great majority of new conservation acres being located in LURC's jurisdiction. The fact that this changeover in forestland ownership and the surge in conservation acreage have occurred during the same period of time is not mere coincidence. The new generation of owners is looking to monetize the development value of its land and conservation easements provide one pathway to achieving this objective.

With conservation ownerships becoming a prevalent feature in the Maine Woods, there is a growing nexus between LURC's planning and regulatory efforts and the acquisition and stewardship work of land trusts and public agencies. Plum Creek's proposal, which incorporates the donation of a 91,000-acre conservation easement including 156 miles of shore frontage, exemplifies this phenomenon. In his testimony before LURC, Alan Caron, president of GrowSmart Maine, a statewide organization working on sustainable growth issues, related that he had contacted his colleagues in 35 different states looking for feedback on how other groups had approached similar developments. According to Caron, "the surprise in the response was on the conservation plan. Most of my colleagues feel if they could get this amount of conservation in a project of this size in their state, they would leap at it." To blur the lines between regulation and land acquisition even further, Plum Creek has linked approval of its plan to a land deal with The Nature Conservancy and the Forest Society of Maine



encompassing an additional 340,500 acres of fee lands and conservation easements. This proposal has created great unease among some who feel that the linkage could unduly influence LURC's regulatory review.

### IS LURC READY FOR THE FUTURE?

If Plum Creek's Moosehead proposal is indicative of the new breed of forest landowners in Maine looking to extract maximum value from their lands, is LURC prepared to handle the challenge that lies ahead? Can the agency manage these development pressures and maintain the unique character of the region? Catherine Carroll, LURC's current director, believes that the agency is "on a sound footing." Even with the weight of the Plum Creek proposal and major wind power applications, Carroll maintains, "we're not crumbling."

According to Carroll, the commission has great concern about trends showing that dispersed development is slowly, but surely, diminishing the unique character and traditional uses of the wildlands including forestry and recreation. With regard to future growth pressures, Carroll points to the recommendations found in the draft update of LURC's Comprehensive Land Use Plan, which include

- Developing new approaches to directing most development to areas most suitable for growth;
- Redefining adjacency to consider other factors pertinent to the appropriateness of areas for development;
- Limiting dwellings to small traditional camps without utilities in areas where the jurisdiction's principal values are most at risk;
- Protecting forestland in the interior by measures such as encouraging conservation efforts and undertaking prospective zoning in these areas;
- Encouraging conservation in high-growth areas with significant resource values to protect the character and values of these areas;

- Applying prospective zoning to high-growth, high-value regions and/or areas where principal values are most at risk;
- Modifying certain subdivision exemptions to limit use for development purposes; and
- Developing an approach that prevents the leading edge of development from moving progressively deeper into remote areas.

But Carroll worries about the "great divide" she sees between forest landowners who feel that LURC's proposals are too restrictive and environmental groups, such as the Natural Resources Council of Maine, who have been trying for many years to push LURC towards prohibiting all development in remote areas of the jurisdiction. She points to the recent success of the governor's wind power task force in coming up with a consensus report supported by developers and environmentalists alike and wonders if a similar effort could work in sorting out development issues in the jurisdiction. "The commission would like these groups to come together rather than have to be the arbitrator."

If there is a common ground to be found, it will need to involve solutions that preserve the unique qualities of the jurisdiction while providing landowners opportunities to realize the financial value of their lands.

If there is a common ground to be found, it will need to involve solutions that preserve the unique qualities of the jurisdiction while providing landowners opportunities to realize the financial value of their lands. Some of these tools already exist: the purchase of conservation easements by public agencies and private groups and LURC's lake concept planning



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process, which provides an avenue for combining targeted growth and permanent conservation. New strategies will likely need to get added to this mix.

The draft plan concludes that, "actions taken or not taken by the Commission to modify its regulatory framework in the immediate future will determine whether the jurisdiction's principal values will be maintained in the future" (LURC 2007: iii). Throughout its history, LURC has shown a gritty determination to fulfill its ambitious mission. The Plum Creek controversy has captured the attention of Maine people. I hope that attention can be translated into lasting solutions for the Maine Woods that will ensure that "the next generations will be able to set out in a canoe and know that adventure is just around the bend." 🐾

## ACKNOWLEDGMENTS

This article was based, in part, on interviews with a number of individuals with extensive knowledge about LURC including Fred Todd (manager of LURC's planning division), Jeff Pidot (former LURC director and assistant attorney general to LURC), Jym St. Pierre (former LURC staff member and current Maine director of RESTORE: The North Woods) and Catherine Carroll (current LURC director).

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