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I did advocacy work for the Maine Audubon Society for five years, and I have just concluded eight years as a regulator on LURC. I now work on behalf of project applicants, primarily in the renewable energy field. During the past fifteen years, I have seen the standards of acceptable or reasonable advocacy change dramatically. That is, the definition of the public interest has been broadened, and I always seem to be at the wrong place at the wrong time.

When I worked for Maine Audubon, we would never have dreamed of insisting that two million acres of privately-owned forest land be locked up as a condition of hydro dam relicensing. In fact, Dick Anderson and I got into a lot of trouble just for suggesting that there might be a wood energy market for hardwoods. That was controversial at the time. But now we see the environmental agenda defined much more ambitiously. Many would say that if a bill or a project is seriously opposed by environmental groups, it does not stand a chance. Clearly, the balance of power has changed. I know some of my environmental colleagues will disagree, but I would argue that they just do not remember the old days.

We also have a new player defining the public interest, the Not-In-My Backyard (NIMBY) opponent. They emerged during my tenure at LURC, and they require a much stronger spine on the part of the regulator. Ironically, while they are often positioned against development interests, that does not necessarily mean that they represent the public interest. Sometimes, quite the contrary.

One of our problems in Maine is that we have no agency that has accepted the responsibility to advocate for the benefits of a project. Championing the benefits of a large project these days is much more controversial than talking about the impacts of the project. One of the things that has gone wrong in our system is just that. We need a much stronger voice from some agency, such as the State Planning Office, that can help balance for the public what the benefits are relative to the costs.

Having reviewed for a moment the players and their respective might and merit, I will address the public interest in environmental regulation. Environmental regulation is primarily concerned with natural resources, which are by definition limited. So the public interest is juxtaposed against individual, generally private property rights. Even for resources that are publicly owned, like water and wildlife, they are not so absolute as to prevent any consumptive uses. For example, you can selectively harvest timber in a deeryard. You can catch fish whose population

is declining and you can emit pollutants into our public waters. It has admittedly been our manifest destiny to use our abundant resources for prosperity and for enjoyment. But where is the point that your prosperity limits my enjoyment? This is the line on which so many projects do battle.

I am not a lawyer, but I believe that one of the fundamental tests, both practically and in some cases legally, gets to the issue of benefits and burdens. As a society we generally tolerate greater burden for greater benefit. If a project will provide jobs or lower electric rates, we may be willing to grant use of a public resource, be it land, water or air quality in return for those public benefits. As individual landowners, we hold a bundle of rights, but as members of society we hold in common a vested interest in our public resources and in the much less tangible resource values.

We use the tool of zoning to prevent or minimize conflicts among user groups. Your amusement park cannot go in my residential neighborhood, because it is not zoned for commercial purposes. But what about a mining operation in an industrial zone or in a moderately populated community? Here, you have two public interest doctrines in conflict. The local public has an interest in maintaining the bucolic nature of their community, but they must also have an interest (often forgotten in the heat of the moment) in preserving a system of fairness and equity - a system that does not spot zone, or which does not confiscate property rights by preventing some activities strictly on the basis of neighborhood complaints. To prevent this abuse and to refine and improve the practice of environmental protection, we have developed a panoply of technical standards that any and all projects must meet. These standards provide decision-makers with far more information because both opponents and proponents have access to much more data on which to base their case.

Yet, ultimately, many of these cases boil down to a subjective judgment. As encompassing as our standards are, they provide the basis for rejecting almost any proposal. They have become a mine field for applicants, never more so than in the case of hydro dam relicensing, with which I am very familiar both from a regulator's point of view and an applicant's perspective. These encompassing standards have afforded us some measure of environmental protection, but if the rules are applied in a vacuum, they will cost us some measure of environmental protection as well. In each case that some public interest prevails, another public interest loses ground. And those interests represented by attorneys tend to fare better than those that are not.

There are not only multiple interests but also multiple publics. What is good for one group of workers may not be good for another group of residents. You just cannot draw a circle around a given amount of water, or wildlife or clean air and say that is the line of legitimate public interest. (I would, however, suggest that you look at LURC zoning schemes to see how we have applied legitimate public interest to protect privately-owned natural resources. I would also admit that LURC zoning is highly protective of existing uses and resources.)

Finally, so as not to completely avoid answering the original question, I will assert one affirmative right of the public interest in environmental regulation. That is the right to ensure the integrity of the process. These are subjective judgments. Therefore, the individuals selected to make these judgments must be chosen on a nonpartisan basis for their ability to dispassionately

weigh both technical matters and emotional claims. If the public, through its representatives and its interest groups, loses its vigilance in monitoring appointments and in tracking the record of decision-makers, then over time its interest in environmental regulation will be compromised.

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