

# FOREST PRODUCTS NEWS

## Task Force Endurance

**By Patrick Strauch**  
**MFPC Executive Director**



It has been an interesting summer, fall and winter participating in the Governor’s Wood Energy Task Force and the Governor’s Utilization Task Force. In reality these two efforts are related and illustrate the complexities of the industry in Maine where competition for wood is strong and markets are volatile. A dangerous combination for all our members during this time of change.

While our sawmills and particleboard mills have been struggling because of the reduction of housing starts; pulp markets were strong and the mills were searching

high and low for pulpwood. Energy markets for biomass and pellets were also strong with the increasing price of oil. The financial industry collapse has created the perfect storm of events that has left us all with challenges to our industry that we could not have imagined several months ago. Everyone has seen examples of how thin print publications have become because the demand for advertisement (and therefore Maine paper) has steeply declined.

All of these challenges strain all parts of our industry and our primary concern is not about trees, but about support of the people who make up our businesses. Many are preparing for

survival of their businesses and are unsure that when the industry resurfaces that the competition for wood will remain chaotic. It is clear to me that the industry is resilient and our contribution of \$11.5 billion to Maine’s economy is important to our future growth as a state.

The Maine Forest Products Council will continue to be a forum where we discuss policy issues that can benefit the greater group. The varied voices of landowners, pulpmills, loggers, sawmills pellet mills, biomass

*(Continued on page 5)*

### MFPC Advocates for Wood-Based Manufacturers

As part of MFPC’s Manufacturing/Energy Initiative, the Council has recently began tracking important utilities legislation with respect to net energy billing and private transmission line construction.

On January 27, James Cote gave testimony on LD 43, An Act to Promote Consumer Fairness in Alternative Energy. This bill requires transmission and distribution utility companies to compensate customers that generate electricity from renewable resources for any excess electricity generated by the customer beyond the customer’s actual electricity usage.

The Council’s position was neither for nor against, but stressed the importance of having discussions

about how to make energy generation and transmission more equitable for forest-based manufacturing companies.

Opposed to the bill were several organizations including Central Maine Power and Bangor Hydro. Opposition to the bill was largely based upon the premise that what the bill required was already included with PUC rules and Maine law.

In conjunction with this discussion and previously host Forest Energy Forums on behalf of FRA and MFPC, the Council is currently planning a third in a series of forums where members, regulators, and businesses will have the opportunity to discuss specific strategies and clarification of rules for sawmills and other wood-based manufacturers.

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## President's Message:

### A Slippery Slope

I am talking today about the erosion of private property value (dollar value) as it relates to private forestland. I'm not talking about lost property value from economic forces but rather from changes brought about through an evolution in how the public is being encouraged to look at private resources.

At one time not so long ago, it was much easier to figure out what belonged to you and what belonged to the public. It has long been established that the public owned such things as the wildlife and water and the term "public resources" was used to describe this connection. This term described those resources that have long been understood to be in the public domain and didn't require acquisition from private owners.

Today, the phrase "public resources" is being replaced by the terms "public values" (sometimes referred to as "public interests") by several state agencies, their associated task forces and some environmental groups. These "public values" cover much more than "public resources" as they have been traditionally defined. The term covers such things as old trees, scenic views, remoteness from population centers, access, vast forested landscapes, primitive recreation opportunities, quality of place, absence of noise, ecological processes, and so on. The resources covered by the term "public values" are mostly found on private land given the extent of private ownership in Maine. The term "public values" absolutely and intentionally blurs the distinction between "public resources" and "private ownership or rights."



**Doug Denico**

The transition of a private resource into a "public value" can have a lot of bad consequences for private landowners. Old trees, remote tracts of forest land, undeveloped landscapes become part of the public domain, in some people's minds without that burdensome step of fee acquisition. Another outcome of this new terminology is to foster policy and legislative changes allowing the public to overlay regulatory burdens on private resources. If old trees are a "public value" then shouldn't the public have a policy about its investment? If remote recreation is a "public value" shouldn't the existence of such areas be enforced?

I very recently heard a policy maker state that data had no place in determining policy decisions. Wonderful! This kind of thinking fits right in with another aspect of "public values." Some of us that have watched "public values" be embraced by certain factions also noted that great effort was used to limit or exclude data based information that would define the "public value." Why bring information to the table that could complicate the free acquisition of private resources? Another cry we hear when data clearly shows that policy changes aren't needed is that past data doesn't reflect what might happen in the future. You just can't win an argument in this type of logic.

*(Continued on page 3)*

Maine Forest Products Council  
535 Civic Center Drive  
Augusta, Maine 04330  
(207) 622-9288  
FAX (207) 626-3002  
[www.maineforest.org](http://www.maineforest.org)

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Executive Director: Patrick Strauch  
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SFI Director: Patrick Sirois  
[psirois@maineforest.org](mailto:psirois@maineforest.org)

Communications Coord.: James Cote  
[jcote@maineforest.org](mailto:jcote@maineforest.org)

Office Manager: Kerry Casey  
[kcasey@maineforest.org](mailto:kcasey@maineforest.org)

Administrative Assistant: Sue McCarthy  
[smccarthy@maineforest.org](mailto:smccarthy@maineforest.org)

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**President.** *(Cont. from page 2)*

So there you have it. Your private resources are now called “public values.” These values will in some mystical way be translated into public resources requiring policy and legislative changes to clinch the deal.

Many of us bought the so called “public values” and are proud of the stewardship we have given them through good and bad economic times. My sense is that landowners aren’t going to let this new term “public values” deter them from staunchly defending their legitimate property rights and financial values. I also sense that that this issue of ownership will come to a head in the near future.



**Communications  
Corner**

*By: James Cote*

**New Landowner  
Materials Available**

The Department of Inland Fisheries and Wildlife and Department of Conservation have recently published two new brochures under the state’s landowner relations program with funding from the Maine Outdoor Heritage Fund.

One of the brochures is a summary of Maine’s landowner liability laws, titled “Landowner Liability Explained: Rights and Responsibilities”. This publication is a great resource for new landowners, business owners, lessees, and easement holders.

The answer to one question, however, seems to be a little misleading. Under the question, “Am

I still covered by the landowner liability law if I charge a fee to use my land?” it states that “In general, landowners running commercial recreation or harvesting operations on their land are not protected”. This seems to imply that managers or owners of a commercial timber harvest could be liable if someone who is recreating on the same piece of

This brochure demands that users show appreciation to the landowner and provides a brief summary of laws related to landowner property. It also provides a few bullets on how to develop a relationship with landowners.

These two brochures along with a new website for the landowner relations

programs are a couple of the first big steps towards a better landowner relations initiative in Maine. Program Director Bob Duplessie has been working in conjunction with the Governor’s Landowner-Sportsmen Relations Advisory Board to edit



land becomes injured, which is not the case as long as the harvest is being conducted within given laws and regulations.

While the brochure lays out the possibility that it may be possible for landowners to be liable under certain circumstances, it also notes that it usually is a rare phenomenon. Having said that, the brochure also identifies the strength of Maine’s landowner liability law, which is a huge asset to the forest products industry.

The second brochure describes Maine’s Landowner Relations Program and stresses the fact that access to private land is a privilege, not a right.

and draft the documents. The Board will also be making a presentation in front of the Legislature’s Rural Caucus to discuss the importance of funding the Landowner Relations Program which is housed between the Department of Conservation and Department of Inland Fisheries and Wildlife. Funding for the position is set to end in June 2009 unless this legislature acts to fund it this year.

For more information on these brochures or about this program please visit [www.maine.gov/lor](http://www.maine.gov/lor) or call 207-287-8091.

## MDEP Unveils First Draft of Dramatic Changes to the Site Location of Development Act

Helen L. Edmonds  
Pierce Atwood LLP

The Maine Department of Environmental Protection (MDEP) has released its initial draft of proposed amendments to the Site Location of Development Act (also known as the Site Law), the State statute that regulates industrial, commercial and residential developments that due to their nature or size could significantly impact the environment. As acknowledged by MDEP staff at “feedback” sessions held on January 21 and 22, these proposed amendments, if enacted, will dramatically change the review landscape for future projects. Some of the most striking proposed changes to the Site Law statute include:

- ◆ a new Section 483-B, prohibiting Site Law projects, including (with limited exceptions) most commercial and industrial projects, outside of locally designated growth areas, areas served by public sewer, or identified census “designated places” or urban compact areas;
- ◆ new requirements for “conservation subdivisions” that would apply to all regulated residential subdivisions outside of the areas listed in Section 483-B;
- ◆ repeal of existing Site Law subdivision exemptions for lots over 40 and 500 acres;
- ◆ a new Section 484-C, authorizing MDEP to require a bond or other security where MDEP determines that construction or operation of a proposed development poses an “unacceptable risk of unreasonable impacts to the environment or existing uses”;
- ◆ new general permit program for MDOT development projects;
- ◆ an amendment to the groundwater standard in the Site Law, changing the standard from a requirement to avoid an unreasonable risk of discharge to a “significant ground water aquifer,” to a requirement to avoid an unreasonable risk of discharge to “ground water”; and
- ◆ elimination of the “planning permit” in name, together with amendments to address “long-term construction projects”.

The draft statutory amendment also calls on MDEP to review and report to the Legislature on provisions in both the Site Law and Storm Water Management Law that provide for delegation of licensing authority or

exemptions within certain municipalities, and whether changes to these provisions are needed in light of changes to the Storm Water program.

MDEP has also released its initial version of proposed amendments to the Site Law Regulations, which would also involve expansive alterations to current law. Several existing MDEP rule chapters implementing the Site Law will be repealed and replaced in their entirety, while others will be amended. The regulatory changes, which will be refined through rulemaking over a number of months, include, among other provisions:

- ◆ revisions to policies and procedures under the Site Law, including “codifying existing interpretations” of certain statutory exemptions, updating standard conditions, and providing for a “permit-by-rule” for certain minor permit modifications;
- ◆ changes to the requirements for demonstrating financial and technical capacity, including adding consideration of prior conduct, and adding a possible condition requiring prior approval of site contractors;

*(Continued on page 5)*

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**MDEP Unveils 1st Draft. . .** *(Cont. from page 4)*

◆ a variety of amendments to the rule sections for the “no adverse environmental effect” standard of the Site Law, including new standards relating to light pollution, minimization of impervious area and heat effects, habitat conservation, solid waste reuse and recycling, and “mobility and connectivity”;

◆ new standards for “long-term construction projects” and “conservation subdivisions.”

A separate series of amendments will be proposed to address climate change and energy efficiency issues related to Site Law projects.

These amendments appear to be continuing a trend, exemplified by the enactment of the Informed Growth Act in 2007, whereby land use issues that have traditionally been seen as local concerns and subject to local decision making will be regulated at the State level. With passage of these amendments, applicants pursuing approvals that require both Site Law and local review could find themselves facing duplicative or even contradictory local and state standards for such issues as project location, lighting, site layout and landscaping.

At the feedback sessions held January 21 and 22, MDEP staff heard a number of significant concerns relating to both the statutory and regulatory amendments. The meetings were not widely publicized or attended, however, and it is vital that the regulated community continue to be active and vocal as these amendments unfold. In the current economic climate, landowners and applicants must be vigilant to ensure that new provisions in the Site Law do not unnecessarily restrict opportunities for achieving value in the coming years.

*Helen Edmonds is a partner at Pierce Atwood LLP and chairs the firm’s Land Use Practice Team. If you have questions or concerns relating to the Site Location of Development Act, you may contact Helen at [hedmonds@pierceatwood.com](mailto:hedmonds@pierceatwood.com), or call her at (207)622-6311.*



**Exec. Director. . . . .** *(Continued from page 1)*

energy plants, truckers are all critical links to our industry. I think our next Board Meeting will be informative as we begin to discuss some of these issues so that we can better navigate the policy initiatives in Augusta for the collective good.

**Preliminary Review of the Legislative Issues**

While many bills are still being written in the Revisor’s office, a review of the bill titles that have been submitted indicate some broad categories of interest to the membership.

**Groundwater Ownership**

There is a lot of focus on this issue and MFPC will be monitoring the issue and reporting back to you on suggested policy positions.

**Pesticide Applications**

A growing focus on organic farming will require strong representation by the Council on not limiting forest management tools to protect our tree crops.

*(Continued on page 7)*



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 Jim Maynard, CPA - Principal --- [jmaynard@bdmp.com](mailto:jmaynard@bdmp.com)

100 Middle Street	36 Pleasant Street
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To ensure an accurate headcount for UMO's catering services, please RSVP no later than February 20, 2009.

Please RSVP and direct your questions to Katrina Mueller:

[mueller.katrina@gmail.com](mailto:mueller.katrina@gmail.com) / (517) 256-0914 / 249 Potter Rd, Hudson ME 04449.

Driving directions and campus parking passes to be provided upon receipt of RSVP.



The primary purpose of this event is to bring together parties interested in cooperative, on-the-ground restoration of Atlantic salmon habitat. However, the benefits of restoring natural function to degraded riverine ecosystems and enhancing aquatic habitat extends far beyond Atlantic salmon to a diverse array of other fishes (e.g. native Eastern brook trout and the sea-run fish community), wildlife and people. Our guest speakers bring perspectives from both the Northeast and west coasts. Their talks will shed light on our current understanding of riverine ecosystem function and stream processes, spotlight a small sample of specific restoration projects already underway, and convey new science to consider during the planning of future restoration efforts. Participants from a diverse array of backgrounds and interests will have the opportunity get acquainted, ask questions of our speakers and panel, and are encouraged to brainstorm about future efforts. We will be asking participants for feedback and suggestions about potential topics/speakers for future forums. **The agenda is being finalized & is forthcoming.**

**Exec. Director.....** (Continued from page 5)

## Net energy Billing and Renewable Energy Focus:

Through our bill and other related bills on this issue we are interested in positioning sawmills and wood production facilities on the list of renewable energy opportunities that should receive public policy support.

## Site Location Law

We will be evaluating this initiative by the DEP to evaluate if further disincentives to forest

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management or manufacturing facility development are imposed. We will be talking about this issue more at our Board of Directors meeting.

### The Biennial Budget

There are tough times ahead for Maine and we will report on the issues within the budget that we think are of importance to all of our businesses. For example, take a look at the article on the “throw out rule” provision and determine if this option has any effect on your business. We all need to be concerned about the potential cuts to BETR funding that effect many of our large and small businesses.

Reminder: All of these issues are examined weekly during our Technical Committee and Manufacturing committee calls. We also plan to have a third energy forum to help members strategize on ways to lower their energy costs. For materials from our past two forums and more information please contact Sue McCarthy at the office.

### “Throw Out” Rule May Help Some Manufacturers and Hurt Others

The so-called “throw out” rule proposed in Governor Baldacci’s Biennial Budget would shift a complex business tax formula to result in additional tax revenue. This provision would lower taxes for most manufacturing businesses in Maine, but could increase taxes for companies that sell products in Maine but have little physical presence here.

In short, the proposal would help a company if both 1) it has a Maine nexus entity that makes sales into non-nexus states and 2) a greater proportion of those sales are from a Maine location rather than from other states (in other words, generally, a Maine-based company).

A company may be hurt by the proposal if both 1) it has a Maine nexus entity that makes sales into non-nexus states and 2) a greater proportion of those sales are from states other than Maine. A company that only makes sales by entities that have nexus in the destination state (the state into which sales are made) is untouched by the proposal. A detailed information package will be sent to members, who are asked to review materials and determine on an individual basis whether or not the provision will affect their business.

### ATTENTION LAND OWNERS!

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## Notes from 2007 National Outstanding Tree Farmer, Jo Pierce

Jo and Kathey Pierce, and 13 other Mainers attended the annual National Tree Farm Convention in Oregon this past October. As with all National Conventions, the trip



**Multnomah Falls, Oregon**

From Left: Jack & Beth Wadsworth, Dave & Katherine Harvey, Jo & Kathey Pierce, Wendal Pinkham, Jo & Pat Benzing, and Dave & Karen McNutt

included traveling around the area to visit local Tree Farms and Tree Farmers. Jo first noted the difference between east coast versus west coast forestry when they passed a loaded logging truck on the highway containing nine or ten 40' Douglas-fir logs. Loaded trucks in Maine generally have five or six times that number of significantly smaller and shorter logs. He also picked up on comments by more than one Tree Farmer about how rocky their land is. Thinking of his own property, Jo considers these Oregon properties to be rather low in rock content. At one stop, Jo, Kathey and the Maine crew visited a forest property where the timber was growing on



*Columbia River Gorge*

steep ground and was inaccessible to wheeled or tracked machines. Using a cable stretched between a tower and spar trees, felled trees were cabled up a hill (mountain) to a landing where they were loaded onto a truck, and hauled down the mountain over forest access roads. Jo also commented that "Oregon law requires replanting to specific stocking levels. Douglas-fir grows so fast and big that a person could plant in his twenties and harvest in his lifetime, trees with three or four 40' logs." Other visits included Crater Lake, Mount Hood, a tree nursery, a winery and the Columbia River Gorge. According to Jo, "Oregon and Washington did a great job showing us a good time."



## Tree Farm Inspector

Based on the last year of performance as a Tree Farm Inspector, Jack Wadsworth was nominated by Maine and New Hampshire Tree Farm Committees, and has been selected as the 2008 Northeastern Regional Tree Farm

Inspector. At the 2008 National Tree Farm Convention in Oregon, Jack received the award, along with three other regional winners. Jack has been very active in Tree Farming since the beginning of his career some 30 years ago. He has initiated countless numbers of Tree Farmers and has been on the Maine Tree Farm Committee for many



years, serving as Chair, Vice Chair, and York County Chair, as well as on various Tree Farm sub-committees. In support of Tree Farming, Jack has participated in many Tree Farm events, including outstanding Tree Farm Field Days, the Maine State Parade, Tree Farm County Fair Booths, and assisted in organizing the Maine sponsored National Tree Farm Convention. In addition, Jack owns and manages his own Tree Farm, and has been involved with the New Hampshire Tree Farm Committee. Congratulations to Jack for this award.

*Thanks to SWOAM for allowing us to reproduce these two articles*

## Action Packed BOD Meeting Scheduled for February 11<sup>th</sup>

MFPC Members are encouraged to attend the Maine Forest Products Council Board of Director's Meeting on February 11<sup>th</sup> at the MFPC Headquarters in Augusta. The meeting will be held from 1:00p-4:00p. The Council will also be hosting a legislative reception immediately following the Board meeting.

On the agenda for the day are a presentation by Pierce Atwood on changes to Maine's Site Location Law, proposed by the Department of Environmental Protection, and an overview of accompanying legislation.

The Board will also discuss issues pertaining to wood utilization, the Comprehensive Land Use Plan, membership drive, annual meeting, and hear a legislative overview from Patrick Strauch and Michele Maclean.

If you are planning to attend the Board meeting or Legislative Reception, please contact Sue McCarthy at 207-622-9288 or [smccarthy@maineforest.org](mailto:smccarthy@maineforest.org).



### Maine Forest Products Council to host Legislative Reception

Please join the Council in welcoming this years Legislators on Wednesday, February 11, 2009 @ 4pm. The Natural Resources Network members will also be attending. The reception will be held at the council office at 535 Civic Center Drive. We will have additional parking at the Farm Credit office down the road and at the Career Center across the street.

Thanks to the following sponsors who are helping to make this years reception possible.

**Huber Resources, Farm Credit of Maine, Maine Snowmobilers Association, Plum Creek.**

*We still need one more sponsor. If you would like to be a sponsor for this reception please contact Sue McCarthy at 622-9288 or email [smccarthy@maineforest.org](mailto:smccarthy@maineforest.org)*

### **Board of Directors Meeting February 11, 2009 1:00 – 4:00 PM MFPC Office, Augusta**

- Presidents Report
  - Governor's Study Group on Wood Utilization
  - Manufacturing/ Energy Initiative
  - LURC CLUP Update
- Pierce Atwood Presentation: Changes to Maine's Site Location Law
- Committee Reports
  - Wildlife Committee
    - √ Canada lynx
  - Membership Committee
    - √ Outreach proposal
- Executive Director Report
  - Legislative/ Budget/ Natural Resource Agency Consolidation
  - Communications Update – James
- Unveiling of new MFPC website

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