

# FOREST PRODUCTS NEWS

## MFPC Celebrates Big Victories This Legislative Session

**By Patrick Strauch  
MFPC Executive Director**



After a policy-packed session, the 124<sup>th</sup> Maine Legislature adjourned on June 12<sup>th</sup>. While many threats were presented to Maine's forest products industry, the Maine Forest Products Council was able to fend off most, and feels that several policies were put in place that advance the needs and vision of our members.

While much of our work focused on traditional issues such as wildlife management, Sunday hunting, the tree growth tax program, and recreational access to private land, the true flavor of the

124<sup>th</sup> Legislature seemed to focus on the location of development, climate change, and energy policy. These are issues which if not appropriately grounded in accurate data and science, could have dramatic affects on our industry.

LD 1333, a piece of climate change legislation, offered probably the largest threat to Maine's forest products industry this session. Although our industry is positioned to be a significant source of carbon sequestration, proponents of this bill did not engage the business community. The lack of participation by the business community meant there was a lack of evaluation in

determining what impact this bill would have on the private sector, as well as other environmental and social implications. This bill was written by Environment Northeast, the Conservation Law Foundation, Natural Resources Council of Maine and Maine Audubon, and came under a tremendous amount of scrutiny during the public hearing phase of the legislative process. LD 1333 was an enormous bill, with many poorly defined provisions included in it. Specific threats to the forest products

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### Legislature Directs LURC to Consider Residents and Property Owners

Some fundamental changes to the statutory Purpose and Scope of the Land Use Regulation Commission were made during the latest legislative session thanks in large part to several key members of the Legislature's Agriculture, Conservation and Forestry Committee.

LD 413, An Act to Clarify Land Use Regulation in Unorganized and Deorganized Townships, sponsored by Representative Herb Clark of Millinocket, sought to insert specific language recognizing property owners and residents of the LURC

jurisdiction into the statutory Purpose and Scope. The legislation also directs LURC to recognize the importance of local economies.

The Maine Forest Products Council believes that these changes were necessary due to ongoing concerns with the draft Comprehensive Land Use Plan, and LURC's insistence that the standing of landowners and residents was no greater than special interest groups. It is believed that these new changes will send a strong message to LURC, which is to consider the people who depend on that area to live and make a living when planning for future land use decisions.

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**President's Message:**

**A Welcome Change**

We received some great news last week about LD 413 (as amended). The governor signed this very important bill that substantially changes the context of the Purpose and Scope of the Land Use Regulation Commission's enabling legislation. The bill, as amended, received a majority report out of the Legislature's Agriculture, Conservation and Forestry Committee, passed in the house by a huge majority and passed unanimously through the Senate.

Why is the passage of this bill so important? For the past few years, the LURC staff and Commissioners have taken an increasingly narrow interpretation of the Purpose and Scope that reduced residence and property owners in the LURC jurisdiction to the level of "just another special interest group." The basis of this interpretation came from words in the Purpose and Scope that talked about "the public interest, for the public benefit and for the good order of the people of this State." One can wonder why LURC has chosen to pursue such a narrow interpretation when other sections of the Purpose and Scope have been broadly interpreted to promote "primitive recreation and remoteness." But I digress.

The new language specifically recognizes residence and property owners while maintaining LURC's obligation to the general public. Also, the new language in the Purpose and Scope gives greater emphasis to economic aspects of the jurisdiction by acknowledging "the importance of these areas in the continued vitality of the State and to local economies" – a



**Doug Denico**

great step forward for the communities in and near the jurisdiction.

How did this happen? Just last session, a bill identical to LD 413 was submitted to the Legislature and failed to even get out of the Agriculture Committee. Well a number of things have taken place. The draft CLUP officially emerged and went through a public review process. The concerns of residents and property owners about the draft CLUP were brought to the attention of the Legislature. Testimony in front of the Agriculture, Forestry and Forestry Committee this past April instigated a response for the Committee that the draft CLUP process wasn't working. I also have a strong feeling from listening to legislators over the past few months that many of them did not realize that residents and property owners in the jurisdiction were not treated like their counter parts in organized towns. LD 413 gained favor as more light was shed on the draft CLUP and the treatment of residents and property owners.

What will come of the changes to the Purpose and Scope? We hope that LURC will consider concerns of residents and property owners on an equal basis with the other residents of Maine. Input into the Commission shouldn't be based on sheer weight of numbers. A hundred post cards from southern Maine advocating for primitive recreation should not

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**Pres. Message** *(Cont. from page 2)*

overwhelm the concerns of the residents and property owners in the LURC jurisdiction. In this context, it's daunting to note that the combined membership of just two environmental groups in Maine approximates the number of residents and property owners in the jurisdiction. We are also hopeful that the economic well being of local communities, residents and property owners are given greater consideration as the Purpose and Scope now spells out.

Unfortunately, The Department of Conservation was opposed to LD 413 and no one knows how the Staff and Commission will react to the changes. For the moment, as I wait for clarity on their respective responses, I choose to enjoy the knowledge that the Legislature considers those of us residing or owning property in the jurisdiction are more than "just another special interest group" and that our economic well being is an important consideration.

Isn't it great that our elected officials are still ultimately in charge?



**Reestablishing the Martha Stewart Committee**

In an effort to dress up the downstairs conference room at the MFPC office we will be reestablishing the Martha Stewart Committee. We will be placing up to date pictures of Land Management/Harvesting, Planting, Road Construction, Recreation, Pulp Mills, Saw Mills, Pellet Mills, Brokers offices and many others. Sue McCarthy will be contacting council members to help out in capturing a good cross section of our many activities. There will be more information to follow.

**Executive Director.** *(Cont. from page 1)*

industry included more rigorous culvert and fish passage standards, threats to subdivision law, and mitigation for the removal of trees, among others. In the final hours of the legislation this bill was watered down to include only new provisions about culvert standards. However, the Maine Forest Products Council did work with the Legislature to provide a forestry and agriculture exemption. Overall, this bill looks to have little impact on our industry. Because of the goodwill that many legislators showed us on LD 1333, we in turn have committed to work on LD 891, a similar bill on climate change which was carried over to next session, in a more collaborative environment.

LD 1268 was also alarming to landowner and manufacturing businesses which have the potential to fall under Maine's Site Location of Development Laws. This bill would have dramatically amended Site Location Law in 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. LD 1268 would have also established new requirements for "conservation subdivisions" that would apply to all regulated residential subdivisions outside of certain areas. 1268 would have also repealed existing Site Law subdivision exemptions for lots over 40 and 500 acres. Fortunately, a coalition of business interests, with strong grassroots leadership by Darryl Brown of Main-Land Consultants in Livermore Falls, were able to force the Legislature to apply this legislation only to public infrastructure.

MFPC was also involved in this year's tax reform debate, LD 1088, sponsored by Representative John Piotti of Unity. In an effort designed to reduce the tax burden on most Maine residents, this legislation, which has recently been enacted as P.L. 2009, c. 382, creates a flat 6.5% income tax for most Maine people. To make up for the reduction in the income tax, Chapter 382 has greatly expanded Maine's sales tax by broadening it to many services that have traditionally been "tax free". Working with Pierce Atwood, MFPC was able to identify both positive and negative attributes of the bill and testified neither for nor against during public hearing. A remaining concern of the law is that it makes the leasing or renting of tangible personal property a taxable service. Under this provision, the lessee or rentee is liable for the tax- which must be collected by the lessor or rentor at the time the property is delivered or when the first payment is required- whichever is sooner. The amount of tax due will be calculated based upon the number of payments required and will be need to be paid in full up front. Certain equipment, such as equipment located at fabrication and manufacturing facilities may be exempt. More analysis will be done to see how much this will affect loggers, truckers, and other woods equipment operators who may lease or rent their equipment.

We also worked diligently this session on behalf of Maine's wood manufacturers. Our work in the Utilities and Energy Committee's went a long way towards exploring new energy opportunities for sawmills in particular. Perhaps the greatest achievement on this front came with the Legislature's approval

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## Legislators direct LURC.....(Cont from page 1)

The original bill was amended slightly in Committee to include the broader term of “local economies” rather than use industry specific terms of agriculture and forestry.

While two members of the Agriculture, Conservation, and Forestry Committee, voted against the bill in Committee, the remaining members held strong in their support of the language on the floor of the House and Senate. The bill passed on June 12, 2009, with a vote of 115 to 31 in the House. The bill was signed by the Governor on June 15.

Another bill, LD 1047, An Act to Amend the Review and Approval Process of the Comprehensive Land Use Plan, which was also sponsored by Representative Herb Clark, was passed on June 2, and signed by Governor Baldacci on June 12. The original bill was amended now requires LURC to review the draft CLUP at a public meeting with the ACF Committee prior to its final adoption by the Commission and the Governor. While this bill did not go so far as to require the ACF Committee to review and approve the Comprehensive Land Use Plan, it does lend itself to provide more oversight by elected officials, which is a goal that the Maine Forest Products Council has supported for some time.

LD 1047 was enacted as an emergency measure, meaning that it is taken to effect upon the Governor’s signing, and the draft 2009 CLUP will be subject to its provisions.

LD 516, An Act to Require That a Majority of the Members of the Maine Land Use Regulation Commission Reside in the Commission’s Jurisdiction, sponsored by Representative Doug Thomas of Ripley, was also passed by the Legislature. The original bill required that at least four of the seven LURC Commissioners reside in the Commission’s jurisdiction. However, the bill was slightly amended to require only three of the seven to reside in the jurisdiction. Only two Commissioners were required under previous law.

The Agriculture, Conservation, and Forestry Committee also voted to kill LD 558, An Act to Amend the Notification Procedures of the Land Use Regulation Commission, sponsored by Representative Tom Saviello, in favor of writing a letter to LURC instead, encouraging them to be more aggressive and timely in their notification procedures dealing with revisions to the Comprehensive Land Use Plan.



Executive Director Patrick Strauch gives testimony on LURC bills in front of the ACF Committee

LD 1370, An Act to Reform the Land Use and Planning Authority within the Unorganized Territories of the State, sponsored by Representative Henry Joy of Crystal, which would have abolished the Land Use Regulation Commission, was killed in Committee.

The success of this session is due in large part to member participation and the reputation we are building for integrity and honesty. Thank you to all who responded to our “calls to action”! We will continue building upon this goodwill in future legislative sessions.

A complete legislative summary will be available for members later this summer. For more information on these bills, or to obtain a copy of MFPC’s testimony concerning these bills, please contact James Cote.

## Have you received your MFPC Forest News today?

Tired of searching through dozens of websites to get the day’s industry news? You’re in luck! The Council’s newest service, MFPC Forest News, is a daily email containing a collection of the day’s most pressing forest products industry related news stories from around the state. MFPC Forest News also contains a calendar of events, member alerts, and Maine Forest Products Council updates. To sign up for this free service, please email Sue McCarthy @ [smccarthy@maineforest.org](mailto:smccarthy@maineforest.org)

## Extending Fundraiser till end of July.....

### 2009 Membership Directory

The Council has the new 2009 Membership Directory ready for the printers. As in previous years, each member will receive a free copy of the directory with the opportunity to purchase additional copies @ \$10 per copy. Please contact Sue McCarthy (smccarthy@maineforest.org) if you would like to advertise your Company in this years directory.

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## MFPC Continues Work Towards Management Guidelines for Deer Wintering Areas

The Maine Forest Products Council, Small Woodlot Owners Association of Maine, and Department of Inland Fisheries and Wildlife are nearing the end of a process to develop management guidelines for deer wintering areas. This process was initiated after the Maine Deer Task Force meetings in an effort to strengthen the relationship between landowners and the DIFW when it comes to the management of Deer Wintering Areas.

Working with landowner members, Patrick Strauch and James Cote of MFPC have been working with Wildlife Management Section Supervisor John Pratte and other staff members of DIFW, on edits to a draft of the guidelines. Recognizing that several landowners have remaining concerns with the draft guidelines, MFPC is organizing a field tour with wildlife and land managers to discuss the guidelines on the ground. The field trip is scheduled for late July. Members interested in participating in this event should contact MFPC staff. To obtain a copy of the draft policy, please contact James Cote. More information on this effort will be distributed over the summer as we near a final product.



## Feds Approve ESA Listing for Atlantic Salmon in Major Maine Rivers

On June 15, NOAA's Fisheries Service and the U.S. Fish and Wildlife Service extended Endangered Species Act protection to more Atlantic salmon by adding fish in the Penobscot, Kennebec, and Androscoggin rivers and their tributaries to the endangered Gulf of Maine population first listed in 2000.

The Maine Forest Products Council, along with a coalition of other pulp and paper, energy, and municipal organizations have advocated against this extended protection in light of science that shows problems with Atlantic salmon returns are most likely happening in the ocean outside of Maine, and would more likely be attributed to other forces.

Endangered status under the ESA will now apply to all anadromous (sea-run) Atlantic salmon whose freshwater range covers the watersheds from the Androscoggin River northward along the Maine coast to the Dennys River, an area which includes the Penobscot and Kennebec rivers. It also applies wherever these fish occur in these rivers' estuaries and marine environment. Hatchery fish used to supplement these natural populations are also included under this rule. Altogether, the area makes up upwards of seven million acres in almost all regions of Maine.

This listing has the potential to affect hydropower dams, forestry operations, mill and municipal discharges, and other industry activities.

Listed species receive the full protection of the Endangered Species Act, including a prohibition against take. Take is defined to include harass, harm, pursue, wound, kill, trap, capture, or collect.

The listing means that before federal support or authorization is provided for any activity that may affect the fish, it would need to be reviewed by federal authorities to ensure that it doesn't jeopardize the continued existence of the species or adversely modify its critical habitat. For instance, operators of hydro-electric dam facilities on the rivers or tributaries will need to consult with the agencies to ensure they are not in violation of the law. Of concern particularly to forest landowners are consultations that may be in order for work related to bridge construction, and mills are concerned over the need to consult when seeking federal permits for discharges into these waterways.

At the last MFPC Board meeting, Pat Keliher, Executive Director, ME Bureau of Sea-Run Fisheries and Habitat provided an update on the USF&W / NOAA proposed listing of Atlantic Salmon as an endangered species in the Penobscot, Kennebec, and Androscoggin Rivers. Although the State of Maine is not suing to stop the listing at this time, they have been advocating for threatened status instead of endangered, which would allow more cooperative, collaborative management approaches under the 4D rule. Maine Governor Angus King was unable to successfully challenge an earlier ESA

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Atlantic Salmon. . . . .(Cont. from page 6)

listing decision for Atlantic salmon in 2000. Maine also requested that the Androscoggin River be dropped from the listing. The primary risks of listing will be to manufacturers and municipalities with permitted water discharges. Keliher noted that the state does not see forest management activity as a threat to the fishery, given the existing regulatory and voluntary management practices in place.

Many believe that the endangered listing will enable other interest groups an opportunity to use lawsuits for critical habitat protection as a tool that supports other agendas to challenge Maine's working forests.

MFPC does plan to hold a forum with federal and state officials to discuss the effects of this listing on the forest products industry. Please contact James Cote for more information.

## MFPC Member Les Otten Joins Race to become Maine's Next Governor

Maine Forest Products Council member Les Otten announced his bid to become the Republican nominee for Governor on Monday, June 29. Otten is President of Maine Energy Systems, and former CEO of American Skiing Company, and part owner of the Boston Red Sox. He also chaired Governor Baldacci's Wood-to-Energy Task Force.

Otten joins two other candidates in the Republican primary, Matt Jacobson, former CEO of Maine & Company, and Maine businessman, Bruce Poliquin. They join Green Party candidates Lynne Williams and former Democratic Attorney General Steve Rowe in their pursuit for Maine's top job.

Other possible candidates include Republican State Senators Peter Mills and Kevin Raye, House Republican Leader Josh Tardy, Department of Conservation Commissioner Patrick McGowan, former Democratic Speaker of the House John Richardson, Democrat State Senator Bill Diamond, Peter Vigue of Cianbro.

You can read more about Les Otten's candidacy at [www.lesotten.com](http://www.lesotten.com).

MFPC does plan to keep members updated about the progress of the race for governor in 2010.



Les Otten, President of Maine Energy Systems and member of the Maine Forest Products Council has recently announced the establishment of an exploratory committee as he mulls a race for governor.

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**Executive Director. . . . .** *(Cont. from page 3)*

of one of our own bills, LD 1044, a Resolve, To Promote Cogeneration of Energy at Maine Sawmills, sponsored by Representative Ken Fletcher. This bill establishes a stakeholder group, including representatives from the PUC, Governor's Office of Energy Independence, forest products industry, and transmission and distribution utilities, among other interested parties, which will discuss the concept of "cogeneration energy zones". These zones would include not less than two and not more than ten manufacturing facilities within a radius of ten miles, and would allow sawmills that own on-site cogeneration facilities to elect net energy billing- within certain guidelines. The cogeneration facility would be limited to an installed capacity of 5 megawatts. The group will also consider the opportunity for these facilities to construct private transmission lines within the so called "cogeneration energy zones" and allow the nonelectric energy produced by the facility to be shared with other entities through private agreement. LD 1044 also provides that the Joint Standing Committee on Utilities and Energy have the ability to report out legislation in the second regular session of the 124<sup>th</sup> Legislature. MFPC fully expects to be an active participant in this process, and will keep members updated on the progress of our effort.

Another topic of interest to landowners in Maine's Unorganized Territory (U.T.) is legislation that was passed and signed by the Governor which requires the Department of Economic and Community Development in partnership with the State Tax Assessor to convene a study group to discuss the role of economic development incentives, specifically tax increment financing (TIF's) in the U.T. LD 1154 requires this group to be made up of a wide range of interests and will consider the legal issues surrounding tax increment financing in the U.T., as well as the effects that the incentive has on taxpayers throughout the U.T. MFPC supported this legislation due to the growing importance of these concepts as TIF's are used throughout the U.T to attract economic development projects such as wind power facilities. The Joint Standing Committee on Taxation is also given the ability to report out legislation regarding this study during the next legislative session.

Other big wins for our industry included several LURC bills that are explained in another story in this newsletter.

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## MFPC Staff to meet members during the summer months

*In an effort to meet the membership and identify policy issues and opportunities, Patrick and James will be scheduling visits with members throughout the summer. These visits allow us to have first-hand knowledge of what is happening on the ground in our industry, and compliment policy discussions in Augusta and Washington. If you or your company have events that you would like MFPC staff to attend, please contact Patrick or James to schedule*