

# LIQUIDATION TIMBER HARVESTING IN MAINE: POTENTIAL POLICY APPROACHES

*Charles R. Scott\**

## I. INTRODUCTION

There is growing concern in northern Maine over liquidation harvesting, a practice whereby land developers purchase tracts of commercial timberland, harvest all the marketable timber, and resell the land for real estate development. The relatively recent decline of the state's forest products industry has spurred both land sell-offs and legislative action. Liquidation harvesting has been defined by the Maine legislature as:

[T]he purchase of timberland followed by a harvest that removes most or all commercial value in standing timber, without regard for long-term forest management principles, and the subsequent sale or attempted resale of the harvested land within 5 years.<sup>1</sup>

Liquidation harvesting poses significant ecological, economic, and recreational problems for the state of Maine.

The threat is made more acute because of the unique ownership pattern of Maine's forests: although they represent only 3.5% of the United States' total commercial timberland, more than 96% of that land was privately owned in 1992. Accordingly, Maine held more than 12% of the country's privately owned commercial timberland, by far the largest percentage of any state.<sup>2</sup> This situation prompted Ralph Nader to call the forest products companies' role in Maine a "pulpwood peonage" in 1974<sup>3</sup> and today facilitates the rapid transformation of commercial timberland into residential developments. Maine is now faced with the question of how to address liquidation harvesting in a manner that protects the state's natural environment, but also preserves forest products industry jobs and traditional recreation uses of Maine's forests.

The tools the state has chosen have been economic disincentives to discourage liquidation harvesting. In this regard, however, it has arguably

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\* J.D. Candidate, Harvard Law School Class of 2006. This Note began as a paper for Professor Lois J. Schiffer's environmental policy seminar at Harvard Law School in the spring of 2004. The author wishes to thank Prof. Schiffer for her invaluable guidance on everything from research through publication.

<sup>1</sup> ME. REV. STAT. ANN. tit. 12, § 8868, sub-§ 6 (West, 2003).

<sup>2</sup> MITCH LANSKY, BEYOND THE BEAUTY STRIP: SAVING WHAT'S LEFT OF OUR FORESTS 2-4 (1992). Maine had more than eight million acres of industrially owned timberland, well ahead of second-ranked Oregon, which had slightly more than five million acres.

<sup>3</sup> Ralph Nader, *Introduction*, in WILLIAM C. OSBORN, THE PAPER PLANTATION: RALPH NADER'S STUDY GROUP REPORT ON THE PULP AND PAPER INDUSTRY IN MAINE ix (1974).

not gone far enough, leaving too many loopholes and not employing a tax mechanism that has been used elsewhere to substantially eliminate liquidation harvesting. Given the scope, urgency, and complexity of the problem it faces, Maine would be best served in its effort to curb liquidation harvesting by strengthening its economic disincentives and combining them, where appropriate, with judiciously crafted conservation strategies.

## II. A BRIEF HISTORY OF LIQUIDATION HARVESTING IN MAINE

There is a dichotomy between the southern, coastal region of Maine and the northern, inland region so pronounced that the term “two Maines” has become common.<sup>4</sup> Southern, coastal Maine is wealthier and more populous than northern, inland Maine, and is growing at a faster rate in both regards.<sup>5</sup> While southern, coastal Maine can count on tourism, commercial fishing, residential growth, and an increasing number of technology employers; northern, inland Maine’s economy has traditionally been more reliant on agriculture and natural resources, including forest products.<sup>6</sup> But, between the late 1980s and late 1990s, the forest products industry in Maine lost almost 6000 jobs, about 18% of the number of jobs in the industry in 1987.<sup>7</sup> While jobs were lost, production of sawlogs actually increased by 63% during that period, as technological innovation within the industry reduced the necessary employment per output unit.<sup>8</sup> More

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<sup>4</sup> See, e.g., Wayne E. Reilly & Michael McDonald, *The Gulf Between the Two Maines Is Widening*, BANGOR DAILY NEWS (Me.), Sep. 12, 1998, at A1.

<sup>5</sup> For a detailed analysis of the geographic disparity among labor indicators in Maine, see Philip A. Trostel, Margaret Chase Smith Center for Public Policy and Department of Economics, U. of Me., *Recent Developments in the Labor Market in Maine* (July 3, 2002), at [http://www.umaine.edu/mcsc/Research/EcoDev/Labor\\_Market/Labor\\_Market.pdf](http://www.umaine.edu/mcsc/Research/EcoDev/Labor_Market/Labor_Market.pdf) (last visited Oct. 30, 2004) (on file with the Harvard Environmental Law Review). For example, per capita income is significantly lower in the northern counties of the state: per capita income in the southernmost counties is 15% higher than that for the state as a whole, while that for the northernmost county is 19% below that for the state as a whole. *Id.* at 9. And, while the geographic disparity in income between the “two Maines” did not widen markedly over the 1990s, see *id.*, the dramatic difference in population growth between the two regions indicates that the problem is worsening. See Joyce Benson and Richard Sherwood, Me. State Planning Office, *Maine’s Changing Population: A Summary of Structural Changes, Mobility and Regional Variations*, at Table 13 (Apr. 2004) (finding that, between 1980 and 2000, four counties in northern Maine actually lost population, with Aroostok County losing 15%, while the eight counties in which population grew the most were all in southern Maine), at [http://www.maine.gov/governor/baldacci/news/events/Realize!/issue\\_papers/whitepaper.doc](http://www.maine.gov/governor/baldacci/news/events/Realize!/issue_papers/whitepaper.doc) (last visited Oct. 31, 2004) (on file with the Harvard Environmental Law Review).

<sup>6</sup> For an evaluation of the importance of natural resource-based industries to Maine’s economy, see generally ME. STATE PLANNING OFFICE, FISHING, FARMING AND FORESTRY: RESOURCES FOR THE FUTURE (Mar. 2001), at <http://www.maine.gov/spo/pubs/origpdf/pdf/farmfish01.pdf> (last visited Oct. 31, 2004) (on file with the Harvard Environmental Law Review).

<sup>7</sup> THOMAS MICHAEL POWER, THE ECONOMIC IMPACT OF THE PROPOSED MAINE WOODS NATIONAL PARK & PRESERVE 14 (2001), available at <http://www.restore.org/Maine/ecoreport.pdf>. During the same period, close to 100,000 new jobs in other industries were created statewide, decreasing the relative importance of the forest products industry. *Id.*

<sup>8</sup> *Id.* at 14.

recently, however, market conditions have led forest products companies to decrease their Maine production: beginning in the late 1990s, increased competition from international sources, a domestic production overcapacity, and decreased demand both for lumber and paper have led to decreased overall production in the Maine forest products industry, as well as a decreased share of the domestic market for forest products from Maine.<sup>9</sup> This, in turn, has only quickened the pace of job losses in the Maine forest products industry, with one study estimating that more than 4500 jobs have been lost since 2000 alone.<sup>10</sup>

Since at least the late 1970s, there has been concern in Maine over the fact that the large forest products companies that together traditionally owned the majority of the state's commercial timberland have been harvesting timber in a non-sustainable manner, with a focus on short-term liquidation rather than long-term stewardship of the resource.<sup>11</sup> Concern over such practices has increased in the last ten years as forest products companies have begun closing mills, laying off workers, and selling land. The number of active forest products mills in Maine has dropped from sixteen in 1974, to eleven today, with three employing only a fraction of their former workforces; the number of Maine loggers dropped from 5500 in 1979 to 2500 in 2002; and the overall number of workers in the paper industry dropped from 17,000 to 10,000 during the same period.<sup>12</sup>

In the late 1990s, concern developed over the specific problem of liquidation harvesting as forest products companies began selling sizeable tracts of timberland to developers. In 1998, two major forest products companies, Bowater, Inc., and SAPPI, Ltd., together sold nearly two million acres of land to three buyers who were more development-minded, McDonald Investment Co., Plum Creek Timber Co., and J. D. Irving, Ltd., transactions involving about 10% of all the land in Maine.<sup>13</sup> Although Plum Creek Timber Co. did sell significant portions of undeveloped land to the state and to a conservation group, it also angered environmentalists by violating preexisting conservation easements and by cutting down the

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<sup>9</sup> Charles Colgan, *Maine's Troubled Economic Base: The Natural Resources Industries in a National and Global Context*, 48(1) ME. BUS. INDICATORS 7, 8–9 (Winter 2004), available at <http://www.usm.maine.edu/cber/mbi/MBIW04.pdf>.

<sup>10</sup> *Id.* at 8.

<sup>11</sup> William Butler, Editorial, *Who's in Charge of Clearcutting?*, BANGOR DAILY NEWS (Me.), Apr. 29, 1995, at A13. The writer stated that even in 1976, during the filming of a documentary on the forest products industry, "people who worked in the woods seemed to recognize forest liquidation."

<sup>12</sup> Lance Tapley, *Cut and Run: How the Paper Industry Betrayed the State*, PORTLAND PHOENIX (Me.), Mar. 12–18, 2004, at 12, available at [http://www.portlandphoenix.com/features/top/ts\\_multi/documents/03665561.asp](http://www.portlandphoenix.com/features/top/ts_multi/documents/03665561.asp).

<sup>13</sup> Mary Anne Lagasse, *Bowater Sells 1 Million Acres to Irving*, BANGOR DAILY NEWS (Me.), Oct. 22, 1998, at A1. See also Ec. Research Serv., USDA, Maine State Fact Sheet (stating that Maine's total land mass is 19.75 million acres), at <http://www.ers.usda.gov/statefacts/ME.htm> (last visited Oct. 31, 2004) (on file with the Harvard Environmental Law Review).

nest of a federally threatened bald eagle (also a violation of Maine's Endangered Species Act).<sup>14</sup> In 2001, Plum Creek Timber Co. announced that it was "planning a major expansion into real estate development" on its property holdings, including those in Maine.<sup>15</sup> By the next year, Plum Creek Timber Co. had created an 89-lot, 272-acre subdivision, the largest ever in the Maine woods, leading the nonprofit Natural Resources Council of Maine to accuse it of "'slicing and dicing the best of Maine's North Woods into second home developments . . . [and] not . . . managing for long-term timber values . . .'"<sup>16</sup>

Plum Creek Timber Co.'s actions came as little surprise to Maine residents and left them wondering which one of the state's pristine lakeshores would be subdivided next. Then-Governor Angus King had assured the public that J. D. Irving, Ltd.'s purchase was different because that company "ha[d] shown no interest in developing the Maine forest lands."<sup>17</sup> Nevertheless, in 2003, J. D. Irving, Ltd. sold 12,500 acres of the highly desirable land it had purchased just east of Baxter State Park, the northern terminus of the Appalachian Trail, to Herb Haynes, a forestry contractor who during the late 1990s "developed a public reputation as Maine's most notorious forest liquidator," who "stirred controversy over abusive cutting practices," and whose "*modus operandi* was to purchase forest tracts, strip them of timber to . . . the maximum [extent] the law allowed and sell [them] quickly for a profit to smaller contractors or subdivide [them] for house lots."<sup>18</sup> In the same area, J. D. Irving, Ltd. also sold 34,500 acres to William Gardner, another landowner with a history of liquidating and subdividing, at a price that the state and conservation groups simply could not match.<sup>19</sup> Like J. D. Irving, Ltd., McDonald Investment Co. claimed at the time of its purchase that it was "not in the develop-

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<sup>14</sup> Phyllis Austin, *Plum Creek: Finding Gold in Maine*, ME. ENVTL. NEWS, June 12, 2002, at <http://www.meeepi.org/files02/pa061202.htm> (last visited Oct. 12, 2004) (on file with the Harvard Environmental Law Review).

<sup>15</sup> Jim Carlton, *Plum Creek Plans to Develop Real Estate, Names Lindquist to Oversee Properties*, WALL ST. J., Nov. 30, 2001, at A11.

<sup>16</sup> Austin, *supra* note 14 (quoting Cathy Johnson, North Woods Project Director, Natural Resources Council of Maine). See also Press Release, Natural Resources Council of Maine, Plum Creek Real Estate Company Puts First Roach Pond Shorefront on the Auction Block (July 30, 2001), at [http://www.maineenvironment.org/nwoods/NW\\_archives.htm](http://www.maineenvironment.org/nwoods/NW_archives.htm) (last visited Nov. 10, 2004) (on file with the Harvard Environmental Law Review).

<sup>17</sup> Lagasse, *supra* note 13.

<sup>18</sup> Phyllis Austin, *Herb Haynes Buys 12,500 Acres of Key East Branch Lands*, ME. ENVTL. NEWS, June 20, 2003, at <http://www.meeepi.org/files03/pa062003.htm> (last visited Oct. 31, 2004) (on file with the Harvard Environmental Law Review).

<sup>19</sup> Phyllis Austin, *Irving to Sell 71,000 Acres East of Baxter Park for Record Prices*, ME. ENVTL. NEWS, Aug. 27, 2003, at <http://www.meeepi.org/files03/pa082703.htm> (last visited Oct 31, 2004) (on file with the Harvard Environmental Law Review).

ment business,”<sup>20</sup> but it, too, soon put a 25,531-acre parcel up for sale to developers.<sup>21</sup>

All told, a relatively small percentage of the land that was sold to Plum Creek Timber Co., J. D. Irving, Ltd., and McDonald Investment Co. in 1998 has been or will be developed in the near future, because significant portions of it are currently desirable only as commercial timberland. Nonetheless, those properties are emblematic of a growing trend of converting the most desirable parts of Maine’s wilderness from commercial timberland to private residential use.<sup>22</sup> In 1999, the Maine Forest Service estimated that 2.5% of all harvested timberland in the years 1995 and 1996 was liquidated, with another 11.7% considered to have undergone “potential liquidation harvesting.”<sup>23</sup> A later field study found that 4.4% of surveyed timberlands had probably been subjected to liquidation harvesting in 2001 and 2002.<sup>24</sup> In all, it is estimated that liquidation harvesting affects 30,000–45,000 acres of timberland in Maine annually.<sup>25</sup> Concerns over the highly publicized sales led Governor John Baldacci to make a 2002 campaign promise to ban liquidation harvesting if elected, arguing that it threatened Maine’s forest products industry and the ecological health of its forests, and infringing on traditional land uses in the state.<sup>26</sup>

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<sup>20</sup> Mary Anne Lagasse & Orna Izakson, *Bowater Selling More Land: Alabama Company to Buy 656,000 Acres*, BANGOR DAILY NEWS (Me.), Nov. 3, 1998, at A1.

<sup>21</sup> Joe Rankin, *Conservationists Worry about “Kingdom Lot” Sale*, KENNEBEC J. (Me.), Jan. 31, 2003, at B1, available at [http://www.centralmaine.com/news/stories/030131kingdom\\_.shtml](http://www.centralmaine.com/news/stories/030131kingdom_.shtml). The most recent high-profile land sale notice in the Maine woods came on November 9, 2004, when International Paper announced that it was selling 1.1 million acres of land, almost all of it in Maine, to a Boston-based investment firm. See Misty Edgecomb, *IP Sells 1.1M Acres to Boston Firm*, BANGOR DAILY NEWS (Me.), Nov. 10, 2004, at A1.

<sup>22</sup> Phyllis Austin, *Cutting and Selling the Gems of Maine’s North Woods*, ME. ENVTL. NEWS, Jan. 29, 2003, at <http://www.meepi.org/files03/pa012903.htm> (last visited Nov. 4, 2004) (on file with the Harvard Environmental Law Review). Moreover, it should be noted that, although only a small percentage of the land involved in the three transactions seems developable right now, the relative desirability of land for development will certainly change over time, with areas previously too remote becoming more desirable real estate as expansion progresses.

<sup>23</sup> ME. FOREST SERV., *TIMBER LIQUIDATION IN MAINE: A REPORT BY THE MAINE FOREST SERVICE 4* (Jan. 5, 1999) (on file with the Harvard Environmental Law Review).

<sup>24</sup> Me. Forest Serv., *Liquidation Harvesting Situation Report: Presentation to the Joint Standing Committee on Agriculture, Conservation, and Forestry*, Augusta, Me., Jan. 28, 2004 at 18–19 (on file with the Harvard Environmental Law Review). At the time of the presentation, the Forest Service estimated that 4.4% of surveyed lands were probably subjected to liquidation harvesting. It was unclear whether they were exempt from consideration because the development plan had been approved before harvesting, they were transferred between family members, they were protected by conservation easements, or they were the subject of “paper transfers,” essentially remaining in the same hands.

<sup>25</sup> Transcript of Me. Forest Serv., *Public Meeting on Proposed Liquidation Harvesting Rule, Gorham, Me. 2* (Mar. 25, 2004) [hereinafter *Gorham Public Meeting Transcript*] (remarks of R. Alec Giffen, Director, Me. Forest Serv.) (on file with the Harvard Environmental Law Review).

<sup>26</sup> Meredith Goad, *Environmentalists Quiz Gubernatorial Candidates*, PORTLAND PRESS HERALD (Me.), Oct. 4, 2002, at 1A.

### III. THE HARMFUL EFFECTS OF LIQUIDATION HARVESTING

As Governor Baldacci noted during his campaign, there are three major concerns associated with liquidation harvesting: (1) ecological damage, (2) economic harm, and (3) recreational impairment. These disparate and sometimes seemingly conflicting problems make crafting a comprehensive solution to liquidation harvesting a complex challenge.

#### A. Ecological Effects

##### 1. Ecological Damage from Clear-Cutting

All one needs to do is see the progression from standing timber to clear-cut lot to subdivision to know that liquidation harvesting has dramatic effects on forest ecology. Clear-cutting, the first step in the liquidation harvest process, has its own detrimental consequences: the organic material in the soil itself, a nutrient source and important habitat for many species, is compacted by logging machinery, preventing air and water from seeping into the soil and halting much biological activity; this is exacerbated by increased sunlight through the thinned canopy, which can leach nutrients from the soil and increase acidity.<sup>27</sup> Soil compaction can also cause increased erosion and decreased water quality due to insufficient filtering through organic matter.<sup>28</sup> The removal of trees naturally also leads to habitat loss, perhaps most dramatically in the case of cutting down an eagle's nest, but also in less obvious ways: species like flying squirrels are "habitat specialists" and need the deep crowns of old, large trees to survive; reduced forest sizes may be too small to support low-density populations of far-ranging species like threatened Canada lynx; and artificially created "edges" of forests bordering clear-cut lands allow for greater predation.<sup>29</sup>

Concomitant with habitat loss caused by clear-cutting is loss of biodiversity, as genetically distinct plant or animal populations that are adapted to local environments, such as northern goshawks and three-toed woodpeckers, are wiped out by clear-cutting to a greater extent than they would be if fewer trees per acre were removed.<sup>30</sup> This effect is particularly dramatic where the complexity of self-sustaining ecosystems is reduced,<sup>31</sup> but

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<sup>27</sup> MITCH LANSKY, *LOW-IMPACT FORESTRY: FORESTRY AS IF THE FUTURE MATTERED* 27 (2002).

<sup>28</sup> *Id.* at 65.

<sup>29</sup> LANSKY, *supra* note 2, at 246–50.

<sup>30</sup> Susan Young, *Mainers Debate Woods Rules*, BANGOR DAILY NEWS (Me.), Oct. 14, 2000, at A1.

<sup>31</sup> Catherine Elliot et al., *Biodiversity in the Forests of Maine: Guidelines for Land Management* (U. of Me. Cooperative Extension, Bulletin #7147, 1999), at [http://www.ume.maine.edu/~MIAL/maine\\_cd/tertiary\\_page/frontiers/bfm.htm](http://www.ume.maine.edu/~MIAL/maine_cd/tertiary_page/frontiers/bfm.htm) (last visited Oct. 31, 2004) (on file with the Harvard Environmental Law Review).

biodiversity loss from clear-cutting works in more subtle ways, too: spatial heterogeneity is essentially destroyed within clear-cut areas, which limits not only what wildlife can thrive there, but obviously destroys plant diversity as well.<sup>32</sup> By contrast, sustainable long-term silviculture (characteristic of permanent forests products industry working timberlands) allows for techniques that mitigate losses of species, age, spatial, and structural diversity.<sup>33</sup>

## 2. *Ecological Damage from Development*

Development, the second half of the liquidation harvesting process, exacerbates the ecological damage already done by liquidation harvesting. Nutrient runoff from construction and existing development harms water quality and aquatic life in streams and rivers, often joining already-present runoff from logging in surrounding and upstream areas.<sup>34</sup> Loss of biodiversity and habitat become more dramatic and less remediable thanks to road construction and greater human presence,<sup>35</sup> a threat not only to deer and Maine's beloved loons,<sup>36</sup> but particularly to species in a more precarious position for survival, including lynx and threatened eastern gray wolves.<sup>37</sup> It is the combined environmental effects of harvesting and development, especially when they occur in too short a time to allow any significant ecosystem recovery, that make liquidation harvesting such a devastating threat, even if it is only done on a relatively small scale.

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<sup>32</sup> MALCOLM L. HUNTER, JR., WILDLIFE, FORESTS, AND FORESTRY: PRINCIPLES OF MANAGING FORESTS FOR BIOLOGICAL DIVERSITY 83–94 (1990).

<sup>33</sup> *Id.* at 201–02.

<sup>34</sup> Austin, *supra* note 22. Maine's Department of Inland Fisheries and Wildlife feared that nutrient runoff from a liquidation harvest-originated development by Herb Haynes would adversely affect fish populations in a nearby lake renowned by anglers in even faraway places. See also MITCH LANSKY, WITHIN THE BEAUTY STRIP: FOREST MANAGEMENT AS IF SALMON MATTERED 26–27 (2004) (warning that development of Maine's forests represents yet another threat to Maine's endangered Atlantic salmon) (on file with the Harvard Environmental Law Review).

<sup>35</sup> BRIAN R. PAYNE ET AL., THE SECOND HOME RECREATION MARKET IN THE NORTHEAST 12–13 (1979).

<sup>36</sup> Joe Rankin, *Officials to Start Work on Forestry Rules*, KENNEBEC J. (Me.), June 6, 2003, at 1.

<sup>37</sup> Jym St. Pierre & David Vail, *Sustaining the Many Values of Maine's Forests*, TIMES RECORD (Me.), Aug. 31, 2001, at 21, available at <http://academic.bowdoin.edu/faculty/D/vvail/op-ed/2001-august-sustaining-forests.shtml>; COALITION TO RESTORE THE EASTERN WOLF (CREW), THE CASE FOR RESTORING THE EASTERN WOLF 2 (2001) (on file with the Harvard Environmental Law Review).

## B. Economic Effects

### 1. Loss of Forest Products Industry Jobs

The negative economic consequences of liquidation harvesting have understandably received a great deal of attention in Maine, particularly as they relate to the continuing decline of the state's forest products industry. When forest products companies sell their lands to liquidation harvesters, they have less acreage to harvest, and consequently less wood to process. As a result, the forest products industry cuts jobs, which are among the highest paying industrial jobs in Maine.<sup>38</sup> As if he needed any additional reminder of this problem, Governor Baldacci was greeted on the eve of his inauguration with the dramatic announcement that Great Northern Paper (a subsidiary of Bowater, Inc., the company that sold its land near Baxter State Park to liquidation harvesters) was declaring bankruptcy and shutting down its two mills in the Millinocket area after 105 years of operation there.<sup>39</sup> The shutdowns not only cost 1100 mill-workers their jobs, but also threatened those of an estimated 7000 support workers, not to mention closures of area schools.<sup>40</sup> While Governor Baldacci was able to broker a deal to preserve a few hundred mill jobs,<sup>41</sup> as he later did again after the near-closure of the Georgia-Pacific mill in Old Town,<sup>42</sup> significant damage was still done to the local economy.

### 2. Economic Harm from Short-Term Silvicultural Practices

Beyond the threat posed by the loss of high-paying jobs, the sustainable forestry practices that characterize permanent working forests make basic economic sense as a choice over the clear-cutting and development that constitute liquidation harvesting, and not only for the sake of the forest products industry. Whereas a working forest provides lower annual income per acre of timberland than liquidation harvesting, which makes it appear as if it is an income-depleting venture, liquidation harvesting is

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<sup>38</sup> See *supra*, notes 7–8 and accompanying text. See also Colgan, *supra* note 9, at 8 (noting “the shift of many of the service jobs out of the large integrated forest products company and into more competitive industries”).

<sup>39</sup> Edward D. Murphy, *Great Northern Bankruptcy Provides Wake-Up Call*, ME. SUN. TELEGRAM, Jan. 19, 2003, at 1A. For an account of Great Northern's history in Millinocket, see Betty Duff, *Twentieth Century Company Towns: The Model Towns of Millinocket, Maine and Lynch, Kentucky*, KHRONIKOS I (2000), at <http://www.library.umaine.edu/khronikos/html/archives.htm> (last visited Nov. 4, 2004) (on file with the Harvard Environmental Law Review).

<sup>40</sup> Editorial, *No White Knight*, BANGOR DAILY NEWS (Me.), Jan. 18, 2003, at A8; Mary Anne Lagasse, *GNP-Area Schools Face Uncertain Future*, BANGOR DAILY NEWS (Me.), Jan. 31, 2003, at B3.

<sup>41</sup> Editorial, *Déjà Vu All Over Again*, BANGOR DAILY NEWS (Me.), Jan. 24, 2004, at A10.

<sup>42</sup> Editorial, *Reprieve on the Penobscot*, BANGOR DAILY NEWS (Me.), May 3, 2003, at A10.

actually more harmful in the long term because the land's natural capital (timber) is depleted, and not merely the income from it.<sup>43</sup> Capital depletion is incompatible with the economic prosperity of future generations, leading economists to seek out a rate of capital savings that achieves an efficient compromise between the financial interests of current and future generations.<sup>44</sup> By removing land from industrial forestry use altogether, liquidation harvesting is at odds with such a balance.<sup>45</sup> However, what makes liquidation harvesting even more economically harmful is that, instead of yielding long-term economic benefits to entire communities, such as Great Northern Paper-dependent Millinocket, its short-term capital-depleting profits are conferred almost entirely on the clear-cutting landowners and developers themselves.<sup>46</sup>

### 3. *Effects of a Changed Economic Base*

Harvesting and development can, of course, provide some economic benefit beyond the double profit turned by the liquidation harvesters themselves: development creates construction jobs that accrue benefits to local businesses and may also lead to infrastructure and support jobs associated with new communities.<sup>47</sup> But permanent service and support jobs (as opposed to transient construction jobs) are often seasonal in nature,<sup>48</sup> and unlikely to be as well-paying as those associated with the forest products industry.<sup>49</sup> Such seasonal service work is also less likely to provide benefits,

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<sup>43</sup> LANSKY, *supra* note 27, at 93.

<sup>44</sup> LLOYD C. IRLAND, *WILDERNESS ECONOMICS AND POLICY* 50–51 (1979).

<sup>45</sup> See Misty Edgcomb, *Forestry Expert Argues Industry Must Rethink Harvesting Practices*, BANGOR DAILY NEWS (Me.), Nov. 25, 2002, at A1.

<sup>46</sup> See LANSKY, *supra* note 27, at 93.

<sup>47</sup> See, e.g., Plum Creek Land Co., A Concept Plan for First Roach Pond I-7 (Jan. 24, 2002) (subdivision plan approved by Maine Land Use Regulation Commission claims that the public will benefit from the subdivision through “additional employment opportunities” attributable to “[t]he construction and sale of seasonal homes . . . and the continuing services needed by the owners of these homes”), at <http://www.maine.gov/doc/lurc/reference/resourceplans/prp009.html> (last visited Nov. 5, 2004) (on file with the Harvard Environmental Law Review). See also Colgan, *supra* note 9, at 7–8:

Of the industries that depend on Maine's natural resources, only two showed consistent growth: tourism and services related to agriculture, fisheries, and forestry. Employment growth in the Leisure and Hospitality industries over 1990–2002 was 19%, or about 9200 jobs. The service industries related [sic] agriculture, fisheries, and forestry also showed growth of about 1800 jobs, or more than 40%. This growth was driven in part by the shift of many of the service jobs out of the large integrated forest products company and into more competitive industries.

<sup>48</sup> See, e.g., Plum Creek Land Co., *supra* note 47, at I-11.

<sup>49</sup> For example, statewide occupational wage estimates for 2003 listed median wages for the following occupations: fallers (\$10.89); logging equipment operators (\$12.86); log graders and scalers (\$13.28); wood sawing machine setters, operators, and tenders (\$11.05); woodworking machine setters, operators, and tenders, except sawing (\$10.27); all other woodworkers (\$9.48); building and grounds cleaning and maintenance occupations (\$9.48);

such as health insurance, and may be subjectively less appealing than forest products industry employment.<sup>50</sup> Residential development concededly generates increased property tax revenues which generally outweigh the costs associated with new communities; such benefits, however, are often not distributed equally over a region, but rather are skewed to the advantage of certain communities while others are burdened by increased costs and service needs.<sup>51</sup> The result could be that rising taxes and land prices drive out forest products-related jobs and that no benefits from development would be able to replace them.<sup>52</sup> While liquidation harvesting is certainly lucrative, it also represents a sacrifice of long-term profitability of the land for short-term gain from seasonal recreation homes, an industry that typically creates a less stable community economic base than a working forest.<sup>53</sup> It is theoretically possible that second home-based communities will attract permanent residents and, eventually, new industries besides services; but this seems too tenuous a justification for preferring vacation homes to forest products as an economic foundation.

### C. Recreation Effects

#### 1. The Conflict Between Private Residential Ownership and Recreation

Job losses in the forest products industry are part of a larger decline in manufacturing in Maine. Hence, although they serve as something of a canary in a mineshaft, especially given the emblematic nature of the state's forest products industry, they nevertheless directly affect only a relatively small portion of its residents. What seems to worry many Maine residents the most about liquidation harvesting is that it will prevent them from using timberlands for traditional recreational purposes, which is not surprising given that an estimated 90% of the state's residents participate in outdoor recreation.<sup>54</sup> Land sales in the late 1990s "startled . . . Mainers, who had come to take for granted the right to hike, ski, boat, and snow-

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food preparation and serving-related occupations (\$7.88); personal care and service operations (\$8.76); sales and related occupations (\$9.84). ME. DEPT. OF LABOR, 2003 OCCUPATIONAL EMPLOYMENT & WAGE ESTIMATES FOR MAINE 9-31 (2004), available at <http://www.state.me.us/labor/lmis/pdf/OES2003Pub.pdf>.

<sup>50</sup> See, e.g., Josie Huang, *Meet the Uninsured*, ME. SUN. TELEGRAM, Nov. 7, 2004, at A1 ("The demise of hundreds of manufacturing jobs, which traditionally come with good benefits, also has forced Mainers into low-wage service sector jobs that typically do not offer health insurance."); Eugene J. Conlogue, Letter, *Fools and Their Money*, BANGOR DAILY NEWS (Me.), July 21, 2001, at A10 (characterizing seasonal tourism industry-based service jobs as "trinket-selling").

<sup>51</sup> LLOYD C. IRLAND, *THE NORTHEAST'S CHANGING FOREST* 167-68 (1999).

<sup>52</sup> See PAYNE ET AL., *supra* note 35, at 17-19.

<sup>53</sup> *Id.* at 16.

<sup>54</sup> Roberta Scruggs, *Outdoors: A Priceless State Asset*, ME. SUN. TELEGRAM, Jan. 9, 2000, at 1D.

mobile on paper company lands.”<sup>55</sup> The politically influential Sportsman’s Alliance of Maine (“SAM”)<sup>56</sup> has noted the many ways that development can hinder recreation: subdivisions and other private property along lake shores often make it impossible for non-owners to launch boats, even though the lakes themselves are state property; since the late 1980s, many residential property owners have begun “posting” their land to prohibit uses they find objectionable, such as hunting, fishing, all-terrain vehicles (“ATVs”), and snowmobiles; and some landowners, valuing their privacy, prohibit trespassing of any kind, meaning that even the least invasive and objectionable forms of recreation are impossible.<sup>57</sup> Moreover, even if new landowners do continue to allow recreational access, the added pressure on the natural resources that development creates may render that access meaningless.<sup>58</sup>

## 2. Financial Effects of Recreation Impairment

Recreation in Maine’s privately owned timberland also represents a significant, and sustainable, revenue source: one study estimated that, in 1999, forest-based recreation in Maine (skiing, snowmobiling, camping, hunting, and wildlife- and foliage-viewing) generated an estimated \$900 million in revenue.<sup>59</sup> Other studies found that inland fishing alone contributes an estimated \$300–494 million annually to Maine’s economy, and that 4452 state residents had full-time jobs catering solely to anglers, hunters, and wildlife watchers.<sup>60</sup>

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<sup>55</sup> Meredith Goad, *A Forest Preserved*, PORTLAND PRESS HERALD (Me.), Feb. 17, 2003, at 1A.

<sup>56</sup> SAM is “one of the most influential lobbying groups” in Maine, especially on environmental issues. Susan M. Cover, *Sportsman’s Alliance Plays Active Role at the Statehouse*, KENNEBEC J. (Me.) Apr. 5, 2004, at A4.

<sup>57</sup> ROBERTA SCRUGGS, SAM, LANDOWNER RELATIONS: A PRACTICAL GUIDE TO PRESERVING PUBLIC ACCESS TO PRIVATE LAND 4–5, 10, 22 (2002). The report notes that, whereas the state’s Department of Inland Fisheries and Wildlife’s warden service had averaged only 22 trespassing prosecutions per year in the mid-1990s, it issued 338 summonses for the charge in 2001.

<sup>58</sup> IRLAND, *supra* note 51, at 173, notes that, for example, “[t]he occupants of new camps on a remote pond can fish it out in a few weekends when it formerly was a treasured retreat for users who had to hike in before the shoreline was sold and subdivided.”

<sup>59</sup> NORTH EAST STATE FORESTERS ASS’N, THE ECONOMIC IMPORTANCE OF MAINE’S FORESTS 7 (2001), available at [http://www.maine-forest.com/pdf\\_files/NEFA.pdf](http://www.maine-forest.com/pdf_files/NEFA.pdf).

<sup>60</sup> Natural Resources Council of Maine, *Why Protect the Best Parts of Maine’s North Woods from Development?*, at <http://www.nrcm.org/nwoods/why.html> (last visited Nov. 24, 2004) (on file with the Harvard Environmental Law Review), citing KEVIN J. BOYLE, ET AL., A STUDY OF THE IMPACT OF GAME AND NONGAME SPECIES ON MAINE’S ECONOMY (U. of Me. Dept. of Agriculture and Resource Economics, Staff Paper ARE 423, 1990); Robert K. Roper, et al., *The Economic Impact of Fishing, Hunting, and Wildlife Observation on Maine’s Economy*, 37(3) ME. BUS. INDICATORS 1 (1992). See also Scruggs, *supra* note 54 (stating that a study showed that “just fishing, hunting and wildlife-related recreation add[ed] more than \$1 billion and 17,680 jobs to the state economy” in 1998).

### 3. Cultural Effects of Recreation Impairment

It should be noted that liquidation harvesting has adverse impacts on recreation even before development begins: while clear-cutting timberland theoretically provides greater access to land and prey, it nevertheless makes for less desirable hunting grounds, and also ruins the aesthetic beauty that hikers and even ATV riders seek out.<sup>61</sup> Moreover, what makes liquidation harvesting's restrictions on recreation so striking to Maine residents is the fact that for generations the forest products companies have been such gracious hosts. Even the industry's harshest critics concede that it does have the virtue of allowing Maine residents to hike, hunt, fish, and ride snowmobiles and ATVs on its lands, and to use its logging roads (if sometimes for a fee) to gain access to remote and unspoiled wilderness.<sup>62</sup> Some forest products companies have even placed conservation easements on portions of their lands, ensuring that recreational uses would not be affected even by timber harvesting.<sup>63</sup> Given this history, liquidation harvesting's restrictions on recreation represent more than an inconvenience to many Maine residents; rather, they presage the end of a way of life, as the Maine legislature realized when it noted that liquidation harvesting threatened Maine's "recreational, cultural and historical values."<sup>64</sup>

## IV. POTENTIAL SOLUTIONS TO LIQUIDATION HARVESTING IN MAINE

Facing ecological, economic, and recreational impacts from liquidation harvesting, Maine must adopt a strategy to address the problem that takes all of these factors into consideration. For example, while turning Maine's northern woods into a preserve would certainly address ecological damage, it might be just as bad for the economy and outdoor enthusiasts as the present situation. Among the strategies currently available, the most attractive are (1) the Maine Forest Service's Liquidation Harvesting Rule; (2) the tax-based approach to controlling liquidation harvesting employed by Vermont; (3) the use of conservation easements; and (4) the creation of a national park.

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<sup>61</sup> LANSKY, *supra* note 2, at 306.

<sup>62</sup> See, e.g., St. Pierre & Vail, *supra* note 37. LANSKY, *supra* note 2, at 12–13, 306, 405, notes that logging roads (which were built after the state banned riverdriving) can also have negative environmental consequences, in that they increase litter, trampling by hikers and hunters, and noise pollution, but, to a certain extent, these are necessary byproducts of wilderness recreation anywhere. The onus for preventing such harm may be better placed on the recreators themselves than the landowners.

<sup>63</sup> Phyllis Austin, *Rafters Seek Role in Revision of Penobscot Plan*, ME. TIMES, May 3, 2001, at 9 (stating that Great Northern Paper placed an easement on sixty-seven miles of river frontage on the Penobscot river which expired on July 8, 2001).

<sup>64</sup> ME. REV. STAT. ANN. tit. 12, § 8866 (West. 2003).

*A. Alternative 1: Maine's Liquidation Harvesting Rule**1. The Rulemaking Process*

In June 2003, Maine's legislature directed the Commissioner of the Department of Conservation to "adopt rules to substantially eliminate liquidation harvesting."<sup>65</sup> That fall, the Maine Forest Service convened a broad-based group of stakeholders—principally foresters and timberland owners, but also state officials, representatives from environmental organizations and recreational groups, and other members of the public—to attempt, in light of the most recent field study indicating that 4.4% of the surveyed lands had probably been subjected to liquidation harvesting in 2001 and 2002, to identify a package of incentives and disincentives that would meet the legislature's directive.<sup>66</sup> Although there was little consensus among such a diverse group, its members were able to agree that "unsustainable practices will persist if they remain profitable."<sup>67</sup> Hence, while incentives that encourage landowners to invest in their property for the long term and manage it with sustainability in mind are acceptable, disincentives, in the form of financial penalties that reduce the profits available from liquidation harvesting, would appear to be much more effective.<sup>68</sup>

*2. The Rule's Mechanisms: Fining Liquidation Harvesters or Requiring Certification of Forestry Practices*

In August 2004, the Maine Forest Service issued a final rule (previously adopted as a public comment draft in February 2004, revised, and scheduled to take effect in January 2005) addressing liquidation harvesting, whose most substantial element was a hefty financial disincentive: fines of \$1,000 per day for any purchase of timberland followed by removal of more than 50% of merchantable-sized timber (trees more than 4.5" thick) and re-sale (or attempted re-sale) of the property within five years.<sup>69</sup> Each

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<sup>65</sup> *Id.* § 8869, sub-§ 14.

<sup>66</sup> See Gorham Public Meeting Transcript at 8 (remarks of Donald Mansius, Director of Forest Policy and Management, Me. Forest Serv.). See also Me. Forest Serv., List of Participants in Complementary Solutions Stakeholders Group, at [http://www.state.me.us/doc/mfs/fpm/liq/docs/comp\\_sol/Complementary%20Solutions%20Report%20Appendix/cs\\_stake\\_members.pdf](http://www.state.me.us/doc/mfs/fpm/liq/docs/comp_sol/Complementary%20Solutions%20Report%20Appendix/cs_stake_members.pdf) (last visited Nov. 4, 2004) (on file with the Harvard Environmental Law Review). The stakeholder groups were charged both with identifying rulemaking measures that required attention to long-term forest management principles in harvesting (including professional involvement in planning and implementation and exemptions for small landowners) and with reporting on complementary solutions to liquidation harvesting (primarily incentives not to engage in it).

<sup>67</sup> ME. FOREST SERV., COMPLEMENTARY SOLUTIONS TO LIQUIDATION HARVESTING: A REPORT TO THE 121ST ME. LEGISLATURE, 2ND REGULAR SESSION 3 (2004) [hereinafter COMPLEMENTARY SOLUTIONS REPORT] (on file with the Harvard Environmental Law Review).

<sup>68</sup> *Id.* at 13.

<sup>69</sup> See Timber Harvesting Standards to Substantially Eliminate Liquidation Harvesting, 2004 Me. Regs. 7808, 04-058-23, secs. 3, 6, 9 (Me. Forest Serv., Aug. 5, 2004) [hereinafter

day will be treated as a separate violation, and the Maine Forest Service clarified at a public meeting that the \$1,000 per day figure would probably be modified to set the level of the fine high enough “to . . . take away the financial incentive to undertake” liquidation harvesting.<sup>70</sup>

While the rule’s most obvious control mechanism is the fine structure, it also contains a major alternative for compliance with the prohibition on liquidation harvesting, doubtless as a result of “attempting to appease everyone.”<sup>71</sup> If a licensed forester prepares a harvest plan before the harvest itself that includes a description of the pre-harvest tree stand, and a “silvicultural rationale” for the planned harvest that includes a justification on the basis of sustainability and descriptions of how wildlife and biodiversity will be preserved, the 50% limit is not applicable.<sup>72</sup> This option is in keeping with the legislature’s directive to the Maine Forest Service to “increase[ ] professional involvement in timber harvests.”<sup>73</sup>

The Maine Liquidation Harvesting Rule also seeks to limit liquidation harvesting through economic incentives. Although no firm approaches have been adopted, the incentives under consideration include loan guarantees for sustainable forestry investment, property tax rebates for sustainable forestry practices, and reduced taxes on capital gains on long-term timberland investment.<sup>74</sup> The purpose of these programs would be to encourage landowners to regard their timberlands as a long-term investment, rather than a commodity from which to realize the greatest possible profit.<sup>75</sup> The capital gains tax reduction is particularly good evidence of this: after ten years of ownership of a plot of land, the potential capital gains tax rate would begin to decrease, eventually reaching zero after twenty years of ownership.<sup>76</sup>

### 3. Policy Analysis of the Maine Liquidation Harvesting Rule

The Maine Liquidation Harvesting Rule appears to address all three problems associated with liquidation harvesting: (1) ecological harm will be somewhat mitigated by discouraging clear-cutting and development in favor of more sustainable forestry practices; (2) land will retain economic value as working timberland; and (3) preservation of industrial,

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Maine Liquidation Harvesting Rule]; ME. REV. STAT. ANN. tit. 12 § 9701 (West 2003).

<sup>70</sup> Gorham Public Meeting Transcript at 20 (remarks of Giffen, *supra* note 25) (also stating that the Forest Service would “determine how much financial gain was realized as a result of timber and the sale of the land [and set the fine so as to] remove[ ] that financial gain”).

<sup>71</sup> Editorial, *Treed by Consensus*, BANGOR DAILY NEWS (Me.), Mar. 29, 2004, at A6.

<sup>72</sup> Maine Liquidation Harvesting Rule, *supra* note 69, at sec. 6.C.1.f.

<sup>73</sup> An Act to Promote Stewardship of Forest Resources, L.D. 1616, 121st Leg., 1st Sess. (2003), Part B (on file with the Harvard Environmental Law Review).

<sup>74</sup> Memorandum, Me. Forest Serv., Key Solutions Proposed in MFS Report dated January 28, 2004 (on file with the Harvard Environmental Law Review).

<sup>75</sup> Gorham Public Meeting Transcript at 9 (remarks of Mansius, *supra* note 66).

<sup>76</sup> Me. Forest Serv., *supra* note 74.

rather than residential, ownership will be likely to ensure continued access for traditional recreational activities. The major problem with the Maine Liquidation Harvesting Rule is that numerous exemptions may weaken its overall effectiveness. For example, while any landowner seeking to achieve compliance through the harvest plan option would face the considerable expense of hiring a licensed forester, at least one logger has noted that the option effectively creates a loophole.<sup>77</sup> Conservationists, moreover, have challenged the option for its vagueness, arguing that if its rationale is that the harvest plan will take timber regeneration into consideration, “it is critical that there be some limits on when a stand can be regenerated,” rather than leaving so much to the landowner’s discretion.<sup>78</sup>

Similar loopholes in the Maine Liquidation Harvesting Rule’s list of exemptions undermine the deterrent power of the fine system. The rule does not apply “[w]here the timber harvesting is on land that has received independent [third]-party certification,” or to lands “[w]here the area affected by a harvest occupies 1000 acres or less, and the harvest is conducted by a Certified Master Logger.”<sup>79</sup> The third-party certification exemption has raised concern among environmentalists because it would appear to allow landowners to obtain certification, then liquidate the timber and sell the land before the next required field audit. This potential violation of the legislature’s five-year waiting period would be exempt from any penalties.<sup>80</sup> In addition, questions have been raised about the credibility of third-party certification overall, with a recent report finding serious flaws in certifications being carried out in the name of the Forest Stewardship Council (“FSC”).<sup>81</sup> In Maine, a report indicated that J. D.

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<sup>77</sup> Gorham Public Meeting Transcript at 22 (remarks of Wendell Scribner, professional logger and landowner) (“If I cut more than [50 percent of the timber on my land and attempt to re-sell it within five years], I’m in violation . . . . If I hire a forester, I can still cut . . . 60 percent.”).

<sup>78</sup> Me. Forest Serv., *Public Meeting on Proposed Liquidation Harvesting Rule, Farmington, Me.* (Mar. 23, 2004) (testimony of Cathy Johnson, North Woods Project Director, Natural Resources Council of Maine), at [http://www.maineenvironment.org/nwoods/liqharv\\_comments2004.htm](http://www.maineenvironment.org/nwoods/liqharv_comments2004.htm) (last visited Nov. 3, 2004) (on file with the Harvard Environmental Law Review).

<sup>79</sup> Maine Liquidation Harvesting Rule, *supra* note 69, at secs. 5.B., D. Third-party certification refers to certification of timberland by an independent body such as the Forest Stewardship Council (“FSC”), which issues certification for compliance with its basic principles, including environmental impact, community relations, and adherence to a sustainable management plan. See generally FSC, *FSC Principles and Criteria* (2000), at [http://www.fsc.org/keepout/content\\_areas/77/71/files/FSC\\_STD\\_01\\_001\\_FSC\\_Principles\\_and\\_Criteria\\_for\\_Forest\\_Stewardship\\_2004\\_04.PDF](http://www.fsc.org/keepout/content_areas/77/71/files/FSC_STD_01_001_FSC_Principles_and_Criteria_for_Forest_Stewardship_2004_04.PDF) (last visited Nov. 10, 2004) (on file with the Harvard Environmental Law Review). A Certified Master Logger has certification for his or her practices on the basis of field visits and a final decision from an independent board. See Maine Master Logger Certification Program, Third Party Certification Process, at [http://www.masterloggercertification.com/index\\_files/vision.htm](http://www.masterloggercertification.com/index_files/vision.htm) (last visited Nov. 27, 2004) (on file with the Harvard Environmental Law Review).

<sup>80</sup> Testimony of Johnson, *supra* note 78.

<sup>81</sup> SIMON COUNSELL & KIM TERJE LORAAS, THE RAINFOREST FOUND., *TRADING IN CREDIBILITY: THE MYTH AND REALITY OF THE FOREST STEWARDSHIP COUNCIL 5–7* (2002).

Irving, Ltd.'s certification (according to FSC principles) by Scientific Certification Systems ignored problems of sustainability, and was based more on wishful thinking than concrete evidence of compliance.<sup>82</sup>

Yet another concern is administrability: budget cuts have recently eliminated ten Maine Forest Service ranger positions; the director acknowledges that those currently employed are at best only able to inspect 60% of the timber harvests in their area, and that it will cost approximately \$70,000 to \$80,000 annually to enforce the new rule.<sup>83</sup> Parallels may be drawn to Maine's Land Use Regulation Commission ("LURC"), the state board responsible for land use planning decisions and enforcement of regulations in northern Maine's unorganized territories (which make up about half of the state's landmass, despite having a population of only about 12,000).<sup>84</sup> Staff and budget cuts in 2003 hampered LURC's capabilities, and enforcement actions have increasingly been eschewed in favor of settlements.<sup>85</sup> It is far from clear that the Maine Forest Service will be capable of enforcing the new rule on a broad scale, although presumably the relatively low risk for a would-be liquidation harvester of getting caught could be counter-balanced by the scale of the fine.

The Maine Liquidation Harvesting Rule's other exemptions have not created as much concern. Parcels containing fewer than twenty acres of forestland are exempt, as are those belonging to landowners who own less than 100 acres of land state-wide.<sup>86</sup> This is because the rule is "targeted to deal with . . . individuals for whom [liquidation harvesting] is a business model," who tend to work with more acreage.<sup>87</sup> Another exception to the rule is the possibility of a variance in cases where economic hardship makes a quick sale necessary.<sup>88</sup>

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<sup>82</sup> Mitch Lansky, *Grade Inflation? SCS Certification of Irving's Allagash Timberlands* (May 2002), at <http://www.meepi.org/files02/irving.htm> (last visited Oct. 31, 2004) (on file with the Harvard Environmental Law Review). Similar certification problems may also have been found on J. D. Irving, Ltd. lands in New Brunswick. Mitch Lansky, *If Certification Is the Answer, What Was the Question? A Close Look at J. D. Irving and the Certification of the Forest Industry*, Nov. 25, 1999, at <http://biodiversityeconomics.org/business/topics-57-00.htm>. (last visited Nov. 4, 2004) (on file with the Harvard Environmental Law Review).

<sup>83</sup> Phyllis Austin, *Committee Working on New Regulations to Eliminate Liquidation Harvesting*, ME. ENVTL. NEWS, Oct. 30, 2003, at <http://www.meepi.org/files03/pa103003.htm> (last visited on Oct. 7, 2004) (on file with the Harvard Environmental Law Review).

<sup>84</sup> See Phyllis Austin, *Maine's Land Use Regulation Commission: Past, Present, and Future*, ME. ENVTL. NEWS, Apr. 23, 2004, at <http://www.meepi.org/files04/pa042004.htm> (last visited Oct. 31, 2004) (on file with the Harvard Environmental Law Review).

<sup>85</sup> See Misty Edgecomb, *Review of LURC Urged by Lobby*, BANGOR DAILY NEWS (Me.), June 18, 2003, at B1. See also Press Release, Maine Public Employees for Environmental Responsibility, Latest LURC Settlement Is "Last Hurrah" for Enforcement: Budget and Staffing Cuts Preclude Corporate Cases in Future (May 21, 2003) (decrying "plummeting LURC enforcement"), at <http://www.peer.org/press/345.html> (last visited Nov. 5, 2004) (on file with the Harvard Environmental Law Review).

<sup>86</sup> Maine Liquidation Harvesting Rule, *supra* note 69, at secs. 5.E. and G.

<sup>87</sup> Gorham Meeting Transcript at 23 (remarks of Giffen, *supra* note 25).

<sup>88</sup> Maine Liquidation Harvesting Rule, *supra* note 69, at sec. 6.D. Some foresters expressed concern over the fact that an individual could only apply for one variance every four

The Maine Liquidation Harvesting Rule's potential economic incentives may also be ineffective. For example, tax incentives may be attractive to small landowners, who statistically tend to be middle-aged or older and to see their timberland as an asset to be passed on, but "no evidence has ever been offered that reducing such a landowner's tax problems would induce others to start practicing [sustainable] forestry."<sup>89</sup> In fact, similar tax incentives have already had difficulty in producing the desired results in Maine. Liquidation harvesters can exploit a loophole in the state's Tree Growth Tax Program, which provides incentives designed to keep timberland in commercial use: landowners have a year from the date of purchase of the property within which to file a forest management plan to qualify for the tax breaks, which a former director of the Maine Forest Service says is more than enough time to clear-cut and build.<sup>90</sup> Further, with the Maine Forest Service already admitting the financial difficulties of enforcing the Maine Liquidation Harvesting Rule, there is uncertainty over the provenance of funds for a loan program.<sup>91</sup>

All told, the Maine Liquidation Harvesting Rule's provisions have met with a great deal of opposition in principle from professional foresters, developers, forest products companies, and private property advocates, who argue that a 4.4% failure rate in the prevention of liquidation harvesting is really a 95.6% success rate.<sup>92</sup> The landowners' chief concerns are restrictions on their autonomy and on the profitability and alienability of their property.<sup>93</sup> Some foresters fear that the rules may lead to worse silvicultural practices by encouraging "high-grading," the practice of removing the best timber and leaving only less marketable trees standing.<sup>94</sup> This would force landowners to harvest even more trees than they would otherwise have done, because, with no sale possible for five years, this would be the only way to get revenue out of the land. Additionally, wily liquidation harvesters simply may hold on to land a little longer after clear-cutting before resale for development.<sup>95</sup> Foresters also are concerned that their professional way of life is disappearing and that additional rules and regulations will only hasten its disappearance. One twenty-seven-year-old

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years. See Gorham Public Meeting Transcript at 18, 25–26 (remarks of Cliff Foster, consulting forester; remarks of Scribner, *supra* note 77).

<sup>89</sup> IRLAND, *supra* note 51, at 156.

<sup>90</sup> Interview by Susan Chisolm with Ken Stratton (Maine Public Radio Broadcast, Feb. 18, 2002), available at <http://www.mainepublicradio.org/asx/020218harvesting.asx>.

<sup>91</sup> See Gorham Public Meeting Transcript at 16 (testimony of Giffen, *supra* note 25).

<sup>92</sup> See *id.* at 44, 48 (testimony of Lloyd Polard, land developer and logger; testimony of Gary Bahlkow, agent, LandVest).

<sup>93</sup> See *id.* at 30, 41, 78 (testimony of Jack Wadsworth, professional forester; testimony of Foster, *supra* note 88; testimony of Charlene Krug, executive director, Me. Landowners Alliance). See also *id.* at 50 (testimony of Bahlkow, *supra* note 92).

<sup>94</sup> The Maine Liquidation Harvesting Rule, *supra* note 69, at sec. 6.A., does expressly prohibit high-grading, but that is a more subjective criterion than the 50% limit.

<sup>95</sup> See *id.* at 31–32 (testimony of Fred Hutcliffe, professional forester). See also *id.* at 42, 50 (testimony of Foster, *supra* note 88; testimony of Bahlkow, *supra* note 92).

apprentice forester remarked that he did not know many other foresters his age.<sup>96</sup> The forest products companies fear that the end result will be higher land prices and further damage to an already struggling industry.<sup>97</sup> To some extent, these concerns are justified, although there is no disagreement among the parties that the Maine Liquidation Harvesting Rule will cause less harm than would allowing liquidation harvest practices to spread farther across the state. Those foresters and others who participated more heavily in the rulemaking process, moreover, appear to recognize that the Forestry Service is operating under a legislative command to address liquidation harvesting's ecological, economic, and recreational harm, and that compromise is necessary.<sup>98</sup> The Maine Liquidation Harvesting Rule will theoretically address the three threats posed by liquidation harvesting, but may have been so weakened by compromise that it will be unable to curb the practice as effectively as stricter regulation could.

### B. Alternative 2: A Timber Gains Tax

#### 1. The Model: Vermont's Land Gains Tax

Despite the stakeholder group's recommendations, the Maine Forest Service has decided not to employ a significant financial disincentive in its rule, one that has been successfully used in Vermont since 1995 to combat liquidation harvesting: an increased state capital gains tax on timberland with a rate that gradually declines on the basis of years of land ownership.<sup>99</sup> The "timber gains penalty" would operate as follows: a penalty is imposed on landowners who buy land, harvest virtually all its marketable timber, and then re-sell the land within ten years; the more timber is cut and the faster the land is sold, the higher the tax.<sup>100</sup> While the exact tax rates are variable, since 1973 Vermont has taxed gains at rates from 80% (for gains over 200% on land held less than four months) to 5% (for gains of less than 100% on land held for between five and six years).<sup>101</sup>

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<sup>96</sup> See *id.* at 64 (testimony of Chris Bickford, apprentice forester). See also *id.* at 43 (testimony of Polard, *supra* note 92).

<sup>97</sup> See *id.* at 54–55, 65–69 (testimony of Carl Jordan, forest products industry employee; testimony of Tony Lyons, Director of Fiber Supply, MeadWestvaco mill, Rumford, Me.; testimony of Patrick Strout, Executive Director, Me. Forest Products Council).

<sup>98</sup> See *id.* at 59, 85–86 (testimony of Everett Towle, professional forester; testimony of Andy Irish, professional logger).

<sup>99</sup> Austin, *supra* note 83, states that most members of the stakeholder group supported the tax proposal as of October 2003. But the COMPLEMENTARY SOLUTIONS REPORT, *supra* note 67, at 10, issued in late January 2004, states that the Forestry Service "believes that a capital gains tax penalty as discussed by the Group is not justified at present."

<sup>100</sup> Natural Resources Council of Maine, *Liquidation Harvesting in Maine Forests*, available at [http://www.maineenvironment.org/legislature/liquidation\\_harvesting\\_factsheet.htm](http://www.maineenvironment.org/legislature/liquidation_harvesting_factsheet.htm) (last visited Nov. 10, 2004).

<sup>101</sup> Tax on Gains from the Sale or Exchange of Land, VT. STAT. ANN. tit. 32, § 10003 (2003). The exact breakdown of taxation rates is as follows:

Taxable gains are normally measured as the amount realized from the sale of the land minus the basis of the land itself.<sup>102</sup> In 1995, however, the law was amended so as to include gains from the sale of timber on parcels of more than 300 acres; such timber gains are added to the gains realized from the sale of the land itself for purposes of computing the tax rate.<sup>103</sup> Since 1997, Vermont has employed the land gains tax in combination with a prohibition on liquidation harvesting similar to that in the Maine Liquidation Harvesting Rule, and has reportedly thereby eliminated liquidation harvesting entirely.<sup>104</sup>

## 2. A Timber Gains Tax in Maine

Prior to enacting the bill directing the Maine Forest Service to generate a rule to substantially eliminate liquidation harvesting, Maine's legislature had considered (and subsequently killed) a bill modeled on Vermont's tax, but with a ten-year maximum holding period, rather than only six, applicability to any parcel greater than 100 acres (rather than 300), and rates ranging from 80% (for gains over 200% on land held less than one year) to 10% (for gains of less than 100% on lands held for between seven and ten years).<sup>105</sup> The bill was thus stricter than Vermont's, and undoubtedly what the stakeholder group had in mind when it recommended a timber gains tax. Nevertheless, the Maine Forest Service, in its Com-

Years land held by transferor	Gains, as a percentage of basis		
	200%+	100-200%	>100%
> 4 mos.	80%	70%	60%
4-8 mos.	70%	52.5%	35%
8 mos.-1 yr.	60%	45%	30%
1-2 yrs.	50%	37.5%	25%
2-3 yrs.	40%	30%	20%
3-4 yrs.	30%	22.5%	15%
4-5 yrs.	20%	15%	10%
5-6 yrs.	10%	7.5%	5%

<sup>102</sup> *Id.* § 10005.

<sup>103</sup> *Id.* § 10006.

<sup>104</sup> Meredith Goad, *Legislative Spotlight: The Environment*, ME. SUN. TELEGRAM, Feb. 2, 2003, at 6B.

<sup>105</sup> Act to Establish a Penalty on Gains from the Sale or Exchange of Land from Which Timber Has Been Harvested, L.D. 920, 121st Leg., 1st Sess. (Me. 2003) (placed in Legislative Files) (on file with the Harvard Environmental Law Review). The exact breakdown of taxation rates was planned as follows:

Years land held by transferor	Gains, as a percentage of basis		
	200%+	100-200%	>100%
> 1 yr.	80%	70%	60%
1-3 yrs.	65%	55%	47.5%
3-5 yrs.	50%	40%	35%
5-7 yrs.	35%	25%	22.5%
7-10 yrs.	20%	15%	10%

plementary Solutions Report, wrote that it did not consider the tax necessary, since the Maine Liquidation Harvesting Rule (if actively enforced) and its concomitant incentives ought to be sufficient to substantially eliminate liquidation harvesting, but left open the possibility of reconsidering the tax's utility at a later date.<sup>106</sup> The Maine Forest Service noted that some of the stakeholders believed the tax "essential to assure that financial incentives to the practice of liquidation harvesting were removed," but that most expressed "[c]onsiderable concern . . . about potential negative effects of disincentives" in general.<sup>107</sup>

### 3. Policy Analysis of a Timber Gains Tax in Maine

A report on liquidation harvesting prepared for the forest products industry group Maine Forest Products Council claims that there is no evidence that Vermont's land gains tax had any significant effect on liquidation harvesting.<sup>108</sup> Noting that the tax was only modified to apply to timber gains in 1995, and that a penalty similar to the Maine Liquidation Harvesting Rule was enacted in 1997, the report cites studies suggesting that the tax alone was ineffective in reducing liquidation harvesting, and that it may have contributed to increased high-grading and lowered property values (when landowners were essentially forced to factor the liquidating buyer's forthcoming gains penalty into their sale price).<sup>109</sup>

Such concerns over decreased value and alienability of property would only be heightened in Maine, where the proposed tax was to have applied to smaller parcels and for a longer time, and may, in combination with doubts over its silvicultural benefits, explain why the Maine Forest Service chose not to adopt a timber gains tax. As previously noted, the Maine Forest Service sees tax incentives as attractive to small landowners (even though larger owners, even liquidation harvesters, can often take advantage of them). These small landowners may not be likely to sell their land for development purposes, considering it a long-term investment to be left to their children. But such a dramatic restraint on their property's alienability as a ten-year capital gains penalty, especially one coming without even the possibility of a hardship exception (for which the Maine Liquidation Harvesting Rule, in contrast, does provide) would doubtless meet with a great deal of resistance from a group that the Maine Forest Service

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<sup>106</sup> COMPLEMENTARY SOLUTIONS REPORT, *supra* note 67, at 14.

<sup>107</sup> *Id.* at 15, 13.

<sup>108</sup> ERIC KINGSLEY, PROMOTING LONG-TERM FOREST MANAGEMENT: DEFINING AND ADDRESSING THE BUSINESS MODEL OF LIQUIDATION HARVESTING IN MAINE 9 (2003).

<sup>109</sup> *Id.*, citing John Dillon, *Impact of Vermont's Act 15 Not Clearcut*, NORTHERN WOODLANDS, Spring 2001, at 50; and D. Robinson & E. M. Chant, *Interaction of Land Policy and Land-Based Tax Policy: The Vermont Land Gains Tax*, REV. URBAN & REGIONAL DEV. STUD. 4(2), 147-61 (1992).

desperately needs as an ally in its efforts to curb liquidation harvesting in Maine.

Nevertheless, despite uncertainty about its effectiveness alone, the fact remains that Vermont employed a timber gains tax (in combination with other measures similar to those in the Maine Liquidation Harvesting Rule) and was effectively able to end liquidation harvesting in the state. That success deserves some deference, despite its lack of appeal to small landowners. A Maine timber gains tax would provide a substantial financial disincentive, which is acknowledged to be the most effective strategy, for potential liquidation harvesters in Maine. It would certainly address some of the loopholes present in the Maine Liquidation Harvesting Rule and would reduce the Maine Forest Service's enforcement burden by involving municipal governments and the Maine Revenue Service.<sup>110</sup> Furthermore, while there are some doubts over the tax's silvicultural incentives, it seems likely that the overall effect would be to encourage longer-term investment in land. That would mean preservation of current working uses, sustainable timber harvests rather than clear-cutting, and doubtless less curtailment of recreational access than residential development would produce.

A tax penalty geared toward gains from timber harvesting on land held for a relatively short time may seem like a fundamental threat to property rights, but Vermont has shown how carefully targeted a timber gains penalty can be. Given Maine's stated policy focus on individuals for whom liquidation harvesting is a business model, a narrowly tailored penalty could be crafted so as to leave the property rights of most forestland owners in Maine unimpaired.

### *C. Alternative 3: Conservation Easements*

#### *1. A Recent History of Conservation Easements in Maine*

Liquidation harvesters have not been the only buyers of former forest products company timberlands in Maine of late. Individuals, non-profit organizations, and the state have all purchased land or easements thereon in order to prevent development. For example, in January 2004, the state and a conservation organization cooperated to protect 329,000 acres of land from development: 47,000 acres were sold to the state Department of Conservation, and an easement allowing logging by the investment group that owns the land, but preventing development, was granted to the Forest

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<sup>110</sup> For background information on property taxes and their collection in Maine, see Me. Municipal Ass'n, Homeowner's Guide to Property Tax in Maine, at [http://www.memun.org/public/local\\_govt/property\\_tax.htm](http://www.memun.org/public/local_govt/property_tax.htm) (last visited Oct. 31, 2004) (on file with the Harvard Environmental Law Review). Admittedly, property tax enforcement and collection is an easier process in Vermont, a smaller state made up mostly of organized townships, as compared to the vast unorganized territories of Maine. See *supra* note 84 and associated text.

Society of Maine.<sup>111</sup> The deal was praised by industry, government, environmentalists, and recreational groups alike for its success in preserving land both for sustainable forestry and for traditional recreational activities.<sup>112</sup> Anticipating the deal in a late 2003 speech, Governor Baldacci described the pattern of state conservation purchases in combination with private ownership of lands (often involving easements) as “tailored to Maine’s landscape, Maine’s traditions and Maine’s economic needs and abilities.” The governor termed it “a better solution” than “models for land conservation that have worked elsewhere” and are advocated in Maine, which was perhaps a dig at proponents of a timber gains tax or the creation of a national park.<sup>113</sup>

## 2. Policy Analysis of Conservation Easements in Maine

Unfortunately, there is a significant catch to Governor Baldacci’s vision of conservation easements as a solution to liquidation harvesting: it is prohibitively expensive. The deal discussed above, although distinguished by being the largest of its kind in state history, cost \$35 million, with about \$20.7 million of that coming from public funds.<sup>114</sup> The Baldacci administration freely admitted that, when faced with competition, neither the state nor any conservation groups had been able to raise the funds necessary to purchase or obtain easements on the previously discussed 47,000 prime acres near Baxter State Park that were instead sold to liquidation harvesters Herb Haynes and William Gardner in June 2003.<sup>115</sup> There is also the possibility that industrial landowners will tend to gouge the state, by selling conservation easements that cover areas for which development presents no real risk, to make up for the lost chance to resell the land at full market value.<sup>116</sup>

There are other considerations besides economic impracticability. First, conservation easements can severely hamper land’s economic productivity: although some buyers of land will continue to allow timber harvest-

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<sup>111</sup> Misty Edgecomb, *West Branch Land Deal Greeted with Accolades*, BANGOR DAILY NEWS (Me.), Jan. 6, 2004, at A1.

<sup>112</sup> *Id.*

<sup>113</sup> Governor John Baldacci, *Maine Woods Legacy*, Address at the Penquis Higher Education Center, Dover-Foxcroft, Me. (Nov. 26, 2003), at <http://www.maine.gov/governor/baldacci/news/speeches/mainewoodslegacyhtml.htm>. (last visited Oct. 7, 2004) (on file with the Harvard Environmental Law Review). The Governor also addressed several means of reviving the forest products industry itself, such as expanding the manufacturing base, ensuring a continuous supply of wood fiber to the market, and controversial “green certification” of industry timberlands.

<sup>114</sup> Edgecomb, *supra* note 111.

<sup>115</sup> Tux Turkel, *Governor Doesn’t Share the Same Vision*, PORTLAND PRESS HERALD (Me.), Dec. 7, 2003, at 1F.

<sup>116</sup> Mitch Lansky, *Are Mega-Easements Worth the Bargain?*, 5(1) THE MAINE WOODS (Late Winter 2001), at [http://www.powerlink.net/fen/TMW\\_LateWinter2001/mega\\_easements.html](http://www.powerlink.net/fen/TMW_LateWinter2001/mega_easements.html) (last visited Oct. 31, 2004) (on file with the Harvard Environmental Law Review).

ing operations to continue on their property, many will prefer strict easements limiting industrial forestry.<sup>117</sup> Conservation easements necessarily decrease state property tax revenue from land, but limitations on industrial uses will affect Maine's citizens more directly through job losses. Additionally, even if conservation organizations and wealthy private individuals are able to compete with liquidation harvesters in purchasing forest products company lands, there is no guarantee that they will share Governor Baldacci's vision that traditional recreational access to lands be preserved.<sup>118</sup> Consequently, while conservation easements are undeniably an excellent method of preserving natural ecosystems, they represent a triple threat that lands will: (1) no longer generate commercial income and jobs; (2) generate lower tax revenues for the state; and (3) be closed to recreation. Carefully placed individual easements on particularly valuable or vulnerable lands can be useful components of a broad-based strategy to prevent liquidation harvesting (as can those rare easements that continue to allow recreational access and commercial forestry, but prevent development), but their potential economic and recreational impacts are too substantial and too uncertain for them to serve as the centerpiece of a campaign to prevent liquidation harvesting in a state with Maine's unique characteristics, notwithstanding Governor Baldacci's vision. Ideally, the state could collaborate with non-profit organizations and philanthropists (which both might have deeper pockets than the state) in funding targeted easements, although disagreements over the permissible scope of recreational access could hinder such joint ventures.

#### D. Alternative 4: Creation of a National Park

##### 1. The Movement for a Maine Woods National Park

One possible means of conserving Maine's forests *and* earning sufficient income from them to continue supporting towns like Millinocket

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<sup>117</sup> Compare Phyllis Austin, *Cautious Optimism About Fate of Mead/Westvaco's 659,000 Acres in Maine and New Hampshire*, ME. ENVTL. NEWS, Nov. 17, 2003 (noting that a forest products company saw the sales of conservation easements that allowed continuing timber harvests as a viable business model), at <http://www.meeepi.org/files03/pa111603.htm> (last visited Nov. 4, 2004) (on file with the Harvard Environmental Law Review) with Phyllis Austin, *Roxanne Quimby Purchases High Priority 24,000 Acre Township East of Baxter Park*, ME. ENVTL. NEWS, Nov. 24, 2003 (stating that a recent buyer of land would put a conservation easement on it allowing no timber harvests), at <http://www.meeepi.org/files03/pa112403.htm> (last visited Nov. 4, 2004) (on file with the Harvard Environmental Law Review).

<sup>118</sup> For example, when the Appalachian Mountain Club purchased 36,691 acres in late 2003, it announced that it would continue to allow hiking, fishing, paddling, skiing, and snowshoeing on its lands, but it banned ATVs and expressed uncertainty on whether to continue allowing hunting and trapping beyond the current season. Phyllis Austin, *Appalachian Mountain Club Purchases 36,691 Acres in Hundred Mile Wilderness*, ME. ENVTL. NEWS, Dec. 9, 2003, at <http://www.meeepi.org/files03/pa120903.htm> (last visited Oct. 7, 2004) (on file with the Harvard Environmental Law Review).

is the creation of a national park. At the forefront of promoting such a park has been the non-profit organization RESTORE: The North Woods (“RESTORE”), which claims that because of the forest products companies’ distress, 3.2 million acres of Maine’s timberland could be bought, “[f]or \$250 an acre or less,” and transformed into the largest national park in the eastern United States.<sup>119</sup> The proposed park would be located in north central Maine, surrounding Baxter State Park, and has already garnered the support not only of numerous celebrities,<sup>120</sup> but also, more importantly, of Roxanne Quimby, a local entrepreneur and philanthropist who has purchased about 40,000 acres of land in Maine, mostly from forest products companies, in the hope of donating it for the park.<sup>121</sup>

A national park would provide excellent protection for forest ecosystems. Moreover, RESTORE argues that a park would be a boon to the local economy, rather than its death knell: it claims that the forest products industry’s decline is ever-worsening and irreversible, and that diversification, spurred by park-related jobs, is necessary for economic recovery.<sup>122</sup> While forest products industry-related jobs in the proposed national park area would obviously be lost, RESTORE claims that such losses would be more than offset by gains in park-related jobs, with a net gain of 3600 jobs over the first twenty years of the park’s existence.<sup>123</sup>

## 2. Policy Analysis of a Maine Woods National Park

A Maine Woods National Park is a superficially desirable solution to the problem of liquidation harvesting: its vast size would represent true ecosystem-based preservation, and economic activity associated with it could reverse the region’s economic problems, which are tied to an arguably inevitable decline in the state’s forest products industry. But most Maine residents, and particularly those living within the park’s proposed borders, are fiercely opposed to its creation. One concern is recreation: Roxanne Quimby has already made known her distaste for hunting, trap-

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<sup>119</sup> Jym St. Pierre, RESTORE: The North Woods, *America’s Next Great National Park*, at <http://www.restore.org/Maine/nextpark.html> (last visited Oct. 7, 2004) (on file with the Harvard Environmental Law Review). The park would be the second largest in the lower forty-eight states, after Death Valley National Park. *Id.*

<sup>120</sup> The proposed park boasts the support of, among others, Harry Belafonte, Walter Cronkite, Harrison Ford, Morgan Freeman, Holly Hunter, Robert Redford, and Meryl Streep. Press Release, RESTORE: The North Woods, Americans for a Maine Woods National Park and Preserve Announced (May 5, 2003), at [http://www.restore.org/Maine/News/Americans\\_release.html](http://www.restore.org/Maine/News/Americans_release.html) (last visited Oct. 7, 2004) (on file with the Harvard Environmental Law Review). The list of Hollywood supporters has drawn particular fire from Maine residents opposed to the park’s creation. Misty Edgcomb, “No-Park Army” Rallies in Protest: Opponents Mock North Woods Plan, BANGOR DAILY NEWS (Me.) June 30, 2003, at A1.

<sup>121</sup> See Austin, *supra* note 117.

<sup>122</sup> POWER, *supra* note 7, at vi.

<sup>123</sup> *Id.* at 53–64. This would represent a 2% job increase in the local economy, hardly a boom, but certainly preferable to the 0.6% job growth rate in the area from 1969 to 1998. *Id.* at vii.

ping, ATVs, and snowmobiles, closing off much of her land to them, and is considering doing the same with the rest.<sup>124</sup> At a meeting with concerned local residents after her most recent purchase, she affirmed that such restrictions would continue and be strengthened over time, reiterating her desire to give all of her Maine lands to the national park.<sup>125</sup> Naturally, recreational groups like SAM are strongly opposed to the plan, noting that hunting is forbidden in national parks, and snowmobile and ATV use is often restricted.<sup>126</sup> From a cultural and economic standpoint, moreover, Maine residents will never agree to a proposal that so significantly limits recreation in such a huge area, and it is culturally paternalistic for out-of-staters to downplay their concerns on the issue.<sup>127</sup> One local resident complained, “What [the park’s supporters] don’t seem to understand is that those of us who live here in northern Maine have access to the wilderness daily. We go fishing and come home and cook the fish. This is our lifestyle.”<sup>128</sup>

Local residents’ main worry about the national park, however, is economic: the fear is that a park would definitively kill off the state’s forest products industry, depriving locals of jobs and their way of life.<sup>129</sup> From a purely economic standpoint, this concern is probably misplaced. As long as forest products companies have the incentive to sell their lands to liquidation harvesters, the industry’s workers will continue to suffer regardless of whether a national park is created or not. But there is nevertheless a socioeconomic argument to be made for keeping the park out: local residents know that recreation-industry jobs, particularly those not associated with guiding and instruction, are likely to be lower-paying than those associated with the forest products industry;<sup>130</sup> and, to their concerns that tourism-based jobs are also subjectively less desirable than forest products industry-related manufacturing jobs,<sup>131</sup> RESTORE can only claim that less than 25% of the jobs created by the park would be true “tourist jobs,” with the remainder coming from “the normal mix of

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<sup>124</sup> Austin, *supra* note 117. Roxanne Quimby intended to close her most recently purchased tract to snowmobiling beginning in the winter of 2004, despite the fact that a major snowmobiling trail runs through it, and she says that she has no reason to allow access to her lands over extant logging roads, “‘because [she is] not in the logging business and [doesn’t] need roads for access.’” *Id.*

<sup>125</sup> Tux Turkel, *Looking for Land*, PORTLAND PRESS HERALD (Me.), Dec. 7, 2003, at 1F.

<sup>126</sup> George Smith, SAM, *No National Park*, at <http://www.samcef.org/No%20National%20Park.htm> (last visited Oct. 7, 2004) (on file with the Harvard Environmental Law Review).

<sup>127</sup> Highlighting the fact that so many of the park’s supporters are from outside of Maine, a popular bumper-sticker in the northern part of the state reads, “RESTORE: Boston. Leave our Maine Way of Life Alone.”

<sup>128</sup> Robin Burgess, Letter, *Maine Wilderness*, BANGOR DAILY NEWS (Me.), Aug. 28, 2001, at A8.

<sup>129</sup> Mary Anne Lagasse, *Mill Towns Brace for Tougher Times*, BANGOR DAILY NEWS (Me.), Jan. 11, 2003, at A1. Millinocket Town Manager Gene Conlogue, for example, argues that the forest products industry’s departure would irreparably damage the town’s tax base.

<sup>130</sup> See *supra* note 49 and accompanying text.

<sup>131</sup> See, e.g., Conlogue, *supra* note 50.

economic activities associated with human settlement.” This is not an entirely reassuring claim, given that the underlying manufacturing industry that supports current service jobs would be gone.<sup>132</sup>

RESTORE and its supporters already face an uphill political battle: like Governor Baldacci, Maine’s entire congressional delegation is on record as being opposed to the creation of a national park.<sup>133</sup> The politicians’ stance is based on the opposition voiced by their constituents,<sup>134</sup> and any attempt to shift public opinion would probably take years. Given the speed at which liquidation harvesting is spreading throughout Maine and the concerns over a park’s economic, cultural, and recreational effects, the creation of a national park in Maine’s northern woods seems like unrealizable idealism, rather than a practical strategy to address an urgent problem in the near future.

#### V. CONCLUSION: A POLICY RECOMMENDATION TO ADDRESS LIQUIDATION HARVESTING IN MAINE

Liquidation harvesting in Maine is a problem that becomes more pressing with time. As more and more people begin to see Maine’s once remote northern forests as a desirable location for second homes and “kingdom lots,” and as forest products companies are increasingly able to find alternate sources of pulp for their mills, there will be an ever-increasing incentive for owners of industrial timberland to sell it off to developers for liquidation harvesting at prices that the state and conservation-minded individuals and organizations can rarely match. As detailed, the potential ecological impact of liquidation harvesting is significantly more harmful than that associated with the more sustainable silvicultural practices of a working forest, not to mention conservation options. Moreover, while the state’s forest products industry is certainly in decline, there is no reason to think that its residents will be better served, from either a purely economic or socioeconomic point of view, by the short-term construction boom and longer-term development of service jobs associated with seasonal vacation communities. Certainly, the fact that local residents strongly desire Maine’s forest products industry be preserved is persuasive. Finally, given the cultural and economic importance of recreation in the northern woods, the posting of land and restrictions on its use that understandably go along with residential development are a significant threat.

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<sup>132</sup> POWER, *supra* note 7, at 93.

<sup>133</sup> See Misty Edgecomb, *Park Backers Want Study of Feasibility*, BANGOR DAILY NEWS (Me.), Apr. 27, 2004, at A1 (“Congress may call for a feasibility study at any time, but none of Maine’s congressional delegates currently supports a park. Sens. Olympia Snowe and Susan Collins, both Republicans, and Reps. Tom Allen and Mike Michaud, both Democrats, have all gone on the record in agreement with Gov. Baldacci to say that most Mainers don’t want a park, so no feasibility study is necessary.”).

<sup>134</sup> See *id.*

The Maine Forest Service, operating on a tight deadline and under a strict legislative command, but aided by the input of a broad group of stakeholders, has identified economic disincentives as the most effective method of curbing and eventually eliminating liquidation harvesting in the state. The Maine Liquidation Harvesting Rule's hefty fine mechanism appears to be a workable option, and there are assurances that its penalties will be set sufficiently high to remove all economic incentives from liquidation harvesting. Unfortunately, the rule is also weakened by the harvest plan option and, particularly, the third-party certification exemption. Both are uncertain to contain effective control mechanisms, and the overall utility of the second is increasingly in doubt. Exemptions for small landowners are not problematic, because they are not the actors whom the state feels that it needs to regulate in order to eliminate liquidation harvesting; nevertheless the overall administrability of the Maine Liquidation Harvesting Rule is questionable, given the Maine Forest Service's limited enforcement capabilities.

Given these problems, the Maine Liquidation Harvesting Rule should be bolstered with a timber gains tax similar to that employed successfully in Vermont. It would add another significant economic disincentive to compensate for the questionable harvest plan and certification elements, as well as increased enforcement capabilities and state revenue. A timber gains tax was identified as a recommended approach in the initial stakeholder report, but subsequently eliminated from consideration by the Maine Forest Service, in large part due to concerns from smaller landowners over restraints on the alienability of their property. Such worries could be diminished, however, if Maine were to adopt a timber gains tax that did not apply to all lots over 100 acres in size (as the proposed 2003 bill would have done), but only to those over 300 acres (like the Vermont tax), or perhaps even more. It is clear from the recent history of land sales that relatively small parcels of land and their owners are not what the legislature is concerned with, and that a timber gains tax could easily be targeted so as to exempt them. With any luck, the Maine Forest Service and its stakeholder group will reconsider the utility of a timber gains tax, in the likely event that the Maine Liquidation Harvesting Rule should not curb liquidation harvesting to the extent that they had hoped.

Although economic disincentives (and potentially incentives as well) appear to be the most effective means of discouraging liquidation harvesting, conservation options can play an important role in a comprehensive strategy to address the problem. Easements targeted to protect particularly valuable wilderness, such as the land near Baxter State Park purchased by Roxanne Quimby, can provide additional protection to the ecosystems that need it most. If such easements are to be used broadly, however (although it is doubtful that they really can be, considering their expense), they should be mollified to allow traditional recreational access and, where feasible, continued long-term silviculture. While conservation is obviously desirable, the

political reality in Maine is that it must be balanced with economic and recreational considerations in order to constitute an acceptable strategy. As such, the creation of a national park in northern Maine, despite promises about the service jobs it might spawn, does not seem like a practicable solution at the moment. Moreover, it would take years to create, and liquidation harvesting is a problem that Maine must address *now*.

The state would be best served by adapting the Maine Liquidation Harvesting Rule to include a targeted timber gains tax and to be accompanied by a focused conservation strategy. In such a manner, a suitable balance could be struck in addressing the ecological, economic, and recreational harms that result from liquidation harvesting.