



July 10, 2021

To: Commissioner Loyzim, Maine Department of Environmental Protection
Maine Board of Environmental Protection

From: Senator Richard A. Bennett
Senator Russell Black
Representative Lori Gramlich
Representative Scott Landry

Re: Concerns regarding NECEC Corridor

We visited the New England Clean Energy Connect ("CMP Corridor") in Johnson Mountain Township (Segment 1, Figure 1) on June 24th and June 29th to witness the clear cut that was in question at the Environment and Natural Resources Committee meeting on May 28, 2021. Our goal was to view and measure the cuttings ourselves to:

1. Determine the actual width of the cut corridor;
2. Assess if the "tapering" condition in the site location permit is an effective tool to protect the wildlife, fisheries and vista ;
3. Visit the public lands where the lease has been illegally issued to allow the Corridor to cross these lands without the constitutionally-required two-thirds vote of the Legislature; and
4. Document our findings.

We found the following:

1. The actual width of the cleared corridor in Johnson Mountain Township varies from 84 to 102 feet. (See the Johnson Mt Report attached). This supports the finding of Mr.

Roger Merchant, a licensed forester who measured the same areas on May 26, 2021. His detail information has already been submitted to Maine DEP.

2. The tapering requirement CAN NOT BE met due to the nature and age of the forest stand. In Site 1, there are a few standing saplings less than 15 feet tall. The residual saplings do not provide the protections desired by Maine DEP for wildlife, fisheries or visual impact. (Johnson Mt Report pages 2-6) On Site 2, there are NO TREES STANDING in the taper zone. (Johnson Mt Report 7-10.)
3. The Corridor we viewed meets the legal definition of a clear-cut with little, if any, standing trees remaining. This will result in a future even age forest that also cannot be effectively tapered. (See the definition of a clear-cut in [chap 20 rules 05012014.pdf \(maine.gov\)](#))
4. Aerial pictures provided show this clear-cut is apparent for the entire Johnson Mt Township corridor cut to date. (Johnson Mt report pages 5-6 and 10).
5. The public lands that would be bisected include two Maine heritage fisheries, Little Wilson Hill Pond and Wilson Hill Pond. (See picture of the sign posted at Little Wilson Hill Pond, Page 11 in the Johnson Mt. Report)
6. The Corridor clear-cut would in fact run directly between these two heritage fisheries, no doubt having a warming effect on both. (See Figure 2 separately attached Forest Operation Notification #560925 Map of Johnson Mt Township and Figure 3, page 12 in the Johnson Mt. Report.)

Our conclusion: The forest tapering condition in the NECEC site location permit awarded by DEP to protect the wildlife, fisheries and vista may be effective on paper, but ***in reality, it has no positive effect.*** All operations ***must cease*** until this condition is addressed, and thoroughly studied, to provide the protections desired. Stopping operations now is particularly important in light of the fact that the DEP has slow-walked the appeal of the permit, preventing the Board of Environmental Protection from considering these issues.

Let's review how this tapering requirement was introduced into the permit in the first place: In developing the final permit, DEP added the tapering condition in Segment 1 as a solution to protect the environmental and visual resources in the impacted area. Nick Livesay, Lands Bureau Director, said in the Environmental and Natural Resources Committee meeting on May 28 that the tapering was to protect wildlife and fisheries and minimize the visual impact. The Site Location Order itself states: ***"In all other portions of Segment 1, the Order requires that cutting of vegetation be limited and tapered tree growth be maintained within the corridor, significantly reducing the area cleared and minimizing visibility of the project."*** Please note that this is **the first time** the DEP suggested the entire length of Segment 1 have this tapering condition. We credit the DEP for trying to minimize the impact of the CMP Corridor. However, the required condition cannot be met as the solution, tapering, is not workable.

We ask you to look at the permit's Appendix C. The Vegetation Management provision states: *"In a tapered corridor, the area outside the wire zone will be selectively cut during construction to create a taper with vegetation approximately 15 feet tall near the wire zone and increasing to approximately 35 feet tall near the edge of the 150-foot-wide corridor. The first taper includes the areas within 16 feet of either side of the wire zone, within which vegetation 15 feet tall and under, including capable species, will be maintained. The second taper includes the next 16 feet on either side of the corridor, within which taller vegetation up to 25 feet tall will be maintained. The third and final taper includes the next 16 feet on either side of the corridor, within which even taller vegetation up to 35 feet tall will be maintained."*

It also states: *"The overall result is that a cross section of a 150-foot-wide tapered corridor breaks down into the following components: 16' 3rd taper + 16' 2nd taper + 16' 1st taper + 54' wire zone + 16' 1st taper + 16' 2nd taper + 16' 3rd taper = 150' wide corridor. The approximate maximum vegetation height of each taper is: • 1st taper: 15-foot vegetation • 2nd taper: 25-foot vegetation • 3rd taper: 35-foot vegetation."*

Clearly the Site Location permit requirements are not, and cannot, be met. The cleared CMP Corridor is and will be well over the permitted 54 -feet. Additionally, we observed the complete lack of vegetational tapering in the cut Corridor, resulting in a clear cut of a previously undeveloped forest.

Appendix C further states: *"How the vegetation within the tapered areas along Segment 1 is managed will influence the environmental benefit of this form of mitigation. Reasonable steps will be taken to manage the vegetation to ensure tapering minimizes the environmental impact of the corridor to the greatest extent practicable, **including reasonable efforts to avoid the growth of even-aged stands within each taper.**"*

Certainly, the intent of the Site Location Order and Appendix C is not being met.

In the future, there is no way this condition can be met as the CMP Corridor cutting is a "clear cut" by definition, which will lead to an even-age forest. Tapered forest growth will be removed at the same time when the height limitations are met. The result will be the periodical removal of any wildlife and visual protection.

We agree with the permit which states, *"This segment is located primarily in working forest."* However, the clear-cut generated by this project would not be allowed by Maine's Forest Practices Act in a working forest.

Why are we concerned? According to the permit, *"Segment 1 crosses 480 freshwater wetlands; 280 rivers, streams, or brooks, of which 237 contain coldwater fisheries habitat, including the Upper Kennebec River, which is an Outstanding River Segment; six Inland Waterfowl and Wading Bird Habitats (IWWH) with 8.23 acres of conversion; and six Significant Vernal Pools (SVP)."* The tapering condition is supposed to protect these areas. It is not, and it will not.

Additionally, this same problem could happen on Maine's public lands. We feel confident the lease allowing the CMP Corridor to be placed on the public lands will be vacated by the courts, the Legislature, and/or the people. Still, there is much cause for concern.

In closing, it is unclear how these conditions are monitored (some of us are still waiting for the inspection reports and CMP training records) and enforced, or what the remedy will be since the desired mitigating impacts and habitat protections cannot be met.

Therefore, the DEP must suspend the permit until this condition is properly studied and addressed to meet the conditions necessary to protect this special part of Maine. We believe the BEP must take jurisdiction for this permit, especially the modification of the tapering requirement (***Title 38: §341-D. Board responsibilities and duties 3. Modification or corrective action. At the request of the commissioner and after written notice and opportunity for a hearing pursuant to [Title 5, chapter 375, subchapter 4](#), the board may modify in whole or in part any license, or may issue an order prescribing necessary corrective action, whenever the board finds that any of the criteria in section 342, subsection 11-B have been met.***) .

There is no doubt that this project has statewide significance as cited in ***Title 38 §341-D. Board responsibilities and duties 2. Permit and license applications. Except as otherwise provided in this subsection, the board shall decide each application for approval of permits and licenses that in its judgment represents a project of statewide significance. A project of statewide significance is a project that meets at least 3 of the following 4 criteria:***

A. [PL 2011, c. 304, Pt. H, §6 (RP).]

B. [PL 2011, c. 304, Pt. H, §6 (RP).]

C. [PL 2011, c. 304, Pt. H, §6 (RP).]

D. [PL 2011, c. 304, Pt. H, §6 (RP).]

E. Will have an environmental or economic impact in more than one municipality, territory or county; [PL 2011, c. 304, Pt. H, §6 (NEW).]

F. Involves an activity not previously permitted or licensed in the State; [PL 2011, c. 304, Pt. H, §6 (NEW).]

G. Is likely to come under significant public scrutiny; and [PL 2011, c. 304, Pt. H, §6 (NEW).]

H. Is located in more than one municipality, territory or county. [PL 2011, c. 304, Pt. H, §6 (NEW).]

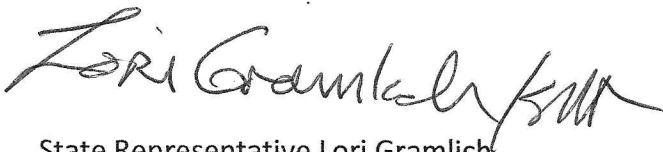
Commissioner and Members of the Board of Environmental Protection, you must act without delay to prevent further unintended destruction in Segment 1 of the NECEC Corridor. Operations on the NECEC Corridor Segment 1 must cease until this is rectified.



State Senator Richard Bennett



State Senator Russell Black



State Representative Lori Gramlich



State Representative Scott Landry

Cc: Joint Standing Committee on Environment and Natural Resources
Joint Standing Committee on Agriculture, Conservation and Forestry
Commissioner, Maine Department of Agriculture, Conservation and Forestry