

November 17, 2021

Mr. James R. Beyer  
Director, Eastern Maine Regional Office  
Maine Department of Environmental Protection  
106 Hogan Road  
Bangor, Maine 04401

RE: NECEC LLC Condition Compliance Submission for Condition #39 of Maine Department of Environmental Protection Site Location/NRPA Permit Numbers #L-27625-26- A-N, L-27625-TB-B-N, L-27625-2C-C-N, L-27625-VP-D-N, and L-27625-IW-E-N, for the New England Clean Energy Connect Project

Dear Mr. Beyer:

The Nature Conservancy in Maine (TNC) and Conservation Law Foundation (CLF) appreciate this opportunity to comment on the Conservation Plan submitted by NECEC Transmission LLC (NECEC LLC) to comply with Condition 39 of the final permit order issued on May 11, 2020 (the Order) by the Maine Department of Environmental Protection (the Department) for the New England Clean Energy Connect (NECEC) project.

The Department's Order requires that, "Within 18 months of the date of this Order, CMP must develop and submit to the Department for review and approval a plan (the Conservation Plan) to permanently conserve 40,000 acres in the vicinity of Segment 1." (Order p. 81).

This condition is central to the ability of the NECEC project to meet the Department's permitting standards. The Department found that, "as Segment 1 initially was proposed, the applicant had not made adequate provision for the protection of wildlife... Through further modification required as a condition of this Order, adequate provision for the protection of wildlife will be achieved." (Order p. 76). The Order further states that, "the landscape-scale wildlife habitat impacts associated with fragmentation that will occur, even with this vegetation management, will not be unreasonable, given that they will be mitigated and offset through the required additional conservation within the western Maine forest area in which Segment 1 is located." (Order p. 82). In other words, the Department found that the NECEC project's habitat fragmentation impacts would be unreasonable, if not for the mitigation that must occur through the conservation of 40,000 acres in the vicinity of Segment 1.

As noted in the Order, TNC advocated for this condition as a measure to compensate for the project's habitat fragmentation impacts (Order p. 80). In our post-hearing brief filed prior to the permit order, TNC and CLF (Group 6) stated, "In light of the NECEC's unreasonable impacts

and adverse effects on Maine’s natural resources as the project is proposed, the Department should only issue permits for the NECEC if the project is significantly modified to include a combination of measures that adequately avoids and minimizes the project’s habitat fragmentation impacts in Segment 1 of the proposed corridor, and that adequately compensates for any habitat fragmentation that cannot be avoided or minimized.” (Group 6 post-hearing brief, p. 20). We appreciated that the Department conditioned its approval of the NECEC permit on measures to avoid, minimize, and compensate for the project’s habitat fragmentation impacts, including the permanent conservation of 40,000 acres in the vicinity of Segment 1 to compensate for impacts that the Department found could not be avoided or minimized.

Given the Department’s finding that the NECEC project would have unreasonable impacts if not for significantly modified vegetation management practices and the conservation of 40,000 acres in the vicinity of Segment 1, it is essential that NECEC LLC adhere strictly to these conditions.

Unfortunately, NECEC LLC’s Conservation Plan, submitted on November 12, 2021—on the final day of the 18-month period allowed by the Order—is inadequate. The Conservation Plan fails to meet what we believe is the intent and letter of the Department’s Order.

#### Identification of conservation areas

The Order requires that the Conservation Plan must:

- “Identify the area(s), with a focus on large habitat blocks, to be conserved and explain the conservation value of this land; any conservation area must be at least 5,000 acres unless the area is adjacent to existing conserved land or the applicant demonstrates that the conservation of any smaller block, based on its location and other characteristics, is uniquely appropriate to further the goals of the Conservation Plan.” (Order p. 81).

The plain language of the Order—that NECEC LLC must “Identify the area(s)...to be conserved...any conservation area must be at least 5,000 acres”—is clear that the Conservation Plan must identify *specific areas* of at least 5,000 acres to be conserved (or smaller areas if adjacent to existing conserved land or otherwise appropriate). Instead, NECEC LLC has identified an “Area of Interest” (AOI) of nearly 7,000,000 acres. This AOI comprises approximately one-third of the land area of the entire state of Maine.

The Conservation Plan states that, “This AOI, in the vicinity of Segment 1, has been identified to ensure the following *are included*:

- Large habitat blocks of at least 5,000 acres;
- Smaller habitat blocks less than 5,000 acres that are adjacent to existing conserved land or that, based on location and other characteristics, are uniquely appropriate to further the goals of the Conservation Plan.” (emphasis ours)

However, the Department's Order does not require NECEC LLC to identify an AOI in which certain size habitat blocks are included; the Order requires NECEC LLC to "Identify the area(s)...to be conserved..." (emphasis ours).

It is entirely reasonable to expect that within the 18-month window that has elapsed since the issuance of the Order, NECEC LLC could have, at a minimum, identified specific parcels to be conserved and signed option agreements with landowners for acquisitions and/or easements for some, if not all, of the 40,000 acres. The intent, and we believe the letter, of the Order clearly requires NECEC LLC to identify these parcels. It certainly did not envision that the Conservation Plan would identify and focus on a 7,000,000-acre AOI.

### Other Conservation Plan requirements

Because NECEC LLC has failed to identify a conservation area(s) in its Conservation Plan, the Plan's compliance with the Order's remaining requirements becomes difficult or impossible to evaluate.

In most cases, NECEC LLC simply restates the requirements of the Order to demonstrate compliance. For example, NECEC LLC states that the primary goal of the Conservation Plan is promoting habitat connectivity and conservation of mature forest areas; that they will ensure the availability of stewardship funding; and that they will ensure third party enforcement rights for the Department. However, there is no clear evidence that these criteria have been or will be met.

The requirement that NECEC LLC must explain the legal interest that will be acquired in each area, the proposed holder of the interest, the qualification of each holder, and preliminary consent from the holder was clearly intended to apply to a specific conservation area(s). However, the Conservation Plan again provides almost no detail, offering only the most general terms.

LandVest's draft forest management plan makes an effort to provide detail, but it is nevertheless difficult to evaluate its merit in the context of a specific conservation area(s), because it applies to such a wide range of potential scenarios spanning 7,000,000 acres.

### Conclusion

NECEC LLC's Conservation Plan fails to meet its foundational obligation to "Identify the area(s)...to be conserved..." This failure is especially problematic given that the initial clearing in Segment 1 of the corridor is nearly complete.<sup>1</sup> The habitat fragmentation that the Department found unreasonable without mitigation has already occurred, but there is no meaningful plan in place to compensate for those impacts.

---

<sup>1</sup> Based on publicly available Sentinel satellite imagery.

TNC and CLF believe that the Department should reject the Conservation Plan as drafted. The Department should find that NECEC LLC is out of compliance with the Order, given its failure to submit a reasonable Conservation Plan.

Thank you again for the opportunity to provide these comments.

Sincerely,



Rob Wood  
Director of Government Relations and Climate Policy  
The Nature Conservancy in Maine



Phelps Turner  
Senior Attorney  
Conservation Law Foundation