



Testimony in Support of LD 471:

An Act To Require Legislative Approval for Certain Leases of Public Lands

Jeff Reardon, Maine Brook Trout Project Director
March 18, 2021

Senator Dill, Representative O'Neill, and members of the Joint Standing Committee on Agriculture, Conservation and Forestry:

My name is Jeff Reardon, and I am testifying today on behalf of Trout Unlimited (TU), a national conservation organization whose mission is to conserve, protect and restore North America's trout and salmon and their watersheds. I am testifying on behalf of our 6 Maine chapters and over 2000 members in support of **LD 471: An Act To Require Legislative Approval for Certain Leases of Public Lands**. LD 471 would require 2/3 approval by both houses of the Legislature for the Bureau of Public Lands (BPL) to issue leases for a short list of projects that substantially alter the existing uses of public lands—which are generally dominated by timber management; fish and wildlife habitat; and low impact recreation. Uses that would trigger legislative approval include: transmission and telecommunications lines, poles, and other facilities; roads, bridges, and landing strips; pipelines and railroad tracks; and other new rights of way.

Legislative approval for these leases is appropriate because their very nature fundamentally alters the landscape by creating linear corridors of development that will cut across and fragment public lands that are almost universally remote, undeveloped, and managed for low-intensity uses that depend on intact and unfragmented forested habitat. The fragmenting impacts of linear corridors are well known and were emphasized by many organizations and individuals, including some of Maine's most respected ecologists, who testified to the DEP with concerns about the impacts of CMP's NECEC corridor on intact forests in Maine's western Mountains. Perhaps the most detailed testimony came from the Nature Conservancy, and was delivered by a team that included Andy Cutko, who was then TNC's Director of Science.¹ Here are two quotes from it—I could take similar quotes from any page.

- *Maine's western forest is unique in the eastern United States for its concentration of well-connected and climate-resilient wildlife habitat. The Conservancy is concerned about the potential of NECEC Segment 1 to contribute to new and unprecedented fragmentation of this connected and resilient landscape. (Page 3.)*
- *Our concerns about habitat fragmentation stem from the linear and permanent nature of the corridor. (Page 5)*

That assessment differs sharply from a September 2020 memo from the BPL—also over Director Cutko's signature²—that calls the NECEC corridor and its impacts "temporary" (six times!) and states that the BPL lands—in the center of what TNC called "the core of one of the

¹ Attachment 3, with my highlights.

² Attachment 2, with my highlights.

Jeff Reardon, Maine Brook Trout Project Director
jreardon@tu.org 207 615 9200 (cell)

world's last contiguous temperate broadleaf-mixed forests," containing "exceptional biodiversity"—are "not crown jewels" of our Public Lands, and the impacts not significant.

In the BPL analysis, that lack of impact on designated uses for timber management, remote recreation, and fish and wildlife habitat is (somehow) related to the lack of outhouses and parking lots and BPL's analysis that a \$1+ billion infrastructure project is "temporary". Please.

The BPL has not done a credible job of assessing how the NECEC project—and perhaps past and future projects of similar impact and scale—affect our public lands and the public's use of them. That is because BPL has no mechanism to get public input on their leasing decisions. Trust me. Given the opportunity, we would have let them know what we thought.

If anyone should have been aware of a lease in this critical and well-loved landscape, it was me. With partners from the Trust for Public Lands, the Maine Department of Inland Fisheries and Wildlife, and Bureau of Public Lands, I worked from 2011 through 2016 to help the state acquire the 8,200-acre Cold Stream Forest parcel—to protect native brook trout, a critical deer wintering habitat, and the Maine Natural Areas Program's Cold Stream/West Forks Focal Area. With BPL staff, we carefully planned the Cold Stream Forest boundaries to abut the BPL's Johnson Mountain and West Forks parcels for comprehensive protection. After the state acquired the Cold Stream parcel, I served for three years on BPL's Upper Kennebec Region Advisory Committee, working to develop and seek public input on BPL's Management Plan for the Cold Stream Forest Property and the West Forks Northeast and Johnson Mountain Lots.

At no time during those eight years was there any discussion of their simultaneous negotiations with Central Maine Power Company regarding the issuance of a lease for CMP's powerline project. Nor was there any public notice or public process to allow the public to comment on—or even be aware that—the state was proposing to lease a cleared corridor across these parcels that would facilitate a new 53-mile corridor across a region the states leading ecologists identify as some of the most intact terrestrial and aquatic habitat in the east.

Nor did BPL seek any input from this Committee. BPL's CMP Lease Memo asserts that they gave you a March 1, 2016 report³ that mentioned this lease, and emphasize that then Representative Black and then Senator Saviello received that report and did not object at the time.⁴ Of course, that happened long after the original lease had been signed. And the discussion of that lease was buried in the fine print on page 27 under the heading "Management Issues."

If BPL won't ask for public input on leases that will make landscape-altering changes to our public lands, the Legislature needs to. I urge you to support LD 471 to keep the public engaged in management of our public lands.

³ Attachment 1 contains the Cover Page, the Table of Contents, and referenced page.

⁴ Attachment 2, highlighted sections on pages 7 and 9.

Jeff Reardon, Maine Brook Trout Project Director
jreardon@tu.org 207 615 9200 (cell)

**Attachments to Trout Unlimited Testimony on LD 471:
An Act To Require Legislative Approval for Certain Leases of Public Lands**

1. Cover, Table of Contents, and Page 27 of BPL's March 1, 2016 FY 2015 Annual Report to the Joint Standing Committee on Agriculture, Conservation and Forestry: Maine Public Reserved, Non-Reserved, and Submerged Lands. (3 Pages.)https://www.maine.gov/dacf/parks/get_involved/planning_and_acquisition/index.html
2. 9/24/2020 Memorandum to Public Lands Lease Files from Andy Cutko (BPL Director) and David Rodrigues (Director of Real Property Management). **RE: Johnson Mountain Township & West Forks Plantation Public Lands Units CMP Utility Corridor Lease.** Highlights added by Jeff Reardon, Trout Unlimited. (11 Pages.)
3. February 26, 2019 Testimony of the Nature Conservancy before the Board of Environmental Protection. **Re: Central Maine Power's New England Clean Energy Connect transmission proposal, DEP Application: L-27625-26-A-N.** Highlights added by Jeff Reardon, Trout Unlimited. (16 Pages.)

FY 2015 ANNUAL REPORT

to

the JOINT STANDING COMMITTEE
on AGRICULTURE, CONSERVATION AND FORESTRY

MAINE PUBLIC RESERVED, NONRESERVED, AND SUBMERGED LANDS



Autumn View of North Crocker Peak at the Crocker Mountain Unit

**MAINE DEPARTMENT OF AGRICULTURE, CONSERVATION
AND FORESTRY**

Bureau of Parks and Lands

March 1, 2016

FY 2015 ANNUAL REPORT
Maine Department of Agriculture, Conservation and Forestry
Bureau of Parks and Lands

TABLE OF CONTENTS

I.	INTRODUCTION.....	1
II.	HIGHLIGHTS – FY 2015 & FY 2016 (to date).....	1
III.	SCOPE OF RESPONSIBILITIES.....	5
IV.	LAND MANAGEMENT PLANNING.....	6
V.	NATURAL/HISTORIC RESOURCES.....	7
VI.	WILDLIFE RESOURCES.....	10
VII.	RECREATION RESOURCES.....	11
VIII.	TIMBER RESOURCES.....	17
IX.	TRANSPORTATION.....	22
X.	PUBLIC ACCESS.....	22
XI.	LAND TRANSACTIONS.....	23
XII.	SUBMERGED LANDS.....	24
XIII.	SHORE AND HARBOR MANAGEMENT FUND.....	25
XIV.	COASTAL ISLAND PROGRAM.....	25
XV.	ADMINISTRATION.....	25
XVI.	INCOME AND EXPENDITURES ACCOUNTING – FY 2015.....	28
XVII.	FINANCIAL REPORT FOR FY 2016.....	36
XVIII.	CONCLUSION.....	44
Appendix A:	Map of BPL Property Interests in FY 2015.....	45
Appendix B:	Map of Public Reserved Lands Management Regions.....	47
Appendix C:	BPL Public Lands Harvest Data: FY 2006 - FY 2015.....	49

Cover Photo: Autumn View of North Crocker Peak at the Crocker Mountain Unit – Jim Vogel

trailheads and campsites will also logically be concluded at the same time, while the acquisition of the boat access sites will occur more gradually over the next five to six years (until May 2022). Partnerships will continue to be key to managing these resources.

Energy Development and Transmission Corridors.

During 2015 the Bureau saw increased requests for new powerline corridor leases across its lands, reflecting continued interest in wind generation for supplying more “green” energy to the demand centers in southern New England. One lease completed in FY 2015 involves a 300-foot corridor 4,700 feet in length crossing two small public lots in the Forks area; another still in process in Western Maine is for a new high voltage line across several units in Carrabassett Valley (total of approximately five miles, adding 125 feet to an existing 125-foot corridor) affecting high value ecological and recreational resources. Bureau planners are working closely with the Attorney General’s Office to ensure the terms adequately protect public resources. The Bureau has one staff person covering all of its leases, easements and agreements. A single project like this can consume a major amount of staff time, due to the complexity of the issues.

Challenging Conditions Affecting Harvests and Markets.

Continuing loss of major Maine wood processing mills in FY 2016 and the worldwide reduction in demand for fiber and wood will be an ongoing challenge for marketing product from the Public Reserved Lands in FY 2017. A weak market for softwood further complicates the objective of removing more fir from Public Reserved Lands as a strategy to control a threatened spruce budworm outbreak. Unpredictable and unfavorable weather conditions also present an increasing challenge to harvesting operations that can limit planned harvest volumes.

MEMORANDUM

TO: Public Lands Lease Files

FROM: Andy Cutko, Parks and Lands Bureau Director; ^{APC}
David Rodrigues, Director of Real Property Management ^{DAR}

DATE: September 24, 2020

RE: Johnson Mountain Township & West Forks Plantation Public Lands Units CMP Utility Corridor Lease

This memorandum provides background detail and context and memorializes actions, considerations, and legal interpretations by the Bureau of Parks and Lands (the Bureau) related to the New England Clean Energy Connect (NECEC) utility corridor lease between the Bureau and Central Maine Power Company (CMP) for 32.4 acres of the Johnson Mountain Township and West Forks Plantation Public Lots, which are units of Public Reserved lands (see attached map). The lease was originally signed in December 2014 (2014 Lease) and was amended and restated in June 2020 (2020 Amended and Restated Lease). In preparing this memorandum, the Bureau consulted with former Bureau Director Willard Harris and former Director of Operations Tom Morrison for additional detail and context regarding the Bureau's memorialized actions, considerations, and legal interpretations with respect to the 2014 Lease and review process.

1. Background

• The Johnson Mountain Township and West Forks Plantation Public Lots

Public Reserved lands, which include public lots, are managed pursuant to a multiple use mandate and a management plan developed with public input. The Johnson Mountain and West Forks Plantation Public Lots (also referred to as the Lots) are original Public Lots. However, because they are relatively small and have limited recreational value, there was no management plan in place for these Lots in 2014. The management plan for the Upper Kennebec Region of Public Reserved lands, which includes the Johnson Mountain Township and West Forks Plantation Public Lots, was adopted on June 25, 2019. That plan describes the dominant uses of both Lots as timber management. Of the 1,241 acres on the two Lots, 1,156 acres are managed forest, and the remainder is mostly open bog or roads, plus 36 acres in the existing Jackson Tie Line utility corridor across the West Forks Plantation Public Lot.

Unlike Tumbledown Mountain, the Mahoosucs, Bigelow Preserve, Deboullie, Nahmakanta and other Public Reserved lands, the Johnson Mountain Township and West Forks Plantation Public Lots are not crown jewels of the Public Reserved lands system. The Johnson Mountain Township and West Forks Plantation Public Lots are not among the state's 18 designated Ecological Reserves, which represent some of the state's most important habitats for wildlife and biodiversity. The Johnson Mountain Township and West Forks Plantation Public Lots are also not improved with recreational infrastructure (maintained campsites, parking lots, kiosks, vault toilets and trail systems) that characterize Public Reserved lands such as Dodge Point, Pineland, the Cutler Coast, Donnell Pond, and many other Public Reserved lands. The Johnson Mountain Township and West Forks Plantation Public Lots have no constructed or maintained facilities.

- **2014 Lease and 2020 Amended and Restated Lease**

In July 2014 CMP approached the Bureau to request a lease for an additional utility corridor across the Johnson Mountain Township and West Forks Plantation Public Lots. Bureau staff in 2014 visited the Lots where the additional corridor was proposed. Field surveys confirmed that the Lots were primarily used for timber harvesting and limited remote recreation; there were old skid trails and signs of timber harvests. There were no recreation facilities observed, except a few hunting blinds on the existing Jackman Tie Line corridor.

From July through December of 2014, CMP staff Kenneth Freye and Bureau Director of Operations Tom Morrison, Chief of Planning and Acquisitions Kathy Eickenberg, and Senior Planner David Rodrigues worked to negotiate a lease for a 300-foot wide utility corridor that extended 5,071 feet across the Lots. CMP informed the Bureau that the additional corridor was for a utility line for future renewable energy transmission. The Bureau requested that CMP co-locate the new corridor onto the existing corridor (the East-West Jackson Tie Line), which is also located on the Lots. CMP responded that co-location would not be feasible and that a North-South route on the Lots would be required. However, CMP agreed to a condition in the 2014 Lease that requires CMP to relocate and co-locate the Jackson Tie Line onto the new 300-foot corridor if the Jackson Tie Line is ever reconstructed (see section 6(n) of the 2014 Lease).

The Bureau also requested reviews of the lease proposal from the Maine Natural Areas Program and the Maine Department of Inland Fisheries and Wildlife (the DIFW) regarding rare plants, exemplary natural communities, and wildlife concerns. The Bureau incorporated their recommendations into the lease. Bureau staff noted that the corridor was initially proposed to cross over Tomhegan Stream, a tributary that flows into Cold Stream. Bureau staff requested that the corridor location be changed so that it would not cross over Tomhegan Stream, and CMP subsequently changed the proposed corridor to the current lease location. The 2014 Lease incorporates the DIFW's Recommended Performance Standards for Inland Waterfowl and Wadingbird Habitats in Overhead Utility ROW Projects, Recommended Performance Standards for Maine's Significant Vernal Pools in Overhead Utility ROW Projects, and Recommended Performance Standards for Riparian Buffers in Overhead Utility ROW Projects.

At the time the lease proposal was under Bureau review in 2014, the following circumstances existed. All of these circumstances remain in place in 2020:

- The Johnson Mountain Township and West Forks Plantation Public Lots have historically been used primarily for timber management. Harvesting occurred on the Lots in 1986-1987 and again in 2006-2007. Abutting property on all sides of the Lots were historically managed extensively as commercial timberlands, and this was the case when the 2014 Lease was signed. This adjacent management largely remains the case in 2020, with the state's Cold Stream property added to the southwest corner of the Lots in 2016. Timber harvesting is still the primary and dominant use of the Lots under the Bureau's June 25, 2019 management plan.

- An existing utility corridor on the Lots, called the Jackson Tie Line, runs east and west across the entire northern property line of the West Forks Plantation Public Lot, abutting the southern boundary of the Johnson Mountain Township Public Lot. The lease for this Jackson Tie Line corridor was issued in 1963 to CMP by the State Forest Commissioner. The Jackson Tie Line corridor is 16,035-feet (3.0 miles) long, 100-feet wide, occupies 37 acres, and is 2.9% of the Lots. (See Attachment A – Map of Johnson Mountain and West Forks Public Lots). The Jackson Tie Line corridor remains in place on the Lots in 2020.
- As of 2014, the Bureau had not constructed any recreational infrastructure (e.g., campsites, hiking trails, kiosks, parking lots) on the Lots, and the limited recreational use in the proposed NECEC corridor consisted of deer hunting primarily on the existing Jackson Tie Line corridor. Some fishing and bear hunting also occurred within the Lots. While many other Public Reserved lands have constructed campsites, parking lots, kiosks, vault toilets, and trail systems, the Johnson Mountain Township and West Forks Plantation Public Lots have no constructed or maintained facilities and no motorized or non-motorized trails. These same conditions remain in 2020.

In December 2014 the Bureau signed the Lease with CMP. The 2014 Lease authorizes CMP to clear vegetation and cross an additional 32.4 acres of the Johnson Mountain Township and West Forks Plantation Public Lots, separate from the 37 acres attributable to the Jackson Tie Line. The 2014 Lease is non-exclusive. The 2014 Lease had a term of 25 years and an annual lease payment of \$1,400 per year. An appraisal was completed on January 9, 2015, by Dwyer Associates, and, based on that appraisal, the annual lease payment for the 2014 Lease was adjusted to \$3,680 per year. Under the 2014 Lease, the annual payment has been adjusted each year by an amount not to exceed the average increase in the Consumer Price Index as published by the Bureau of Labor Statistics, United States Department of Labor, over the preceding one-year period.

The 2014 Lease was amended and restated in June 2020 to reflect a higher lease value (\$65,000 per year) based on a comparative review of recent leases and acquisitions for the NECEC project in the region. In addition to the DIFW Performance Standards that were included in the 2014 Lease, the DIFW Performance Standards for Deer Wintering Areas in Overhead Utility ROW Projects was added to the 2020 Amended and Restated Lease as requested by DIFW staff. The 2020 Amended and Restated Lease requires CMP to commission an appraisal within one year, and if the appraised value exceeds the lease value, the lease payment will be adjusted based on the new appraised value.

CMP had not acquired a Certificate of Public Convenience and Necessity from the Public Utilities Commission at the time the 2014 Lease was signed in December 2014, as contemplated by 35-A M.R.S. § 3132(13). CMP acquired this Certificate on May 3, 2019, which was well in advance of the 2020 Amended and Restated Lease signed in June 2020. In any event, the Bureau's position is that CMP's failure to obtain the Certificate at the time the 2014 Lease was signed does not invalidate the 2014 Lease. CMP has performed no on-the-ground disturbance or construction on any of the leased premises, and, pursuant to section 6(m) of both the 2014 Lease and the 2020 Amended and Restated Lease:

- m. *Lessee shall be in compliance with all Federal, State and local statutes, ordinances, rules, and regulations, now or hereinafter enacted which may be applicable to Lessee in connection to its use of the Premises. Lessee further shall not construct, alter or operate the described Premises in any way until all necessary permits and licenses have been obtained for such construction, alteration or operation. Lessee shall provide written confirmation that Lessee has obtained all material permits and licenses to construct and operate the Facilities. Lessee shall furnish Lessor with copies of all such permits and licenses, together with renewals thereof to Lessor upon the written request of Lessor. This Lease shall terminate at the discretion of the Lessor for failure of Lessee to obtain all such required permits. Prior to such termination, however, Lessor shall provide written notice to Lessee of such failure and Lessee shall have 30 days in which to cure such failure.*

Thus, CMP will not undertake any such activities until it receives all necessary approvals. If CMP does not obtain all required permits, the Bureau may terminate the lease.

2. Applicable Authority

The Bureau considered and interpreted the following legal provisions during its negotiations with respect to both the 2014 Lease and the 2020 Amended and Restated Lease:

- **12 M.R.S. § 1852 and Public Reserved Land Leases**

Public Reserved lands are not held strictly for conservation, forest management, or recreation purposes. The Bureau's internal review process for the 2014 Lease also took into consideration 12 M.R.S. § 1852(1)-(9), which outlines conditions pursuant to which the Bureau may lease Public Reserved lands for specific types of leases. Specifically, 12 M.R.S. § 1852(4) allows the Bureau to lease Public Reserved lands for utilities and rights-of-way:

4. Lease of Public Reserved land for utilities and rights-of-way. The bureau may lease the right, for a term not exceeding 25 years, to:

- A. Set and maintain or use poles, electric power transmission and telecommunication transmission facilities, roads, bridges and landing strips;
- B. Lay and maintain or use pipelines and railroad tracks; and
- C. Establish and maintain or use other rights-of-way.

Notably, this subsection addressing the lease of Public Reserved land for utilities and rights of way *does not* require consent from the Commissioner of Agriculture, Conservation & Forestry (ACF), the Governor, or the Legislature to convey a utility corridor lease. Only one of the nine subsections in 12 M.R.S. § 1852 (subsection 1852(7) - Lease of Public Reserved lands to the Federal Government) requires the approval of the Legislature. The Bureau has always sought legislative approval for leases to the Federal Government, as required by 12 M.R.S. § 1852(7). As an example, in 2013 the Bureau sought and obtained legislative

approval (reference Resolves 2013, Chapter 56) for a lease to the Customs and Border Protection for a Tower on Coburn Mountain.

Other subsections of 12 M.R.S. § 1852 (e.g., subsections 1852(3) and 1852(8), which relate to the lease of Public Reserved land to other state agencies and to municipalities) also require consent of the Governor and Commissioner. Because some subsections in 12 M.R.S. § 1852 require express approvals of specified government officials and others do not, the Bureau interprets subsection 1852(4) as a legislative recognition that utility leases such as the 2014 Lease and the 2020 Amended and Restated Lease do not amount to reductions or substantial alterations to designated lands that require legislative approval.

- **Article IX, Section 23 of the Maine Constitution, 12 M.R.S. § 598-A, and Legislative Approval**

In 1993 Maine's Constitution was amended to require 2/3 legislative approval to convey or substantially alter the uses of public lands held for conservation or recreation purposes. Article IX, section 23 of the Maine Constitution states that, "State Park land, public lots or other real estate held by the State for conservation or recreation purposes and designated by legislation implementing this section may not be reduced or its uses substantially altered except on the vote of 2/3 of all members elected to each House...." Title 12 M.R.S. § 598-A, part of Maine's designated lands statutes, implements Article IX, section 23 by providing that designated lands "may not be reduced or substantially altered except by a 2/3 vote of the Legislature." As the Bureau interpreted these constitutional and statutory provisions with respect to both the 2014 Lease and the 2020 Amended and Restated Lease, no designated lands have been reduced or substantially altered as a result of the lease with CMP for the new corridor on the Lots.

As used in Title 12, Chapter 202-D (Designated Lands), which includes 12 M.R.S. § 598-A, "[s]ubstantially altered" means "changed so as to significantly alter physical characteristics in a way that frustrates the essential purposes for which that land is held by the State...." 12 M.R.S. § 598(5). Accordingly, the designated lands statutes define substantially altered in reference to the purposes for which the State holds each type of designated lands. As the Bureau interprets this provision, another proposed transmission line (in addition to the Jackson Tie Line, which is 2.9% of those public land units) through the Johnson Mountain Township and West Forks Plantation Public Lots should be measured against the management objectives of these Lots. No management plan existed for the Lots in 2014, and the Lots were used primarily for timber management purposes in 2014 and were historically used primarily for that purpose prior to 2014. The June 25, 2019 management plan outlines the intended uses of the Lots as forest management, wildlife habitat, and dispersed recreation, with timber harvesting being the primary and dominant use. The creation of an additional utility corridor would result in a temporary change from one habitat type (forest) to another (shrub or early-successional forest) for an amount of 2.6% of the Lots. The total percentage of land on the Lots occupied by both utility corridors would be 5.5%. While forest and shrub habitats provide different conditions for wildlife, neither are inconsistent with the Bureau's existing management plan for the Lots and the purposes for which the Bureau holds the Lots. Accordingly, relative to 12 M.R.S. § 598-A, the Johnson Mountain Township and West

Forks Plantation Public Lots have not been substantially altered as a result of the 2014 Lease or the 2020 Amended and Restated Lease.

As used in 12 M.R.S. § 598-A, “[r]educed” means “a reduction in acreage of an individual parcel of lot of designated land under 598-A.” 12 M.R.S. § 598(4). Based on the Bureau’s interpretation, this definition of “[r]educed” does not include or mean a change in vegetation or a reduction in the value of the property, and no acreage has been reduced in the Lots as a result of the 2014 Lease or the 2020 Amended and Restated Lease, both of which are temporary and non-exclusive; the Bureau still owns the same amount of acreage of the Lots.

- **Leases v. Easements**

The Bureau’s interpretations and approach as to leases is and has historically been different than its interpretations and approach as to easements. These differences also factored into the Bureau’s positions in 2014 and 2020 that the CMP utility lease for the new additional corridor on the Lots did not result in any reductions or substantial alterations of Public Reserved lands such that further legislative approval would be required.

- **Leases**

Under the Bureau's interpretations of its authority, leases issued by the Bureau are *temporary* instruments and typically range from five-year to 25-year terms. Utility corridor leases are not exclusive, and the public has continued full use of the premises. As noted above, leases are addressed in statute through 12 M.R.S. § 1852. Neither Article IX, section 23 of the Maine Constitution nor 12 M.R.S. § 598-A are referenced in 12 M.R.S. § 1852 governing leases. By contrast, in 12 M.R.S. § 1851 (Sale of Public Reserved Lands) the phrase “subject to the provisions of section 598-A” appears multiple times.

The Bureau’s FY 2015 annual report stated that the Bureau administered 62 leases (excluding camp lots), including 18 utility leases. The 18 utility leases consist mostly of small residential utility lines, guy wire leases, and a few high voltage leases. Some of these leases are located on State Park land and were granted under 12 M.R.S. § 1814. The majority of the other leases were already present on parcels when they were acquired by the Bureau. As discussed below, the Bureau issued a lease for a transmission line to Bangor Hydro in 2007. The only other utility corridor lease granted to date by the Bureau is the NECEC lease that is the subject of this memo. To date, as far as the Bureau is aware, the Bureau has never acquired legislative approval to issue a utility corridor lease on Public Reserved lands. This is consistent with the Bureau’s longstanding positions and interpretations that no such approval is generally required under applicable authority and that no such approval was required with respect to the 2014 Lease and the 2020 Amended and Restated Lease.

- **Easements**

Under the Bureau's interpretations of its authority, easements, unlike leases, are typically *permanent* and may convey exclusive rights, which limit the public's ability to access and use that land. Easements are conveyed pursuant to 12 M.R.S. § 1851, which expressly cross-

references 12 M.R.S. § 598-A multiple times. Because of these differences, the Bureau has always sought 2/3 legislative approval to convey an easement and has interpreted these authorities as not requiring similar approval for leases like the 2014 Lease and the 2020 Amended and Restated Lease.

The Bureau always acquires legislative approval to grant an easement, since an easement, unlike a lease, is a permanent right and is generally viewed by the Bureau as a reduction under 12 M.R.S. § 598-A and Article IX, section 23 of the Maine Constitution. As an example, the Bureau acquired legislative approval to grant an easement to Bangor Hydro for a utility corridor in Bradley and No. 21 Township in 2007 for electric transmission purposes (Resolve Chapter 91, 123rd Legislature). The Bureau had issued a lease to Bangor Hydro in 1990 for a utility corridor for electric transmission purposes in Bradley and No. 21 Township, and the utility corridors were not built at that time. Bangor Hydro subsequently changed its proposal, including the corridor size, and a second lease to Bangor Hydro was issued for these corridors in 2007, prior to conveying the easement. Consistent with its longstanding positions and interpretations on legislative approvals for easements but not leases, the Bureau did not acquire legislative approval for the 2007 lease but did acquire legislative approval for the subsequent easement. The Legislature at that time (2007) provided no indication that legislative approval should have been acquired to issue the lease to Bangor Hydro, or for future utility corridor leases.

- **12 M.R.S. § 1853 and Legislative Reporting**

12 M.R.S. § 1853(1) requires the Bureau to submit a written report each year to the joint standing committee with jurisdiction over Public Reserved lands. The committee “shall review the report and submit a written recommendation regarding the bureau's proposed budget to the joint standing committee of the Legislature having jurisdiction over appropriations and financial affairs on or before March 15th of each year.”

The 2014 Lease was described in the Bureau's *FY 2015 Annual Report to the Joint Standing Committee on Agriculture, Conservation and Forestry* (March 1, 2016). That report, under the sub-heading Energy Development and Transmission Corridors, states: “During 2015 the Bureau saw increased requests for new powerline corridor leases across its lands, reflecting continued interest in wind generation for supplying more “green” energy to the demand centers in southern New England. One lease completed in FY 2015 involves a 300-foot corridor 4,700 feet in length crossing two small public lots in the Forks area.” The Bureau's FY 2015 Annual Report was presented to the ACF Committee in March 2015. Representative Russel J. Black was a member of the ACF Committee at that time and remained a member of the ACF Committee when the 2014 Lease was discussed with the Committee in February 2020. Senator Tom Saviello was also on the ACF Committee that received the Bureau's FY 2015 Annual Report. In discussing its 2014 activities with the 2015 ACF Committee, the Bureau was not made aware by the ACF Committee of any objections to the 2014 Lease. Additionally, the Bureau's FY 2015 Annual Report states that the Bureau was working on negotiating another lease for a high voltage line across Public Reserved Land in Western Maine. In response to the Bureau's FY 2015 Annual Report, the ACF Committee did not object to the ongoing negotiations for that prospective high voltage line in

Western Maine. The Bureau understood and interpreted this to mean that no legislative approval of either lease referenced in the FY 2015 Annual Report, or any similar future leases, was required.

3. Bureau Review, Findings, and Determinations

In reviewing the project in 2014, the Bureau made the following findings and determinations, although not reduced to writing, with respect to the 2014 Lease based on field observations and its consideration and interpretations of applicable statutes. In 2020, the Bureau confirmed and made again these same findings and determinations, although not reduced to writing, with respect to the 2020 Amended and Restated Lease:

- The CMP lease is temporary, not permanent; it is for a stated term of years. The lease may also be terminated under the lease terms if the Lessee does not obtain all the required permits or defaults on the required conditions.
- The primary and dominant use and purpose of the Johnson Mountain Township and West Forks Plantation Public Lots is and has historically been timber management, with wildlife and recreation as secondary uses.
- The lease does not grant an exclusive right to CMP. The public may continue to use the leased property for walking, hiking, hunting, fishing, trapping, bird watching, and other recreational uses. In fact, deer hunting opportunities may be increased since there will be an additional utility corridor for hunting.
- The lease does not “frustrate the essential purposes for which that land is held by the State.” The primary use of the leased property is currently timber harvesting, and the 2014 Lease required and the 2020 Amended and Restated Lease requires that the Bureau be paid the value of the trees cut for the corridor. The appraisal included the future value of the timber in the rent amount to be paid annually.
- The presence of an existing utility corridor (the Jackson Tie Line) on the Lots indicates that these units of Public Reserved lands constitute a reasonable place for an additional utility corridor and is consistent with existing uses (in contrast to a unit of Public Reserved lands with no existing fragmentation or in contrast to a unit of Public Reserved lands that is primarily managed for wildlife habitat and public recreation).
- The creation of an additional utility corridor results in the temporary change from one wildlife habitat type (forest) to another (shrub or early-successional forest) for a relatively small portion of the Lots. Creation and maintenance of both habitat types are consistent with the Bureau’s existing June 25, 2019 management plan, and the change in habitat type does not frustrate the purposes for which the Lots are and have been held. The total percentage of both existing and new utility corridors is 5.5% of the Lots.

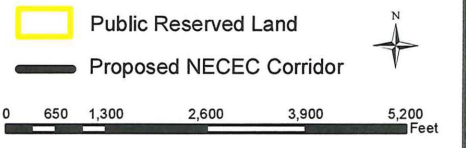
4. Conclusions

Based on the above considerations and its interpretation of its authority, the Bureau's position was and is that legislative approval was not required for either the 2014 Lease or the 2020 Amended and Restated Lease. The Bureau's longstanding position is supported by the above considerations and the following conclusions:

- The Bureau's governing statute for utility corridor leases, 12 M.R.S. § 1852(4) (Lease of Public Land for Utility Rights-of-Way), does not require legislative approval for such leases. Unlike other subsections, 12 M.R.S. § 1852(4) does not require any express approvals, including Governor or Commissioner approval. Under the Bureau's longstanding interpretation of this and other applicable authority, utility leases such as the 2014 Lease and the 2020 Amended and Restated Lease require no express approvals and no legislative approval.
- 12 M.R.S. § 1852 (Transfer or Lease of Public Reserved Lands) does not state "subject to the provisions of section 598-A". In contrast, 12 M.R.S. § 1851 (Sale of Public Reserved Lands) expressly states "subject to the provisions of section 598-A" three times. The Bureau interprets these provisions as further support for its longstanding position that no legislative approval was required for the 2014 Lease or the 2020 Amended and Restated Lease.
- The Bureau's historical practice is consistent with its longstanding interpretation of applicable authority as not requiring legislative approval for utility leases such as the 2014 Lease and the 2020 Amended and Restated Lease. There is no precedent in past Bureau practice for seeking such legislative approval, since the Bureau has never sought legislative approval for a utility corridor lease on Public Reserved lands.
- The ACF Committee of the Maine Legislature was made aware of the 2014 Lease in 2015 through the Bureau's FY 2015 Annual Report. The ACF Committee was also made aware of the 2007 Bangor Hydro utility corridor lease, which was also not subject to legislative approval, in 2007. Neither the ACF Committee nor the Maine Legislature objected to either utility lease at the time they were notified about them. The Bureau understood and interpreted these events to mean that no further legislative approval of such utility leases was required.
- At the time the 2014 Lease was proposed, there was already an existing utility corridor (the Jackson Tie Line) running across the Johnson Mountain Township and West Forks Plantation Public Lots. The proposed additional corridor contemplated by the 2014 Lease and the 2020 Amended and Restated Lease consists of 2.6% of the Lots' total area; 97.4% of the Lots would not be affected by any such new utility corridor.
- The Bureau's longstanding position is that 12 M.R.S. § 598-A is not relevant to utility leases. But, as the Bureau interprets its authority, even if 12 M.R.S. § 598-A were relevant to utility leases, the Bureau's lease of a utility corridor as contemplated by the 2014 Lease and the 2020 Amended and Restated Lease would not constitute any

reduction or substantial alteration that would "frustrate the essential purposes for which that land is held by the state." The CMP lease is a non-exclusive temporary use for the term of the lease, and the public retains all recreational use of that Public Reserved land. There were no recreation facilities constructed by the Bureau on the Lots prior to the 2014 Lease or existing today, and the public still has full use of the Lots for recreation. There is not a substantial alteration in recreational use and there is no reduction of the Lots. The Lots are managed primarily for timber management, which is the dominant use and purpose of the Lots. Under the terms of the CMP lease, the Bureau would be paid for all timber that was present on the corridor when it would be cleared and all future growth value for the 25-year lease term. Under the Bureau's longstanding interpretation of its authority, the influence of the lease on timber management does not constitute a significant alteration or reduction.

Proposed CMP Lease



Cold Stream Forest
Public Reserved Land

Johnson Mountain Township
Public Reserved Land

West Forks Plantation
Public Reserved Land

Jackson Tie Line



Testimony before the Maine Department of Environmental Protection

By
Rob Wood, Energy Policy and Projects Advisor,
Andy Cutko, Director of Science, and
Bryan Emerson, Mitigation Program Manager, for
The Nature Conservancy in Maine

February 26, 2019

Re: Central Maine Power's New England Clean Energy Connect transmission proposal
DEP Application: L-27625-26-A-N

Thank you for the opportunity to provide testimony on the proposed Central Maine Power (CMP or “the applicant”) New England Clean Energy Connect (NECEC) transmission corridor. This testimony is provided by The Nature Conservancy in Maine staff Rob Wood, Energy Policy and Projects Advisor, Andy Cutko, Director of Science, and Bryan Emerson, Mitigation Program Manager.

The Nature Conservancy (“the Conservancy”) is a science-based, global conservation organization dedicated to conserving the lands and waters on which all life depends. The Conservancy has been working in Maine for more than 60 years and is the 12th largest landowner in the state. We own and manage some 300,000 acres, all of which are open to the public for a wide variety of uses, including hiking, hunting, canoeing and fishing. We work across the state to restore rivers and streams, rebuild groundfish populations in the Gulf of Maine, and develop solutions to climate change. In 2017, we paid more than \$450,000 in property taxes statewide.

One of our properties, the Leuthold Forest Preserve, is directly adjacent to the proposed NECEC corridor. The Leuthold Preserve encompasses 16,934 acres of forest land southwest of Jackman, including Number 5 Mountain and the shorelines of seven ponds. Among the wildlife species found in the Leuthold Preserve are pine marten, Bicknell’s thrush, gray jay, boreal chickadee, Blackburnian warbler, and blackpoll warbler. The proposed corridor would run along the southern border of our preserve.

In general, when new energy infrastructure is proposed, the Conservancy seeks to ensure that the planned infrastructure is well-sited and that projected impacts are appropriately addressed through the mitigation hierarchy, which includes avoidance, minimization, and compensation for unavoidable impacts. Although our position in this proceeding is “neither for nor against” a

permit being issued, it is our contention that if NECEC is permitted, it must be accompanied by mitigation measures that are commensurate with the projected impacts.

In our testimony below, we address three topics that speak to the siting of the proposed project and the applicant's proposed mitigation actions:

1. Wildlife Habitat and Fisheries (Habitat Fragmentation)
2. Alternatives Analysis
3. Compensation and Mitigation

I. Wildlife Habitat and Fisheries (Habitat Fragmentation)

The Department's second procedural order states that 38 M.R.S. § 480-D (3) and DEP Chapter 375 § 15 are within the scope of the NECEC hearing. DEP Chapter 375 § 15 provides significant latitude for the Department to consider cumulative, landscape-level impacts that extend beyond isolated impacts to specific resources. The relevant Chapter 375 § 15 language is:

“B) Scope of Review. In determining whether the developer has made adequate provision for the protection of wildlife and fisheries, the Department shall consider **all relevant evidence to that effect, such as evidence that: ... (2) Proposed alterations and activities will not adversely affect wildlife and fisheries lifecycles.**” (Emphasis added.)

The phrase “all relevant evidence to that effect” is inclusive of the evidence we present below on the issue of habitat fragmentation. **We also believe that the scale and cumulative impact of the habitat fragmentation caused by Segment 1 of the proposed NECEC corridor could potentially “adversely affect wildlife and fisheries lifecycles” for many years into the future.**

38 M.R.S. § 480-D (3) provides additional direction to the Department to consider habitat fragmentation. Specifically:

“3. Harm to habitats; fisheries. The activity will not unreasonably harm any significant wildlife habitat, freshwater wetland plant habitat, threatened or endangered plant habitat, aquatic or adjacent upland habitat, **travel corridor**, freshwater, estuarine or marine fisheries or other aquatic life.” (Emphasis added.)

Although the term “travel corridor” can sometimes refer to MDIFW-mapped deer travel corridors, we interpret the term to be applied here more broadly. 38 M.R.S. § 480-D (3) mentions “significant wildlife habitat” and “travel corridors” separately, suggesting that mapped deer travel corridors fall under the definition of “significant wildlife habitat,” and the term “travel corridors” is referring to travel corridors for wildlife more generally. As is detailed below, as well as in the expert witness testimony of Dr. Hunter, there are hundreds of fish and wildlife species that use the forests and waters of the region, and many of these species (in addition to deer) would be affected by the cleared NECEC transmission corridor. Habitat fragmentation can deter movement of specific species and therefore consideration of fragmentation is also warranted under this provision.

The global importance of western Maine

Maine's western forest is unique in the eastern United States for its concentration of well-connected and climate-resilient wildlife habitat. The Conservancy is concerned about the potential of NECEC Segment 1 to contribute to new and unprecedented fragmentation of this connected and resilient landscape. In a suburban or developed area, we would be less concerned about habitat fragmentation.

TNC Exhibit 1 displays Conservancy data on the connectedness of landscapes in eastern North America. Landscape connectedness is a measure of how easily wildlife may move from one place to another. It is determined through remote imagery and is strongly influenced by the lack of permanent fragmenting features such as paved roads and development. Western Maine is unique in the eastern United States for lands with above-average to high-connectivity scores. Additional details on these factors, including the data used to create Exhibit 1, is available in Anderson et al (2016).¹

TNC Exhibit 2 provides the Conservancy's base data layer for connected and resilient lands in the northern Appalachian region, again demonstrating the concentration of well-connected landscapes in western Maine.²

TNC Exhibit 3 shows unfragmented forest block data from the State of Maine (the proposed NECEC route is superimposed). At more than 500,000 acres, the forest block through which NECEC would traverse is one of the largest unfragmented forest blocks in the region.

Moreover, western Maine is the core of one of the world's last remaining contiguous temperate broadleaf-mixed forests. **TNC Exhibits 4 and 5** show the original extent (pre-colonization-era) and the current extent of broadleaf-mixed forests globally. This work was informed by a global assessment, using remote imagery, of land uses, forest loss and conversion, and forest cover.³ Maine has successfully maintained forest connectivity over time while other regions have become increasingly fragmented. The western Maine mountains remain approximately 97 percent forested, well-above the statewide and national average.⁴

Largely for this reason, the western Maine region supports exceptional biodiversity.⁵ It contains a diverse range of connected forest ecosystems—including floodplain hardwood forests, boreal forests, alpine tundra, ribbed fens—that provide habitat for roughly 140 rare species and the last stronghold for wild native brook trout in the eastern U.S. As shown in **TNC Exhibit 6**, the

¹ Anderson, M.G., Barnett, A., Clark, M., Prince, J., Olivero Sheldon, A. and Vickery B. 2016. Resilient and Connected Landscapes for Terrestrial Conservation. The Nature Conservancy, Eastern Conservation Science, Eastern Regional Office. Boston, MA.

² Anderson et al. 2016.

³ Haselon, B, Bryant, D., Brown, M and C. Cheeseman. 2014. Assessing Relatively Intact Large Forest Blocks in the Temperate Broadleaf & Mixed Forests Major Habitat Type. The Nature Conservancy, NY.

⁴ New England Forestry Foundation (NEFF) (in press). *Landscape scale resource inventory and wildlife habitat assessment for the Mountains of the Dawn*. New England Forestry Foundation, Littleton, Massachusetts.

⁵ McMahon, J. 2018. The Environmental Consequences of Forest Fragmentation in the Western Maine Mountains. Occasional Paper No. 2. Maine Mountains Collaborative, Phillips, Maine.

region has also been mapped by the National Audubon Society as a globally important bird area, providing crucial nesting habitat for more than 30 northern woodland songbird species.

Western Maine is expected to be especially effective at maintaining biodiversity as the climate changes. This resilience to climate change is a function of the region's connectedness, as well as its topographical diversity and resulting diversity of landforms, such as wetlands, floodplains, mountaintops, and steep slopes. These diverse landforms create a variety of microclimates (a range of microclimates will allow species to persist by moving to adjacent microclimates as temperatures change).^{6,7} Connected forests allow for greater species movement over time in response to climate change, and western Maine will serve as a key wildlife linkage in the northern Appalachian region.⁸

Habitat fragmentation effects of the proposed NECEC corridor

Habitat fragmentation occurs when continuous habitat is broken into smaller, more isolated patches. Segment 1 of the proposed NECEC corridor would create a new linear fragmenting feature in what is currently a large, mostly unfragmented forest block. We contend that this new fragmentation will have unpredictable implications for the health and viability of wildlife and plant species over time, and that such implications could be significant.

A growing body of research presents findings on the negative impacts of habitat fragmentation, ranging from edge effects (caused by sharp transitions from one habitat to another), to spread of invasive species, to increased pressure from associated uses (such as motorized vehicle use), to changes in species composition and behavior over time from reduced habitat patch sizes.⁹ Fragmentation is of particular concern for wildlife species that require mature, closed-canopy forest cover, such as the American marten and many interior forest nesting birds. (Additional information on habitat fragmentation effects is provided in Dr. Hunter's expert witness testimony).

The applicant acknowledges the potential for habitat fragmentation and associated impacts on page 7-23 of the NECEC Site Location of Development Application. The application cites numerous studies and states that, "Transmission line corridors present potential direct impacts, as they may affect species movement, dispersal, density, nesting success and/or survival... For the undeveloped corridor of Segment 1, impact may include fragmentation and creation of new linear edges... Habitat conversion along transmission line corridors results in a loss of habitat types which, in turn, may adversely impact species that are reliant on the original habitat types." ***However, the applicant does not propose any measures to avoid, minimize, or compensate for these impacts.***

⁶ Anderson, M.G., M. Clark, and A. Olivero Sheldon. 2012. *Resilient sites for terrestrial conservation in the Northeast and Mid-Atlantic Region*. The Nature Conservancy, Eastern Conservation Science.

⁷ Anderson, M.G., M. Clark, C.E. Ferree, A. Jospe, and A. Olivero Sheldon. 2013. *Condition of the northeast terrestrial and aquatic habitats: A geospatial analysis and tool set*. The Nature Conservancy, Eastern Conservation Science. Boston, Massachusetts.

⁸ Trombulak, S.C., and R.F. Baldwin (eds.). 2010. *Landscape-scale conservation planning*. Springer, New York.

⁹ See McMahan, J. 2018 references for a full literature review.

On page 7-25 of the Site Location of Development Application, the applicant suggests several reasons for choosing not to address habitat fragmentation. For example, the applicant states, “Some bird species within the NECEC Project area that may be sensitive to forest fragmentation are the long distance, neotropical migrants that rely on forest interior habitats, but plentiful suitable habitat is available near the NECEC Project areas for these interior forest species.” While it is true that suitable habitat would remain for these species regionally, our concern is that the linear nature of the cleared right-of-way, coupled with the edge effects that may extend hundreds of feet into the forest, create a permanent area of unsuitable habitat that is several hundred feet wide and more than 53 miles long.

Furthermore, several of the bird species in question that require interior forest—specifically the wood thrush, Canada warbler, black throated blue warbler, and Blackburnian warbler—have been listed as Species of Greatest Conservation Need in the Maine State Wildlife Action Plan due to regional declines in populations, the importance of Maine in the overall breeding range of the species, or both.¹⁰ Therefore, special attention is warranted to impacts to these species’ habitat.

Additionally, the applicant states, “Most of the terrestrial mammal species that are likely to be found near the proposed transmission line corridors are likewise not dependent on mature forest.” This is partly true; however, as noted in Dr. Hunter’s testimony, the American marten does require mature forest and is particularly susceptible to forest clearing,¹¹ and the marten is considered an “umbrella species” that requires a large home range.¹² Therefore, it is reasonable to assume that a linear corridor, over time, could have negative effects on marten populations.

Finally, the applicant states, “[Segment 1] is located in an intensively managed timber production area and therefore not likely to significantly alter existing fragmentation.” **The right-of-way will indeed traverse working forest; however, our concerns about habitat fragmentation stem from the linear and permanent nature of the corridor. While there are long-term forest management roads in proximity to the project, these roads are much narrower (typically 20-40 feet wide) than the proposed transmission line. As a result, sustainable forestry does not fragment large forest blocks in the same manner as a wide, linear corridor, which bisects the landscape.** A 53.5-mile corridor would create 107 miles of new habitat edge, while business-as-usual timber harvesting will result in significantly less edge—and, moreover, timber harvesting edge will change over time, whereas edge from a new transmission corridor will likely be permanent.

Ultimately, the Conservancy is most concerned about the unknown and largely unpredictable long-term impact of linear habitat fragmentation across a currently well-connected and resilient landscape. The fragmenting effects of utility corridors are less certain, in general, than the effects of paved highways, whose impacts are more readily studied (e.g., species mortality from

¹⁰ Maine Dept. of Inland Fisheries and Wildlife. 2015. Maine’s wildlife action plan. Maine Dept. of Inland Fisheries and Wildlife, Augusta, ME.

¹¹ Legaard K.R., Sader, S.A., and E.M. Simons-Legaard. 2015. Evaluating the impact of abrupt changes in forest policy and management practices on landscape dynamics: analysis of a Landsat image time series in the Atlantic Northern Forest. PLoS ONE 10(6): e0130428. <https://doi.org/10.1371/journal.pone.0130428>.

¹² Hunter, M.L., Jr., and J. Gibbs. 2007. *Fundamentals of conservation biology* (3rd ed.). Blackwell Publishing. 482 pp.

automobile collisions). Furthermore, there have been few (if any) projects like the proposed NECEC corridor (53.5 miles through well-connected forest), so there have been few opportunities to study long-term impacts. However, there is ample evidence that habitat fragmentation from a variety of fragmenting features can have cumulative, and significant, negative effects on ecosystems over time, as well as ample research on specific species (e.g., American marten) that are averse to forest edges. Moreover, NECEC could potentially allow for new fragmenting features to develop in the future that could exacerbate habitat fragmentation—for example, new roads to access and service the NECEC line or new energy infrastructure development in the additional 150' of the Segment 1 right-of-way.

We recommend that the Department consider the full scope of potential habitat fragmentation impacts in its review of the NECEC application. We also recommend that the Department consider approaches to mitigating habitat fragmentation impacts to the maximum extent practicable. For example:

1. Edge effects could be minimized by significantly narrowing the cleared width of the corridor or portions of the corridor. This could be accomplished, for example, by burying additional sections of line and/or using vegetation management techniques to create a narrower, V-shaped corridor (as required for the Bingham Wind Project, DEP application L-25973-24-A-N/L-25973-TG-B-N). Co-location of the corridor or portions of the corridor with the Spencer Road could also reduce new habitat edge.
2. Fragmentation could be minimized using additional wildlife travel corridors similar to those proposed in the Segment 1 Deer Wintering Area. The applicant has proposed allowing 25-35' vegetation to grow under the wires in this Deer Wintering Area and has proposed raising pole heights in Roaring Brook Mayfly and Northern Spring Salamander habitat to allow forest canopy under the wires. We recommend that these measures be extended to other portions of the corridor. Using remote imagery and in consultation with other wildlife biologists, the Conservancy has identified nine areas totaling 21 miles within Segment 1 where habitat connectivity is a high priority. These high-priority connectivity areas are shown in **TNC Exhibit 7**.
3. Remaining habitat fragmentation could be compensated for through additional land conservation in the affected region (beyond what is proposed as compensation for wetland and other natural resource impacts). Land conservation could minimize the effects of existing habitat fragmentation and/or prevent future fragmentation.

II. Alternatives Analysis

Among the three action alternatives presented in the NRPA Application, the applicant makes a reasonable case that NECEC would be the least damaging. We especially appreciate that the applicant explicitly considers habitat fragmentation in its analysis. On page 2-4, the applicant states:

CMP's analysis identified the total length, in miles, of previously-undeveloped transmission line corridor to be developed and considered. To minimize wildlife habitat

conversion, loss, or fragmentation, the analysis favored transmission line routes that minimized previously undeveloped land requiring clearing and development as a transmission line corridor.

To this point, Alternative 1 was rejected partly based on the projected magnitude of habitat fragmentation impacts (see NRPA Application page 2-10). The applicant also considered total acreage of tree clearing required within the proposed NECEC corridor versus alternatives when conducting its analysis.

We believe the applicant's emphasis on habitat fragmentation in its Alternatives Analysis provides additional rationale for the Department to consider mitigation measures for NECEC's potential habitat fragmentation impacts. In this vein, we believe that it would be reasonable for the Department to request an alternative to be analyzed that includes additional line burial in Segment 1 of the corridor, particularly if line burial were administered in conjunction with alignment of the corridor more closely with the Spencer Road. The Alternatives Analysis already contains an "underground transmission alternative" specific to the Kennebec Gorge; understanding the practicability¹³ of underground transmission in Segment 1 of the corridor more generally could be useful in evaluating the proposed NECEC route, especially given that other proposed corridors in northern New England—such as Northern Pass and New England Clean Power Link—have included significant portions of buried line, suggesting that line burial may be logistically, technologically and financially practicable.

Finally, the Conservancy notes that there is an inconsistency in the delineation of the project's "purpose and need." On page 2-1 of the NRPA application, the "purpose and need" is framed in terms of the general purpose to deliver clean energy from Quebec to New England: "The purpose of the NECEC Project is to deliver up to 1,200 MW of Clean Energy Generation from Québec to the New England Control Area1 via a High Voltage Direct Current (HVDC) transmission line, at the lowest cost to ratepayers." On page 2-2, however, the framing shifts from a general purpose to a specific purpose of CMP delivering the energy:

The no-action alternative, however, would not meet the NECEC Project's purpose of allowing CMP to deliver 1,200 MW of the clean energy generation from Quebec to the New England Control Area at the lowest cost to ratepayers. In addition, even if a non-CMP project could be permitted elsewhere and could economically deliver 1,200 MW of clean energy generation from Quebec to the New England Control Area, such a project would not meet CMP's need to deliver that energy, and such a project would have unknown environmental impacts.

On page 2-3, the frame shifts back to a general purpose: "The three HVDC transmission line routes, which have been considered as part of this analysis, would all meet the purpose and need to deliver clean energy generation from Québec to the New England Control Area." This discrepancy also arose in correspondence between the applicant and the Army Corps of

¹³ DEP Chapter 310, section 5, paragraph A requires, "The activity will be considered to result in an unreasonable impact if the activity will cause a loss in wetland area, functions, or values, and there is a practicable alternative to the activity that would be less damaging to the environment. The applicant shall provide an analysis of alternatives (see Section 9(A)) in order to demonstrate that a practicable alternative does not exist."

Engineers (March 23, 2018 Response to February 23, 2018 USACE Information Request). Clarification of the purpose and need could be useful in evaluating the application and fully understanding the alternatives analysis.

III. Compensation and Mitigation

The Nature Conservancy administers the Maine Natural Resource Conservation Program (MNRCP) under contract with DEP; therefore, we cannot comment on the applicant's proposed compensation and mitigation for wetland and vernal pool impacts. Below we provide testimony on the applicant's proposed mitigation and compensation for cold water fisheries habitat, as well as additional testimony on mitigation pertaining to habitat fragmentation.

Cold Water Fisheries Habitat

Replacing undersized culverts with Stream Smart culverts, as proposed by the applicant, can improve aquatic habitat connectivity. We appreciate the applicant's recognition of the benefits of Stream Smart culvert projects and their proposed funding for such projects.

However, based on our experience, the proposed funding amount of \$200,000 will not go as far as the applicant estimates. The applicant's Revised Compensation Plan states that this amount will be "sufficient to replace approximately 20-35 culverts on lands outside of CMP's ownership." The cost of one Stream Smart replacement can range from \$50,000 (on logging roads) to several hundred thousand (in high-traffic areas), with an average cost around \$120,000. Therefore, if funds are applied directly, the applicant could expect \$200,000 to cover a maximum of four culvert replacement projects (or eight if matching funds are leveraged). Achieving the desired number of culvert replacements (20-35) would realistically require a minimum commitment of \$1 million, and likely a higher commitment.

The Conservancy also appreciates the applicant's proposal to allow vegetation to grow up to 10 feet in stream buffers (Site Location of Development Application, Exhibit 10-1, pp. 8-9). However, we encourage the applicant to follow MDIFW's recommendation that a "100-foot buffer be maintained along all streams, including perennial, intermittent, and ephemeral streams, within the Project area." (March 15, 2018 MDIFW project review comments, p. 12). The applicant currently proposes riparian buffers within 100 feet of "all perennial streams within the greenfield (Segment 1) portion of the Project, outstanding river segments, or rivers, streams, or brooks containing Threatened or Endangered species..." (Site Location of Development Application, Exhibit 10-1, p. 8). At a minimum, more information on the practicability of 100-foot buffers along all streams should be provided.

Extending the scope of the applicant's compensation plan

Page 1 of the applicant's revised Compensation Plan states, "This Plan achieves a *no-net-loss* of ecological functions and values..." (Emphasis added by the applicant.) The Conservancy believes that for no-net-loss of ecological functions and values to be achieved for the proposed project, habitat fragmentation impacts must be addressed alongside impacts to protected natural resources regulated under NRPA.

We believe it is within the Department's discretion to apply the mitigation hierarchy to habitat fragmentation. The Department, in consultation with MDIFW, has required that the applicant propose mitigation for impacts for which mitigation and compensation are not explicitly required in law or regulation, for example impacts to cold water fisheries.

There are approximately 800 species of vertebrate wildlife in Maine and thousands of species of invertebrates, and most of these are present in the region affected by this corridor. While habitat fragmentation affects different species in different ways, many other species would be affected in addition to those specified in the applicant's Compensation Plan.

It is notable that the applicant's proposed mitigation strategies acknowledge that NECEC would impact habitat connectivity. Specifically, the Compensation Plan proposes allowing 25- to 35-foot softwood stands to grow under the lines in the Segment 1 Deer Wintering Area and raising pole heights to allow for greater forest growth in Roaring Brook Mayfly and Northern Spring Salamander habitat. These strategies are certainly a step in the right direction. However, these strategies apply only to a very small portion of the 53.5-mile Segment 1 corridor.

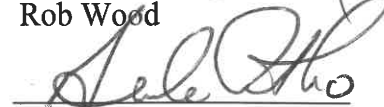
Accounting for habitat edge effects, we estimate that Segment 1 of the proposed NECEC corridor could directly and permanently impact more than 5,000 linear acres of habitat for species that require mature forest. Steps could potentially be taken to avoid, minimize and compensate for this habitat fragmentation impact. As mentioned above, the Conservancy recommends that the Department consider approaches to mitigating habitat fragmentation impacts to the maximum extent practicable. For example:

1. Reducing edge effects by significantly narrowing the cleared width of the corridor or portions of the corridor, either by burying additional sections of line or changing vegetation management practices to narrow the corridor. For example, the Bingham Wind Project was required to narrow its transmission corridor in places and to use V-shaped vegetation management (See DEP application L-25973-24-A-N/L-25973-TG-B-N, Final Order, page 18). Requiring co-location of the line or portions of the line with the Spencer Road would also significantly reduce new habitat edge.
2. Minimizing habitat fragmentation by requiring additional wildlife travel corridors. These would be similar to the applicant's proposed areas of increased vegetation height under the wires in the Segment 1 Deer Wintering Area and Roaring Brook Mayfly and Northern Spring Salamander habitat. We recommend that these measures be extended to other sections of corridor identified as high-priority habitat connectivity areas in **TNC Exhibit 7**.
3. Compensating for remaining habitat fragmentation by reducing or preventing fragmentation elsewhere in the affected region through land conservation. Conservation could come in the form of preservation, working forest conservation easements, or a combination of the two. Applying a 8:1 multiplier for the approximately 5,000 affected acres would indicate compensation of approximately 40,000 acres, and applying a 20:1 multiplier would suggest compensation of approximately 100,000 acres.

Thank you again for the opportunity to provide testimony on the proposed NECEC transmission project. We are happy to answer any questions now or in the future.

Dated: 2/26/19

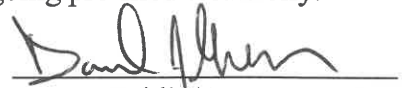
By: 
Rob Wood


Andrew Cutko


Bryan Emerson

Date: 2/26/2019

The above-named Rob Wood, Andrew Cutko, and Bryan Emerson did personally appear before me and made oath as to the truth of the foregoing pre-filed testimony.

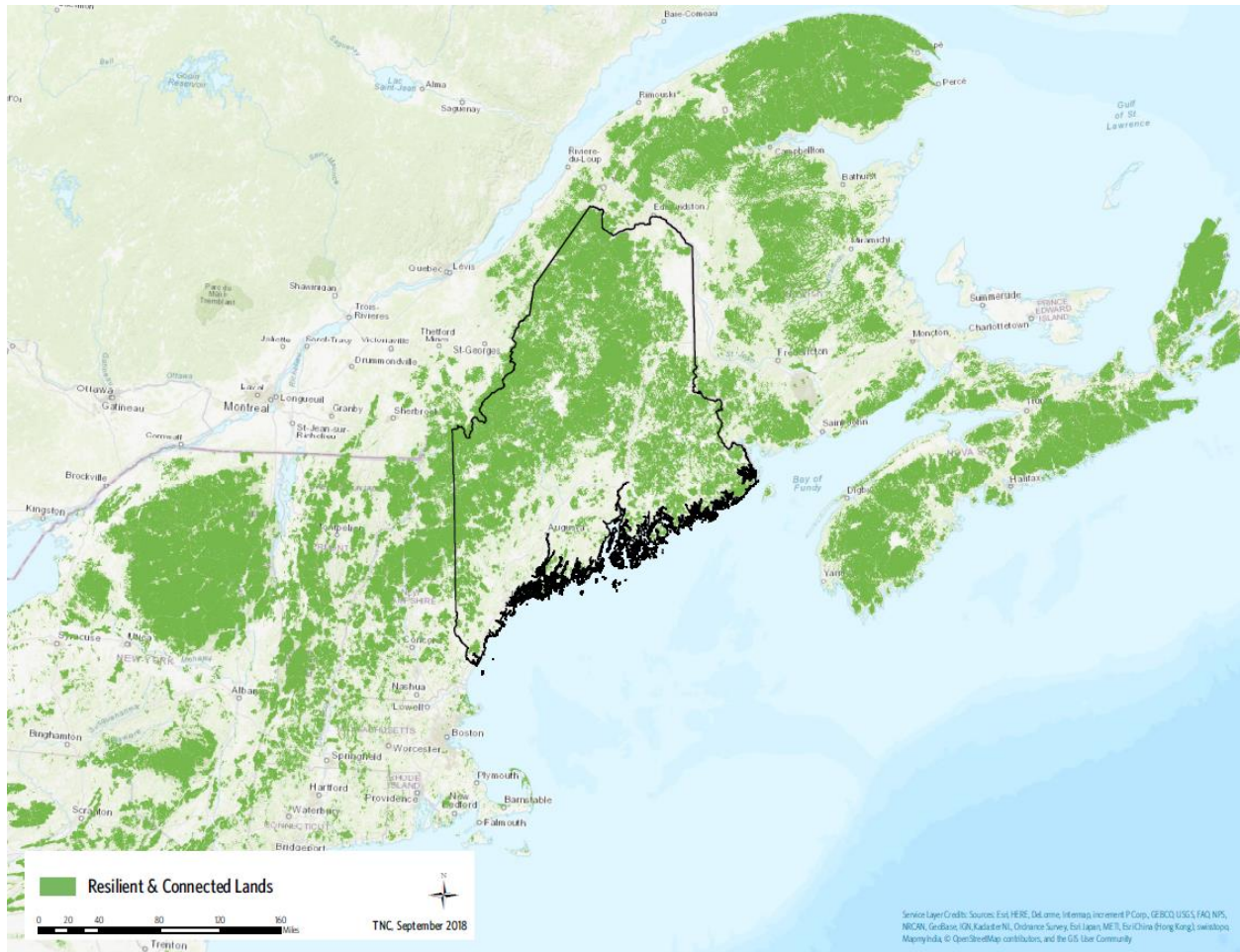

Notary Public/Attorney at Law
My Commission Expires: _____

DANIEL J. GRENIER NOTARY PUBLIC SAGADAHOOC COUNTY MAINE MY COMMISSION EXPIRES NOVEMBER 9, 2023

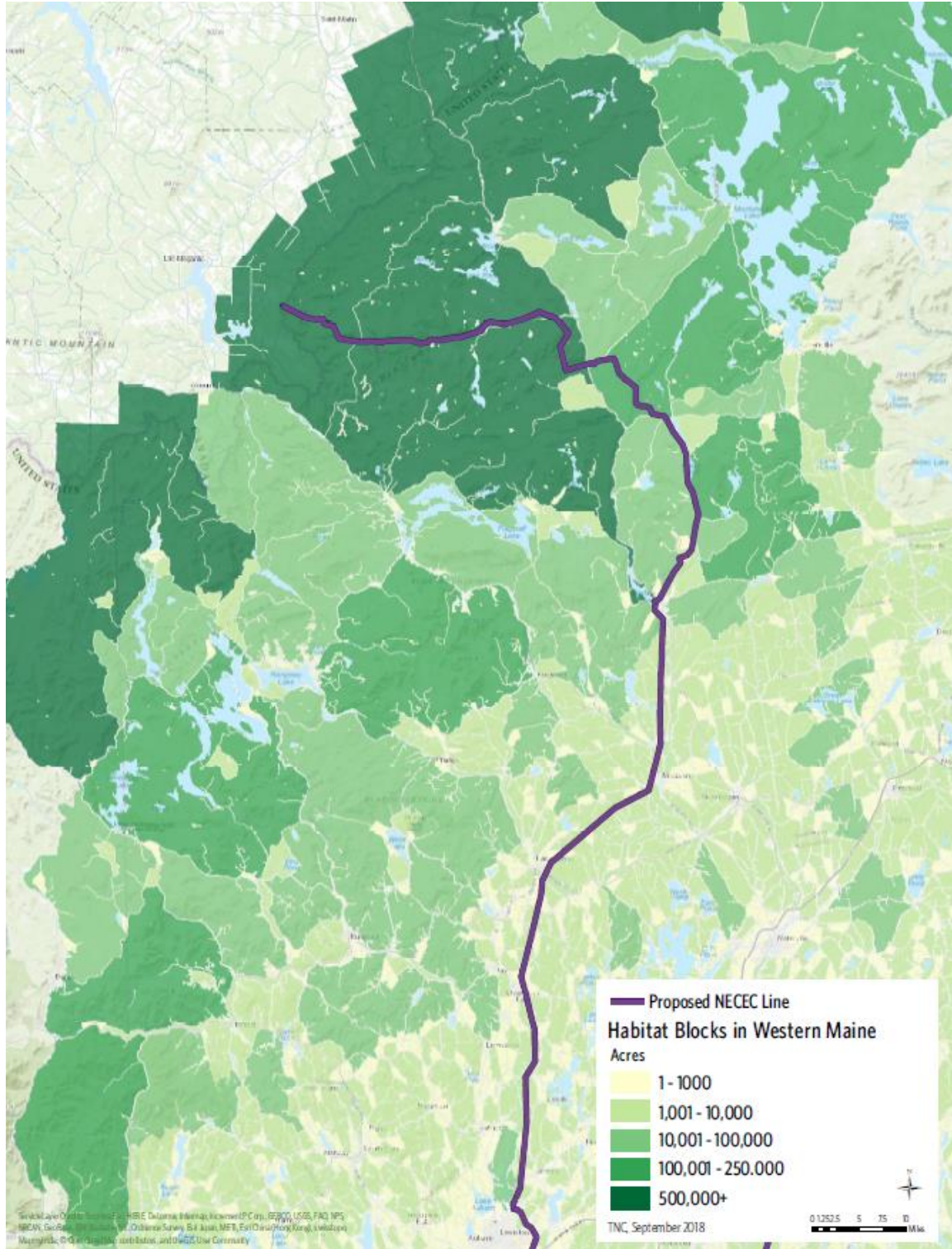
TNC Exhibit 1: Connected and resilient forests of eastern North America (The Nature Conservancy)



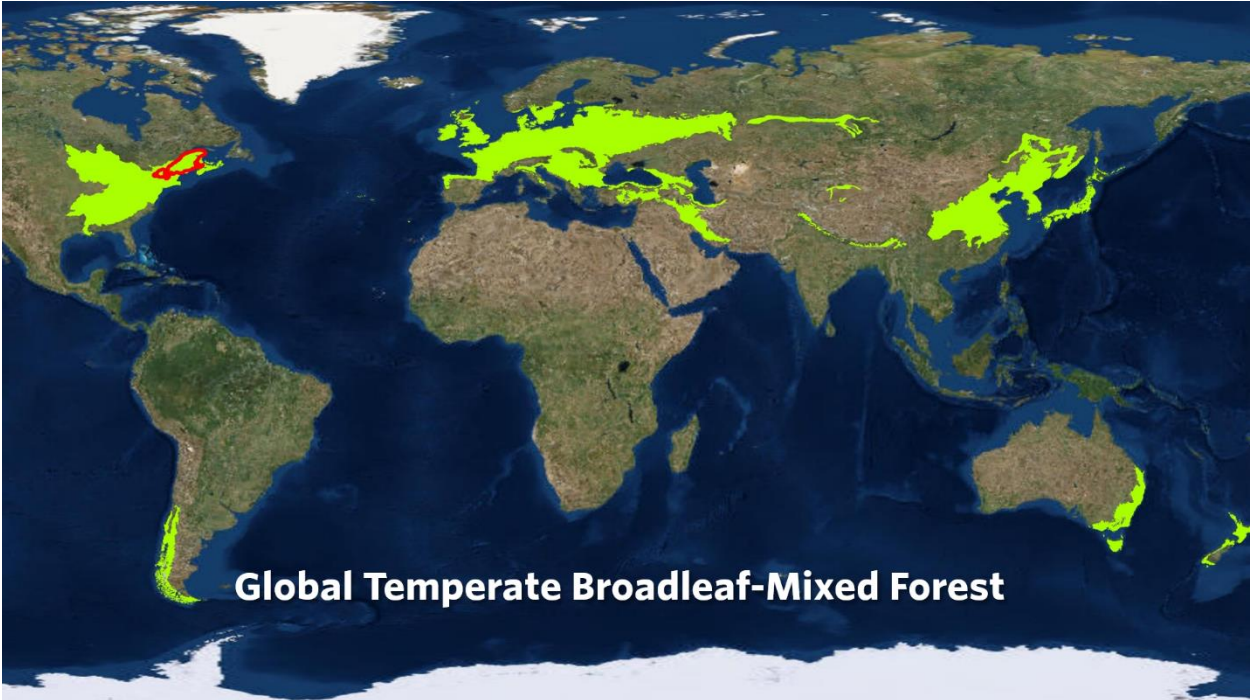
TNC Exhibit 2: Connected and resilient forests of the northern Appalachian region (The Nature Conservancy)



TNC Exhibit 3: Forest blocks in western Maine (State of Maine)



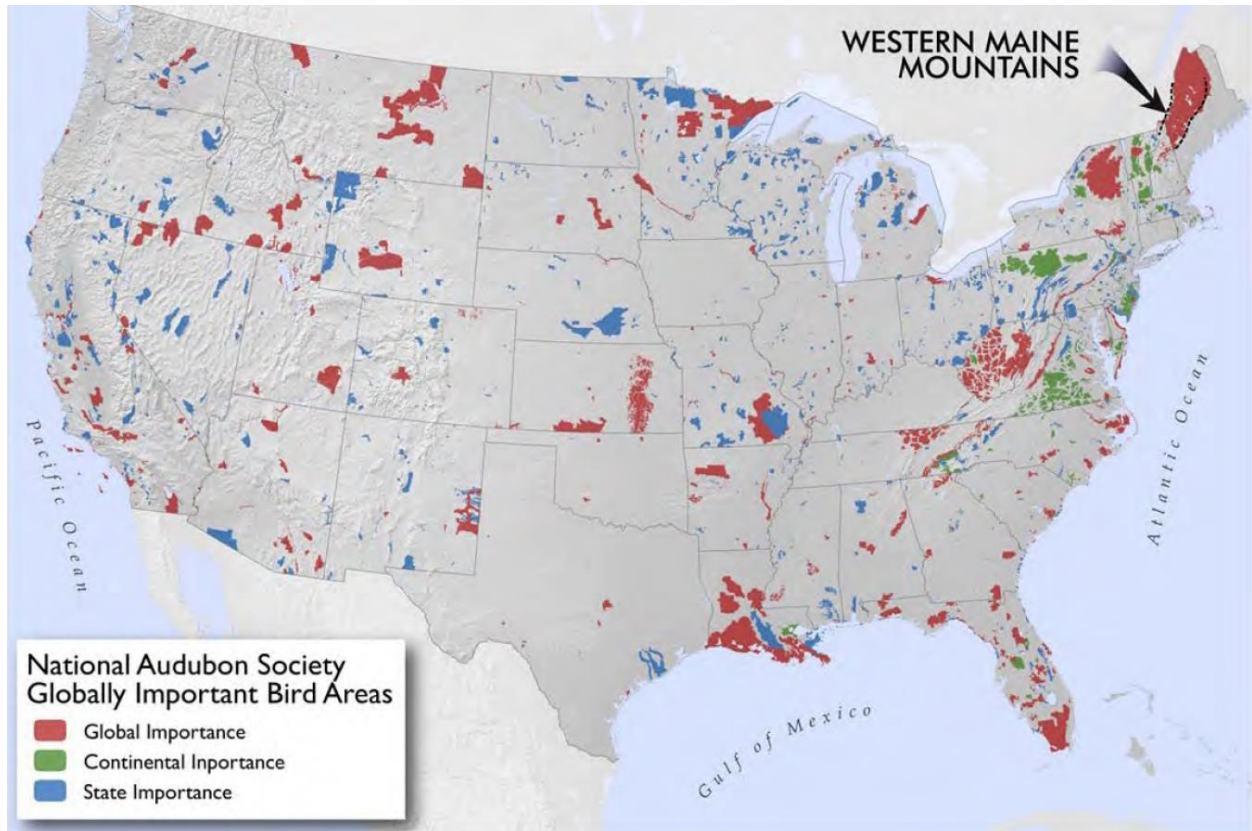
TNC Exhibit 4: Global temperate broadleaf-mixed forests, original extent (The Nature Conservancy)



TNC Exhibit 5: Global temperate broadleaf-mixed forests, current extent (The Nature Conservancy)



TNC Exhibit 6: Globally Important Bird Areas in the United States (National Audubon Society)



TNC Exhibit 7: Priority areas for habitat connectivity in the proposed NECEC corridor (The Nature Conservancy)

