

STATE OF MAINE  
BOARD OF ENVIRONMENTAL PROTECTION

IN THE MATTER OF

NECEC TRANSMISSION LLC  
Somerset and Franklin Counties  
Conservation Plan

L-027625-003

**NATURAL RESOURCES COUNCIL OF MAINE,  
MAINE AUDUBON,  
APPALACHIAN MOUNTAIN CLUB, AND  
TROUT UNLIMITED APPEAL FROM  
DEPARTMENT'S ORDER APPROVING  
CONSERVATION PLAN**

The Natural Resources Council of Maine (“NRCM”), Maine Audubon, the Appalachian Mountain Club (“AMC”), and Trout Unlimited (“TU” and collectively, the “Appellants”) hereby appeal from the Department of Environmental Protection’s (the “Department’s”) Order<sup>1</sup> approving the Conservation Plan (the “Plan”) submitted by NECEC Transmission, LLC (“NECEC”) to satisfy conditions in a permit (the “Permit”)<sup>2</sup> authorizing NECEC’s transmission corridor (the “Corridor”).

**INTRODUCTION**

The Plan does not “promot[e] habitat connectivity and conservation of mature forests,” and therefore fails to satisfy the conditions imposed by the Department and the Board of Environmental Protection (the “Board”). The Plan consists solely of a conservation easement over heavily harvested land the vast majority of which is subject to ongoing harvesting, and thus fails to meet the Board’s specific directive that “standard sustainable forestry operations commonly allowed in

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<sup>1</sup> *NECEC Trans. LLC*, L-027625-003, Order Approving Conservation Plan (Me. D.E.P. Nov. 18, 2025) (attached as **Exhibit A**).

<sup>2</sup> *Cent. Me. Power Co.*, L-27625-26-A-N/L-27625-TG-B-N/L-27625-2wC-C-N/L-27625-VP-D-N/L-27625-IW-E-N, Findings of Fact and Order at 81 (Me. D.E.P. May 11, 2020) (attached as **Exhibit B**) *affirmed with conditions by Cent. Me. Power Co.*, L-27625-26-F-Z/L-27625-TG-G-Z/L-27625-2C-H-Z/L-27625-VP-I-Z/ L-27625-IW-J-Z/L-27625-26-AB-Z, Findings of Fact and Order (Me. B.E.P. July 22, 2022) (attached as **Exhibit C**).

areas subject to working forest easements would not be consistent with the primary goal of the Conservation Plan.” It inexplicably counts two undersized forest blocks that which do not meet the requirement to be “at least 5,000 acres” and do not qualify for the stated exceptions to that requirement. Furthermore, it will be at least forty years—a full generation—before there is much, if any, “mature forest” (even using the Plan’s flawed definition), despite the already existing ecological harm caused by the Corridor, which the Plan was required to mitigate.

Every agency that has commented on this Plan—and the Department itself—has suggested that this approach to mature forest protection should not serve as precedent in future proceedings. But there is no way around it: this is a precedential project. It has already set several precedents—including at the Maine Supreme Court.<sup>3</sup>

The only way to avoid bad precedent is to not set it in the first place. If sustained, the Department’s Order approving the Plan will be a glaring and unavoidable precedent for substandard mitigation. The Board cannot let that happen.

The Board should therefore reverse the Department’s Order approving the Plan and remand for further proceedings or, alternatively, modify it to require NECEC to (1) purchase and conserve an additional 10,000 acres with substantially more mature forest, (2) adopt an ecologically defensible definition of “mature forest,” maintain and enhance existing patches of mature forest, and (3) set aside an additional 10,000 acres within the Easement Area to be managed for mature forest growth in perpetuity.<sup>4</sup>

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<sup>3</sup> See *NextEra Energy Res., LLC v. Maine Pub. Utilities Comm’n*, 2020 ME 34, 227 A.3d 1117; *Avangrid Networks, Inc. v. Sec’y of State*, 2020 ME 109, 237 A.3d 882; *NECEC Transmission LLC v. Bureau of Parks & Lands*, 2022 ME 48, 281 A.3d 618; *Black v. Bureau of Parks & Lands*, 2022 ME 58, 288 A.3d 346.

<sup>4</sup> Appellants have not requested a stay and are not requesting that NECEC’s operations be curbed during or following this appeal. Rather, the appeal is entirely about the mitigation measures that NECEC is required to meet to address the fragmenting impacts of the project.

## **BACKGROUND**

On May 11, 2020, the Department conditionally approved the Permit.<sup>5</sup> Special Condition 39 of the Permit provides:

Within 18 months of the date of this Order, the applicant shall develop and submit to the Department for review and approval a Conservation Plan, consistent with Section 7(D)(2)(a)(3), to permanently conserve 40,000 acres in the vicinity of Segment 1 [of the Corridor].

In turn, Section 7(D)(2)(a)(3) provides that this Conservation Plan must, among other requirements:

- Establish as its primary goal the compensation for the fragmenting effect of the [Corridor] on habitat in the region of Segment 1 and the related edge effect by promoting habitat connectivity and conservation of mature forest areas;
- 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; [and]
- Include a draft forest management plan establishing how, consistent with the primary goal of the Conservation Plan, the conservation area(s) will be managed, including to provide blocks of habitat for species preferring mature forest habitat and wildlife travel corridors along riparian areas and between mature forest habitat[.]

On subsequent appeal, the Board affirmed the Department but imposed a few additional conditions.<sup>6</sup> One of the Board's conditions required that the Conservation Plan conserve an additional 10,000 acres, for a total of 50,000 acres.<sup>7</sup> The Board also clarified that "standard

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<sup>5</sup> See **Exhibit B**. Central Maine Power originally applied for the Permit and later transferred it to NECEC. See **Exhibit A** at 1.

<sup>6</sup> See **Exhibit C**.

<sup>7</sup> **Exhibit C** at 77.

sustainable forestry operations commonly allowed in areas subject to working forest easements would not be consistent with the primary goal of the Conservation Plan.”<sup>8</sup>

NECEC proposed the Plan to satisfy Condition 39, as modified by the Board.<sup>9</sup> The Plan would establish a conservation easement on 50,063 acres of land owned by the Weyerhaeuser Company near the Corridor (the “Easement Area”).<sup>10</sup> It will take more than four decades – until 2065 – for even 50% of the Easement Area to meet the Plan’s definition of “mature forest.”<sup>11</sup> That portion will grow slowly over the course of decades until it reaches 50% of the Easement Area in 2065.<sup>12</sup> The Plan defines “mature forest” as

a forest stand consisting of a mix of native species with a minimum basal area of 80 square feet per acre of live trees at least 4.5 inches in diameter at breast height, including a minimum basal area of 60 square feet per acre of live trees at least 50 feet tall, accompanied by the presence of representative levels of well-distributed standing dead and downed trees.<sup>13</sup>

The Corridor, a smaller transmission line, and Route 201 all intersect the Easement Area.<sup>14</sup> Accordingly, 1,909 acres of the Easement Area would be “edge habitat” impacted by those developments.<sup>15</sup> Relatedly—and despite the Department’s directive to conserve areas of “at least

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<sup>8</sup> **Exhibit C** at 57.

<sup>9</sup> NECEC submitted a Conservation Plan to the Department on November 15, 2021, and a revised Conservation Plan on May 9, 2025. *See* **Exhibit D** (revised Conservation Plan). NECEC thereafter updated the proposed Conservation Easement and the Forest Management Plan that it had submitted with the revised Conservation Plan. *See* **Exhibit D-1** (Updated Proposed Conservation Easement); **Exhibit D-2** (Updated Forest Management Plan). The “Plan” at issue in this Appeal therefore includes **Exhibits D, D-1, and D-2**.

<sup>10</sup> *See* **Exhibit A** at 3.

<sup>11</sup> *See* **Exhibit A** at 5.

<sup>12</sup> *See* **Exhibit A** at 10.

<sup>13</sup> **Exhibit A** at 9; **Exhibit D-1** at 3.

<sup>14</sup> **Exhibit A** at 4.

<sup>15</sup> In its Order approving the Permit, the Department found that areas within 330 feet of the Corridor are “edge habitat” impacted by the Corridor. *See* **Exhibit B** at 80. The 1909-acre figure applies the same calculation to the other transmission line that bisects the Easement Area and to Route 201. *See* **Exhibit A** at 3.

5,000 acres”—the Easement Area includes two blocks of land immediately adjacent to the Corridor that are under 5,000 acres (even considering existing conserved land) and do not uniquely contribute to the goals of the Conservation Plan.<sup>16</sup> The Appellants and the Department identify these blocks as Areas E3 and E4.<sup>17</sup>

Appellants,<sup>18</sup> the Maine Bureau of Parks and Lands (“BPL”),<sup>19</sup> the Maine Department of Inland Fisheries and Wildlife (“MDIFW”),<sup>20</sup> the Maine Natural Areas Program (“MNAP”),<sup>21</sup> and many other individuals and organizations commented on the Plan. Commenters raised several concerns about the Plan:

***Failure to Achieve Primary Conservation Goals:*** The Plan does not achieve the “primary goal” of “promoting habitat connectivity and conservation of mature forest areas.”<sup>22</sup> The Easement Area is one of the most heavily harvested parts of Maine’s Unorganized Territories, containing very little ecologically mature forest.<sup>23</sup>

***Flawed Definition of “Mature Forest”:*** The Plan employs a definition of “mature forest” that, according to ecologist Dr. John Hagan’s unrefuted comments, “does not pass the ecological straight-face test.”<sup>24</sup> Licensed forester Robert Bryan similarly commented that the forests the Plan

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<sup>16</sup> **Exhibit A** at 4-5.

<sup>17</sup> *Id.*

<sup>18</sup> See Joint Comments of NRCM, AMC, Maine Audubon, and TU (June 12, 2025) (attached as **Exhibit E**); Joint Comments of NRCM, AMC, Maine Audubon, and TU (Oct. 24, 2025) (attached as **Exhibit F**); Joint Comments of NRCM, AMC, and Maine Audubon on Draft Order (Nov. 12, 2025) (attached as **Exhibit G**).

<sup>19</sup> See BPL Comments (June 13, 2025) (attached as **Exhibit H**).

<sup>20</sup> See DIFW Comments (June 13, 2025) (attached as **Exhibit I**).

<sup>21</sup> See MNAP Comments (June 12, 2025) (attached as **Exhibit J**).

<sup>22</sup> See **Exhibit B** at 81; **Exhibit G** at 12-13.

<sup>23</sup> See, e.g., **Exhibit G** at 1-5.

<sup>24</sup> Dr. John Hagan Comments at 1 (June 12, 2025) (attached as **Exhibit K**).

defines as “mature” are in fact “far from being mature.”<sup>25</sup> Tellingly, the commenting state agencies all agreed that the Plan’s definition of mature forest should not serve as precedent in future cases.<sup>26</sup>

***Failure to Conserve 5,000-acre blocks:*** The Plan “conserves” two unremarkable blocks under 5,000 acres, which do not contain unique features that would further the goals of the Plan. To the contrary, these substandard blocks directly abut the Corridor and thus suffer from the very fragmenting impacts that the Plan is supposed to mitigate.<sup>27</sup>

***Delayed Mitigation to Compensate for Immediate Impacts:*** Under the Plan, the overwhelming majority of the Easement Area will not be “mature forest” (under the Plan’s substandard definition) until 2065.<sup>28</sup> During this unprecedented delay mitigating for the fragmenting impacts of the Corridor, NECEC will operate a transmission project on the Corridor and generate the impacts that the Plan is supposed to mitigate.<sup>29</sup>

Despite these apparent shortcomings, the Department approved the Plan on November 18, 2025.<sup>30</sup>

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<sup>25</sup> Robert Bryan Comments at 1 (June 12, 2025) (attached as **Exhibit L**).

<sup>26</sup> See **Exhibit H** at 2 (“The mature forest definition used here should not be considered a precedent in other regulatory proceedings requiring mature forest.”); **Exhibit I** at 2 (“Ultimately, it is . . . [MDIFW]’s position that if 50 feet is approved, it should be clear that 50 feet applies to this Plan only and should not be considered a precedent for future mitigation parcels requiring mature forests.”); **Exhibit J** at 2 (“MNAP recommends that the definition of mature forest used in the Plan not be used as a precedent for working forest easements.”).

<sup>27</sup> See, e.g., **Exhibit E** at 2-3.

<sup>28</sup> See, e.g., **Exhibit F** at 5.

<sup>29</sup> See, e.g., **Exhibit E** at 6; see also **Exhibit B** at 106 (explaining that the Corridor’s current contracts are valid for 20 years and that NECEC may renew those contracts).

<sup>30</sup> See **Exhibit A**. Appellants timely filed this appeal within “30 days of the date of a final license decision of the Commissioner.” 06-096 C.M.R. ch. 2, § 23(A).

## **ARGUMENT**

The Board should vacate the Department's Order approving the Plan or require additional mitigation. If permitted to stand in its current form, the Plan will be an unavoidable precedent conflating a working forest easement on a heavily harvested area with mature forest conservation, allowing mitigation measures to be delayed decades into the future for environmental impacts that have already occurred, counting land impacted by development toward mitigation of those same impacts, and allowing the permit holder to defy the Board's and the Department's clear directives.

### **A. Standing**

As a threshold issue, are all "aggrieved persons" with standing to appeal from the Order approving the Plan.<sup>31</sup>

#### **1. Natural Resources Council of Maine**

"NRCM is an environmental advocacy group whose mission is protecting, conserving, and restoring Maine's environment."<sup>32</sup> It has members and supporters who reside, own and operate businesses, and recreate in Somerset County near the Easement Area.<sup>33</sup>

#### **2. Maine Audubon**

Maine Audubon is a nonprofit that "works to conserve Maine wildlife and wildlife habitat by engaging people in education, conservation, and action."<sup>34</sup> It has more than 30,000 members,

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<sup>31</sup> 06-096 C.M.R. ch. 2, § 23(A). As shown is **Exhibits E, F, and G**, Appellants participated in Department proceedings on the Corridor and raised substantial evidence leading to Department implementation of the Plan requirement.

<sup>32</sup> *Black*, 2022 ME 58, ¶ 30, 288 A.3d 346 (and holding that NRCM had standing to appeal from BPL's decision to lease public lands for the Corridor).

<sup>33</sup> *See Cent. Me. Power Co.*, L-27625-26-A-N/L-27625-TG-B-N/L-27625-2C-C-N/L-27625-VP-D-N/L-27625-IW-E-N, First Procedural Order (Me. D.E.P. Aug. 13, 2018) (attached as **Exhibit M**) (granting NRCM petition to intervene in this proceeding); *see also* **Exhibit C** at 6 (finding that NRCM had standing to appeal from Department's initial approval of the Permit).

<sup>34</sup> *See Mission and Overview*, Maine Audubon (accessed Dec. 8, 2025) <https://maineaudubon.org/about/mission-and-overview/>.

supporters, and volunteers statewide. Its Western Maine Chapter includes 180 members living in Franklin and Somerset Counties, many of whom work or recreate in the North Woods.

### **3. Appalachian Mountain Club**

AMC is a nonprofit that promotes the protection, enjoyment, and understanding of the outdoors. It has over 6,500 members who reside in Maine and owns 127,000 acres of forest land in Piscataquis County, which are managed for multiple uses including biological conservation, sustainable forestry, backcountry recreation and environmental education.<sup>35</sup> AMC's members live and work near and in the Easement Area.

### **4. Trout Unlimited**

"TU is a national conservation organization whose mission is to conserve, protect and restore North America's trout and salmon and their watersheds" with 5 chapters and roughly 1,800 members in Maine. The Kennebec Valley chapter includes members in most of the area affected by the Corridor. "Most members of Trout Unlimited are anglers who enjoy fishing the waters that will be impacted by the [Corridor], as well as other recreation in the affected area."<sup>36</sup>

## **B. Merits**

The myriad issues with the Plan boil down to two fundamental shortcomings: First, the Plan fails to comply with the "primary goal" imposed by the Department of providing "compensation for the fragmenting effect of the [Corridor] on habitat in the region of Segment 1 and the related edge effect by promoting habitat connectivity and conservation of mature forest areas" because it conserves very little mature forest and undermines habitat connectivity. Second, the Plan violates the Department's requirement that it provide for conservation of blocks of land that meet a minimum size of 5,000 acres.

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<sup>35</sup> See **Exhibit M** (granting AMC petition to intervene).

<sup>36</sup> See **Exhibit M** (granting TU petition to intervene).



**1. The Plan Conserves Very Little Mature Forest and Fails to Promote Habitat Connectivity.**

The Plan does exactly what the Board said it should not. It employs an easement permitting “standard sustainable forestry operations commonly allowed in areas subject to working forest easements” that fails to actually conserve mature forest.<sup>37</sup> It also fails to promote habitat connectivity. Several of the Plan’s features contribute to these failures:

**a. The Easement Area is Almost all Young and Intermediate Age Forest.**

To start, the Easement Area is one of the most heavily harvested portions of the unorganized areas of Maine. Forest ecologist Dr. John Hagan estimated that just 0.2% of the Easement Area consists of late-successional and old-growth forest stands, which cover 3% of the unorganized areas as a whole.<sup>38</sup> And NECEC acknowledges that 60% of the Easement Area is forested by trees under 35 feet tall.<sup>39</sup> Growth-adjusted LiDAR data from 2016 indicates that this portion may be closer to 78%.<sup>40</sup> The LiDAR data further indicates that only 7% of the Easement Area is forested by trees over 50 feet tall,<sup>41</sup> which would meet at least the height component of the Plan’s substandard “mature forest” definition.<sup>42</sup> In other words, very little of the forest the Plan proposes to conserve is currently mature.

**b. The Plan Permits a “Shifting Mosaic” of Forestry Operations that Undermine its Purported Conservation Objectives.**

Relatedly, the Plan allows very little of the forest in the Easement Area to grow to full maturity. The Plan will permanently protect from harvesting only about 2,400 acres, or 5% of the

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<sup>37</sup> **Exhibit C** at 57.

<sup>38</sup> *See* **Exhibit K** at 3.

<sup>39</sup> *See* **Exhibit D** at 12.

<sup>40</sup> *See* **Exhibit K** at 7.

<sup>41</sup> *Id.*

<sup>42</sup> *See* Argument Section 1(e) *infra*.

Easement Area, which lies within the riparian buffer.<sup>43</sup> The rest of the Easement Area will be subject to a “shifting mosaic” forest management regime that permits “clearcutting or other heavy harvesting [to] proceed at a sustainable rate of over 4,000 acres every ten years.”<sup>44</sup> Robert Bryan, a licensed forester, described this approach as “essentially business as usual commercial forestry.”<sup>45</sup>

Most of the small portion of the Easement Area that still contains ecologically mature forest will be fully available for harvesting, with 25% of these forests scheduled for harvesting within the next 12 years.<sup>46</sup> In other words, the already scarce ecologically mature forest in the Easement Area will steadily diminish over time and the forest outside of the riparian buffer will perpetually be harvested in a fashion that continually disrupts and eliminates mature forest habitat as forest areas within the Plan area meet or exceed 50 feet in height. That result is fundamentally inconsistent with the Department’s and the Board’s mandate to conserve mature forest areas, and with the Board’s statement that “standard sustainable forestry operations commonly allowed in areas subject to working forest easements would not be consistent with the primary goal of the Conservation Plan.”

**c. The Plan Uses Delayed Mitigation to Offset Immediate Impacts from the Corridor.**

The Plan delays most mitigation for nearly half a century, despite the fact that the impacts that the Plan is supposed to mitigate are occurring today. Under the Plan, less than 50% of the Easement Area capable of supporting mature forest will actually have “mature forest” (as the Plan

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<sup>43</sup> **Exhibit A** at 13.

<sup>44</sup> **Exhibit L** at 3; *see* **Exhibit A** at 11-13.

<sup>45</sup> **Exhibit L** at 3.

<sup>46</sup> *See* **Exhibit K** at 1; **Exhibit D-2** at 20 (NECEC UKCE Footprint 2025 – 2037 Harvest Schedule by Period).

defines that term) before 2065.<sup>47</sup> This delayed mitigation is without precedent in Maine,<sup>48</sup> and it could have been avoided. If a significant portion of the Easement Area had included taller, older trees and existing mature forest habitat, the mitigation would have been concurrent with the Corridor's fragmentation impacts. As is, this 40-year delay, for an inadequate 50% benchmark, will not sufficiently compensate for the Corridor's impact on wildlife habitat, as this time period far exceeds the life span of much of that wildlife.

**d. The Plan Fails to Conserve Wildlife Travel Corridors Between Mature Forest Habitats.**

The Plan relies solely on riparian no-cut areas for travel corridors, despite the Department's requirement that it provide "wildlife travel corridors along riparian areas and between mature forest habitat." While this approach provides connectivity along riparian areas, it fails to connect those areas with upland mature forest areas, or to provide connectivity between upland mature forest areas.

Instead, the Plan subjects the areas between those upland mature forest areas, which are intersected by roads and transmission lines, to a "shifting mosaic" forest management. These features will present numerous hazards for wildlife trying to cross from one mature forest to another, reducing opportunities for movement across the landscape.<sup>49</sup>

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<sup>47</sup> See **Exhibit D-2** at 15.

<sup>48</sup> As precedent for this delayed mitigation, the Department pointed to compensatory mitigation programs for wetland impacts "that allow wetland restoration projects to be implemented over a period of years after the impact is permitted." **Exhibit A** at 10-11. But as Appellants pointed out to the Department, wetland mitigation is typically achieved through payment of fees in lieu of specific mitigation projects, and fee in lieu "projects usually take from 1-3 years to be completed, with monitoring of restoration projects required for 3-7 years." **Exhibit G** at 13. The Department provides no example of a compensatory mitigation project that was separated by many decades from the impacts of the project.

<sup>49</sup> See **Exhibit B** at 75-77 (discussing harms to wildlife due to fragmentation, including impacts to wildlife movement).

**e. The Plan Relies on a Flawed Definition of “Mature Forest.”**

Finally, the Plan defines “mature forest” in a way that does not comport with the conservation objectives that the Plan is supposed to achieve. As Appellants explained to the Department, true mature forests that support “species preferring mature forest habitat” develop over the course of 100 years, or longer, and contain unique habitat features such as “three layers of vegetation composed of trees varying in age and size, dominant trees with [Diameter at Breast Height (“DBH”)] values above 12-16 inches, large downed logs, large standing dead trees, pit-and-mound microtopography, and a well-developed leaf litter layer.”<sup>50</sup>

The Plan tailors its definition of “mature forest” to the preferences of a single species, the pine marten, and relies on simplistic metrics such as tree height and basal area.<sup>51</sup> But even within those parameters, the Plan’s “mature forest” definition falls short.<sup>52</sup> Dr. Hagan commented that a better definition of “mature forest would have a basal area of at least 120 sq. ft./acre and trees at least 60 ft tall.”<sup>53</sup>

The commenting state agencies acquiesced to the Plan’s definition of “mature forest” only subject to the caveat that it should not serve as precedent in future cases. The Department adopted this approach in its Order approving the Plan, which acknowledges that “[p]ine marten habitat is not equivalent to late-successional or old growth forest, and future regulators considering mitigation for development of forest habitats are not obligated to focus on pine marten habitat.”<sup>54</sup>

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<sup>50</sup> **Exhibit E** at 8; *see also* Maine Audubon, *Forestry for Maine Birds* 53, 83-84 (2017), <https://maineaudubon.org/wp-content/uploads/2017/12/FFMB-2017.pdf>; **Exhibit K** at 2 n.1 (citing *Forestry for Maine Birds*).

<sup>51</sup> **Exhibit A** at 9; **Exhibit D** at 4.

<sup>52</sup> The photographs provided at page 4 of Appellants November 12, 2025, comments to the Department (**Exhibit G**) illustrate the difference between ecologically mature forest and the forest stands within the Easement Area that currently meet the Plan’s definition of “mature forest.”

<sup>53</sup> **Exhibit K** at 1.

<sup>54</sup> **Exhibit A** at 10.

But the Department also had no obligation to focus solely on pine marten habitat here.<sup>55</sup> Its decision to accept this definition of “mature forest” here is unavoidably precedential. It is unreasonable to expect that in the future, the Department will not be able to tell other applicants that this heavily litigated matter that occupied the media and the Department for years is not precedential.<sup>56</sup> If there is any principled reason for applying a more lenient approach to NECEC’s Plan than to future developers’ conservation plans, Appellants have not found it in this record. If anything, the need to mitigate the Corridor’s fragmenting effect on a “largely unfragmented forest block” of “more than 500,000 acres” in “one of the world’s last remaining contiguous temperate broadleaf-mixed forests,” which “supports exceptional biodiversity,” demands a more rigorous approach.<sup>57</sup>

The Department’s attempt to limit the precedential effect of the Plan’s substandard definition of “mature forest” betrays the fundamental shortcomings of that definition. If agencies should not use that definition as precedent in the future, the Department should not endorse its use in the Plan. The Board should either remand to the Department to require an ecologically defensible definition of “mature forest,” or impose one directly as a modification to the Department’s Order.

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<sup>55</sup> While the Department did identify pine marten as an important “umbrella species,” meaning that “planning for marten often serves the purpose of planning for a wide range of other wildlife,” that finding did not prevent the Department from considering whether the Plan in fact serves the needs of other species. **Exhibit B** at 77.

<sup>56</sup> See, e.g., *Cassidy Holdings, LLC v. Aroostook Cnty. Commissioners*, 2023 ME 69, ¶ 16 n.4, 304 A.3d 259.

<sup>57</sup> **Exhibit B** at 75.

## **2. The Plan Fails to Meet the 50,000-acre Requirement Through Large Forest Blocks.**

The Plan also clearly violates the Board's and the Department's unambiguous directives. NECEC was required to "permanently conserve [5]0,000 acres in the vicinity of Segment 1 [of the Corridor]" and "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."<sup>58</sup> Despite these requirements, the Plan includes two blocks that do not meet the 5,000 acre minimum size. These block (Blocks E3 and E4) are directly adjacent to the Corridor, and do not fall within any exception to the 5,000-acre rule.

Blocks E3 and E4 do not fall under the "adjacent to existing conserved land" exception because, when the acreage of adjacent conserved lands are added to those blocks, they still fall under 5,000 acres.<sup>59</sup> And in addition to bordering the Corridor itself, they also border other fragmenting features, including Route 201 and another transmission line. For the purposes of mitigating the fragmenting impacts of the Corridor, "adjacent to existing conserved land" cannot possibly mean separated from conserved land by additional fragmenting features.

Nor are these two blocks "uniquely appropriate to further the goals of the Conservation Plan." A sub-5,000-acre parcel might be "uniquely appropriate" to further the Plan if it had distinct ecological features, not found on other parcels in the Easement Area, that provided conservation benefits that the Plan might otherwise lack. But the Department concluded that the two smaller parcels qualify because "excluding the areas immediately adjacent to the [Corridor], Route 201, and the east-west transmission line from the conservation area would leave these areas eligible for

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<sup>58</sup> **Exhibit B** at 81; **Exhibit C** at 77.

<sup>59</sup> **Exhibit D** at 11; *see* **Exhibit E** at 7.

development.”<sup>60</sup> This cannot meet a standard of “uniquely appropriate” since it would equally apply to any other parcel along the entire 53-mile Segment 1 portion of the Corridor or along any other fragmenting feature (road or transmission line) within the nearly 7-million-acre Area of Interest that NECEC evaluated for large block conservation options.<sup>61</sup>

The Department also posited that failure to conserve the sub-5,000 acre parcels adjacent to the Corridor could “exacerbate” the Corridor’s “fragmenting effect.”<sup>62</sup> That is exactly backwards.

As the Department acknowledged in its Order approving the Permit, “fragmentation occurs when contiguous habitat is broken into smaller, more isolated patches.”<sup>63</sup> Because the Corridor already fragments the landscape, any development directly adjacent to the Corridor would cause *less* additional fragmentation than development within the interior of the nearby large habitat blocks that NECEC was supposed to conserve.

Because these small parcels do not meet the Department’s and the Board’s clear directives, they cannot count toward the acreage for the Plan. And without these small parcels, the Plan fails to meet the Department’s and Board’s most unambiguous requirement of conserving 50,000 acres.

### **C. Remedy**

If the Board agrees with Appellants that the Plan is deficient, it has two options. It may simply reverse the Department’s Order approving the Plan and remand for further proceedings addressed to the issues raised herein.<sup>64</sup> Reversal and remand would allow the Department to

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<sup>60</sup> **Exhibit A** at 4.

<sup>61</sup> *See* **Exhibit G** at 6.

<sup>62</sup> **Exhibit A** at 5.

<sup>63</sup> **Exhibit B** at 76.

<sup>64</sup> 06-096 C.M.R. 2, § 23(J).

reopen the record and consider an alternate proposal from NECEC.<sup>65</sup> That is an appropriate remedy under these circumstances, as it would allow the Department to address the full suite of issues raised in this appeal.

However, if the Board does not want to completely reverse the Department, it could “affirm all or part of the decision of the Commissioner with modifications, or new or additional conditions.”<sup>66</sup> Appellants propose modifications to simply re-affirm what the Board has already said.<sup>67</sup> These modifications could be in the form of new conditions<sup>68</sup> requiring NECEC to:

1. Purchase (in fee, not a conservation easement) at least an additional 10,000 acres to be owned and permanently managed as mature forest by BPL or a conservation organization.
2. Adopt a new, ecologically defensible definition of “mature forest” that applies to the entire Easement Area and prepare a new forest management plan that adheres to that definition.
3. Create, within the Easement Area, a Special Management Area or Areas of at least 10,000 acres and consisting of no more than two contiguous blocks of at least 5,000 acres each, to be permanently managed as mature forest (as defined above), not subject to the shifting mosaic approach. This Special Management Area or Areas should be in addition to the mature forest riparian buffers and could include some of the remaining late-successional and old growth forests on site now.
4. Establish additional no-cut areas and/or strict harvesting limitations in and around the little remaining ecologically mature forest within the Easement Area that will maintain those

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<sup>65</sup> More recent working forest easements, such as the Kennebago Conservation Easement, provide a better template that NECEC should have followed. See **Exhibit G** at 13-14; **Exhibit F** App. C.

<sup>66</sup> *Id.*

<sup>67</sup> Appellants made a similar proposal to the Department. See **Exhibit G** at 14.

<sup>68</sup> A proposed order suggesting how the Board might impose these conditions is attached for consideration as **Exhibit N**. The Board is, of course, free to fashion relief in any manner it sees fit.



areas as mature forest indefinitely. These areas could either remain under Weyerhaeuser's management (if identified in the easement and ecological or forest management plan) or be transferred to another conservation owner.

Satisfaction of these conditions would result in the conservation of 50,000 acres of mature forest, which is the standard that the Department set for the Plan.

### **CONCLUSION**

For the forgoing reasons, Appellants the Natural Resources Council of Maine, Maine Audubon, Appalachian Mountain Club, and Trout Unlimited respectfully request that the Board reverse the Department's Order approving NECEC Transmission LLC's Conservation Plan and remand with instructions to require an ecologically defensible definition of "mature forest," exclude Blocks E4 and E5 from counting toward the 50,000 acre requirement, and make other changes necessary to remedy the issues identified herein or, alternatively, affirm with the new conditions as described above.

[SIGNATURES APPEAR ON THE FOLLOWING PAGE]

Respectfully submitted this 18th day of December, 2025;



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