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From: Eliza Townsend <etownsend@outdoors.org>
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To: DEP, NECEC
Subject: AMC's written comments on permit suspension
Attachments: AMC comments re suspension of NECEC permit 10.18.21.pdf

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Hello, please find attached AMS's written comments on the suspension of the permit for the NECEC.

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Comments of the Appalachian Mountain Club

Regarding suspension of the DEP Order # L-27625-26-A-N/L-27625-TB-B-N/L-27625-2C-C-N/L-27625-VP-D-N/L-27625-IW-E-N, permitting the New England Clean Energy Connect

The Appalachian Mountain Club requests that the Department of Environmental Protection suspend the permit for the New England Clean Energy Connect power transmission corridor.

AMC is the nation's oldest conservation, recreation, and education organization, with the mission to foster the protection, enjoyment, and understanding of the outdoors. We have 6,500 members in Maine and own 75,000 acres of forestland in the 100-Mile Wilderness region of Piscataquis County, managed for multiple use, including sustainable forestry, backcountry recreation, and environmental education. Our forest management and conservation advocacy activities are informed by an active, highly credentialed research team.

We believe that the permit must be suspended for two reasons.

First, as we testified during the permitting process, this project bisects a globally significant forest region notable for its forest composition, lack of development, and high degree of ecological connectivity. Construction of the corridor will result in the permanent loss of nearly 1,000 acres of forest, significantly alter the remaining forest through the "edge effect," and reduce habitat connectivity. Our joint intervenor Trout Unlimited also testified as to the impact that clearing of riparian forest along hundreds of streams would have on nationally significant habitat for brook trout.

Allowing the applicant to continue construction will increase the severity of forest fragmentation and further damage aquatic habitat in the Upper Kennebec Region. If the project cannot be completed, not only will the damage take decades to undo, but the compensatory land conservation required as mitigation by the DEP in issuing the permit will not be secured, resulting in long-lasting but unmitigated harm to Maine's environment and the species who depend upon it.

Second, the applicant does not have right, title and interest in all the property proposed for development, and it did not have it at the time that it applied for a permit from the department. Though the validity of the lease to cross the West Forks Plantation and Johnson Mountain Township public lands was raised repeatedly by intervenors, examination of the issue was opposed by the applicant and the department wrote that it *"accepts the decision of its sister agency to enter into the leases and the fully executed leases as sufficient title, right, or interest in that portion of the proposed corridor to apply for permits for the project."*

To be clear, Maine's constitution says that public lands may not be reduced, or their uses substantially altered, without a vote of approval by 2/3rds of the legislature. Without question, the construction of a transmission line of 150 – 300 feet in width would be a substantial alteration of the use of public land.



The applicant knew or should have known about the constitutional provision but succeeded--twice--in securing a lease to cross public lands without the legislative approval that the constitution requires. As Justice Murphy observed during the hearing on *Black v Cutko* "it seems as if there was a concerted effort to keep the Legislature in the dark both times."

Now the applicant argues that right, title, and interest was only relevant prior to the issuance of the permit. That's just wrong. If the department does not suspend the permit, it will set a dangerous precedent, and we can anticipate that future applicants will follow Central Maine Power's playbook: represent that they have right, title, and interest long enough to secure a permit, and, once the permit is issued, argue that right, title and interest are no longer relevant.

Maine's Public Lands are an extraordinary asset. Among the most beautiful and remote places in the state, they offer unparalleled recreation opportunities, drawing visitors and their dollars to rural Maine year-round. Further, our public lands provide both critical wildlife habitat and a substantial contribution to the wood basket. These assets had nearly slipped from our grasp in the 1960's, but were won back by diligence, public opinion, and a lawsuit. We must not take them for granted. If the West Forks Plantation and Johnson Mountain Township public lands can be substantially altered without legislative approval, so too can be better-known parcels like Deboullie, Donnell Pond, Nahmakanta, or Tumbledown.

By statute, the Department of Environmental Protection's purpose is to "prevent, abate and control the pollution of the air, water and land and **preserve, improve and prevent diminution of the natural environment of the State. The department shall protect and enhance the public's right to use and enjoy the state's natural resources** and may educate the public on natural resource use, requirements and issues."

If the department does not suspend the permit for the New England Clean Energy Connect for the reasons outlined above, it will not be fulfilling its mission.