

York, Marylisa

From: Brenda Cummings <bcummings.plt@gmail.com>
Sent: Tuesday, October 19, 2021 5:59 PM
To: DEP, NECEC
Subject: Fwd: Testimony NECEC Suspension Hearing - Brenda Cummings
Attachments: B Cummings Hearing testimony No 1 10-19-2021.pdf; 12 Mar 1972 Telegram - Public Land Sold and Given Away.pdf

EXTERNAL: This email originated from outside of the State of Maine Mail System. Do not click links or open attachments unless you recognize the sender and know the content is safe.

I am sending this testimony to the correct email address to make sure it is included in the testimony.

----- Forwarded message -----

From: Brenda Cummings <bcummings.plt@gmail.com>
Date: Tue, Oct 19, 2021 at 4:48 PM
Subject: Testimony NECEC Suspension Hearing - Brenda Cummings
To: <ruth.a.burke@maine.gov>

Dear Ms. Burke,

Attached is the first of two submissions for the public record in the suspension hearing for the NECEC project. Thank you.

Brenda Cummings
64 Pearl Street
Bath, ME 04530
207-844-1706
bcummings.plt@gmail.com

Public Testimony
Suspension Hearing, NECEC Permit

Brenda Cummings
64 Pearl Street
Bath, ME 04530

Today's Maine Department of Environmental Protection (DEP) hearing on whether to suspend the construction of the proposed New England Clean Energy Connect (NECEC) project will focus on the fate of 33 acres of public lands in Johnson Mountain Township and West Forks Plantation in Somerset County. These lands, held in trust for the people of Maine, will also play a central role in the upcoming election.

Central Maine Power (CMP) has argued that its illegal lease of 2014 (in violation of Title 35-A Section 3132 part 13), since replaced by a restated lease in 2020, does not affect its eligibility for the DEP permit issued in 2020, and the DEP has previously accepted this contention. Moreover, CMP has argued in the *Black v. Cutko* case that the protections of Maine Constitution do not or should not apply to the public lands in question in this matter. I disagree.

The Maine lands at the center of today's hearing are protected and managed today by the State of Maine in the public trust in large part because of the work of Bob Cummings, my father, the journalist for the Portland Press Herald and Sunday Telegram who first told Maine people in March of 1972 that we had over 400,000 acres of publicly owned land that we didn't even know existed – land that could be used, he proposed, for hunting, camping, and other recreational purposes.

Cummings reported that Maine's public lands had a long history of commercial exploitation, primarily by paper companies that treated our land as their own. It wasn't until 1981 that the Maine Supreme Court finally affirmed the State's right to these lands, removing them from the de facto control of paper companies that had purchased cutting rights to the lands in the 1800s.

In 1993 Maine voters stepped in and amended the State Constitution to protect our public lands from the whims of whatever party faction controlled the Blaine House by requiring 2/3rds approval of the state legislature for any sale or substantial change in use of our public lands. This referendum passed with the overwhelming support of over 72% of Maine voters.

Though we have come a long way since 1972 – winning back the rights to our public lands in the Maine Supreme Court and securing those rights in a constitutional amendment -- there remains a need for constant vigilance to ensure no one person, no one state agency or governor, can substantially change, sell or give away our lands without our consent.

This is what is at stake for the Maine people today.

Just as the town of Flagstaff will never reappear from under Flagstaff Lake, even though CMP only leases the dams that were built on State land in the 1950s, the lands we give to CMP for these transmission lines will not be returned to us in our lifetimes. Maine's public lands are, by statute, to be used for conservation, recreation, or wood harvesting purposes. When an alternative use is proposed, the state legislature has the responsibility, under the 1993 constitutional amendment, to approve or disapprove the change. Now that a Maine Supreme Court judge has terminated CMP's illegal lease, the Maine Department of Environmental Protection should act swiftly to cease all construction until CMP obtains this necessary approval.

The Department of Environmental Protection is responsible, along with all other state agencies, to operate in alignment with the State Constitution, and thus must now act to ensure our public lands, held in public trust for the benefit of all Maine people, are not misused by Central Maine Power.

Thank you for considering the important history of Maine's public lands and their Constitutional protections in your deliberations.

Brenda Cummings
64 Pearl St
Bath, ME 04530

Public Land Sold And Given Away

TELEGRAM

SUN MAR 12 1972

By BOB CUMMINGS

Maine is pondering the disappearance of its coastline to out of state developers and speculators.

And it is struggling to buy enough land to preserve some minimum of public access to its lake and mountain country.

But at the same time the recreational potential of 400,000 acres the public already owns continues to be neglected, sold and given away.

This is the amazing story of the state's little known, and little understood public lots—a vast legacy of public domain dating from colonial time.

This public land lies scattered throughout the 10 million acres of wildlands. All of it is in the unorganized townships of northern and eastern Maine.

Public lots straddle mountain tops and slopes, encompass miles of lake, pond and riverfront and include within their environs hundreds of free flowing wilderness streams.

They are 1,000-acre and in some cases 1,280-acre plots set aside when Maine and Massachusetts sold millions of acres of public lands. Massachusetts' role stemmed from the fact that until 1820 Maine was part of Massachusetts.

The plots originally were set up so income from them could be used to support the ministry and the public schools.

Later, in 1833, by joint action of the legislatures of the two states, the public lots were dedicated solely to the support of public schools and Maine was given trusteeship.

As a source of funds for schools the lots have proved a complete bust. After 151 years of state trusteeship, the lots generated just \$55,000 in interest last year, money which was paid to the state department of education.

The principal now stands at the grand total of \$2.8 million, approximately what a typical Maine community of 15,000 spends for schools in a year.

One reason for the poor showing is the state's poor trusteeship. Between 1850 and 1878 the Maine legislature sold off all rights to harvest the trees on the public lots for as little as a nickel an acre — and didn't even put the money into the trust fund. It spent it instead.

As a result the state owns both land

and timber rights to only 70,000 acres of its 400,000 acres. On the rest the state owns only the land itself and the minerals under it.

But the value today is not in the timber harvesting potential which the state sold. Maine already grows twice as much wood each year as its mills can use.

The shortage is in public recreation lands.

And in public lots Maine owns twice as much land as the area of Baxter State Park, Maine's largest, and 10 times the total acreage of all the other state parks including the Allagash Wilderness Waterway.

Aside from the occasional leasing of camp lots, Maine has largely ignored the recreational value of its vast domain. This may at last be changing. But the change is coming slowly.

Last June Gov. Kenneth M. Curtis issued an executive order setting up a joint committee of state department heads to ponder "the need for coordinating future plans of each state agency for acquiring and using lands for recreation, conservation or open space preservation."

Named to the panel was the Commissioner of Forestry, Austin Wilkins—the man currently responsible for the management of the public lots.

Others are the commissioners of inland fisheries and game, and highways, the executive director of the Maine Land Use Regulation Commission and the director of state planning.

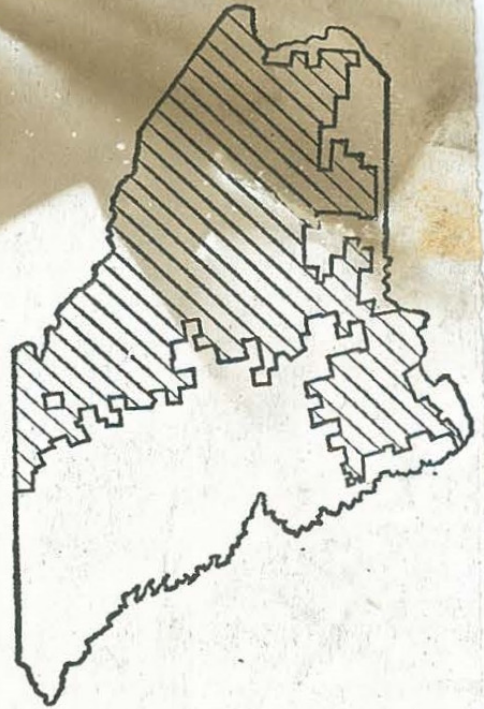
Lawrence Stuart, director of parks and recreation, is chairman.

Among the specific charges to the committee is to recommend a policy for the public lots including "the exchange of forest lots in the unorganized townships."

But the committee has yet to meet. The governor's office and Stuart blame the time required to plan for the proposed department of Natural Resources of which Stuart is commissioner.

The special session of the legislature, however, has now finally rejected the new department and members of the land committee say they expect a meeting now to be called soon.

The directive calling for a study of the



UNORGANIZED — Cross hatched area indicates extent of Maine's unorganized territory. There are about 425 unorganized townships within the area and most contain more than 1,000 acres of woodland dedicated to public use.

"exchange" of public lots may be the most important consideration of the new committee.

The scattered location of the lots makes the management for sustained yield of forest products expensive and difficult Wilkins says — and makes any systematic recreational use impossible.

Consolidation of the lots into several compact blocks would make public access and public recreation more likely and probably increase the value of the lots in providing money for the operation of schools in the wildlands.

Wilkins moved a lot near Greenville a couple of years ago because it was in the way of Squaw Mountain ski development.

If the location of public land can be moved to facilitate private recreation, the locations can be changed to provide for public recreation.

At least this is the suggestion of John McKee, a director of the Land Use Regulation Commission and an officer of the Natural Resources Council of Maine.

McKee, whose photographic essay "As Maine Goes . . ." focused national attention on the Maine coast a few years ago, has written, "little thought has been given to the role the public lots might play

in a coordinated program of conservation and wilderness recreation at minimum cost to the public.

"Indeed, many people looking at the state house from the outside and jarred at the prices being demanded for potential state park and other lands, have come away wondering whether the left hand was aware of the right hand."

His concern has some foundation. While the state is buying coastal land for up to \$25,000 and more an acre, it has recently embarked on a new policy of selling away its public lots for as little as \$400 an acre.

Sales have been completed for big chunks of the public lots in the Carrabasset Valley near Sugarloaf for an average price of 11 cents ~~an acre~~ and other sales are pending. *4 5 square feet*

Forest Commissioner Wilkins says the prices were established by an indepen-

dent appraisal and the sale was authorized by the legislature on his recommendation.

The initial sale was voted a couple of years ago and two more sales last spring.

The first was an attempt to clarify the legal status of camp owners who had leased land from the Dead River Co. and built camps—only to find later that the state actually owned the land.

But the sales authorized last year had no such legal complications. The owners of camp lots on land the state itself had leased wanted the protection of ownership and the state went along.

Wilkins calls the sales "a special situation" and says he will oppose future sales of the public lands.

But the precedent has been set and future legislatures are certain to be faced with continuing pressure to sell camp lots wherever the forest commissioner has the leased land.

Wilkins defends the leasing program. "I am not adverse to continuing the pol-

icy of leasing camp lots. This is part of a national trend of outdoor recreation," he says.

Three hundred and sixty such leases are outstanding now—most for an annual fee of \$50.

mittee must ponder is whether it is affordable to give exclusive use to 150 feet or more of lakefront to one person, while at the same time buying other lakefront for use by the general public.

The public lots were created on the assumption that eventually all parts of the state will become settled and grow into communities with their own stores, churches, homes and schools.

But the facts of Maine life, of course, have changed in the years since the lots were created by the Massachusetts legislature in the 1870's. The assumption is no longer valid.

Maine wildlands are no longer serious candidates for being settled—except by recreational home buyers who need no schools.

More important the wildlands are the

croplands for the state's most important industries — pulp, paper and wood products.

These combine to provide jobs for a majority of Maine workers. Few seriously contend that it is in the state's interest to try to replace this industry with anything else.

The woods industry pays the highest wages of any in the state and by its use of the woods for timber harvesting provides most of the tiny bits of wildness left for outdoor recreation available in the entire northeast.

The legislature recognized the uniqueness of the Maine woods when it created the Land Use Regulation Commission to assure that any development in these areas doesn't destroy the woods environment.

If the premise of the wildlands commission is realistically to be carried out, the 1780's goal of an organized community in each township has to be changed and a better use be made of the land, McKee argues.

The key vote establishing the state's right to the land was made by the Massachusetts Legislature on March 26, 1788, when it made a condition of the sale of any township of six square miles the reservation of "four lots of 320 acres each, one for the first settled minister, one for the future appropriation of the general court, one for the use of the ministry and one for the use of the schools."

When Maine became a separate state the one of the articles of separation that became part of the Maine constitution provides "... and in all grants hereafter to be made by either state of unlocated land within the said district, the same reservation shall be made for the benefit of schools and the ministry as heretofore been usual."

The only subsequent change in the basic law setting up the reserve lots came in 1832, when both legislatures agreed to change 1,280 acres to 1,000 acres and to eliminate the reference to the ministry.

About half the 400,000 acres of public land lies scattered in the 390 unorganized

townships—towns laid out in six square mile blocks but containing no organized government.

The land is located in plots as small as 50 acres and as large as 2,000 — bigger than all but two of our 37 state parks.

The rest the state owns but has never gotten around to laying out on the ground. But the public's right to its land remains undisputed and the procedures for establishing the boundaries are established by law.

The public lots are what remain from the seven million acres of public domain that Maine inherited or bought after it separated from Massachusetts in 1820.

But Maine didn't get to be a half century old before it had peddled or given away all of its seven million acres of public lands—except the public lots.

It may be one of the ironies of history that these lots set up to insure eventual civilization may become a major tool in preserving one of the scarcest commodities of the final decades of the 20th century—natural areas and wilderness.