Maine Forest Products Council

The voice of Maine's forest economy

Companies represented on the MFPC Board

A & A Brochu Logging
American Forest Mgmt.
Baskahegan Co.
BBC Land, LLC
Columbia Forest Prod.
Cross Insurance
Family Forestry
Farm Credit East
Fontaine Inc.
H.C. Haynes
Huber Resources
INRS
J.D. Irving
Katahdin Forest Mgmt.
Key Bank
Kennebec Lumber
LandVest Inc.
Louisiana Pacific
Maibec Logging
ND Paper
Nicols Brothers
Pingree Associates
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ReEnergy
Richard Wing & Son
Robbins Lumber
Sappi North America
Southern Maine Forestry
Stead Timberlands
St. Croix Tissue
St. Croix Chipping
TD Bank
Timber Resource Group
Timberstate G.
Wadsworth Woodlands
Wagner Forest Mgt.
Weyerhauser
Woodland Pulp

March 7, 2024

Via Electronic Mail to: naomi.kirk-lawlor@maine.gov

Maine Department of Environmental Protection
C/O Naomi Kirk-Lawlor
17 State House Station
Augusta, ME 04333-0017

Re: Chapter 375: No Adverse Environmental Effect Standards of the Site Location of Development Act

Dear Ms. Kirk-Lawlor,

The Maine Forest Products Council (the Council) submits comments today to highlight our concerns regarding the Maine Department of Environmental Protection's proposal to amend Chapter 375, No Adverse Environmental Effect Standards of the Site Location Development Act. Since 1961, the Maine Forest Products Council has been the voice of Maine's forest economy. The Council represents the diverse needs of Maine's forest products community. Our members are landowners, loggers, truckers, paper mills, tree farmers, foresters, lumber manufacturers, and more. We welcome this opportunity to comment on the draft proposal that is before you today, as it would have ongoing and significant impacts on our membership, which includes landowners managing more than 8 million acres of sustainably managed forestland.

While the Council has no issue with the establishment of a compensation fee program to allow payments in lieu of mitigation, **this proposal includes a broadly defined new "undeveloped habitat block" category under Site Law that would require automatic mitigation for renewable energy development.** As a result, this proposal would tag an estimated 14.5 million acres, or 79% of Maine's undeveloped land in a new category that is broadly defined, and unscientific in nature.

As you will see on the attached map**, this represents the most extensive rezoning effort in recent history** with significant impact to land values and development opportunities for thousands of landowners in every corner of the state. Yet, by the Department's own admission in testimony, the priority was to "get rules in place expeditiously." We feel that this is the wrong approach for a proposal of this magnitude.

It is customary for consequential new rules to involve a rigorous stakeholder process (i.e. Chapter 428: Stewardship Program for Packaging and PFAS in Products). Even though this rule would result in a huge taking of the land development values and opportunities for landowners of all sizes, **not a single landowner or landowner group was consulted in the drafting of this rule.** If MFPC had been included in the rulemaking process, we would have advised the Department that arbitrarily mapping upwards of 79% of Maine's undeveloped lands as a new protected resource is not scientifically sound.

The Maine Forest Products Council recommends that this rule be returned to the Department for substantial revisions as part of a stakeholder process.

The draft proposal goes far beyond the directives of Chapter Law 448. Last year, the Legislature passed LD 1881 in response to the development of large-scale solar projects on agricultural lands. This new law directed the Department of Environmental Protection to develop a mitigation compensation fee structure for solar and wind energy development under the Site Location of Development Act (Site Law). The mitigation fund would allow developers the option to either conduct a habitat mitigation project or pay a fee to the fund that would then be used to conserved land located in the same ecoregion as the development. This process would be required for solar, wind or high-impact transmission line projects that trigger Site Location of Development Laws. MFPC believes the proposed mitigation standard would codify a procedure that is much too general and unscientific. The regulation needs to be developed with an eye towards other types of large projects and defined criteria that do not cloak most of the forested land base in a broad regulatory regime.

The DEP proposal before the Board today would establish a rigid compensation formula for all impacts when the DEP's directive in LD 1881 was to "establish variable compensation amounts based on the value of the habitats…and the degree of adverse effect caused by the development." The presumption that simply being a block of an arbitrary size means the parcel contains critical wildlife habitat, and that all impacts to these parcels would have adverse impacts, is not based on a scientific approach to evaluating specific sites, and results in a flawed regulation.

Mitigation requirements should be site-specific and require the confirmed presence of critical wildlife habitat. Simply being undeveloped is not a unique habitat worthy of rigid regulation. Mitigation and compensation must be site-specific and based on in-depth studies to confirm rare or important habitat features such as deer wintering areas, habitats of rare, threatened or endangered species, migratory bird pathways (new to Site Law) and important wildlife corridors (also new to Site Law, and problematic).

The proposal includes a map of this new "undeveloped habitat block" habitat that has not been verified, did not originate from within the landowner community and should not be used for regulatory purposes. The map includes blocks presumed to be 150 acres or larger in the Southern ecoregion (40% of the region), and blocks presumed to be 250 acres or larger in the Central Interior and Midcoast ecoregion (33% of the region). The rest of the state does not have a size limit, and remains unmapped, but preliminary estimates are substantial, especially in the unorganized territories.

This is not an area where fragmentation is of concern, yet any level of impact to these undeveloped blocks, which again, are defined in a way so broad as to impact upwards of 14.5 million acres, would require automatic compensation.

The DEP's proposal that acreage alone should determine the value of a habitat block is not biologically justified. As with the agricultural soil component of this new law, impacts on wildlife should be determined on a case-by-case basis with many other variables considered. Mitigation without a case-specific study of impacts is unprecedented and unreasonable.

The new rule seems to broaden the deer wintering areas category to include all areas, regardless of value. Under Site Law currently, it is stipulated that "There will be no unreasonable disturbance to: ***High and moderate value*** deer wintering areas." The proposal before you today, however, stipulates that "Compensation must be proposed for likely adverse effects to wildlife and fisheries habitats *consisting of deer wintering areas*…through off-site habitat improvements or preservation or the payment of a compensation fee in accordance with this section." The rule goes on to stipulate a 4:1 ration for alterations to "a deer wintering yard." There is no mention of the actual value of the area, which in turn broadens the rule significantly to protect deer wintering areas of low value.

New migratory bird pathways category needs to be based on science and data to point to a specific geography and its importance to migratory species. "Stopover" places (where the animals refuel or wait out bad weather) during migration is a known occurrence for some species and in some places. But again, data is required to determine where these pathways occur, which again relies on site-specific assessments.

Additionally, the consideration of wildlife corridors in this rule is also problematic. Wildlife corridors are very site and species specific and are best addressed at a site-planning level versus at broad policy levels. Corridor science is not a mature subject matter; there are many gaps in our understanding of which species use corridors, how they use these spaces, how adaptable some species are to land use changes, etc.

Requiring mitigation for all impacts, regardless of site-specific data, could disincentivize the development of areas of lower impacts. If all impacts are considered adverse, where is the incentive to plan projects based on the characteristics of specific parcels/habitats? Site Law is specific on evaluation of undue adverse impacts. There would be no incentive to minimize or avoid site-specific (actual) impacts to critical wildlife habitats under this proposal.

The rule considers logging roads as a feature that fragments critical habitats. Again, this is a new concept that is not based on science and could have effects that go far beyond the scope of Chapter 375. Research does not support this generalization of roads in the UT, which have very limited traffic patterns and varying road widths that do not create fragmented habitat. Fragmentation, when it comes to roads, should again be species and site-specific. A blanket rule approach would not be appropriate. For example, paved roads can fragment salamander habitat between breeding ponds and upland areas, but the same road would have little impact on robin or woodpecker habitat or movements.

While the proposal is limited to renewable energy development at this time, as we have seen time and time again, once established, these criteria could very easily be expanded to projects of all types, and potentially even to forestry, the construction of logging infrastructure such as roads, etc.

The Council is concerned that a punitive, broad new regulatory framework for unproven impacts to blocks of a certain size would now be mapped and could easily be applied to other projects within these blocks for other types of projects and forestry operations in the future.

While the intent of the law was to incentivize the development of renewable energy in certain locations, the proposed rule that has been posted is deeply flawed and would require **permanent mitigation for temporary impacts.** If a project requires a decommissioning plan, it is inappropriate to require permanent mitigation. For example: short term easements matched to decommissioning plans should be acceptable.

As posted, the DEP's proposed amendment to Chapter 375 is not workable or acceptable to the landowner community or forest industry. The Council believes a more equitable framework can be established to address wildlife mitigation concerns for large renewable energy projects that will protect important species and habitats on a site-specific basis while meeting the State of Maine's clean energy goals. For those reasons, we urge the Board to return the amendment to the Department pending a full and rigorous stakeholder process. The goals laid out in this amendment are significant and should not be rushed through the process.

Thank you for your attention to these comments.

Sincerely,

Patrick Strauch
Executive Director
Maine Forest Products Council

Large Undeveloped Habitat Blocks Under Proposed Chapter 375 Rule