**Responses to MDIFW Remaining Issues from December 21, 2018 MDIFW email and Clarification Regarding January 30, 2019 Compensation Plan**

**March 11, 2019**

**Issue 1**

MDIFW is reviewing and verifying available spatial and numerical data that was used to calculate totals related to natural resource impact areas for assessing mitigation needs. The data provided and the details in the compensation plan have allowed MDIFW to concur with your compensation for deer wintering areas.  We are still verifying the impact areas on the following resources to assess appropriate compensation. We look forward to your assistance in finalizing any questions that may arise.

a.       Perennial and Intermittent Stream Buffers.

b.       IWWH

c.       RBMF/NSS

d.       RTE and SC Species

e.       SVP

**Issue 1 Resolution**

CMP verified and updated impact areas for all of the above resources, recalculated and reconsidered in-lieu fees and other compensation measures for these resources, and incorporated updated impact areas and associated updated compensation in its January 30, 2019 Compensation Plan, submitted to MDIFW and other parties.

**Issue 2**

The discussion of Cold Stream, 3 Significant Vernal Pools (SVPs) and their Critical Terrestrial Habitats needs to be finalized.  In previous discussions CMP indicated that a portion of an abandoned road in proximity will be removed and that another portion is currently revegetating with alder.   To resolve this MDIFW staff will review the photographs of the regenerating area that you have provided to determine if further plantings are necessary.  MDIFW looks forward to reviewing these materials to bring this issue to completion.

**Issue 2 Resolution**

It is our understanding that after reviewing the photos of the regenerating area and the other information contained in Matt Manahan’s December 21, 2018 email to you, MDIFW agrees that further plantings are not necessary.

**Issue 3**

MDIFW and CMP agreed to evaluate all riparian areas post-construction and assess the need to augment the natural regrowth of vegetation within the respective buffers.  As part of the post construction assessment MDIFW requests that the five streams labeled as PSTR-44-01, 44-01, 45-03, 44-06, 44-07 (kmz pin 12) receive a higher level of consideration for potential plantings as they have elevated value as stream resources.  MDIFW does request that CMP provide additional planting plans during this phase of the project for the resources listed below.

a. Sheepscot River where Brook Floaters are present

b. Montsweag Book where Brook Floaters are present

**Issue 3 Resolution**

The statement that “CMP agreed to evaluate all riparian areas post-construction and assess the need to augment the natural regrowth of vegetation with the respective buffers” was inaccurate, and has been clarified, as discussed below.

In consultation meetings, one stream complex, PSTR-44-01, 44-01, 45-03, 44-06, 44-07 (kmz pin 12), known as Tomhegan Stream, was discussed and CMP agreed to revisit these areas with MDIFW following construction to determine if plantings were warranted. It was also discussed in the course of these consultation meetings that plantings of non-capable species in stream buffers, particularly in this area of the Project where soils are rocky, may not succeed, and that natural revegetation is likely to out-compete plantings.

After this discussion MDIFW requested that CMP propose planting plans for the West Branch of the Sheepscot River and Montsweag Brook because of the documented presence of the Brook Floater, a State-threatened freshwater mussel. CMP has proposed additional protections for Tomhegan Stream by implementing an expanded 100-foot buffer, which will minimize impact to the riparian area during construction and will allow the natural revegetation and re-establishment of non-capable vegetation, consistent with the VCP and VMP.

In email correspondence on 1/8/2019, Bob Stratton indicated that “brook floaters are present in the Sheepscot River, but are not known to occur in Montsweag Brook. Though Montsweag Brook is a valuable resource, recent communications have incorrectly included it as a resource for this mussel species.” Gerry Mirabile responded on 1/8/2019 via email, “now that MDIFW has determined that the Brook Floater mussel is not known to occur in Montsweag Brook, CMP does not intend to provide a buffer planting plan for Montsweag Brook (we will provide a planting plan for the Sheepscot in the near future).”

The planting plan for the West Branch of the Sheepscot River was provided to MDIFW and MDEP on 1/9/2019. See MDEP web link: [2019-01-09 WEST BRANCH SHEEPSCOT PLANTING.pdf](https://www.maine.gov/dep/ftp/projects/necec/info-since-2018-12-09/2019-01-09%20WEST%20BRANCH%20SHEEPSCOT%20PLANTING.pdf)

**Issue 4**

MDIFW requests CMP provide easement language and any other encumbrances against preservation properties that have been offered as mitigation to impacted resources.  We are assuming no further easements will be placed on the properties once we receive that documentation.

**Issue 4 Resolution**

CMP provided the requested information on the 7 proposed preservation tracts within the upper Kennebec deer wintering area by email to you and others on January 8, 2019, 8:00 pm.  CMP provided this same information for the original 6 offered compensation tracts by email to you and others on January 11, 2019, 6:06 pm.

**Brook Trout – Capable Vegetation**

Bob Stratton’s email of January 24, 2019 4:16 pm regarding NECEC brook trout resources states as follows: “This opinion is based on CMP’s plan to allow capable vegetation within the ROW to attain heights of up to approximately 10-feet, and higher as conditions allow.” To clarify, CMP’s plan is that where terrain conditions permit (e.g., ravines and narrow valleys) capable vegetation will be permitted to grow within and adjacent to protected natural resources or critical habitats where maximum heights are expected to remain well below the conductor safety zone.

**Stream Buffers**

* **Does the VMP reflect changes in the Compensation Plan? If not, need to update.**

Yes, Exhibit 10-1 VCP (Section 4.0) and Exhibit 10-2 VMP (pages 6-7) submitted on January 30, 2019, reflect the expanded stream buffers recommended as a result of the CMP, MDEP, and MDIFW January 22, 2019 meeting.

MDEP web links for revised plans:

[2019-1-30 NECEC Site Law Exhibit 10-1 (Revised).pdf](https://www.maine.gov/dep/ftp/projects/necec/response-comments/2019-01-30%20Response%20to%20comments/2019-1-30%20NECEC%20Site%20Law%20Exhibit%2010-1%20(Revised).pdf)

[2019-1-30 NECEC Site Law Exhibit 10-2 (Revised).pdf](https://www.maine.gov/dep/ftp/projects/necec/response-comments/2019-01-30%20Response%20to%20comments/2019-1-30%20NECEC%20Site%20Law%20Exhibit%2010-2%20(Revised).pdf)

* **Confirm that 100’ buffers will be maintained for streams in compensation tracts.**

This is not necessary. The compensation tracts are proposed for preservation and will be placed in conservation using the MDEP Declaration of Covenants and Restrictions (DOCR) template to be recorded prior to the start of construction activities (see Section 1.2.2 of January 30, 2019 NECEC Compensation Plan). No “work” or impact to stream buffers is proposed or can occur with the DOCR in place. Note that invasive species control is proposed for the Little Jimmie Pond-Harwood Tract (Manchester), but that work will not affect protections afforded to stream buffers. (See 1.2.2.2 of the NECEC Compensation Plan).

MDEP web link: [2019-01-30 NECEC Compensation Plan\_final.pdf](https://www.maine.gov/dep/ftp/projects/necec/response-comments/2019-01-30%20Response%20to%20comments/2019-01-30%20NECEC%20Compensation%20Plan_final.pdf)

* **Quantify stream lengths and stream buffer areas in Grand Falls, Lower Enchanted, and Basin parcels.**

Please refer to Table 8-2 of the NECEC Compensation Parcels Natural Resource Surveys Report (Exhibit 1-9 of the January 30, 2019 NECEC Compensation Plan), summarized here:

|  |  |
| --- | --- |
| **Tract** | **Linear feet/miles** |
| Grand Falls | 5,610 ft / 1.06 mi |
| Lower Enchanted | 22,620 ft / 4.28 mi |
| Basin | 35,210 ft / 6.67 mi |

CMP quantified the total stream linear length on the compensation parcels, as discussed in the January 22, 2019 meeting with CMP, MDEP, and MDIFW. Quantifying the buffer area was also discussed, but MDEP instructed CMP to quantify streams by linear length to serve as the comparison between project impacts and the compensation offered.

**IWWH**

* **Provide 25’ buffer for herbicide application from wetlands within IWWH.**

See Exhibit 10-1 VCP Section 6.1.d, which states: “No herbicide use is permitted within 25 feet of any wetland within the mapped IWWH.”

* **Specify that spot herbicide spraying (vs. broadcast spraying) will be done.**

Please refer to Exhibit 10-1 VCP, Section 2.2.m, which states “Herbicide application is done by personnel with low-volume, hand-pressurized (manual) backpacks with appropriate nozzles, to minimize drift, who travel along the transmission line corridor by foot or by all-terrain vehicle and spot treat target specimens.”

Additionally, please refer to Exhibit 10-2 VMP, pages 3-4: “Direct application to individual plant species, as opposed to broadcast spray, will control the targeted woody vegetation allowing low-growing plant communities (the desired shrub and herbaceous species) to thrive….Aerial application will not be used.”

These restrictions apply globally within all habitat types.

* **Exhibit 10-1 VCP, Section 6.d and Exhibit 10-2 VMP-related section, note herbicide setback of 25’ for IWWH. Verify spot-spraying.**

See Exhibit 10-1 VCP, Section 6.1.d: “No herbicide use is permitted within 25 feet of any wetland within the mapped IWWH.”

See Exhibit 10-2 VMP, page 9: “No herbicide use is permitted within 25 feet of any wetland within the mapped IWWH.”

See Exhibit 10-1 VCP, Section 2.2.m and Exhibit 10-2 VMP, pages 3-4, regarding spot spraying (also noted above).

These restrictions apply globally within all habitat types.

**Freshwater Wetlands**

* **Table 1-1 (57 acres, 440.29 acres), Exhibit 1-4, discrepancy between compensation acreages in Musson Report, and Power report (510.75 acres).  Verify and correct as needed.**

The Musson Report (8/10/17), prepared for the USACE for their consideration of the proposed compensation parcels pursuant to 33 C.F.R § 332.3(h), relied on preliminary data contained in Power Engineers’ natural resource survey results. The NECEC Potential Compensation Tracts Natural Resources Survey Results Report (8/13/2017) further refined the acreages based on the survey results utilizing GPS data. The Power Engineers Report is the superseding document and a correction to the Musson report is not necessary.

There is no discrepancy between the Compensation Plan Table 1-1, Exhibit 1-4, and the Power Engineers Report. While the preservation parcels contain 510.75 acres of wetlands to be used for wetland preservation, only 497.30 acres of wetland preservation were required to offset permanent fill in wetlands (WOSS and non-WOSS), temporary wetland fill in PSS, and permanent forested wetland conversion impacts. This required compensation amount was determined using the appropriate compensation ratios and adjustments. There was an excess of 13.45 acres provided by the three compensation tracts (FLT, LJPT, PPT). This is described in Exhibit 1-4.

Table 1-1 notes that 57.01 acres of wetland preservation will be used to offset temporary wetland fill (in PSS) and 440.29 acres will be used to offset permanent fill in wetlands (WOSS and non-WOSS) and permanent forested wetland conversion, for a total of 497.30 acres, which is the total acreage required to compensate for wetland impacts.

**SVPs**

* **Exhibit 7-5, discrepancies between manual totals and “cumulative” totals (31,606 vs. 31,370) – due to rounding?  Verify which is correct; check all columns for same issue.**

The “manual totals” (i.e., summation of the columns) are not represented in the Cumulative Impacts section of Exhibit 7-5 and are not intended to be. See *Footnote 4: Cumulative Impacts are calculated by dissolving overlapping polygon areas.* In other words, the summation of the column sums each individual SVPH impact, while the Cumulative Impact portion of the table removes the overlapping buffer areas, thereby avoiding counting twice for an impact in the same location. This issue was discussed in the January 22, 2019 meeting with MDEP and MDIFW, and MDEP agreed this was the appropriate method to calculate impacts to SVPH.

* **Exhibit 10-1 (VCP) 250’ buffers vs. Exhibit 10-2 (VMP) 100’ buffers. Verify which is correct (or explain rationale for difference).**

Both are correct.

Exhibit 10-1, the Construction Vegetation Clearing Plan (VCP), applies to construction of the NECEC project. The 250-foot buffer, measured from the SVP depression, is intended to offer additional protections to these resources during construction, which is a more intensive management period, with the primary concern being tree clearing. During construction, vegetation clearing of capable species will be completed primarily with mechanical equipment, including motorized equipment. As such, CMP has incorporated expanded protections for SVPs by proposing a 250-foot buffer. Mechanized equipment will not be allowed in the pool depression and hand-cutting will be the preferred method of vegetation clearing within the SVP including its 250-foot critical terrestrial habitat or buffer. Mechanized equipment may be used in certain instances, specifically during frozen conditions or when matted travel lanes and reach-in techniques are implemented. Between April 1 and June 30, no vegetation removal using tracked or wheeled equipment will be performed within the 250-foot buffer. Additionally, no refueling or equipment maintenance will be allowed in these areas, unless done on a public access road.

Exhibit 10-2, the Post-Construction Vegetation Maintenance Plan (VMP), applies to the routine vegetation maintenance requirements within the NECEC transmission line corridors. While providing similar protections to SVPs as the VCP (please refer to exhibits 10-1 and 10-2 for a detailed description of the applicable restrictions), routine vegetation maintenance is a significantly less intensive activity and uses a combination of hand-cutting and selective herbicide applications, typically on a 4-year cycle. Personnel will travel along the transmission line corridor by foot or by all-terrain vehicles (ATVs) and spot-treat target species and specimens with approved herbicides and application methods. In some cases, hand tools (e.g., chain saws) may be used, but typically no heavy logging equipment is necessary because vegetation within the corridor will be younger and smaller, and so will already be controlled.

The activities that will occur during construction of the NECEC and during the post-construction vegetation maintenance cycles are quite different, so additional restrictions within a 250-foot buffer during construction are warranted while a 100-foot buffer is appropriate to protect these resources during post-construction routine vegetation maintenance.

* **Verify and reiterate spot herbicide application vs. broadcast in vicinity of vernal pools.**

See Exhibit 10-1 VCP, Section 2.2.m and Exhibit 10-2 VMP, pages 3-4, regarding spot spraying (also noted above). These restrictions apply globally to all habitat types.

* **Verify 25-foot setback of herbicides from pool depression.**

See Exhibit 10-1 VCP, Section 5.1.e: “No herbicide use is permitted within 25 feet of the SVP pool depression.”

See Exhibit 10-2 VMP, page 9: “No herbicide use is permitted within 25 feet of the SVP pool depression.”

**Roaring Brook Mayfly**

* **VMP and compensation plan erroneously state that both Gold and Mountain Brook contain RBM – correct this.**

This is not erroneous, because they both contain RBM. Please refer to the NECEC Roaring Brook Mayfly and Northern Spring Salamander Survey Results, submitted to MDEP and MDIFW on October 19, 2018, pages 2-3: “RBM was confirmed as present in Mountain Brook (Johnson Mtn Twp) and Gold Brook (Appleton Twp).”

MDEP web link: [9.4 AIR Attachment F RBM and NSS Survey Results.pdf](https://www.maine.gov/dep/ftp/projects/necec/applications/hdd-amend/9.4%20AIR%20Attachment%20F_RBM%20and%20NSS%20Survey%20Results.pdf)

This report documents, though, that NSS was discovered in Mountain Brook, and not Gold Brook (page 3).

The results of the survey report submitted on October 19, 2018 are consistent with the January 30, 2019 Compensation Plan, VCP and VMP.

* **Calculations of tributary to Bog Brook has not been updated; IFW calculated 3.13 acres, CMP calculated 1.9 acres. Which is correct?**

The clearing impact within the management area of Tributary to Bog Brook (PSTR-12-07) is 1.9 acres. This is the forested area within the mapped management area polygon. The remainder of this management area is devoid of trees.

The following shapefiles were used to arrive at this result:

NECEC\_RBM\_and\_Salamander\_250\_area\_2018\_11.29.shp

NECEC\_RBM\_and\_Salamander\_water\_feature\_area\_2018\_11.29.shp

Clearing\_Limits.shp

Forest\_Area.shp

Supporting files can be accessed at the MDEP Web link: [Shapefiles\_01\_30\_2019](https://www.maine.gov/dep/ftp/projects/necec/response-comments/2019-01-30%20Response%20to%20comments/Shapefiles_01_30_2019/Source%20Data/).

**RTE Species**

* **CMP agreed in writing to April 20 to June 30 (Rusty Blackbird?) as a no cut period - should be included in VCP and VMP.**

For the Rusty blackbird, CMP agreed in writing in its September 27, 2017 Site Law Application Section 7.4.4.8 “To avoid impacts during the breeding season, the NECEC will avoid clearing activities within the mapped polygon associated with the documented occurrence, as shown on the Natural Resources Maps (Attachment 2) during the nesting season (April 30 through June 30).” This commitment was reiterated in CMP’s response to MDIFW’s 6/29/2018 review comments and again in several consultation meetings with MDIFW. This commitment has not been incorporated into the VCP or VMP, but incorporation into those plans is not necessary because it is part of the MDEP record and CMP will be bound by it.

For the Bicknell’s Thrush, in Site Law Application Section 7.4.4.7, CMP committed to “avoid impacts during construction within the Bicknell’s thrush habitat, as shown on the Natural Resources Maps (Attachment 2), during the nesting and fledging periods (June 1 through August 15).” Again, this commitment has not been incorporated into the VCP or VMP, but it is part of the MDEP record and CMP will be bound by it.

These time of year restrictions have been incorporated into documents provided to the construction contract bidders as part of the NECEC request for proposals. Further, the granting of a permit by the MDEP will be dependent upon the proposals and plans and supporting documentation submitted by CMP during the application process. CMP will incorporate these restrictions into the VCP and VMP prior to construction.

* **CMP agreed in writing to providing written reports to MDIFW & MDEP - should be in VCP and VMP.**

For the Northern Bog Lemming, CMP agreed to conduct preliminary surveys for suitable habitat conditions and provide those results to MDIFW. CMP conducted surveys in a 1.5-mile survey area identified by MDIFW and determined that the survey area did not contain potential habitat for the Northern Bog Lemming. CMP provided those results to MDIFW on August 9, 2018.

MDEP web link: [2018-08-09 NECEC RBM NBL Habitat Survey Results.pdf](https://www.maine.gov/dep/ftp/projects/necec/response-comments/2018-08-09%20Responses%20to%20comments/2018-08-09%20NECEC_RBM_NBL_Habitat%20Survey%20Results.pdf).

For the Roaring Brook Mayfly and Northern Spring Salamander, CMP agreed to conduct presence/absence surveys in the Project area. CMP worked closely with MDIFW to identify potential habitat for these species. The results of the stream characterization surveys were provided to MDIFW on August 9, 2018. Based on survey results and with guidance provided by MDIFW, CMP conducted presence/absence surveys in September 2018. The results of the presence/absence surveys were provided to MDEP and MDIFW on October 19, 2018 (see weblink above).

Additionally, CMP made the following commitments to survey or provide reports to the MDEP:

* + Bald Eagles, Site Law Application Section 7.4.3.1: “CMP will perform an aerial survey each spring prior to construction. These surveys will be used to determine if any new bald eagle nests have been established near the NECEC transmission line corridors and substations. “
  + Great Blue Heron colonies, Site Law Application Section 7.4.4.9: “prior to initial transmission line clearing, CMP will complete surveys for heron colonies within or immediately adjacent (within 75-feet) to existing IWWH’s within the NECEC Project, between April 20 and May 31 prior to each year of construction. If discovered, CMP will notify and consult with MDIFW biologist.”
  + Invasive Plant Species, NECEC Compensation Plan (1/30/2019), page 28: “Prior to construction CMP will submit to the MDEP and USACE, for approval, an invasive species plan for the survey, control, and treatment of invasive species on the Project, including the Little Jimmie Pond-Harwood Tract. CMP will implement the control measures approved by the MDEP and the USACE during the first full growing season following permit issuance and will submit a report by December 31 of that year by documenting the efficacy of the treatment.”

CMP will provide evidence and/or the results of these surveys as they occur.

These commitments to survey and/or provide results of those surveys are part of the MDEP record and it is not necessary to incorporate them into the VCM or VMP because CMP will be bound by them.

**DWAs**

* **12/7/18 email item -- Include in compensation plan and VMP proposal to install land markers at limits of deer winter travel corridors for benefit of vegetation management crews.**
* **12/7/18 email item -- Include in VMP proposal to offset / vary maintenance schedule for 8 deer winter travel corridors.**
* **Include in VMP proposal to inform MDIFW in advance of planned maintenance of deer winter travel corridors so MDIFW can be present for that work.**

CMP hereby commits to undertake these actions, and will incorporate them into the VCP and VMP prior to construction.

**Compensation / Preservation Tracts**

* **Provide method of conveyances (fee, easement, lease, MOU, verbal permission, etc.) for snowmobile / ATV trails or any other permissions to use the land. Encumbrance documentation provided by CMP on 1/8/19 (7 DWA tracts) and 1/11/19 (6 original tracts) is not sufficiently clear.**

Attached please find the two spreadsheets from January 8 and 11, updated to provide additional clarity relating to the encumbrances for (1) the six compensation parcels (“Original 6 Comp parcels”) and (2) the seven DWA preservation parcels (“Additional Com parcels”). Also attached are the relevant encumbrance agreements, which apply to the parcels noted below and are further summarized on the attached Word document (Encumbrance Agreements Summary):

* Brookfield White Pine Hydro indenture (Lower Enchanted), SOM 5152-29
* Oxford Paper Co. easements (Lower Enchanted), SOM 2166-1
* Western Mountains Charitable Foundation trail lease (multiple parcels), SOM 3990-137
* State of Maine/DOC, trail use agreement (multiple parcels)
* Forks Area Chamber of Commerce license (multiple parcels)
* Weyerhaeuser/CMP Easement (multiple parcels)
* State of Maine/DOC license (Moxie Stream)

Generally, trails are granted by license on CMP land. Terms and conditions may vary between licenses but they are not permanent encumbrances. Trails will be excluded from the Declaration of Covenants and Restrictions (DOCR) to allow continued use of these trails without conflicting with the DOCR. If the qualified holder is not the same entity that administers the trail, CMP may grant an easement for the trail to the trail administrator.

Existing easements are permanent encumbrances and therefore will be excluded from the DOCR. However, the fee interest under the easement would be conveyed to the qualified holder if the tract is being conveyed and not retained by CMP (as with the DWA tracts).

Recreational and commercial leases (i.e., camp lots and Maine Huts and Trails land) were excluded from acreage calculations, will not be subject to the DOCR, and will not be conveyed to a qualified holder. CMP will either retain ownership or convey these leased areas to the lessees.

CMP will work with qualified holders before a DOCR is placed on mitigation tracts to ensure traditional recreation uses can continue on the land and that neither the DOCR nor the recreational uses conflict with the qualified holder’s management plan.

* **Are backup owners needed if fee not conveyed to BPL or MDIFW, to assure preservation?**

This is not necessary. As CMP stated in the January 30, 2019 supplemental materials, “Per chapter 310.6(F)(2), CMP will use the MDEP DOCR template (Attachment D), tailored for existing uses and encumbrances, and reserving the appropriate rights to CMP to manage vegetation [i.e. invasive species management], and intends to maintain fee ownership of these tracts and to manage them in compliance with the DOCR and associated restrictions (i.e., undeveloped in perpetuity) until such time that the tracts are transferred to (a) qualified holder, i.e., an entity or entities with experience and demonstrated stewardship capabilities.” MDEP’s DOCR form provides protection because it provides for MDEP enforcer no matter the identity of the owner.

See CMP’s response to MDEP’s December 28, 2018 Compensation Review Comments, submitted on 1/30/2019. MDEP web link: [2019-01-30 NECEC Response to MDEP Compensation Review Comments.pdf](https://www.maine.gov/dep/ftp/projects/necec/response-comments/2019-01-30%20Response%20to%20comments/2019-01-30%20NECEC%20Response%20to%20MDEP%20Compensation%20Review%20Comments.pdf).

**Sheepscot River Vegetation Planting Plan**

* **Verify that plan uses only native species and non-ornamentals (species names included sub-species).**

The plan only uses native species. This was confirmed using the USDA NRCS PLANTS Database (https://plants.sc.egov.usda.gov/java/).