

July 22, 2016

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JUL 25 2016 |

LUPC - DOWNEAST

Ms Beyer,

Since the first applications for the Bowers Mountain Wind Project were denied, it is now time to embrace this naturally renewable, environmentally safe energy source.

The months of work required to test the feasibility of this project from availability to resident support to investor return has been proven.

Whatever criteria was used to deny these applications does not necessarily apply now, as other energy sources are much more harmful to the environment as well as dangerous to humans.

Man has been blessed with the desire and intelligence to harness this "free" resource without holes in or under-ground, or pipelines or tanker cars traveling across the landscape or nuclear power plants - all causing concerns of safety and pollution.

Please reconsider the applications for the Bowers Mountain Wind Project; please expedite the process for APPROVAL.

207-738-4909

548 BROWN RD

CARROLL PLT ME 04487-5524

Sincerely,
Carol F. Graybeal

JUL 25 2016

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Michael and Robin Corbin
1355 Main Road
Carroll Plantation, Maine 04487
July 23, 2016

Stacie R. Beyer
Maine Land Use Planning Commission
106 Hogan Road, Suite 8
Bangor, Maine 04401

Dear Ms. Beyer,

My wife and I have been residents of Carroll Plantation since 1980. We both served in Plantation Office, as Assessor and Tax Collector, for a combined 20 years during the 1980's and 90's.

We are supporting the request for substantive review of the petition that was filed to remove Carroll Plantation from expedited review status. We, like most Carroll Plantation residents, only learned of the petition to remove the Plantation from expedited review status when we read it in the newspaper (Lincoln News), after it had been filed.

The actions of a few in Carroll went against the will of the majority of the residents, as demonstrated at previous Plantation meetings in which votes were taken which supported wind power.

Our experience with other wind power projects in the area has been that they have provided jobs for local residents and have been an attraction to behold for visitors from away.

Another concern we ask is, would removal from expedited status hinder future projects that may be considered for Carroll Plantation, projects that might boost the local economy. Removal would also put us at an unfair advantage with neighboring communities.

Thank you for your consideration of this matter.

Respectfully submitted,

Michael Corbin, Robin Corbin

Michael and Robin Corbin

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JUL 28 2016

LUPC - DOWNEAST

13 Old Kelley Ave
Orono, Maine 04473

July 29, 2016

Members of LUPC

C/O Stacie R. Beyer
Maine Land Use Planning commission
106 Hogan Road, Suite 8
Bangor, Maine 04401

SUBJECT: Substantive Review of Request to Remove Carroll Plt from Expedited Wind Permitting Area

Dear Members of the LUPC:

I have been using the Downeast lakes area around West Grand Lake since the early 1970's and own a camp on the south end of Junior Lake. I am a member of the Partnership for the Preservation of the Downeast Lakes Watershed which has successfully contested the development of industrial wind projects on Bowers Mountain before LURC, DEP, and BEP.

I strongly believe that the inclusion of Carroll Plantation in the Expedited Wind Permitting Area was an egregious oversight by the original commission that designed the map for expediting permitting of industrial wind. The entire Downeast Lakes region is still one of the few wilderness-like areas in the State, visited primarily by outdoor enthusiasts. It has a large number of lakes classed Scenic Resources of State or National Significance, many of which would have been sullied by industrial wind development—marked forever with red strobe lights and clearcut view sheds.

Please add yet another State Agency, LUPC, to the list of State agencies that have protected Maine's Downeast Lake Watershed from expedited wind permitting. Allow Carroll Plantation to be removed from the Expedited Wind Permitting Area.

Sincerely,


Donald E. Moore

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JUL 28 2016

LUPC - DOWNEAST

13 Old Kelley Ave
Orono, Maine 04473

July 29, 2016

Members of LUPC

C/O Stacie R. Beyer
Maine Land Use Planning commission
106 Hogan Road, Suite 8
Bangor, Maine 04401

SUBJECT: Substantive Review of Request to Remove Carroll Plt from Expedited Wind Permitting Area

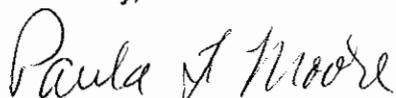
Dear Members of the LUPC:

I own a camp at the south end of Junior Lake and frequently kayak, fish, ice fish, bird watch, snowmobile, and ride my ATV in the Downeast Lakes area. I also own a farmhouse in Orono. If I wanted to erect a wind tower on my Orono lawn, the town code enforcement officer would carefully weigh up how that wind tower might affect my many neighbors who are in close proximity. I feel certain my wind tower would be denied, even though I have a very windy lawn, and it IS my property. Land use regulations, either at the local or state level, are specifically in place to protect both the rights of all citizens *and* the land resources, regardless of who owns it.

Unfortunately, the commission that established the Expedited Wind Permitting Area in the Wind Energy Act did not do what a diligent code enforcement officer would do: examine how industrial wind projects in the expedited areas would affect the areas in very close proximity. Consequently, the status of the lakes in the Downeast Lakes Watershed, many of which are classed Scenic Resources of State or National Significance, was seriously compromised by potential industrial development by including Carroll Plantation in the expedited area. But, fortunately, three State Agencies (LURC, DEP, BEP) recognized this miscalculation in the Expedited Wind Permitting and denied wind permits in the Carroll Plantation area when the Bowers Wind Project was twice proposed.

So, once again, I strongly urge another State Agency, LUPC, to be a diligent code enforcement office and affirm that Carroll Plantation should be removed from Expedited Wind Permitting Area.

Sincerely,



Paula F. Moore, Ed. D.
PPDLW Member

July 30, 2016

RECEIVED

AUG 03 2016 |

LUPC - DOWNEAST

To whom it may concern:

My husband and I have lived in Carroll since 1971. The old Osgood homestead has been here since the late 1800s. We've raised our 3 sons here — each of them developing a fine respect for the outdoors — in fact one of them becoming a Maine State Game Warden.

In our years here we have never heard of out-of-staters or out-of-towners being concerned with or complaining about the rape of our forests around us by the woods companies. We've had clearcuts that have been not only downright ugly to look at, but have raised havoc with the wildlife — taking away their natural habitat and ruining brooks and streams so that favorite fishing and hunting spots were devastated. Nor have there been complaints from these out-of-staters about the many deer and moose being killed by logging and chip trucks barreling through our town only because applying the brakes is an inconvenience. These are the same people who argue

that a bat or bird may be killed by a windmill, by the way!

Now we have companies that are interested in putting windmills in our town. It's a chance for our little town to get an economic boost. It's called progress! We don't find windmills to be a visual impairment. We've seen how First Wind has tended to the needs of the local people and created animal-friendly power line right-of-ways. They have shown a respect not only of our woodland, but of our people by coming to talk to us and listening to and using our suggestions. In fact when the windmills were first erected in our area, people from out of town actually came to see them because they were awed by them. They did not consider them an eyesore.

Now these out-of-staters and some out-of-towners coming to some of our surrounding lakes are complaining that the windmills would be an eyesore they don't want to deal with. Some canoeists and guides are of the same opinion. These are the same people who don't

want us on the lakes they have camps on. Many of them have clearcut their lots, not caring about 'looks' or devastation to wildlife or lakes. They also have voted down putting in public landings so we don't have access.

The fate of Carroll Plantation should be decided by it's residents, not by out-of-staters. We want to have a chance with economic progress that might be drawn here because of the windmills. Our fate should not be decided by people from afar who don't want the scenery changed a bit. They can still use the lakes and forests and enjoy nature. It's still going to be beautiful; the windmills will not change that. Our town will still have it's woods and lakes and streams to enjoy — and it might also get a chance to boost itself economically.

Respectfully submitted,

Susan Osgood

Carroll resident

since 1971

I also taught in the local elementary school for 32 years.

From: [Gary](#)
To: [Beyer, Stacie R](#)
Subject: Carroll Plt Petition to be removed
Date: Wednesday, August 03, 2016 4:54:33 PM
Attachments: [Carroll Petition - PPDWLW prefiled testimony.pdf](#)
[Exhibit D - Law Court Appeal Decision.pdf](#)
[Exhibit C - BEP Bowers Appeals Decision.pdf](#)
[Exhibit B - DEP Bowers Decision.pdf](#)
[Exhibit A - LURC Bowers Decision.pdf](#)

Hi Stacie,
Attached is PPDWLW's Pre-Filed Testimony concerning Carroll Plt's petition to be removed from the Expedited Wind Permitting Area. The first 4 exhibits were too large to incorporate directly. I hope it's OK that I am including them as attachments. A hard copy is going out in tomorrow's mail.

Thanks very much,

Gary Campbell
President

STATE OF MAINE
LAND USE PLANNING COMMISSION

Substantive Review, Carroll Plantation) Pre-Filed Testimony of
Petition to Remove Carroll Plt from the Expedited) Partnership for the Preservation of the
Permitting Area for Wind Energy Development) Downeast Lakes Watershed

Introduction

The Partnership for the Preservation of the Downeast Lakes Watershed (hereafter PPDW) is a nonprofit that was founded in 2010. We currently have nearly 200 members including Carroll Plt residents, residents of neighboring towns, property owners, business owners, sporting camp owners, professional recreation guides and outdoor sports enthusiasts. PPDW is dedicated to the long-term preservation of Maine’s Downeast Lakes Watershed through conservation, environmental action and opposition to inappropriate industrial or commercial development.

PPDW intervened in both of First Wind’s (Champlain Wind’s LLC’s) two applications to build a wind energy facility in Carroll Plt. We are therefore very familiar with wind energy, Carroll Plt, and the Wind Energy Act.

Through our testimony we hope to show the Commission that Carroll Plt is not able to host a wind project that could contribute toward the State’s wind energy goals and that a wind project in Carroll Plt would be in direct conflict with the values and the goals so clearly expressed in the Comprehensive Land Use Plan.

We respectfully ask the Commission to remove Carroll Plt from the Expedited Wind Permitting Area.

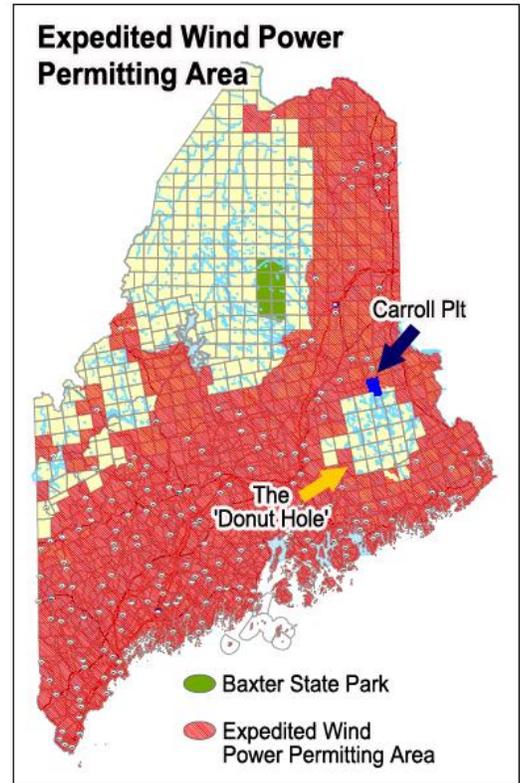
History and the Existing Record

The history of wind energy and Carroll Plt is unique in many ways. Although we recognize that the Commission is not bound to abide by any previous decisions made regarding wind energy in Carroll Plt, the existing record is extensive and the data presented is relevant. A timeline may be useful:

- March 2011 Champlain Wind LLC applies to LURC for a permit to build a wind project known as Bowers in Carroll Plt. The proposal calls for 27 turbines with a total nameplate capacity of 69MW.
- June 2011 LURC holds three days of public adjudicatory hearings on the application.
- April 2012 The Commission votes unanimously to deny the project a permit based on the project's unreasonable adverse effect on the scenic character AND on uses related to scenic character of the nine Scenic Resources of State or National Significance (SRSNS) located within eight miles. Champlain Wind does not appeal this decision.
- Oct 2012 Champlain Wind LLC applies to DEP for a permit to build a revised Bowers project in Carroll. The new plan calls for 16 turbines and a nameplate capacity of 48 MW.
- Aug 2013 Following a two day adjudicatory hearing, multiple site visits and three months of deliberation DEP denies the project a permit based on the project's unreasonable adverse effect on the scenic character AND on uses related to scenic character of the nine Scenic Resources of State or National Significance (SRSNS) located within eight miles.
- Sept 2013 Both the developer, Champlain Wind, and a major land lessor, Douglas E. Humphrey, appeal the DEP denial decision to the BEP.
- June 2014 The BEP votes to deny both appeals and uphold the DEP's denial of the Bowers application based on the project's unreasonable adverse effect on the scenic character AND on uses related to scenic character of the nine Scenic Resources of State or National Significance (SRSNS) located within eight miles.
- July 2014 Champlain Wind appeals the DEP's denial decision to Maine's Supreme Judicial Court.
- Dec 2014 The Supreme Court upholds the BEP's decision.

The four relevant decision documents are included as **Exhibits A through D**.

In deciding whether to remove Carroll Plt from the Expedited Wind Permitting Area it's important to understand that although the surrounding area is expedited, the legislature created a 'donut hole' leaving the Downeast Lakes region unexpedited. This is readily apparent on the map of the expedited area. Unfortunately the hilliest part of Carroll Plt is a small peninsula of expedited area protruding into the 'donut hole'. As a result, any expedited wind project in Carroll Plt will impose its greatest negative impacts the Downeast Lakes, an area that the legislature specifically intended to protect. It's therefore important to balance Carroll Plt's value as a wind resource with the damage that will be imposed on the surrounding unexpedited region.



* * * * *

Discussion of Removal Criteria

Section 3453-A(3) contains two statutory criteria; both must be met during the substantive review process to remove a place from the expedited area.

Criterion A

"The proposed removal will not have an unreasonable adverse effect on the State's ability to meet the state goals for wind energy development in section 3404, subsection 2, paragraph C."

The State failed to meet its first goal of 2,000 MW of installed (i.e. operating) capacity (i.e. nameplate capacity) by 2015.

The next goal, the immediate goal, is to have 3,000 MW of total installed capacity by 2020, including at least 300 MW from facilities offshore. Currently there are 610.5 MW of operating capacity online (see **Exhibit E**). That leaves 2,389.5 MW, or 80% of the goal, to be built and commissioned within the next 53 months (assuming the deadline is the *end* of 2020).

The third goal is to have 8,000 MW of total installed capacity by 2030, including at least 5,000 MW from facilities offshore. In establishing this goal, the legislature must have assumed we first met the 2020 goal of 2,700 MW of land based capacity and 300 MW of offshore capacity. The 2030 goal then calls for an addition 5,000 MW of total capacity. Interestingly, this additional capacity is to be comprised of 4,700 MW of offshore capacity and a mere 300 MW of additional land based capacity over the 10 year period. We can only guess at the legislature's reasons for not encouraging significant new land based wind capacity beyond 2020. The Wind Energy Act clearly states that its objective is "to encourage the attraction of appropriately sited development related to wind energy..." The only modifier in that statement is that the development must be "appropriately sited". We're left to assume that the legislature is convinced that by 2020 virtually all *appropriate sites* will have been developed.

Still, that 2020 goal is daunting. Can a wind project sited in Carroll Plt make a significant contribution to achieving the goal? We don't see how that could be possible for the following reasons:

1. Even though the Commission is not considering a specific project, it is important to consider that the only significant elevations are in the southern third of Carroll Plt, south of Route 6. That is why Champlain Wind decided to site its Bowers project south of Route 6 close to so many SRSNS lakes. When the responsibility for issuing wind energy permits shifted from LURC to DEP, Champlain Wind had a unique opportunity to learn from the failure of its first Bowers application and move the project farther north, farther from the SRSNS lakes and closer to the transmission substation in Prentiss. The fact that they chose not to strongly suggests that the southernmost part of Carroll Plt is its only viable wind site.
2. LURC determined that the Bowers site was not appropriate for a 69 MW project. DEP later concluded it was not appropriate for a 48 MW project. Should another developer propose a project,

it would almost certainly have to be less than 30 MW. It's very unlikely that any wind project in Carroll Plt could ever contribute more than about 1% (30/3000) to the 2020 goal.

3. Another factor standing in the way of a wind project in Carroll was expressed on page five of the Pre-Filed Testimony of EverPower Wind Holdings in the Substantive Review of the Petition to Remove Milton from the Expedited Permitting Area for Wind Energy Development:

“While turbines are getting taller with larger blades capable of capturing more wind, in our experience, a site must still have a minimum of approximately 6.5-7.0 m/s (14.54-15.66 mph) annual average wind speeds to compete in the current lower price PPA market.”

According to the National Renewable Energy Laboratory, the average annual wind speed in Carroll Plt is only 5.5-6.0 m/s (see **Exhibit F**). By EverPower's calculation, the wind resource in Carroll Plt is not sufficient to support an economically viable wind project even if the latest and largest turbines are employed.

4. On page seven of its Pre-Filed Testimony in the review of the Milton petition, EverPower offers another fact relevant to the Carroll Plt petition:

“Wind turbine generators within a wind farm are aligned in rows facing the most prevailing wind directions, in order to optimize and maximize wind turbine production and to minimize turbulence and wind speed deficits created in the wind stream (wake) of neighboring wind turbines...”

Looking at the turbine layouts of the Mars Hill, Stetson I, Rollins, Stetson II and Oakfield wind projects we see that all are laid out predominantly north/south to capture the prevailing winds of eastern Maine. A wind project in Carroll would be hampered by the fact that its ridgeline runs east/west.

For these reasons we contend that removing Carroll Plt from the Expedited Wind Permitting Area would not have an unreasonable adverse effect on the State's ability to meet the state goals for wind energy development.

* * * * *

Criterion B

“The proposed removal is consistent with the principal values and the goals in the Comprehensive Land Use Plan (CLUP) adopted by the Maine Land Use Planning Commission pursuant to Title 12, section 685-C.”

Three Principal Values presented in CLUP

1. ***Diverse and abundant recreational opportunities***, including many types of motorized and non-motorized activities. Unique opportunities exist for recreational activities which require or are significantly enhanced by large stretches of undeveloped land, ranging from primitive recreation in certain locations to extensive motorized trail networks. Recreation is increasingly an economic driver in the jurisdiction and the State.

Carroll Pt and the surrounding area provide extensive recreational opportunities. The Downeast Lakes region has an international reputation for providing outstanding outdoor experiences in a near-wilderness setting. Trail and water networks provide opportunities for both motorized and nonmotorized activities. The SRSNS lakes provide a constellation of waters that allow for extended loop-paddling experiences. Popular activities include paddling, camping, fishing, hunting, photography, hiking, cycling, ATV riding, snowmobiling, wildlife viewing and stargazing. For these reasons, ***removing Carroll Pt from the Expedited Wind Permitting Area will ensure that the region continues to offer diverse and abundant recreational opportunities.***

2. ***Diverse, abundant and unique high-value natural resources and features***, including lakes, rivers and other water resources, fish and wildlife resources, plants and natural communities, scenic and cultural resources, coastal islands, mountain areas and other geologic resources.

Carroll Pt and the surrounding area contain numerous high-value natural resources including lakes, ponds, streams, both warm and cold-water fisheries, numerous bald eagle nesting sites, outstanding hunting opportunities, extensive forestlands, rock outcroppings and glacial eskers. Many of the local lakes have primitive island campsites that are available to the public free of charge on a first-come, first-served basis.

As an ancient crossroads for the Wabanki people, it is not difficult to find native artifacts and both the Penobscot and Passamaquoddy Tribes recognize several ceremonial sites in the area (see Exhibits G and H). The Downeast Lakes Region is almost entirely protected by conservation easements and outright ownership. The lands owned by the Downeast Lakes Land Trust, which totals more than 55,000 acres, are managed for wildlife habitat, public recreation, traditional uses and sustainable forestry. For a map depicting the conserved land, see Exhibit I.

Removing Carroll Plt from the Expedited Wind Permitting Area will protect the diverse, abundant and unique high-value natural resources and features of the area.

3. ***Natural character***, which includes the uniqueness of a vast forested area that is largely undeveloped and remote from population centers. Remoteness and the relative absence of development in large parts of the jurisdiction are perhaps the most distinctive of the jurisdiction's principal values, due mainly to their increasing rarity in the Northeastern United States. These values may be difficult to quantify but they are integral to the jurisdiction's identity and to its overall character.

Carroll Plt is located in an area of LUPC jurisdiction that is largely agricultural and sparsely developed. In 2000 the US Census Bureau counted only 59 households and a population of 1441. Carroll has no retail businesses, no grocery stores or filling stations. The nearest town of any size is Lincoln, 25 miles to the west. As motorists travel along State Route 6 through (Carroll's Main Street, its only major road), they enjoy a close view of Bowers Mountain and its associated hills.

Removing Carroll Plt from the Expedited Wind Permitting Area will add one layer of approval before a wind development can cut wide roads and transmission corridors through the forests.

Specific Goals in CLUP

I,A. Location of Development. Goal: To guide the location of new development in order to protect and conserve forest, recreational, plant or animal habitat and other natural resources, to ensure the compatibility of land uses with one another and to allow for a reasonable range of development opportunities important to the people of Maine, including property owners and residents of the unorganized and deorganized townships.

¹ US Census Bureau, 2000, <http://factfinder.census.gov/faces/tableservices/jsf/pages/productview.xhtml?src=CF>

As already explained, any wind project sited in Carroll Plt will severely impact recreational resources located in an area that the legislature specifically sought to protect from wind development.

In a joint letter to LURC in connection with the first Bowers application, Maine Audubon, The Appalachian Mountain Club and the Natural Resources Council of Maine wrote:

“As members of the Governor’s Task Force on Wind Power Development, we were intimately involved with the drafting of the proposed expedited permitting area boundaries. The proposed area (i.e. southern Carroll Plt) lies at the very northern edge of a large area around the Downeast Lakes that was intentionally excluded from the expedited area because it represents a broadly treasured landscape with significant conservation values... The presence of Pleasant Lake was one of the reasons the southern portion of Kossuth Township was excluded from the expedited permitting area.”

Although Carroll Plt has no Great Ponds of its own, just to the south of Carroll, adjacent to the Carroll land most likely to be developed for wind power, lie nine Great Ponds that the State has recognized as Outstanding or Significant for their value as scenic resources **(see Exhibit J)**. These resources are more valuable than nine individual lakes. They are interconnected by an extensive network of water passages and short portages. Most of the lakes are dotted with islands that host primitive campsites. This network of lakes provides visitors with a rare opportunity for extended loop paddles. In other words, a visitor can park a vehicle and launch a canoe in one place, paddle and camp for a week or two, traversing numerous scenic lakes, never using the same campsite twice and return to his/her point of origin. Few such opportunities exist in Maine **(see Exhibit K)**.

I,B. Economic Development. *Goal: To encourage economic development that is connected to local economies, utilizes services and infrastructure efficiently, is compatible with natural resources and surrounding uses, particularly natural resource-based uses, and does not diminish the jurisdiction’s principal values.*

After lengthy hearings and deliberation, LURC, DEP and BEP each determined that southern Carroll Plt is not an appropriate site for wind development. Their decision was based on the close proximity of nine

SRSNS lakes and the fact that the local economy is unusually dependent on tourism and extremely vulnerable to industrialization. The Supreme Court upheld the propriety of those decisions. User surveys conducted by both PPDLW and Kleinschmidt (the survey commissioned by Champlain Wind LLC) showed clearly that a wind project in Carroll would have significant impacts on the quality of resource users' experience and their likelihood of returning. Please study the survey results presented in **Exhibit L**.

A wind energy development in Carroll would not be an economic boost for the area, in fact it would cause irreparable damage to the existing tourism economy. In their pre-filed testimony in support of the first Bowers project, Champlain Wind VP Matt Kearns projected that the 27-turbine project would result in only three permanent, full time employees. These would be operations & maintenance jobs and it is unlikely they would be given to Carroll residents. Any positive economic impact generated by a wind project in Carroll will largely be in the form of direct payments to the town. For the first two Bowers applications Carroll Plt settled for the minimum community benefits package allowed under the Wind Energy Act, or \$4000 per turbine per year. Clearly the economic benefits of a wind project in Carroll are very limited while the scenic/economic damages will be enormous and irreversible.

I.G. Land Conservation. *Goal: To encourage the long-term conservation of select areas of the jurisdiction that are particularly representative of its cultural and natural values, including working forests, high-value natural resources and recreational resources.*

Many organizations have recognized the unique value of this beautiful scenic area. Thanks to dedicated partnerships among the Passamaquoddy Tribe, the Penobscot Tribe, timber companies, State and federal agencies, conservation groups and local citizens, the Downeast Lakes Region is almost entirely protected. The village of Grand Lake Stream is home to the tremendously successful community-led Downeast Lakes Land Trust that has won numerous awards for the conservation and exemplary management of its forests and waters. Because of these extensive conservation purchases and easements, the Downeast Lakes are very sparsely developed, offering visitors a chance to experience the feel of the north Maine wilderness. (See Exhibit I).

As described above, The Downeast Lakes Region which lies immediately south of Carroll Plt, was specifically carved out from the Expedited Wind permitting Area. In describing the reasoning behind the Expedited Wind Permitting Area, the Governor's Wind Task Force wrote that they specifically excluded "...broad areas that encompass concentrations of ecological, recreational and/or scenic values that are among the most

significant in the jurisdiction".² The Downeast Lakes Region is one such area and so it was specifically excluded from expedited permitting.

II.D. Cultural, Archaeological and Historical Resources. Goal: To protect and enhance archaeological and historical resources of cultural significance.

In the information gathering process associated with the two Bowers project applications, it came to light that there are several cultural and historical sites of significance within the viewshed of the mountains/hills of southern Carroll Plt.

The Historic Preservation Officer for the Passamaquoddy Tribe, Donald Soctomah, testified in 2011 to the existence of several areas set aside for traditional cultural activities, including religious sites, places that have been used for the last 10,000 years and are currently still being used (see Exhibit G). He expressed the Tribe's concern that the presence of wind turbines would have a harmful effect on the tribe's cultural activities at these sites. He was also convinced that the visibility of turbines in such a pristine area would have a negative impact on the Tribe's subsistence hunting and the value of the area's outdoor wilderness. Mr. Soctomah then reminded the Commission that the Passamaquoddy Tribe worked with local towns to stop the nuclear waste disposal site that was proposed for the area (Lakeville) in 1986.

A similar letter was received from John Dieffenbacher-Krall, Executive Director of The Maine Indian Tribal-State Commission (MITSC) (see Exhibit H). MITSC maintains responsibility for promoting positive relations between the Wabanaki (the Mi'kmaq, Maliseet, Passamaquoddy and Penobscot Tribes) and the State of Maine. He describes the Tribes' concern about the potential visual impacts on a Wabanaki repatriation site, burial grounds and ceremonial grounds. "Repatriation" refers to the return of all ancestors and their funerary objects found in the state of Maine to the Wabanaki tribes, and the protection of their ancestors' "spiritual repose." He explains that the repatriation site is a sacred site for the Wabanaki People and that the desecration of the area's view by the erection wind turbines would profoundly interfere with Wabanaki People's ability to use this site for its religious and sacred purposes.

II.F. Forest Resources. Goal: To conserve, protect and enhance the forest resource in a way that preserves its important values, including timber and fiber production, ecological

² Report of the Governor's Task Force on Wind Power Development, Feb 2008, p18

diversity, recreational opportunities, as well as the relatively undeveloped remote landscape that it creates.

The southern third of Carroll Plt is commercially undeveloped. It consists of some year round residences and a number of secluded camps. The faces of the hills and mountains that form the only ridgeline appear wild and remote. The Getchell/Bowers ridgeline is popular with hunters and trappers. The portion of the forests that is owned by commercial timber companies is harvested responsibly to maintain this landscape. In order to deliver massive construction equipment, turbines and extremely long blades up the steep grade to the top of the ridgeline would require an extensive network of very wide switchback roads. Those roads and the crane paths would be visible scars on the landscape when viewed from State Route 6. Such construction would diminish the sense of an undeveloped remote landscape.

II.I. Recreational Resources. *Goal: To conserve the natural resources that are fundamental to maintaining the recreational environment that enhances diverse, abundant recreational opportunities.*

The Carroll area abounds with recreational opportunities such as fishing, hunting, ATV riding, hiking, snowmobiling, stargazing, camping, boating, paddling, wildlife viewing & photography, etc. While the construction of a wind project may increase roads available to ATV riders and snowmobilers, user surveys have repeatedly shown that those who recreate in this area would be less likely to use the resources if a wind project were present. **See Exhibit L.**

II.J. Scenic Resources. *Goal: To protect the high-value scenic resources of the jurisdiction by fitting proposed land uses harmoniously into the natural environment.*

The CLUP itself recognizes the Downeast Lakes region for its natural features and fisheries.

“...A unique combination of geology, natural forces and climate have combined to produce an area of unparalleled natural resources and values. Lakes abound with names like Pocumcus, Wabassus and Sysladobsis, reminiscent of the area's Indian heritage. Stands of white birch, eastern hemlock and white pine attest to the economic importance of the natural resources that first drew settlers hundreds of years ago. Today, the forest and fisheries continue to sustain the unique community in and around Grand Lake Stream Plantation. This community has more Registered Maine Guides than any place in Maine. These professionals provide a vital link

between visitors and the complex ecosystem of lakes, marshes, woodlands, bogs and their wildlife in an area scientists recognize as one of unmatched biodiversity.”³

As presented so clearly in the Kleinschmidt user survey, the people who recreate on the SRSNS lakes within eight miles of the proposed turbines assign the lakes high scenic value, and they expect a very high overall quality experience when visiting the lakes.⁴

These surveys show conclusively that if there are turbines visible on Bowers Mountain, the Downeast Lakes region will lose its unique allure and many of these visitors will recreate elsewhere. The local economy, being almost entirely dependent on tourism, will be seriously damaged. Traditional Maine Sporting Camps will suffer. Professional Guides will suffer. Small businesses will close. Jobs will be lost.

II.K. Water Resources. Goal: To preserve, protect and enhance the quality and quantity of surface waters and groundwater.

In addition to the SRSNS lakes just to its south, Carroll Plt itself hosts Getchell, Lindsay and Wallace Brooks, all of which provide habitat for native populations of brook trout. The brooks flow southward from the Getchell/Bowers ridgeline and would be vulnerable to siltation caused by construction activity.

* * * * *

CONCLUSION

Based on this landscape-level review development of a wind project in Carroll Plt would definitely compromise the principal values and goals identified in the LUPC

Comprehensive Land Use Plan. It is a fairly remote location that hosts minimal development. Carroll Plt lacks much in the way of infrastructure and a wind project would provide very little economic development to the region. There are many scenic and recreational resources in the region. The damage a wind

³ Comprehensive Land Use Plan, Land Use Regulation Commission, 2010, p.54.

⁴ Exhibit L. Kleinschmidt User Intercept Survey

development would cause to the landscape, the scenery and the fragile tourism economy would far outweigh the few benefits that residents of Carroll would receive. Maine's brand, its sense of place, must be protected.

As such, based on a landscape-level review, Carroll Plt does not should no longer be in the Expedited Wind Permitting Area. PPDLW respectfully asks the Commission to return Carroll Plt to its normal status whereby a grid-scale wind energy project would require rezoning.

Exhibit A

LURC Decision Document: Bowers

(included as an attachment)

Exhibit B

DEP Decision Document: Bowers

(included as an attachment)

Exhibit C

BEP Decision Document: Appeal of DEP Decision

(included as an attachment)

Exhibit D

Law Court Decision Document: Appeal of BEP Decision

(included as an attachment)

Exhibit E

Wind Development in Maine Status: July 2016

OPERATIONAL WIND PROJECTS (07/05/16)

Project Name	MW	Turbines	Op Date
1 Mars Hill	42	28	2007
2 Beaver Ridge	4.5	3	2008
3 Stetson I	57	38	2009
4 Vinalhaven	4.5	3	2009
5 Kibby Mtn	132	44	2010
6 Stetson II	25.5	17	2010
7 Rollins Mtn	60	40	2011
8 Spruce Mountain	20	10	2011
9 Bull Hill	34	19	2012
10 Record Hill	50	22	2012
11 Oakfield	147	48	2015
12 Saddleback Mountain	34	12	2015
Total:	610.5	284	

WIND PROJECTS UNDER CONSTRUCTION

Project Name	MW	Turbines	Op Date
1 Bingham	206	62	2016
2 Canton Mountain	23	8	2016
3 Hancock Wind	54	18	2016
4 Passadumkeag	42	14	2016
5 Pisgah Mountain	15	5	2017
Total:	340	97	

PROPOSED WIND PROJECTS

Project Name	MW	Turbines	Op Date
1 Alder Stream Wind	245	74	2019
2 Blueberry Hills Wind	250	80	2019
3 EDP No. Nine	400	119	2019
4 EDP Horse Mountain	250	76	2019
5 King Pine	600	182	2019
6 Moose Wind	216	65	2019
7 Somerset Wind	85.5	26	2019
8 Weaver Wind	73	23	2019
9 Big Indian	79	24	TBD
10 Moscow Wind	100	30	TBD
11 Timberwinds	36	10	TBD
Total:	2,334.5	709	

Grand Totals: 3285 MW 1090 Turbines

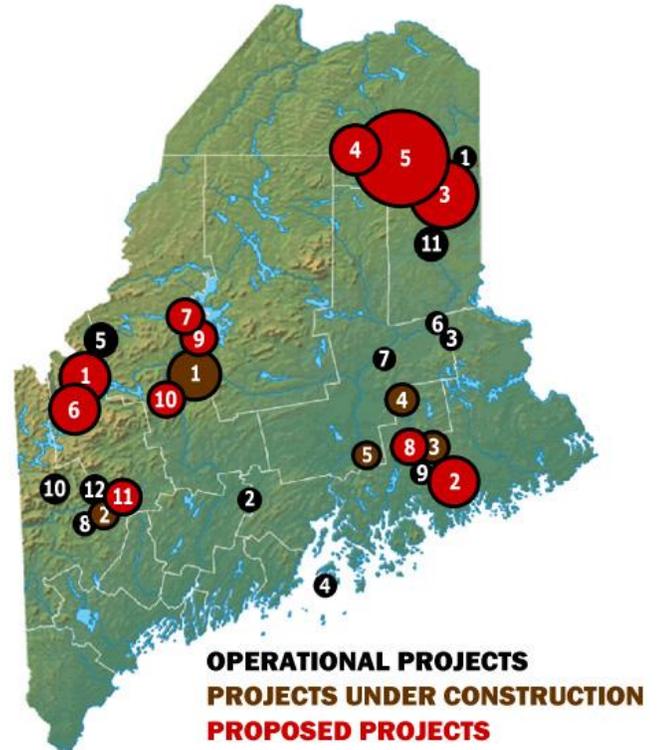


Exhibit F

NREL Wind Resource Map of Maine

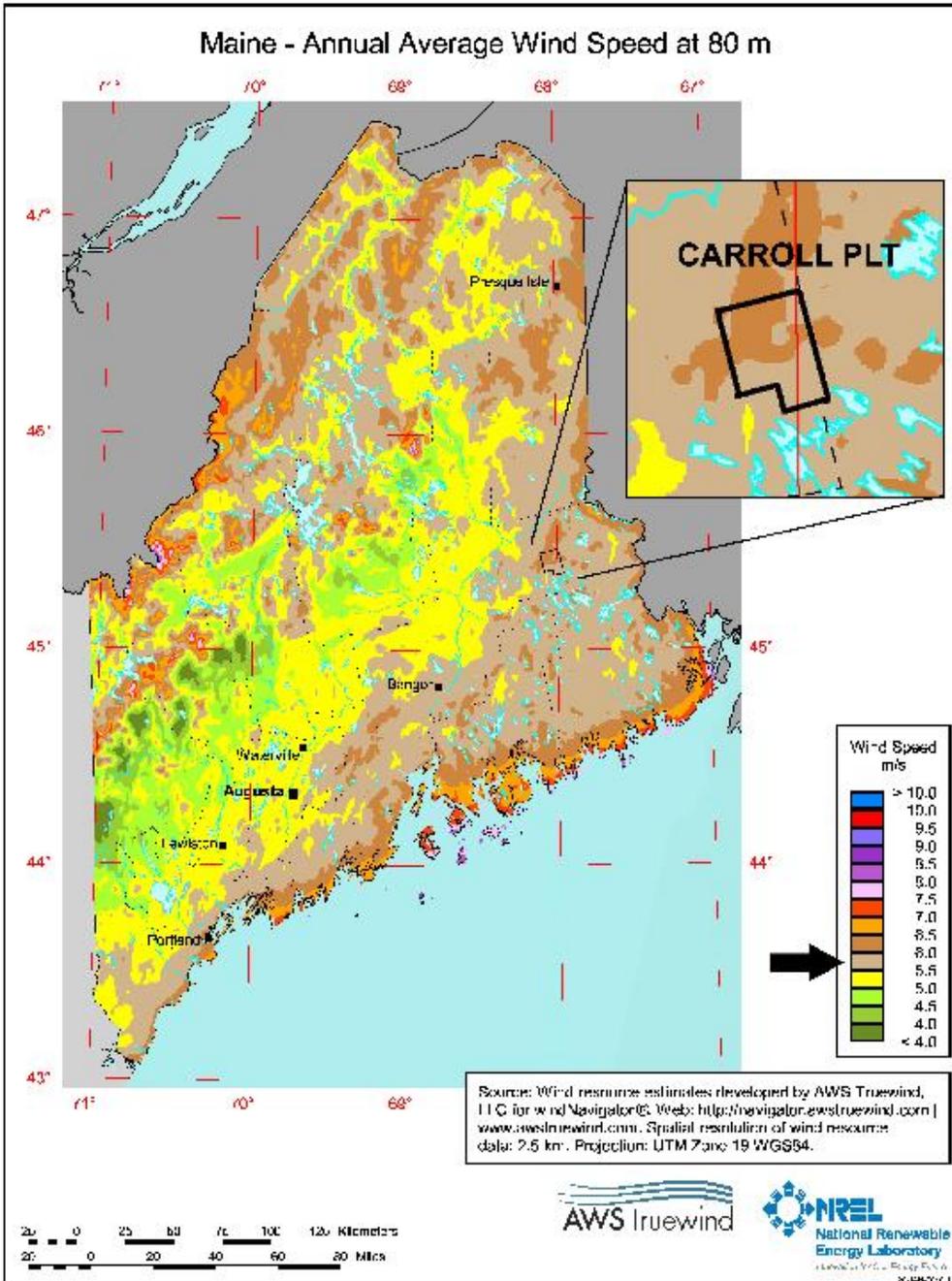


Exhibit G

Letter from Passamaquoddy Tribe to LURC

Tribal Historic Preservation Office

Passamaquoddy Tribe

PO Box 159

Princeton, Maine 04668

Fred Todd

LURC

Augusta, Maine

July 15, 2011

RE: Bowers Mountain – Wind Project

Dear Mr. Todd:

I would like to express my concern about the proposed wind project on Bowers Mountain. Champlain Wind, LLC, has proposed installing 27, 428-foot industrial turbines on [Bowers Mountain](#) and Dill Ridge, which rise up at the headwaters of the Downeast Lakes Watershed.

I am the Historic Preservation Officer for the Passamaquoddy Tribe and I review project applications on the impact regarding the historic properties and significant religious and cultural properties in accordance with NHPA, NEPA, AIRFA, NAGPRA, ARPA, Executive Order 13007 Indian

Sacred Sites, Executive Order 13175 Consultation and Coordination with Indian Tribal Governments, and Executive Order 12898 Environmental Justice.

This proposed project is located very close to Passamaquoddy tribal lands located in Township 5 Range 1 Penobscot County and Township 5ND in Washington County.

We are in opposition to this proposed project for several reasons:

1. The Passamaquoddy Tribe has several areas set aside for traditional cultural activities within this area (T5ND, T5R1). We believe that the wind turbines would have a harmful effect on these cultural activities.
2. Located on these two tribal townships, near the wind turbine site are religious sites, places that have been used for the last 10,000 years and are currently still being used. We believe that the wind turbines would have a harmful effect also on this activity for the tribe.
3. The visual effect of these giant turbines in this pristine area would have a ripple negative effect on other activities of the tribe, such as traditional tribal hunting for subsistence of the tribal families; tribal guiding activities in these areas will be reduced; tribal camps in the area will lost the outdoor wilderness exposure.

The Tribe has fought long and hard for years to keep this area from large developers such as the wind turbine project, we still remember the proposed nuclear waste disposal site that was proposed for this area just a few years ago, there we worked with local towns to stop that.

This proposed project will destroy the areas remoteness just as it has altered the other areas it is in now, how much is enough?

Sincerely;

Donald Soctomah

Tribal Historic Preservation Officer

Passamaquoddy Tribe

Exhibit H

Letter from MITSC to LURC

July 15, 2011

Maine Land Use Regulation Commission

22 State House Station

Augusta, ME 04333-0022

Attention: Mr. Fred Todd

Re: Land Use Regulation Commission Application Bowers Wind Project, Penobscot & Washington Counties, Maine

Dear Mr. Todd:

Please accept this letter as the Maine Indian Tribal-State Commission's testimony opposing the Bowers Wind Project as currently proposed. MITSC maintains responsibility for promoting positive relations between the Wabanaki and the State of Maine, but we are also responsible for reviewing any proposal that might affect the land, water or natural resource rights of the Tribes. We have, to date, received no information about this project. This is unfortunate because we would have weighed in earlier with our objections concerning LURC's review of this project.

The Maine Indian Tribal-State Commission (MITSC) met on July 14, 2011. Matt Dana, the Passamaquoddy commissioner from Indian Township raised the Tribe's concerns about the Bowers Wind Project. The principal concern that both the Penobscot and Passamaquoddy MITSC Commissioners raised pertains to the potential visual impacts on a Wabanaki repatriation site, burial grounds and ceremonial grounds all located in Springfield. No mention of these sites is made in the applicant's visual analysis. MITSC views the application as incomplete until such an analysis is done.

The Springfield Repatriation site is a sacred site for the Wabanaki People. The possible desecration of the area's view by the erection of up to 27 wind turbines would profoundly interfere with Wabanaki People's ability to use this site for its religious and sacred purposes. In MITSC's view, the

approval of the Bowers Wind Project without determining its potential impact on the Springfield Repatriation Site could compromise the Wabanaki People's ability to maintain and to protect this sacred site.

MITSC also believes LURC has violated EO 06 FY 10-11. This executive order, initially issued by Governor John Baldacci and which both remains in effect and is strongly supported under Governor Paul LePage, exists to promote timely and substantive consultation between all State Agencies and the Wabanaki Tribal Governments "on matters that significantly or uniquely affect those Tribes." MITSC asserts that LURC should have direct and substantial consultation on a government-to-government basis with the affected Wabanaki Tribal governments as required under EO 06 FY 10-11.

The application does mention a meeting between the applicant and an unnamed Passamaquoddy Governor. No date for the meeting is provided. A list of consultations is offered including meetings with town counselors and county commissioners—in other words, governmental bodies. The Tribal governments should have been and, in the future, must be extended the same consideration as other local governments impacted by such a project.

MITSC remains concerned that LURC fails to recognize the sovereignty of the Wabanaki Tribes and their special relationship to the State of Maine. The Wabanaki Tribes are not ordinary stakeholders. They are sovereign nations recognized under state, federal, and international law. LURC's seeming failure to acknowledge the inherent sovereignty of the Wabanaki Tribes undermines MITSC efforts to support an effective government-to-government relationship between the sovereigns.

From this point forward, We request LURC directly notify MITSC of any proposed rule, policy change, or application that would affect Wabanaki interests according to the threshold delineated in EO 06 FY 10-11, that standard being "matters that significantly or uniquely affect those Tribes." Please consider this a formal request under 30 MRSA §6212, §§5.

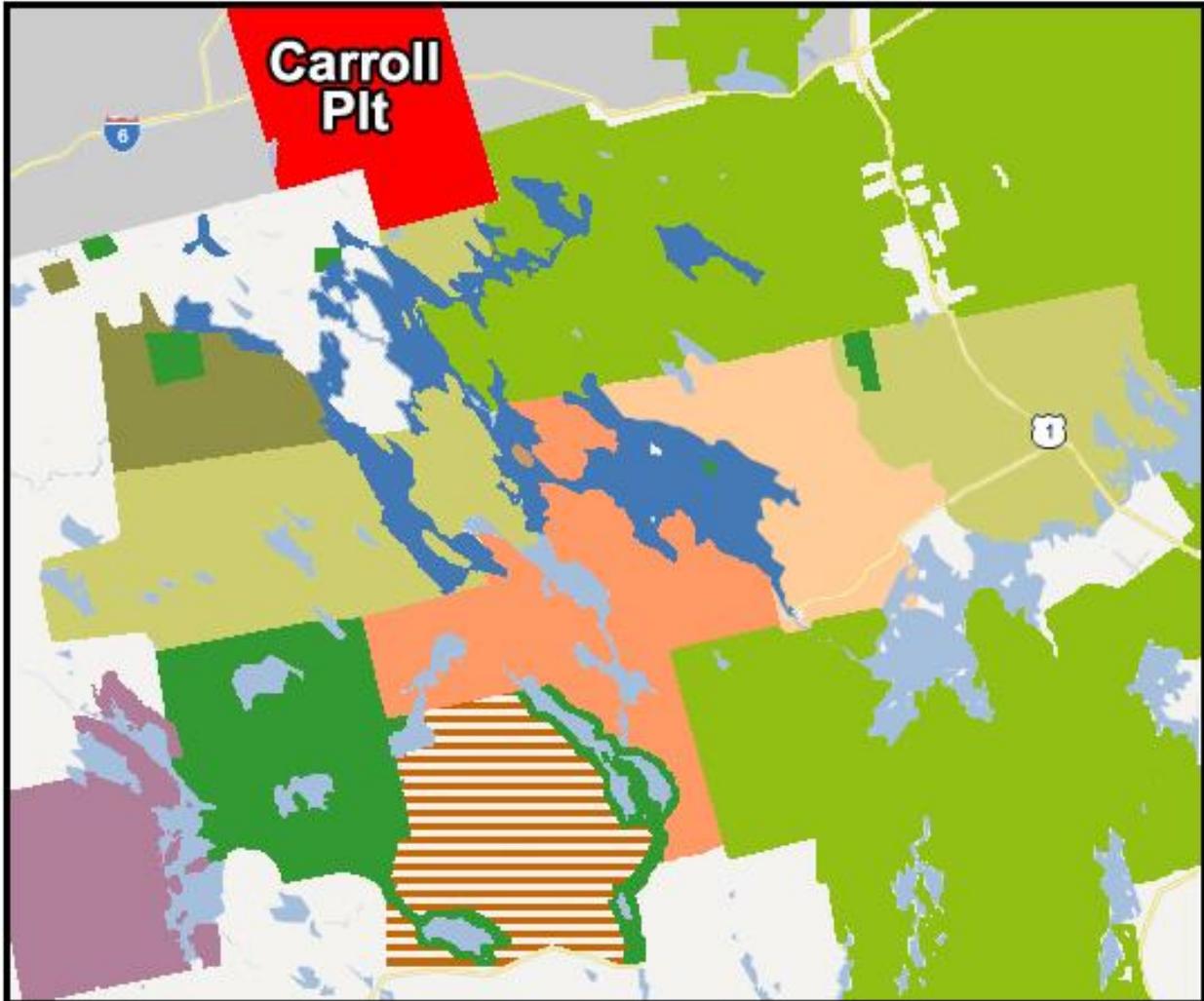
Respectfully yours,

John Dieffenbacher-Krall

Executive Director

Exhibit I

Map showing conserved lands near Carroll Plt



KEY

- | | |
|---|---|
|  Maine Public Reserve Land |  Washington Bald C.E. (pending) |
|  Nicatous Lake Conservation Easement |  Sunrise Easement |
|  Passamaquoddy Tribal Land |  DLLT Farm Cove Community Forest |
|  Penobscot Tribal Land |  DLLT West Grand Lake Community Forest |
|  Lake - SRSNS |  Bear Island Trust |
|  Lake - Not SRSNS |  Proposed Turbines |
| |  Expedited Wind Permitting Area |

Exhibit J

Map depicting SRSNS Lakes near Carroll Plt



17 Lakes shown in dark blue are "Scenic Resources of Statewide Significance" per the Wind Law

Exhibit K

Schematic Depiction of connectivity of Downeast Lakes

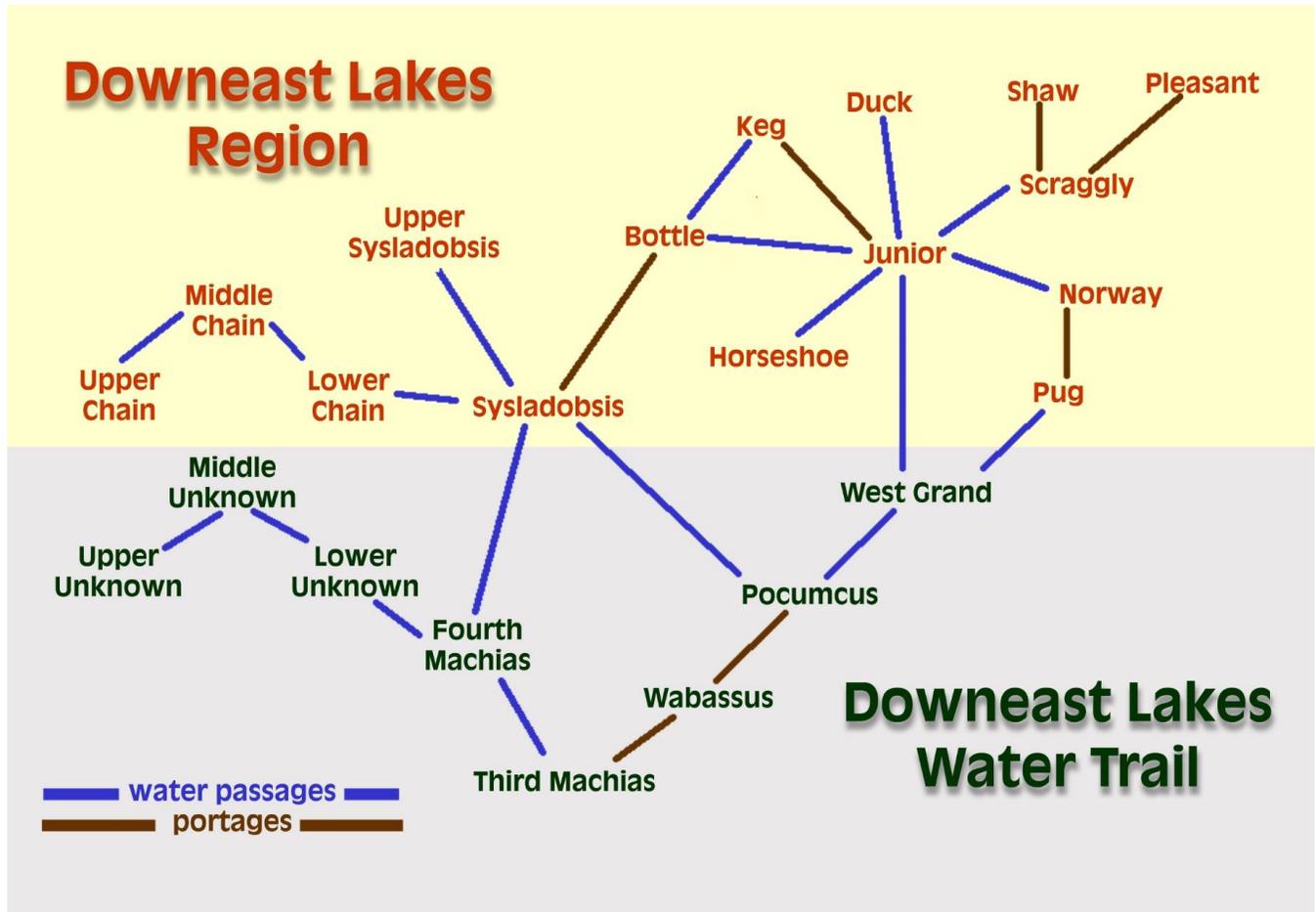
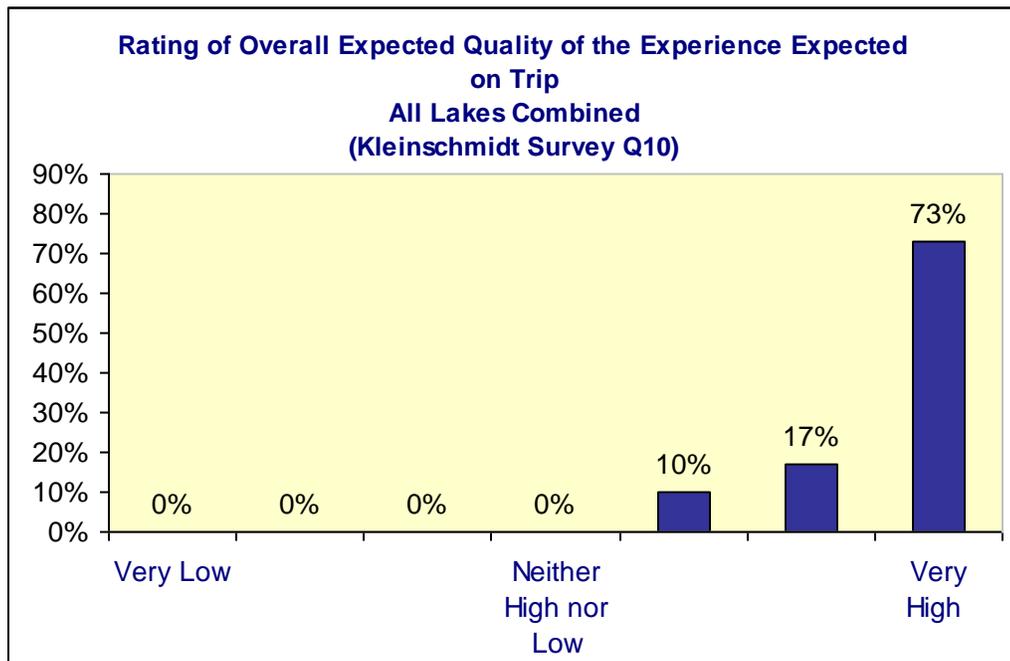


Exhibit L

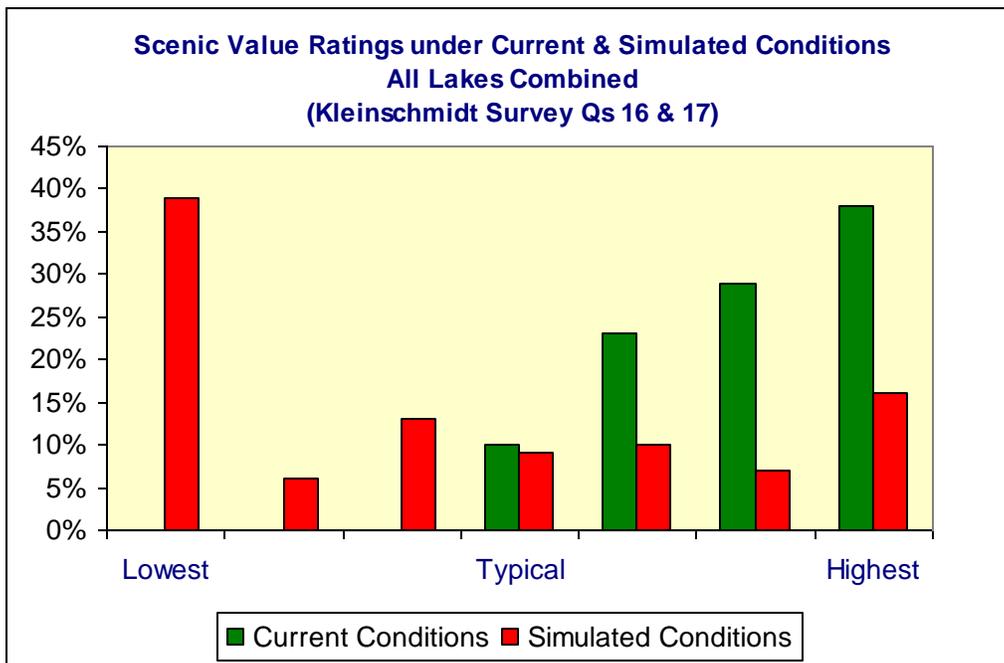
Key Findings of Kleinschmidt User Intercept Survey

1. Users surveyed have very high expectations of overall quality during their visit to the lakes.



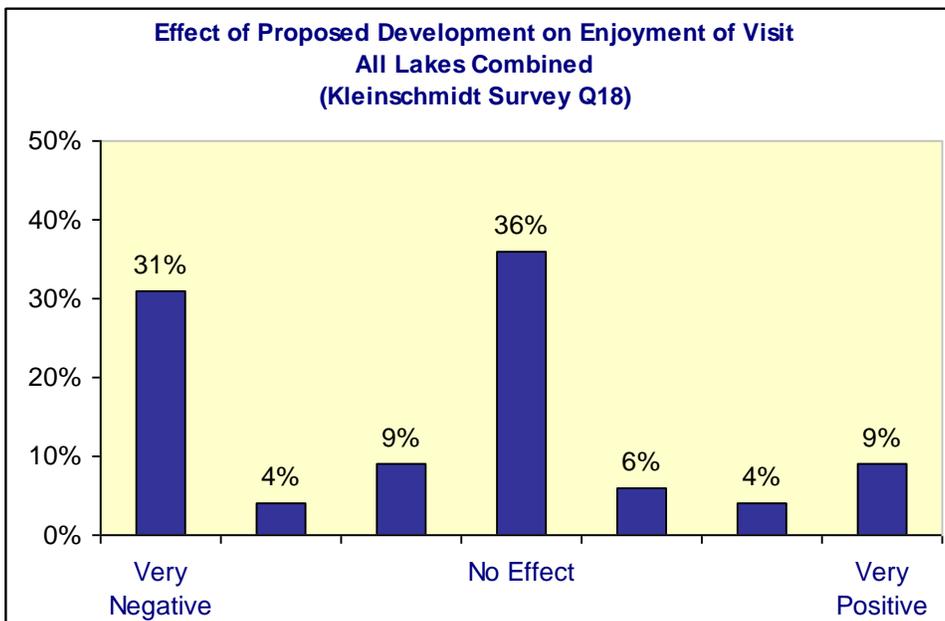
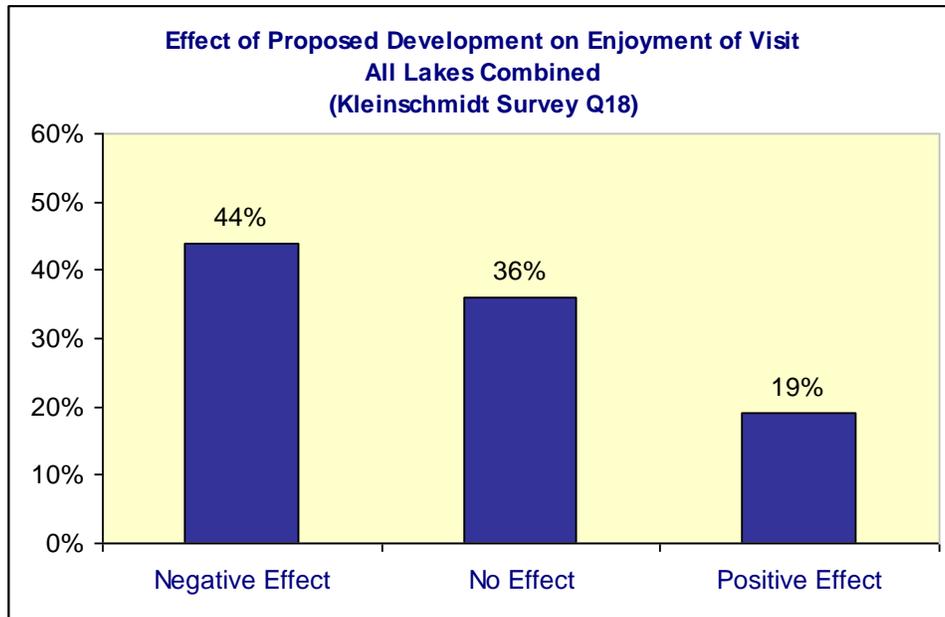
2. The proposed project would have an unreasonable adverse impact on the scenic character of the SRSNS:

- 90% rated scenic value with current conditions as high.
- 58% rated scenic value with simulated conditions as low.
- 39% rated scenic value with simulated conditions as lowest.



3. The proposed project would have an unreasonable adverse effect on the existing uses of the SRSNS:

- 44% said that the presence of the wind project would have a negative effect on their enjoyment of the lakes.
- 31% said the project would have a very negative effect on their enjoyment.





STATE OF MAINE
DEPARTMENT OF CONSERVATION
MAINE LAND USE REGULATION COMMISSION
22 STATE HOUSE STATION
AUGUSTA, MAINE
04333-0022

PAUL RICHARD LEPAGE
GOVERNOR

WILLIAM H. BEARDSLEY
COMMISSIONER

COMMISSION DECISION
IN THE MATTER OF

Champlain Wind, LLC
Denial of Development Permit DP 4889
Bowers Wind Project

Findings of Fact and Decision

The Maine Land Use Regulation Commission, at a meeting of the Commission held on April 20, 2012, at Bangor, Maine, after reviewing the application and supporting documents submitted by Champlain Wind, LLC for Development Permit DP 4889, public and Intervenor comments and testimony, agency review comments, and other related materials on file, pursuant to Titles 12 and 35-A, the Commission's Standards and Rules, and the Commission's 2010 Comprehensive Land Use Plan finds the following facts:

SUMMARY OF PROPOSAL

1. *Applicant:* Champlain Wind, LLC
129 Middle Street, 3rd Floor
Portland, ME 04101
2. *Application Accepted as Complete for Processing:* March 14, 2011
(The Commission's statutory authority directs the Commission, with respect to wind energy development permit applications that are set for public hearing, to return a decision within 270 days from the date the application is accepted as complete for processing unless the Applicant requests an extension of time agreeable to the Commission and the Applicant as was the case with this application (see findings 14,O and 14, Q below.) See 12 M.R.S.A. § 685-B(2-C).
3. *Location of Proposal:* Carroll Plantation, Penobscot County
(Map 1, Lots #1, 3.1, 3.2)
(Map 5, Lots #17, 18.4)
(Map 8, Lots #2, 5, 13)
(Map 11, Lots #9, 9.1)

Kossuth Township, Washington County
(Map 1, Lots # 4, 7, 9.1, 9.2, 23)

4. *Current Zoning:* (M-GN) General Management Subdistrict
(P-WL) Wetland Protection Subdistrict
(P-SL2) Shoreland Protection Subdistrict

5. *Proposed Project.* The purpose of the proposed Bowers Wind Project (BWP) is to construct a 69.1 megawatt (MW) grid-scale wind energy development on Bowers Mountain, an unnamed ridge to the south referred to as “South Peak” in Carroll Plantation, Penobscot County, and on Dill Hill in Kossuth Township, Washington County. The proposed BWP would consist of up to 27 turbines with associated turbine pads – up to 10 of the turbines would be Siemens 3.0 MW turbines and up to 17 would be Siemens 2.3 MW turbines, with maximum height of 428 feet; existing and new access and crane path roads; 34.5 kV above-ground collector lines; permanent meteorological towers; an operation and maintenance (O&M) building; and a new substation to connect to an existing 115 kV transmission line.

The proposed BWP would be entirely located within the area designated for expedited permitting under the “Act To Implement Recommendations of the Governor’s Task Force on Wind Power Development” (the “Task Force Act”) (PL 2007, Ch. 661) and as amended through rulemaking by the Commission in accordance with 12 M.R.S.A. § 685-A(13) and 35-A M.R.S.A. § 3453 effective on December 16, 2010.

Following questions raised by the Commission regarding the visual impact on ground observers of required nighttime turbine lighting, the Applicant submitted information on nighttime lighting mitigation technology. The Applicant informed the Commission that it had commenced the process of determining the suitability of the BWP site for the use of a radar-assisted warning system, which would eliminate the current Federal Aviation Authority (FAA) requirement that the turbines be lit at night. In its filings with the Commission, the Applicant stated that if the radar-assisted warning system was approved by the FAA, it would evaluate the feasibility of retrofitting the BWP to incorporate such a system. The Applicant stated its evaluation of feasibility would take into account the following minimal considerations: a site suitability analysis indicating that the site is an appropriate candidate for use of such a technology; a determination by the FAA that the system is approved for use at this site; availability of reasonable and appropriate insurance coverage; a determination that the use of the system does not present an unreasonable risk to aircraft and that the vendor and technology are reliable; a determination that the system is compatible with the turbine manufacturer warranty; and, that the costs of implementing such a system are reasonable and the project is financeable with the use of the technology. The Applicant committed that it would evaluate and implement if feasible the use of this new radar-assisted technology if approved by the FAA.

SUMMARY OF REVIEW CRITERIA

6. *Review Criteria.* The Commission is the primary siting authority for a wind energy development entirely sited within the unorganized townships or plantations of Maine. As

discussed in more detail below, the proposed project is subject to the provisions of Title 12, §§ 685-B(2-B), (4) and (4-B); the applicable provisions within the Commission's standards and rules in Chapter 10; and the Commission's Comprehensive Land Use Plan (CLUP). The proposed project is also subject to the provisions of Title 35-A, Ch. 34-A, §§ 3451 *et seq.* The review of the project is also subject to the provisions of the Commission's rules in Chapter 4 and 5. Central to this decision are the review criteria for assessing scenic impact found in Title 12 § 685-B(4)C and Title 35-A, chapter 34-A, § 3452 – see finding 17 below.

Commission's Comprehensive Land Use Plan (CLUP). The legislative amendments made by the Task Force Act to the Commission's permitting authority with respect to expedited wind energy projects did not remove the Title 12 requirement that the Commission, in reviewing development permit applications, determine whether a proposal is in conformance with certain regulations, standards, and the CLUP. 12 M.R.S.A. § 685-B(4) & (4-B). The Commission's 2010 CLUP, while expressly recognizing the statutory changes made by the Task Force Act with respect to wind energy development in the expedited permitting area, continues to provide for the environmentally sound and socially beneficial utilization of indigenous energy resources where there are not overriding public values that require protection. (2010 CLUP at 13). The CLUP explains that it seeks to accommodate energy generation installations that are consistent with the State's energy policies, are suitable for the proposed locations, and designed to minimize intrusion on natural and cultural resources and values. (2010 CLUP at 13). The CLUP reflects the State's policy of identifying and protecting areas that possess scenic features and values of state or national significance, and it recognizes that sporting camps are recreational and cultural resources, worthy of protection from incompatible development and land uses. (2010 CLUP at 13, 18, 17, 265 – 267)

Each large-scale project proposed in the Commission's jurisdiction calls on the Commission to carefully consider on a case-by-case basis proposed impacts to the human and natural environment. Not all sites are appropriate for grid-scale wind energy development -- the Commission must find the appropriate balance between development and protection of natural resources and natural resource uses to achieve conformity with the goals and policies of the CLUP.

REVIEW OF EVIDENCE

7. *Review of Evidence.* The Commission has assembled a large administrative record regarding the BWP. The administrative record contains written and oral testimony and written comments from the Parties, government review agencies, and the public, all of which was gathered through a process conducted in accordance with the Commission's Chapters 4 and 5 Rules. In this matter, the process also included an evidentiary hearing, held at the discretion of the Commission. Thus, it is not possible to list or acknowledge all of the evidence that led the Commission to reach the factual findings and legal conclusions set forth below. Those findings and conclusions, however, are based on the application of the governing review criteria to all the evidence in the record and not only those examples of evidence recited herein.

SUMMARY OF REVIEW PROCESS

8. *Application Submittal.* Champlain Wind, LLC (Applicant) submitted its application for the proposed Bowers Wind Project (BWP), Development Permit DP 4889 on January 24, 2011. The Applicant is a wholly-owned subsidiary of First Wind.

The application was accepted by LURC staff as complete for processing on March 14, 2011. Public notices of “Intent to File” the application were published on January 24, 2011, and on January 27, 2011, respectively, in the Bangor Daily News and the Lincoln News. Public notices of the public evidentiary hearing were given in the Bangor Daily News on May 26, 2011, and June 17, 2011. Notices of the hearing were also given in the Lincoln News on May 26, 2011, and June 16, 2011.

9. *Intervenors and Interested Persons.* On April 6, 2011, within 45 days of accepting the application as complete, the Commission exercised its discretion and set this matter for a public evidentiary hearing, and granted Intervenor status to two Parties: the Conservation Law Foundation (CLF) and the Natural Resources Council of Maine (NRCM). The Partnership for the Preservation of the Downeast Lakes Watershed (PPDLW), David Corrigan and Gordon Mott were granted Intervenor status through the Sixth Procedural Order on June 2, 2011. NRCM withdrew as an Intervenor on June 9, 2011. CLF formally announced its support for the project on June 10, 2011. PPDLW and Corrigan intervened in opposition to the project. Mott intervened in support of the tangible benefits proposed by the Applicant. Fifteen (15) individuals requested status as, and the Commission recognized them as, Interested Persons in accordance with the Commission’s rules.
10. *Pre-filed Testimony.* The Applicant and Intervenors PPDLW, CLF, Corrigan, and Mott submitted pre-filed testimony on June 10, 2011. Issues addressed included, but were not limited to: scenic impact, wildlife impact, in particular lynx and birds and bats, and tangible benefits concerns. Written rebuttal testimony to pre-filed testimony was submitted on June 17, 2011.
11. *Public Hearing and Site Visit.* A public evidentiary hearing was held on June 27 and 28, 2011 in Lincoln, Maine and continued on July 6, 2011, in Bangor, Maine. Evening public hearing sessions were held on June 27 and 28, 2011 in Lincoln. A portion of the hearing, structured primarily to serve the purposes of hearing summaries of the pre-filed testimony from the Parties, hearing testimony from review agencies, and for conducting cross examinations, was held during the day on June 28th in Lincoln and continued on July 6th in Bangor, Maine. The Commission’s site visit was held on June 27th to observe the project site, road access, and views from several of the lakes which were identified as scenic lakes of state or national significance.
12. *Participating Review Agencies.* The Maine Department of Environmental Protection (MDEP), the State Soil Scientist, and the Maine Department of Inland Fisheries and Wildlife (MDIFW) attended the public hearing in order to answer questions as needed. In addition, the Commission retained additional staff with respect to processing this permit application, namely third party peer reviewers and experts, Dr. James Palmer (scenic) and Warren Brown

(sound). Dr. Palmer was present at the hearing to answer questions on matters of scenic impact as needed. The details of Dr. Palmer's comments and testimony on the proposed BWP can be found in the record and, by way of summary, below.

13. *Public Comments.* Members of the public and several of the Interested Persons submitted written comments and testified at the evening sessions of the public evidentiary hearing. The record closed for public comment on July 18, 2011.
14. *Post-Hearing Briefs.* The Applicant and Intervenor PPDW filed their final briefs on the deadline of August 22, 2011.
15. *Procedural Matters.* The Presiding Officer issued 16 Procedural Orders throughout the proceeding, addressing administrative and procedural matters.
 - A. *First Procedural Order.* On March 29, 2011, the First Procedural Order was issued, requesting legal argument from the Parties regarding whether, as set forth at 35-A M.R.S.A. § 3452(2), the scenic character impact review of the associated facilities should be conducted according to the provisions of 35-A M.R.S.A. § 3452, or according to the harmonious fit standard for non-expedited projects in 12 M.R.S.A. § 685-B(4) and LURC's Chapter 10 §10.25,E(1) scenic standards (*See Finding of Fact #18 for a discussion of the review criteria for the associated facilities*).
 - B. *Second Procedural Order.* On April 21, 2011, the Second Procedural Order was issued, stating that the scenic character standard to be applied during the review of the associated facilities of the proposed BWP would be 35-A M.R.S.A. § 3452, not 12 M.R.S.A., § 685-B(4) and LURC's Chapter 10 Rules, § 10.25,E(1) (see further discussion in Finding 18 below).
 - C. *Third Procedural Order.* On April 29, 2011, the Third Procedural Order was issued, containing the memorandum of the pre-hearing conference, and containing specifically the schedule for the public evidentiary hearing and procedures, the service list, filing requirements, pre- and post-hearing filings, and other administrative matters pertaining to the public hearing.
 - D. *Fourth Procedural Order.* On May 13, 2011, the Fourth Procedural Order was issued, regarding those individuals seeking status as Interested Persons, Intervenors, and preliminary consolidation of those seeking Intervenor status. Parties were provided an opportunity to comment on the preliminary consolidation of intervenors.
 - E. *Fifth Procedural Order.* On May 23, 2011 the Fifth Procedural Order was issued, clarifying that the standard set forth at 35-A M.R.S.A. § 3453 governs the Commission's finding on the impacts of turbine lighting on scenic character and existing uses related to scenic character.
 - F. *Sixth Procedural Order.* On June 2, 2011, the Sixth Procedural Order was issued regarding extending the deadline for response to scenic review of James Palmer,

amended and reaffirmed scheduling deadlines and final consolidation of Parties (see finding 9 above).

- G. *Seventh Procedural Order.* On June 23, 2011, the Seventh Procedural Order was issued regarding objections to certain pre-filed direct testimony, availability of witnesses at hearing, and objections to portions of the proposed site visit.
- H. *Eighth Procedural Order.* On June 23, 2011, the Eighth Procedural Order was issued with the public hearing schedule, noting continuation of evidentiary hearing to July 6, 2011, and consequent extension of close of record.
- I. *Ninth Procedural Order.* On July 14, 2011, the Ninth Procedural Order was issued regarding a request by the Commission for post-hearing submissions by the Applicant and the MDIFW, official notice of agency records consisting of a staff memo to the Commission regarding issues related to wind power development and a related report by the Appalachian Mountain Club, and an objection to public hearing testimony by an individual who pre-filed testimony as a witness for an Intervenor. The Parties were provided an opportunity to comment on the submittals by the Applicant and MDIFW. The Applicant was also provided an opportunity to provide rebuttal comments to those provided by MDIFW and Intervenors.
- J. *Tenth Procedural Order.* On August 3, 2011, the Tenth Procedural Order was issued regarding reopening the evidentiary record to allow for inclusion of material from the Applicant and staff regarding tangible benefits; staff response to issues raised by the native American tribes in the area; and Secretary of State records regarding the PPDW; and an order to disregard certain post-hearing rebuttal comment by a witness for the Applicant that was in the nature of legal argument.
- K. *Eleventh Procedural Order.* On August 11, 2011, the Eleventh Procedural Order was issued regarding official notice of agency records consisting of a public access easement for a portion of the project area and decommissioning references from other proceedings to provide context for the decommissioning portion of this proposal. The Parties were provided an opportunity to contest the substance or materiality of these records.
- L. *Twelfth Procedural Order.* On September 16, 2011, the Twelfth Procedural Order was issued regarding Commission staff's request to reopen the evidentiary record to allow for the submission of updated summary tables of the visual impact assessment (to include Pug Lake – a portion of West Grand Lake) by the Applicant's scenic consultant, LandWorks, and the scenic consultant for the Commission, Dr. Palmer. The Parties were provided an opportunity to comment on these updated summary tables to include Pug Lake.
- M. *Thirteenth Procedural Order.* On October 4, 2011, the Thirteenth Procedural Order was issued, indicating the Commission would disregard any comments made by the PPDW in response to the Twelfth Procedural Order which did not address the addition of Pug Lake to the visual assessment summary tables of LandWorks and Dr. Palmer and to

reopen the evidentiary record to allow submission of additional information by the Applicant regarding night lighting of the project facilities. [Note: while the order is dated October 4, 2011, due to technical difficulties, the order was not released until 5:30 a.m. on October 5, 2011.]

- N. *Commission Directive to Draft Denial.* On October 19, 2011, following a deliberative session on the visual impacts of this project, the Commission directed staff to draft a denial of the project and bring that draft denial to the December 7, 2011 Commission meeting for a vote by the Commission.
- O. *Request to Withdraw.* On November 8, 2011, the Applicant filed a request to withdraw its application, and agreed to an extension of the Commission's deadline for issuing a final decision through January 2012.
- P. *Fourteenth Procedural Order.* On November 15, 2011, the Fourteenth Procedural Order was issued in response to the Applicant's request to withdraw its application, and it indicated the Commission would act on the request to withdraw at its regularly scheduled meeting on December 7, 2011, with consideration of the denial of the permit application to occur at the Commission's January meeting, as necessary. The Parties were provided an opportunity to comment on the request to withdraw both in writing and orally at the December 7, 2011, Commission meeting.
- Q. *December 7, 2011, Commission action.* On December 7, 2011, the Commission tabled the Applicant's request to withdraw. The Commission further directed the Applicant to submit a written description of its plans for reconfiguring the BWP to address the concerns expressed by the Commission during this proceeding and the Commission's deliberations on the visual impacts of this Project in September and October of 2011. The Applicant agreed to an extension of the Commission's deadline for issuing a final decision through May 15, 2012. The Fifteenth Procedural Order (see below) further specified the process for further consideration of the request to withdraw.
- R. *Fifteenth Procedural Order.* On December 12, 2011, the Fifteenth Procedural Order was issued, directing the Applicant to submit, by Friday, March 9, 2012, a written description of its plans for reconfiguring the BWP as described in subsection Q above. In issuing the order, the Chair noted the purpose of the filing, together with any comments thereon received from the Intervenors and public, was to enable the Commission to decide whether, based upon its Title 12 authority enabling legislation and in keeping with considerations of administrative fair play, a withdrawal was appropriate under the facts and circumstances of this proceeding.
- S. *March 9th filing by Applicant.* On March 9, 2012, the Applicant responded to the Fifteenth Procedure Order by stating it was unable to provide a written description of its plans for moving forward with a reconfigured BWP because of uncertainties regarding the availability of capital due to a pending PUC decision, and also because the Applicant claimed there remained uncertainty regarding the statutory visual impact standard. The Applicant also renewed its request to withdraw its application.

- T. *Sixteenth Procedural Order.* On April 4, 2012, the Sixteenth Procedural Order was issued responding to certain objections by the Parties regarding the March 9th and subsequent filings. This Order also established an oral argument schedule for the Parties for the April 6, 2012, meeting at which time the Commission was to reconsider the Applicant's request to withdraw its application based on its March 9th filing.
- U. *April 6, 2012, Commission action.* On April 6, 2012, the Commission heard oral argument from the Applicant and Intervenors PPDLW, Corrigan, and Mott regarding the Applicant's March 9th filing and renewed request to withdraw. The Commission took the request to withdraw off the table (see section Q above), and discussed the merits of the request to withdraw. The Commission has the authority to manage and control its adjudicatory proceedings pursuant to its Title 12 enabling legislation and in keeping with considerations of administrative fair play. At the time of the Applicant's request to withdraw, this matter had already proceeded through a substantial administrative process, as summarized above. The Commission had convened more than one day of a public evidentiary hearing, the Commission had already articulated a basis for denial, and it had directed its staff to prepare a decision document denying the BWP. Under these circumstances, it would not be equitable to allow an applicant to withdraw, and therefore the Commission denied the request to withdraw. The Commission directed staff to bring a denial decision back to the Commission for decision no later than May 15, 2012, the agreed-upon deadline for issuing a decision in accordance with 12 M.R.S.A. § 685-B(2-C).

PROJECT SETTING

16. *Existing Conditions and Uses of the Site.* The proposed 69.1 MW BWP would be located on three ridges: Bowers Mountain and an unnamed ridge to the south (referred to as "South Peak" throughout the application) in Carroll Plantation, Penobscot County, and Dill Hill in Kossuth Township, Washington County. By way of placing the proposed project area in context, according to the application, the project is located in the Eastern Lowlands biophysical region of Maine, which is characterized by extensive lowlands with elevations generally below 600 feet, except for several hills within the Project area. The Bowers Mountain, South Peak and Dill Hill ridgelines have elevations between 750 to 1,120 feet above mean sea level. All of these rolling hills are located directly south of Route 6 and cross the town boundary from Carroll to Kossuth. Together they form a divide between stream drainages to Baskahegan Stream in the north, and to streams flowing to lakes and ponds in the south. The project area is primarily dominated by a regenerating Beech-Birch-Maple forest. The entire project area has been heavily logged in the past, with harvesting activities occurring largely between 10 and 20 years ago.
- A. While, as earlier noted, the project area is within the expedited wind development area, it also sits at the edge of a large "donut hole" excluded from the expedited area. This adjacent excluded area is part of the Downeast lakes region – an area known for its vast lake resources and the recreational opportunities they provide. This is an area recognized by the CLUP as a unique region within the Commission's jurisdiction (2010 CLUP at

54). Of this region, the CLUP notes: *“Today, the forest and fisheries continue to sustain the unique community in and around Grand Lake Stream Plantation. This community has more Registered Maine Guides than any place in Maine. These professionals provide a vital link between visitors and the complex ecosystem of lakes, marshes, woodlands, bogs and their wildlife in an area scientists recognize as one of unmatched biodiversity.”*

There is considerable testimony in the record from guides and sporting camp owners working in, and around the area of, Grand Lake Stream. While Grand Lake Stream is located approximately 18 miles from the BWP area, the testimony of the guides and camp owners, among other pieces of evidence in the record, addresses the anticipated adverse scenic impacts the BWP would have on their and their clients’ experiences in traveling through the lakes within 8 miles of the project area and the resultant adverse impact that the BWP would have to their livelihood.

- B. Like much of the Commission’s jurisdiction, the region is generally undeveloped, is currently forested, and the dominant land use is commercial forestry. An existing network of unimproved logging roads is present throughout the area and the effects of past and current timber harvesting are evident across the entire project area, from large clear-cuts to small selective harvesting areas. Aside from the roads and skidder trails, the area around the project area is mostly undeveloped with sparsely located year-round and seasonal properties. The majority of these properties nearest to the project are located to the south of the South peak turbines and the closest dwelling is a seasonal camp located approximately 2,500 feet to the south of the nearest proposed turbine. There are four year-round residences on Route 6 that are more than 0.5 miles from the nearest proposed turbine. The nearest sporting camp is Maine Wilderness Camps on Pleasant Lake approximately 2.8 miles of the closest proposed turbine. There are several other sporting camps that utilize the lakes within the 8-mile study area that are located as far as 18 miles away whose clients regularly utilize lakes within the 8-mile study area. The 8-mile study area is the area set by statute within which scenic impacts are assessed on certain identified resources of state or national significance (see finding 19 below).
- C. Much of the land in the area is privately owned. There are also a number of publicly and privately conserved lands in the 8-mile study area. Located in the southeastern part of the study area are portions of the Sunrise Conservation Easement held by the New England Forest Foundation, which maintains this undeveloped land forever in its present and historic, and primarily undeveloped condition, to allow its continued operation as a working forest. Under the terms of the Sunrise Conservation Easement, the land is managed to provide the perpetual ability to produce forest products, as well as to conserve and/or enhance forest and wildlife habitats, undeveloped shoreline, and historic public recreation opportunities for present and future generations. Overlaying the Sunrise Conservation Easement is a Public Access Easement acquired by the Bureau of Public Lands. The Public Access Easement grants public access to this area for the purposes of *“hunting, fishing, trapping, picnicking, swimming, cross-country skiing, snowshoeing, hiking, nature observation, and enjoyment of open space in accordance with applicable state rules and regulations.”*

- D. Typical recreational uses in the surrounding area include swimming, boating, fishing, hunting, and snowmobiling.

SCENIC IMPACT REVIEW CRITERIA AND ASSESSMENT

17. *Scenic Impact Review Criteria: Evaluation of effects on scenic character [Title 12, § 685-B(4)C and Title 35-A, chapter 34-A, § 3452].* The Commission’s criteria for approval for an expedited wind energy development in Title 12, § 685-B(4)(C), pursuant to the Task Force Act states: *“In making a determination under this paragraph regarding an expedited wind energy development, as defined in Title 35-A, § 3451, subsection 4, the Commission shall consider the development’s effects on scenic character and existing uses related to scenic character in accordance with Title 35-A, § 3452.”*
- A. Title 35-A, chapter 34-A, §3452 states that when *“making findings on the effect of an expedited wind energy development on scenic character and existing uses related to scenic character, [the Commission] shall determine”*... *“whether the development significantly compromises views from a scenic resource of state or national significance such that the development has an unreasonable adverse effect on the scenic character or existing uses related to the scenic character of the scenic resource of state or national significance.”* The determination by the Commission under this section also includes the associated facilities of the expedited wind energy development, unless otherwise determined by the Commission pursuant to 35 M.R.S.A. § 3452(2) (see Finding 18 below).
- B. Title 35-A, chapter 34-A, § 3452(3) further requires that when making a determination on impacts of an expedited wind energy development on scenic character, the Commission shall consider the following:
- (a) *“The significance of the potentially affected [scenic resource];*
 - (b) *The existing character of the surrounding area;*
 - (c) *The expectations of the typical viewer;*
 - (d) *The expedited wind energy development’s purpose and the context of the proposed activity;*
 - (e) *The extent, nature and duration of the potentially affected public uses of the scenic resource of state or national significance and the potential effect of the generating facilities’ presence on the public’s continued use and enjoyment of the scenic resource of state or national significance; and*
 - (f) *The scope and scale of the potential effect of views of the generating facilities on the scenic resource of state or national significance, including but not limited to issues related to the number and extent of the turbines visible from the scenic resource of state or national significance, the distance from the scenic resource of state or national significance and the effect of prominent features of the development on the landscape.”*
- C. Title 35-A, § 3452(3) and (4) also state that *“a finding by [the Commission] that the generating facilities are a highly visible feature in the landscape is not a solely sufficient basis for determination that an expedited wind energy development has an unreasonable*

adverse effect on the scenic character and existing uses related to scenic character of a scenic resource of state or national significance.” The effects of portions of the developments facilities located more than 8 miles from a scenic resource of state or national significance shall be considered to be insignificant. (Title 35-A, § 3452(3)). A visual assessment is not generally required for the portions of the wind energy development located from 3 to 8 miles from scenic resources of state or national significance, but may be required if there is substantial evidence that such an assessment is needed. (Title 35-A, § 3452(4)). Based upon the applicant’s submissions, the Commission did not reach the issue of whether an 8-mile assessment was necessary (see Finding 19 below).

18. *Scenic Standard Applicable to Associated Facilities.* After accepting this application complete for processing, the issue of the scenic standard applicable to this project’s associated facilities was raised. The Chair provided the Parties an opportunity to submit argument prior to the resolution of this issue, all in advance of the Parties’ pre-filing of testimony. *See* First Procedural Order (March 29, 2011). At its April 6, 2011 regularly scheduled business meeting, the Commission formally delegated to the Chair the authority to determine whether the Title 35-A standard or the Title 12 standard would apply to the associated facilities. And, thereafter, the Second Procedural Order (April 21, 2011) set forth in detail the findings and conclusions regarding the scenic standard applicable to the associated facilities.

A. *Title 35-A analytical framework.* Pursuant to 35-A M.R.S.A. § 3452(2): “*The [Commission] shall evaluate the effect of associated facilities of a wind energy development in terms of potential effects on scenic character and existing uses related to scenic character in accordance with Title 12, section 685-B, subsection 4, paragraph C . . . in the manner provided for development other than wind energy development, if the [Commission] determines that application of [Title 35-A, subsection 3452, paragraph 1]. . . to the development may result in unreasonable adverse effects due to the scope, scale, location or other characteristics of the associated facilities. An interested party may submit information regarding this determination to the primary siting authority for its consideration. The primary siting authority shall make a determination pursuant to this subsection within 30 days of its acceptance of the application as complete for processing.*” 35-A M.R.S.A. § 3452(2) (emphasis added). Thus, to determine whether to apply Title 35-A or Title 12, this section directs the Commission to first apply the scenic standard provided Title 35-A to the associated facilities, and then compare that to the application of the scenic standard provided by Title 12.

(a) *Title 35-A standard.* The Title 35-A scenic standard and its associated criteria are found at 35-A M.R.S.A. §§ 3452(1) & (3). In applying that standard, the Commission considers views of the associated facilities only from statutorily designated scenic resources of state or national significance, and based upon the criteria set forth in Title 35-A, it would consider whether the associated facilities significantly compromised those views such that there was an unreasonable adverse effect on scenic character or existing uses related to scenic character. 35-A M.R.S.A. §§ 3451(9), 3452(1) & (3). Upon this review, that is—the scenic impacts of the

associated facilities under the Title 35-A standard—section 3452(2) then directs the Commission to consider whether the application of that standard, as opposed to application of the scenic standard set forth in Title 12, “may result in unreasonable adverse effects due to scope, scale, location or other characteristics of the associated facilities.” 35-A M.R.S.A. § 3452(2). Thus, the Commission must next consider what it would consider with regard to the scenic impacts of associated facilities under the Title 12 standard that it would not consider under the Title 35-A standard.

- (b) *Title 12 scenic standard.* Under the Commission’s traditional scenic standard, 12 M.R.S.A. § 685-B(4)(C) and Commission Standards § 10.25(E)(1), the Commission would consider whether “*adequate provision has been made for fitting the [project] harmoniously into the existing natural environment in order to ensure there will be no undue adverse effect on [among other things] existing uses [and] scenic character . . . in the area likely to be affected by the project.*” Thus, under Title 12, the standard is the so-called harmonious fit/no undue adverse effect standard, and the Commission’s review of the scenic impacts of associated facilities would not be limited to those views that have been identified by the Legislature as significant under Title 35-A. See 35-A M.R.S.A. § 3451(9) & § 3452(1). Under Title 12 the Commission would consider the impacts the associated facilities would have on views from scenic resources of state or national significance as well as locally significant scenic resources in the area likely to be affected by the project.
- (c) *Contrasting Titles 35-A and 12.* If the Commission were to apply the Title 35-A standard to associated facilities, two factors are relevant for the Commission’s consideration. First, the Commission would not consider the scenic impacts of the associated facilities on locally significant scenic resources. Second, with respect to views of the associated facilities from scenic resources of state or national significance, the Commission would not consider whether the associated facilities fit harmoniously into the natural environment. Thus under the analytical framework provided by 35-A M.R.S.A. § 3452(2), the Commission must ultimately consider: whether (because of their scope, scale, location or other characteristics) the associated facilities may (because the first and second factors stated above would not be taken into consideration) result in unreasonable adverse effects.

B. *Application of Title 35-A to Bowers Wind Project.* As a preliminary matter, to determine which scenic standard applies to the associated facilities in this project, the definition of associated facilities, as compared to generating facilities, must be clear.

- (a) *Definition of associated facilities.* Title 35-A defines associated facilities and generating facilities. In accordance with 35-A M.R.S. §§ 3451(1) & (5):
 - (i) *Generating facilities* means wind turbines, including their blades, towers, and concrete foundations, and transmission lines (except generator lead lines).
 - (ii) *Associated facilities* means all other facilities that are not generating facilities, and that includes the turbine pads, which are the cleared, leveled areas of gravel around each turbine, all roads used to access the turbines, the generator lead lines, and the meteorological towers, as well as the operations and maintenance building and the substation.

- (b) *Bowers Wind Project's associated facilities.* The record indicates the following with respect to the scope, scale, location and other characteristics of this project's associated facilities:
- (i) Lakes located to the south of the project area in the Downeast lakes region (other than the lakes in this region that have been designated scenic resources of state or national significance under the Task Force Act) have been identified as locally significant scenic resources, but the views of associated facilities from these resources will be limited for the reasons stated below;
 - (ii) This project does not propose a new generator lead line;
 - (iii) The operations and maintenance building, substation, and express collector line will be located on the north side of the project area, and while the access road to the operations and maintenance building will be visible from an existing road, and the express collector line will be visible where it crosses an existing road, none of those associated facilities will be visible from any identified scenic resources;
 - (iv) This project proposes 9.8 miles of new access roads in a project area that contains existing logging roads, the roads will be located at relatively low elevations, the topography will not require extensive cut and fill, and therefore the visual impact from the roads will primarily be limited to notches in the vegetation canopy;
 - (v) Elevations proximate to the project area are relatively low-lying and elevations that will provide views of the associated facilities will be at a distance that reduces the scenic impact; and
 - (vi) This project's associated facilities may be visible to varying degrees from statutorily designated scenic resources of state or national significance, but they will not be visible from any national natural landmark, federally designated wilderness area, nationally-listed historic property, or national park.

C. *Scenic standard applicable to associated facilities.* As set forth in the Second Procedural Order, the Commission does not conclude that the application of the Title 35-A scenic standard to this project's associated facilities may result in an unreasonable adverse effect. While such application will eliminate consideration of the associated facilities' scenic impact on any locally significant scenic resources, nothing in the record indicates any concern in that regard. Further, in view of the scope, scale, location and other characteristics of the associated facilities, as identified above, the Commission concludes that not requiring them to fit harmoniously into the natural environment with respect to how they will be viewed from scenic resources of state or national significance will not result in an unreasonable adverse effect. For all of these reasons, the Title 35-A scenic standard, not the Title 12 standard, is applicable to the associated facilities of the BWP.¹

¹ Following the issuance of the Second Procedural Order, PPDW asserted that the Chair had failed to properly consider the scenic impacts of the meteorological (MET) towers, and thus argued that the Title 12 scenic standard ought to have been applied to the associated facilities. The record shows, however, that the MET towers of the BWP would only have been visible in a limited way from limited locations, and thus the MET towers do not provide a basis to conclude that the Title 12 standard ought to have been applied to the BWP associated facilities.

19. *Applicant's VIA.* The Applicant submitted a Visual Impact Assessment (VIA) dated January 19, 2011 that was conducted by LandWorks of Middlebury, Vermont. Scenic Resources of State or National Significance (SRSNS) were identified according to the definition in 35-A M.R.S.A. § 3451(9). The VIA analyzed scenic impacts to 8 miles, so the Commission did not reach the visual impact assessment issues described in Title 35-A §3452 (4), namely whether a VIA was necessary and whether the VIA must address impacts located more than 3 miles and up to 8 miles away.

The record shows that the following 9 lakes are SRSNS within 8 miles that have views of the project: Pleasant Lake, Shaw Lake, Duck Lake, and Junior Lake—all of which are within 3 miles of the Project; and Scraggly Lake, Keg Lake, Bottle Lake, Sysladobsis Lake and Pug Lake, which is a subset portion of West Grand Lake—all of which are within 3-8 miles of the Project. (*See Applicant's VIA and July 5, 2011, memo from LandWorks to the Applicant*) The record also shows that these lakes are connected by water or portages that facilitate recreational use of these lakes as canoe routes by guides and the general public. (See, for example, testimony of NRCM). See Table 1 below for a summary of the findings regarding the 9 lakes by both LandWorks and Dr. Palmer, the Commission's scenic review expert.

Six other SRSNS were identified as having no views of the project within 8 miles: Horseshoe Lake, Lombard Lake, West Musquash Lake, Norway Lake, Upper Sysladobsis Lake, and the Springfield Congregational Church. (*See Application Exhibit #17, VIA p. 20*)

Applicant's overall scenic impact assessment: *"This region of Maine has very low population, vast woodlands, and plentiful lakes. It is not recognized as a tourism center and there are primitive recreational opportunities. It is a working landscape on which the region's residents have depended for centuries, including the harvesting and processing of forest products, evidence of which can be seen in the hillsides and the network of logging roads throughout the area. Throughout most of the study area, topography, forest cover, and roadside vegetation constrain or block views of the Project, limiting the overall visual impact. There are scenic resources of state or national significance within the viewshed, which include thirteen great ponds and one national historic site. For each of these resources, the assessment examined its significance, character, use, and visibility, as defined by 35-A M.R.S.A. §3452.3. This information was used to make a determination of whether the Project "has an unreasonable adverse effect on the scenic values and existing uses related to scenic character of a scenic resource of state or national significance." This Visual Impact Assessment demonstrates that the Project, as proposed, **will not result in an unreasonable adverse effect on the scenic values and existing uses related to scenic character of a scenic resource of state or national significance.**" (Exhibit 17 of application, page 2) In the Applicant's pre-filed testimony it is stated that "this is not a pristine landscape, and has long been a working landscape that has been used and developed for its recreational, timber and water resources." (LandWorks pre-filed testimony, p. 17)*

A. *Intervenor Comments:* The PPDW employed Michael Lawrence & Associates (MLA) to prepare their own VIA of the project area (see pre-filed testimony of MLA). MLA rebutted two of the overall conclusions of the Applicant's VIA: (1) that this "region of

Maine ... is not recognized as a tourism center”, and (2) that the overall visual impact is limited by topography, forest cover, and roadside vegetation.

As for the region not being recognized as a tourism center, MLA asserted that the project area is part of the Downeast lakes watershed which has served as a recreation area for “travelers ...as early as 1830” when Passamaquoddy guides brought clients into this area. Gary Campbell, a small business owner with an MBA from Harvard Business School, also testified on behalf of PPDW. Campbell has had a summer residence in Lakeville for the past 28 years, and he explained in his testimony that “*in the Downeast Lakes regions [of which the project area is a part], tourism employs hundreds of people directly and many more indirectly. ...Small businesses include sporting camps, lodges and housekeeping cabins, hunting fishing guides, as well as retail and service businesses.*” Campbell also cited the 2005 Strategic Plan for Implementing the Maine Nature Tourism Initiative, which was prepared for the Maine Department of Economic and Community Development. This Plan describes the Grand Lake Stream and BWP area as “*situated within nearly 2 million unbroken acres of northern woodlands*” where “*Maine Guides can lead their visitors on a number of adventures depending on the season.*” (see pre-filed testimony of Gary Campbell). Registered Maine Guides, testifying on behalf of Intervenor Corrigan, also testified to the importance of lakes in the project area to their guiding business. (see pre-filed testimony of David Tobey and Dale Tobey).

As for the Applicant’s claim regarding limited visual impact, MLA asserted that it is irrelevant that topography or vegetation limits views of the project from viewpoints other than lakes. MLA argues that what must be considered is the chain of lakes within the project area that are the scenic resources of state or national significance, and specifically the 9 of which that would have views of the BWP.

- B. *Public Testimony from the Natural Resources Council of Maine (NRCM):* NRCM, a Maine nonprofit organized for the purpose of conserving Maine’s environment, testified at the public session of the evidentiary hearing. NRCM testified that “*most of the North Woods is a working landscape, not pristine wilderness. Limiting a finding of unreasonable adverse impacts to pristine landscapes or unique vistas like Katahdin (as [the Applicant’s scenic expert] LandWorks did in its testimony) would be inconsistent with the law and insufficiently protective of the other places in Maine with high scenic and recreational importance.*”
- C. *Third Party Review.* The Commission’s retained scenic expert, Dr. James Palmer of Scenic Quality Consultants, conducted a third party peer review, dated June 3, 2011, of the Applicant’s Visual Impact Assessment (VIA). Dr. Palmer has an MLS in landscape architecture and a PhD in forestry/natural resource planning from the University of Massachusetts, Amherst, with over 30 years of experience in consulting and research on environmental perceptions and behavior. He has provided scenic assessment consulting services to the Commission and the Maine Department of Environmental Protection on several other projects, including six wind power project proposals.

As noted in Finding 19 above, the Applicant prepared a VIA with the following results. Nine lakes were identified as SRSNS within 8 miles that have views of the project: Pleasant Lake, Shaw Lake, Duck Lake, and Junior Lake -- which are within 3 miles of the Project-- and Scraggly Lake, Keg Lake, Bottle Lake, Sysladobsis Lake and Pug Lake (portion of West Grand Lake) -- which are within 3-8 miles of the Project. (See Applicant's VIA, Exhibit 17 of application, and July 5, 2011, memo from LandWorks to the Applicant). The Commission's scenic consultant, Dr. Palmer, generally agreed with the results of the Applicant's VIA by LandWorks but found that the potential adverse scenic impact was greater on the SRSNS than that estimated in the Applicant's VIA (see Table 1 below).

Dr. Palmer's overall scenic impact assessment: In his peer review, Dr. Palmer stated "*overall this VIA is accurate and clearly presented.*" Dr. Palmer's review, however, concluded that the scenic impacts of the project would be more severe than indicated by the Applicant's VIA. Dr. Palmer's overall conclusion includes the following statement: "*The apparent scenic impact to the state and nationally significant scenic resources is Adverse at some locations and Very Adverse others. It is my judgment that it will be very difficult to decide whether the scenic impact to some of the state or nationally significant scenic resources is Unreasonably Adverse without better information about the "extent, nature and duration" of their use, the "expectations of the typical viewer" and "potential effect...on the public's continued use and enjoyment" of these resources.*" (See Palmer review, p.63)

Palmer stated, as to applying the statutory "typical user" criterion above to, for example, Junior Lake, "*there are no existing data to directly address this criterion. An alternative approach is to apply deductive reasoning to respond to this criterion using common knowledge and assumptions. Because it is not empirically grounded, it may not be valid or reliable.*" (See Palmer review, p. 45) He commented similarly for each lake having views of the project.

- D. *Summary of impacts; Lake Management Program.* Table 1 summarizes the scenic status of each of the lakes with views of the turbines, distance to the nearest turbine, number of turbines visible within 8 miles, and overall scenic impact as judged by LandWorks (the Applicant's scenic expert) and Dr. Palmer (Commission's scenic expert). The overall scenic impact assessment for each lake takes into account the extent to which turbines would be visible at the hub. As highlighted in Table 1 below, there is agreement as to which 4 lakes have the greatest potential for adverse scenic impact: Pleasant, Shaw, Scraggly, and Junior Lakes.

Table 1. Summary of Resources of State or National Significance Within 8 Miles of Any Visible Project Element -- LandWorks and Dr. Palmer (listed in descending order by distance to nearest turbine)

	Scenic Status [Significant (S), Outstanding (O)]	Distance to Nearest Visible Turbine	# of Turbines Visible within 8 Miles (27 total)	Overall Scenic Impact (LandWorks)	Overall Scenic Impact (Palmer)
GREAT PONDS					
Within 3 miles of the Project					
<i>Pleasant Lake</i>	(O)	2.16 mi.	0-27	<i>Medium</i>	<i>Med-High</i>
<i>Shaw Lake</i>	(S)	2.6 mi.	0-25	<i>Medium</i>	<i>Med-High</i>
Duck Lake	(S)	2.7 mi.	0-18	Low	Low-Med
<i>Junior Lake</i>	(S)	2.99 mi.	0-23	<i>Medium</i>	<i>Medium</i>
Within 3-8 miles of the Project					
<i>Scraggly Lake</i>	(S)	3.3 mi.	0-26	<i>Medium</i>	<i>Med-High</i>
Keg Lake	(S)	3.78 mi.	0-18	Low	Medium
Bottle Lake	(S)	5.1 mi.	0-13	Low	Low
Sysladobsis Lake	(S)	6.34 mi.	0-22	Low	Low-Med
Pug Lake ² (West Grand Lake)	(O)	7.2 mi.	0-6	Low	Low-Med

Column 1 above sets forth the lakes’ scenic status, as established by the Commission’s *Lake Management Program* of June 1990 (see Appendix C of the CLUP). As shown above, all of the 9 lakes that would be impacted by the BWP received either an outstanding or significant scenic rating based upon the *Program*, which as explained below was an exhaustive process.

The Lake Management Program was the culmination of a 5-year undertaking by the Commission in consultation with the Maine Department of Inland Fisheries and Wildlife, State Planning Office, Natural Areas Program and other agencies. The Program first assessed the land use and natural resource characteristics associated with the approximately 1500 lakes in the Commission’s jurisdiction that are over 10 acres in size (representing 98% of the lake surface area located in the Commission’s jurisdiction). This preliminary assessment culminated in the *Wildlands Lake Assessment* in 1987.

Then, with the guidance of a Lakes Policy Committee—which included representatives of major landowners, statewide environmental and sportsmen’s organizations, the

² While the Applicant’s post-hearing brief states there should be no visibility of turbines from Pug Lake (portion of West Grand Lake), LandWorks notes in its July 5, 2011, memo to the Applicant that assuming a tree height of 45 feet, portions of up to 6 turbines could be visible within 8 miles of Pug Lake. The Applicant’s VIA assumes a tree height of 45 feet in its visibility analysis of all other lakes (see Exhibit 17 of Application, p. 6).

University of Maine and the Commission —an *Action Program for Management of Lakes in Maine Unorganized Areas* was prepared and accepted by the Commission in January of 1989. The *Action Program* recommended a variety of innovative regulatory and non-regulatory lake management techniques, including policy guidance, special review criteria for lake development, lake concept plans, lake management classifications and other public and private efforts.

Following numerous public meetings and hearings around the state, the recommendations of the *Action Program* culminated in the 1990 adoption of the *Lakes Management Program*, which included an amendment to the Commission's CLUP and regulations governing land use around lakes.

In enacting the Task Force Act, the Legislature adopted the scenic assessment of lakes established in the Commission's *Lake Management Program*. 35-A M.R.S.A. § 3451(9)(D)(2). Of the 1500 lakes only 280 lakes were considered as having either significant or outstanding scenic values. Fourteen of those 280 lakes are within 8 miles of the BWP, and, as shown in Table 1, 9 of those 14 would have views of the BWP turbines.

20. *User data.* The Legislature has directed the Commission, in determining whether a wind energy development Applicant has satisfied the applicable scenic standard, to consider, among other things, the expectations of the typical viewer and the extent, nature, and duration of the potentially affected public uses of the relevant scenic resources. 35-A M.R.S.A. § 3452(3). As explained in paragraph 19 above, in view of the degree of the adverse scenic impact of the BWP, a careful consideration of this criterion is warranted.

On behalf of the Applicant, the Portland Research Group conducted two studies. The first was a January 2011 telephone survey of users of outdoor resources in Maine during the past three years, focusing on those who used the lakes within 8 miles of the BWP. The second study was a February 2011 intercept survey of snowmobilers who attended a ride-in to the Stetson Mountain Wind Project. Although the Applicant's pre-filed testimony asserts that the findings of these studies show the BWP would not have an unreasonable impact on uses related to scenic resources, the Commission's expert questioned the methodology and reliability of the studies in his peer review.

The Applicant also surveyed activity on Pleasant, Scraggly, and Bottle Lakes over Memorial Day weekend (2011) and boat traffic through a stream that provides the only water access point to Junior Lake, during 11 days in July 2011. Both surveys documented low overall use, and the July survey documented little, if any, guiding activity. The Memorial Day weekend survey was conducted by two individuals over a total of approximately 10 hours observing use on these lakes and around their shore areas (See May 31 letter to the Applicant from Randy Seaver). The stream/waterway survey was conducted on 11 days from July 4 through July 15 by an observer who camped on the site. All boats travelling through the stream/waterway to Junior Lake were documented as well as all boats observed travelling in Junior Bay (a portion of West Grand Lake before entering the waterway). (See July 19 letter to the Applicant from Stantec reporting the results of the survey).

Additionally, the Applicant asserts there are a number of existing significant studies and surveys that demonstrate that public use and recreational activity does not decline following the construction of wind turbines. The Applicant submitted to the Commission studies that have been conducted in Prince Edward Island, Scotland, the Czech Republic, Searsburg, VT, and Quebec. The Applicant states that all of these studies indicate that public acceptance of wind turbines is high, and that the existence of wind energy projects in an area has little negative effect on tourism or recreational use.

Furthermore, the Applicant maintains that the results of the Baskahegan Stream Watershed Recreational Use & Resource Analysis (“Baskahegan Study”) are compelling evidence that the visibility of turbines, on a lake that receives relatively high recreational use (including by guides), has not had any adverse impact on the public’s continued use and enjoyment of that resource following turbine construction. The Baskahegan Study was conducted in the summer of 2010 by faculty and students of the University of Maine on Baskahegan Lake in Brookton Township, Washington County, following the construction of the Stetson Mountain Wind Project in T8 R3 NBPP, Washington County. The purpose of the Study was “to illuminate the characteristics of recreation use patterns and site condition around the Baskahegan watershed area.” (see Exhibit D of LandWorks pre-filed testimony). The Stetson Mountain Wind Project had become operational the previous year, but no one interviewed for the study indicated any detrimental impact from the turbines visible from that lake. The interviewees, however, were not asked specifically about the turbines, which are approximately 8.9 miles from the boat launch where most of the interviews were conducted. The Stetson Mountain Wind Project turbines are approximately 5.1 miles from the closest part of Baskahegan Lake, which is not recognized under state law as a SRSNS.

A. *Intervenor PPDLW*: Witnesses for the PPDLW included several Registered Maine Guides and sporting camp owners from the Grand Lake Stream area, which is about 18 miles from the BWP area, who utilize the lakes within 8 miles of the BWP to guide their clients, primarily for the purpose of recreational fishing. They all expressed the concern that the visual impact of the BWP turbines would reduce the likelihood their clients would want to return to the area and thus adversely impact their businesses.

In its rebuttal comments of July 28, 2011, Intervenor witnesses guides Dave Tobey and Andy Buckman, and sporting camp owner Charles Driza all question the reliability of the Applicant’s July 2011 survey of boat traffic through the waterway to Junior Lake. Tobey states “*guiding on these waters are the busiest during May and June... [Grand Lake Stream] is always slow during July. Around the first of August the guiding picks up again with the fall season becoming a popular time.*” Similarly, Buckman states “most of our canoe groups are off on trips in other areas of Maine and Canada during July.” And Driza states “*Junior Lake and Junior Stream [which is the waterway stream leading to Junior Lake] are two of our most used destinations in May and June when our fishing season is at its peak.*”

B. *Public comment*: During the two public sessions of the evidentiary hearing on June 27 and June 28, 2011 several other Registered Maine Guides and sporting camp owners

from the Grand Lake Stream area testified as to the importance of the lakes in the project area to their businesses. They stated concerns similar to those of the PPDW witnesses about the adverse impact the BWP would have on the segment of their business that relies on guests utilizing the lakes within 8 miles of the project. They explained that their livelihood depends on the natural beauty of this area, and stated that some of their clients had expressed negative reactions to the views of the Stetson Mountain Wind Project turbines from Baskahegan Lake.

C. *Third party review:* Regarding the Applicant's snowmobile survey, Dr. Palmer explains that it was not an unbiased probability sample³ because the respondents had already declared, by agreeing to attend the ride-in to the Stetson Mountain Wind Project, that they thought they would enjoy recreating in and around a wind power project. Palmer stated that “[b]ecause of this self-selection bias, I do not see what role this survey can play as a responsible decision making tool.”

Regarding the telephone survey, Dr. Palmer explains that it used “a nonprobability sampling procedure where the data cannot be generalized beyond the specific 191 respondents in the survey. It begins with a list of self-declared outdoor activity participants. In addition, some people were excluded from the survey, which had a quota to balance gender and limit the number of respondents who rarely or never used the scenic lakes in the study area. A probability sample would be needed to estimate the extent, nature and duration of recreation use. A second problem is that respondents did not see simulations of what the Bowers Wind Project turbines would look like from the study area. It is therefore highly unlikely that they could have an accurate mental image of the ‘scope and scale’ of the turbines from any particular viewpoint.” (Palmer comments on VIA, page 36)

Regarding the Baskahegan Study, Dr. Palmer stated that, like the snowmobile survey, it was affected by a self-selection bias because persons who chose not to visit Baskahegan Lake because the Stetson Mountain Wind Project turbines were visible from the lake were not included in the survey. While Palmer agreed it was significant that no one who did continue to visit the Lake post-construction mentioned the visibility of the turbines, no one in the study was actually asked about the effect of seeing turbines, and thus he did not find the results persuasive in evaluating the potential impacts of the BWP. See paragraphs 19(C) & (D) above regarding BWP's degree of adverse scenic impact. Dr. Palmer also noted that Baskahegan Lake is not a SRSNS, and the boat launch from which most of the survey was completed was over 8 miles from the Stetson Mountain Wind Project, and thus beyond the 8-mile limit for assessing scenic impacts set by the Legislature under the Task Force Act. (Palmer cross-examination, July 6, 2011, page 59 of transcript). See 35-A M.R.S.A. § 3452(3) (providing that the Commission, in

³ The record includes Dr. Palmer's explanation of his use of the term “probability sample:” A probability sampling scheme is one in which every unit in the population has a chance (greater than zero) of being selected in the sample, and this probability can be accurately determined. The combination of these traits makes it possible to produce unbiased estimates of population totals, by weighting sampled units according to their probability of selection. Examples of probability sampling include simple random samples, systematic samples, stratified samples and cluster samples. Examples of nonprobability sampling include accidental samples, quota samples, and purposive sampling.

determining a wind energy development's effect on scenic character, "shall consider insignificant the effects" of turbines that are located more than 8 miles away).

As to the existing studies cited by the Applicant regarding how people perceive wind projects, Palmer noted that those studies were not conducted in the context of the specific statutory criteria applicable in Maine pursuant to the Task Force Act. Title 35-A has specific criteria about how to evaluate the scenic impact of a wind power project, including, for example, considering turbines only within 8 miles of specific, identified, significant resources, and considering the impacts only on those who actually use the resources. Dr. Palmer also opined that, in order to be reliable, respondents in a study need to be presented with an accurate visual simulation from real viewpoints toward a proposed project to understand the potential scenic impact. These conditions have rarely been met by previous studies, which are typically about wind energy in general, without reference to particular viewpoints, user activities, or specific projects.

Dr. Palmer explained that the Searsburg, VT study, which he conducted, had many strengths, but the respondents were not engaged in recreational activities and the viewpoints had not been designated by law as significant.

21. Remote recreational values and evaluating scenic impact under customary VIA's

The Task Force Act's scenic impact evaluation criterion, directing the Commission to consider the extent, nature, and duration of a project's impact on public uses, *see* 35-A M.R.S.A. § 3452(3)(E), may appear to contradict (under customary visual impact assessment methodologies) the Commission's long-standing policy, embodied in its CLUP and regulatory standards, to value remote recreation and related low levels of public use. This is most evident with regard to certain lakes in the Commission's jurisdiction that, because of long-standing Commission policy, are valued because of their remote characteristic and thus potentially low level of use. The Commission concludes, however, that there is no conflict; rather, this is an issue that requires the Commission to harmoniously apply Titles 35-A and 12, as well as the Commission's regulations and its CLUP.

A. *Value of remoteness.* The Commission has a long-standing policy on valuing remote recreation, embodied in its districts, standards, and CLUP (2010 CLUP at 5, 17, 258, and 259). Thus, as stated above, while the Commission is directed to consider the extent, nature and duration of a project's impact, the Commission does not interpret that criterion to require it to discount certain resources that receive limited use. For example, some SSRNS are located in areas zoned as P-RR, the Recreation Protection Subdistrict, which is the subdistrict characterized by areas that currently support, or have opportunities for, unusually significant primitive recreation activities (Section 10.23, I of Commission's rules). Additionally, there are areas within the Commission's jurisdiction that, while not zoned as P-RR, share the same characteristics of remoteness and associated low levels of use that are integral to the experience of the typical user. Therefore it would not be consistent with the CLUP for the Commission to discount the significance of such a scenic resource due to its low level of use. *See* 35-A M.R.S.A. § 3452(3)(A). Thus, with respect to SRSNS in the P-RR, or in instances where substantial evidence shows that a SRSNS's low use contributes to the value of the resource, the Commission will consider

a low level of use on equal footing as a high level of use in determining whether an applicant has satisfied the applicable scenic standard. (See staff discussion paper titled “Evaluating Scenic Impacts Under the Wind Energy Act” for September 7, 2011, Commission meeting).

- B. *Shaw Lake*. This record shows that this lake is inaccessible and undeveloped and, in addition to having a significant scenic value, it also has significant fishery value according to the Commission’s Wildlands Lake Assessment. As demonstrated by materials submitted by the Applicant, use of the lake is most likely limited to adventurous, inveterate paddles and anglers. It is a favorite of a number of smallmouth anglers.

22. Connectivity of regulated resources

The record for the BWP shows that several of the SRSNS that would be affected by this project form a waterway through the landscape within 8 miles of the proposed project. Staff prepared a discussion paper for the September 7, 2011, Commission meeting titled “Evaluating Scenic Impacts Under Wind Energy Act” which contained a section on evaluating “traveling through the landscape” visual impact where there are multiple SRSNS views from a water or land trail within 8 miles of a proposed wind project. There is testimony in the record about the value of these SRSNS lakes in terms of their connectivity as water trails.

Public testimony and comments on connectivity: NRCM noted two such trails in the AMC Quiet Waters Canoe Guide through the project area lakes -- see the testimony of NRCM including a map showing water trails through the project area. In its July 28, 2011, comments, the PPDLW noted several such water trails through the project lakes: 4 trails advertised by Maine Wilderness Camps all of which include use of Pleasant Lake, the REI website which advertises two water trails which include use of Pleasant, Scraggly and Junior Lakes, and the wilderness travel firm “Wilderness Inquiry” which leads canoe trips through Junior Lake.

There is also extensive testimony from guides and sporting camp owners who utilize the lakes within the project area with their clients. For example, guides explained that they often lead trips through the waterway, taking their clients up and back through several lakes in a day or over several days. See the testimony of witnesses for intervenors Partnership for the Preservation of the Downeast Lakes Watershed (PPDLW) and David Corrigan. There were also several guides and sporting camp owners who testified during the evening public sessions on 6/27 and 6/28 regarding the importance of these lakes to their guiding services.

Applicant’s comments on connectivity: In its rebuttal comments of July 25, 2011, the Applicant states “that the potential impacts due to the connectivity of these lakes is overstated. Not all of these lakes are connected, including Sysladobsis Lake, Pleasant Lake and Shaw Lake. For most of the other lakes, the connections are often shallow and rocky, limiting or preventing access to motorboats wishing to travel between lakes due to low water levels, particularly later in the season.”

Third-party comments on connectivity: Palmer stated in his July 26, 2011, correspondence that “it appears to me that the affected scenic lakes are part of a connected network.”

SCENIC CHARACTER IMPACT CONCLUSIONS

Based on the above, with respect to the Bowers Wind Project proposal, the Commission finds and concludes that:

23. Wind power projects must be evaluated on the basis of the provisions of the Commission’s statute, as revised in accordance with provisions of PL 2007, Ch. 661 (the Task Force Act). The Applicant has not carried its legal burden of proof in showing that the criteria of the Commission’s statute, 12 M.R.S., § 685-A(4), or the criteria of 35-A M.R.S., Ch. 34-A, § 3452 have been met. The Commission recognizes the BWP’s high visibility in the landscape is not a solely sufficient basis for determining that this project would have an unreasonable adverse scenic impact. 35-A M.R.S. § 3452(3). For all of the reasons discussed below, however, the Applicant has failed to demonstrate that the scope and scale of the BWP will *not* significantly compromise views from the SRSNS such that the BWP would have an unreasonable adverse effect on the scenic character or existing uses related to scenic character of the SRSNS.

The Commission notes that the more than 10 million acres under its jurisdiction are characterized not only by natural character and recreational opportunities, but also by maintained forests and farmlands. (2010 CLUP at 2). Thus, much of the jurisdiction is a working landscape, and limiting a finding of unreasonable adverse impacts to only pristine landscapes or unique vistas would be inconsistent with Title 12, the Task Force Act, and the CLUP as it would be insufficiently protective of resources with high scenic value. On this record, the scenic impacts to this Downeast lakes region do not satisfy the applicable criteria.

- A. *Project assessment.* The Applicant conducted a scenic assessment in accordance with Title 35-A, chapter 34-A, § 3452 of scenic resources of state or national significance (Title 35-A, § 3451(9)) within 8 miles of the proposed BWP. Within 8 miles of the proposed turbine locations, the area in which the Applicant must prepare a visual impact assessment, there are 9 scenic resources of state or national significance that will have views of the project. Based upon the Applicant’s commitment to retrofit the BWP with nighttime lighting mitigation technology, if feasible and approved by the FAA, the Commission has limited concern about the potential of the BWP to have an unreasonable adverse scenic impact on night skies. Within the Commission’s approximately 10.5 million-acre jurisdiction, however, these 9 lakes are among only 280 lakes that have either significant or outstanding scenic ratings, thus resulting in the BWP having a significant impact on the scenic lakes in the Commission’s jurisdiction. Importantly, 4 of these lakes are within notable proximity to turbines, that is, within 3 miles of the project.

The BWP significantly compromises views such that it has an unreasonable adverse effect on Pleasant, Shaw, Junior, and Scraggly Lakes due to the number of turbines visible from these lakes and their proximity to the turbines: Pleasant Lake (all 27 turbines visible with the closest being within 2.16 miles), Shaw Lake (up to 25 turbines visible with the closest being within 2.6 miles), Junior Lake (up to 23 turbines visible with the closest being within 2.9 miles), and Scraggly Lake (up to 26 turbines with the closest being within 3.3 miles). Of these 4 lakes the effects to Pleasant Lake are particularly notable as this is a lake that, pursuant to the Commission's comprehensive Lake Management Program assessment, received the highest scenic rating of "outstanding." All 27 turbines of the BWP would be visible from Pleasant Lake.

The effect of the BWP is also particularly adverse as the record shows that the 9 lakes collectively represent water trails that receive significant use as recreational resources by the public, including the clients of guides and sporting camp owners from the Grand Lake Stream area. As users travel through the 9-lake waterway, there would be repeated views of the BWP turbines. The fact that some of the 9 lakes are connected only by a shallow stream or a portage trail (e.g. Scraggly to Shaw Lake), is not compelling since the Commission considers portaging a common practice in following canoe trails. Such evidence includes the testimony of guides and sporting camp owners, the AMC canoe guide, and the testimony of NRCM.

- B. *Evidence regarding impact on uses related to scenic character:* Title 35-A directs the Commission to consider specific criteria in evaluating effects on scenic character and related existing uses, and user survey data may be helpful with regard to some, but not all, of the criteria. User data, which is not limited to user survey data, can assist in the Commission's consideration of the expectations of the typical viewer, the effect on the public's continued use and enjoyment, and the duration of the impact. 35-A M.R.S.A. §§ 3452(3)(C) & (E). The record for the BWP indicates that the scope and scale of the impacts of this project on the typical viewer and on the public's continued use and enjoyment of the SRSNS would be significant.

On this record as a whole, the Commission was not persuaded by the Applicant's submissions for the reasons explained by Dr. Palmer. See Finding 20(C). Given the significant scenic impacts of the BWP, the Commission finds the more credible evidence in the record to be that provided by testimony and comment from the public and by the Grand Lake Stream area guides and sporting camp owners. This evidence shows the likely impact on the recreational uses of these SRSNS, including the impact on the client base of the guides and camp owners, from the extensive scenic impact of the project. Notably, the community in and around the Grand Lake Stream area has more Registered Maine Guides than any place in Maine. Accordingly, the Commission was not convinced by the evidence presented by the Applicant that the expectations of, and the continued use by, those that recreate in this area would not be unreasonably adversely effected by the BWP.

- C. *Remote recreational experiences and low levels of use.* As discussed above, under certain circumstances the Commission has determined that resources which provide remote

recreational opportunities and resultant low levels of use are valuable, and thus in those situations it will consider low levels of public use as contributing to the value of the resource. Without this adjustment to customary VIA's, such VIA's are best suited to more urban areas than to areas such as the Commission's jurisdiction.

As noted in finding 21 above, the Commission concludes that there is substantial evidence in the record that remote recreational values and associated low levels of use are integral to the experience of the typical user of Shaw Lake. Thus the primitive recreational values of Shaw Lake and its resultant low use are judged to contribute to the value of that Lake. Thus the impact to Shaw Lake was greater than that estimated by both the Applicant and the Commission's scenic consultant because both discounted the impact due to low use, contrary to the Commission's long standing policy on remoteness. While on this record, in view of the other significant impacts on the other 8 SSRNS, this conclusion is not essential to a finding of an unreasonable adverse impact, the discussion, findings, and conclusions regarding Shaw Lake reflect a harmonization of the traditional VIA approach and the Task Force Act with the Commission's long-held policy on valuing remote recreational experiences and consequential low levels of public use.

D. *Summary.* Views from all 9 of the SRSNS will be significantly compromised by the BWP such that the development would have an unreasonable adverse effect on the scenic character and existing uses related to scenic character. The adverse effect is unreasonable due to turbine number, extent of turbine visibility, turbine proximity to the resources, the nature of the views as users travel through the SSRNS, the scenic significance of the SRSNS, and the evidence showing the scenic impacts will have an adverse impact on uses related to the SSRNS. While the scope and scale of the BWP is less visible from Duck, Keg, Bottle, Sysladobsis, and Pug Lakes, see Table 1 above, the adverse effect on the views from the SRSNS is unreasonable due to the nature of the views as users travel through the SSRNS water trail. The Commission therefore concludes the BWP would have an unreasonable adverse effect on the scenic character and existing uses related to scenic character of the SSRNS located within 8 miles of the project.

24. For all the reasons discussed herein, the Commission concludes that at this development location there are overriding scenic and public values, that the BWP has not minimized its intrusion on these existing scenic and public values, and that therefore the BWP is not in conformance with the policies and goals of the Commission's CLUP.

While the 2010 CLUP expressly recognizes the statutory changes made by the Task Force Act with respect to wind energy development in the expedited permitting area, the CLUP provides for the environmentally sound and socially beneficial utilization of indigenous energy resources where there are not overriding public values that require protection, and it clarifies that it seeks to accommodate energy generation installations that are consistent with the State's energy policies, are suitable for the proposed location(s), and minimize intrusion on natural and cultural resources and values. The CLUP specifically recognizes that sporting camps are recreational and cultural resources, worthy of protection from incompatible development and land uses. The CLUP identifies the need to protect the values of the jurisdiction that provide residents and visitors with a unique array of recreational

experiences, especially high-value natural resources and remoteness where they exist. (2010 CLUP at pages 17, 265 – 267). Finally, the CLUP is consistent with the Task Force Act in that, while it recognizes the Act’s goal of facilitating the siting of wind power, the CLUP continues to protect the state’s quality of place and natural resources (p. 188) and pursues a policy of identifying and protecting areas that possess scenic features and values of state or national significance (p. 18).

For all the reasons stated in these Conclusions and based upon the record before it, the Commission finds the BWP, with respect to scenic and recreational resource impacts would not be in conformance with the above-identified goals and policies of the 2010 CLUP.

FINAL CONCLUSIONS

A number of other issues were raised concerning conformity of the proposed BWP with applicable provisions of Titles 12 and 35-A, the Commission’s Standards, and its CLUP. The above conclusions require the Commission to deny the application, and thus the Commission does not make finding and conclusions on those other issues. The Commission noted during its deliberations, however, that this proceeding primarily turned on whether the BWP application met the scenic impact review criteria, and therefore it did not see a need to engage in an extended deliberation on the other applicable criteria.

The Commission appreciates the professional manner in which the Applicant prepared and presented its application for the BWP, as well as the thorough participation by the Intervenor and members of the public. While the proceedings to process expedited wind energy development proposals in the Commission’s jurisdiction have proven to be necessarily complex, the Commission’s evaluation of such proposals are clearly guided by its statutory permitting authority, as modified by PL 2007, Ch. 661 (codified in part in Title 12 and in part in Title 35-A), the Commission’s Chapter 10 standards & rules, and its Comprehensive Land Use Plan (CLUP). Based on the findings set forth above, and in addition to the conclusions set forth above, the Commission concludes that, with respect to the 27-turbine Bowers Wind Project (BWP) proposal, the Applicant has not met its burden of demonstrating that the BWP is in conformance with the applicable statutory and regulatory requirements, and that it is not consistent with the goals and policies of the CLUP. (12 M.R.S. §§ 685-B(2-B), (4) and (4-B); 35-A M.R.S. §§ 3401-3404, 3451-3458; applicable provisions of the Commission’s Chapter 10 standards and rules; Comprehensive Land Use Plan (2010 CLUP)).

Therefore, the Commission DENIES Development Permit DP 4889, submitted by Champlain Wind, LLC for the 27-turbine Bowers Wind Project, as proposed.

In accordance with 12 M.R.S.A. section 689, 5 M.R.S.A. section 11002, and Maine Rules of Civil Procedure 80C, this decision by the Commission may be appealed to the Law Court within 30 days after receipt of notice of the decision by a party to this proceeding, or within 40 days from the date of the decision by any other aggrieved person.

DONE AND DATED AT BANGOR, MAINE THIS 20TH DAY OF APRIL, 2012.



By: _____

Samantha Horn Olsen, Acting Director
Maine Land Use Regulation Commission



STATE OF MAINE
DEPARTMENT OF ENVIRONMENTAL PROTECTION



PAUL R. LEPAGE
GOVERNOR

PATRICIA W. AHO
COMMISSIONER

August 2013

Champlain Wind, LLC
129 Middle Street, Floor 3
Portland, Maine 04101
ATTN: Mr. Neil Kiely

RE: Site Location of Development Act/ Natural Resources Protection Act Applications, Carroll Plantation and Kossuth Township, #L-25800-24-A-N/#L-25800-TE-B-N/#L-25800-IW-C-N Denial

Dear Mr. Kiely:

Please find enclosed a signed copy of the denial of your Department of Environmental Protection applications for permits under the Site Location of Development Act and the Natural Resources Protection Act. You will note that the denial includes a description of your project, and findings of fact that relate to the criteria the Department used in evaluating your project. The Department reviews every application thoroughly and strives to formulate reasonable findings of fact within the context of the Department's environmental laws. You will also find attached some materials that describe the Department's appeal procedures for your information.

If you have any questions or concerns on how the Department processed this application please get in touch with me directly. I can be reached at (207) 446-9026 or at Jim.R.Beyer@maine.gov.

Sincerely,

James R. Beyer, Regional Licensing and Compliance Manager
Division of Land Resource Regulation
Bureau of Land & Water Quality

pc: File

AUGUSTA
17 STATE HOUSE STATION
AUGUSTA, MAINE 04333-0017
(207) 287-7688 FAX: (207) 287-7826

BANGOR
106 HOGAN ROAD, SUITE 6
BANGOR, MAINE 04401
(207) 941-4570 FAX: (207) 941-4584

PORTLAND
312 CANCO ROAD
PORTLAND, MAINE 04103
(207) 822-6300 FAX: (207) 822-6303

PRESQUE ISLE
1235 CENTRAL DRIVE, SKYWAY PARK
PRESQUE ISLE, MAINE 04769
(207) 764-0477 FAX: (207) 760-3143



DEPARTMENT ORDER

IN THE MATTER OF

CHAMPLAIN WIND, LLC	) SITE LOCATION OF DEVELOPMENT ACT
Kossuth Township, Washington County)
Carroll Plantation, Penobscot County	) NATURAL RESOURCES PROTECTION ACT
BOWERS WIND PROJECT	) WATER QUALITY CERTIFICATION
L-25800-24-A-N (denial)	) SIGNIFICANT WILDLIFE HABITAT
L-25800-TE-B-N (denial)	) WATER QUALITY CERTIFICATION
L-25800-IW-C-N (denial)	) FINDINGS OF FACT AND ORDER

Pursuant to the provisions of 35-A M.R.S.A. §§ 3401 -3457, 38 M.R.S.A. §§ 481 et seq. and 480-A et seq., and Section 401 of the Federal Water Pollution Control Act, the Department of Environmental Protection (Department) has considered the application of CHAMPLAIN WIND, LLC with the supportive data, agency review comments, and other related materials on file and FINDS THE FOLLOWING FACTS:

1. PROJECT DESCRIPTION:

- A. Summary: The applicant proposes construct a wind energy development consisting of 16 turbines. This project qualifies as an expedited wind energy development as defined in the Wind Energy Act (35-A M.R.S.A. §3451(4)) (WEA). In addition to the turbines, the project would include an operations and maintenance (O&M) building as well as associated facilities. The O&M building would be located in Carroll Plantation on Route 6. The proposed project overall would include 33.92 acres of impervious area and 33.92 of developed area. The O&M building would result in approximately 7,000 square feet of impervious area. The project is shown on a set of plans included in the application, the first of which is entitled "Overall Location Plan," prepared James W. Sewall Company, and dated September 26, 2012.
- 1) Wind Turbines. The applicant proposes to construct 16 wind turbines, either the Siemens 3.0 megawatt (MW) model (SWT-3.0-113) or the Vestas 3.0 MW turbine (V112 3.0-MW) for a total of 48 MW of generation capacity. The turbines would be either 446 (Siemens) or 459 (Vestas) feet in total height to the tip of the fully extended blade. The turbines would be located on Dill Hill and Bowers Mountain in Carroll Plantation and Kossuth Township.
 - 2) Turbine Pads. The turbines would be constructed on 16 pads. The total impervious area associated with the turbine pads is 0.66 acre.
 - 3) Access Roads and Crane Path. The applicant is proposing 3.0 miles of 24-foot wide access roads and 4.0 miles of 35-foot crane paths. The total impervious area associated with the linear portion of the project is 21.74 acres.

- 4) Electrical Collector Substation and O&M building. The applicant proposes to construct an electrical substation adjacent to Line 56 in Carroll Plantation. The applicant is also proposing a 7,000 square foot O&M building in Carroll Plantation located north of Route 6, adjacent to the express collector line. The total new impervious area associated with the electrical substation and the O&M building is 5.65 acres.
- 5) Meteorological Towers. The applicant is proposing to construct one permanent meteorological tower on the site to monitor turbine performance.
- 6) Express Collector Line. The applicant is proposing to collect the power from the turbines in a 34.5 kilovolt (kV) express collector line. The express collector line would run approximately 5.2 miles to the proposed substation.

The applicant's proposal includes the conversion of 2.58 acres of forested wetland to scrub-shrub wetland associated with the summit collector line and express collector line and no permanent wetland fill. The proposal would also include 0.14 acre of fill in the upland portion of an Inland Waterfowl and Wading Bird Habitat (IWWH).

B. Public Hearing. The Department received numerous requests for a public hearing. The proposed project is a modified version of a project previously denied by the Land Use Regulation Commission (LURC) in 2011. The previous project was subject to an evidentiary public hearing process. To assist the Department in its decision making for the proposed project, the Commissioner exercised her discretion pursuant to 096 CMR Chapter 2, Section 7.B to hold a public hearing. The Department held a public hearing on April 30th and May 1st, 2013 at Lee Academy in Lee, Maine. The Department granted intervenor status to Conservation Law Foundation (CLF)/Maine Renewable Energy Associates (MREA), Partnership for the Preservation of Downeast Lakes Watershed (PPDLW), and David Corrigan, and they participated in the public hearing process. Throughout the public hearing process the Department issued five procedural orders:

- 1) First Procedural Order. The first procedural order set forth the Hearing Officer's decision with respect to Petitions for Leave to Intervene and set a date for the pre-hearing conference.
- 2) Second Procedural Order. The second procedural order was completed after the pre-hearing conference and summarized the discussions of the attendees at the conference, and included the scheduling of the public hearing.
- 3) Third Procedural Order. In the third procedural order the Hearing Officer set forth time limits for the summary of direct testimony and witness requests for cross-examination, and made other rulings with respect to procedural issues and objections to ensure the fair and orderly conduct of the hearing.
- 4) Fourth Procedural Order. The fourth procedural order was issued upon conclusion of the public hearing. The Hearing Officer set forth time limits for

submission of post-hearing briefs, and made other rulings with respect to procedural issues and objections.

- 5) Fifth Procedural Order. The fifth procedural order dealt with three specific objections that had been raised by PPDLW and the applicant.

C. Current Use of the Site. The site of the proposed project is woodlands and is currently used for commercial forestry operations.

2. TITLE RIGHT OR INTEREST:

To demonstrate title, right or interest in the property proposed for development, as required in Chapter 2(11)(D) and Chapter 372(9) of the Department's rules, the applicant submitted copies of deeds, leases and lease options between the applicant and the property owners for the proposed project site. The owner of one protected location has a license agreement with the underlying landowner from the wind energy development, as described in Section 5 below. There are no other proposed easements for adjacent parcels of land pertaining to shadow flicker effects and safety setbacks.

The Department finds the applicant has demonstrated sufficient title, right or interest for the area which would be occupied by the project.

3. FINANCIAL CAPACITY:

The applicant estimates the total cost of the project to be \$100 million. Champlain Wind, LLC is a legal entity authorized to do business in the State of Maine and is a wholly owned subsidiary of First Wind Holdings, LLC. The applicant submitted a plan detailing financing for the project. The financing is proposed to include First Wind Holdings, LLC equity funded from cash balances, bank construction and long-term debt sourced on market terms, tax equity source on market terms, and cash contributions from Emera pursuant to its joint venture with First Wind. Prior to the start of construction, the applicant would be required to submit to the Bureau of Land and Water Quality (BLWQ) for review and approval evidence that it has been granted a line of credit or a loan by a financial institution authorized to do business in the State or evidence of any form of financial assurance determined by Department Rules, Chapter 373(1), to be adequate.

PPDLW argued in pre-filed testimony that the applicant had not submitted accurate and complete cost estimates for the proposal because "other construction costs" were not detailed to a sufficient level to conduct an analysis. PPDLW also questioned if these costs included the cost that would be incurred to retrofit the turbines to include the Obstacle Collision Avoidance System once it is approved by the Federal Aviation Administration (FAA). PPDLW concluded that the applicant should have submitted detailed audited financials similar to what the applicant was required to submit to the Public Utility Commission in connection with the Emera transaction, an up to date organization chart that clearly informs the Department of where project assets and liabilities would be held, and two sets of financials with one set reflecting if the Emera

transaction is overturned. PPDLW also argued that the Department should hire a certified professional accounting firm to properly assess the finances of the applicant.

In rebuttal testimony submitted by the applicant, the applicant stated that it has met requirements set forth by Chapter 373. The Site Location of Development Law (Site Law) authorizes the Department to condition a permit such that the applicant submits evidence of financial capacity prior to construction. 38 M.R.S.A. § 484 (1). The applicant contends that the breakdown of the project cost is consistent with what the Department has required for other developments. The project estimate does include the cost of installing radar-assisted lighting technology. The applicant concludes that it has submitted sufficient financial evidence to satisfy Chapter 373. In order to further guard against any financial risk to the public, the applicant is proposing to post appropriate financial security (a letter of credit, performance bond, or other similar security) that would be independent from the decommissioning fund and available to the State to fully restore the site in the event that the developer started but did not complete construction within a certain time period.

The Department finds that the applicant has demonstrated adequate financial capacity to comply with Department standards, conditioned on the applicant submitting prior to construction evidence that it has been granted a line of credit or a loan by a financial institution authorized to do business in this State, or evidence of any other form of financial assurance determined by Department Rules, Chapter 373(1), to be adequate for the BLWQ review and approval.

4. TECHNICAL ABILITY:

The applicant operates 16 other wind energy projects across the country with a total generation capacity of 980 MW. The applicant provided resume information for key persons involved with the project and a list of projects successfully constructed by the applicant. The applicant also retained the services of several consulting firms to assist in the design and engineering of the project. The firms and their proposed involvement are as follows:

- Stantec Consulting – natural resource assessment, permitting
- James W. Sewall Company – engineering and stormwater
- SGC Engineering, LLC – electrical engineering
- Kevin J. Boyle, PhD – user surveys
- Landworks – visual impact analysis
- Kleinschmidt Associates, LLC – recreational surveys
- TRC/Northeast Cultural Resources – prehistoric archaeological resources
- Verrill Dana – legal counsel

Based on the experience and expertise of the applicant and their retained consultants, the Department finds that the applicant has demonstrated adequate technical ability to develop the project in compliance with Department standards and provisions of the Site Law.

5. NOISE:

To address the Site Law standard pertaining to the control of noise, 38 M.R.S.A. §484(3), and the applicable rules, Chapter 375(10), the applicant submitted a Noise Impact Study entitled “Sound Level Assessment for the Bowers Wind Project,” completed by Stantec Consulting and dated September 2012. The Noise Impact Study was conducted to predict expected sound levels from the proposed project, and to compare the model results to the applicable requirements of Chapter 375(10).

The Bowers Wind Project must comply with Department regulations applicable to sound levels from construction activities, routine operation and routine maintenance. Chapter 375(10) applies hourly sound level limits (L_{eqA-Hr}) at facility property boundaries and at nearby protected locations. Chapter 375(10)(G)(16) defines a protected location as “[a]ny location accessible by foot, on a parcel of land containing a residence or planned residence or approved subdivision near the development site at the time a Site Location of Development application is submitted...”. In addition to residential parcels, protected locations include, but are not limited to, schools, state parks, and designated wilderness areas. For the proposed project, the nearest protected location is approximately 3,600 feet from a turbine.

As outlined in Chapter 375(10)(I)(2), the sound level resulting from routine operation of a wind energy development is limited to 75 decibels (dBA) at any time of day at any development property boundary. At any protected location, the limit is 55 dBA between 7:00 a.m. and 7:00 p.m., and 42 dBA between 7:00 p.m. and 7:00 a.m.

Pursuant to Chapter 375(10)(C)(5)(s) sounds from a regulated development received at a protected location are exempt from the regulations when the owner of the property conveys a noise easement for that location to the generator of the sound. The owner of one protected location has a license agreement with the underlying landowner from the wind energy development.

To assist with the review of the application, the Department retained an independent noise expert, Peter Guldborg of Tech Environmental, Inc., to review the applicant’s prediction model and associated data as well as other evidence received on the issue of noise.

A. Sound Level Modeling. The applicant’s noise consultant, Stantec Consulting, Ltd., developed a sound level prediction model to estimate sound levels from the operation of the proposed project. The sound model for the project was created using Cadna/A software developed by DataKustik of Germany. Cadna/A allows the consultant to construct topographic surface models of area terrain for calculating sound attenuation from multiple sound sources such as wind turbines. The location of the proposed turbines, roads, parcels, land uses and waterbodies were entered into Cadna/A in order to calculate sound levels at various points within the proposed project area. Sound level predictions were calculated in accordance with ISO 9613-2, which is an international standard for calculating outdoor sound propagation.

This computerized model is capable of predicting sound levels at specific receiver positions originating from a variety of sound sources. Applicable national or international standards can also be included in the analysis as described above. Cadna/A accounts for such factors as:

- Distance attenuation;
- Geometrical characteristics of sources and receivers;
- Atmospheric attenuation (i.e. the rate of sound absorption by atmospheric gases in the air between sound sources and receptors);
- Ground attenuation (effects of sound absorption by the ground as sound passes over various terrain and vegetation types between source and receptor);
- Screening effects of surrounding terrain; and
- Meteorological conditions and effects.

The model used the Vestas 112 3.0 MW turbine since this turbine has the greatest potential sound impact. To be conservative in calculating the high end of the sound power levels produced by the turbines, a factor of 2 dBA was added by the applicant's consultant to the manufacturer's sound power level of the Vestas turbine, and a factor of 1 dBA was added to account for uncertainty in the mathematical modeling, resulting in a total adjustment factor of 3 dBA.

Sound associated with the operational phase of the project was modeled excluding other existing sound sources. Modeling the sound generated from the operation of the 16 turbines was conducted by first obtaining the manufacturer's sound power level specifications 106.5 dBA, and then applying the uncertainty factors described above to account for the manufacturer's uncertainty and the modeling uncertainty, for a total sound power level of 109.5 dBA from each turbine. The model was run with all 16 turbines operating at full sound power output. No noise reduction operations are proposed for this project. The applicant reported that the predicted hourly nighttime sound levels at 4 protected locations at distances of 3,646 feet to 5,906 feet from the nearest proposed turbine ranged from 39.4 dBA to 40.2 dBA. The applicant concluded that the proposed project would result in sound levels below the required daytime sound level limit of 55 dBA and the nighttime sound level limit of 42 dBA at all protected locations.

Although substation transformers emit sound, they were not considered significant sound sources by the applicant's consultant due to a low sound output and relatively large distance from protected locations, and were therefore not included in the model. The Department and Peter Guldberg found this appropriate and acceptable.

- B. Tonal Sound. As defined in Chapter 375(10)(I)(3), a tonal sound exists if: at a protected location, the 10 minute equivalent average one-third octave band sound pressure level in the band containing the tonal sound exceeds the arithmetic average of the sound pressure levels of the two contiguous one-third octave bands by 5 dB for center frequencies at or between 500 Hz and 10,000 Hz, by 8 dB for center frequencies at or between 160 and 400 Hz, and by 15 dB for center frequencies at or between 25 Hz and 125 Hz. 5 dBA shall be added to any average 10 minute sound

level ($Leq_{A 10\text{-min}}$) for which a tonal sound occurs that results from routine operation of the wind energy development.

The applicant's September 2012 Noise Impact Study states that the Vestas V112 turbines proposed for use carry Sound Level Performance Standard warranties certifying that they would not produce a tonal sound as it is defined by the Department's Noise Regulations. In his review of the applicant's Noise Impact Study on behalf of the Department, Mr. Guldborg confirmed that an analysis of the sound power octave band spectrum for the Vestas V112 reveals that they have no potential for creating a tonal sound as defined in the Department's Noise Regulations.

- C. Short Duration Repetitive Sound. Chapter 375(10)(I)(4) defines short duration repetitive sound (SDRS) as:

“a sequence of repetitive sounds that occur within a 10-minute measurement interval, each clearly discernible as an event resulting from the development and causing an increase in the sound level of 5 dBA or greater on the fast meter response above the sound level observed immediately before and after the event, each typically ± 1 second in duration, and which are inherent to the process or operation of the development.”

Chapter 375(10)(I)(4) requires that if any defined SDRS results from routine operation of a development, 5 dBA must be added to the average 10-minute sound level ($Leq_{A 10\text{-min}}$) measurement interval in which greater than 5 SDRS events are present.

The September 2012 Noise Impact Study submitted by the applicant summarized measurements of operating wind turbines in Maine and data from published literature that indicate that sound level fluctuations during the blade passage of the wind turbines typically range from 2 to 5 dBA, with an occasional event reaching 6 dBA. The applicant's report states that amplitude modulation is not likely to occur in more than one-third of the measurement intervals, meeting the “worst-case” test protocol criteria. The applicant states that the conservative assessment of the 5 dBA penalty to one-third of the compliance measurement intervals would result in an added 1.7 dBA to the measured average $Leq_{A 10\text{-min}}$. Based on the applicant's Noise Impact Study and the assessment of the Department's noise expert, it appears the proposed project is unlikely to generate SDRS in exceedence of the applicable sound limits. Compliance testing for SDRS would be incorporated into the post-construction noise monitoring program (discussed in Section 5.E. below) after completion would provide assurance that SDRS was not occurring.

- D. Department Analysis. Mr. Guldborg reviewed the proposed project and the report, entitled, “Sound Level Assessment Bower Wind Project,” submitted by Stantec and dated September 2012 to determine if the acoustic studies submitted by the applicant were reasonable and technically correct according to the standard engineering practices and the Department's Regulations on Control of Noise (06-096 CMR 375(10)). Mr. Guldborg concluded that the Vestas 112 3.0 MW turbine maximum sound power levels with conservative uncertainty factors were used in the analysis;

the acoustic model and its assumptions are appropriate; the sound receiver locations are appropriate; the decibel contour maps adequately cover the potential impact area; and the Department Regulations on Control of Noise have been properly interpreted and applied for by the applicant.

- E. Post-Construction Monitoring Program. In his project review, Mr. Guldberg states that to ensure that the sound level predictions submitted by the applicant are accurate for the wind turbines actually installed, and to ensure compliance with the Department's Noise Regulations, including provisions regarding SDRS and tonal sound, the Department should require post-construction sound monitoring for the project.

To ensure compliance, post-construction monitoring must meet all applicable standards of Chapter 375(10)(I)(8), which specifies the methods for measuring sound and the information to be reported to the Department.

- F. Sound Complaints Response and Resolution Protocol. The applicant proposes to implement a formal protocol for responding to sound complaints. The protocol would meet all applicable standards of Chapter 375(10)(I)(7)(j). The applicant must notify the Department of any complaints within three business days of receiving them and must notify the Department of the outcome of its investigation within three business days of completion.

Based on the applicant's submissions and the review of those submissions by the Department's expert, the Department finds that the proposed project would meet all applicable standards of Chapter 375(10), including both tonal sound and SDRS, and that the applicant has made adequate provisions for the control of excessive environmental noise from the proposed project. To ensure that the project operates in compliance with the permit and the Department's regulations, the Department finds that the applicant must implement the post-construction monitoring program described above, including the sound complaint protocol. The applicant must investigate all complaints and must notify the Department of any complaints within three business days of receiving them, and must notify the Department of the outcome of this investigation within three business days of completion; and the applicant must submit sound level monitoring reports in accordance with the post-construction monitoring program described above. Upon any finding of non-compliance by the Department, the applicant must take short-term action immediately to adjust operations to reduce sound output to applicable limits under Chapter 375(10). Within 60 days of a determination of non-compliance by the Department, the applicant must submit, for review and approval, a mitigation plan that proposes actions to bring the project into compliance. The Department would review any such mitigation plan and may require additional mitigation or alternative measures. If immediate actions to bring the project into compliance with the applicable noise standards are not taken or not successful while the process of generating and obtaining approval of a longer term plan is taking place, the Department may take such enforcement action as it finds appropriate to ensure compliance with the Site Law, applicable provisions of Chapter 375(10), and this Order.

6. SCENIC CHARACTER:

The Site Law and the NRPA both have standards pertaining to scenic impacts that must be satisfied in order to obtain a permit for a wind energy project. The Site Law requires an applicant for a wind energy project to demonstrate that the proposed project would not adversely affect existing uses or scenic character. Pursuant to the NRPA an applicant must demonstrate that a proposed project would not unreasonably interfere with existing scenic, aesthetic or recreational uses of a protected natural resource. The WEA further specifies those standards and declares that when expedited wind energy developments are being evaluated:

[T]he [Department] shall determine, in the manner provided in subsection 3 [which provides specific criteria discussed below], whether the development significantly compromises views from a scenic resource of state or national significance such that the development has an unreasonable adverse effect on the scenic character or existing uses related to scenic character . . . Except as otherwise provided in subsection 2, determination that a wind energy development fits harmoniously into the existing natural environment in terms of potential effects on scenic character and existing uses related to scenic character is not required for approval under . . . Title 38, section 484, subsection 3. 35-A M.R.S. §3452(1).

The proposed wind project contains “generating facilities” including wind turbines as defined by 35-A M.R.S. §3451(5) and “associated facilities” such as buildings, access roads, collection lines, and substation, as defined by 35-A M.R.S.A. §3451(1). With regard to the associated facilities, the WEA, 35-A M.R.S. §3452(2), provides in pertinent part that:

The [Department] shall evaluate the effect of associated facilities of a wind energy development in terms of potential effects on scenic character and existing uses related to scenic character in accordance with . . . Title 38, section 484, subsection 3, in the manner provided for development other than wind energy development if the [Department] determines that application of the standard subsection 1 to the development may result in unreasonable adverse effects due to the scope, scale, location or other characteristics of the associated facilities. An interested party may submit information regarding this determination to the [Department] for its consideration. The [Department] shall make a determination pursuant to this subsection within 30 days of its acceptance of the application as complete for processing.

The WEA, 35-A M.R.S. §3452(3), further provides that:

A finding by the [Department] that the development’s generating facilities are a highly visible feature in the landscape is not solely sufficient basis for determination that an expedited wind energy project has an unreasonable adverse effect on the scenic character and existing uses related to scenic character of a scenic resource of state or national significance. In making its determination under subsection 1, the [Department] shall consider insignificant the effects of portions of the development’s

generating facilities located more than 8 miles, measured horizontally, from a scenic resource of state or national significance.

As provided in the WEA, 35-A M.R.S. §3452(2), the Department made a determination within 30 days of the receipt of the application that the potential effects of the express collector line on the scenic character and existing uses would be reviewed under the standards set forth in the Wind Energy Act (35-A M.R.S. §3452).

To address the scenic impact criteria, the applicant submitted a Visual Impact Assessment (VIA) for the proposed project prepared by LandWorks and dated October 2012. The VIA examined the potential scenic impact of the generating facilities and associated facilities on Scenic Resources of State or National Significance (SRSNS) within eight miles of the proposed project using the evaluation criteria contained in the WEA. The applicant also submitted the results of user intercept surveys conducted by Kleinschmidt and dated September 2012.

The applicant identified fifteen SRSNS within eight miles of the proposed generating facilities. Fourteen of the SRSNS are great ponds, and the other is the Springfield Congregational Church. Additional descriptions of these fifteen SRSNS are included below, including the anticipated scenic impacts on them from the proposed project.

The applicant conducted a VIA within an eight-mile radius of the proposed generation facilities portion of the project. The applicant's VIA for the generating facilities and associated facilities addresses the criteria set forth in 35-A M.R.S. §3452(3):

- (A) The significance of the potentially affected scenic resource of state or national significance;
 - (B) The existing character of the surrounding area;
 - (C) The expectations of the typical viewer;
 - (D) The expedited wind energy development's purpose and the context of the proposed activity;
 - (E) The extent, nature, and duration of potentially affected public uses of the scenic resource of state or national significance and the potential effect of the generating facilities' presence on the public's continued use and enjoyment of the scenic resource of state or national significance; and
 - (F) The scope and scale of the potential effect of views of the generating facilities on the scenic resource of state or national significance, including but not limited to issues related to the number and extent of turbines visible from the scenic resource of state or national significance, the distance from the scenic resource of state or national significance and the effect of prominent features of the development on the landscape.
- A. Scenic Resources of State or National Significance. SRSNS are defined in 35-A M.R.S. §3451(9). The following is a description of what constitutes each type of a SRSNS and the applicant's summary of potential impacts to each of the SRSNS within eight miles of the proposed generating facilities:

- 1) National Natural Landmarks. National Natural Landmarks are federally designated wilderness areas or other comparable outstanding natural and cultural features, such as Orono Bog or Meddybemps Heath. The applicant did not identify any National Natural Landmarks within eight miles of the proposed project.
- 2) Historic Places. Historic Places are properties listed on the National Register of Historic Places pursuant to the National Historic Preservation Act of 1966, as amended, including, but not limited to, the Rockland Breakwater Light and Fort Knox.

The applicant identified one historic property within eight miles of the proposed project, the Springfield Congregational Church, located on Route 6. The church is 5 miles from the proposed project and would not have any view of the project.

- 3) National or State Parks. There are no national or state parks within eight miles of the project.
- 4) Great Ponds. A great pond is a SRSNS if it is:
 - a. One of the 66 great ponds located in the State's organized area identified as having outstanding or significant scenic quality in the *Maine's Finest Lakes* study published by the Executive Department, State Planning Offices in October 1989; or
 - b. One of the 280 great ponds in the State's unorganized or de-organized areas designated as outstanding or significant from a scenic perspective in the *Maine Wildlands Lake Assessment* published by the Maine Land Use Regulation Commission in June, 1987.

There are fourteen great ponds within eight miles of the project that have been rated significant or outstanding for scenic quality in the *Maine Wildlands Lake Assessment*. (Assessment)

GREAT POND	MWLA RATING	NEAREST TURBINE	NUMBER OF TURBINES VISIBLE
Pleasant Lake	Outstanding	2.4 miles	0-16
Duck Lake	Significant	2.7 miles	0-14
Junior Lake	Significant	3.2 miles	0-13
Shaw Lake	Significant	3.5 miles	0-14
Keg Lake	Significant	3.7 miles	0-12
Scraggly Lake	Significant	4.1 miles	0-16
Bottle Lake	Significant	5.1 miles	0-10
Sysladobsis Lake	Significant	6.3 miles	0-10
Pug Lake	Outstanding	7.7 miles	0-6
Horseshoe Lake	Significant	approx. 7.8 miles	No visibility

Lombard Lake	Outstanding	approx. 5.5 miles	No visibility
West Musquash Lake	Outstanding	approx. 6.0 miles	No visibility
Norway Lake	Significant	approx. 7.8 miles	No visibility
Upper Sysladobsis Lake	Significant	approx. 6.5 miles	No visibility

The applicant's VIA utilized a system by which methods and indicators were used collectively to evaluate each of the criteria in the WEA and determine their contribution to, or potential impact on, the scenic impact. Based on the evaluation of the indicators by the applicant, each criterion was given a rating of Low, Medium or High impact. For each SRSNS, the VIA concluded with a rating of Low, Medium or High for the overall scenic impact to the SRSNS. The following is a summary of the applicant's VIA materials and evaluations.

BOTTLE LAKE

Bottle Lake is approximately 258 acres, all of which are located within eight miles of the project. This lake is 5.1 miles from the nearest visible turbine. The applicant states that Bottle Lake is the most densely developed lake in the study area, with roughly 100 camps along the shoreline. Bottle Lake is listed as a great pond with a scenic resource rating of significant in the Assessment. The applicant did not conduct any user surveys on this lake.

The applicant's VIA indicates that up to 10 turbine hubs may be visible over 21% of the lake. The turbines would be visible within a horizontal viewing angle of 7 degrees. The applicant concludes that Bottle Lake will be minimally affected by the project since the closest turbine is 5.1 miles away and the views of the project would not appear dominant to a typical user. Given these facts along with the small horizontal viewing angle, the applicant contends that the overall scenic impact to Bottle Lake would be Low.

DUCK LAKE

Duck Lake is 262 acres in size. The nearest turbine is 2.7 miles away. Duck Lake is listed as a great pond with a scenic resource rating of significant in the Assessment. The applicant states that Duck Lake has approximately 37 camps along its wooded shoreline. The applicant did not conduct any user surveys on this lake.

The VIA identifies that up to 14 turbine hubs may be visible from the southern shore of the lake, while there would be no visibility from the northern side of the lake. The photosimulation prepared by the applicant shows that the turbines would be visible within an 8 degree angle of view. The project would be visible from 61% of the lake surface. The applicant concludes that the scenic values would not be unreasonably diminished by the visibility of the proposed project and rates the overall impact to Duck Lake as Low.

JUNIOR LAKE

Junior Lake is 4,000 acres in size with a mixed forest land cover. The applicant states that there are approximately 87 camps and/or structures on this lake. The proposed project would be 3.2 miles from the lake. Junior Lake is listed as a great pond with a scenic resource rating of significant in the Assessment. A portion of the eastern shore is conserved through what is referred to in the administrative record as the Sunrise Conservation Easement, which limits the amount of development allowed along the lake shore. The applicant conducted user surveys on this lake and submitted them with the application.

The applicant's VIA indicates that there may be up to 13 turbine hubs visible from Junior Lake. The photosimulation shows that the proposed project would be visible within a horizontal angle of view of 17.25 degrees. The project would be visible from 85 % of the lake. The applicant completed the user survey on Junior Lake over 12 days between May 25 and August 11, 2012. The survey found that 73% of the users expected to have a "very high quality" experience on the lake. The VIA noted that 60% of the respondents said that the proposed project would adversely affect their use and enjoyment of the lake. The applicant noted that these numbers may be related to the "significant public opposition" of the project because the survey found that, after viewing simulated conditions of post construction views, 74% of the users stated they would continue to use the resource. The applicant argues that the impact of the extent and nature of the visibility of the turbines from this lake is diminished by the lake's variety of views and the variety of the surrounding landscape. In other words, the applicant concludes that, because the ridge lines around the SRSNS are low-lying and not distinct, the addition of wind turbines on two of them would be visually absorbed, thus reducing the scenic impact of the project. The applicant rates the overall scenic impact to Junior Lake as Medium.

KEG LAKE

Keg Lake is 371 acres and located 3.7 miles from the nearest turbine. The applicant states that Keg Lake has a mixed growth forest and approximately 15 camps along the western shore. Keg Lake is identified as a great pond with a scenic resource rating of significant in the Assessment. The applicant did not conduct any user surveys on this lake.

The applicant's VIA indicates that up to 12 turbine hubs may be visible from this lake. The photosimulation shows that turbines would be visible within a horizontal view angle of 15 degrees. The project would be visible from 54% of the lake surface. The applicant concludes that the visibility is limited and not overly dominant and it would not have an adverse, unreasonable effect on scenic values and existing uses of Keg Lake. The applicant rated the scenic impact to Keg Lake as Low-Medium.

PLEASANT LAKE

Pleasant Lake is listed as a great pond with a scenic resource rating of outstanding in the Assessment. The lake is 1,550 acres in size and is surrounded by mixed growth forest. The nearest turbine is 2.4 miles from the lake. The majority of the shoreline is undeveloped. The applicant did a user survey for this resource.

The applicant's VIA indicates that 16 turbine hubs may be visible from the lake. The photosimulation shows the turbines would have a horizontal view angle of 30 degrees. The project would be visible from 90% of the lake. The user survey was completed in 12 days between May 25 and August 11, 2012. The user survey found that 70% of the respondents anticipated that the project would have a neutral or positive effect on their enjoyment and 86% indicated that it would have a positive or neutral effect on their continued use of the lake. Based upon this information the applicant concluded that "the effect on continued use and enjoyment of the scenic resource is low." Dr. Palmer, examining the converse of percentages, notes that the applicant does not explain its rationale as to why a negative effect to enjoyment of 30% and a negative effect on continued use of 14% is within the threshold of a Low scenic impact rating. Ultimately the applicant concludes that the overall result of the project would be a Medium impact to Pleasant Lake.

PUG LAKE

Pug Lake is a nearly enclosed bay that is considered part of West Grand Lake, which is listed as a great pond with a scenic resource rating of outstanding in the Assessment. Pug Lake is 7.7 miles from the nearest turbine. The lake is surrounded by the Sunrise Conservation Easement, which maintains a working forest. The applicant did not conduct any user surveys for this lake.

In the applicant's VIA, it states that only approximately 97.2 acres of the lake, which is 14,467 acres in size, are within the project's 8-mile radius and up to 6 turbine hubs may be visible. The turbines would have a horizontal view angle of 5 degrees. The project would be visible from 17% of the lake surface of Pug Lake. The applicant concluded that the overall impact to Pug Lake is Low.

SCRAGGLY LAKE

Scraggly lake is listed as a great pond with a scenic resource rating of significant in the Assessment. Scraggly Lake is 1,641 acres in size with mixed growth forest and little development. The nearest turbine would be 4.1 miles in the distance. The applicant did a user survey for this resource.

The applicant's VIA indicates that up to 16 turbine hubs may be visible from the lake. The photosimulation shows the turbines would have a horizontal view angle of 36 degrees. The VIA indicates that from other locations on the lake the turbines would have a horizontal view angle of 43 degrees. The project would be

visible from 77% of the lake surface. The user survey was conducted over 12 days from May to August 2012. The survey found that 50% of respondents anticipated that it would have a positive or neutral effect on their enjoyment and 77% indicated that it would have a positive or neutral effect on their continued use. The VIA concludes that “based on all of these factors, effect on continued use and enjoyment of the scenic resource is low”, although Dr. Palmer notes that the applicant does not explain its rationale as to why the converse of percentages results in a Low scenic impact rating. The applicant concludes that the overall scenic impact is Medium.

SHAW LAKE

Shaw Lake is listed as a great pond with a scenic resource rating of significant in the Assessment. Shaw Lake is 251 acres in size with a mixed growth forest cover. There is no road access to the lake shore and three quarters of the lake is surrounded by the Sunrise Conservation Easement. The lake is located 3.5 miles from the nearest turbine. The applicant attempted a user survey on this lake when the surveys were done for Junior, Pleasant and Scraggly Lakes, but was not able to identify any users to the lake.

In the VIA, the applicant indicates that up to 14 turbine hubs may be visible. The photosimulation of the turbines shows there would be a horizontal view angle of 45 degrees. The project would be visible from 80% of the lake surface. During the 2012 user survey, no individuals were observed using this lake. The applicant concludes that “The survey results indicate that the effect of the wind farms presence on the public’s continued use and enjoyment of the scenic resource...will be minimal” and the overall scenic impact would be Low-Medium.

SYSLADOBSIS LAKE

Sysladoobsis Lake is listed as a great pond with a scenic resource rating of significant in the Assessment. The lake is 5,401 acres in size although only 689 acres are within 8 miles of the proposed turbines. The land cover around the lake is mixed forest and the applicant states that there are approximately 52 camps along the shoreline. The nearest turbine is approximately 6.3 miles in the distance. The applicant did not conduct a user survey for this resource.

In the VIA, the applicant indicates that up to 10 turbine hubs would be visible from the lake. The most visible turbines at the photosimulation location would have a horizontal view angle of 10 degrees. The project would be visible from 47% of the lake surface. The applicant concludes that the overall scenic impact on this lake would be Low.

- 5) Scenic Rivers or Streams. A segment of a scenic river or stream is a SRSNS if it is identified as having unique or outstanding scenic attributes in Appendix G of the 1982 “Maine Rivers Study” by the Department of Conservation. There are no

scenic rivers or stream segments identified as having unique or outstanding scenic attributes within eight miles of the project.

- 6) Scenic Viewpoints. A scenic viewpoint is a SRSNS if it is located on state public reserved land or on a trail that is used exclusively for pedestrian use, such as the Appalachian Trail, that the Department of Agriculture, Conservation and Forestry (DACF) designates by rule adopted in accordance with 35-A M.R.S. § 3457. There are no scenic viewpoints within eight miles of the project.
 - 7) Scenic Turnouts. A scenic turnout is a SRSNS if it has been constructed by the Department of Transportation pursuant to M.R.S. 23, § 954 on a public road designated as a scenic highway. There are no scenic turnouts within eight miles of the project.
 - 8) Scenic Viewpoint in Coastal Areas. To qualify as a SRSNS, a scenic viewpoint located in the coastal area, as defined by 38 M.R.S. § 1802, subsection 1, must be ranked as having state or national significance in terms of scenic quality in:
 - a. one of the scenic inventories prepared for and published by the Executive Department, State Planning Office: “Method for Coastal Scenic Landscape Assessment with Field Results for Kittery to Scarborough and Cape Elizabeth to South Thomaston,” Dominie, et al., October 1987; “Scenic Inventory Mainland Sites of Penobscot Bay,” Dewan and Associates, et al., August 1990; or “Scenic Inventory: Islesboro, Vinalhaven, North Haven and Associated Offshore Islands,” Dewan and Associates, June 1992; or
 - b. a scenic inventory developed by or prepared for the Executive Department, State Planning Office in accordance with 38 M.R.S.A. § 3457.
- There are no scenic viewpoints in a coastal area within eight miles of the project.

- B. Public Hearing. At the public hearing, PPDLW summarized its pre-filed testimony asserting that, based on the applicant’s intercept user intercept study, the PPDLW User Survey, and public opposition, the proposed project would have an unreasonable adverse effect on both scenic character and the existing uses related to the scenic character of the SRSNS within eight miles of the proposed project. PPDLW also submitted Exhibit N *Critique of Project Developer’s VIA* prepared by Michael Lawrence & Associates, Landscape Architect & Site Planning Consultants, dated March 2013.

PPDLW also asserted that the tourism in the region would suffer serious impacts due to the proposed project. PPDLW argued that the guides that use this area rely on the “wilderness brand that brings visitors to the lakes.” PPDLW disputes the applicant’s assertion that tourism and guiding does not occur within 8 miles of the project location. PPDLW contends that, while the applicant described the area as “heavily forested” and a “working forest” thereby implying that these areas are not pristine or worth protecting from an industrial wind development, tourism and guiding can actually go hand in hand with forestry activities.

PPDLW's prefile testimony provides that twelve of the fourteen SRSNS that lie within eight miles of the project are connected by water or short portages. This water-way trail is discussed in the book "Quiet Water Maine", and is noted in ten other websites for paddling enthusiasts provided by PPDLW. Nine of those SRSNS would have views of the turbines closer than 8 miles.

In prefiled testimony PPDLW described how the Legislature did not designate certain areas for expedited wind permitting in the WEA. These areas that were not designated were described in the report of the Governor's Wind Task Force on Wind Power Development as "...broad areas that encompass concentrations of ecological, recreational and/or scenic values that are among the most significant in the jurisdiction." PPDLW describes how the Downeast Lakes areas were not included in the expedited wind permitting area. The proposed project is inside the expedited permitting area, but as close as approximately 1,220 feet to the edge of the expedited permitting area. PPDLW stated that the Downeast Lakes economy relies on forestry and tourism, and that the proposed project would be the first project to be visible from a total of nine SRSNS. PPDLW also testified that the applicant's VIA consistently minimized and understates the "scenic quality of the Downeast Lakes Region and the nine Scenic Resources of State or National Significance (SRSNS) with visibility of turbines within eight miles."

The applicant argued in its post-hearing brief that the area is not a tourist destination and found no publications to support the fact that it is a tourist destination. In its post-hearing brief the applicant states the proposed project is supported by many Maine guides, including the two sporting camps located closest to the project, the Maine Snowmobile Association, ATV Maine, Downeast Salmon Federation, Maine State Chamber of Commerce, Sierra Club Maine, Maine Audubon Society, large landowners within the vicinity of the proposed project, the Passamaquoddy Tribe, construction companies and the host communities, among many others. The applicant testified that they did not find much evidence of guides working in the vicinity of the project while conducting its user surveys.

PPDLW also noted in its post-hearing brief that the Maine Sporting Camp Association, Grand Lake Stream Association, Maine Professional Guides Association, Forest City Guides Association and Maine Wilderness Guides Association all oppose the proposed project.

CLF/MREA submitted pre-filed testimony regarding the "purpose and context" of the purposed activity as discussed in 35-A M.R.S.A. §3452(3). This included testimony from Abigail Krich, the president of Boreas Renewables, who testified about the positive economic and environmental impacts of wind energy in Maine. They also submitted testimony from George A. Smith, an outdoor writer, who testified that fishermen would still fish in waters within view of an industrial turbine development. CLF/MREA also submitted testimony from Philip Bartlett and Stacey Fitts regarding the WEA and its specific purpose to promote wind. Senator Bartlett and Mr. Fitts testified during the public hearing that the Governor's Task Force on Wind Power

Development (on which they served) knew that areas that were not included in the expedited permitting area would be able to see turbines that were located in the expedited permitting area. Further, areas of special interest, like Baxter State Park, were not located in the expedited permitting area and the nearest expedited permitting area is many miles away, therefore creating a ‘buffer’ area around these special interest areas.

- C. Peer Review of the Visual Impact Assessment. The Department hired Dr. James F. Palmer of Scenic Quality Consultants, an independent scenic expert, to assist in its review of the evidence submitted on scenic character. Dr. Palmer provided the Department with review comments March 8, 2013. Dr. Palmer ranked fifteen SRSNS in a table entitled “Summary of Evaluation Criteria Ratings for the Bowers Wind Project”. The fifteen SRSNS were evaluated by Dr. Palmer based on the WEA criteria, namely, significance of the resource; character of surrounding area; typical viewer expectations; development’s purpose and context; extent, nature, and duration of uses; effect on continued use and enjoyment; and, scope and scale of project views. Dr. Palmer rated each statutory criterion for each of the fifteen SRSNS with ratings between “None” to “High”. Dr. Palmer then determined an overall scenic impact to those SRSNS based on his evaluation of the three core criteria – extent, nature, and duration of uses; effect on continued use and enjoyment; and scope and scale of project views. No SRSNS reached the level of a “High–” or “High” overall scenic impact in Dr. Palmer’s judgment. However, Dr. Palmer concluded that eight of the great ponds (Bottle Lake, Duck Lake, Junior Lake, Keg Lake, Pleasant Lake, Scraggly Lake, Shaw Lake, and Sysladobsis Lake) would reach a level of “Medium” overall scenic impact. Dr. Palmer concludes that “While the Bowers Wind Project is found to have an Adverse scenic impact, it does not reach the level of Unreasonably Adverse.”

In his review comments, Dr. Palmer noted that the VIA did not set forth a procedure for combining evaluation criteria into an overall evaluation, and that nighttime use or visibility of the FAA lighting of the lakes are not discussed. In addition to the overall scenic impact ratings, Dr. Palmer provided the following comments to the Department on the nine great ponds within eight miles and with visibility of the proposed project:

1) Bottle Lake:

Dr. Palmer found that the proposed project would have an overall scenic impact on Bottle Lake of “Medium”. Dr. Palmer reached this conclusion by using what he believes are the three core scenic criteria from the WEA (extent, nature and duration; effect to enjoyment and continued use, and scope and scale). Since these three core scenic criteria combined did not rate “High-“ or “High”, then he found the scenic impact to this resource would not be unreasonably adverse.

2) Duck Lake:

For Duck Lake, Dr. Palmer states the applicant's basis for concluding that the overall scenic impact on this resource would be Low is not clear. Specifically, he questioned how the views of turbines from this lake are limited when the turbines would be visible from half the lake, and why a communications tower would lessen the impacts of the turbines. Dr. Palmer found that by combining the three core scenic criteria from the WEA, the project's overall scenic impact on Duck Lake would be "Medium" but the overall scenic impact to Duck Lake would not be unreasonably adverse.

3) Junior Lake:

Dr. Palmer reviewed the applicant's VIA and questioned the applicant's basis for rating the project's effect on continued use and enjoyment of the lake as Low when 60% of the respondents to the user surveys indicated that the proposed project would have a negative effect on their enjoyment, and 27% indicated that it would have a negative effect on their continued use. The applicant states that "The visibility of the project is not so extensive and dominant as to deter the typical user, and will not substantially reduce use and enjoyment". Dr. Palmer found that by combining the three core scenic criteria from the WEA, Junior Lake would have an overall scenic impact of "Medium", but the overall scenic impact to Junior Lake would not be unreasonably adverse.

4) Keg Lake:

Dr. Palmer reviewed the applicant's VIA and found that there were no studies provided on how additional development such as the proposed project would affect user enjoyment of Keg Lake. The applicant's VIA states, "the common activity is likely fishing and some paddling, primarily by camp owners. As such, they are still likely to continue to visit and use the resource" but the applicant offers no specific evidence to support this claim. Dr. Palmer found that by combining the three core scenic criteria from the WEA, Keg Lake would have an overall scenic impact of "Medium", but the overall scenic impact to Keg Lake would not be unreasonably adverse.

5) Pleasant Lake:

Dr. Palmer points out that the applicant's VIA states that, "although the turbines are visible throughout much of the lake, they would not be an unduly dominant presence". Dr. Palmer also notes that the applicant's VIA states that "the central angle of view occurs within 40-60 degrees and is the area that most highly influences human perception of a scene, given a fixed viewing direction". Dr. Palmer believes that the 30 degree and 45 degree angle of view visible in Exhibits 15 and 16 of the VIA represent a "very large proportion of the 'central angle of view... that most highly influences human perception of a scene.'" Exhibit 16 is a view of the northern shore of Pleasant Lake and from this viewpoint the turbines

are visible over a horizontal view angle of 45 degrees at a distance of 2.8 to 4.3 miles away. Dr. Palmer found that by combining the three core scenic criteria from the WEA, the project would have an overall scenic impact on Pleasant Lake of “Medium”, but the overall scenic impact to Pleasant Lake would not be unreasonably adverse.

6) Pug Lake:

Dr. Palmer found that by combining the three core scenic criteria for the WEA, Pug Lake would have an overall scenic impact of “Low”, and the overall scenic impact to Pug Lake would not be unreasonably adverse.

7) Scraggly Lake:

Dr. Palmer reviewed the applicant’s VIA that described Scraggly Lake as having “poor access and a lack of development” which can “give the lake a feeling of relative remoteness.” Dr. Palmer found the statement in the applicant’s VIA that, “it can also be posited that the extent of the project and linear layout reduces the potential for the view of the project to act as a distinct focal point that will continually draw the eye,” confusing since it seemed to be saying that since the turbines were visible for such a large angle of view there was no focal point. The user survey results for this proposed project for Junior, Pleasant and Scraggly Lakes indicated that 66%, 57% and 62% of the respondents, respectively, would be less likely to continue to use the lakes if the proposed project were to be built. Dr. Palmer found that by combining the three core scenic criteria from the WEA, the project would have an overall scenic impact on Scraggly Lake of “Medium”, but the overall scenic impact to Scraggly Lake would not be unreasonably adverse.

8) Shaw Lake:

Dr. Palmer reviewed the applicant’s VIA and questioned the statement that “the project will not appear overly dominant” in part because “the regular pattern and linear nature of the array reflects accepted practice for reducing visual impact by providing order and pattern to the turbine siting” . He also stated that the applicant’s VIA asserts that “the Baskahegan and Bowers project area lakes reinforce the fact that having wind turbines in view does not necessarily diminish the likelihood of users to return to this resource”. Dr. Palmer found that by combining the three core scenic criteria from the WEA, the project would have an overall scenic impact on Shaw Lake of “Medium”, but the overall scenic impact to Shaw Lake would not be unreasonably adverse.

9) Sysladobsis Lake:

Dr. Palmer reviewed the applicant’s VIA and commented that the VIA stated that “Getchell Mountain is the proximate landform in view, and it would serve to provide visual balance to the turbines on the adjacent Bowers Mountain (see

Exhibit 20: Visual Simulation from Sysladobsis Lake), contributing to the landscape's ability to visually absorb the Project". Dr. Palmer found that this assertion was not true, that the turbines would be the highest element in the landscape and would be very much visible from the lake. Dr. Palmer found that by combining the three core scenic criteria from the WEA, the project would have an overall scenic impact on Sysladobsis Lake of "Medium", but the overall scenic impact to Sysladobsis Lake would not be unreasonably adverse.

- D. Department Analysis and Findings. On December 7, 2012, the Commissioner exercised her discretion to hold a public hearing for the proposed project. The Commissioner determined that due to the unique history of the project and the fact that the previously proposed project was subject to an evidentiary public hearing process by the Land Use Regulation Commission, a public hearing would allow for sufficient public testimony, comment, and cross-examination that would be helpful to the Department's decision-making process. The Department reviewed and analyzed all information in the record related to scenic impacts including but not limited to, the applicant's VIA, Dr. Palmer's review and analysis, the Intervenor's submissions, the Department's site visit, and public testimony and comments.

The Commissioner and Department staff conducted a site visit on May 21, 2013. Department staff also conducted site visits on November 6, 2012 and December 13, 2012 to six of the great ponds within eight miles of the proposed project. While the project area is designated as part of the expedited permitting area for wind energy projects, the Department notes that the project area is adjacent to the only area not designated as a wind expedited area in the entire southern and eastern part of the state, which is the Downeast Lakes region. On the site visit the Department visited Scraggly Lake, Junior Lake and Pleasant Lake by motor boat. On the site visit Junior Lake was easily accessed by boat via Scraggly Lake through a water passage between the two lakes. The Department's observations of these three lakes were consistent with other evidence in the record in that these lakes are undeveloped and provide a sense of remoteness. The Department acknowledges that these lakes do not meet the definition of a remote pond (04-061 CMR Chapter 10 106. Management Class 6 Lake (Remote Pond)) because they have existing road access and some level of development. Pleasant Lake and Scraggly Lake, however, appeared almost completely void of development in that there was only one sporting camp and the public boat launch visible on the shore from the lakes. Thus, the views of the turbines in the distance would not be interrupted by any shoreline development in the foreground when viewed from these three SRSNS. The only visible development on the shoreline of Junior Lake was a few scattered camps, which were developed in such a manner that masked most of the camps. This may be due to the fact that, consistent with regulatory land use standards of the Land Use Planning Commission, new camp construction along the shoreline since 1972 is required to be set back 100 feet, and to retain vegetation as screening from the shoreline, as pointed out in public comment. On the site visit the Department observed the unique character and topography, described in more detail below, involved in evaluating scenic impacts within the project area.

As listed above, there are fourteen SRSNS within 8 miles of the proposed generating facilities. The Department concludes based upon the evidence in the record that since the following five SRSNS do not have any visibility of the project, there would not be an unreasonable adverse effect on the scenic character or existing uses related to scenic character of these scenic resources:

- Springfield Congregational Church
- Horseshoe Lake
- Lombard Lake
- West Musquash Lake
- Norway Lake

The Department has reviewed the applicant's VIA, and it disagrees with many of the applicant's descriptions of the existing character of many of the lakes classified as SRSNS. In reference to Pleasant Lake, the VIA states that "logging activity directly influences user expectations by diminishing the potential for this area and the lake itself to be viewed as a pristine, unaffected landscape". However, the applicant's user surveys demonstrate that 90 percent of respondents give the three surveyed lakes high or highest ratings for existing scenic value. The Department acknowledges that the areas around the proposed project are working forests, but because of the rolling topography logging activity was not a primary visible feature from the resources observed on the Department's May 21, 2013 site visit. Logging activity did not change the undeveloped and remote character of Pleasant Lake and Scraggly Lake, a character description that was brought up many times in the public testimony and comments.

The Department has reviewed Dr. Palmer's reports and analyses, and it recognizes he found that the proposed project would have "an adverse scenic impact, [but] it does not reach the level of Unreasonable Adverse". The Department supports Dr. Palmer's, and the applicant's, approach of assigning scenic impact ratings (of Low, Medium or High) to each of the project's fourteen SRSNS and basing such rating on each of the six statutory criteria for scenic impact in the WEA. The Department agrees with Dr. Palmer that if an extensive number of SRSNS are determined to have an overall scenic impact of Medium, the project could be considered to have an unreasonable adverse effect on the scenic character of SRSNS. However, the Department did not agree with Dr. Palmer's assessment that the three core criteria (extent, nature and duration; effect to enjoyment and continued use; and scope and scale) should, as a matter of course, be given extra weight for determining scenic impacts to SRSNS. Rather, scenic impacts on SRSNS must be evaluated on a case by case basis, applying each of the six review criteria to the facts in the administrative record to determine whether a project's impacts would be unreasonable.

The Department also disagrees with Dr. Palmer's statement that "if SRSNSs with ratings of Medium or higher comprise 10 percent of the area within 3 miles or 8 miles then the scenic impact is Unreasonably Adverse" because, on this administrative record, such a bright line test cannot be drawn. While the Department gave considerable weight to Dr. Palmer's analyses of the applicant's VIA, it finds that since Dr. Palmer assigned a majority of, or eight of the project's fourteen, SRSNS an

overall scenic ranking of Medium, the Department must further review the scenic impact evidence in the record to determine whether the project would result in an unreasonable adverse effect on scenic character. For example, if a single SRSNS receives an overall scenic impact rating of High, it appears that that would be sufficient grounds for concluding that the project would have an unreasonable adverse effect on scenic character, based on the statutory language in 35-A M.R.S. §3452(1).

In his review of the applicant's VIA, Dr. Palmer concluded that the overall scenic impact to Pleasant Lake would be Medium. The Department disagrees with Dr. Palmer's rating of this lake, and after reviewing the evidence in the record, concludes that the impact to Pleasant Lake would be greater than Medium and very close to receiving an overall scenic impact rating of High. The reasons for the Department's conclusion include: the lake received a rank of outstanding in the Assessment; 73% of the lake surface would have visibility of 9 to 16 turbines; it is 2.4 miles from the closest turbine, and therefore the turbines would appear large and if constructed, would dominate the viewshed from the lake; the observations of undeveloped nature of the May 21 site visit; and, that LUPC assigns a Management Class 2 and Resource Class of 1A to Pleasant Lake. The LUPC defines Management Class 2 lakes as "high value, accessible, undeveloped lakes", their second highest Management Class. LUPC defines Resource Class 1A as "lakes of statewide significance with two or more outstanding values". Resource Class 1A is the LUPC's highest Resource Class. The Department ultimately concluded that Pleasant Lake would not have an overall scenic impact rating of High because of the relatively small horizontal angle of view (30 degrees), which is in the middle of the range of angles of view for the other SRSNS within 8 miles of this project.

For the other seven great ponds (Duck Lake, Junior Lake, Shaw Lake, Keg Lake, Scraggly Lake, Bottle Lake, and Sysladobsis Lake) the Department concurs with Dr. Palmer's assessment that these lakes have a ranking of Medium for overall scenic impact. As stated above, the Department concludes that since a majority of the SRSNS (eight lakes out of the fourteen SRSNS, or 57%) received an overall scenic impact of Medium, and the Department concludes this is a significant impact on SRSNS by the proposed project, then that must be factored into the Department's analysis. The Department, however, further considered the evidence in the record with regard to whether the proposed project would have an unreasonable adverse effect on scenic character and existing uses related to scenic character.

After reviewing the administrative record as a whole, the Department notes the following pieces of evidence, reviewed in determining whether the proposed project would have an unreasonable adverse effect on scenic character or existing uses related to scenic character:

- 1) The applicant's user intercept survey indicates that if the scenic conditions remained the same, that is, if the project were not built, only 1% of the respondents indicated that they would be unlikely or very unlikely to visit the lakes again. When asked if the proposed project were to be constructed, the

percentage of respondents indicating they would be unlikely or very unlikely to visit the lakes again jumped up to 20%. The Department finds that this is a significant increase and impact on existing uses related to scenic character.

- 2) Forty-five percent of the user survey respondents (including 31% indicating it would have a very negative effect) indicated that the proposed project would have a negative effect on their enjoyment of the SRSNS. While this is mitigated somewhat by the 36% of the user survey results respondents would have no effect on their enjoyment of the SRSNS, this negative effect is relevant in the Department's analysis.
- 3) Similarly, not one user survey respondent rated the scenic value ratings of the lakes as Low in the current condition. After being shown the applicant's photosimulations, that number increased to 58%, which is a significant jump. Further, 90% of the respondents gave the lakes High or the highest scenic value ratings in the current condition, but that number dropped to 33% in the simulated conditions.
- 4) Dr. Palmer concluded that Pug Lake received an overall scenic impact ranking of "Low +", which mitigates the "Medium" and higher scenic impact rankings of the other SRSNS.
- 5) There was substantial public testimony and comment received at the public hearing and during the processing of the application. There were large numbers of project supporters at the public hearing, but the Department also received a significant number of comments from those opposed to the project. The common themes of the public comments received at the public hearing that expressed opposition to the project were: scenic impacts; nighttime lighting impacts; fire safety; negative impacts to local businesses and tourism; and noise issues. The comments received at the public hearing expressing support for the project included: job creation; support by local residents; tangible benefits; lack of concern about project's impact to tourism; and support for renewable energy.
- 6) A unique aspect of this project is that many of the great ponds within 8 miles of the proposed project are interconnected. The applicant supplied credible evidence indicating that, of the sample of users consulted, there is little actual multi-day use of the connected lakes. However, the Department gives consideration to the fact that this interconnection exists.
- 7) The Department agrees with the applicant that when considering whether a project's scenic impacts would cause an unreasonable adverse effect on scenic character, a case-by-case inquiry must be made. Each wind energy development project must be reviewed individually on its own merits, under the statutes and regulations applicable to that development. The applicant attempted to compare the proposed project's scenic impacts with impacts from other wind energy developments reviewed by the Department in an attempt to portray how the proposed impacts were comparable to other approved wind energy developments.

For instance, the applicant stated that the proposed project's scenic impacts were mitigated by the fact that the prior Bowers Wind project reviewed and denied by LURC in 2011 consisted of 27 turbines while the proposed project now consists of 16 turbines. The Department did not compare the proposed project with other previous wind energy developments, and gave no weight to the applicant's evidence in this regard.

- 8) The Department gave little weight to the applicant's "hypersensitivity" argument related to the user surveys. The applicant has asserted that people employ two coping strategies when they fear change, namely precaution and hyperdefensiveness. With the precaution strategy people follow a sort of "why take a chance" approach and people can become hyperdefensive about the presumed change or "danger". The applicant asserts that this coping strategy could have affected the user survey results. The Department concludes that the user surveys cannot be discounted due to assumed "hypersensitivity." There are two existing wind energy projects (the Rollins Wind project in Lincoln and the Stetson Wind project in T8 R3 NBPP) in near proximity to this proposed project. It is reasonable to conclude that many of the users of these SRSNS know what an existing wind energy project looks like, and could base their responses to the user survey questions on their experiences and not feelings of "hypersensitivity".
- 9) The Department gave little weight to the post-construction Baskahegan Survey supplied by the applicant. The Department does not infer that the proposed project's SRSNS users would not be impacted, and would continue to use the SRSNS, because of the results of this Baskahegan Survey. The reasons for this conclusion are that Baskahegan Lake is not a SRSNS; there is no pre-development information on the Stetson Wind project; the boat launch where the Baskahegan Survey was conducted is more than 8 miles from the Stetson Wind project; and the applicant did not provide credible evidence to support the concept that many people that were using Baskahegan Lake prior to the Stetson Wind project have not stopped. For these reasons, the Department was not persuaded by this survey to support the idea that the users of the proposed project's SRSNS would continue to use the resources even if the user surveys did not always indicate this fact.
- 10) Numerous amounts of public comment and testimony raised the issue of FAA lighting because the nature of star gazing requires a sky with limited man-made lighting. The applicant's user survey found that 38% of respondents reported star gazing in response to the question of what the users' plans for the day were. Dr. Palmer states, "I believe that FAA warning lights can pose a serious scenic impact to viewers of the nighttime sky. Of course there need to be such observers, but the Bowers survey suggests that a large percentage of respondents do enjoy viewing the nighttime sky." The applicant did not provide any photosimulations of the impacts from the night lighting system proposed by the applicant due to the difficulty in accurately simulating night lighting. And there is not clear evidence in the record as to when the FAA will approve radar-activated lighting for wind projects. In view of this evidence in the record, the Department is concerned

about the negative effect of nighttime lighting on the scenic character of the project's SRSNS without the use of FAA-approved radar-activated lighting. To mitigate for those negative scenic effects, the applicant is willing to accept a condition to install FAA-approved radar-activated lighting prior to the start of project construction.

The Department considered the evidence in the record regarding scenic impacts and weighed the evidence in determining if the proposed project would have an unreasonable adverse effect on scenic character and existing uses related to scenic character. The Department concluded that it is not allowed under the WEA to balance a project's potential scenic impacts with the project's potential benefits. The Department concludes that it is responsible for considering all the evidence in the record and determining if all the applicable statutes and regulations are met. For the proposed Bowers Wind project, the Department finds that the generating facilities portion of the project would have an unreasonable adverse effect on the scenic character and the existing uses related to the scenic character of the nine SRSNS listed above. This finding is not based on the fact that the proposed project would be highly visible, but rather on evidence in the record that demonstrates the great ponds within 8 miles of the project have a high scenic significance; there are 8 great ponds that were deemed to have an overall scenic impact rating of Medium or greater; and the user surveys demonstrate that in addition to the negative effect on scenic character, there would be negative effects on continued use and enjoyment of the SRSNS.

7. WILDLIFE AND FISHERIES:

Applicants for Site Law and NRPA permits are required to demonstrate that the proposed project would not unreasonably harm wildlife and fisheries; any significant wildlife habitat; freshwater plant habitat; threatened or endangered plant habitat; aquatic or adjacent upland habitat; travel corridor; freshwater, estuarine or marine fisheries; or other aquatic life. To address these criteria, the applicant submitted the results of a series of ecological field surveys conducted by Stantec Consulting (Stantec), including wildlife species surveys, and vernal pool surveys within the project area, including the area affected by the express collector line. During the preparation of the surveys and other material in support of the application, Stantec consulted with the Department and other natural resource review agencies.

- A. Significant Vernal Pools. Stantec conducted vernal pool surveys in 2010 and 2011 within the project area and identified 5 natural vernal pools, 1 of which meets the criteria of a significant vernal pool. The project was designed to avoid any impacts to the significant vernal pool depression and a 250-foot buffer area around the pool.
- B. Inland Waterfowl and Wading Bird Habitat. The proposed project includes upland clearing in approximately 0.14 acre of Inland Waterfowl and Wading Bird Habitat (IWWH) for construction of a road.

- C. Deer Wintering Area. The applicant states that neither the generating facilities nor the transmission line portions of the project would impact any Deer Wintering Areas as defined under NRPA.
- D. Rare, Threatened, and Endangered Species. Stantec conducted a survey of the area within the proposed project for plant and animal species that are state or federally listed as Rare, Threatened, or Endangered. No Rare, Threatened or Endangered plant or animal species were found.
- E. Salmon Habitat Streams. The project is located outside the mapped Critical Habitat for Atlantic Salmon.
- F. Birds and Bats. The applicant retained Stantec to conduct bird and bat surveys to identify which species occurred in the area of the proposed project; the extent of the use of the site by such species; and potential impacts of the proposed project. Stantec conducted field surveys between September 2009 and June 2012. In the fall of 2009, Stantec conducted nocturnal radar surveys, bat acoustic surveys, raptor migration surveys, and nest surveys for bald eagle and great blue heron. In the spring/summer of 2010, Stantec conducted nocturnal radar surveys, acoustic bat surveys, raptor surveys and bald eagle nest surveys. Bald eagle nest surveys were also conducted in the spring of 2011 and 2012.

Stantec provided the results of the studies in the *Wildlife Habitat Report* in Section 7 of the application. The majority of the bat calls identified were unknown calls (1509 out of 2374), followed by the Genus *Myotis* (840 out of 2374 calls). No bald eagle nests are located within four miles of the proposed project.

MDIFW reviewed the proposed project and stated that there would be no significant adverse impact under the standards of Site Law and NRPA in the application submitted by Champlain Wind, LLC if these standards are met or exceeded as explicit permit conditions:

For the period of April 20th through October 15th over the life of the project, set the cut-in speed for all turbines to 5.0 meters per second each night starting at one-half hour before sunset to one-half hour after sunrise. Cut-in speeds are determined based on mean wind speeds measured at hub heights of a turbine over a 10-minute interval. Turbines would be feathered during these low wind periods to minimize risks of bat mortality.

The applicant has agreed to these operational control measures for the proposed project.

Exhibit 7D of the application contains a post-construction monitoring plan. As the turbines would be curtailed to minimize impacts to bats, the Department would not require post-construction mortality monitoring of the project. However, should the applicant choose to apply to the Department to modify the curtailment plan, the

Department strongly advises the applicant to consult with MDIFW prior to the start of a study for methodology review and approval.

- G. Fisheries. No fisheries impacts are anticipated from the proposed project.
- H. Intervenor position on wildlife issues. In his pre-filed testimony, intervenor David Corrigan testified that the applicant had failed to meet its burden of proof under Chapter 375: No Adverse Environmental Effect Standard of the Site Location Law. Mr. Corrigan testified that the United States Fish and Wildlife Service (USFWS) recommended that the applicant consider doing winter track surveys to determine the presence of Canada Lynx in and around the project area and they also recommended having discussions with biologists at the MDIFW who may have first-hand knowledge of the local Canada Lynx population. The applicant only did a desktop assessment to determine if there was high quality snowshoe hare habitat within the project area, which is the primary prey for Canada Lynx. Mr. Corrigan did not believe that the applicant met their burden of proof under Chapter 375 as it relates to the threatened Canada Lynx population.

In rebuttal testimony submitted by the applicant, the applicant testified that in Exhibit 7C-4 of the application, Stantec conducted a desktop assessment to identify potential habitat suitable for Canada Lynx. The methodology for the desk top assessment Stantec used was recommended by USFWS. Based on this assessment, no high or moderate-value hare habitat was present in the project area. The assessment did find 15 small patches of moderate value hare habitat and 8 small patches of low value hare habitat within the vicinity of the project, but none of those areas were within the project footprint. USFWS recommended that the applicant either conduct a desktop habitat assessment and/or conduct winter track surveys. The applicant determined that the desktop assessment was a more thorough approach than winter tracking. The applicant determined that the project would not result in habitat loss for the lynx. The project would include minimal road construction, with all roads posted to speeds less than 30 mph. The applicant thereby concludes that the proposed project should not adversely impact Canada Lynx or its habitat.

Mr. Corrigan testified at the public hearing that the applicant did several aerial surveys which showed bald eagle nests in close proximity to the project area (as close as 4.72 miles). The applicant also noted several instances of bald eagles being seen in and near the project area during their site surveys. Despite the high numbers of federally protected birds using the area, Mr. Corrigan concluded that the applicant offered no real evidence that the project would not have an unreasonable adverse effect on the residence and migratory populations of bald eagles or other raptors.

In rebuttal testimony submitted by the applicant, the applicant stated that they had consulted with both USFWS and the US Army Corps of Engineers (ACOE) in connection with the previously proposed larger 27-turbine project. In the review of the previous project USFWS had stated, "survey dated suggests that current use of the project area by migrating and resident bald eagles is lower than many proposed or

existing Maine wind projects.” The applicant developed all wildlife surveys in consultation with MDIFW and USFWS.

Mr. Corrigan testified that the applicant did not offer a solid plan to avoid undue adverse effects on bats. Mr. Corrigan noted that the applicants even objected to the curtailment plan presented by MDIFW.

In rebuttal testimony submitted by the applicant, they agreed to the conditions of curtailment stipulated by MDIFW, as described above.

Mr. Corrigan also submitted a list of questions regarding Canada Lynx and bald eagles to the Department for a response from MDIFW. In an email dated May 30, 2013 MDIFW submitted responses to Mr. Corrigan’s questions specifically regarding the management of the Canada Lynx habitat and previous consultation between MDIFW and the applicant.

The Department concludes the project would not result in an unreasonable impact on fisheries and wildlife or habitat protected by the NRPA provided turbine operation is curtailed as outlined above. If post-construction monitoring indicates an unreasonable impact on birds, bats and/or raptors, the Department, in conjunction with MDIFW, may require modified operation of the project, including the curtailment of turbines, as necessary.

8. HISTORIC SITES AND UNUSUAL NATURAL AREAS:

The Maine Historic Preservation Commission (MHPC) reviewed the proposed project and stated that it would have no effect upon any structure or site of historic, architectural, or archaeological significance as defined by the National Historic Preservation Act of 1966.

The Maine Natural Areas Program (MNAP) database does not contain any records documenting the existence of rare or unique botanical features on the project site and, as discussed in Finding 6, MDIFW did not identify any unusual wildlife habitats located on the project site. The applicant’s consultant surveyed the proposed project site and determined that four rare plant species were in the project area. They included populations of male fern, Orono sedge, large toothwort, and swamp fly-honeysuckle. MNAP worked with the project consultant on the development of avoidance and minimization plans for these four species. The applicant proposed to reduce the size of the turbine pad at Turbine 1 and to run underground electrical collector in the vicinity of Turbine 1; locate the express collector poles outside of any area determined to have a rare plant; and locate the O&M building away from any rare plant locations in order to avoid and minimize impacts to rare plants. MNAP worked with the applicant in order to provide the best methods of avoiding and minimizing any impacts to the rare plant communities.

Based on the information in the application, MHPC’s review and MNAP’s review, the Department finds that the proposed development would not have an unreasonably

adverse effect on the preservation of any historic sites or unusual natural areas either on or near the project site.

9. BUFFER STRIPS:

The applicant proposes four basic buffer types for the proposed project. The buffers for the proposed project would include no-disturbance buffers around roads and turbines, right-of-way (ROW) buffers, waterbody and stream buffers, and Inland Waterfowl and Wading Bird Habitat buffers. All buffer strips would be clearly marked prior to construction.

- A. Access Road, Crane Path and Turbine Buffers. The applicant proposes to maintain forested buffers along the access road and around the turbine pads. Those buffers provide both a visual screen and stormwater and phosphorus treatment. The stormwater and phosphorus treatment measures are more fully described in Finding 11. Most of the area of the turbine pads would be revegetated after construction is complete, providing additional buffering.
- B. ROW buffers. The collector line would require cutting to meet required safety standards. The applicant would flag all resources and their buffers in the field prior to any clearing. During clearing activities all methods to reduce ground disturbance, erosion and sedimentation would be employed.
- C. Waterbody and Stream Buffers. There are 12 streams within the collector line ROW. These streams would have the standard buffer of 25-feet wide, measured from the top of the bank of the stream. No poles are proposed to be located in the stream buffer area. During initial construction, any vegetation that must be removed would be done by hand-cutting or traveling or reaching into the buffer using low ground pressure mechanized harvesting equipment. Following construction, any disturbed areas would be graded to the original contour and stabilized with permanent seeding.
- D. Inland Waterfowl and Wading Bird Habitat (IWWH) Buffers. The proposed access road and collector line cross upland portions of one moderate-value mapped IWWH. During construction, the applicant proposes to only remove capable species. Topping of trees is the preferred method of vegetation maintenance unless the tree is dead or dying. No other vegetation would be removed. Removal of capable species would be by hand-cutting or with low ground pressure tree harvesting equipment. Where possible, the applicant would leave two to three snags per 500 linear feet of corridor to provide nesting habitat for waterfowl. Initial ROW clearing would be done during frozen conditions whenever practical. No clearing would take place between April 15 and July 15 in any calendar year, unless approved by the Department and MDIFW.
- E. Vegetation Management Plan (VMP). The applicant proposes to utilize a Post Construction Vegetation Plan, prepared by Stantec Consulting, for the Bowers Wind Project, dated August 2012, which includes routine maintenance along the ROW to prevent vegetation from getting too close to the conductor. This plan summarizes vegetation management maintenance methods and procedures that would be utilized

by the applicant for transmission line corridor and collector lines. This plan describes restrictive maintenance requirements for natural resources and significant wildlife habitats. The plans also include procedures for managing or removing osprey nests built on power line structures, describe a system for identifying restricted areas, and summarize training requirements for construction personnel.

The Department finds that the applicant has made adequate provision for buffer strips based on the post-construction VMP and provided that the buffers are clearly marked on the ground prior to construction, for all visual screening buffers, stream buffers and other resource buffers, and the stormwater buffers. Additionally, prior to operation, the applicant must record all deed restrictions for stormwater buffers and submit the recorded deeds along with plot plans to the Department within 60 days of recording.

10. SOILS:

The applicant submitted a Class L soil survey for the turbine and road areas and a Class B soil survey for the O&M building location. These surveys were prepared by a certified soils scientist and reviewed by staff from the Division of Environmental Assessment (DEA) of the BLWQ. DEA commented that the applicant must submit the geotechnical data for review and approval prior to construction. DEA also reviewed a blasting plan and commented that the applicant must submit a revised blasting plan for review and approval prior to construction. If a rock crusher is being utilized on site, the applicant must ensure that the crusher is licensed by the Department's Bureau of Air Quality and is being operated in accordance with that license. DEA also commented that they recommend that the applicant submit an evaluation of any potentially reactive rock types encountered in the proposed construction area.

The Department finds that, based on these reports and the blasting plan, and DEA's review, the soils on the project site present no limitations to the proposed project that cannot be overcome through standard engineering practices, provided that the geotechnical report and revised blasting plan are submitted to the Department for review and approval prior to construction, in addition to the evaluation of any potentially reactive rock types encountered in the proposed construction area.

11. STORMWATER MANAGEMENT:

The proposed project includes approximately 33.92 acres of impervious area and 33.92 acres of developed area. It lies within the watersheds of Mill Privilege Lake, Dipper Pond, Baskahegan Lake, and Pleasant Lake. The applicant submitted a stormwater management plan based on the Basic, Phosphorus and Flooding standards contained in Department Rules, Chapter 500. The proposed stormwater management system would consist of 22 meadow buffers and 59 forest buffers and an underdrained soil filter.

A. Basic Standards:

- (1) Erosion and Sedimentation Control: The applicant submitted an Erosion and Sedimentation Control Plan (Section 14 of the application) that is based on the

performance standards contained in Appendix A of Chapter 500 and the Best Management Practices outlined in the Maine Erosion and Sediment Control BMPs, which were developed by the Department. This plan and plan sheets containing erosion control details were reviewed by, and revised in response to the comments of, the Division of Land Resource Regulation (DLRR) of the BLWQ.

Erosion control details would be included on the final construction plans and the erosion control narrative would be included in the project specifications to be provided to the construction contractor. Given the size and nature of the project site, the applicant must retain the services of a third-party inspector in accordance with the Special Condition for Third Party Inspection Program, which is attached to this Order. Prior the start of construction, the applicant must conduct a pre-construction meeting to discuss the construction schedule and the erosion and sediment control plan with the appropriate parties. This meeting must be attended by the applicant's representative, Department staff, the design engineer, the contractor, and the third-party inspector.

- (2) Inspection and Maintenance: The applicant submitted a maintenance plan that addresses both short and long-term maintenance requirements. This plan was reviewed by, and revised in response to the comments of, DLRR. The maintenance plan is based on the standards contained in Appendix B of Chapter 500. The applicant would be responsible for the maintenance of all common facilities including the stormwater management system.
- (3) Housekeeping: The proposed project would comply with the performance standards outlined in Appendix C of Chapter 500.

The following minor adjustments may be made during construction without advance notice to the Department provided they do not impact protected resources and are reflected in the final as-built drawings: changes that result in a reduction in impact and/or footprint (such as a reduction in clearing or impervious area, and elimination of structures or a reduction in structure size); location of a structure within the identified clearing limits; the type of foundations used; additional drainage culverts, level spreaders or rock sandwiches; changes to culvert size or type provided that the culvert does not convey a regulated stream and that the hydraulic capacity of the substitute culvert is greater than or equal to that of the original; and changes of up to 10 feet in the base elevation of a turbine vertically as long as the change in elevation does not result in increased visual impacts or changes to the stormwater management plan.

Additionally, the following minor adjustments may be made upon prior approval by the third-party inspector or Department staff, and do not require a revision or modification of the permit but must be reflected in the final as-built drawings: minor changes that do not increase overall project impacts or project footprint and which do not impact any protected resources as long as any new areas of impact have been surveyed for environmental resources and do not affect other landowners. These

changes include adjustments to horizontal or vertical road geometry that do not result in changes to the stormwater management plan; a shift of up to 100 feet in a turbine clearing area; and adjustments to culvert locations based on field topography.

Based on DLRR's review of the erosion and sedimentation control plan and the maintenance plan, the Department finds that the proposed project would meet the Basic Standards contained in Chapter 500(4)(A) provided the applicant retains a third-party inspector and conducts a pre-construction meeting as described above.

B. Phosphorus Standards:

The applicant's stormwater management plan includes general treatment measures that would mitigate for the increased frequency and duration of channel erosive flows due to runoff from smaller storms, provide for effective treatment of pollutants in stormwater, and mitigate potential temperature impacts. This mitigation is being achieved by using Best Management Practices (BMPs) that will control runoff from no less than 95% of the impervious area and no less than 80% of the developed area for the O&M building. The proposed access road and turbine pads meets the definition of "a linear portion of a project" in Chapter 500 and the applicant is proposing to control runoff volume from no less than 75% of the impervious area and no less than 50% of the developed area.

The forested and meadow buffers would be protected from alteration through the execution of a deed restriction. The applicant proposes to use the deed restriction language contained in Appendix G of Chapter 500 and submitted a draft deed description that meets Department standards.

Prior to operation, the applicant must record all deed restriction for stormwater buffers and submit the recorded deeds to the Department within 60 days of recording.

Because of the proposed project's location in the watersheds of Mill Privilege Lake, Dipper Pond, Baskahegan Lake and Pleasant Lake, stormwater runoff from the project site would be treated to meet the phosphorus standard outlined in Chapter 500(4)(C). The applicant's phosphorus control plan was developed using methodology developed by the Department and outlined in "Phosphorus Control in Lake Watersheds: A Technical Guide for Evaluating New Development". For this project, the lakes have the following Predicted Phosphorus Export and Permitted Phosphorus Export values:

Lake	Town	Predicted Phosphorus Export (Lbs/Phos/Year)	Permitted Phosphorus Export (Lbs/Phos/Year)
Mill Privilege	Carroll Plt.	3.50	3.66
Dipper Pond	Carroll Plt.	0.30	0.30
Pleasant Lake	Carroll Plt.	4.57	4.65
Pleasant Lake	Kossuth Twp.	0.83	1.47
Baskahegan Lake	Carroll Plt.	14.72	14.74

Baskahegan Lake	Kossuth Twp.	2.35	2.43
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The applicant is proposing to remove phosphorus by using buffers and an underdrained soil filter. The proposed stormwater treatment would be able to reduce the export of phosphorus in the stormwater runoff below the maximum Permitted Phosphorus Export for the site.

The stormwater management system proposed by the applicant was reviewed by, and revised in response to comments from, DLRR. After a final review, DLRR commented that the proposed stormwater management system is designed in accordance with the Phosphorus Standard contained in Chapter 500(4)(C) provided that the design engineer or a third-party engineer oversees the construction of the stormwater management structures according to the details and notes specified on the approved plans.

Within 30 days of completion of the entire system or at least once per year, the applicant must submit a log of inspection reports detailing the items inspected, photos and the dates of each inspection to the BLWQ for review.

Based on the stormwater system's design and DLRR's review, the Department finds that the applicant has made adequate provision to ensure that the proposed project would meet the Phosphorus Standard contained in Chapter 500(4)(C).

C. Flooding Standard:

The applicant is proposing to utilize a stormwater management system based on estimates of pre- and post-development stormwater runoff flows obtained by using Hydrocad, a stormwater modeling software that utilizes the methodologies outlined in Technical Releases #55 and #20, U.S.D.A., Soil Conservation Service and detains stormwater from 24-hour storms of 2-, 10-, and 25-year frequency. The post-development peak flow from the site would not exceed the pre-development peak flow from the site and the peak flow of the receiving waters would not be increased as a result of stormwater runoff from the development site.

DLRR commented that the proposed system is designed in accordance with the Flooding Standard contained in Chapter 500(4)(E).

Based on the system's design and DLRR's review, the Department finds that the applicant has made adequate provision to ensure that the proposed project would meet the Flooding Standard contained in Chapter 500(4)(E) for peak flow from the project site, and channel limits and runoff areas.

The Department further finds that the proposed project would meet the Chapter 500 standards for: (1) easements and covenants; (2) management of stormwater discharges; (3) discharge to freshwater or coastal wetlands; (4) threatened or endangered species; and (5) discharges to public storm sewer systems.

12. GROUNDWATER:

The project site is not located over a mapped sand and gravel aquifer. The applicant is proposing a single well to serve the domestic water needs at the O&M building, as described in Finding 13. The applicant submitted a Post-Construction Vegetation Management Plan for the project site, dated August 2012, that was reviewed by DEA. DEA recommended the plan be revised to add the requirement that the express collector line is reviewed prior to any herbicide application in order to determine whether any new wells or water supplies have been established that would require marking additional buffer areas.

The applicant submitted a Spill Prevention, Control and Countermeasures (SPCC) plan detailing steps to be taken to prevent groundwater contamination during construction, however if the contractor is required to provide a SPCC the plan must be submitted to the Department for review and approval.

The Department finds that the proposed project would not have an unreasonable adverse effect on groundwater quality provided the applicant submits the contractor or subcontractor SPCC plans to the Department for review as outlined above. The Department may require changes to any SPCC plan or handling or storage procedure based on review of the SPCC plans or inspection of the site. The Department further finds that the proposed project would not have an unreasonable adverse effect on groundwater quality provided the applicant submits a revised Post-Construction Vegetation Management Plan with the added requirement that the express collector line be reviewed prior to any herbicide application in order to determine whether any new wells or water supplies have been established that would require marking additional buffer areas prior to operation of the facility, and submits any revised SPCC plan to the Department for review and approval.

13. WATER SUPPLY:

When completed, the proposed project is anticipated to use less than 300 gallons of water per day for the O&M building. The applicant submitted an assessment of the groundwater supplies available on the project site. This assessment was prepared by a well driller and was reviewed by the DEA.

The Department finds that the applicant has made adequate provision for securing and maintaining a sufficient and healthful water supply.

14. WASTEWATER DISPOSAL:

When completed, the proposed project is anticipated to discharge less than 300 gallons of wastewater per day for the O&M building. Wastewater would be disposed of by an individual subsurface wastewater disposal system. The applicant submitted an HHE-200 form for the proposed wastewater disposal system. This information was reviewed by DEA.

Based on DEA's comments, the Department finds that the proposed wastewater disposal system would be built on suitable soil types.

15. SOLID WASTE:

When completed, the proposed project is anticipated to generate minor amounts of general solid waste per year. All general solid wastes from the proposed project would be disposed of at Penobscot Energy Recovery Center, which is currently in substantial compliance with the Maine Solid Waste Management Rules.

All marketable timber would be removed from the project site. A single one-acre stump dump may be located on the project site. All stumps and grubblings generated would be disposed of on site, either chipped or burned, with the remainder to be worked into the soil, in compliance with the Maine Solid Waste Management Rules.

The proposed project would generate approximately 400 cubic yards of construction debris and demolition debris. All construction and demolition debris generated would be disposed of at Juniper Ridge, which is currently in substantial compliance with the Maine Solid Waste Management Rules.

Based on the above information, the Department finds that the applicant has made adequate provision for solid waste disposal.

16. FLOODING:

A portion (0.5 mile) of the electrical collector is located within the 100-year flood plain of a river, stream or brook. Four poles of the collector line would be located in the floodplain of Lindsey Brook and three poles of the collector line would be located in the floodplain of Tolman Brook. The applicant would alter 7.5 acres of floodplain forest to scrub-shrub vegetation. The applicant is not proposing to alter the topography or existing drainage ways.

The Department finds that the proposed project is unlikely to cause or increase flooding or cause an unreasonable flood hazard to any structure.

17. WETLAND IMPACTS:

The applicant retained Stantec to locate wetlands and waterbody resources on the proposed project site. The results of the applicant's surveys for wetlands and waterbodies which may be affected by the turbine sites, access roads and collection lines are summarized as follows:

- 257 wetlands were identified along the proposed access roads and the electrical collector line.
- 81 jurisdictional streams were identified, including 47 perennial streams.
- 50 vernal pools were identified, including 1 significant vernal pool, none of which would be impacted, as discussed in Finding 7.

- 67 wetlands were identified that meet the definition of wetlands of special significance.

The applicant is not proposing to fill any wetlands. The proposed project would include 2.5 acres of wetland clearing.

The Department's Wetlands and Waterbodies Protection Rules, Chapter 310, provide the framework for the Department's analysis of whether a proposed project's impacts to protected resources will be unreasonable, as that term is used in the NRPA, and whether the project meets the NRPA licensing criteria. A proposed project's impacts may be found to be unreasonable if the project will cause a loss in wetland area, functions and values and for which there is a practicable alternative that will be less damaging to the environment. For this aspect of the Department's review an applicant must provide an analysis of alternatives to the project.

- Avoidance. The applicant submitted an alternatives analysis for the proposed project completed by Stantec and dated October 1, 2012. The applicant designed the project road and turbine pad layout in order to minimize impacts to wetlands while meeting the project purpose. The applicant used existing roads as much as possible in order to minimize new impacts to wetlands. The applicant was able to avoid permanent wetland fill in wetland areas.
- Minimal Alteration. The amount of wetland to be altered must be kept to the minimum amount necessary for meeting the overall purpose of the project. As stated above, the applicant was able to design the project so that there is no proposed permanent fill in wetland areas. The applicant would allow cleared areas to revegetate.
- Compensation. Compensation is required to achieve the goal of no net loss of wetland functions and values. The applicant is not required to compensate due to the fact that the proposed wetland clearing would not result in lost functions and values.

The Department finds that the applicant has avoided and minimized wetland and waterbody impacts to the greatest extent practicable, and that the proposed project represents the least environmentally damaging alternative that meets the overall purpose of the project. The proposed project would not result in an unreasonable impact to freshwater wetlands

18. SHADOW FLICKER:

In accordance with 38 M.R.S.A. §484(10), an applicant must demonstrate that the proposed wind energy development has been designed to avoid unreasonable adverse shadow flicker effects. Shadow flicker caused by wind turbines is defined as alternating changes in light intensity caused by the moving blade casting shadows on the ground and stationary objects. Shadow flicker is the sun seen through a rotating wind turbine rotor. Shadow flicker does not occur when the sun is obscured by clouds or fog or when the turbine is not rotating. The spatial relationships between a wind turbine and receptor, as

well as wind direction which cause the turbines to rotate, are key factors relating to shadow flicker occurrence and duration. At distances of greater than 1,000 feet between wind turbines and receptors, shadow flicker usually occurs when the rotor plane is in-line with the sun and receptor (as seen from the receptor), the cast shadows would be very narrow (blade thickness) and of low intensity, and the shadows would move quickly past the stationary receptor. When the rotor plane is perpendicular to the sun-receptor “view line,” the cast shadow of the blades would move within a circle equal to the turbine rotor diameter.

The applicant submitted a shadow flicker analysis with its application based on the Vestas 112 MW turbines. The applicant used WindPRO, a wind modeling software program, to model expected shadow flicker effects on adjacent properties from the 16 proposed turbine locations. The applicant assumed a worst case scenario, that all receptors have a direct in-line view of the incoming shadow flicker sunlight, and did not take into account any existing vegetative buffers.

The Department generally recommends that an applicant conduct a shadow flicker model out to a distance of 1,000 feet or greater from a residential structure, and the applicant’s model did so. The applicant modeled 54 receptors. All modeled receptors do not show any impact of shadow flicker; the modeling showed shadow flicker only on the project parcel. Maine currently has no numerical regulatory limits on exposure to shadow flicker; however, the industry commonly uses 30 hours per year as a limit to reduce nuisance complaints. No parcels outside the project parcel would receive any shadow flicker. Based on the WindPRO analysis, no properties outside the project parcel have been calculated to receive flicker in excess of 30 hours per year.

The Department finds the shadow flicker modeling conducted by the applicant is credible. Based upon the proposed project’s location and design, the distance to the nearest shadow flicker receptor, and results of the shadow flicker analysis, the Department finds that the proposed project, in accordance with 38 M.R.S.A. §484(10), would not unreasonably cause shadow flicker to occur over adjacent properties which would not be subject to an easement allowing for shadow flicker.

19. PUBLIC SAFETY:

The proposed project would use either Vestas V-112 3.0-megawatt (MW) wind turbine generators or Siemens 3.0 wind turbine generators. The Vestas V-112 conformity with International Electrotechnical Commission standards has been certified by Det Norske Veritas and included in the applications in Appendix 27-2 dated March 19, 2010. The Siemens 3.0 certification is in progress.

The Department recognizes that locating wind turbines a safe distance away from any occupied structures, public roads or other public use areas is extremely important. In establishing a recommended safety setback, the Department considered industry standards for wind energy production in climates similar to Maine, as well as the guidelines recommended by certifying agencies such as Det Norske Veritas. Based on these sources, the Department requires that all wind turbines be set back from the

property line, occupied structures or public areas a minimum of 1.5 times the maximum blade height for the wind turbine. Based on the Department setback specifications, the minimum setback distance to the nearest property line should be 688.5 feet for the Vestas turbines, the taller of the turbine options. A review of the application indicates that all turbines are proposed to be setback 1490 feet from the nearest non-participating landowner.

In the Fourth Procedural Order, the Department requested additional information from the applicant on fire safety issues. The Department received several comments from the public regarding fire safety of wind turbines. The applicant supplied additional evidence regarding the design of the turbines, the constant monitoring of the turbine conditions, operation and maintenance procedures used to reduce fire risk, and fire protection plan and emergency communications protocols. The Department reviewed these materials under Site Law, and concluded that the proposed project would pose a minimal adverse impact to the health, safety and general welfare of the people.

The Department finds that the applicant provided documentation for the Vestas turbine of industry standard compliance that the wind generation equipment has been designed to conform to applicable industry safety standards, and has demonstrated that the proposed project would be sited such that it would not present an unreasonable safety hazard to adjacent properties or adjacent property uses. The Department further finds that the applicant has submitted sufficient evidence which demonstrates that the proposed project would be sited with appropriate safety setbacks from adjacent properties and existing uses provided that prior to construction, the applicant submits the required certification to the Department for the Siemens 3.0 turbine if the proposed project utilizes that type of turbine.

20. DECOMMISSIONING PLAN:

In order to facilitate and ensure appropriate removal of wind generation equipment when it reaches the end of its useful life or if the applicant ceases operation of turbines, the Department requires an applicant to demonstrate, in the form of a decommissioning plan, the means by which decommissioning would be accomplished. The applicant submitted a decommissioning plan which includes a description of the trigger for implementing the decommissioning, a description of work required, an estimate of decommissioning costs, a schedule for contributions to its decommissioning fund, and a demonstration of financial assurance.

A. Trigger for implementation of decommissioning. The proposed wind turbine generators are designed and certified by independent agencies for a minimum expected operational life of 20 years, however other factors may trigger the requirement for decommissioning before 20 years have passed. The applicant's proposal is that the wind generation facility, or any single turbine, would be decommissioned when it ceases to generate electricity for a continuous period of twelve months. In the case of a force majeure event which causes the project, or any single turbine, to fail to generate electricity for 12 months, the applicant proposes that it be allowed to submit to the Department for review and approval reasonable

evidence in support of a request that they not be required to decommission the project at that time.

Decommissioning would begin if twelve months of no generation occurs. An exception to the requirement would be allowed for a force majeure event, however the Department finds that the applicant's proposed definition of "force majeure" is exceedingly broad, and instead the definition would be as follows: The Department considers a force majeure to mean fire, earthquake, flood, tornado, or other acts of God and natural disasters; and war, civil strife or other similar violence. In the event of a force majeure event which results in the absence of electrical generation by one or more turbines for twelve months, by the end of the twelfth month of non-operation the applicant shall demonstrate to the Department that the project, or any single turbine, would be substantially operational and producing electricity within twenty-four months of the force majeure event. If such a demonstration is not made to the Department's satisfaction, the decommissioning must be initiated eighteen months after the force majeure event.

- B. Description of work. The description of work contained in the application outlines the applicant's proposal for the manner in which the turbines and other components of the proposed project would be dismantled and removed from the site. Subsurface components would be removed to a minimum of 24 inches below grade, generating facilities would be removed and salvaged and disturbed areas would be re-seeded. At the time of decommissioning, the applicant must submit a plan for continued beneficial use of any wind energy development component proposed to be left on-site to the Department for review and approval.
- C. Financial Assurance. The applicant estimates that the current cost for decommissioning the project would be \$616,020. The applicant proposes that financial assurance for the decommissioning costs would be in the form of (i) performance bond, (ii) surety bond, or (iii) letter of credit, or other acceptable form of financial assurance for the total cost of decommissioning. The applicant proposes to have the financial assurance mechanism in place prior to construction and to re-evaluate the decommissioning cost at the end of years ten and fifteen. Proof of acceptable financial assurance must be submitted to the Department prior to the start of construction.
- D. Notification. The applicant must notify the Department within two business days of any catastrophic turbine failure. Catastrophic turbine failure shall include the voluntary or involuntary shut-down of a turbine due to a fire event, structural failure or accidental event resulting in a turbine collapse, a force majeure event, or any mechanical breakdown the applicant anticipates would result in a turbine being off-line for a period greater than six months.

Based on the applicants' proposal outlined above, the Department finds that the applicant's proposal would adequately provide for decommissioning, provided the applicant implements the decommissioning plan as proposed and submits proof of financial assurance for the decommissioning costs as set forth above.

21. TANGIBLE BENEFITS:

In its application the applicant described tangible benefits that the project would provide to the State of Maine and to host communities, including economic benefits and environmental benefits.

- A. Job Creation. The applicant states that its proposal would benefit the host communities and surrounding areas through construction-related employment opportunities. The applicant has indicated that it would hire local firms and individuals whenever possible for construction, operations, and maintenance positions related to the project. Jobs created could include tree clearing jobs, and jobs in businesses that support construction such as lodging, restaurant, fuel and concrete supply. The applicant estimates the project would create approximately 100 full-time jobs during construction and 6 to 9 permanent jobs for operation and maintenance of the facility after construction.
- B. Generation of Wind Energy. The applicant estimates that the proposed project would provide an approximate average output of 157,000 megawatt-hours per year, which is enough to power over 25,000 homes.
- C. Property Tax Payments. Champlain estimates that the Project would result in estimated average annual tax payments of approximately \$15,933 to Kossuth Township, (net value after adjustment through a Credit Enhancement Agreement) and in estimated average annual tax payments of \$287,358 to Carroll Plantation.
- D. Community Benefits Agreement. The applicant has provided proposed Community Benefit Agreements with Carroll Plantation, Kossuth Township, and Washington County. The communities may use the funds at their discretion for public purposes including lowering tax rates or investment in municipal assets and/or services. Annual payments made to with Carroll Plantation, Kossuth Township, and Washington County as part of the Community Benefits Agreements total \$8,875 per turbine per year for 20 years. The applicant must submit confirmation of the receipt of funds by the communities and county to the Department annually for review.
- E. Other tangible benefits. Based on from area stakeholders, the applicant has also agreed to provide \$300,000 to a Watershed Recreational Tourism and Conservation Fund to benefit the watershed area from Bowers Mountain extending south to Grand Lake Stream. This fund would be hosted by the Sunrise County Economic Council. Also, the applicant is evaluating the preliminary mapping of a “Ride the Wind” snowmobile trail that would link all the wind farms in the State, and the proposed project would provide \$25,000 in seed money to finalize the snowmobile routes, create marketing materials and promote the trail.

Based on the proposed employment opportunities, energy generation, property tax revenue and the Community Benefits Agreements proposed by the applicant, the Department finds that the applicant has demonstrated that the proposed project would provide significant tangible benefits to the State, host communities and surrounding area

pursuant to 35-A M.R.S.A. §3454, provided that annual payments are made to Carroll Plantation, Kossuth Township, and Washington County as described above.

22. MAINE LAND USE PLANNING COMMISSION CERTIFICATION:

The proposed project was reviewed by the Land Use Planning Commission (LUPC) to determine if the project is an allowed use in the subdistricts affected and if the project meets the Commission's land use standards applicable to the project that are not considered in the Department's review. The LUPC standards for this project include land division history, vehicular circulation, access and parking, lighting, minimal dimensional requirements, vegetation clearing, signs, and general criteria for approval.

In a Commission Determination, dated January 4, 2013 and signed by LUPC Director Nicholas Livesay, the LUPC certified that the project is an allowed use in the subdistricts affected and complies with LUPC standards, subject to conditions. The conditions, detailed by the Commission Determination, may be enforced by either the LUPC or the Department.

BASED on the above findings of fact, and subject to the conditions listed below, the Department makes the following conclusions pursuant to 38 M.R.S.A. Sections 480-A et seq. and Section 401 of the Federal Water Pollution Control Act:

- A. The proposed activity would not interfere with existing navigational uses, but the proposed activity would interfere with existing recreational uses and significantly compromise views from a SRSNS and would have an unreasonable adverse effect on the scenic character and existing uses related to scenic character of the resource, the proposed activity would unreasonably interfere with existing scenic and aesthetic uses.
- B. The proposed activity would not cause unreasonable erosion of soil or sediment.
- C. The proposed activity would not unreasonably inhibit the natural transfer of soil from the terrestrial to the marine or freshwater environment.
- D. The proposed activity would not unreasonably harm any significant wildlife habitat, freshwater wetland plant habitat, threatened or endangered plant habitat, aquatic habitat, travel corridor, freshwater, estuarine, or marine fisheries or other aquatic life, provided the applicant was to implement turbine curtailment and provide a final mortality monitoring methodology to the Department as described in Finding 7, and all buffers were marked prior to construction as described in Finding 9.
- E. The proposed activity would not unreasonably interfere with the natural flow of any surface or subsurface waters.
- F. The proposed activity would not violate any state water quality law including those governing the classifications of the State's waters.

- G. The proposed activity would not unreasonably cause or increase the flooding of the alteration area or adjacent properties.
- H. The proposed activity is not on or adjacent to a sand dune.
- I. The proposed activity is not on an outstanding river segment as noted in 38 M.R.S.A. Section 480-P.

BASED on the above findings of fact, and subject to the conditions listed below, the Department makes the following conclusions pursuant to 35-A M.R.S.A. §§ 3401-3457, and 38 M.R.S.A. Sections 481 et seq.:

- A. The applicant has provided adequate evidence of financial capacity and technical ability to develop the project in a manner consistent with state environmental standards provided that the applicant meets the requirements of Finding 3.
- B. The proposed activity would significantly compromise views from a SRSNS and would have an unreasonable adverse effect on the scenic character and existing uses related to scenic character of the resource. The applicant has made adequate provisions for air quality, water quality, the control of noise and other natural resources in the municipality or in neighboring municipalities provided that the applicant was to implement the post-construction noise monitoring program, and were to investigate all noise complaints as described in Finding 5; the applicant were to install FAA-approved radar-activated lighting prior to the start of construction as described in Finding 6; the applicant were to implement turbine curtailment and provide a final mortality monitoring methodology to the Department as described in Finding 7; and all buffers were marked prior to construction as described in Finding 9.
- C. The proposed development would be built on soil types which are suitable to the nature of the undertaking and would not cause unreasonable erosion of soil or sediment nor inhibit the natural transfer of soil, provided that the applicant meets the requirements of Finding 10.
- D. The proposed development meets the standards for stormwater management in Section 420-D and the standard for erosion and sedimentation control in Section 420-C provided that the applicant meets the requirements of Finding 11.
- E. The proposed development would not pose an unreasonable risk that a discharge to a significant groundwater aquifer would occur provided that the applicant meets the requirements of Finding 12.
- F. The applicant has made adequate provision of utilities, including water supplies, sewerage facilities and solid waste disposal required for the development and the development would not have an unreasonable adverse effect on the existing or proposed utilities in the municipality or area served by those services.

- G. The activity would not unreasonably cause or increase the flooding of the alteration area or adjacent properties nor create an unreasonable flood hazard to any structure.
- H. The proposed development would not unreasonably cause shadow flicker effects to occur over adjacent properties.
- I. The activity would not present an unreasonable safety hazard to adjacent properties or adjacent property uses.
- J. The applicant has made adequate provisions to achieve decommissioning of the wind power facility provided the decommissioning plan is implemented as described in Finding 20 and financial assurance of funds for decommissioning is demonstrated as set forth in Finding 20.

- K. The activity would provide significant tangible benefits to the host communities and surrounding area, provided that the applicant implements the Community Benefit Agreement as discussed in Finding 21.

THEREFORE, the Department DENIES the application of CHAMPLAIN WIND, LLC to construct a 16-turbine, grid-scale, wind energy development as described in Finding 1.

DONE AND DATED IN AUGUSTA, MAINE, THIS 5th DAY of August, 2013.

DEPARTMENT OF ENVIRONMENTAL PROTECTION

BY: Patricia W. Aho
Patricia W. Aho, Commissioner



PLEASE NOTE THE ATTACHED SHEET FOR GUIDANCE ON APPEAL PROCEDURES

JD/L#25800ANBNCN/ATS#75284/75285/76298



DEP INFORMATION SHEET

Appealing a Department Licensing Decision

Dated: March 2012

Contact: (207) 287-3901

SUMMARY

There are two methods available to an aggrieved person seeking to appeal a licensing decision made by the Department of Environmental Protection's ("DEP") Commissioner: (1) in an administrative process before the Board of Environmental Protection ("Board"); or (2) in a judicial process before Maine's Superior Court. An aggrieved person seeking review of a licensing decision over which the Board had original jurisdiction may seek judicial review in Maine's Superior Court.

A judicial appeal of final action by the Commissioner or the Board regarding an application for an expedited wind energy development (35-A M.R.S.A. § 3451(4)) or a general permit for an offshore wind energy demonstration project (38 M.R.S.A. § 480-HH(1)) or a general permit for a tidal energy demonstration project (38 M.R.S.A. § 636-A) must be taken to the Supreme Judicial Court sitting as the Law Court.

This INFORMATION SHEET, in conjunction with a review of the statutory and regulatory provisions referred to herein, can help a person to understand his or her rights and obligations in filing an administrative or judicial appeal.

I. ADMINISTRATIVE APPEALS TO THE BOARD

LEGAL REFERENCES

The laws concerning the DEP's *Organization and Powers*, 38 M.R.S.A. §§ 341-D(4) & 346, the *Maine Administrative Procedure Act*, 5 M.R.S.A. § 11001, and the DEP's *Rules Concerning the Processing of Applications and Other Administrative Matters* ("Chapter 2"), 06-096 CMR 2 (April 1, 2003).

HOW LONG YOU HAVE TO SUBMIT AN APPEAL TO THE BOARD

The Board must receive a written appeal within 30 days of the date on which the Commissioner's decision was filed with the Board. Appeals filed after 30 calendar days of the date on which the Commissioner's decision was filed with the Board will be rejected.

HOW TO SUBMIT AN APPEAL TO THE BOARD

Signed original appeal documents must be sent to: Chair, Board of Environmental Protection, c/o Department of Environmental Protection, 17 State House Station, Augusta, ME 04333-0017; faxes are acceptable for purposes of meeting the deadline when followed by the Board's receipt of mailed original documents within five (5) working days. Receipt on a particular day must be by 5:00 PM at DEP's offices in Augusta; materials received after 5:00 PM are not considered received until the following day. The person appealing a licensing decision must also send the DEP's Commissioner a copy of the appeal documents and if the person appealing is not the applicant in the license proceeding at issue the applicant must also be sent a copy of the appeal documents. All of the information listed in the next section must be submitted at the time the appeal is filed. Only the extraordinary circumstances described at the end of that section will justify evidence not in the DEP's record at the time of decision being added to the record for consideration by the Board as part of an appeal.

WHAT YOUR APPEAL PAPERWORK MUST CONTAIN

Appeal materials must contain the following information at the time submitted:

1. *Aggrieved Status.* The appeal must explain how the person filing the appeal has standing to maintain an appeal. This requires an explanation of how the person filing the appeal may suffer a particularized injury as a result of the Commissioner's decision.
2. *The findings, conclusions or conditions objected to or believed to be in error.* Specific references and facts regarding the appellant's issues with the decision must be provided in the notice of appeal.
3. *The basis of the objections or challenge.* If possible, specific regulations, statutes or other facts should be referenced. This may include citing omissions of relevant requirements, and errors believed to have been made in interpretations, conclusions, and relevant requirements.
4. *The remedy sought.* This can range from reversal of the Commissioner's decision on the license or permit to changes in specific permit conditions.
5. *All the matters to be contested.* The Board will limit its consideration to those arguments specifically raised in the written notice of appeal.
6. *Request for hearing.* The Board will hear presentations on appeals at its regularly scheduled meetings, unless a public hearing on the appeal is requested and granted. A request for public hearing on an appeal must be filed as part of the notice of appeal.
7. *New or additional evidence to be offered.* The Board may allow new or additional evidence, referred to as supplemental evidence, to be considered by the Board in an appeal only when the evidence is relevant and material and that the person seeking to add information to the record can show due diligence in bringing the evidence to the DEP's attention at the earliest possible time in the licensing process or that the evidence itself is newly discovered and could not have been presented earlier in the process. Specific requirements for additional evidence are found in Chapter 2.

OTHER CONSIDERATIONS IN APPEALING A DECISION TO THE BOARD

1. *Be familiar with all relevant material in the DEP record.* A license application file is public information, subject to any applicable statutory exceptions, made easily accessible by DEP. Upon request, the DEP will make the material available during normal working hours, provide space to review the file, and provide opportunity for photocopying materials. There is a charge for copies or copying services.
2. *Be familiar with the regulations and laws under which the application was processed, and the procedural rules governing your appeal.* DEP staff will provide this information on request and answer questions regarding applicable requirements.
3. *The filing of an appeal does not operate as a stay to any decision.* If a license has been granted and it has been appealed the license normally remains in effect pending the processing of the appeal. A license holder may proceed with a project pending the outcome of an appeal but the license holder runs the risk of the decision being reversed or modified as a result of the appeal.

WHAT TO EXPECT ONCE YOU FILE A TIMELY APPEAL WITH THE BOARD

The Board will formally acknowledge receipt of an appeal, including the name of the DEP project manager assigned to the specific appeal. The notice of appeal, any materials accepted by the Board Chair as supplementary evidence, and any materials submitted in response to the appeal will be sent to Board members with a recommendation from DEP staff. Persons filing appeals and interested persons are notified in advance of the date set for Board consideration of an appeal or request for public hearing. With or without holding a public hearing, the Board may affirm, amend, or reverse a Commissioner decision or remand the matter to the Commissioner for further proceedings. The Board will notify the appellant, a license holder, and interested persons of its decision.

II. JUDICIAL APPEALS

Maine law generally allows aggrieved persons to appeal final Commissioner or Board licensing decisions to Maine's Superior Court, see 38 M.R.S.A. § 346(1); 06-096 CMR 2; 5 M.R.S.A. § 11001; & M.R. Civ. P 80C. A party's appeal must be filed with the Superior Court within 30 days of receipt of notice of the Board's or the Commissioner's decision. For any other person, an appeal must be filed within 40 days of the date the decision was rendered. Failure to file a timely appeal will result in the Board's or the Commissioner's decision becoming final.

An appeal to court of a license decision regarding an expedited wind energy development, a general permit for an offshore wind energy demonstration project, or a general permit for a tidal energy demonstration project may only be taken directly to the Maine Supreme Judicial Court. See 38 M.R.S.A. § 346(4).

Maine's Administrative Procedure Act, DEP statutes governing a particular matter, and the Maine Rules of Civil Procedure must be consulted for the substantive and procedural details applicable to judicial appeals.

ADDITIONAL INFORMATION

If you have questions or need additional information on the appeal process, for administrative appeals contact the Board's Executive Analyst at (207) 287-2452 or for judicial appeals contact the court clerk's office in which your appeal will be filed.

Note: The DEP provides this INFORMATION SHEET for general guidance only; it is not intended for use as a legal reference. Maine law governs an appellant's rights.



STATE OF MAINE
DEPARTMENT OF ENVIRONMENTAL PROTECTION
17 STATE HOUSE STATION AUGUSTA, MAINE 04333-0017

BOARD ORDER

IN THE MATTER OF

CHAMPLAIN WIND, LLC	) SITE LOCATION OF DEVELOPMENT ACT
Kossuth Township, Washington County	) NATURAL RESOURCES PROTECTION ACT
Carroll Plantation, Penobscot County)
BOWERS WIND PROJECT	) WATER QUALITY CERTIFICATION
L-25800-24-D-Z (Denial of appeal)	) SIGNIFICANT WILDLIFE HABITAT
L-25800-TE-E-Z (Denial of appeal)	) FINDINGS OF FACT AND ORDER
L-25800-IW-F-Z (Denial of appeal)	) ON APPEAL

Pursuant to the provisions of 38 M.R.S. §§ 341-D (4), 480-A et seq; & 481 et seq; 35-A M.R.S. §§ 3401-3459; and Section 401 of the Federal Water Pollution Control Act, the Board of Environmental Protection (Board) has considered the appeals of CHAMPLAIN WIND, LLC and DOUGLAS E. HUMPHREY AND BOWERS MOUNTAIN, LLC (collectively "appellants"), the material filed in support of the appeals, the responses to the appeals, and other related materials on file and FINDS THE FOLLOWING FACTS:

1. PROCEDURAL HISTORY:

On October 3, 2012, Champlain Wind, LLC submitted a Site Location of Development Act (Site Law) application and a Natural Resources Protection Act (NRPA) application to the Department, proposing the construction of a wind energy development with 16 turbines. The project site is located in Carroll Plantation and Kossuth Township.

The Department held a public hearing on the application on April 30 and May 1, 2013 in the Town of Lee. As part of the public hearing process, the Department granted intervenor status to the Conservation Law Foundation (CLF), Maine Renewable Energy Associates (MREA), the Partnership for the Preservation of the Downeast Lakes Watershed (PPDLW), and David Corrigan. CLF and MREA were consolidated into one intervenor group. All intervenors participated in the public hearing process.

A draft Department order was issued on July 24, 2013, for public comment. After consideration of the comments received, the Department denied the application in Department Order #L-25800-24-A-N/L-25800-TE-B-N/L-25800-IW-C-N, dated August 5, 2013. The Department denied the application based on its finding that the proposed project would result in an unreasonable adverse effect on the scenic character or existing uses related to the scenic character of nine scenic resources of state or national significance (SRSNS).

Two timely appeals to the Board were filed on September 4, 2013 by the applicant, Champlain Wind, LLC, and the owners of the property on which the proposed project would

be located, Douglas E. Humphrey and Bowers Mountain, LLC. The appellants requested that the Board reverse the Department's denial, find that the project meets the scenic impact standards, and approve the project. The Department received responses to the appeals from two of the intervenors, PPDLW and MREA/CLF. The Department received numerous other responses to the appeal, both supporting and in opposition to the project.

2. STANDING:

Champlain Wind, LLC qualifies as an aggrieved person, as defined in Chapter 2, § 1(B) of the Department's Rules, because its Site Law and NRPA applications to develop the wind energy development were denied.

Douglas E. Humphrey and Bowers Mountain, LLC are also aggrieved, because they own the land on which the proposed project was to be constructed.

The Board finds that both appellants, Champlain Wind, LLC and Douglas E. Humphrey and Bowers Mountain, LLC, have demonstrated they are aggrieved persons as defined in Chapter 2 § 1(B) and may bring these appeals before the Board.

3. PROJECT DESCRIPTION:

The applicant proposes to construct a wind energy development consisting of 16 turbines. In addition to the turbines, the project would include an operations and maintenance (O&M) building as well as associated facilities. The turbines would be located in Carroll Plantation and Kossuth Township and the O&M building would be located in Carroll Plantation on Route 6. The O&M building would result in approximately 7,000 square feet of impervious area. The proposed project overall would include a total of 33.92 acres of impervious area and 33.92 of developed area. The project is shown on a set of plans included in the application, the first of which is entitled "Overall Location Plan," prepared James W. Sewall Company, and dated September 26, 2012.

- A. Wind Turbines. The applicant proposes to construct 16 wind turbines; it has requested approval to use either the Siemens 3.0 megawatt (MW) turbine (model SWT-3.0-113) or the Vestas 3.0 MW turbine (model V112 3.0-MW) for a total of 48 MW of generation capacity. The turbines would be either 446 (Siemens) or 459 (Vestas) feet in total height to the tip of the fully extended blade. The turbines would be located on Dill Hill and Bowers Mountain.
- B. Turbine Pads. The turbines would be constructed on 16 pads. The total impervious area associated with the turbine pads would be 0.66 acre.
- C. Access Roads and Crane Path. The applicant is proposing 3.0 miles of 24-foot wide access roads and 4.0 miles of 35-foot wide crane paths. The total impervious area associated with the linear portion of the project is 21.74 acres.

- D. Electrical Collector Substation and O&M building. The applicant proposes to construct an electrical substation adjacent to the existing Line 56 in Carroll Plantation. The applicant is proposing a 7,000 square foot O&M building adjacent to the express collector line. The total new impervious area associated with the electrical substation and the O&M building is 5.65 acres.
- E. Meteorological Towers. The applicant is proposing to construct one permanent meteorological tower on the site to monitor turbine performance.
- F. Express Collector Line. The applicant is proposing to collect the power from the turbines in a 34.5 kilovolt (kV) express collector line. The express collector line would run approximately 5.2 miles to the proposed substation.

4. BASIS FOR APPEALS:

The appellants assert that the Department erred in making the finding that the proposed project would have an unreasonable adverse effect on the scenic character and existing uses related to scenic character. The appellants' arguments are based on the following contentions:

- A. The Wind Energy Act (WEA) criteria require the Department to balance economic benefits of a project against its scenic impact;
- B. The Department improperly aggregated impacts to multiple SRSNS and the evidence demonstrates that the proposal meets the requirements of the WEA's scenic standard;
- C. The Department's application review process violated the requirements of the Administrative Procedure Act; and,
- D. The Department failed to consider that approval of the project would help to sustain working forests and result in the continuation of their availability to the public for recreational use.

5. REMEDY REQUESTED:

The appellants request that the Board reverse the August 5, 2013 Department decision denying a permit for the construction of the Bowers Wind project in Carroll Plantation and Kossuth Township and approve the proposed project.

6. DISCUSSION AND FINDINGS:

A. Statutory Framework.

To obtain a Site Law and a NRPA permit for the proposed development, Champlain Wind, LLC, must demonstrate that the project meets the criteria set forth in the Site Law and the NRPA. The scenic and aesthetic impacts criteria of both statutes are further specified, and narrowed, for projects such as this one, which meet the definition of an expedited wind energy development. The WEA, 35-A M.R.S. § 3452 (1), provides in pertinent part that:

In making findings regarding the effect of an expedited wind energy development on scenic character and existing uses related to scenic character pursuant to [the Site Law] or [the NRPA], the [Department] shall determine, in a manner provided in subsection 3, whether the development significantly compromises views from a scenic resource of state or national significance. Except as otherwise provided in subsection 2, determination that a wind energy development fits harmoniously into the existing natural environment in terms of potential effects on scenic character and existing uses related to scenic character is not required for approval under [the Site Law].

With this language the Legislature directs a narrower analysis for expedited wind energy developments in the determination of whether the scenic and aesthetic criteria of the Site Law and the NRPA are met and a permit may be issued under those laws.

The WEA directs that the following factors be considered in making the determination on scenic impacts:

- A) The significance of the potentially affected scenic resource of state or national significance;
- B) The existing character of the surrounding area;
- C) The expectations of the typical viewer;
- D) The expedited wind energy development's purpose and the context of the proposed activity;
- E) The extent, nature and duration of potentially affected public uses of the scenic resource of state or national significance and the potential effect of the generating facilities' presence on the public's continued use and enjoyment of the scenic resource of state or national significance; and,
- F) The scope and scale of the potential effect of views of the generating facilities on the scenic resource of state or national significance, including but not limited to issues related to the number and extent of turbines visible from the scenic resource of state or national significance, the distance from the scenic resource of state or national significance and the effect of prominent features of the development on the landscape.

The WEA directs that in the determination of scenic impacts, the effects of portions of the development's generating facilities located more than 8 miles, measured horizontally, from a SRSNS should be considered insignificant. A finding that the development's generating facilities are a highly visible feature in the landscape is not a solely sufficient basis for determination that an expedited wind energy development has an unreasonable adverse effect on the scenic character and existing uses related to scenic character of a SRSNS.

The proposed project contains "generating facilities" including wind turbines and towers as defined by 35-A M.R.S. § 3451 (5) and "associated facilities" such as buildings, access roads, substations as defined by 35-A M.R.S. § 3451 (1).

Each application for a wind energy development is required to include a visual impact assessment that addresses each of the six evaluation review criteria listed above. The applicant submitted a visual impact assessment evaluating the project's scenic impacts within eight miles of the SRSNS.

B. Analysis and Findings.

The appellants assert that the Department erred in its finding that the project would have an unreasonable adverse effect on the scenic character or existing uses related to scenic character based on the following contentions:

- 1) The appellants argue that the WEA criteria require the Department to balance economic benefits of a project against its scenic impact;
- 2) The Department improperly aggregated impacts to multiple SRSNS and the evidence demonstrates that the proposal meets the requirements of the WEA's scenic standard;
- 3) The Department's application review process violated the requirements of the Administrative Procedure Act; and,
- 4) The Department failed to consider that approval of the project would help to sustain working forests and a resulting continuation of their availability to the public for recreational use.

I. Consideration of Economic Benefits in Scenic Analysis.

The appellants assert that the intent of the WEA is to facilitate development of wind energy and realize energy, economic and environmental benefits that such developments can provide. They contend that the expedited permitting areas were designated and a modified regulatory process put into effect for projects in such areas, including a modified scenic impact standard, to encourage the construction of grid-scale wind energy developments.

The Board agrees that this project is proposed to be located in an expedited permitting area, which was defined by the Legislature, and is therefore subject to the modified scenic impact analysis. However, the WEA does not allow wind energy developments other special considerations for approval solely due to the fact that the project would be located in an expedited permitting area. The burden of proof remains on the applicant to demonstrate that the proposed project meets all the applicable regulatory standards, specifically, the standards of the Site Law, and the NRPA.

The appellants assert that the Department was required to balance the project's potential adverse scenic impacts against its potential benefits and the failure to do so was legal error. The appellants also contend that the Department did not consider the wind energy development's purpose and the context, which is Criterion D in 35-A M.R.S. § 3452 (3) (the WEA).

The Board disagrees with the appellants that the Department committed legal error by not balancing the project's potential adverse scenic impacts against the project's potential benefits. In order to obtain a permit under the Site Law and the NRPA, each of the statutory criteria must be met. The WEA further specifies certain language of the Site Law and the NRPA but the Board finds no language in the WEA requiring a balancing of a wind energy development's adverse scenic impacts with the development's benefits, either in 35-A M.R.S. §3452 or 35-A M.R.S. §3454. An applicant for a permit must demonstrate that the proposed project complies with each of the applicable review standards under the Site Law, and the NRPA, as further refined by the WEA. The Board is obligated to make a determination as to whether each of the applicable review standards has been met. The Board finds that it is appropriate to weigh and balance the evidence on each individual criterion when making a finding under that particular criterion, however, the WEA does not direct or even allow a balancing of one standard against another standard, or a balancing of a proposed project's overall benefits against the proposed projects overall adverse impacts.

The wind energy development's purpose and the context of the proposed activity must be considered in the assessment of the proposed project's potential impacts on scenic character or existing uses related to scenic character, and the Board interprets this language in light of its placement in the WEA's framework for assessment of scenic impacts. The purpose of the proposed development is to generate energy using the wind. The context of the proposed activity, in the physical sense, is the nature of the general area surrounding the project. The Board also considers the context in a practical sense, which includes the size of turbines generally used in grid-scale developments and the fact that such projects must be located in areas with significant wind resources. This is consistent with the Legislature's acknowledgement of the unusual nature of a grid-scale wind energy development when, in the WEA, it made inapplicable the Site Law's requirement that such a project fit harmoniously into the natural environment. Here the Board considered the topography, level of development, and scenic quality of the surrounding area as visible from the SRSNS, the size of grid-scale turbines, and, given the purpose of wind energy developments, the need to locate the project where there will be wind available, in its assessment of the scenic impacts of a proposal. In this way the development's purpose and the context of the proposed activity were considered in the Board's assessment of whether the proposed project would significantly compromise views from a SRSNS.

The appellants assert that the proposed project is supported by the host communities, landowners in the vicinity, recreational organizations, environmental organizations and businesses and the Department should have given weight to the economic interests of the host communities in determining whether the scenic impacts are unreasonable.

Support from the host community is not one of the statutory licensing criteria of the Site Law or the NRPA, nor is it a factor listed to be considered in the WEA. The Board agrees with the appellants that host communities' testimony with regard to economic benefits of the proposed project should be given consideration, however, such evidence

goes to the analysis of the project's tangible benefits under the Site Law criterion pertaining to tangible benefits (38 M.R.S. §484(10)), as further specified in the WEA (35-A M.R.S. §3454).

Based on the language of the Site Law and the NRPA, as well as the WEA, the Board concludes that a balancing of the project's benefits under one criterion against its adverse impacts under a different criterion is not required or appropriate.

II. Impacts to Multiple Scenic Resources of State or National Significance.

The appellants argue that the Department concluded that the impact of the project's visibility on any single lake was not unreasonable, and therefore the Department could not deny the permit applications based on adverse scenic impacts. The appellants assert that the applicant's evidence on scenic impacts demonstrated that the proposed project would not result in an unreasonable adverse effect on the scenic character or existing uses related to scenic character of any specific SRSNS. The appellants contend that the applicant's scenic consultant, David Raphael, appropriately applied the statutory criteria and concluded that there is no unreasonable adverse impact on any single SRSNS. The appellants assert that Dr. Kevin Boyle, retained by the applicant to design user surveys for the project, also determined that there would not be an unreasonable adverse impact on scenic character or existing uses related to scenic character.

As part of the licensing review process, the Department retained a scenic consultant, Dr. James Palmer, to assist the Department in its analysis of the technical aspects of the submittals pertaining to scenic impacts.

Both of the applicant's consultants and the Department's consultant opined on the reasonableness of the scenic impacts of this proposed project; however, initially the Department and now the Board is the fact finder and the entity with the legal authority to make that determination under the law. It is not the responsibility of either the applicant's or the Department's scenic consultant to make that determination. The analysis and conclusions of the applicant's scenic consultant are evidence in the record regarding scenic impacts for consideration. The Board has considered the comments and review of the applicant's scenic consultants and the analysis of that evidence by the Department's consultant. However, neither the Department nor the Board is obligated to agree with the opinion of the scenic consultants, and reach the same conclusions. The Department, and now the Board, must reach its own conclusion based on its assessment of all the evidence in the record.

To assess whether the scenic impacts criteria of the Site Law, the NRPA, and the WEA have been met, the Board used the six statutory evaluation criteria related to scenic impacts, as set forth in the WEA at Title 35-A M.R.S. § 3452 (3). In order to make this determination, the Board weighed the evidence in the project record. The Board considered the public comments in the record regarding the proposed project, and used

its discretion in applying more weight to testimony from those existing users most impacted by the proposed project.

The Board concurs with the Department's analysis and findings in the August 5, 2013 denial of the project as to what constituted an unreasonable adverse effect on scenic character. The Board makes the following findings:

- A. Dr. Palmer's assessment of the impacts to eight of the great pond SRSNS within eight miles of the proposed turbines (Duck Lake, Junior Lake, Shaw Lake, Keg Lake, Scraggly Lake, Bottle Lake, Pleasant Lake and Sysladobsis Lake) was that they would sustain a Medium level of adverse scenic impact, based on the scenic review analysis method used by the applicant. A ninth lake, Pug Lake, was assessed by Dr. Palmer to sustain a low level of adverse scenic impact. The evidence in the record shows that, of the proposed 16 turbines, the number of turbines potentially visible within eight miles of the affected SRSNS are: Duck Lake – up to 14, Junior Lake – up to 13, Shaw Lake – up to 14, Keg Lake – up to 12, Scraggly Lake – up to 16, Bottle Lake – up to 10, Pleasant Lake – up to 16, Sysladobsis Lake – up to 10, and Pug Lake – up to 6. For Pleasant Lake, the distance to the nearest visible turbine would be 2.4 miles. The Board finds that Pleasant Lake would sustain a greater scenic impact than the Medium assessed by Dr. Palmer, but does not conclude that Pleasant Lake would have an overall scenic impact of High based on mitigating factors. The Board finds that it is significant that eight of the fourteen SRSNS within eight miles of the proposed project would sustain an overall scenic impact of Medium, or possibly higher in the case of Pleasant Lake.
- B. The Board considers the existing scenic quality of each of the nine affected great ponds (Duck Lake, Junior Lake, Shaw Lake, Keg Lake, Scraggly Lake, Bottle Lake, Pleasant Lake, Sysladobsis Lake, and Pug Lake) to be high. While the generating facilities are proposed to be located in the expedited permitting area and therefore were appropriately subject to review under the WEA, the majority of these nine great ponds within eight miles of the proposed turbines are not located within the expedited permitting area. The Board concludes that since the subject great ponds were excluded from the expedited permitting area, the Legislature considered these great ponds to have a high value of scenic significance.
- C. The Board notes that the Commissioner and DEP staff conducted a site visit on May 21, 2013 by motor boat on Scraggly Lake, Junior Lake and Pleasant Lake. During this site visit the Department noted that these lakes appeared almost completely devoid of development, with only one sporting camp and scattered camps. Thus, the views of turbines would not be interrupted by shoreline development when viewed from these three SRSNS. Therefore, the scenic impact from the proposed project would be greater than if the shorelines of the lakes and the viewsheds from the SRSNS had a higher level of visible development.

- D. The applicant's user survey indicates that 90 percent of the respondents gave the lakes high or the highest scenic value ratings in their current condition, and the Board finds this evidence of the high scenic character of the existing lakes compelling. Further, after respondents were shown photosimulations of the views of the proposed project and asked the same question, those indicating that the lakes would have high or the highest scenic value dropped from 90 percent to 33 percent. The Board finds that this evidence demonstrates that the project would have a significant impact on the scenic character of these lakes.
- E. A unique aspect of the proposed project is that many of the nine affected great ponds within 8 miles of the proposed turbines are interconnected. The record includes credible evidence indicating low multi-day use of the connected lakes, but some use of more than one lake occurs, and this factor was given some consideration by the Board.

The appellants assert that since there are ten wind energy developments now operating in Maine, the Department was required to consider and give significant weight to certain evidence it submitted regarding the impact of turbine visibility on recreational users near other wind energy developments. The appellants assert that their post-construction intercept survey on Baskahegan Lake provides proof that visibility of turbines is not adversely impacting scenic quality or recreational users of that resource. The appellants assert this evidence is probative of the impacts on uses which would result from this proposed development, and that these results show that wind energy developments are compatible with sporting camps.

The Board finds that a consistent review process is utilized in the review of wind energy development applications; however, each wind energy development must be judged on its own merits against the licensing criteria, because each development has unique characteristics affecting scenic character. Comparisons to other developments are difficult and generally not helpful in determining whether the development at issue meets the licensing criteria. The Board reviewed the applicant's post-construction intercept survey which was done to gather information about the Stetson Wind development's scenic impacts, but sees limited value in extrapolating its results to a wind energy development in another location, with different topography, a different array of turbines, and different SRSNS. The intercept survey information the applicant submitted from Baskahegan Lake has many significant differences from the proposed Bowers development, so was therefore given little weight by the Board. These differences include the fact that Baskahegan Lake is not a SRSNS, the fact that the survey point was more than 8 miles from the Stetson Wind development and views of turbines from beyond 8 miles are by statute deemed insignificant, and the lack of pre-development information for the Stetson Wind development for comparison. Dr. Palmer also pointed out that the survey involved only "existing users", thus, former users who find the development so objectionable that they will no longer use Baskahegan Lake would not have been represented in this survey. The Board reviewed

the Baskahegan Lake survey, but did not give it significant weight as it is not probative of the reasonableness of the scenic impact of the proposed development.

As part of its analysis of the expectations of the typical viewer of the proposed project, the Board relied on the applicant's user surveys and public hearing testimony. The record contains numerous letters in opposition to this project from people that were extremely frustrated with the scenic impacts of the nearby Rollins Wind project. The record contains comments and testimony that are both negative and positive in regard to existing wind energy developments. However, in its analysis, the Board gave the most weight to testimony and intercept survey data that could be used to evaluate the expectations of the typical user of the SRSNS that would have visibility of the proposed Bowers Wind project.

Public hearing testimony is in the record from the owners of First Settlers Lodge in Danforth and Maine Wilderness Camps on Pleasant Lake that states that the proposed project would not adversely impact their business. However, the Board also considered the testimony from three other sporting camp owners that noted that their guests and clients were less likely to return to their establishments if the proposed project were to be constructed. These three business owners stated that their guests seek the undeveloped nature of the Downeast Lakes region, and the project would cause a negative effect on the existing uses of the lakes due to a negative impact on the scenic character of those lakes. The Board gave these comments considerable weight when analyzing the effects of the proposed project on existing uses related to scenic character.

The appellants assert that the majority of evidence in opposition to this project comes from guides and commercial camp owners in the Grand Lake Stream area which is approximately 18 miles from the proposed Bowers Wind project. The appellants assert that there is little data to show that guides are using the project lakes. The appellants assert that even if there were evidence of economic harm to the guides, such economic harm cannot be a basis for a denial of a permit.

The evidence in the record regarding adverse scenic impacts of the proposed project came from many different sources. While a number of recreational and sporting camp businesses that voiced concern about the potential adverse scenic impacts of the proposed project are located further than eight miles from the proposed project, the evidence reflects notable use by the clients of these businesses of the SRSNS within eight miles of the proposed project, which the Board considers to be 'existing uses related to scenic character' as delineated in the WEA (35-A M.R.S. § 3452 (1)). The camp owners on the SRSNS lakes frequently use the SRSNS lakes and they testified on the impacts the proposed project would have on their use and enjoyment of the SRSNS. The Board gave greater weight in its review to comments and testimony from people who actually use the SRSNS lakes impacted by this proposed project. The applicant's user surveys for the specific SRSNS showed that the actual users would be impacted. For example, the applicant's user intercept survey on Scraggly Lake showed that 50%

of the respondents noted that the proposal would have a negative effect on their enjoyment of the lake and 23% of those surveyed responded that the proposal would have a negative effect on their continued use of the lake. The applicant combined the user surveys results from the three lakes, Scraggly, Junior and Pleasant Lakes, and those results show that 45% of those surveyed said the proposal would have a negative effect on their enjoyment of the SRSNS.

In the applicant's VIA, a methodology was selected by the applicant's consultant to demonstrate the level of the project's scenic impacts by assigning values of low, medium, or high to the each of the six factors to be considered under the WEA (35-A M.R.S. § 3452 (3)), in order to reach an overall scenic impact rating for each SRSNS. The applicant's evidence supports a conclusion that three of the SRSNS would suffer a medium adverse scenic impact. The applicant's scenic consultant concluded that the project would not have an unreasonable adverse impact on the scenic character or existing uses related to scenic character of the SRSNS within eight miles of the project. The Department's scenic consultant disagreed with the applicant's conclusions on overall scenic impacts. Dr. Palmer concluded that eight of the fourteen SRSNS within an eight mile radius of the proposed project (Duck Lake, Junior Lake, Shaw Lake, Keg Lake, Scraggly Lake, Bottle Lake, Pleasant Lake and Sysladobsis Lake) would sustain an overall scenic impact of 'medium' or higher. The appellant argues that one or more SRSNS would have to sustain a high adverse impact rating in order to support a conclusion that a proposed project would result in an unreasonable adverse effect on scenic character.

The appellants assert that the Department improperly denied the project based on an aggregation of impacts which they argue is not allowed under the applicable laws. The appellants assert that the WEA states that the Department must consider the scenic impact on each single resource independently, not as a collection of resources. They claim that the Department found that each individual SRSNS met the scenic impact criteria, but then the Department improperly considered the overall impacts on the SRSNS as a whole. The appellants assert that the Department created a new standard with its analysis of the impacts as a whole and that this analysis was arbitrary. They also contend that the alleged new standard is unconstitutional due to vagueness.

The Board finds that the adverse scenic impacts of this proposed project are widespread in nature, and this characteristic of the scenic impacts is a factor that may be considered in the ultimate determination of the reasonableness or unreasonableness of the impacts under the Site Law, NRPA and WEA licensing criteria. Whereas a medium level of adverse impact on one SRSNS might not rise to the level of unreasonableness, a medium level of adverse impact to several SRSNS is significant. Such a level of impact on the scenic character or existing uses related to scenic character of eight SRSNS (Duck Lake, Junior Lake, Shaw Lake, Keg Lake, Scraggly Lake, Bottle Lake, Pleasant Lake and Sysladobsis Lake) supports a finding that the proposed project would result in an unreasonable interference with existing scenic and aesthetic uses under the NRPA and an adverse effect to existing uses and scenic character under the Site Law.

The Board disagrees that the Department aggregated or created a new category of SRSNS in its denial. The Department discusses on page 23 of the August 5, 2013 order that:

“...the Department concludes that since a majority of the SRSNS (eight lakes out of the fourteen SRSNS, or 57%) received an overall scenic impact of Medium, and the Department concludes this is a *significant impact* [emphasis added] on SRSNS by the proposed project, then that must be factored into the Department’s analysis. The Department, however, further considered evidence in the record with regard to whether the proposed project would have an unreasonable adverse effect on scenic character and existing uses related to scenic character.”

The Department did not conclude that the proposed project would cause an unreasonable adverse effect solely on the basis of there being eight SRSNS that would sustain a medium level of overall scenic impact.

The WEA (35-A M.R.S. §3452(3)(F)) requires the Department to consider the number and extent of turbines visible from a SRSNS. There are 14 SRSNS within eight miles of the project, nine of which have views of the project. Six of the 14 SRSNS are connected by water and an additional six are connected by a short portage. The applicant’s user surveys demonstrate that users were traveling from one resource to another. The evidence in the record reflects that the only public boat launch facility to Junior Lake is from a boat launch on either Bottle Lake or Scraggly Lake. Therefore, the Board finds that the boating users of Junior Lake would have to travel through Bottle Lake or Scraggly Lake and would see views of the proposed project from multiple SRSNS. In addition, the applicant’s user survey also showed that 49% of the users had used at least two lakes on the day they were interviewed, indicating usage of the lakes. The evidence also reflects that there is a loop canoe/kayak trail throughout many of these lakes with primitive campsites. Because some of these lakes are interconnected, the Board concludes that some users may be impacted by seeing the turbines repeatedly from more than one SRSNS. It should be noted that the applicant also reported the results of their user survey by combining the results for all lakes.

The appellants assert that the Bowers Wind project is located within a working forest landscape and emphasize that the majority of the area surrounding the project is subject to the Sunrise Conservation easement, which is a working forest easement. They note that there is a 66 lot subdivision just north of Shaw Lake with houses and associated roads.

The WEA requires the Department to make a finding whether the proposed project will have an unreasonable adverse effect on scenic character or existing uses related to scenic character on the affected SRSNS. Specifically, the WEA specifies in 35-A M.R.S. §3452(1) that the determination must be made as to whether ‘the development significantly compromises views *from* [emphasis added] a scenic resource of state or

national significance...'. Therefore, the Department and Dr. Palmer conducted their analysis of the project's potential effects on scenic character on views from the affected SRSNS. The Board acknowledges the evidence in the record regarding the working forest and the amount of development in the project vicinity, as evidenced by aerial photographs and other testimony. However, based on the applicant's VIA, Dr. Palmer's review, and the site visits by Department staff, the Department observed the overall lack of development that was visible from the SRSNS that were visited, which contributed to the Department's finding on scenic impacts.

The Department considered the review methodology created by the applicant's own scenic consultant. This methodology was supported by the Department's consultant, Dr. Palmer, but this methodology by itself was not used to guide the Department in its final determination. The applicant's VIA utilized a methodology for evaluating the project's effects on scenic character by assigning values of low, medium or high to each of the WEA's six statutory requirements. The Department and Dr. Palmer supported this approach, but disagreed with the applicant's conclusions. The Board finds credible evidence in the record that this development will result in adverse scenic impacts of a medium level to eight SRSNS. The evidence in the record including the applicant's VIA, the applicant's user surveys, the Department site visits, and the significance of the SRSNS, supports the conclusion that the proposed project would unreasonably adversely affect scenic character and existing uses related to scenic character.

III. The Department's Application Review Process.

The appellants contend that the Department's procedure in the processing of this permit application did not comply with the protections provided by the Administrative Procedure Act. They argue the Commissioner's denial of the application is legally flawed and should be reversed because: a) the Department should have promulgated rules further specifying the scenic impact criteria under the Site Law, the NRPA and the WEA; and b) the Commissioner did not attend the public hearing and her designee did not prepare written findings or recommendations. The appellants also contend that the Commissioner and DEP staff should not have done a site visit without the parties and without the Department's scenic consultant in attendance.

The Board disagrees with the appellants' contention that regulations further specifying the scenic impact criteria are legally required. As discussed in Section II, neither the Department's analysis nor the Board's analysis includes a new standard pertaining to scenic impacts. The criteria are set forth in the Site Law and the NRPA and are made more specific by the WEA for wind energy developments' review. These criteria give sufficient direction for the Board to assess the nature and the severity of impacts of wind energy developments. In fact, the Law Court has found that the Site Law and NRPA statutory framework on scenic impacts is not unconstitutionally vague and the WEA provides significant additional direction.

With regard to procedural rules, the Department's Chapter 3 Rules (Rules Governing the Conduct of Licensing Hearings) were utilized in the conduct of the public hearing held April 30 and May 1, 2013. In accordance with Chapter 3 § 4(A) the Commissioner designated a Presiding Officer for the public hearing. As provided in Chapter 3 § 5, Department staff assisted the Presiding Officer in gathering facts, identifying issues, analyzing evidence and making recommendations regarding licensing criteria. Additionally, Department staff wrote a draft order summarizing the information in the record, including testimony gathered through the public hearing process, for the Commissioner's consideration, which is in accord with Chapter 3 § 5(E). The draft Department order was issued on July 24, 2013, after the public hearing. There is no requirement in Chapter 3 or elsewhere that the Commissioner attend the public hearing, nor is there a requirement that a written report of the hearing be filed by the Presiding Officer.

The Department has the discretion to inspect the site of a proposed development when reviewing permit applications. Department staff conducted a site visit with the Department's scenic consultant on December 13, 2012, and a site visit which included the Commissioner on May 21, 2013. The Commissioner had all of the evidence pertaining to scenic impact, including the applicant's reports and information that the Department's consultant had compiled, available to her before and after the site visit.

The Board finds that regulations further specifying the scenic impact review criteria are not required under the Administrative Procedure Act and that the procedure followed by the Department in its review of the application was fair and accorded all parties and interested persons ample opportunity to participate.

IV. Impacts on the Sustainability of Working Forests.

The appellants assert that the scenic impacts of the project must be balanced against landowner rights and the financial interests of the forestry community. The appellants assert that wind power is critical to the long term sustainability of Maine's working forests and the continued use of those lands by Maine's recreating public.

Appellants Douglas E. Humphrey and Bowers Mountain LLC state that land lease payments the commercial forest products industry receives for wind energy developments are important to the financial health of the industry, and without this income stream there might be less commercial forest land accessible to the public for recreation. The appellants assert that public access to the lakes that are the SRSNS affected by the project is limited and the lakes have low use. They argue that the timber industry's importance to the economy of the region should be given more weight than potential impacts to the use of the affected SRSNS lakes by guides, sporting camps and their customers.

The timber industry is clearly important to the economy of this region. However, the Board finds no language in the WEA regarding a leasing landowner's financial benefits

or the financial interests of any particular industry being balanced against potential scenic impacts of a project. The criteria that the WEA directs the Board to consider are specific to scenic character and existing uses of the SRSNS related to scenic character. The possibility of changes in nearby landowners' public access policies is not relevant to whether the construction of this project meets the scenic impact criteria under the relevant statutory provisions.

The Board considered the testimony of sporting camp owners, guides, and any business owners regarding their concerns that are related to scenic character and existing uses related to scenic character of the SRSNS, as required by the WEA. Consideration of the project's economic benefits occurs under the review of the tangible benefits of the project as outlined in the tangible benefits standard of the WEA, 35-A M.R.S. §3454, not under the scenic impact criteria. The proposed project would provide tangible benefits to the neighboring communities and working forest landowners, but the project would also cause unreasonable adverse effects on scenic character, and these two standards must be reviewed separately and independently.

The Board reviewed the information in the record regarding the project's proposed tangible benefits and the project's potential impacts to scenic character. The Board notes the Department made a positive finding regarding the project's tangible benefits, in addition to the negative finding on impacts to scenic character. As discussed above, the Board did not weigh the evidence in the record of each of these findings against each other in making its final decision.

The Board disagrees with the appellants that the Department committed legal error by not balancing the project's potential scenic impacts against the project's potential financial benefits to the commercial forestry industry. The Board is sensitive to and acknowledges the appellant's concerns regarding Maine's working forests, but finds that such a balancing against adverse scenic impacts is outside of the Board and the Department's regulatory authority under the WEA. The Board finds that the WEA does not allow a balancing of a wind energy development's adverse scenic impacts with potential financial benefits to the landowners leasing the land to the applicant.

7. CONCLUSIONS:

Based on the above findings, the Board concludes that:

- A. The appellants filed a timely appeal.
- B. The applicant's proposal to construct a 48 MW wind energy development, known as the Bowers Wind project, in Carroll Plantation and Kossuth Township does not meet the criteria for a permit pursuant to the Site Location of Development Act, 38 M.R.S. § 484, the Natural Resources Protection Act, 38 M.R.S. §480-D, and the Wind Energy Act, 35-A M.R.S. §§ 3452-3458.

THEREFORE, the Board AFFIRMS the Department's denial of the permit application filed by CHAMPLAIN WIND, LLC to construct a 48 MW wind energy development, known as the Bowers Wind project, in Carroll Plantation and Kossuth Township, Maine, as described in Department Order DEP #L-25800-24-A-N, L-25800-TE-B-N and L-25800-IW-C-N. The Board DENIES the appeals of Champlain Wind, LLC and Douglas E. Humphrey and Bowers Mountain, LLC.

DONE AND DATED AT AUGUSTA, MAINE, THIS 5th DAY OF June, 2014.

BOARD OF ENVIRONMENTAL PROTECTION

By: Robert A. Foley
Robert A. Foley, Chair



DEP INFORMATION SHEET

Appealing a Department Licensing Decision

Dated: March 2012

Contact: (207) 287-2811

SUMMARY

There are two methods available to an aggrieved person seeking to appeal a licensing decision made by the Department of Environmental Protection's ("DEP") Commissioner: (1) in an administrative process before the Board of Environmental Protection ("Board"); or (2) in a judicial process before Maine's Superior Court. An aggrieved person seeking review of a licensing decision over which the Board had original jurisdiction may seek judicial review in Maine's Superior Court.

A judicial appeal of final action by the Commissioner or the Board regarding an application for an expedited wind energy development (35-A M.R.S.A. § 3451(4)) or a general permit for an offshore wind energy demonstration project (38 M.R.S.A. § 480-HH(1)) or a general permit for a tidal energy demonstration project (38 M.R.S.A. § 636-A) must be taken to the Supreme Judicial Court sitting as the Law Court.

This INFORMATION SHEET, in conjunction with a review of the statutory and regulatory provisions referred to herein, can help a person to understand his or her rights and obligations in filing an administrative or judicial appeal.

I. ADMINISTRATIVE APPEALS TO THE BOARD

LEGAL REFERENCES

The laws concerning the DEP's *Organization and Powers*, 38 M.R.S.A. §§ 341-D(4) & 346, the *Maine Administrative Procedure Act*, 5 M.R.S.A. § 11001, and the DEP's *Rules Concerning the Processing of Applications and Other Administrative Matters* ("Chapter 2"), 06-096 CMR 2 (April 1, 2003).

HOW LONG YOU HAVE TO SUBMIT AN APPEAL TO THE BOARD

The Board must receive a written appeal within 30 days of the date on which the Commissioner's decision was filed with the Board. Appeals filed after 30 calendar days of the date on which the Commissioner's decision was filed with the Board will be rejected.

HOW TO SUBMIT AN APPEAL TO THE BOARD

Signed original appeal documents must be sent to: Chair, Board of Environmental Protection, c/o Department of Environmental Protection, 17 State House Station, Augusta, ME 04333-0017; faxes are acceptable for purposes of meeting the deadline when followed by the Board's receipt of mailed original documents within five (5) working days. Receipt on a particular day must be by 5:00 PM at DEP's offices in Augusta; materials received after 5:00 PM are not considered received until the following day. The person appealing a licensing decision must also send the DEP's Commissioner a copy of the appeal documents and if the person appealing is not the applicant in the license proceeding at issue the applicant must also be sent a copy of the appeal documents. All of the information listed in the next section must be submitted at the time the appeal is filed. Only the extraordinary circumstances described at the end of that section will justify evidence not in the DEP's record at the time of decision being added to the record for consideration by the Board as part of an appeal.

WHAT YOUR APPEAL PAPERWORK MUST CONTAIN

Appeal materials must contain the following information at the time submitted:

1. *Aggrieved Status.* The appeal must explain how the person filing the appeal has standing to maintain an appeal. This requires an explanation of how the person filing the appeal may suffer a particularized injury as a result of the Commissioner's decision.
2. *The findings, conclusions or conditions objected to or believed to be in error.* Specific references and facts regarding the appellant's issues with the decision must be provided in the notice of appeal.
3. *The basis of the objections or challenge.* If possible, specific regulations, statutes or other facts should be referenced. This may include citing omissions of relevant requirements, and errors believed to have been made in interpretations, conclusions, and relevant requirements.
4. *The remedy sought.* This can range from reversal of the Commissioner's decision on the license or permit to changes in specific permit conditions.
5. *All the matters to be contested.* The Board will limit its consideration to those arguments specifically raised in the written notice of appeal.
6. *Request for hearing.* The Board will hear presentations on appeals at its regularly scheduled meetings, unless a public hearing on the appeal is requested and granted. A request for public hearing on an appeal must be filed as part of the notice of appeal.
7. *New or additional evidence to be offered.* The Board may allow new or additional evidence, referred to as supplemental evidence, to be considered by the Board in an appeal only when the evidence is relevant and material and that the person seeking to add information to the record can show due diligence in bringing the evidence to the DEP's attention at the earliest possible time in the licensing process or that the evidence itself is newly discovered and could not have been presented earlier in the process. Specific requirements for additional evidence are found in Chapter 2.

OTHER CONSIDERATIONS IN APPEALING A DECISION TO THE BOARD

1. *Be familiar with all relevant material in the DEP record.* A license application file is public information, subject to any applicable statutory exceptions, made easily accessible by DEP. Upon request, the DEP will make the material available during normal working hours, provide space to review the file, and provide opportunity for photocopying materials. There is a charge for copies or copying services.
2. *Be familiar with the regulations and laws under which the application was processed, and the procedural rules governing your appeal.* DEP staff will provide this information on request and answer questions regarding applicable requirements.
3. *The filing of an appeal does not operate as a stay to any decision.* If a license has been granted and it has been appealed the license normally remains in effect pending the processing of the appeal. A license holder may proceed with a project pending the outcome of an appeal but the license holder runs the risk of the decision being reversed or modified as a result of the appeal.

WHAT TO EXPECT ONCE YOU FILE A TIMELY APPEAL WITH THE BOARD

The Board will formally acknowledge receipt of an appeal, including the name of the DEP project manager assigned to the specific appeal. The notice of appeal, any materials accepted by the Board Chair as supplementary evidence, and any materials submitted in response to the appeal will be sent to Board members with a recommendation from DEP staff. Persons filing appeals and interested persons are notified in advance of the date set for Board consideration of an appeal or request for public hearing. With or without holding a public hearing, the Board may affirm, amend, or reverse a Commissioner decision or remand the matter to the Commissioner for further proceedings. The Board will notify the appellant, a license holder, and interested persons of its decision.

II. JUDICIAL APPEALS

Maine law generally allows aggrieved persons to appeal final Commissioner or Board licensing decisions to Maine's Superior Court, see 38 M.R.S.A. § 346(1); 06-096 CMR 2; 5 M.R.S.A. § 11001; & M.R. Civ. P 80C. A party's appeal must be filed with the Superior Court within 30 days of receipt of notice of the Board's or the Commissioner's decision. For any other person, an appeal must be filed within 40 days of the date the decision was rendered. Failure to file a timely appeal will result in the Board's or the Commissioner's decision becoming final.

An appeal to court of a license decision regarding an expedited wind energy development, a general permit for an offshore wind energy demonstration project, or a general permit for a tidal energy demonstration project may only be taken directly to the Maine Supreme Judicial Court. See 38 M.R.S.A. § 346(4).

Maine's Administrative Procedure Act, DEP statutes governing a particular matter, and the Maine Rules of Civil Procedure must be consulted for the substantive and procedural details applicable to judicial appeals.

ADDITIONAL INFORMATION

If you have questions or need additional information on the appeal process, for administrative appeals contact the Board's Executive Analyst at (207) 287-2452 or for judicial appeals contact the court clerk's office in which your appeal will be filed.

Note: The DEP provides this INFORMATION SHEET for general guidance only; it is not intended for use as a legal reference. Maine law governs an appellant's rights.

Decision: 2015 ME 156
Docket: BEP-14-291
Argued: April 8, 2015
Decided: December 3, 2015

Panel: SAUFLEY, C.J., and MEAD, GORMAN, JABAR, and CLIFFORD, JJ.

CHAMPLAIN WIND, LLC

v.

BOARD OF ENVIRONMENTAL PROTECTION

SAUFLEY, C.J.

[¶1] Champlain Wind, LLC, appeals from a decision of the Board of Environmental Protection in which the Board considered and balanced competing statutorily defined policies applicable to wind energy projects in Maine. The applicable statutes establish the dual policies of expediting wind energy development in defined geographic areas of Maine and at the same time providing enhanced protection for specific scenic resources. Champlain proposed the Bowers Wind Project to be situated within, but very near, the geographic border of the expedited permitting area. Within sight of the proposed wind turbines lie several scenic resources of state or national significance. On the record before us, we do not disturb the Board's balancing of the Legislature's policies, and we affirm the Board's denial of a permit for the Project.

I. COMPETING LEGISLATIVE PRIORITIES

[¶2] In 2004, the Maine Legislature enacted the Maine Wind Energy Act,¹ and in 2008, it enacted additional statutes governing “Expedited Permitting of Grid-Scale Wind Energy Development.”² As subsequently amended, the Wind Energy Act has a stated purpose to “encourage the development, where appropriate, of wind energy production in the State.” 35-A M.R.S. § 3402 (2014). To support and expedite permitting of wind energy projects, an “expedited permitting area” has been established to “reduce the potential for controversy regarding siting of grid-scale wind energy development by expediting development in places where it is most compatible with existing patterns of development and resource values when considered broadly at the landscape level.” 35-A M.R.S. §§ 3402(2), 3451(3) (2014).

[¶3] One of the primary goals of the wind energy statutes is to reduce and, where possible, eliminate costly opposition to wind projects based on the visual impact of the wind turbines. Recognizing that “wind turbines are potentially a highly visible feature of the landscape that will have an impact on views,” *id.* § 3402(2)(C), the Board is prohibited by statute from denying a wind energy

¹ See P.L. 2003, ch. 665, § 3 (effective July 30, 2004) (codified as subsequently amended at 35-A M.R.S. §§ 3401-3404 (2014)).

² See P.L. 2007, ch. 661, § A-7 (emergency, effective Apr. 18, 2008) (codified as subsequently amended at 35-A M.R.S. §§ 3451-3459 (2014)).

development permit on the sole basis that “generating facilities are a highly visible feature in the landscape.” 35-A M.R.S. § 3452(3) (2014). Expedited wind energy developments are not required to meet the more stringent standard of “fitting . . . harmoniously into the existing natural environment,” which is otherwise required by the environmental protection statute governing site location for development projects. 38 M.R.S. § 484(3) (2014); *see* 35-A M.R.S. § 3452(1) (2014).

[¶4] Concurrently, to ensure that the statutes also protect certain scenic geographic areas, the Legislature has identified areas where the visual impact of prospective wind energy developments must be more closely scrutinized. Specifically, an expedited wind energy development must not “significantly compromise[] views from a scenic resource of state or national significance such that the development has an unreasonable adverse effect on the scenic character or existing uses related to scenic character of the scenic resource of state or national significance.” 35-A M.R.S. § 3452(1). A “scenic resource of state or national significance” is defined to include national natural landmarks, certain historic places, national or state parks, great ponds, and other places of scenic significance. *See* 35-A M.R.S. § 3451(9) (2014).³

³ Although not at issue here, the Legislature and the Land Use Planning Commission have completely excluded from the expedited permitting area specifically identified areas of particular ecological, recreational, and scenic significance, including Baxter State Park, a large portion of the Downeast Lakes region, and other waters subject to tidal influence. *See* 35-A M.R.S. § 3451(3) (2014); 1A C.M.R. 01 672

[¶5] Thus, the Legislature has attempted to improve the predictability of siting decisions by creating a more streamlined, lower-cost regulatory process for wind energy development in the expedited permitting area, while at the same time it has sought to protect particularly important scenic resources in Maine by requiring stricter scenic standards in specified geographic areas.

II. BOWERS WIND PROJECT

[¶6] Both geographically and analytically, the Bowers Wind Project falls on the line between competing legislative purposes—expediting the development of wind power and protecting identified scenic resources. The Project would place sixteen wind turbines, with a combined generating capacity of forty-eight megawatts,⁴ just within the boundary of the expedited permitting area, making them visible from multiple scenic resources of state or national significance.

[¶7] Champlain filed a consolidated application with the Department of Environmental Protection in October 2012 seeking permits to construct the Project in Carroll Plantation and Kossuth Township. *See* 35-A M.R.S. § 3451(4) (2014). Although the Project is proposed to be developed within the expedited permitting area, its turbines would be visible from nine great ponds, each of which is rated as

010-200 Appendix F (2014); *see also* Report of the Governor’s Task Force on Wind Power Development: Finding Common Ground For a Common Purpose 18 n.2 (Feb. 2008).

⁴ For context, the legislatively established goal for wind energy development in Maine is set at, at least, 2,000 megawatts of installed capacity by this year, 2015. *See* 35-A M.R.S. § 3404(2)(A) (2014).

outstanding or significant from a scenic perspective in the Maine Wildlands Lake Assessment and thus is classified as a scenic resource of state or national significance. *See id.* § 3451(9)(D)(2); Me. Dep't of Conservation, Land Use Regulation Comm'n, Maine Wildlands Lake Assessment, pt. V (Master List of Lakes) (June 1, 1987). Most of the area of the nine great ponds affected by the Project is excluded from the expedited permitting area.

[¶8] The Department ultimately denied Champlain's application after evaluating data collected by both Champlain's and the Department's experts concerning the scenic impact that the Project would have on the affected great ponds, reviewing a user intercept survey, holding a public hearing,⁵ and conducting multiple site visits. The Department concluded that the Project did not satisfy the statutory scenic standard because the project "would have an unreasonable adverse effect on the scenic character and existing uses related to the scenic character" of the nine affected great ponds. With the exception of the scenic standard, the Department found that Champlain had met all of the permit criteria.

⁵ Before the public hearing, an individual, David Corrigan, and an organization that opposes the project, the Partnership for the Preservation of the Downeast Lakes Watershed (PPDLW), intervened in opposition to the Project. The Maine Renewable Energy Association, a professional trade association of power producers including wind energy producers, and the Conservation Law Foundation, a New England environmental advocacy organization, intervened in support of the project. PPDLW and the Conservation Law Foundation each submitted an amicus curiae brief in the matter before us.

[¶9] Champlain appealed from the Department's denial to the Board of Environmental Protection. *See* 38 M.R.S. § 341-D(4) (2014). The Board considered the evidence in the record, heard a presentation by the Department, and heard oral argument from the parties involved. Multiple parties submitted proposed supplemental evidence, but the Board did not admit any of that evidence into the administrative record because it found that the evidence was neither relevant nor material. *See id.*; 2 C.M.R. 06 096 002-12 § 24(D)(2) (2013).

[¶10] In June 2014, the Board issued an order affirming the Department's denial of Champlain's permit application. Although the Board did not specifically find that the Project would have an unreasonable adverse effect on the scenic character or existing uses related to scenic character on any *one* of the affected great ponds, the Board concluded that "the proposed project would unreasonably adversely affect scenic character and existing uses related to scenic character." Champlain filed a timely petition for review of the Board's final agency action pursuant to 38 M.R.S. § 346(4) (2014), 5 M.R.S. § 11002 (2014), and M.R. Civ. P. 80C.

III. DISCUSSION

A. The Dispute

[¶11] Primarily, Champlain argues that the Board unlawfully aggregated the scenic impact of the Project on the nine affected great ponds in reaching its

conclusion that the Project would have an unreasonable adverse scenic effect, contravening the plain language of the Wind Energy Act and related statutes.⁶ Champlain argues that because the Board did not find that the Project had an unreasonable adverse effect on the scenic character or existing uses related to scenic character of any one specific affected great pond alone, it could not have concluded that the project failed to satisfy the statutory standards. Champlain further argues that in aggregating the scenic impact, the Board applied the Act and related statutes arbitrarily because there are no standards to guide the exercise of the Board's discretion in evaluating aggregated scenic impacts.

[¶12] The Board responds that it is authorized to consider the overall impact of the Project on the nine affected great ponds. Section 3452(3), it argues, authorizes the Board to take a “holistic approach” when considering the impact a proposed project may have on multiple scenic resources of state or national significance.⁷ Moreover, the Board argues that its decision to deny Champlain's

⁶ We are not persuaded by Champlain's subsidiary arguments that the Board's decision is unsupported by the evidence in the record, *see Kroeger v. Dep't of Envtl. Prot.*, 2005 ME 50, ¶¶ 8-14, 870 A.2d 566, and that the Board's consideration of the overall impact of the Project is not judicially enforceable because it constitutes a rule that has not been adopted in accordance with the rulemaking provisions of the Maine Administrative Procedure Act, *see S.D. Warren Co. v. Bd. of Envtl. Prot.*, 2005 ME 27, ¶ 30, 868 A.2d 210, *aff'd*, 547 U.S. 370 (2006).

⁷ A determination that an expedited wind energy development meets the scenic standard imposed by the Wind Energy Act can be made only after evaluating specific criteria, including

- A. The significance of the potentially affected scenic resource of state or national significance;
- B. The existing character of the surrounding area;

permit application was not arbitrary; it simply applied the existing scenic standard to an unprecedented factual situation—a project that would simultaneously affect nine scenic resources of state or national significance, including many unusually interconnected great ponds, most of which were fully carved out of the expedited permitting area by the Legislature.

B. The Role of the Board and the Standard of Review

[¶13] As created by the Maine Legislature, the Board⁸ is uniquely situated to make decisions regarding competing legislatively established environmental policies. It has been entrusted with making “informed, independent and timely decisions” regarding those environmental policies. *See* 38 M.R.S. § 341-B

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- C. The expectations of the typical viewer;
 - D. The expedited wind energy development’s purpose and the context of the proposed activity;
 - E. The extent, nature and duration of potentially affected public uses of the scenic resource of state or national significance and the potential effect of the generating facilities’ presence on the public’s continued use and enjoyment of the scenic resource of state or national significance; and
 - F. The scope and scale of the potential effect of views of the generating facilities on the scenic resource of state or national significance, including but not limited to issues related to the number and extent of turbines visible from the scenic resource of state or national significance, the distance from the scenic resource of state or national significance and the effect of prominent features of the development on the landscape.

35-A M.R.S. § 3452(3) (2014).

⁸ The Board is composed of “7 members appointed by the Governor, subject to review by the joint standing committee of the Legislature having jurisdiction over natural resource matters and to confirmation by the Legislature.” 38 M.R.S. § 341-C(1) (2014). “At least 3 members must have technical or scientific backgrounds in environmental issues and no more than 4 members may be residents of the same congressional district.” 38 M.R.S. § 341-C(2) (2014).

(2014).⁹ Crucial to the matter before us, the very first paragraph of the Board’s authorizing legislation establishes the Board’s responsibility to “protect and enhance the public’s right to use and enjoy the State’s natural resources.” 38 M.R.S. § 341-A(1) (2014).

[¶14] Because the Board acted as the fact-finder and determined all legal issues de novo, we review the Board’s decision—not the Department’s decision—denying Champlain’s application. *See* 38 M.R.S. § 341-D(4) (“The [B]oard is not bound by the commissioner’s findings of fact or conclusions of law but may adopt, modify or reverse findings of fact or conclusions of law established by the commissioner.”); *Passadumkeag Mountain Friends v. Bd. of Env’tl. Prot.*, 2014 ME 116, ¶¶ 8-10, 102 A.3d 1181 (holding in a wind energy case that the Board’s decision, which was based on its independent analysis, was the decision on appeal, even though the Board did not supplement the administrative record in the course of its review); *see also Concerned Citizens to Save Roxbury v. Bd. of Env’tl. Prot.*, 2011 ME 39, ¶¶ 12-17, 15 A.3d 1263.

[¶15] Our review of the Board’s decision must therefore be “deferential and limited.” *Passadumkeag*, 2014 ME 116, ¶ 12, 102 A.3d 1181 (quotation marks omitted). Although “statutory construction is a question of law, subject to de novo

⁹ Among other responsibilities and authority, the Board is also explicitly authorized by the Legislature to recommend changes in the law. 38 M.R.S. § 341-B (2014).

review,” *FPL Energy Me. Hydro LLC v. Dep’t of Envtl. Prot.*, 2007 ME 97, ¶ 11, 926 A.2d 1197 (alteration omitted) (quotation marks omitted), “[w]hen reviewing an agency’s interpretation of a statute that it administers, we defer to the agency’s construction unless the statute plainly compels a contrary result,” *Passadumkeag*, 2014 ME 116, ¶ 12, 102 A.3d 1181. “We do not second-guess an agency on issues within its area of expertise; rather, we review only to ascertain whether its conclusions are unreasonable, unjust, or unlawful.”¹⁰ *Town of Eagle Lake v. Comm’r, Dep’t of Educ.*, 2003 ME 37, ¶ 8, 818 A.2d 1034 (quotation marks omitted).

C. Interpretation of the Wind Energy Act and Related Statutes

[¶17] The generating facilities and wind turbines that make up the Project are proposed to be sited within the expedited permitting area; however, most of the nine great ponds affected by the Project—all of which are rated as outstanding or significant from a scenic perspective—are fully excluded from the expedited permitting area. Thus, as previously noted, the Board was confronted with a project that falls directly between competing legislative priorities. It is from that perspective that we review the Board’s application of the applicable statutes.

¹⁰ Our deferential review of agency decisions has been the subject of legislative discussion in the past. See L.D. 1546 (125th Legis. 2011); Comm. Amend. A. to L.D. 1546, No. S-394 (125th Legis. 2012); 3 Legis. Rec. H-1381, S-2089 (2d Reg. Sess. 2012) (accepting minority report of ought not to pass). However, the Legislature has not enacted a provision that would alter this standard of review.

[¶18] In reaching its determination that the Project would have an unreasonable adverse effect on the scenic character or existing uses related to scenic character of the nine affected great ponds, the Board considered (1) the “existing character of the surrounding area” and “significance of the potentially affected scenic resource,” *see* 35-A M.R.S. § 3452(3)(A), (B); (2) the Legislature’s intent in balancing the goal of encouraging and expediting wind power development with the goal of protecting Maine’s scenic resources by limiting the geographic scope of the expedited permitting area; (3) the exclusion of most of the nine affected great ponds from the expedited permitting area; and (4) the unique interconnectedness of the affected great ponds, which would result in users being repeatedly confronted with views of the turbines from multiple scenic resources of state or national significance when traveling from one lake to another.

[¶19] The statutes at issue neither prohibit nor explicitly allow or require the aggregated or “holistic” approach taken by the Board. They do, however, explicitly require the Board to consider the “significance of the potentially affected scenic resource of state or national significance” and the “expectations of the typical viewer.” *Id.* § 3452(3)(A), (C). In this context of competing legislative priorities and unusually interconnected scenic resources, we cannot conclude that the Board acted unlawfully or arbitrarily in its determination that the visual impact of the Project would have an unreasonable adverse effect on the existing scenic

character or existing uses related to the scenic character of the nine affected great ponds. *See Town of Eagle Lake*, 2003 ME 37, ¶ 8, 818 A.2d 1034.

[¶20] Given the authority granted to the Board by the Legislature and the Board's superior position for addressing the unique characteristics of each project when considering the effect of wind energy development on Maine's scenic environment, we cannot conclude that the statutes compel a result contrary to that reached by the Board. Mindful of the unique circumstances before us, and of the legislatively defined interests at stake, we defer to the Board's interpretation of the Maine Wind Energy Act and the statutes governing expedited permitting for grid-scale wind energy projects. *See id.*

The entry is:

Judgment affirmed.

On the briefs:

Juliet T. Browne, Esq., Scott D. Anderson, Esq., and Gordon R. Smith, Esq., Verrill Dana, LLP, Portland, for appellant Champlain Wind, LLC

Janet T. Mills, Attorney General, and Margaret A. Bensinger, Asst. Atty. Gen., Office of the Attorney General, Augusta, for appellee Department of Environmental Protection

Frederick F. Costlow, Esq., Richardson, Whitman, Large & Badger, Bangor, for amicus curiae Partnership for the Preservation of the Downeast Lakes Watershed

Sean Mahoney, Esq., Conservation Law Foundation, Portland, for amicus curiae Conservation Law Foundation

At oral argument:

Juliet T. Browne, Esq., for appellant Champlain Wind, LLC

Margaret A. Bensinger, Asst. Atty. Gen., for appellee Department of Environmental Protection

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LUPC - AUGUSTA

Telephone (207) 945-5900

Facsimile (207) 945-0758

E-Mail fcostlow@rwlbb.com

Offices in
Portland, Maine
Bangor, Maine

Individual attorneys also
admitted in MA and NH

In Reply Refer To:

Richardson, Whitman, Large & Badger

A Professional Corporation

Attorneys at Law

One Merchants Plaza

P. O. Box 2429

Bangor, ME 04402-2429

Harrison L. Richardson (1930-2009)

John S. Whitman
Wendell G. Large
Frederick J. Badger, Jr.*
Elizabeth G. Stouder
Frederick F. Costlow*
Thomas R. McKeon
Gerard O. Fournier*
Carol I. Eisenberg
Heidi J. Hart
Joseph L. Cahoon, Jr.

* Resident in Bangor Office

March 18, 2016

Timothy Beaucage
State of Maine
Department of Agriculture, Conservation & Forestry
Land Use Planning Commission
22 State House Station
Augusta, Maine 04333-0022

**RE: Petition for Removal of Carroll Plantation from Windpower Expedited
Area - Substantive Review**

Dear Mr. Beaucage:

Please accept this correspondence as comments and evidence with respect to the
Petition for Removal of Carroll Plantation from the Wind Power Expedited Area.

I received a copy of the petition through landowner notice. I have property close
to the wind energy development. I have one property within Carroll Plantation and
another just outside of Carroll Plantation.

I begin by informing you I hold a Master's Degree in land use law from Vermont
Law School. The hallmark of land use planning is that a particular land use may be
appropriate in one area but completely inappropriate in another. Placing Carroll
Plantation in the Wind Energy Act was a mistake from its inception. In a rush to reap
economic and political benefits from renewable resources, large tracts of land were
included in the expedited areas without critical analysis. In addition, there was a great
deal of unfamiliarity with the effects of wind power projects, both visually and
economically. Projects have now taken over many Maine mountain tops and people have

had an opportunity to see them. Secondly, the claims of large numbers of jobs have not materialized. After the initial construction, these facilities are manned by skeleton staff.

Maine derives a huge economic benefit from its natural beauty and unadulterated natural landscape. What is occurring at this time in this particular location is commercial interests trying to place a truly large-scale industrial facility directly in an area dependent on the natural beauty for sustainable income into the future. I can speak specifically that my purchase of property in Carroll Plantation and Lakeville, Maine would not have occurred in the shadow of large-scale commercial wind towers.

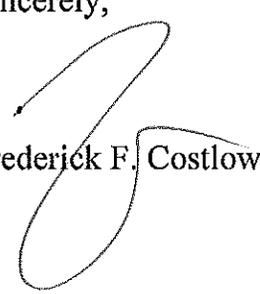
Property south of Route 6 which includes Carroll Plantation, Lakeville and Kossuth are considered part of the Lake Region. While the actual lakes may not be in Carroll Plantation or Kossuth, their proximity to the lake makes them part of the lake area. Properties from Carroll Plantation and Kossuth have elevated areas. This is why they are being sought by wind power. Those same properties, however, overlook the lake, provide camps, recreational opportunities because they view the lake. The line for the expedited wind area should have been Route 6 initially, but it was not.

This particular area has a history of efforts to build industrial wind projects. The request to use Carroll Plantation (Bowers Mountain) was eventually denied by the Land Use Regulatory Commission. In essence, the Land Use Regulatory Commission recognized that the area adjacent to the Downeast Lakes is part of the lake and is incompatible with large-scale commercial development. The applicant again went to the Department of Environmental Protection, then the Board of Environmental Protection and then the Maine Supreme Court. In each case, the incompatibility was the specific reason for denial.

I can provide some personal factual information which you may deem relevant. I was on the committee to negotiate the community benefits package for Carroll Plantation. The wind power applicants often claim overwhelming support of the community. They did so in the Carroll Plantation (Bowers Mountain) project. My first action as part of that committee was to suggest that the landowners in Carroll Plantation be notified of the existence of the committee and to provide input. This was rejected because the persons claiming residence in Carroll Plantation wished to retain any potential, minor benefit from the project. The persons owning land, but not being a resident, were not allowed an input or vote despite the serious, negative impacts on their property. I was one of those persons. Despite being a member of the committee, I was not even provided notice of the vote. The number of persons voting for the community package was 24 in favor and 10 against. This meant that only 34 people even voted on the project and a third of those opposed. Industrial wind projects that affect large areas, guide businesses, non-resident landowners and tourists should not be negatively impacted due to the whim of an

additional 14 people on a vote. At that time, there were 296 parcels owned by non-resident land owners who got no vote in the community package nor were involved in any way whatsoever. They were not even allowed notice.

Sincerely,



Frederick F. Costlow

FFC/lah