



PAUL RICHARD LEPAGE
GOVERNOR

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

WILLIAM H. BEARDSLEY
COMMISSIONER

Eleventh Procedural Order

**In the Matter of
Development Permit DP 4889
Champlain Wind, LLC.
Bowers Wind Project
August 11, 2011**

To: Parties
Neil Kiely (Applicant)
Juliet Brown, Esq. (Counsel for Applicant)
Sean Mahoney, Conservation Law Foundation
Kevin Gurall, PPDLW
David Corrigan
Gordon Mott

cc: LURC Commissioners
Amy Mills, Maine Assistant AG
Catherine Carroll, LURC Director
Samantha Horn Olsen, LURC
Frederick Todd, LURC
Steve Timpano, Maine Department of Inland Fisheries and Wildlife (MDIFW)
Jim Palmer, LURC scenic consultant

From: Gwen Hilton, Presiding Officer

Subject: Official notice of agency records

I. Background

- A. Access Easement: There are general references in the record of this proceeding to conservation easements on lands in proximity to the project area – see, for example, testimony of Catherine B. Johnson of the NRCM at the evening session of the June 27, 2011, Bowers Wind Project public hearing. No person or agency, however, offered the written text of any specific conservation easement.

Notably, the Bureau of Parks and Lands, on behalf of the State of Maine, holds an Access Easement on lands in proximity to the project area, including lands that abut, for example, Pleasant, Junior, and Scraggly lakes. This Access Easement is attached to this order (note that the attachment includes the first page twice, demonstrating recording of the document at the registry of deeds in two separate counties).

While the attached Access Easement provides some substantive information possibly relevant to the review criteria applicable to wind energy development, it primarily provides background contextual information on the surrounding area.

CATHERINE M. CARROLL, DIRECTOR

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- B. Decommissioning references from various sources: Attached to this order are decommissioning plans from various other LURC and DEP projects, as well as certain court decisions and a model wind energy ordinance.
1. LURC Development Permit Application DP#4788 by Evergreen Wind Power V, LLC
‘Stetson I Wind Project’ DP Application-Description; and Permit (*granted 1/2/2008*).
 2. LURC Development Permit Application DP#4818 by Stetson Wind II, LLC
‘Stetson II Wind Project’ DP Application-Description; and Permit (*granted 3/4/2009*).
 3. LURC Development Permit Application DP#4794 by Transcanada Maine Wind Development, Inc., ‘Kibby Wind Project’ DP Application-Description; and Permit (*granted 7/9/2008*).
 4. LURC Development Permit Application DP#4860 by Transcanada Maine Wind Development, Inc., ‘Kibby Expansion Project’ DP Application-Description; and Permit (*granted 1/5/2011*).
 5. LURC Development Permit Application DP#4889 by Champlain Wind, LLC
‘Bower’s Mountain Wind Project’ DP Application-Description and Decommission Exhibit 20 and Exhibit B – Sewall Memorandum 4-21-11 by Janine S. Murchison, PE. (*application pending*).¹
 6. LURC Development Permit Application DP#4862 by Highland Wind, LLC
‘Highland Wind Project’ DP Application-Description and Decommission Exhibit 22. (*withdrawal of application pending*).
 7. LURC Development Permit Application DP#4886 by Bull Hill, LLC
‘Bull Hill Wind Project’ DP Application-Description and Decommission Exhibit 20 and Exhibit B – Sewall Memorandum 4-12-11 by Michael N. Young, PE. (*application pending*).
 8. DEP Site Location of Development Act Application-Description, Section 29 Decommissioning Plan; and Approval Order. ‘Spruce Mountain Wind Project’, Woodstock, ME
Applicant: Patriot Renewables, Spruce Mountain Wind, LLC. (*granted 10-5-10*).
 9. DEP Site Location of Development Act Application-Description, Section 29 Decommissioning Plan; and Approval Order. ‘Saddleback Ridge Wind Project’, Carthage, ME.
Applicant: Patriot Renewables, Saddleback Ridge Wind, LLC. (*application pending*).
 10. DEP Site Location of Development Act Application-Description, Sec. 29 Decommissioning Plan; and Approval Order. ‘Record Hill Wind Project’, Roxbury, ME.
Applicant: Patriot Renewables, Record Hill Wind LLC. (*granted 8-20-09*).
 11. DEP Site Location of Development Act Application-Description, Section 29 Decommissioning Plan; and Approval Order. ‘Oakfield Wind Project’, Oakfield, ME.
Applicant: Patriot Renewables, Evergreen Wind Power II, LLC. (*granted 1-21-10*).

¹ These materials are already part of the record in the instant matter, and thus they have been listed and attached to this order for the convenience of the Commission and parties.

12. DEP Site Location of Development Act Application-Description, Section 29 Decommissioning Plan; and Approval Order. 'Rollins Wind Project', Lincoln, ME. Applicant: Patriot Renewables, Evergreen Wind Power III, LLC. (*granted 4-21-09*).
13. Maine Supreme Judicial Court, Decision 2011 ME 39, Docket BEP-10-206, Decided 3-24-11 CONCERNED CITIZENS TO SAVE ROXBURY et al v. BOARD OF ENVIRONMENTAL PROTECTION et al.
14. Maine Supreme Judicial Court Decision, 2011 ME 40, Docket BEP-10-339, Decided 3-24-11 MARTHA A. POWERS TRUST et al v. BOARD OF ENVIRONMENTAL PROTECTION et al.
15. 'Maine State Planning Office Model Wind Energy Facility Ordinance' August 27, 2009

To the extent it is helpful to the Commission in reaching a decision on this project, based upon its application of the applicable review criteria to relevant facts in the administrative record, the Commission intends to take official notice of the attached agency records. 5 M.R.S. § 9058.

II. Order

The Commission takes official notice of the Access Easement and listed decommissioning references, all of which are attached to this order:

Any party wishing to contest the substance or materiality of these records may do so in writing no later than August 22, 2011.

III. Authority and Reservations

This procedural order is issued by the Presiding Officer pursuant to LURC Chapter 5, *Rules for the Conduct of Public Hearings*. All objections to matters contained herein should be timely filed in writing with the Commission but are not to be further argued except by leave of the Presiding Officer. All rulings and objections will be noted in the record. The Presiding Officer may amend this order at any time.

Questions regarding this Order or rulings of the Presiding Officer should be directed to Catherine Carroll, the Commission's Director, or Fred Todd, at the Commission's office in Augusta. No ex parte communication may occur with the Presiding Officer or any other Commission member.

DATED AT AUGUSTA, MAINE THIS 11th DAY OF AUGUST, 2011



By: _____
Gwen Hilton, Presiding Officer