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GOVERNOR

STATE OF MAINE
DEPARTMENT OF CONSERVATION
22 STATE HOUSE STATION
AUGUSTA, MAINE
04333-0022

WILLIAM H. BEARDSLEY
COMMISSIONER

Second Procedural Order

**In the Matter of
Development Permit DP 4862
Highland Wind, LLC
Highland Wind Project
April 8, 2011**

To: Katherine Joyce, Esq. (Applicant)
Phil Worden, Esq. (Friends of the Highland Mountains (FHM))
Alan Michka (FHM)
Karen Pease (FHM)
Chris O'Neil (Friends of the Maine Mountains (FMM))
Rand Stowell (FMM)
William Plouffe, Esq. (Maine Appalachian Trail Club)
Robert Proudman (Appalachian Trail Conservancy (ATC))
Hawk Metheny (ATC)
David Publicover (Appalachian Mountain Club)
Dylan Voorhees (NRCM)
Jeff Goldman, Esq. (Maine Interfaith Power and Light)
Jane West, Esq. (Conservation Law Foundation)
Sean Mahoney, Esq. (CLF)
Steve Clark (Arnold Expedition Historical Society)
Jonathan Carter (Forest Ecology Network)
David Corrigan
Greg Perkins
Rita Hennessey (National Park Service (NPS))
W. Brent Allen (NPS)
Jodie Dunphy (Highland Plantation Assessors)

cc: Commissioners of the Land Use Regulation Commission (LURC)
Amy B. Mills, AAG
Catherine Carroll, LURC Director
Samantha Horn-Olsen, LURC Planning Division Manager
Marcia Spencer Famous, LURC Senior Planner
Jim Palmer, LURC Scenic Quality Consultant

From: Gwen Hilton, Land Use Regulation Commission Chair and Presiding Officer

Subject: Clarification regarding associated facilities; and briefing schedule regarding legal issues raised at pre-hearing conference

I. Background.

This order is issued in advance of a more comprehensive procedural order, which will address all issues raised and discussed at the April 7, 2011 pre-hearing conference regarding this wind project.

A. Commission decision regarding associated facilities

On April 6, 2011 at its regularly-scheduled business meeting, and in accordance with the First Procedural Order (March 15, 2011), the Commission heard oral argument regarding the scenic standard applicable to this wind project's associated facilities. The Commission deliberated on this issue, and, after having read directly from the definitions provided by the Legislature in the Wind Energy Act, unanimously voted that: "generating facilities" means wind turbines, including what was referred to at the meeting as "turbine pads," turbine towers, and transmission lines; and "associated facilities" means all other facilities that are not generating facilities, including all roads used to access the turbines, and meteorological towers. Of course, as set forth in the Wind Energy Act, generating facilities also includes transmission lines, except for generator lead lines, which are associated facilities.

On April 7, 2011 the Presiding Officer convened the pre-hearing conference regarding this project. The attendees of the conference raised and discussed an issue arising out of the Commission decision discussed above, namely the attendees now seek a clarification as to what the Commission intended by using the term "turbine pads." The attendees discussed that wind projects include, from top to bottom, turbine blades, towers, concrete foundations, and pads. The "turbine pads" are not what turbines immediately rest upon, but rather are cleared, leveled areas of gravel around each turbine. Thus, while it appeared to the attendees at the conference that the Commission intended for concrete foundations to be included under the definition of generating facilities, they inquired as to whether the Commission, by referring to "turbine pads," intended for the cleared, leveled areas of gravel to fall under the definition of generating facilities.

B. Legal issues raised at the pre-hearing conference

At the pre-hearing conference, the attendees also raised and discussed several legal issues, the resolution of which will provide for a more efficient adjudicatory process. Specifically, the attendees raised the following issues:

- (1) Whether locations along the Appalachian Trail and within the Bigelow Preserve that have a view of the project's generating facilities, but are more than 8 miles away from the generating facilities, are relevant with respect to the project's effect on scenic character and existing uses related to scenic character;
- (2) Whether privately-owned locations that have a view of the project's associated facilities are relevant with respect to the project's effect on scenic character and existing uses related to scenic character; and
- (3) Whether consideration of the effect of turbine lighting on scenic character and existing uses related to scenic character is governed by the scenic standards of the Wind Energy Act, 35-A M.R.S. § 3452, or of LURC's statute, 12 M.R.S. § 685-B(4)(C), and LURC's standards, chapter 10.25(F)(2).

II. Order.

A. Generating and Associated facilities

The Commission's decision regarding generating and associated facilities is clarified as follows:

Generating facilities means wind turbines, including their blades, towers, and concrete foundations, and transmission lines (except generator lead lines); and 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.

B. Briefing schedule for legal issues

Any party in opposition to the Applicant's proposed project who wishes to file written argument on any of the 3 legal issues identified above shall file pleadings no later than April 18, 2011.

The Applicant and any party in support of the Applicant's proposed project shall file responsive pleadings no later than April 28, 2011.

Filings made pursuant to this order shall be made electronically on all parties on the service list set forth above, including LURC staff, to the attention of Marcia Spencer Famous, no later than 5:00 p.m. on the designated dates.

The Presiding Officer will issue a subsequent procedural order, resolving these 3 legal issues, as soon as reasonably possible following the receipt of all timely pleadings.

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 these rulings of the Presiding Officer should be directed to Catherine Carroll, the Commission's Director, or Marcia Spencer-Famous 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 8th DAY OF April 2011

By:



Gwen Hilton, Chair and Presiding Officer