

**AGENCY REVIEW COMMENTS  
REVISED PROPOSAL FOR THE KIBBY EXANSION PROJECT  
TRANSCANADA MAINE WIND DEVELOPMENT, INC**

**DEVELOPMENT PERMIT DP 4860  
October 18, 2010**

**The state agency reviewer comments included in this compiled document:**

1. Maine Dept. of Inland Fisheries and Wildlife – page 1
2. Maine Historic Preservation Commission - page 4
3. Maine Public Utilities Commission – page 11
4. Maine Bureau of Parks and Lands - page 14
5. Warren Brown – 3<sup>rd</sup> party sound reviewer for LURC – page 18
6. Maine State Soil Scientist David Rocque – page 18
7. Town of Eustis – page 18
8. Franklin County Commissioners – page 19

**The agency comments shown on LURC’s website for this project under “Agency Review Comments” in separate files include:**

1. Jim Palmer - 3<sup>rd</sup> party scenic reviewer for LURC
  2. Maine Natural Areas Program
- 

**1. Maine Dept. of Inland Fisheries and Wildlife**

MDIFW has reviewed the amendment to the application for development of the Sisk Mountain-Kibby Wind Expansion. MDIFW still believes that additional pre-construction studies at this site are not necessary. This determination is based on state regulations and review policies. Considerations relative to federal law (Migratory Bird Treaty Act, U.S. Endangered Species Act, or Bald Eagle – Golden Eagle Protection Act) are under the jurisdiction of the U.S. Fish and Wildlife Service.

Similar to the initial application, we offer the following comments regarding several habitats for species of concern

**Bicknell’s Thrush habitat:** The original proposal included 5 turbines, which would have occurred within potential Bicknell’s Thrush habitat. Turbine # 11 and its access road were the greatest concern to MDIFW, because this turbine and road would have bisected the occupied habitat. We originally recommended that the applicant remove Turbine # 11 and its access road. The applicant moved that turbine and road to the outside of the habitat currently occupied by Bicknell’s Thrush, which reduced impacts to this habitat. In the current amendment, the applicant proposes to remove the southern 4 turbines, which will further reduce impacts to Bicknell’s habitat associated with this site. The removal of the southern 4 turbines, not only reduces direct habitat loss, but also reduces the fragmentation of habitat currently occupied by Bicknell’s Thrush, as well as

any future habitat that may occur within the Fir-Heart-leaved birch Subalpine Forest identified on-site. Although significantly reduced, impacts to Bicknell's Thrush habitat still exist with the remaining 2 turbine pads and access roads. Therefore, MDIFW still requests a detailed post-construction monitoring protocol to be implemented for this species with at least the same rigor and scope as the pre-construction studies.

**Northern Bog Lemming:** The applicant identified several wetlands that are suitable and potentially occupied by Northern Bog Lemmings. As currently proposed, all access roads, turbine pads, and collector lines are located outside of the minor watersheds that contain these wetlands. Removal of the southern 4 turbines further separates any proposed development from a potentially occupied wetland. Therefore, MDIFW does not anticipate negative impacts this species/ habitat.

**Roaring Brook Mayfly/Spring Salamander:** The removal of the southern 4 turbines does not minimize potential impacts to both Roaring Brook Mayfly and Spring Salamander, known to occur within the Gold Brook Watershed. MDIFW initial comments still apply, and are as follows: "The applicant conducted surveys for both of these species in the Kibby Stream Watershed. The surveys did not document either species within Kibby Stream, however suitable habitat for both species is present in the watershed. The applicant has agreed to follow MDIFW management guidelines (in final draft form and will be forthcoming ASAP) developed to protect the habitat for both species. As currently proposed, the "mile 5 access Rd" has 4 stream crossing with the greatest potential for this species to occur: C-09-S-0-1b, E-09-S-2-1, A-09-S-102-1, and F-09-S-2-1, for these access road stream crossings, we recommend that these crossings be upgraded to in-kind crossings that span at least 1.5 times the bankfull width of the stream channel and provide an openness ratio<sup>2</sup> of at least 0.60 meters. The rest of the perennial stream crossings associated with the access road can follow fisheries recommendations of 1.2 times the bankfull width. All collector line crossings of perennial streams should follow guidelines similar to DEP's Minimum Performance Standards for Electric Utility Corridors, found in Appendix A of Chapter 375 Rules. ([http://www.maine.gov/dep/blwq/topic/site\\_storm\\_revisions/site\\_rules/fourth\\_informal\\_draft/APPENDIX\\_A\\_2\\_cl.pdf](http://www.maine.gov/dep/blwq/topic/site_storm_revisions/site_rules/fourth_informal_draft/APPENDIX_A_2_cl.pdf))."

**Vernal Pools:** In order to clarify some confusion regarding vernal pools surveys and previous MDIFW comments, we submit the following comments:

Typically, MDIFW requests vernal pool surveys as part of any large development application. Currently, MDIFW utilizes Natural Resources Protection Act- Significant Vernal Pools standards, regardless of actual regulatory jurisdiction (DEP NRPA Chapter 335 Rules; Section 9, Significant Vernal Pools). NRPA rules only provide protection for vernal pools that are determined to be "Significant Vernal Pools." There are several criteria used to determine significance of a vernal pool (outlined in Section 9 of Chapter 335 rules).

NRPA rules allow for vernal pools to be surveyed in any season. An applicant can identify potential vernal pools, using indicators such as flat topography with depressions or pit-and-mound topography, wetland flora, fingernail clams, caddis fly cases, and evidence of temporary flooding. These potential vernal pools can either be surveyed again during the appropriate window for official determination of significance or in lieu of additional surveys the applicant can apply the habitat management standards for “Significant Vernal Pools.” It is important to note that official determination of pool Significance is made by MDIFW and not the applicant or the certified professional conducting the survey.

TransCanada, through consultation with MDIFW, adopted a protocol to identify vernal pools as part of their pre-construction study package based on these NRPA standards and definitions. The objective of the protocol employed by TransCanada was to identify, map, and characterize all vernal pools that are in proximity to their proposed development. TransCanada submitted their vernal pool data forms to MDIFW. All pools submitted were determined to be non-significant, because the vernal pools identified in the survey were all of unnatural origin. Therefore, additional surveys during the identification period for pool-breeding amphibians were unnecessary, and would not have changed the determination of Significance. In most circumstances, unnatural vernal pools are not determined to be Significant or subject to habitat management standards (under NRPA rules). Regardless of this determination, TransCanada is proposing to apply NRPA habitat management standards to all identified vernal pools, including a 250-ft upland buffer.

Finally, a detailed post-construction monitoring plan should be developed and approved as part of the Development Permit. MDIFW re-states our willingness to work with the applicant in developing this monitoring plan. The post-construction monitoring efforts should be at least as rigorous as the pre-construction efforts. This monitoring plan should be conducted for a minimum of two years (preferably three) and can be distributed over a period of several years post-construction (i.e., years 1, 3, 5). We request that the post-construction monitoring plan is reviewed and approved by MDIFW and LURC prior to operation of any wind turbines

Post-construction monitoring protocols for wind projects are rapidly evolving. Many of the same techniques used at the Mars Hill and Stetson Mountain Wind Power Facilities should be used for the Sisk Mountain-Kibby Wind Expansion project and refined through consultation with MDIFW. This post-construction monitoring protocol should be adaptive as continued wind power projects shed new information on possible ways to minimize impacts on birds and bats. This may result in the modification of proposed studies through discussions among the applicant, MDIFW, and DEP.

---

## **2. Maine Historic Preservation Commission**

“Kirk Mohney’s letter of September 27 explained the National Historic Preservation Act Section 106 adverse effect process, with adequate mitigation being the desired result. In negotiations between our office, the Arnold Expedition Historical Society, and Jay Clement of the Army Corps, TransCanada has developed two draft documents that in principle provide adequate and acceptable mitigation. These are a Memorandum of Agreement between TransCanada and the Arnold Expedition Historical Society and a Memorandum of Agreement between the Army Corps and the Maine SHPO referencing the previously mentioned agreement. The drafts of these documents transmitted to us by Juliet Browne by email October 5 are acceptable, and we look forward to concluding this process.”

Sincerely,  
Earle G. Shettleworth, Jr.  
State Historic Preservation Officer

---

**MEMORANDUM OF AGREEMENT  
BETWEEN THE  
NEW ENGLAND DISTRICT, U.S. ARMY CORPS OF ENGINEERS,  
AND THE  
MAINE STATE HISTORIC PRESERVATION OFFICER  
REGARDING THE KIBBY EXPANSION PROJECT  
KIBBY AND CHAIN OF PONDS TOWNSHIPS, FRANKLIN COUNTY, MAINE**

WHEREAS, the New England District, U.S. Army Corps of Engineers (“Corps”) plans to issue a permit for the construction of the Kibby Expansion Project in Kibby and Chain of Ponds Townships, Franklin County, Maine being permitted by the proponent TransCanada Maine Wind Development, Inc. (“TransCanada”) (Corps Permit Application No. NAE-2009-00892), pursuant to 33 CFR Part 325, Appendix C; and

WHEREAS, the Corps has determined that Kibby Expansion Project will have an adverse effect on a portion of the Arnold Trail to Quebec, which was listed on the National Register of Historic Places on October 1, 1969; and

WHEREAS, the Corps has consulted with the Maine State Historic Preservation Officer (“Maine SHPO”) pursuant to 36 CFR Part 800, and 33 CFR Part 325, Appendix C, regulations implementing Section 106 of the National Historic Preservation Act (16 U.S.C. Section 470f), and the Maine SHPO concurred with the Corps determination on \_\_\_\_\_; and

WHEREAS, the parties agree that there are no prudent or feasible alternatives to avoid the adverse effect; and

WHEREAS, in accordance with 36 CFR Section 800.6(a)(1), the Corps has notified the Advisory Council on Historic Preservation (“ACHP”) of its adverse effect determination with specified documentation and the Council has chosen not to participate in the consultation pursuant to 36 CFR Section 800.6(a)(1)(iii); and

WHEREAS, the proponent has participated in the consultation and has been invited to be a concurring party to this MOA;

NOW, THEREFORE, the Corps and Maine SHPO agree that the project shall be implemented in accordance with the following stipulations in order to take into account the project’s effect on historic properties.

### **Stipulations:**

TransCanada will make the funds available under this agreement upon commencement of construction of the Kibby Expansion Project. Commencement of construction shall be deemed to occur when the first concrete pour for a wind turbine foundation commences.

#### ***A. Documentation***

1. TransCanada will provide \$50,000 (US) to be used as seed money for acquisition of land rights in the Horseshoe Stream area or other areas along the Arnold Trail and consistent with preserving the Arnold Trail route, and as set forth more fully in the Memorandum of Agreement between the Arnold Expedition Historical Society (“AEHS”) and TransCanada and agreed to by the Maine SHPO, attached as Exhibit A hereto (referred to as the “AEHS MOA”). In the event that AEHS, in coordination and consultation with the Maine SHPO, is unable to acquire land rights or enter into an option agreement to acquire land rights in the Horseshoe Stream area or other area along the Arnold Route then, as set forth in the AEHS MOA, the funds may be used for any one or more of the following:

- Archaeological research in the Chain of Ponds region;
- The acquisition and/or preservation of archaeological resources relating to the Arnold Trail including the conservation of artifacts; or,
- Historical interpretation of the Arnold Route for the public in the Chain of Ponds Region.

2. Additionally, TransCanada will provide funds to the Maine SHPO in an amount up to \$25,000.00 (US) for the following:

- Acquisition of original Maine woods photographs taken in the period 1880-1890 by the photographer Edwin R. Starbird and his contemporaries, or acquisition of digital copies of such images;
- Acquisition of original Maine woods photographs taken in the period 1925-1950 by the Portland photographer John Carleton Bicknell and his contemporaries; and
- Development of a website that creates public access to and information about the

collection.

The balance of any funds not required for acquisition of the photographic collection or development of the website, and as determined by SHPO, shall be added to the Funds set forth in the AEHS MOA such that the total mitigation package herein will consist of \$75,000 (US) to be used for the purposes described herein..

**B. *Amendment***

At any time during the period in which this memorandum of agreement is in effect, the Corps or Maine SHPO may request that it be amended, whereupon the parties shall consult to consider the proposed amendment. 36 C.F.R. 800.6(c)(7) shall govern the execution of any such amendment.

**C. *Dispute Resolution***

Should any party to this agreement object within 30 days to any actions proposed by any party pursuant to this agreement, they will contact the Corps and the Corps shall consult with the party to resolve the objection. If the Corps determines that the objection cannot be resolved, the Corps shall request comments from the ACHP pursuant to 36 CFR Section 800.6 (b) and 33 CFR Part 325, Appendix C. Any Council comments provided in response to such a request will be taken into account by the Corps in accordance with 36 CFR Section 800.6 (c) (2) and 33 CFR Part 325, Appendix C with reference only to the subject of the dispute. The responsibility of the Corps to carry out all actions under this agreement, other than those subject to dispute, will remain unchanged.

**D. *Duration***

This MOA will be null and void if its terms are not carried out within three (3) years from the date of its execution. Prior to such time, this MOA may be amended when such an amendment is agreed to in writing by all signatories. The amendment will be effective on the date a copy signed by all of the signatories is filed with the ACHP.

---

---

Execution of this Memorandum of Agreement by the Corps and Maine SHPO, and implementation of its terms, are evidence that the Corps has afforded the ACHP an opportunity to comment on this project and its effects on historic properties, and the Corps has taken into account the effects of the undertaking on historic properties.

NEW ENGLAND DISTRICT, U.S. ARMY CORPS OF ENGINEERS

By: \_\_\_\_\_ Date: \_\_\_\_\_

Chief, Regulatory Division

MAINE STATE HISTORIC PRESERVATION OFFICER

By: \_\_\_\_\_ Date: \_\_\_\_\_

Earle G. Shettleworth, Jr.  
State Historic Preservation Officer

CONCURRENCE:

By: \_\_\_\_\_ Date: \_\_\_\_\_

TransCanada Maine Wind Development, Inc.

---

**MEMORANDUM OF AGREEMENT**

THIS MEMORANDUM OF AGREEMENT is entered into as of the \_\_\_\_ day of \_\_\_\_\_, 2010 between TRANSCANADA MAINE WIND DEVELOPMENT INC., a Maine corporation with a mailing address of 3647 The Arnold Trail, Chain of Ponds Township, Maine (“TransCanada”), and the ARNOLD EXPEDITION HISTORICAL SOCIETY, a corporation organized pursuant to 26 U.S.C. § 501(c)(3) with a mailing address of 33 Arnold Road, Pittston, Maine 04345 (“AEHS”).

WHEREAS, TransCanada has proposed the development of a wind energy development project consisting of 11 turbines and associated facilities on and around Sisk ridgeline in the Kibby and Chain of Ponds townships in Franklin County, Maine (the “Kibby Expansion Project”);

WHEREAS, the mission of AEHS is to preserve and celebrate the history of Benedict Arnold’s 1775 march through Maine to Quebec City along what is referred to as the Arnold Route;

WHEREAS, a portion of the Arnold Route is located in the vicinity of the Kibby Expansion Project;

WHEREAS, AEHS and TransCanada agree that it would constitute a public benefit to protect a portion of the Arnold Route in the vicinity of Horseshoe Stream, north of the current Maine Public Reserve Land at Natanis Point (the “Horseshoe Stream area”);

NOW, THEREFORE, TransCanada and AEHS agree to the following:

1. TransCanada agrees to provide funding in the amount of \$50,000 (US) (the “Funds”) for AEHS to use in consultation and coordination with the Maine State Historic Preservation Officer (SHPO) as seed money to acquire land rights or enter into an option to acquire land rights in the Horseshoe Stream area.

2. If AEHS is unable to acquire land rights or enter into an option to acquire land rights in the Horseshoe Stream area, it may, in consultation and coordination with the SHPO, use the funds as seed money to acquire land rights or enter into an option to acquire land rights for other areas along the Arnold Route and consistent with preserving the Arnold Trail route.
3. AEHS must consult with and obtain the advance approval of the SHPO before committing or using the Funds. Upon agreement of AEHS and SHPO, a third party may be the holder of the land rights acquired under this agreement.
4. In the event that AEHS is unable to acquire land rights or enter into an option agreement to acquire land rights in the Horseshoe Stream area or other area along the Arnold Route on or before November 15, 2014, then AEHS in consultation with the SHPO may use the Funds for any one or more of the following purposes as determined by AEHS and approved by the SHPO:
  - a. Archaeological research in the Chain of Ponds region;
  - b. The acquisition and/or preservation of archaeological resources relating to the Arnold Trail including the conservation of artifacts; or,
  - c. Historical interpretation of the Arnold Route for the public in the Chain of Ponds Region.
5. AEHS acknowledges and agrees that any expenditure of Funds must be reviewed and approved in advance by the SHPO.
6. AEHS agrees that TransCanada's obligation to provide the Funds is contingent upon TransCanada obtaining all final and non-appealable local, state and federal regulatory approvals necessary to construct and operate the Kibby Expansion Project (the "Approvals") and commencing construction of the Kibby Expansion Project. AEHS further acknowledges that TransCanada's agreement to provide the Funds under this agreement is being done in connection with the Army Corps of Engineers permitting requirements for the Project and TransCanada's obligation to provide the Funds is contingent upon (i) issuance of a permit from the Army Corps of Engineers, including finalization of any mitigation requirements associated with a finding by the SHPO that the Kibby Expansion Project will have an adverse affect on the Arnold Trail within the meaning of 36 CFR Part 800, Section 600.5(a)(2), and (ii) commencement of construction of the Kibby Expansion Project. Within six months of commencement of construction, which shall be deemed to occur with commencement of the first concrete pour for a turbine foundation, TransCanada agrees to place the Funds into escrow for use by AEHS in consultation with the SHPO and in accordance with the terms of this agreement.
7. AEHS acknowledges that TransCanada has decided to seek the Approvals and to build the Kibby Expansion Project as a part of its business objectives and



that nothing in this agreement is intended to limit TransCanada's exercise of its business discretion in deciding when, whether and how to pursue the Approvals and, if they are obtained, to commence or complete the Kibby Expansion Project.

8. Notices and communications under this agreement shall be in writing and sent to TransCanada at the address set forth above to the attention of \_\_\_\_\_ and to AEHS at the address set forth above to the attention of \_\_\_\_\_.

IN WITNESS WHEREOF, TransCanada and AEHS have caused this instrument to be executed as of the date first above written.

TRANSCANADA MAINE WIND DEVELOPMENT INC.

By: \_\_\_\_\_  
Name: \_\_\_\_\_

State of \_\_\_\_\_  
County of \_\_\_\_\_, SS \_\_\_\_\_, 2010

Then personally appeared the above-named \_\_\_\_\_ in his/her capacity as \_\_\_\_\_ of TransCanada Maine Wind Development Inc. and acknowledged the foregoing instrument to be his/her free act and deed in said capacity and the free act and deed of TransCanada Maine Wind Development Inc.

Before me,  
\_\_\_\_\_  
Notary Public

TRANSCANADA MAINE WIND DEVELOPMENT INC.

By: \_\_\_\_\_  
Name: \_\_\_\_\_

State of \_\_\_\_\_  
County of \_\_\_\_\_, SS \_\_\_\_\_, 2010

Then personally appeared the above-named \_\_\_\_\_ in his/her capacity as \_\_\_\_\_ of TransCanada Maine Wind Development Inc. and acknowledged the foregoing instrument to be his/her free act and deed in said capacity and the free act and deed of TransCanada Maine Wind Development Inc.

Before me,

\_\_\_\_\_  
Notary Public

ARNOLD EXPEDITION HISTORICAL SOCIETY

By: \_\_\_\_\_

Name: \_\_\_\_\_

Its: \_\_\_\_\_

State of \_\_\_\_\_

County of \_\_\_\_\_, SS \_\_\_\_\_, 2010

Then personally appeared the above-named \_\_\_\_\_ in his/her capacity as \_\_\_\_\_ of the Arnold Expedition Historical Society and acknowledged the foregoing instrument to be his/her free act and deed in said capacity and the free act and deed of the Arnold Expedition Historical Society.

Before me,

\_\_\_\_\_  
Notary Public

CONCURRENCE:

By: \_\_\_\_\_  
Maine State Historic Preservation Officer

Date: \_\_\_\_\_

### 3. Maine Public Utilities Commission

#### MAINE PUBLIC UTILITIES COMMISSION Review Comments

TransCanada Maine Wind Development  
Revised Proposal for the Kibby Expansion Wind Power Project

October 14, 2010

#### Introduction

The Land Use Regulation Commission (LURC) has requested that the Public Utilities Commission (PUC) provide review comments with respect to TransCanada Maine Wind Development, Inc.'s (TransCanada) revised proposal for the Kibby Expansion Wind Power Project located in the unincorporated townships of Kibby and Chain of Ponds in Franklin County, Maine (Revised Kibby Expansion Project).

The Act to Implement Recommendations of the Governor's Task Force on Wind Power Development (Act) requires LURC to determine whether the Revised Kibby Expansion Project will provide "significant tangible benefits."<sup>1</sup> The Act provides that the PUC (among other agencies) shall submit review comments at the request of the siting authority.<sup>2</sup> The PUC is pleased to provide review comments within its areas of expertise.

"Tangible benefits" are defined by statute to mean:

environmental or economic improvements or benefits to residents of this State attributable to the construction, operation and maintenance of an expedited wind energy development, including but not limited to: property tax payments resulting from the development; other payments to a host community, including but not limited to, payments under a community benefit agreement; construction-related employment; local purchase of materials; employment in operations and maintenance; reduced property taxes; reduced electrical rates; natural resource conservation; performance of construction, operations and maintenance activities by trained, qualified and licensed workers in accordance with Title 32, chapter 17 and other applicable laws; or other comparable benefits, with particular attention to assurance of such benefits to

---

<sup>1</sup> P.L. 2007, ch. 661, section C-4 (codified at 12 M.R.S.A. § 685-B(4-B)).

<sup>2</sup> P.L. 2007, ch. 661, section A-7 (codified at 35-A M.R.S.A. § 3454).

the host community or communities to the extent practicable and affected neighboring communities.<sup>3</sup>

The Act specifies that the siting authority shall presume the general energy and emissions-related benefits stated in statute (e.g. reduced reliance on fossil fuels, avoidance of air pollution and greenhouse gas emissions and improved state and regional energy security) and make additional findings regarding other tangible benefits.<sup>4</sup> Thus, the PUC submits the following comments on whether the Revised Kibby Expansion Project provides significant tangible benefits in the areas of electricity market and pricing.

### **Discussion**

In its original application for the Kibby Expansion Project, TransCanada asserted that the project will provide tangible benefits in the form of electricity market and price benefits. TransCanada stated that the project will increase diversification of energy resources and reduce dependence on fossil fuel based energy generation. TransCanada also stated that an increase in renewable energy production will also help to reduce both the level and volatility of electricity prices in the region and assist Maine in meeting its renewable energy portfolio standards, which require an increasing percentage of the electricity provided in Maine to come from eligible renewable energy sources.

In TransCanada's Revised Proposal for the Kibby Expansion Project, TransCanada incorporated these benefits by reference and noted that the emission free energy produced by the revised project will be 92,000-MWhs per year.

Although the PUC agrees that the Revised Kibby Expansion Project will have the energy diversity, price stability and portfolio standard benefits cited by TransCanada, these benefits should not be considered by the LURC in its evaluation of significant tangible benefits because the Act specifies that the general energy and environmental benefits of an expedited wind energy development should be assumed and do not constitute "tangible benefits" for purposes of satisfying the significant tangible benefits requirement. The PUC suggests that the LURC consider as an electricity market tangible benefit the sale of a significant amount of the output of the wind power project to customers (particularly industrial and commercial customers) within the area or to the utility under the PUC's long-term contracting authority at fixed prices projected to below

---

<sup>3</sup> 35-A M.R.S.A. § 3451(10).

<sup>4</sup> 35-A M.R.S.A. 3402(1), 3454.

market prices or at a stated discount off of market prices.<sup>5</sup> The PUC is not aware of any such benefit conferred by the Revised Kibby Expansion Project.

It is important to note, however, that the Act does not require that a wind project provide tangible benefits from each of the categories listed in statute to meet the significant tangible benefits requirement. The project could offer no electricity pricing tangible benefits and still satisfy the requirement if there are enough benefits from the other categories listed in the statutory definition of tangible benefits. The determination of whether the overall package of benefits satisfies the significant tangible benefit requirement is for the "primary siting authority," in this case LURC.<sup>6</sup>

The PUC appreciates the opportunity to provide these comments and would be happy to answer any questions you may have.

DATED: October 14, 2010



---

Mitchell M. Tannenbaum  
Deputy General Counsel  
Maine Public Utilities Commission  
State House Station # 18  
Augusta, Maine 04333-0018

#### 4. Maine Bureau of Parks and Lands

“In summary, BPL offers no reason for rejection of the pending revised Kibby II application. Rather, BPL’s interest continues to be to define good precedent for more straightforward decision-making, in such cases where BPL-owned or BPL-stewarded assets are the subject of discussion in a windpower context.

1. The removal of Kibby III rulemaking and its cumulative implications, and the scaling back of Kibby II, collectively mean that the scenic and recreational impacts of the revised Kibby II proposal do not jump out as troublesome to BPL when considering the need for balance. That being said, we continue to comment with an eye toward precedent and the larger balance of land conservation momentum and wind power momentum statewide, with a respect for the evolving laws on tangible benefits and other matters.
2. BPL sees no evidence of any defined viewpoint on BPL land or viewpoint on BPL-owned shoreline which gives rise to LURC scenic jurisdiction. Nor does BPL have reasonably-foreseeable plans to develop viewpoints on those BPL undeveloped conserved lands (shorelines or roadsides) which if developed would have possibly jurisdictional views with impacts.
3. There are jurisdictional viewpoints from the water on Chain of Ponds, which are surrounded by BPL lands. BPL’s ownership of the shoreline is relevant as LURC weighs the significance of the water-based viewpoints. These water viewpoints also overlap with BPL’s stated interest as a guardian, of sorts, of the Arnold Trail.
4. Regarding the views from the water, if isolated from the Arnold Trail for analytical purposes, BPL’s inexpert opinion is that the impacts are neither unreasonable nor unduly adverse. That being said, we offer some additional observations, with no intent of leading LURC toward any conclusion other than neither unreasonable nor unduly adverse:
  - We have not reviewed in detail LURC’s commissioned consulting work (Jim Palmer) regarding scenic impacts. This body of work is worthy of review and comment by the public and parties. Upon cursory review, this body of work seems to be establishing good analytical precedent for future projects and future applications to mirror analytically.
  - We urge exclusion or rejection of the applicant’s argument that “incremental” scenic impacts are a primary justification for a finding of reasonableness. This language does not appear in Palmer’s work. LURC should consider incrementalism as a justification for windpower impacts only if LURC can articulate simultaneously a methodology for analysis of cumulative impacts.

- We urge exclusion of any proposed finding that highway noise on a scenic byway is a significant reason to significantly diminish the significance of a scenic asset. It just seems like a circular argument, on several dimensions. Palmer's work mentions this as a factor, but not necessarily a significant or determinative factor.
  - We urge exclusion of any proposed finding that motorized recreation is a significant reason to diminish the significance of a scenic asset. Provoking "us versus them" debates between types of recreationists would be counterproductive. One could debate these matters forever, with no benefit to anyone. Non-motorized boats or trail users enjoy the same scenery that motorized boats or trail users enjoy. Palmer's work does not introduce this issue enough to be problematic.
  - Consistent with my verbal statements in testimony to the Commission, BPL urges exclusion of any proposed finding that BPL's management plans are a factor in LURC's windpower siting decisions. Palmer's work does not seem to introduce this issue. We urge future applicants and future parties to avoid introducing BPL management plans into discussions. Our management plans simply should not be used to guide decision-making on adjacent private lands. If this happens, our drafting process for future plans will become impossibly controversial. Landowner and windpower trade associations have expressly or implicitly supported legislative or regulatory decisions for public viewpoints to cast a regulatory shadow over private lands; the same is not true for the details of BPL management plan documents. We recognize that this will limit the evidence available to the Commission for decision-making especially on upcoming projects.
5. Regarding the views from the Arnold Trail, and the extent to which the existence of the Arnold Trail may or may not enhance the determined value of the Chain of Ponds viewshed, BPL defers to the expert opinions of the Maine Historic Preservation Commission or other parties with respect to the extent or reasonableness or adversity under state and/or federal law. Responding to the LURC consulting (Palmer) scenic report with an eye toward future projects with comparable postures, we question whether the Arnold Trail should be analyzed as a separate viewpoint, or instead whether the Arnold Trail should be a contributing factor in the analysis of the water-based viewpoints (Chain of Ponds.) My impression is that the two are the precise same geography, and thus the viewer expectations and other criteria should be identical as one viewpoint.
  6. The Commission, directly or indirectly, appears poised to accept the apparent analysis of the Attorney General, that compensatory offsite mitigation for scenic impacts is not supported by Maine law, in the context of a determination of meeting scenic standards. BPL chooses to no longer advance contrary arguments through the regulatory process, while noting that it is an appropriate discussion for future legislatures. BPL notes that wind proponents, including distinguished columnists, argue or assume the existence of mitigation as an available tool, and that some wind

developers or their representatives explicitly or privately recognize the need for new mitigation tools to maintain popular support for windpower goals.

7. The Commission appears unclear as to whether regulators might affirmatively shape tangible benefit packages, and what basis might lead to that power, such as whether an impact on recreational enjoyment or scenic quality might be a basis to proactively shape tangible benefit packages. The precedent of DEP's Woodstock Spruce Mountain wind power project draft permit can be read as follows:

“Negative (but not unduly adverse or unreasonable) impacts on public views from public viewpoints may be the basis for a regulatory requirement of enhanced and offsetting tangible benefits related to land conservation or recreation.”

With this in mind, BPL leaves to LURC the open question of the sufficiency of the pending tangible benefit package, noting that LURC has the apparent authority to shape the amount of package, beyond what has been offered.

BPL further thinks it is important that any tangible benefit packages offered by developers which appear to advance goals of land conservation be shaped by LURC to ensure concrete outcomes. This exact same issue will exist – perhaps with even more acuity – under the new statutes regarding tangible benefits which expressly reference land conservation as an option. Thus in the pending Kibby II permit, BPL urges LURC to provide checks and balances such that the proposed contribution to the High Peaks Alliance result in measurable outcomes. Four possible non-exclusive approaches include: (1) the approach of LMFB, that a conservation acquisition be protected by a “project agreement” with a state agency; (2) the approach of various regulators, that conservation funding be placed in escrow pending concurrence of various parties; (3) the approach of LURC under other laws, that a conservation acquisition be protected by terms in the title which provide third-party deeded rights to a state agency; (4) the approach of LURC under other laws, that a conservation acquisition or donation be evaluated in the context of the credibility and stewardship potential of the recipient. On this project, with only modest proposed funds, we propose that LURC use approach #2, and offer to serve as a party on an escrow agreement to ensure that High Peaks Alliance expenditures meet basic terms of credibility to result in concrete outcomes. (With larger amounts of funds on future projects, additional protections would be advised.)

Additionally, we know that “land conservation” is more than mere “price at closing.” Yet with only modest funds in the context of land prices and regional goals, BPL argues that “price at closing” is an important benchmark or carrot from which to rally or mobilize additional funds. Otherwise all funds could go toward options or negotiations or planning with no ultimate successful conservation project. Additionally, land “stewardship” can be an important and too often forgotten component of land conservation. In summary, BPL proposes that TransCanada's tangible benefit contribution to the High Peaks Alliance be conditioned as follows, as a precedent toward future land conservation proposals of future windpower projects:



- To the High Peaks Alliance, 80% of funds toward value at closing, toward conservation or recreation land or interest in land in Franklin County, held in escrow pending release by the Bureau of Parks & Lands upon a finding that the transaction will permanently protect conservation and recreation interests.
  - To the High Peaks Alliance, 20% of funds toward land conservation stewardship or recreational stewardship, of those interests in land acquired with the 80% above, held in escrow until land or interests in land have been acquired, with no other conditions on the release of funds to the High Peaks Alliance.
8. In the context of the comment immediately above, BPL notes that multiple wind developers are hesitant to work with BPL due to BPL's relationship with LURC, both agencies part of MDOC. The same is true with pending windpower applications before DEP, since both DEP and BPL report to the Executive. This tension will continue to exist or be enhanced under the new statutes. Thus the precedent set by Kibby II could set the stage to streamline and simplify future project reviews. The risk of public accusations of conflict of interest, or mixed agendas, has created regulatory uncertainty and developer skittishness and specific measureable lost opportunities for land conservation or public recreation contributions, or more credible or measureable land conservation outcomes. BPL notes that aside from windpower, there are numerous situations (subdivision and concept plans) where LURC and less so DEP have turned to BPL as an implementing party, with full transparency. If LURC chooses to direct Kibby II developers toward BPL as an implementing party in any capacity, or if LURC itself requests a BPL role, the directive should be done clearly enough by LURC as to allow other developers --- and LURC or DEP --- to bring BPL to the table with no suggestion that BPL endorses or is complicit with any application, preliminary application, or preliminary scoping. In the alternative, the LURC Commission should expressly create an alternate model."

## **5. Warren Brown – Third party sound assessment review for LURC**

“With the elimination of turbines 12-15 the sound impact to nearby protected locations will be likely diminished, but in no case increased. These turbine locations appear to be East of the ridge and may contribute little noise to nearest protected locations. If you have any questions please don't hesitate to contact me.”

## **6. State Soil Scientist, David Rocque**

“I had no objections to the revised Kibby Expansion project and still do not, from a technical view point. The main revision was the elimination of a few wind towers with the remainder of the project being essentially the same as the original expansion proposal. All wind farm projects on mountains include construction in areas with unique hydrologic features and soils that need tailored construction techniques to minimize alteration of the natural hydrology and provide stable roads. The higher and steeper the mountain, the more likely and numerous the features and soils are. That is the reason for the “tool box” approach and why I like to do a site visit before making final comments on design of roads.”

Sent in a separate communication:

“I know those comments did not express any concerns but I would like to amend them now, on the basis of a site walk along the proposed access road September 29 with Dana Valleau. My revision does not include concerns but during the site walk, I noticed that virtually the entire access road path contains oxyaquic soils (soils with oxygenated groundwater). There were numerous seeps and standing water all along the way (I took a number of pictures). Because of the high seasonal groundwater table in the soils along the proposed access road, I recommend the road base be constructed of blast rock with numerous rock sandwiches. Ditching should not be used to collect ground water and convey it long distances downslope.”

---

## **7. Town of Eustis**

“I am writing in support of the Sisk Mountain Wind expansion being proposed by TransCanada in northwestern Maine. The 11 tower expansion is a good project as it is adjacent to the 44 turbine Kibby project and much of the infrastructure is already in place. It is a boon to our small town during construction and after completion as the town of Eustis is the nearest town to receive the benefit package offered by TransCanada. Please consider this worthy project as you do your mandatory site reviews and prepare to permit the expansion. Thank you for your consideration.”

Yours, Jane M. Wilkinson, Selectman, Town Of Eustis

---

## **8. Franklin County Commissioners**

“Please accept this brief message as a note of support for the TransCanada compromise proposal for an additional eleven wind turbines to be located in Franklin County. The Franklin County Commissioners are in support of the revised wind tower proposal as it would provide for an economic and ecological fit for Maine. We are very fortunate to have such an environmentally conscience company as TransCanada working in Maine. The approval of this scaled-down project is important to Franklin County and the State of Maine.”

Thank you and the LURC Board for your diligence in making this happen.  
Gary McGrane, Chairman of the Franklin County Board of Commissioners