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GOVERNOR

STATE OF MAINE  
DEPARTMENT OF CONSERVATION  
LAND USE PLANNING COMMISSION  
PO BOX 1107  
GREENVILLE, MAINE  
04441

WALTER E. WHITCOMB  
COMMISSIONER

# PERMIT

## DEVELOPMENT PERMIT DP 4951

The staff of the Maine Land Use Planning Commission, after reviewing the application and supporting documents submitted by EverPower Maine, LLC for Development Permit DP 4951, finds the following facts:

1. Applicant: EverPower Maine, LLC  
c/o EverPower Wind Holdings, Inc.  
Attn: Seth Wilmore  
1251 Waterfront Place, 3<sup>rd</sup> Floor  
Pittsburgh, PA 15222
2. Date of Completed Application: April 2, 2014
3. Location of Proposal: Squaretown, Somerset County  
Taxation Plan 01, Lot 1;  
Met Tower Coordinates: 45°22'35.87"N; 69°47'50.861"W
4. Zoning: (M-GN) General Management Subdistrict
5. Lot Size: 11,202 acres (lease)
6. Development: One (1) Meteorological Testing Equipment Tower

### Proposal

7. On December 4, 2013, EverPower Maine, LLC submitted an application for a proposed approximately 197' tall guy wire supported meteorological testing equipment (Met) tower with access trail within the 11,202 acre lot leased from Penobscot Forest LLC, located in Squaretown Township, Somerset County. The proposed erection of the temporary Met tower would be to collect wind data from Black Nubble, a ridge line located within the applicant's lease. Access to the Met tower site would require extending an existing ATV trail .3 miles. The applicant proposes very limited clearing and soil disturbance to extend the trail. No heavy equipment would be used for the trail construction; there would be no stumping and minimal pruning and cutting. The route would be located to minimize soil disturbance. All construction and maintenance work would be done using ATV's for access, with very minimal vegetative clearing and soil disturbance at the tower site. The Met tower would be a "tilt-up" pole requiring a very limited amount of soil disturbance to install anchors for 3-4 guy wires designed to hold the tower in place. The proposed Met tower would be painted a neutral color to minimize visual

impacts and would have no lighting. Currently, the leased area and surrounding parcel are utilized for commercial timber harvesting, which will continue.

8. The applicant proposes to maintain the Met tower for a maximum of 4 years after the date of installation. This would require the applicant to renew the lease, which expires on November 1, 2015.

### **Agency Review Comments**

9. After reviewing the proposal, the Maine Department of Inland Fisheries and Wildlife commented that there is potential for increased bird collisions with the construction of tall meteorological towers. They recommended that the tower should be equipped with bird and bat diverters arranged on the guy wires at the manufacturer's suggested rate and spacing to prevent/reduce strikes. In addition, to prevent/reduce entanglement of mammalian wildlife, especially ungulates, double yellow-marker sleeves should be placed on all guy wires such that all guy wires within 12-15 feet of the ground would be covered. Furthermore, secure all cable, rope, fencing and construction materials to prevent / reduce entanglement of wildlife. Additionally, to minimize potential disturbance to nesting and brood rearing Bicknell's Thrush, a State listed species of Special Concern, disturbance to stands of stunted Balsam Fir with dense understory should be avoided from May 1<sup>st</sup> to July 15<sup>th</sup>.
10. After reviewing the proposal, the Maine Natural Areas Program commented that there were no rare botanical features that would be disturbed within the project site.
11. After reviewing the proposal, the Maine Historic Preservation Commission concluded that there would be no historic properties affected by the proposed undertaking.
12. After reviewing the proposal, the Maine State Soil Scientist recommended that the applicant utilize proper trail construction techniques. This included the use of slash from de-limbed trees to firm up soft areas as necessary and constructing the trail across the most suitable soils in route that avoids erosion problems.

### **Commission Review Criteria**

13. Pursuant to Section 10.22,A,3,a,(6) of the Commission's Land Use Districts and Standards, surveying and other resource analysis are uses allowed without a permit from the Commission within a (M-GN) General Management Subdistrict.
14. Pursuant to Section 10.22,A,3,c,(26) of the Commission's Land Use Districts and Standards, other structures, uses, or services that are essential to the uses listed in Section 10.22,A,3,a through c may be allowed within a (M-GN) General Management Subdistrict upon issuance of a permit from the Commission pursuant to 12 M.R.S.A §685-B, and subject to the applicable requirement set forth in Sub-Chapter III.
15. Pursuant to Sub-Chapter III, Section 10.26,F of the Commission's Land Use Districts and Standards, for a structure set back at least 500 feet from a great pond, the maximum building height shall be 100 feet for commercial, industrial, and other non-residential uses involving one or more structures.

Features of structures which contain no floor area such as chimneys, towers, ventilators and spires, and free standing towers and turbines may exceed the maximum height with the Commission's approval.

16. Pursuant to 12 M.R.S.A. §685-B,4,(C), the Commission may not approve an application, unless adequate provision has been made for fitting the proposal harmoniously into the existing natural environment in order to ensure there will be no undue adverse effect on existing uses, scenic character and natural and historic resources in the area likely to be affected by the proposal.
17. The facts are otherwise as represented in Development Permit application DP 4951, and supporting documents.

**Based upon the above Findings, the staff concludes that:**

1. In accordance with Sections 10.22,A,3,a,(6) and 10.22,A,3,c,(26) of the Commission's Land Use Districts and Standards, the proposed temporary meteorological testing equipment tower is an allowed use in an (M-GN) General Management Subdistrict. The tower is necessary to support and elevate the wind resource collection equipment, and as such is a structure essential to an allowed use.
2. In accordance with Section 10.26,F of the Commission's Land Use Districts and Standards, the meteorological testing equipment towers may exceed the Commission's maximum 100 foot height restriction for structures because the proposed structure does not contain floor area, and the proposed height of approximately 197 feet height is necessary for wind data collection.
3. In accordance with 12 M.R.S.A. §685-B,4,(C), the proposed installation of a temporary meteorological tower would not be expected to have an undue adverse effect on existing uses, scenic character and natural and historic resources in the area likely to be affected by the proposal. Specifically:
  - a. The parcel is currently actively utilized for commercial timber harvesting; this use would continue.
  - b. The potential undue adverse impacts to the scenic character have been minimized with: the rural setting; the vast surrounding forest management lands; the limited opportunity for clear tower views; the setbacks from the nearest property boundary lines; the setbacks from the land management roads, and the neutral color and thin profile of the tower which would blend with the topographic landscape. While visibility is unavoidable, the metrological tower is temporary in nature and is expected to be perceived as subordinate elements of the larger landscape against a backdrop of trees, mountains, and forest areas that exhibit evidence of past logging activities such as, land management roads, log landing yards, skidder trails, and clear cuts.
  - c. The potential undue adverse impacts to natural resources have been minimized by limiting the amount of vegetation cutting to only that which is needed to complete the wind resource analysis, and by locating the tower. No wetlands, rare or unique botanical features, inland wading bird and waterfowl habitat, deer wintering areas or inland fish habitat would be directly affected. Further, appropriate erosion control measures would be utilized for the

ATV access trail and there are no nearby streams or wetlands in the vicinity of the trail. Lastly, as a condition of approval, design elements recommended by Inland Fisheries and Wildlife would be required to help limit bird and bat strikes and ungulate entanglement.

- d. There are no undue adverse impacts to historic resources. A review of the proposals by the State Historic Preservation Office indicates that there are no concerns regarding archaeology and there would be no historic properties affected by the proposals.
4. If carried out in compliance with the Conditions below, the proposal will meet the Criteria for Approval, section 685-B(4) of the Commission's Statutes, 12 M.R.S.A.

**Therefore, the staff approves the application of EverPower Maine, LLC with the following Conditions:**

1. The Standard Conditions for Development Permits, revised 04/2004, a copy of which is attached.
2. Notwithstanding Standard Conditions for Development Permits, Condition #3, prior to five years from the date of issuance of this permit (the permit expiration), if the temporary meteorological testing equipment tower is proposed to remain on site, the permittee shall submit a new permit application and obtain approval from the Commission.
3. Upon completion of the data collection or upon the expiration date of this permit or upon expiration of the lease, if no additional approval for the temporary meteorological testing equipment tower had been issued by the Commission, the permittee shall lower the temporary meteorological testing equipment tower and remove it and all other associated equipment from the site. Any waste materials must be disposed of in accordance with Maine Solid Waste Disposal Rules.
4. Access to the temporary meteorological testing equipment tower site shall be by existing logging roads and ATV trails, no new access roads shall be created without prior approval by the Commission.
5. Bird diverters shall be secured and maintained on the guy wires at the manufacturer's suggested rate and spacing to prevent/reduce strikes. To prevent/reduce entanglement of mammalian wildlife, especially ungulates, double yellow-marker sleeves shall be placed on all guy wires such that all guy wires within 12-15 feet of the ground would be covered. All cable, rope, fencing and construction materials shall be secured to prevent / reduce entanglement of wildlife.
6. To minimize potential disturbance to nesting and brood rearing Bicknell's Thrush, a State listed species of Special Concern, disturbance to stands of stunted Balsam Fir with dense understory should be avoided from May 1<sup>st</sup> to July 15<sup>th</sup>. In the event that nesting and brood rearing Bicknell's Thrush are encountered during trail construction and/or tower erection, the permittee shall immediately contact the Maine Department of Inland Fisheries and Wildlife and follow all guidance to avoid disturbance.

7. Clearing shall be limited to only the very limited area required to erect the tower. Extending and maintaining a trail for ATV access shall be limited to cutting limbs and very minimal vegetative clearing. The permittee shall not stump the project site and/or trail.
8. The permittee shall utilize proper trail construction techniques to extend and maintain the ATV trail, which provides access to the tower site. This includes the use of slash from de-limbed trees to firm up soft areas as necessary and constructing the trail across the most suitable soils in a route that avoids erosion problems and avoids cutting down mature trees.
9. The permittee shall comply with all Federal Aviation Administration (FAA) requirements for the Met tower authorized by this permit.
10. To avoid creating any undue adverse visual impacts to the resources in the vicinity of the project site, the tower shall be less than 200 feet tall, have no lights and be neutral in color.
11. The Met tower and trail authorized by this permit shall not cause conflicts with the existing timber harvesting operations.

This permit is approved upon the proposal as set forth in the application and supporting documents except as modified in the above stated conditions, and remains valid only if the permittee complies with all of these conditions. Any variation from the application or the conditions of approval is subject to prior Commission review and approval. Any variation undertaken without Commission approval constitutes a violation of Land Use Planning Commission law. In addition, any person aggrieved by this decision of the staff may, within 30 days, request that the Commission review the decision.

DONE AND DATED AT GREENVILLE, MAINE, THIS ELEVENTH DAY OF APRIL, 2014.

for:  *NICHOLAS D. LIVESAY*  
Nicholas D. Livesay, Executive Director



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

**STANDARD CONDITIONS OF APPROVAL FOR ALL DEVELOPMENT PERMITS**

1. The permit certificate must be posted in a visible location on your property during development of the site and construction of all structures approved by this permit.
2. This permit is dependent upon and limited to the proposal as set forth in the application and supporting documents, except as modified by the Commission in granting this permit. Any variation therefrom is subject to the prior review and approval of the Maine Land Use Regulation Commission. Any variation from the application or the conditions of approval undertaken without approval of the Commission constitutes a violation of Land Use Regulation Commission law.
3. Construction activities authorized in this permit must be substantially started within two (2) years of the effective date of this permit and substantially completed within five (5) years of the effective date of this permit. If such construction activities are not started and completed within this time limitation, this permit shall lapse and no activities shall then occur unless and until a new permit has been granted by the Commission.
4. The recipient of this permit ("permittee") shall secure and comply with all applicable licenses, permits, and authorizations of all federal, state and local agencies including, but not limited to, natural resources protection and air and water pollution control regulations and the Subsurface Wastewater Disposal Rules of the Maine Department of Environmental Protection and the Maine Department of Human Services.
5. Setbacks of all structures, including accessory structures, from waterbodies, roads and property boundary lines must be as specified in conditions of the permit approval.
6. In the event the permittee should sell or lease this property, the buyer or lessee shall be provided a copy of the approved permit and advised of the conditions of approval. The new owner or lessee must contact the Land Use Regulation Commission to have the permit transferred into his/her name and to reflect any changes proposed from the original application and permit approval.
7. The scenic character and healthful condition of the area covered under this permit must be maintained. The area must be kept free of litter, trash, junk cars and other vehicles, and any other materials that may constitute a hazardous or nuisance condition.
8. The permittee shall not advertise Land Use Regulation Commission approval without first obtaining Commission approval for such advertising. Any such advertising shall refer to this permit only if it also notes that the permit is subject to conditions of approval.
9. Once construction is complete, the permittee shall notify the Commission that all requirements and conditions of approval have been met. The permittee shall submit all information requested by the Commission demonstrating compliance with the terms of the application and the conditions of approval. Following notification of completion, the Commission's staff may arrange and conduct a compliance inspection.