



STATE OF MAINE
DEPARTMENT OF AGRICULTURE, CONSERVATION & FORESTRY
LAND USE PLANNING COMMISSION
45 RADAR ROAD
ASHLAND, MAINE 04732

PAUL R. LEPAGE
GOVERNOR

WALTER E. WHITCOMB
COMMISSIONER

NICHOLAS D. LIVESAY
EXECUTIVE DIRECTOR

PERMIT

DEVELOPMENT PERMIT DP 4970

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 4971, finds the following facts:

1. Applicant: EverPower Maine LLC
Attn: Seth Wilmore
1251 Waterfront Place 3rd Floor
Pittsburgh, PA 15222
2. Landowner: Aroostook Timberlands LLC
c/o J. D. Irving, Limited
300 Union Street
PO Box 5777
Saint John, New Brunswick, Canada E2L 4M3
3. Date of Completed Application: March 17, 2014
4. Location of Proposal: T14 R 6 WELS, Aroostook County
Taxation Plan 01, Lots 5 and 7
Proposed Temporary MET Tower 3 (Coordinates: 46°55'18.43"N;
68°32' 57.18"W)
5. Zoning: (M-GN) General Management Subdistrict
6. Lot Size: 10,204 acres (Agreement)
7. Proposed Development: One (1) Temporary Meteorological Testing Equipment Tower

Proposal

8. The applicant proposes to construct one, 10 inch diameter, 60 meter-tall (197 foot) temporary meteorological testing equipment towers in T14 R 6 WELS, Aroostook County. The base of the tower (known as Tower 3) would be set back approximately 6800 feet from the nearest public road; 2,400 feet from the nearest mapped wetland; 500 feet from the nearest stream; 4,600 feet from Pennington Pond; and approximately 1,200 feet from the nearest property boundary line.

9. *Vegetative Clearing.* Approximately 0.7 up to 2.0 acres of vegetation would need to be removed for the installation and operation of each tower. When completed, the clearing would extend approximately 165 feet from the base of the tower pole.
10. *Site access.* The site would be accessed utilizing existing privately owned forest management roads and existing ATV trails.
11. *Soils, Soil Disturbance and Erosion and Sedimentation Control Measures.* Soil map unit data were obtained and reviewed using the U.S. Department of Agriculture's (USDA) National Resource Conservation Service's (NRCS) Soils Survey Geographical database for Northeastern Aroostook County, Maine. The soils are mapped as Thorndike, a shaly silt loam, on 8 – 15 % slopes at the site for Tower 3. These soils are classified as well drained and generally suitable for the proposed development. New or expanded soil disturbance would be approximately 100 square feet in order to install the tower base and guy wire anchors; the filling and grading would be in the (M-GN) General Management Subdistrict. Erosion control best management practices would be implemented in accordance with the Commission's Land Use Districts and Standards.
12. *Wetland Alteration.* No mapped wetlands would be altered by the project and less than one acre of soil would be disturbed.
13. *Birds and bat strikes and ungulate entanglement.* The applicant states that the tower will be equipped with bird/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 will be placed on all guy wires such that all guy wires within 12-15 feet of the ground/snowpack will be covered. Furthermore, the applicant will either remove all excess wire or secure loose ends of each guy wire 20 to 25 feet above the ground.
14. *Lighting.* The applicant has submitted an evaluation for each tower by the FAA using their Online Notice Criteria Tool. Lighting is not required by the Federal Aviation Administration (FAA) for either tower.
13. *Period of use.* The applicant proposes to leave the proposed meteorological tower in place until no later than December 22, 2017 when their agreement with Aroostook Timberlands LLC expires. If the tower is needed longer, the applicant would obtain a new agreement and permit amendment from the Commission. At the end of the data collection period, if no other project is proposed and permitted, the tower and associated appurtenances will be dismantled and removed from the site.
14. *Title, right and interest and land division history.* On December 22, 2014, the applicant entered into an agreement with grant of easements that grants the applicant permission for, among other things, the installation of meteorological testing equipment towers on a parcel of land owned by Aroostook Timberlands LLC for the purpose of collecting wind resource data (Reference, Aroostook County Northern Registry of Deeds: Book 1880; Page 294). The applicant have previously submitted an outlined 20-year land division history and indicated that no non-exempt divisions have occurred on the applicable parcel(s) in the past 20 years.
15. *Visual impact assessment.* The applicant has submitted a visual analysis for the proposed tower using a viewshed tool in ESRI ArcGIS Desktop 10 software. They state that the tower is 60 meters (197 feet) in height, has a diameter of 10 inches, will be painted a neutral color, and will not be required to have lighting on it. All of these factors, plus tree heights and topography greatly minimize the visibility of the tower. The analysis indicates that the tower would not be visible from Pennington Pond or the east shore of St. Froid Lake and would not be visible from any of the residences on Route 11, which are over 8,000 feet away. Therefore, the applicant states that temporary tower is not anticipated to negatively impact the

scenic character or natural resources of the area. Given the rural setting, the surrounding forest management lands, the minimal amount of vegetation cutting, the setbacks from the nearest property boundary lines, and the setbacks from public roads, opportunities for clear views of either tower would be limited and it is anticipated that the towers would be minimally visible.

16. *Technical and financial capacity, and estimated development costs.* The applicant, Ever Power Maine LLC, has managed MET tower installations at over 15 sites and will contract with Capital City Renewables for this project. All funding for the project is being provided by the applicant. The cost for the proposed meteorological tower, including installation, is estimated to be approximately \$35,000.

Agency Review Comments

17. The Maine Natural Areas Program reviewed the application and states that according to their current information, there are no rare botanical features that will be disturbed within the project site.
18. The Maine Historic Preservation Commission reviewed the application and states that based on the information submitted, I have concluded that there will be no historic properties affected by the proposed undertaking, as defined by Section 106 of the National Historic Preservation Act.
19. The Maine Department of Inland Fisheries and Wildlife reviewed the application in consideration of the proposal's probable effect on the environment, and on the agencies programs and responsibilities, and provided the following comments:
 - A. *Wildlife Considerations.* "At this time, MDIFW Significant Wildlife Habitat (SWH) maps indicate no known presence of SWHs within the project area, which include Waterfowl and Wading Bird Habitats, Deer Wintering Areas, Seabird Nesting Islands, Shorebird Areas, and Significant Vernal Pools. However, a comprehensive statewide inventory for Significant Vernal Pools has not been completed. Therefore, surveys for vernal pools will need to be conducted within the project boundary prior to final project design to determine whether there are Significant Vernal Pools, or the critical terrestrial habitat from any adjacent pools, present in the area. Once surveys are completed, our Department will need to verify vernal pool data sheets prior to final determination of significance.

Avian Collision and Wildlife Entanglement Concerns

In general, avoidance of guy wires is preferable, even if it requires a slightly larger footprint for the tower. If guy wires must be used, the avian diverters should be placed at the manufacturer's suggested rate and spacing for each guy wire. During placement of these diverters, the technician should stagger them on the guy wires so they are not directly under the prior one. MDIFW also recommends placement of some type of sleeve over the guy wires from the ground level up to approximately 12-15 feet in height. The intent is to make sure that there is plastic sleeve on the guy wire up to a vertical height of 12-15 feet from the ground/snowpack to help reduce entanglement. This height is to accommodate ungulates under variations in terrain and snow pack—depending on topography, average annual snow depth, and angle of the wires this could mean upwards of 30 feet or more of length of sleeve up the wire. All loops of excess wire should be eliminated, but if excess wire is required for future removal of the tower then loops of excess wire should be tied off at a height of 20-25 feet above the ground (well above snowpack) instead of near ground level to isolate it from wildlife. These recommendations are made to aid wildlife in detection of wires and help to prevent or reduce entanglement of mammalian wildlife, especially ungulates (see photo below) [Photo on file]. Similarly, we recommend that all construction materials (i.e., cable, rope, loose fencing) is either cleaned up and removed from the site, or adequately stored and secured to prevent/reduce entanglement of wildlife.

Ultimately, the burden of securing the wire and preventing mortality belongs to the applicant, who is put on notice to ensure that the taking of a big game species or a listed species, such as Canada lynx (Special Concern in Maine and also federally-protected), does not occur.”

B. Fisheries Considerations. There are no inland fisheries concerns for this project.

Commission Review Criteria

20. Pursuant to Section 10.22,A,3,a,(6) of the Commission's Land Use Districts and Standards, surveying and other resource analysis shall be allowed without a permit from the Commission within an (M-GN) General Management Subdistrict.
21. Pursuant to Section 10.22,A,3,c,(26) of the Commission's Land Use Districts and Standards, other structure, uses, or services that are essential to the uses listed in Sections 10.22,A,3,a though c may be allowed within an (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 requirements set forth in Sub-Chapter III.
22. Pursuant to Sub-Chapter III, Section 10.26,F of the Commission's Land Use Districts and Standards, for structure set back at least 500 feet from a great pond, the maximum structure 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.
23. 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.
24. The facts are otherwise as represented in Development Permit application DP 4970 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 tower is an allowed uses in an (M-GN) General Management Subdistrict. The tower structure is necessary to support and elevate the wind resource collection and surveying equipment, and as such is a structure essential to an allowed use.
2. In accordance with Sub-Chapter III, Section 10.26,F of the Commission's Land Use Districts and Standards, the proposed temporary meteorological tower may exceed the Commission's maximum 100- foot height restriction for structures because the proposed tower does not contain floor area, is a free standing tower, and the 197-foot height is necessary for wind data collection.
3. In accordance with 12 M.R.S.A. §685-B,4,(C), the installation of the temporary meteorological tower, as proposed, is not 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 nearest public road. Due to its size, the FAA does require that the tower be lit. Therefore, at night, the lights will be visible to people in the area. While visibility is unavoidable, the metrological towers are temporary in nature and are 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 towers so that 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 have been outlined and would be implemented to minimize the potential for undue adverse impacts to nearby streams and wetlands. Lastly, the proposal includes design elements that would help limit bird and bat strikes and ungulate entanglement.
4. If carried out in compliance with the Conditions below, the proposal will meet the applicable requirements set forth in Sub-Chapter III of the Commission's Land Use Districts and Standards and the Criteria for Approval, section 685-B(4) of the Commission's Statutes, 12 M.R.S.A.

Therefore, the staff approves the amendment request of Ever Power 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 December 22, 2017** (the permit expiration), if the temporary meteorological testing equipment tower is proposed to remain on site and if no permanent meteorological reference tower associated with a commercial wind energy development has been proposed, the permittee shall submit a new permit application and obtain approval from the Commission to extend the time period to the expiration date of this permit.
3. Except as provided for in this permit, all activities shall be in conformance with the Standards for *Vegetation Clearing*, Section 10.27,B of the Commission's Land Use Districts and Standards, revised September 01, 2013, a copy of which is attached.
4. Except as provided for in this permit, all activities shall be in conformance with the Standards for *Filling and Grading*, Section 10.27,F of the Commission's Land Use Districts and Standards, revised September 01, 2013, a copy of which is attached.
5. Except as provided for in this permit, all activities shall be in conformance with the *Guidelines for Vegetative Stabilization*, Appendix B of the Commission's Land Use Districts and Standards, revised September 01, 2013, a copy of which is attached.
6. The temporary meteorological testing equipment tower must be placed at the identified location. The base of the tower must be set back at least one tower height from any public road, any private road open for public use, and any other property boundary line, 500 feet from all bodies of standing water 10 acres or greater in size, 150 feet from the nearest major flowing water, and 100

feet from the nearest minor flowing water and upland edge of wetlands designated as (P-WL1) wetland of special significance.

7. The total area of fill or disturbed soil for the project must not exceed 1 acre.
8. The total of new cleared area for the project must not exceed 10 acres. The cleared areas must not impact any area meeting the description of a (P-GP) Great Pond Protection Subdistrict, a (P-SL) Shoreland Protection Subdistrict or (P-WL) Wetland Protection Subdistrict. The cleared areas must be set back at least 75 feet from any public road, 150 feet from all bodies of standing water 10 acres or greater in size and the nearest major flowing water, 100 feet from the nearest minor flowing water and P-WL1 wetland of special significance, and 25 feet from the nearest property boundary line.
9. Access to the temporary meteorological testing equipment tower sites must be by existing logging roads and trails, or overland.
10. As recommended by the Maine Department of Inland Fisheries and Wildlife, bird and bat diverters or similar products must be installed on the guy wires at the manufacturer's spacing, and a plan should be implemented to ensure that the devices remain visible, functional and in place for the life of the tower.
11. As recommended by the Maine Department of Inland Fisheries and Wildlife, some type of sleeve must be placed over the guy wires from the ground level up to approximately 12-15 feet in height. All loops of excess wire must be eliminated if possible, but if excess wire is required for future removal of the tower then loops of excess wire must be tied off at a height of 20-25 feet above the ground (well above snowpack) instead of near ground level to isolate it from wildlife. Finally, all construction materials (i.e., cable, rope, loose fencing) must be cleaned up and removed from the site, or adequately stored and secured to prevent/reduce entanglement of wildlife.
12. The permittee shall secure and comply with all other applicable licenses, permits, and authorizations of all federal, state and local agencies.
13. All activities shall be in conformance with the standards for *Erosion and Sedimentation Control*, Section 10.25,M of the Commission's Land Use Districts and Standards, revised September 1, 2013, a copy of which is attached.
14. For areas where soil is to be disturbed, erosion and sedimentation control structures, including but not limited to silt fences, must be installed prior to commencement of construction, and measures to control erosion, including but not limited to hay mulch, re-seeding and water bars, must be employed during and after construction. Once implemented or put in place, erosion control devices and measures must be maintained to insure proper functioning.
15. Installation of the temporary meteorological testing equipment tower and any improvement of the land management road must be avoided when the soil is saturated; or if unavoidable, slash, wood chips, or mats must be used to drive heavy equipment over where the soil is soft enough to rut. However, work that will disturb soils must not be conducted if conditions are such that significant erosion and sedimentation with the potential to damage a stream, vernal pool or wetland will occur. For the development proposed, no clearing or other disturbance may occur within any wetland areas, vernal pools, or streams.
16. Excluding areas actively use for forest management activities or existing access road or skidder trails, all areas of disturbed soil associated with the installation of the tower must be promptly

reseeded and stabilized with mulch until 85% vegetative cover is achieved, and maintained in a vegetated state to prevent soil erosion. In areas where re-vegetation is not initially successful, additional measure to control erosion and sedimentation must be undertaken as often as necessary to be effective.

17. Should any erosion or sedimentation impacting a wetland or stream occur during construction, the permittee shall contact the Land Use Planning Commission staff immediately, or as soon as possible if the event occurs outside of regular business hours, notifying staff of the problem and describing all proposed corrective measures.
18. Once construction is complete, the permittee shall submit to LUPC staff photos of the site showing the completed work including: the wildlife protection techniques; the tower sites.
19. Upon completion of the data collection or upon the expiration date of this permit, if no extension of time is requested for this permit, or if no permanent meteorological reference tower associated with a commercial wind energy development is proposed, the permittee shall lower the temporary meteorological testing equipment tower and remove them and all other associated equipment from the site. Any waste materials must be disposed of in accordance with Maine Solid Waste Disposal Rules.

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 ASHLAND, MAINE, THIS 15TH DAY OF APRIL, 2015.

By: Billie J. Magleone
for Nicholas D. Livesay, Executive Director



STATE OF MAINE
DEPARTMENT OF AGRICULTURE, CONSERVATION & FORESTRY
LAND USE PLANNING 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 Planning Commission. Any variation from the application or the conditions of approval undertaken without approval of the Commission constitutes a violation of Land Use Planning 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 Planning 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 Planning 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.

Administrative Policy Revised 04/04