



PAUL R. LEPAGE
GOVERNOR

PATRICIA W. AHO
COMMISSIONER

MEMORANDUM

TO: The Board of Environmental Protection

FROM: Erle Townsend, Project Manager and Mark Bergeron, Division Director, Division of Land Resource Regulation, Bureau of Land & Water Quality

RE: Remand of Board Order denying appeal filed by Friends of Maine’s Mountains of Site Location of Development and Natural Resource Protection Act Permit Approvals #L-25137-24-H-N/L-25137-TG-I-N, Saddleback Ridge Wind, LLC

DATE: November 7, 2013

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Statutory and Regulatory References: The applicable statutory and regulatory framework for the issues raised in this appeal are the Site Location of Development Law (Site Law), 38 M.R.S.A. §§ 484, Site Location of Development Rules (Chapter 375), and the Maine Wind Energy Act (WEA), 35-A M.R.S.A. §§ 3451-3455. The Site Law Rules interpret and elaborate on the Site Law criteria. The Site Law contains standards for noise resulting from a commercial or industrial development. Chapter 375 sets specific standards for noise resulting from the operation of wind energy facilities. The Wind Energy Act (WEA) sets forth licensing criteria specific to applications filed for permits for expedited wind energy projects. Procedures for appeals before the Board are outlined in the Department’s Rules Concerning the Processing of Applications, Chapter 2 § 24.

Location: The 12 turbines and an operations and maintenance (O&M) building for this project are all proposed to be located in the Town of Carthage. The transmission line is proposed to extend from Carthage through the Town of Dixfield and into the Town of Canton.

Procedural History and Project Description: In Department Order #L-25137-24-A-N/L-25137-TG-B-N, dated October 6, 2011, the Department approved the application for the construction of a 33-megawatt (MW) wind energy development. The applicant for the project was Saddleback Ridge Wind, LLC. The proposed development consisted of 12 turbines with associated turbine pads, access roads, meteorological towers, transmission lines, and an O&M building.

The license was subsequently appealed to the Board by Friends of Maine’s Mountains (FOMM) and others. The appellants challenged, among other things, the Department’s findings and conclusions regarding the project’s compliance with the Department’s rules pertaining to sound levels in Chapter 375.

In Board Order #L-25137-24-A-Z/L-25137-TG-B-Z, dated February 18, 2012, the Board denied the appeal and affirmed the Department’s approval of the application, including a nighttime sound level limit of 45 dBA at protected locations. FOMM, and others (appellants) appealed the Board’s decision to the Maine Law Court.

The Law Court, in *Friends of Maine's Mountains v. Board of Environmental Protection*, 2013 ME 25, dated March 5, 2013, vacated the Board's order and remanded the matter for further review using the 42 dBA nighttime sound level limit for protected locations set forth in Chapter 375 §10(I)(2)(b).

On April 9, 2013, Saddleback Ridge Wind, LLC (applicant) submitted a "Noise Impact Study for Saddleback Ridge Wind Farm" dated April 2013 in response to the Court's decision.

After receiving comments and hearing oral arguments from the applicant and the appellants regarding the process for consideration of the project on remand from the Law Court, the Board issued a procedural order dated May 10, 2013, asserting its legal authority to consider the changes to the project proposed by the applicant under its right to amend a licensing decision by the Commissioner in an appeal proceeding and in light of the instructions accompanying the Law Court's vacatur of the Board's order. The Board's order outlined the procedure for consideration of the proposed changes to the project, including opportunity for public comment on the proposed revisions, and public comments on a draft order.

A Draft Board Order was made available for public review and comment on August 26, 2013. Comments on the Draft Board Order were accepted by the Board until 5 PM on September 17, 2013. Comments were received from Mr. Michael Bond, Ms. Peggy Lucas, and FOMM. The comments were incorporated in Board Order #L-25137-24-H-N/L-25137-TG-I-N where appropriate.

Environmental Issues: Sound impacts to protected locations were reviewed under the standards in 06-096 CMR 375 §10(I), which became effective June 10, 2012.

Department Recommendation: The Department recommends that the Board approve the applicant's proposal as modified in response to the Law Court's remand of Board Order #L-25137-24-A-Z/L-25137-TG-B-Z and as presented in Board Order #L-25137-24-H-N/L-25137-TG-I-N.

Estimated Time of Presentation: 1 hour