Department Order Appealed

STATE OF MAINE
DEPARTMENT OF ENVIRONMENTAL PROTECTION
17 STATE HOUSE STATION AUGUSTA, MAINE 04333-0017

DEPARTMENT ORDER

IN THE MATTER OF

HANCOCK WIND, LLC	) SITE LOCATION OF DEVELOPMENT ACT
T16 MD/T22 MD/Aurora	) NATURAL RESOURCES PROTECTION ACT
Osborn, Hancock County	) FRESHWATER WETLAND ALTERATION
WIND POWER FACILITY	) WATER QUALITY CERTIFICATION
L-25875-24-A-N (approval)	)
L-25875-TF-B-N (approval)	) FINDINGS OF FACT AND ORDER

Pursuant to the provisions of 35-A M.R.S.A. §§ 3401-3457, 38 M.R.S.A. §§ 480-A et seq. and 481 et seq., and Section 401 of the Federal Water Pollution Control Act, the Department of Environmental Protection (Department) has considered the application of HANCOCK WIND, LLC with the supportive data, agency review comments, and other related materials on file and FINDS THE FOLLOWING FACTS:

1. PROJECT DESCRIPTION:

A. Summary: The applicant proposes to construct a wind energy development consisting of 18 turbines. This project qualifies as an expedited wind energy development as defined in the Wind Energy Act (WEA) (35-A M.R.S.A. §3451(4)). The area of land proposed to be used for the generating facility portion of the project is located wholly within property currently used for commercial forestry operations. The site contains logging roads, some of which will be upgraded and used for project access to minimize clearing and wetlands impacts. In addition to the generating facilities, the project will include an operations and maintenance (O&M) building as well as associated facilities. The O&M building will be located in the Town of Aurora, an organized town. The proposed project overall includes 30.04 acres of impervious and developed area. The development of the O&M building will result in approximately 0.6 acre of impervious area. The proposed project will use roads constructed for the nearby Bull Hill Wind Project (Bull Hill) and will lease a portion of the Bull Hill substation.

1) Wind Turbines. The applicant proposes to construct 18 turbines, either Vestas V112 or Siemens 3.0-113, 3.0-megawatt (MW) turbines, for a total of 54 MW of generation capacity. Each Vesta turbine will have a 94-meter tall (approximately 308 feet) tower with a total height of 150 meters (492 feet) to the tip of a fully extended blade. Each Siemens turbine will have a 99.5-meter tall (approximately 326 feet) tower with a total height of 156 meters (approximately 512 feet) to the tip of a fully extended blade. The

turbines will be located on Schoppe Ridge in T22 MD and an unnamed ridge in T16 MD.

2) Turbine Pads. The turbines will be constructed on 18 pads. The total impervious area associated with the turbine pads is 8.52 acres.

3) Access Roads and Crane Path. The applicant proposes 24-foot wide access roads and a 39.5-foot wide crane path. Some existing logging roads will be utilized to minimize environmental impacts. The total impervious area associated with the linear portion of the project is 20.79 acres.

4) Electrical Collector Substation and O&M Building. The applicant proposes to direct all power generated by the Hancock Wind project to the existing electrical substation located at the Bull Hill project. A substation addition will be constructed as part of the Hancock Wind project on an existing pad to accommodate the new flow. Also proposed for the Hancock Wind project is an O&M building in the town of Aurora. The total new impervious area associated with the electrical substation and the O&M building is 0.73 acre.

5) Meteorological Towers. The applicant is proposing to construct two permanent meteorological towers on the site to monitor turbine performance. Up to a total of five temporary meteorological towers are proposed for the project. Up to three temporary met towers, not to exceed 105 meters tall, will be placed on turbine pads and removed prior to commercial operation. Two additional 60-meter temporary meteorological towers on metal base plates are also proposed.

The applicant proposes to alter 19,514 square feet of forested wetland by clearing for the collector line right of way. No soil disturbance is proposed in these areas. The applicant also submitted Permit-By-Rule #55522 for activities adjacent to a protected natural resource, a stream.

The project is shown on a series of plans included with the application, the first of which is entitled "Index Sheet", prepared by the James W. Sewall Company, and dated January 03, 2013.

2. TITLE RIGHT OR INTEREST:

To demonstrate title, right or interest in the property proposed for development, as required in Chapter 2(11)(D) and Chapter 372(9) of the Department's rules, the applicant submitted copies of leases and easements between the applicant and the property owners for the proposed project site. The submissions include deeds which show that the property owners who are leasing to the applicants have

ownership over the parcels which are the subject of the leases. The applicant also submitted a lease for the parcel on which the O&M building will be located. There are no proposed easements for adjacent parcels of land pertaining to noise, shadow flicker effects, and safety setbacks.

The Department finds the applicant has demonstrated sufficient title, right or interest for the area which will be occupied by the project

3. FINANCIAL CAPACITY:

The applicant estimates the total cost of the project to be $110 million. Hancock Wind, LLC is a legal entity authorized to do business in the State of Maine and is a wholly owned subsidiary of First Wind Maine Holdings, LLC, which is a wholly owned subsidiary of First Wind Holdings, LLC. The applicant submitted a plan detailing financing for the project. The financing is proposed to include First Wind Holdings equity funded from cash balances, bank construction and long-term debt sourced on market terms, tax equity sourced on market terms, and cash contributions from Emera pursuant to its joint venture with First Wind.

With the exception of the construction of two temporary meteorological towers, prior to the start of construction, the applicant must submit evidence that it has been granted a line of credit or a loan by a financial institution authorized to do business in this State or evidence of any other form of financial assurance determined by Department Rules, Chapter 373(1), to be adequate to the Bureau of Land and Water Quality for review and approval.

The Department finds that the applicant has demonstrated adequate financial capacity to comply with Department standards provided that evidence is submitted as detailed above.

4. TECHNICAL ABILITY:

The applicant operates 16 other wind energy projects across the country with a total generation capacity of 980 MW. In addition the applicant retained the services of the following companies to prepare the application:

- Stantec Consulting – natural resource assessment, shadow flicker assessment, permitting
- Reed and Reed, and James W. Sewall Company– civil engineering and stormwater
- Market Decisions, LLC – user surveys
- Terrence J. DeWan & Associates – visual impact assessment
- Public Archeology Lab, and Independent Archaeological Consulting – historic archaeological resources
- TRC/Northeast Cultural Resources – prehistoric archaeological resources
- Verrill Dana – legal counsel
- Bodwell EnviroAcoustics, LLC – sound assessment

- CHA, Inc. – electrical engineering

Based on the experience and expertise of the applicant and their retained consultants, the Department finds that the applicant has demonstrated adequate technical ability to develop the project in compliance with Department standards and provisions of the Site Law.

5. NOISE:

To address the Site Law standard pertaining to the control of noise, 38 M.R.S.A. §484(3), and the applicable rules, Chapter 375(10), the applicant submitted a Noise Impact Study entitled "Sound Level Assessment Hancock Wind, LLC," completed by Bodwell EnviroAcoustics LLC and dated January 2013. The Noise Impact Study was conducted to predict expected sound levels from the proposed project, and to compare the model results to the applicable requirements of Chapter 375(10).

The Hancock Wind project must comply with Department regulations applicable to sound levels from construction activities, routine operation and routine maintenance. Chapter 375(10) applies sound level limits (L_{eqA}-Hr) at facility property boundaries and at nearby protected locations. Chapter 375(10)(G)(16) defines a protected location as "[a]ny location accessible by foot, on a parcel of land containing a residence or planned residence or approved subdivision near the development site at the time a Site Location of Development application is submitted…". In addition to residential parcels, protected locations include, but are not limited to, schools, state parks, and designated wilderness areas. For the proposed project, the nearest protected location is approximately 2,360 feet from a turbine.

As outlined in Chapter 375(10)(I)(2), the sound levels resulting from routine operation of a wind energy development is limited to 75 decibels (dBA) at any time of day at any development property boundary. At any protected location, the limit is 55 dBA between 7:00 a.m. and 7:00 p.m., and 42 dBA between 7:00 p.m. and 7:00 a.m.

To assist with the review of the application, the Department retained an independent noise expert, Peter Guldberg of Tech Environmental, Inc., to review the applicant's prediction model and associated data as well as other evidence received on the issue of noise.

A. Sound Level Modeling. The applicant's noise consultant, Bodwell EnviroAcoustics LLC, developed a sound level prediction model to estimate sound levels from the operation of the proposed project. The sound model for the project was created using Cadna/A software developed by DataKustik of Germany. Cadna/A allows the consultant to construct topographic surface models of area terrain for calculating sound attenuation from multiple sound

sources such as wind turbines. The locations of the proposed turbines, roads, parcels, land uses and waterbodies were entered into Cadna/A in order to calculate sound levels at various points within the proposed project area. Sound level predictions were calculated in accordance with ISO 9613-2, which is an international standard for calculating outdoor sound propagation.

This computerized model is capable of predicting sound levels at specific receiver positions originating from a variety of sound sources. Applicable national or international standards can also be included in the analysis as described above. Cadna/A accounts for such factors as:

- Distance attenuation;
- Geometrical characteristics of sources and receivers;
- Atmospheric attenuation (i.e. the rate of sound absorption by atmospheric gases in the air between sound sources and receptors);
- Ground attenuation (effect of sound absorption by the ground as sound passes over various terrain and vegetation types between source and receptor);
- Screening effects of surrounding terrain; and
- Meteorological conditions and effects.

To be conservative in calculating the high end of the sound power levels produced by the turbines, the applicant added in the manufacturer's sound power level uncertainty values of 2.0 dBA and 1.5 dBA for the Vestas V112 and the Siemens ST-113 turbines, respectively. In addition, Bodwell EnviroAcoustics added 1 dBA to the turbine sound power output to compensate for any uncertainty in the model. The total uncertainty factors are 3.0 dBA for the Vestas V112 and 2.5 dBA for the Siemens ST-113 turbines.

Sound associated with the operational phase of the project was modeled excluding other existing sound sources. Modeling the sound generated from the operation of the 18 turbines was conducted by first obtaining the manufacturer's sound power level specifications (106.5 dBA for the Vestas and 107.0 for the Siemens), and then applying the uncertainty factors described above to account for the manufacturer's uncertainty and the modeling uncertainty, for a total sound power level of 109.5 dBA from each turbine. The model was run with all 18 turbines operating at full sound power output. No noise reduction operations are proposed for this project. The applicant reported that the predicted hourly nighttime sound levels at three protected locations at distances of 2,360 feet to 4,830 feet from the nearest proposed turbine ranged from 35.8 dBA to 39.6 dBA for the Vestas and Siemens turbines. The applicant concluded that the proposed project would result in sound levels below the required daytime sound level limit of 55 dBA and the nighttime sound level limit of 42 dBA at all protected locations.

B. Tonal Sound. As defined in Chapter 375(10)(I)(3), a tonal sound exists if:

> at a protected location, the 10 minute equivalent average one-third octave band sound pressure level in the band containing the tonal sound exceeds the arithmetic average of the sound pressure levels of the two contiguous one-third octave bands by 5 dB for center frequencies at or between 500 Hz and 10,000 Hz, by 8 dB for center frequencies at or between 160 and 400 Hz, and by 15 dB for center frequencies at or between 25 Hz and 125 Hz. 5 dBA shall be added to any average 10 minute sound level ($Leq_{A\ 10\text{-}min}$) for which a tonal sound occurs that results from routine operation of the wind energy development.

The applicant's January 2013 Noise Impact Study states that the Vestas V112 turbines proposed for use carry Sound Level Performance Standard warranties certifying that they will not produce a tonal sound as it is defined by the Department's Noise Regulations. The study also states that information provided by Siemens states that the ST-113 turbines are not anticipated to produce a tonal sound. In his review of the applicant's Noise Impact Study on behalf of the Department, Mr. Guldberg confirmed that an analysis of the sound power octave band spectrum for the Vestas V112 and Siemens ST-113 turbines reveals that they have no potential for creating a tonal sound as defined in the Department's Noise Regulations.

C. Short Duration Repetitive Sound. Chapter 375(10)(I)(4) defines short duration repetitive sound (SDRS) as:

> a sequence of repetitive sounds that occur within a 10-minute measurement interval, each clearly discernible as an event resulting from the development and causing an increase in the sound level of 5 dBA or greater on the fast meter response above the sound level observed immediately before and after the event, each typically ±1 second in duration, and which are inherent to the process or operation of the development." Chapter 375(10)(I)(4) requires that if any defined SDRS results from routine operation of a development, 5 dBA must added to the average 10-minute sound level ($Leq_{A\ 10\ min}$) measurement interval in which greater than 5 SDRS events are present.

The January 2013 Noise Impact Study submitted by the applicant summarized measurements of operating wind turbines in Maine and data from published literature that indicate that sound level fluctuations during the blade passage of wind turbines typically range from 2 to 5 dBA, with an occasional event reaching 6 dBA or more. The applicant's report states that SDRS events that would invoke the 5 dBA penalty are not likely to occur in more than one-third of the measurement intervals, meeting the "worst-case" test protocol criteria. The applicant states that conservative assessment of the 5 dBA penalty to one-third of the compliance measurement intervals will result in an added 1.7 dBA to the measured average $Leq_{A\ 10\ min}$. Based on the applicant's Noise Impact

Study and the assessment of the Department's noise expert, it appears the proposed project is unlikely to generate SDRS that would result in sound levels above the applicable limits. Compliance testing for SDRS will be incorporated into the post-construction noise monitoring program (discussed in Section 5.E. below) after project completion will provide assurance that SDRS was not occurring that would result in sound levels above the applicable limits.

D. Department Analysis. Mr. Guldberg reviewed Section 1 of the project application, Project Description, as well as Section 5, Noise. Section 5 contains the report by Bodwell EnviroAcoustics, LLC, entitled "Sound Level Assessment, Hancock Wind, LLC, and Hancock Wind Project". Mr. Guldberg concluded the Vestas V112 and Siemens ST113 turbine maximum sound power levels with conservative uncertainty factors were used in the analysis; the acoustic model and its assumptions are appropriate; the sound receiver locations are appropriate; the decibel contour maps adequately cover the potential impact area; and the Department Regulations on Control of Noise (06-096 CMR 375.10) have been properly interpreted and applied for by the applicant. Although not required, the applicant's noise consultant also performed a cumulative impact analysis of the Hancock Wind Project and Bull Hill project, demonstrating compliance with both the Maine Noise Regulations and the town of Eastbrook Ordinance.

E. Post-construction Monitoring Program. In his review, Mr. Guldberg states that to ensure that the sound level predictions submitted by the applicant are accurate for the type of wind turbines installed, and to ensure compliance with the Maine Noise Regulations, including the provisions regarding SDRS and tonal sound, the Department should require post-construction sound monitoring for the project. With the exception of Receptor H3 that is 4,830 away from the nearest turbine, all nearby protected locations, and those closest to the turbines, are on the east shore of Spectacle Pond.

Mr. Guldberg recommends that the Department require sound compliance testing at Receptor H1 as it has the highest predicted sound level in the combined project analysis when potential SDRS corrections are included (41.8 dBA), and it is the closest protected location to any turbine in the Hancock Wind Project. A verification of compliance at Receptor H1 will ensure the project complies with the Maine Noise Regulations at all other protected locations. At least six of the 12 test periods used in the compliance test report must represent the nighttime period (7 pm to 7 am) during which the sound level limit is 42 dBA. The compliance test report must include a complete presentation of the data and calculations for the SDRS analysis performed.

To ensure compliance, post-construction monitoring must meet all applicable standards of Chapter 375(10)I(8), which specifies the methods for measuring sound and the information to be reported to the Department.

F. Sound Complaint Response and Resolution Protocol. The applicant proposed to implement a formal protocol for responding to sound complaints. The proposed protocol will meet all applicable standards of Chapter 375(10)I(7)j. The applicant must notify the Department of any complaints within three business days of receiving them and must notify the Department of the outcome of its investigation within three business days of completion.

Based on the applicant's submissions and the review of those submissions by the Department's noise expert, the Department finds that the proposed project will meet all applicable standards of Chapter 375(10), including tonal sound and SDRS, and that the applicant has made adequate provisions for the control of excessive environmental noise from the proposed project. To ensure that the project operates in compliance with the permit and the Department's regulations, the Department finds that the applicant must implement the post-construction monitoring program described above, including the sound complaint protocol. The applicant must investigate all complaints and must notify the Department of any complaints within three business days of receiving them, and must notify the Department of the outcome of its investigation within three business days of completion; and the applicant must submit sound level monitoring reports in accordance with the post-construction monitoring program described above. Upon any finding of non-compliance by the Department, the applicant must take short-term action immediately to adjust operations to reduce sound output to applicable limits under Chapter 375(10). Within 60 days of a determination of non-compliance by the Department, the applicant must submit, for review and approval, a mitigation plan that proposes actions to bring the project into compliance. The Department will review any such mitigation plan and may require additional mitigation or alternative measures. If immediate actions to bring the project into compliance with the applicable noise standards are not taken or not successful while the process of generating and obtaining approval of a longer term plan is taking place, the Department may take such enforcement action as it finds appropriate to ensure compliance with the Site Law, applicable provisions of Chapter 375(10), and this Order.

6. SCENIC CHARACTER:

The Site Law and the NRPA both have standards pertaining to scenic impacts that must be satisfied in order to obtain a permit for a wind energy project. The Site Law requires an applicant for a wind energy project to demonstrate that the proposed project will not adversely affect existing uses or scenic character. Pursuant to the NRPA an applicant must demonstrate that a proposed project will not unreasonably interfere with existing scenic, aesthetic or recreational uses of a protected natural resource. The WEA further specifies those standards and declares that when expedited wind energy developments are being evaluated:

> [T]he [Department] shall determine, in the manner provided in subsection 3, whether the development significantly compromises views from a scenic

> resource of state or national significance such that the development has an unreasonable adverse effect on the scenic character or existing uses related to scenic character . . . Except as otherwise provided in subsection 2, determination that a wind energy development fits harmoniously into the existing natural environment in terms of potential effects on scenic character and existing uses related to scenic character is not required for approval under...Title 38, section 484, subsection 3. 35-A M.R.S.A. §3452(1).

The proposed wind project contains "generating facilities" including wind turbines as defined by 35-A M.R.S.A. §3451(5) and "associated facilities" such as buildings, access roads, collection lines, and substation, as defined by 35-A M.R.S.A. §3451(1). With regard to the associated facilities, the WEA, 35-A M.R.S.A. §3452(2), provides in pertinent part that:

> The [Department] shall evaluate the effect of associated facilities of a wind energy development in terms of potential effects on scenic character and existing uses related to scenic character in accordance with ...Title 38, section 484, subsection 3, in the manner provided for development other than wind energy development if the [Department] determines that application of the standard in subsection 1 to the development may result in unreasonable adverse effects due to the scope, scale, location or other characteristics of the associated facilities. An interested party may submit information regarding this determination to the [Department] for its consideration. The [Department] shall make a determination pursuant to this subsection within 30 days of its acceptance of the application as complete for processing.

The WEA, 35-A M.R.S.A. §3452(3), further provides that:

> A finding by the [Department] that the development's generating facilities are a highly visible feature in the landscape is not solely sufficient basis for determination that an expedited wind energy project has an unreasonable adverse effect on the scenic character and existing uses related to scenic character of a scenic resource of state or national significance. In making its determination under subsection 1, the [Department] shall consider insignificant the effects of portions of the development's generating facilities located more than 8 miles, measured horizontally, from a scenic resource of state or national significance.

To address the scenic impact criteria, the applicant submitted a Visual Impact Assessment (VIA) entitled "Visual Assessment", prepared by Terrence J. DeWan and Associates (TJD&A). The VIA examined the potential scenic impact of the generating facility and associated facilities on Scenic Resources of State or National Significance (SRSNS) within eight miles of the proposed project using the evaluation criteria contained in the WEA. The applicant also submitted a user intercept survey authored by Market Decisions and dated October 2012. The applicant identified eleven SRSNS within eight miles of the proposed generating facilities. Nine of the SRSNS are great ponds, one is the Eastbrook Baptist Church

and Town House, and the other is Tunk Mountain. Additional descriptions of these eleven SRSNS are included below, including the anticipated scenic impacts from the proposed project.

The applicant conducted a VIA within an eight-mile radius of the proposed generation facility portion of the project. The applicant's VIA for the generating facility and associated facilities addressed the criteria set forth in 35-A M.R.S.A. §3452(3):

(A) The significance of the potentially affected scenic resource of state or national significance;
(B) The existing character of the surrounding area;
(C) The expectations of the typical viewer;
(D) The expedited wind energy development's purpose and the context of the proposed activity;
(E) The extent, nature, and duration of potentially affected public uses of the scenic resource of state or national significance and the potential effect of the generating facilities' presence on the public's continued use and enjoyment of the scenic resource of state or national significance; and
(F) The scope and scale of the potential effect of views of the generating facilities on the scenic resource of state or national significance, including but not limited to issues related to the number and extent of turbines visible from the scenic resource of state or national significance, the distance from the scenic resource of state or national significance and the effect of prominent features of the development on the landscape.

A. Scenic Resources of State or National Significance. SRSNS are defined in 35-A M.R.S.A. §3451(9). The following is a description of what constitutes each type of SRSNS and the applicant's assessment of potential impacts to each of the SRSNS within eight miles of the proposed generating facilities:

1) National Natural Landmarks. A federally designated wilderness area or other comparable outstanding natural and cultural features, such as the Orono Bog or Meddybemps Heath. The applicant did not identify any national natural landmarks within eight miles of the project.

2) Historic Places. Properties listed on the National Register of Historic Places pursuant to the National Historic Preservation Act of 1966, as amended.

The Eastbrook Baptist Church and Town House are together an historic place as defined in the WEA and are located 7.0 miles west of the closest turbine. The turbines would not be visible from the Church or the Town House.

3) National or state parks. There are no national or state parks within eight miles of the project.

4) Great ponds. A great pond is an SRSNS if it is:

a. one of the 66 great ponds located in the State's organized area identified as having outstanding or significant scenic quality in the "Maine's Finest Lakes" study published by the Executive Department, State Planning Office in October 1989; or,

b. one of the 280 great ponds in the State's unorganized or de-organized areas designated as outstanding or significant from a scenic perspective in the "Maine Wildlands Lakes Assessment" (MWLA) published by the Maine Land Use Regulation Commission in June, 1987.

There are no great ponds within eight miles of the generating facilities listed in the "Maine Finest Lakes" study. There are nine lakes and ponds located within eight miles of the project that have been rated significant or outstanding for scenic quality in the MWLA. According to the applicant's VIA, the project would be visible from three of those rated great ponds within eight miles of the project. These three SRSNS are: Narraguagus Lake, Upper Lead Mountain Pond, and Lower Lead Mountain Pond.

NARRAGUAGUS LAKE

Narraguagus Lake (426 acres, elevation 224 feet above sea level) is 4.7 miles south of the project. The lake is located in three unorganized townships: T16 MD, T10 SD, and T9 SD. The applicant's description of the shoreline is that it is mostly undeveloped with a half a dozen cottages on the northwestern corner and western shoreline. The cottages are oriented toward the east or southeast, and would not have views of the proposed project. There are no public boat launches on the lake, and the nearest road is approximately 500 feet from the shoreline. The applicant reports that typical uses are expected to be boating, fishing, swimming, and seasonal camps. No user intercept surveys were completed on Narraguagus Lake. Narraguagus Lake is rated as "significant" in the MWLA.

The applicant's VIA indicates that there would be up to 6 turbines visible over 45% of Narraguagus Lake at distances of 5.7 to 8.0 miles. The turbines would be visible at or slightly above the tree line, and nacelles would be visible for most of the turbines. None of the turbines would interfere with views of Tunk Mountain from the lake since the turbines are located to the north of the lake and views of Tunk Mountain are to the southeast. The turbines would be visible over a horizontal viewing angle of six degrees from the midpoint of the lake. While red warning lights would be visible above the horizon of much of the lake, most of the cottages on the lake are oriented to the east or southeast, and the applicant states that people at the cottages are not likely to see the project lighting.

The applicant states that the proposed Hancock turbines would be less prominent than the views of the existing 14 to 19 turbines of the Bull Hill project, which are visible approximately 2 miles away.

The applicant concludes that based on the photosimulations and viewshed maps, the proposed project should not significantly compromise views from Narraguagus Lake, and would not have an unreasonable adverse effect on its scenic character or the recreational uses related to the scenic character of the lake.

UPPER LEAD MOUNTAIN POND

Upper Lead Mountain Pond (1,021 acres, elevation 355 feet above sea level) is located 4.2 miles north of the nearest turbine. It is the closest SRSNS to the project. The pond is located in T28 MD and T22 MD. The applicant states that most of the shoreline is privately owned cottages or timberland, and most of the camps are set back from the shoreline, leaving a substantial amount of vegetation. A public boat launch is located on the southeastern shoreline. The applicant reports that typical uses are expected to be boating, fishing, ice fishing, snowmobiling, swimming, and seasonal camps. No user intercept surveys were completed on Upper Lead Mountain Pond. Upper Lead Mountain Pond is rated as "significant" in the MWLA.

The greatest number of turbines would be visible from the northeastern portion of Upper Lead Mountain Pond. The applicant's VIA indicates that the blades of approximately 3 to 4 turbines would be visible over 29% of the pond at distances of 6.7 to 7.1 miles over a horizontal viewing angle of approximately two degrees. However, the existing trees on a low ridge would reduce visibility. A few red warning lights would be visible from Upper Lead Mountain Pond when activated. The applicant reports no turbines from the Bull Hill project are visible due to topography and vegetation. The applicant states the turbines should be minimally noticeable to the average viewer due to their distance and the filtering effect of the intervening vegetation.

The applicant concludes the proposed project should not significantly compromise views from Upper Lead Mountain Pond and should not have an unreasonable adverse effect on its scenic character or the recreational uses related to the pond's scenic character.

LOWER LEAD MOUNTAIN POND

Lower Lead Mountain Pond and Middle Lead Mountain Pond (486 acres combined, elevation 341 feet above sea level) is in T28 MD, five miles north of the nearest turbine. The applicant states approximately 12 homes and summer camps are located along the southern end of Lower Lead Mountain Pond. Public boating access is also located at the southern end. The majority of the land surrounding Lower Lead Mountain Pond is commercial timberland. The

applicant reports that typical uses appear to be boating, fishing, ice fishing, snowmobiling, swimming, and seasonal camps. No user intercept surveys were completed on Lower Lead Mountain Pond. Lower Lead Mountain Pond is rated as "significant" in the MWLA.

The applicant's VIA states that the blades of up to 10 turbines may be visible from the northeastern corner of Lower Lead Mountain Pond over 38% of the pond at distances of 6.2 to 6.9 miles over a horizontal viewing angle of approximately nineteen degrees. A few red warning lights would be visible from Lower Lead Mountain Pond when activated. The applicant states the turbines would not interfere with or be seen in conjunction with the easterly view toward Lead Mountain nor significantly compromise views from Lower Lead Mountain Pond.

The applicant's VIA states that several of the Bull Hill project turbines are slightly visible from the northern end of Lower Lead Mountain Pond, but those turbines are located more than eight miles from the pond, so there should be no cumulative visual impact from the proposed project.

The applicant concludes that the proposed project should not have an unreasonable adverse effect on the scenic character or recreational uses related to the scenic character of Lower Lead Mountain Pond.

MIDDLE LEAD MOUNTAIN POND/MYRICK LAKE/FOX POND/LITTLE LONG POND/TILDEN POND/SPRING RIVER LAKE

These lakes and ponds are all considered SRSNS and are located within 8 miles of the proposed project. However, the project would not be visible from any of these scenic resources.

5) Scenic Rivers or Streams. A segment of a scenic river or stream is an SRSNS if it is identified as having unique or outstanding scenic attributes in Appendix G of the 1982 "Maine Rivers Study" by the Department of Conservation. There are no scenic river or stream segments identified as having unique or outstanding scenic attributes within eight miles of the project.

6) Scenic Viewpoints. A scenic viewpoint is an SRSNS if it is located on state public reserved land or on a trail that is used exclusively for pedestrian use, such as the Appalachian Trail, that the Department of Agriculture, Conservation and Forestry (DACF) designates by rule adopted in accordance with 35-A M.R.S.A. § 3457. The summit of Tunk Mountain is located approximately 6.9 miles south of the nearest Hancock Wind turbine. There is a pedestrian trail on Public Reserve Land that is built and maintained by DACF to the summit of Tunk Mountain. The portion of the trail that leads to the viewpoint where the project is visible is located on private land, owned by the Nature Conservancy. This land is conditionally open to public. The applicant's VIA states that four turbines from the Hancock Wind project will be visible

over an arc of six degrees at distances ranging from 6.9 to 7.0 miles from the summit of Tunk Mountain. Approximately 19 turbines from the existing Bull Hill project are currently visible from Tunk Mountain at distances of 4.9 to 7.1 miles.

The applicant conducted a hiker intercept survey on Tunk Mountain between September 28 and 29, and on October 5, 7, and 8, 2012. A total of 66 people were observed during the 5-day survey period, and 30 hikers were interviewed.

Those interviewed stated their reasons for hiking Tunk Mountain included favorable weather, foliage, views, and the enjoyment of hiking. Ninety percent of respondents indicated that the proposed additional wind turbines would have no impact (83%) or positive impact (7%) on their enjoyment. Only 10% indicated the additional turbines would have a negative impact on their enjoyment. All respondents indicated that the proposed project would have no effect or a positive effect on their likelihood of returning to Tunk Mountain.

Based on the results of the intercept study, the applicant states that the proposed project will have an incremental impact on the northerly view from Tunk Mountain but concludes that the proposed project should not have an unreasonable adverse effect on the scenic character or the uses related to scenic character.

There are no other scenic viewpoints within eight miles of the project.

7) Scenic Turnouts. A scenic turnout is an SRSNS if it has been constructed by the Department of Transportation pursuant to M.R.S.A. 23, § 954 on a public road designated as a scenic highway. Route 182 has been designated as the Blackwoods Scenic Byway by the Department of Transportation, but there are no scenic turnouts along the byway within eight miles of the proposed project.

8) Scenic viewpoints located in the coastal area. To qualify as an SRSNS, a scenic viewpoint located in the coastal area, as defined by 38 M.R.S.A. § 1802, subsection 1, must be ranked as having state or national significance in terms of scenic quality in:

   a. one of the scenic inventories prepared for and published by the Executive Department, State Planning Office: "Method for Coastal Scenic Landscape Assessment with Field Results for Kittery to Scarborough and Cape Elizabeth to South Thomaston," Dominie, et al., October 1987; "Scenic Inventory Mainland Sites of Penobscot Bay," Dewan and Associates, et al., August 1990; or "Scenic Inventory: Islesboro, Vinalhaven, North Haven and Associated Offshore Islands," Dewan and Associates, June 1992; or

   b. a scenic inventory developed by or prepared for the Executive Department, State Planning Office in accordance with 38 M.R.S.A. § 3457.

Tunk Mountain is the only scenic viewpoint located in a coastal area within eight miles of the project. A summary of the applicant's submission information on Tunk Mountain is included in Section 6.A.6. above.

B. Public Comment. The Department received limited public comment on this project during the two public meetings and throughout the review process. Several members of the public expressed concerns about the use of radar-assisted lighting for the project. Much of the comment was in support of the project and its economic benefits to the area.

C. Peer Review of the Visual Impact Assessment. The Department hired Dr. James F. Palmer of Scenic Quality Consultants, an independent scenic expert, to assist in its review of the evidence submitted on Scenic Character. Dr. Palmer provided the Department with comments dated May 22, 2013. Dr. Palmer ranked eleven SRSNS in table entitled "Summary of Evaluation Criteria Ratings for the Hancock Wind Project". The eleven SRSNS were evaluated by Dr. Palmer based on the significance of the resource; character of surrounding area; typical viewer expectations; development's purpose and context; extent, nature, and duration of uses; effect on continued use and enjoyment; and, scope and scale of project views. Dr. Palmer rated each criterion for each of the eleven SRSNS with ratings between "none" to "high". Dr. Palmer then determined an overall scenic impact to those SRSNS based on his evaluation of the three core criteria – extent, nature, and duration of uses; effect on continued use and enjoyment; and scope and scale of project views. No SRSNS reaches the level of a "High –" or "High" overall scenic impact in Dr. Palmer's judgment. Dr. Palmer concludes that while the Hancock Wind project will have an adverse scenic impact, it does not reach the level of unreasonably adverse.

D. Department Analysis and Findings. Department staff conducted two site visits over the course of the evaluation of the application on May 14, 2013 and June 6, 2013, including a summit visit to Tunk Mountain. In its analysis, the Department considered the evidence pertaining to scenic impacts submitted by the applicant and by members of the public, information gathered during two public meetings, the comments of its independent scenic expert, observations made during site visits and the evidence gathered by staff.

In making its determination of whether the proposed project would cause an unreasonable adverse effect on scenic character or existing uses related to scenic character, the Department evaluated the relevant evidence in the record regarding each of the statutory criteria in 35-A M.R.S.A. § 3452 (3) for each of the SRSNS. For the Eastbrook Baptist Church and six of the great ponds identified as SRSNS (Middle Lead Mountain Pond, Myrick Lake, Fox Pond, Little Long Pond, Tilden Pond and Spring River Lake) the Department considered the evidence in the record that there would be no visibility of the generating facilities from these SRSNS. The Department determined that since there was no visibility of the generating facilities from these seven SRSNS, the

proposed project would not cause an unreasonable adverse effect on scenic character or existing uses related to scenic character for any of those SRSNS.

For Narraguagus Lake, the Department concurred with Dr. Palmer and determined the scenic impact to be low because of the distance to the proposed turbines (5.7 to 8.0 miles), the number of visible turbines from the Lake, and the mitigating factor of the visibility of the existing Bull Hill project turbines. Therefore, the Department concluded that the overall scenic impact to Narraguagus Lake would be low and would not constitute an unreasonable adverse effect on scenic character or existing uses related to scenic character.

For Upper Lead Mountain Pond and Lower Lead Mountain Pond, the Department concurs with Dr. Palmer's conclusion that the scenic impact would be low and would not constitute an unreasonable adverse effect on scenic character or existing uses related to scenic character.

At Tunk Mountain, the Department concluded, because of the distance to the proposed turbines (6.9 to 7.0 miles), the number of visible turbines within eight miles (four turbines), and the small angle of view, the overall scenic impact is medium-low and would not constitute an unreasonable adverse effect on scenic character or existing uses related to scenic character.

For Lower Lead Mountain Pond, the Department considered cumulative impacts for the Hancock Wind and Bull Hill projects since the Bull Hill turbines would be visible inside of the viewing angle of the proposed Hancock Wind turbines, however the additional turbines did not constitute an unreasonable adverse impact to scenic character or existing uses related to scenic character. Upper Lead Mountain Pond does not have any visibility of the Bull Hill turbines so there is no cumulative impact on that SRSNS.

For Narraguagus Lake and Tunk Mountain, the Department considered the cumulative impacts of the proposed Hancock Wind turbines with the existing impacts of the visible Bull Hill turbines. On Narraguagus Lake, approximately 14 to 19 Bull Hill turbines and 6 Hancock Wind turbines would be visible. From the summit of Tunk Mountain, all 19 Bull Hill turbines plus only 4 Hancock Wind turbines will be visible within 8 miles, for a total of 23 visible turbines. The Department did not consider the scenic or cumulative impacts of the fourteen Hancock Wind turbines located more than eight miles from the summit of Tunk Mountain. The Department concluded that the cumulative impacts of the Hancock Wind project onto the Bull Hill project will not constitute an unreasonable adverse effect on scenic character considering the distance of the turbines from the SRSNS, and the limited total cumulative angle of view of the two projects (specifically, approximately 30 degrees as viewed from Narraguagus Lake and approximately 35 degrees for Tunk Mountain.)

E. Night Lighting. The applicant has proposed to install a radar-activated lighting system if such a system is approved by the Federal Aviation Administration

(FAA), is technically feasible and economically viable. The FAA has not yet approved radar-activated lighting systems for use on wind power projects, but has been working on technical rules for these systems for some time. While the Department finds that the project as proposed will not have an unreasonable adverse effect on the scenic character or existing uses related to scenic character, the Department is sensitive to the interested persons' concerns with impacts to the night sky from lighting of the turbines. To potentially reduce these impacts, the Department is requiring as a condition to this permit that, within six months of FAA's final approval of the specifications for radar-activated lighting, the applicant submit an application to the FAA to install such a system. Within one year of FAA's approval of a radar-activated lighting system at the Hancock Wind site, the applicant must install and operate the warning lights in accordance with that approval.

Based on the evidence in the record, the Department finds that the proposed project will not have an unreasonable adverse effect on scenic character or existing uses related to scenic character of the SRSNS within eight miles of the generating facilities, provided the applicant meets the conditions described above for night lighting.

7. WILDLIFE AND FISHERIES:

Applicants for Site Law and NRPA permits are required to demonstrate that a proposed project will not unreasonably harm wildlife and fisheries; any significant wildlife habitat; freshwater plant habitat; threatened or endangered plant habitat; aquatic or adjacent upland habitat; travel corridor; freshwater, estuarine or marine fisheries; or other aquatic life. To address these criteria, the applicant submitted the results of a series of ecological field surveys conducted by Stantec Consulting (Stantec), including wildlife surveys; wetland delineations; rare, threatened, and endangered plant and animal species surveys; and vernal pool surveys within the project area. During the preparation of the surveys and other material in support of the application, Stantec consulted with the Department and other natural resource review agencies.

A. Significant Vernal Pools. Stantec conducted vernal pool surveys within the project area and identified fourteen natural vernal pools in the Spring of 2010. During the design of the project, each pool was treated as significant and the project designed to avoid the vernal pool depression and a 250-foot buffer area around each.

B. Inland Waterfowl and Wading Bird Habitat. According to the application, the construction and operation of the project will not impact any Significant Wildlife Habitat.

C. Deer Wintering Area. The applicant states that neither the generating facilities nor the transmission line portions of the project will impact any Deer Wintering Areas as defined under the NRPA.

D. Rare, Threatened, and Endangered Species. Stantec conducted a survey of the area within two miles of the proposed project for plant and animal species that are state or federally listed as Rare, Threatened, or Endangered. No Rare, Threatened or Endangered plant or animal species were found.

E. Salmon Habitat Streams. The project area contains 19 streams designated as Critical Habitat for Atlantic salmon (Salmo salar). However, other than the temporary stream crossing for the overhead collection line construction, no impacts to streams are proposed.

Maine Department of Marine Resources (DMR) reviewed the proposed project and stated it is located within the Union River and Narraguagus River drainages. Both drainages do contain Atlantic salmon. It is unlikely that Atlantic salmon would be present in tributaries that drain to the east branch of the Union River and Spectacle Pond. In 2012, DMR did document juvenile Atlantic salmon in the west branch of the Union River. DMR does have an active restoration program in the west branch of the Narraguagus River and it is possible that Atlantic salmon could be in the Mahanon Brook and its tributaries (T16 MD).

There are several road stream crossings within the project area, however, only one new temporary crossing is proposed. It is DMR's understanding that many of the existing roads will need to be widened or improved for this project. Any work conducted near water should utilize BMPs to reduce sediment inputs. The one temporary stream crossing is on a tributary to Mahanon Brook. According to the applicant's Section 7A, Wetland and Waterbody Report, Appendix B, Table C-2, no fish were documented at stream ID 29, but given the cobble and boulder substrate, fish could be present. It is DMR's recommendation that the temporary crossing be constructed in a manner that maintains fish passage and that BMPs be used to reduce the risk of sedimentation. DMR emphasizes the importance of maintaining adequate buffers for all streams and waterbodies as outlined in Table 10-1 in the application.

F. Wild Brook Trout Streams. The project area contains 13 perennial streams that contain brook trout. In its review, Maine Department of Inland Fisheries and Wildlife (MDIFW) recommended a 100-foot stream buffer/no-cut zone around any wild brook trout streams. Road crossings of streams should have installed bridges, open-bottomed arch culverts, or three-sided box culverts of widths at least 1.2 times the bankfull width of the stream. Any work in a wild brook trout stream (such as a culvert installation) must be done within the standard work-window between July 15th and October 1st. All standard Best Management Practices for construction activity near streams are applicable.

G. Birds and Bats. The applicant retained Stantec to conduct bird and bat surveys to identify which species occurred in the area of the proposed project; the extent of the use of the site by such species; and potential impacts of the proposed

project. Through meetings with MDIFW, it was determined that sufficient data was previously collected by the applicant at the Bull Hill project site, precluding the need for pre-construction radar migration and acoustic bat surveys for the Hancock Wind project. Stantec conducted diurnal raptor surveys in the fall of 2012, aerial nest surveys in spring 2010, spring 2011, and spring 2012. The majority of the bat calls identified were of the Genus *Myotis*.

MDIFW reviewed the proposed project and stated that there is no significant adverse impact under the standards of Site Law and NRPA in the application submitted by Hancock Wind if these standards are met or exceeded as explicit permit conditions:

> Wind turbines will operate only at cut-in wind speeds exceeding 5.0 meters per second each night (from at least ½ hour before sunset to at least ½ hour after sunrise) during the period April 20 to October 15 over the life of the project. Cut-in speeds are determined based on mean wind speeds measured at hub heights of a turbine over a 10-minute interval. Turbines will be feathered during these low wind periods to minimize risks of bat mortality.

MDIFW also stated that the finding of no significant adverse impact does not indemnify the applicant from liabilities related to a federal law, the Bald Eagle – Golden Eagle Protection Act and associated "Eagle Conservation Plan – Wind Energy Guidance". The U.S. Fish and Wildlife Service, Division of Migratory Bird Management has sole authority for oversight and enforcement.

Exhibit 7D of the application contains a post-construction mortality monitoring plan. As the turbines will be curtailed to minimize impacts to bats, the Department will not require post-construction mortality monitoring of the project. However, should the applicant choose to apply to the Department to modify the curtailment plan, the Department strongly advises the applicant consult MDIFW prior to the start of a study for methodology review and approval. In its comments, MDIFW stated that the proposed frequency of searches for dead bats is insufficient.

The Department finds the project will not result in an unreasonable impact on fisheries and wildlife or habitat protected by the NRPA provided turbine operation is curtailed as outlined above and the temporary stream crossing is constructed as proposed, with BMPs. If post-construction monitoring indicates an unreasonable impact on birds, bats and/or raptors, the Department, in conjunction with MDIFW, may require modified operation of the Hancock Wind project, including the curtailment of turbines, as necessary.

8. HISTORIC SITES AND UNUSUAL NATURAL AREAS:

The Maine Historic Preservation Commission (MHPC) reviewed the proposed project and stated that it will have no effect upon any structure or site of historic,

architectural, or archaeological significance as defined by the National Historic Preservation Act of 1966.

The Maine Natural Areas Program (MNAP) database does not contain any records documenting the existence of rare or unique botanical features on the project site.

Based on information in the application, MHPC's review, and MNAP's review, the Department finds that the proposed project will not have an unreasonably adverse effect on the preservation of any historic sites or unusual natural areas either on or near the project site.

9. BUFFER STRIPS:

The applicant proposes three basic buffer types for the project. Buffers for the proposed development will include stormwater buffers along the access road, salmon habitat stream buffers, and overhead collector line right-of-way (ROW) buffers. All buffer strips will be clearly marked prior to construction.

A. Access Road Buffers. The applicant proposes to maintain stormwater buffers along the access road and around the turbine pads. Forested buffers provide both a visual screen and stormwater and phosphorus treatment. The stormwater and phosphorus treatment measures are more fully described in Finding 11.

B. Salmon Habitat Stream Buffers. There are 19 streams in the project area which contain, or may contain, habitat for Atlantic Salmon. Buffers proposed around these streams will be 100 feet wide and only trees that are capable of growing within 15 feet of the conductor within the next 3 to 4 years will be removed. The applicant has attempted to place poles as close to the edge of these buffers as is practical, thereby elevating the line above the stream to the greatest extent and reducing the number of trees that must be removed. Topping of trees is the preferred method of vegetation maintenance unless the tree is dead or dying. No other vegetation will be removed. Initial clearing and vegetation maintenance will be completed by hand-cutting or with low-ground-pressure tree harvesting equipment. No refueling, including refueling of chain saws, will be allowed in the Salmon Stream Buffers.

C. Vegetation Management Plan (VMP). The applicant submitted a Post-Construction Vegetation Management Plan for the proposed project, prepared by Stantec Consulting, dated December 2012, which includes routine maintenance along the ROW to prevent vegetation from getting too close to the conductor. The plan summarizes vegetation management methods and procedures that will be utilized by the applicant for overhead collector lines. The plan describes restrictive maintenance requirements for natural resources and salmon habitat streams. The plan also includes procedures for managing or removing osprey nests built on power line structures, describes a system for identifying restricted areas, and summarizes training requirements for construction personnel.

The Department finds that the applicant has made adequate provision for buffer strips based on the post-construction VMP, and provided that the buffers are clearly marked on the ground, prior to construction, for all visual screening buffers, stream buffers and other resource buffers, and the stormwater buffers. Additionally, prior to operation, the applicant must record all deed restrictions for stormwater buffers and submit the recorded deeds to the Department within 60 days of recording.

10. SOILS:

The applicant submitted a Class L soil survey for the turbines and road areas and a Class B soil survey for the O&M building location. These surveys were prepared by a certified soils scientist and reviewed by staff from the Division of Environmental Assessment (DEA) of the Bureau of Land and Water Quality (BLWQ). DEA also reviewed a blasting plan submitted by the applicant outlining the proposed procedures for removing bedrock. A preliminary geotechnical investigation has not been completed. Prior to the start of construction, the geotechnical report must be submitted to the Department for review and approval.

DEA stated the blasting plan received for review references the overall blasting requirements of 38 M.R.S. §490-Z(14)(H) and (L) for airblast and record keeping, but does not include the specific standards for ground vibration and flyrock control. The specific standards state that ground vibration at structures not owned or controlled by the developer may not exceed the limits shown in Figure B-1 of Appendix B, U.S. Bureau of Mines Report of Investigations 8507 and that flyrock must be controlled so as to remain on the site and may not enter a protected resource unless the Department has previously approved alteration of that resource in the impacted area.

The Department finds that, based on the applicant's soil surveys and blasting plan, and DEA's review, the soils on the project site present no limitations to the proposed project that cannot be overcome through standard engineering practices, provided the geotechnical report is submitted to the Department for review and approval prior to the start of construction, and that DEA comments listed above regarding the blasting plan are followed.

11. STORMWATER MANAGEMENT:

The proposed project includes approximately 30.04 acres of impervious and developed area. It lies within the watersheds of Spectacle Pond, the Narraguagus River, and the Union River. The applicant submitted a stormwater management plan based on the Basic, General, Phosphorus, and Flooding standards contained in Department Rules, Chapter 500. The proposed stormwater management system consists of 6 meadow buffers, 54 forested buffers, and an underdrained soil filter.

A. Basic Standards:

(1) Erosion and Sedimentation Control: The applicant submitted an Erosion and Sedimentation Control Plan (Section 14 of the application) that is based on the performance standards contained in Appendix A of Chapter 500 and the Best Management Practices outlined in the Maine Erosion and Sediment Control Best Management Practices (BMPs), which were developed by the Department. This plan and plan sheets containing erosion control details were reviewed by the Department's Division of Land Resource Regulation (DLRR).

Erosion control details will be included on the final construction plans and the erosion control narrative will be included in the project specifications to be provided to the construction contractor. Given the size and nature of the project site, the applicant must retain the services of a third-party inspector in accordance with the Special Condition for Third Party Inspection Program, which is attached to this Order. Prior to the start of construction, the applicant must conduct a pre-construction meeting to discuss the construction schedule and the erosion and sediment control plan with the appropriate parties. This meeting must be attended by the applicant's representative, Department staff, the design engineer, the contractor, and the third-party inspector.

(2) Inspection and Maintenance: The applicant submitted a maintenance plan that addresses both short and long-term maintenance requirements. This plan was reviewed by DLRR. The maintenance plan is based on the standards contained in Appendix B of Chapter 500. The applicant will be responsible for the maintenance of all common facilities including the stormwater management system.

(3) Housekeeping: The proposed project will comply with the performance standards outlined in Appendix C of Chapter 500.

The following minor adjustments may be made during construction without advance notice to the Department provided they do not impact protected natural resources and are reflected in the final as-built drawings: changes that result in a reduction in environmental impact and/or footprint (such as a reduction in clearing or impervious area, and elimination of structures or a reduction in structure size); location of a structure within the identified clearing limits; the type of foundations used; additional drainage culverts, level spreaders or rock sandwiches; changes to culvert size or type provided that the culvert does not convey a regulated stream and that the hydraulic capacity of the substitute culvert is greater than or equal to that of the original; and changes of up to 10 feet in the base elevation of a turbine vertically as long as the change in elevation does not result in increased visual impacts or changes to the stormwater management plan.

Additionally, the following minor adjustments may be made upon prior approval by the third-party inspector or Department staff, and do not require a revision or modification of the permit but must be reflected in the final as-built drawings: minor changes that do not increase overall project impacts or project footprint and which do not impact any protected natural resources as long as any new areas of impact have been surveyed for environmental resources and do not affect other landowners. These changes include adjustments to horizontal or vertical road geometry that do not result in changes to the stormwater management plan; a shift of up to 100 feet in a turbine clearing area; and adjustments to culvert locations based on field topography.

Based on DLRR's review of the erosion and sedimentation control plan and the maintenance plan, the Department finds that the proposed project meets the Basic Standards contained in Chapter 500(4)(A), provided the applicant retains a third-party inspector and conducts a pre-construction meeting as described above.

B. General and Phosphorus Standards:

The applicant's stormwater management plan includes general treatment measures that will mitigate for the increased frequency and duration of channel erosive flows due to runoff from smaller storms, provide for effective treatment of pollutants in stormwater, and mitigate potential temperature impacts. This mitigation is being achieved by using BMPs that will control runoff from no less than 95% of the impervious area and no less than 80% of the developed area for the O&M building located in the Union River watershed. The proposed access road and turbine pads in the Narraguagus River watershed meet the definition of "a linear portion of a project" in Chapter 500 and the applicant is proposing to control runoff volume from no less than 75% of the impervious area and no less than 50% of the developed area.

The forested and meadow limited disturbance stormwater buffers will be protected from alteration through the execution of a deed restriction. The applicant proposes to use the deed restriction language contained in Appendix G of Chapter 500 and submitted a draft deed restriction that meets Department standards.

Prior to operation, the applicant must record all deed restrictions for stormwater buffers and submit the recorded deeds to the Department within 60 days of recording.

Because a portion of the proposed project is located in the watershed of Spectacle Pond, stormwater runoff from that portion of the project site will be treated to meet the phosphorus standard outlined in Chapter 500(4)(C). The applicant's phosphorus control plan was developed using methodology developed by the Department and outlined in "Phosphorus Control in Lake Watersheds: A Technical Guide for Evaluating New Development". For the

portion of the project located in T22 MD, the Permitted Phosphorus Export is 11.34 pounds of phosphorus per year. The applicant proposes to remove phosphorus from the project's stormwater runoff by utilizing buffers, as shown on the set of plans referenced in Finding 1. The Predicted Phosphorus Export for the project site based on the applicant's model is 11.06 pounds of phosphorus per year. The proposed stormwater treatment will be able to reduce the export of phosphorus in the stormwater runoff below the maximum Permitted Phosphorus Export for the site.

For the portion of the project located in Osborn, a minor road upgrade, the Permitted Phosphorus Export is 1.09 pounds of phosphorus per year. The applicant proposes to remove phosphorus from the project's stormwater runoff by utilizing buffers, as shown on the set of plans referenced in Finding 1. The Predicted Phosphorus Export for the project site based on the applicant's model is 0.91 pound of phosphorus per year. The proposed stormwater treatment will be able to reduce the export of phosphorus in the stormwater runoff below the maximum Permitted Phosphorus Export for the site.

The stormwater management system proposed by the applicant was reviewed by, and revised in response to comments from, DLRR. After a final review, DLRR commented that the proposed stormwater management systems are designed in accordance with the General Standard contained in Chapter 500(4)(B) provided that the design engineer or a third-party engineer oversees the construction of the stormwater management structures according to the details and notes specified on the approved plans.

Within 30 days of completion of the entire system of at least once per year, the applicant must submit a log of inspection reports detailing the items inspected, photos and the dates of each inspection to the BLWQ for review.

Based on the stormwater system's design and DLRR's review, the Department finds that the applicant has made adequate provision to ensure that the proposed project will meet the General and Phosphorus Standards contained in Chapter 500(4)(B) and (C).

C. Flooding Standard:

The applicant is proposing to utilize a stormwater management system based on estimates of pre- and post-development stormwater runoff flows obtained by using Hydrocad, a stormwater modeling software that utilizes the methodologies outlined in Technical Releases #55 and #20, U.S.D.A., Soil Conservation Service and detains stormwater from 24-hour storms of 2-, 10-, and 25-year frequency. The post-development peak flow from the site will not exceed the pre-development peak flow from the site.

DLRR commented that the proposed system is designed in accordance with the Flooding Standard contained in Chapter 500(4)(E).

Based on the system's design and DLRR's review, the Department finds that the applicant has made adequate provision to ensure that the proposed project will meet the Flooding Standard contained in Chapter 500(4)(E) for peak flow from the project site, and channel limits and runoff areas.

The Department further finds that the proposed project will meet the Chapter 500 standards for: (1) easements and covenants; (2) management of stormwater discharges; (3) discharge to freshwater or coastal wetlands; (4) threatened or endangered species; and (5) discharges to public storm sewer systems.

12. GROUNDWATER:

The project site is not located over a mapped sand and gravel aquifer. The proposed project does not propose any withdrawal from, or discharge to, the groundwater aside from the well and wastewater disposal system described in Findings 13 and 14, respectively. The applicant submitted a Post-Construction Vegetation Management Plan for the project site, dated December 2012, that was reviewed by DEA and found to meet Department standards. The proposed Post-Construction Vegetation Management Plan prohibits herbicide application within 100 feet of any known well or spring, or home or other dwelling, and also prohibits herbicide application within 250 feet of any residence listed on the Board of Pesticide Control Notification Registry. These buffer limits must be clearly marked in the field prior to any herbicide application.

The applicant submitted a Spill Prevention, Control and Countermeasures (SPCC) plan detailing steps to be taken to prevent groundwater contamination during construction, however the applicants did not submit an SPCC plan for on-going operation of the project. The applicant stated that potential contamination during construction will be fuel and hydraulic and lubricating oils used in vehicles and construction equipment. The SPCC plan includes general operational requirements, storage and handling requirements, and training requirements to prevent spilling of oil, hazardous materials or waste. The plan also sets out spill reporting and cleanup requirements should such an event occur. No petroleum products or other hazardous materials will be stored or transferred within 100 feet of mapped aquifers, waterbodies, wetlands, rare plant or unique natural community locations, or within 200 feet of a water supply well. Prior to operation of the development, the applicant must submit an operational SPCC plan for the on-going operation of the project to the Department for review and approval.

The Department finds that the proposed project will not have an unreasonable adverse effect on groundwater quality provided the applicant submits the operational SPCC plan to the Department for review and approval, and the applicant submits the contractor or subcontractor SPCC plans to the Department for review as outlined above. The Department may require changes to any SPCC plan or handling or storage procedure based on review of the SPCC plans or inspection of the site.

13. WATER SUPPLY:

When completed, the proposed project is anticipated to use approximately 300 gallons of water per day for the O&M building. The applicant submitted an assessment of groundwater supplies that are available on the project site. This assessment was prepared by a well driller and was reviewed by the DEA.

DEA comments that the use of calcium chloride or water for dust control is acceptable provided that the third-party inspector approves the locations for water withdrawal and the vehicle access to these locations is stabilized prior to and after use. The withdrawal of water must not adversely impact the quantity or quality of water or associated biological criteria of any water body used as a source of dust control.

The Department finds that the applicant has made adequate provision for securing and maintaining a sufficient and healthful water supply, provided the dust control measures meet the requirements of DEA as outlined above.

14. WASTEWATER DISPOSAL:

When completed, the proposed project is anticipated to discharge 300 gallons of wastewater per day for the O&M building. Wastewater will be disposed of by an individual subsurface wastewater disposal system. The applicant submitted an HHE-200 form for the proposed disposal system. This information was reviewed by DEA.

Based on DEA's comments, the Department finds that the proposed wastewater disposal system will be built on suitable soil types.

15. SOLID WASTE:

When completed, the proposed project is anticipated to generate 240 cubic yards of general office solid waste per year. All general solid wastes from the proposed project will be disposed of at Penobscot Energy Recovery Company, which is currently in substantial compliance with the Maine Solid Waste Management Rules.

The proposed project will generate approximately 840 cubic yards of construction debris and demolition debris. All construction and demolition debris generated will be disposed of at Juniper Ridge, which is currently in substantial compliance with the Maine Solid Waste Management Rules.

Approximately 50 large tires may be disposed of at BDS Waste Disposal. BDS Waste Disposal is licensed to handle the tires, and currently is in substantial compliance with Maine Solid Waste Management Rules.

Based on the above information, the Department finds that the applicant has made adequate provision for solid waste disposal.

16. FLOODING:

The proposed project is not located within the 100-year flood plain of any river or stream.

The Department finds that the proposed project is unlikely to cause or increase flooding or cause an unreasonable flood hazard to any structure.

17. WETLAND IMPACTS:

The applicant retained Stantec to locate wetlands and waterbody resources on the proposed project site. The results of the applicant's surveys for wetlands and waterbodies which may be affected by the turbine sites, access roads and collection lines are summarized as follows:

- 146 wetlands were identified along the proposed access roads and the electrical collector line.
- 19 jurisdictional streams were identified, including 13 perennial streams.
- 35 vernal pools were identified, including 14 potentially significant vernal pools, none of which will be impacted, as discussed in Finding 7.
- 22 wetlands were identified that meet the definition of wetlands of special significance.

Freshwater Wetland Impacts

The applicant is proposing 19,514 square feet of vegetation conversion in wetland areas for the overhead collector line. No permanent loss of freshwater wetland through filling is proposed.

The Department's Wetlands and Waterbodies Protection Rules, Chapter 310, provide the framework for the Department's analysis of whether a proposed project's impacts to protected resources will be unreasonable, as that term is used in the NRPA, and whether the project meets the NRPA licensing criteria. A proposed project's impacts may be found to be unreasonable if the project will cause a loss in wetland area, functions and values and for which there is a practicable alternative that will be less damaging to the environment. For this aspect of the Department's review an applicant must provide an analysis of alternatives to the project.

A. Avoidance. The applicant submitted an alternatives analysis for the wetland impacts of the proposed project, completed by Stantec Consulting, and dated January 2013. The applicant states that the proposed project was designed to avoid wetlands to the greatest extent possible. The applicant used existing roads when possible to avoid any new impacts to natural resources. Any new

roads that were necessary were designed to avoid wetlands. The construction and maintenance of the overhead collector line will primarily result in a permanent change in vegetation cover type in wetland areas.

B. Minimal Alteration. In the determination of whether any adverse impacts from a project are unreasonable, the Department looks at whether the amount of wetland and waterbodies to be altered have been kept to the minimum amount necessary for meeting the overall purpose of the project. Wetland impacts have been minimized by placing most of the collector line underground and minimizing the width of the collector corridor.

C. Compensation. Compensation may be required to achieve the goal of no net loss of wetland functions and values. The project does not propose any fill in freshwater wetlands, only conversion of wetlands due to cutting. The conversion of the vegetative cover type in the wetlands will not result in a loss of functions and values, therefore, compensation will not be required.

The Department finds the applicant has avoided and minimized wetland and water body impacts to the greatest extent practicable, and that the proposed project represents the least environmentally damaging alternative that meets the overall purpose of the project. The proposed project will not result in an unreasonable impact to freshwater wetlands.

18. SHADOW FLICKER:

In accordance with 38 M.R.S.A. §484(10), an applicant must demonstrate that the proposed wind energy development has been designed to avoid unreasonable adverse shadow flicker effects. Shadow flicker caused by wind turbines is defined as alternating changes in light intensity caused by the moving blade casting shadows on the ground and stationary objects. Shadow flicker is the sun seen through a rotating wind turbine rotor. Shadow flicker does not occur when the sun is obscured by clouds or fog or when the turbine is not rotating. The spatial relationships between a wind turbine and receptor, as well as wind direction which cause the turbines to rotate, are key factors relating to shadow flicker occurrence and duration. At distances of greater than 1,000 feet between wind turbines and receptors, shadow flicker usually occurs when the rotor plane is in-line with the sun and receptor (as seen from the receptor), the cast shadows will be very narrow (blade thickness) and of low intensity, and the shadows will move quickly past the stationary receptor. When the rotor plane is perpendicular to the sun-receptor "view line," the cast shadow of the blades will move within a circle equal to the turbine rotor diameter.

The applicant submitted a shadow flicker analysis with its application based on Siemens SWT-3.0 turbines. The applicant used WindPRO, a wind modeling software program, to model expected shadow flicker effects on adjacent properties from the 18 proposed turbine locations. The applicant assumed a worst-case

scenario, that all receptors have a direct in-line view of the incoming shadow flicker sunlight, and did not take into account any existing vegetative buffers.

The Department generally recommends that an applicant conduct a shadow flicker model out to a distance of 1,000 feet or greater from a residential structure, and the applicant's model did so. The applicant modeled 26 receptors, of which fifteen will potentially receive shadow flicker. Maine currently has no numerical regulatory limits on exposure to shadow flicker; however, the industry commonly uses 30 hours per year as a limit to reduce nuisance complaints. Receptor Y will have approximately 42.17 hours of shadow flicker per year given an assumption of 365 sunny days per year, and no vegetation.

To adjust for likely weather conditions, the applicant revised the model using sunlight data obtained from the National Oceanic and Atmosphere Administration (NOAA) station in Portland, Maine. NOAA collects cloud data at two locations in Maine, Caribou and Portland. Portland has the higher number of sunny or partly cloudy days, two hundred per year. Using this data, the remodeled shadow flicker for Receptor Y is expected to be 10.28 hours of flicker per year.

The Department finds the shadow flicker modeling conducted by the applicant is credible. Based upon the proposed project's location and design, the distance to the nearest shadow flicker receptor, and results of the shadow flicker analysis, the Department finds that the proposed project will not unreasonably cause shadow flicker to occur over adjacent properties which are not subject to an easement allowing for shadow flicker.

19. PUBLIC SAFETY:

The proposed project will use Vestas V112 or Siemens 3.0-113, 3.0-MW wind turbine generators. The Vestas' and Siemens' conformity with International Electrotechnial Commission standards has been certified by Det Norske Veritas and are included in Section 27of the application.

The Department recognizes that locating wind turbines a safe distance away from any occupied structures, public roads or other public use areas is extremely important. In establishing a recommended safety setback, the Department considered industry standards for wind energy production in climates similar to Maine, as well as the guidelines recommended by certifying agencies such as Det Norske Veritas. Based on these sources, the Department requires that all wind turbines be set back from the property line, occupied structures, or public areas, a minimum of 1.5 times the maximum blade height for the wind turbine. Based on the Department setback specifications, the minimum setback distance to the nearest property line should be 768 feet for the Siemens turbines, the taller of the turbine options. A review of the application indicates that all turbines are set back more than 2,400 feet from the nearest non-participating landowner.

The Department finds that the applicant provided documentation for the Vestas and Siemens turbines of industry standard compliance that the wind generation equipment has been designed to conform to applicable industry safety standards, and has demonstrated that the proposed project has been sited such that it will not present an unreasonable safety hazard to adjacent properties or adjacent property uses. The Department further finds that the applicant has submitted sufficient evidence which demonstrates that the proposed project will be sited with appropriate safety setbacks from adjacent properties and existing uses.

20. DECOMMISSIONING PLAN:

In order to facilitate and ensure appropriate removal of the wind generation equipment when it reaches the end of its useful life or if the applicant ceases operation of the turbines, the Department requires an applicant to demonstrate, in the form of a decommissioning plan, the means by which decommissioning will be accomplished. The applicant submitted a decommissioning plan which includes a description of the trigger for implementing the decommissioning, a description of the work required, an estimate of decommissioning costs, a schedule for contributions to its decommissioning fund, and a demonstration of financial assurance.

A. Trigger for implementation of decommissioning. The proposed wind turbine generators are designed and certified by independent agencies for a minimum expected operational life of 20 years, however other factors may trigger the requirement for decommissioning before 20 years have passed. The applicant's proposal is that the wind generation facility, or any single turbine, will be decommissioned when it ceases to generate electricity for a continuous period of twelve months. In the case of a force majeure event which causes the project, or any single turbine, to fail to generate electricity for 12 months, the applicant proposes that it be allowed to submit to the Department for review and approval reasonable evidence in support of a request that they not be required to decommission the project at that time.

Decommissioning will begin if twelve months of no generation occurs. An exception to the requirement will be allowed for a force majeure event, however the Department finds that the applicant's proposed definition of "force majeure" is exceedingly broad, and instead the definition will be as follows: The Department considers a force majeure to mean fire, earthquake, flood, tornado, or other acts of God and natural disasters; and war, civil strife or other similar violence. In the event of a force majeure event which results in the absence of electrical generation by one or more turbines for twelve months, by the end of the twelfth month of non-operation the applicant shall demonstrate to the Department that the project, or any single turbine, will be substantially operational and producing electricity within twenty-four months of the force majeure event. If such a demonstration is not made to the Department's satisfaction, the decommissioning must be initiated eighteen months after the force majeure event.

B. Description of work. The description of work contained in the application outlines the applicant's proposal for the manner in which the turbines and other components of the proposed project will be dismantled and removed from the site. Subsurface components will be removed to a minimum of 24 inches below grade, generating facilities will be removed and salvaged, and disturbed areas will be re-seeded. At the time of decommissioning, the applicant must submit a plan for continued beneficial use of any wind energy development components proposed to be left on-site to the Department for review and approval.

C. Financial Assurance. The applicant estimates that the current cost for decommissioning the project will be $506,600. The applicant proposes that financial assurance for the decommissioning costs will be in the form of (i) performance bond, (ii) surety bond, or (iii) letter of credit, or other acceptable form of financial assurance for the total cost of decommissioning. The applicant proposes to have the financial assurance mechanism in place prior to construction and to re-evaluate the decommissioning cost at the end of years ten and fifteen. Proof of acceptable financial assurance must be submitted to the Department prior to the start of construction.

D. Notification. The applicant must notify the Department within two business days of any catastrophic turbine failure. Catastrophic turbine failure shall include the voluntary or involuntary shut-down of a turbine due to a fire event, structural failure or accidental event resulting in a turbine collapse, a force majeure event, or any mechanical breakdown the applicant anticipates will result in a turbine being off-line for a period greater than six months.

Based on the applicants' proposal outlined above, the Department finds that the applicant's proposal will adequately provide for decommissioning, provided the applicant implements the decommissioning plan as proposed and submits proof of financial assurance for the decommissioning costs as set forth above.

21. TANGIBLE BENEFITS:

In its application the applicant described tangible benefits that the project will provide to the State of Maine and to host communities, including economic benefits and environmental benefits.

A. Job Creation. The applicant states that its proposal will benefit the host communities and surrounding areas through construction-related employment opportunities. The applicant has indicated that they will hire local firms and individuals whenever possible for construction, operations, and maintenance positions related to the project. Jobs created could include tree clearing jobs, and jobs in businesses that support construction such as lodging, restaurant, fuel and concrete supply. The applicant estimates the project will create approximately 100 full-time jobs during construction and 3 to 6 permanent jobs for operation and maintenance of the facility after construction.

B. Generation of Wind Energy. The applicant estimates that the proposed project will provide an approximate average output of 150,000 megawatt-hours per year, which is enough to power 24,000 homes.

C. Property Tax Payments. The applicant estimates that the proposed project will result in estimated average annual property tax payments to Unorganized Territories in excess of $350,000, and average annual payments to the Town of Aurora of $8,000.

D. Community Benefits Agreement. The applicant has provided proposed Community Benefit Agreements with the Towns of Osborn, Waltham and Eastbrook. The Towns may use the funds at their discretion for public purposes including lowering tax rates or investment in municipal assets and/or services. Annual payments made to the Towns of Osborn, Waltham, and Eastbrook as part of the Community Benefits Agreements total $5,333 per turbine per year for 20 years. The applicant must submit confirmation of the receipt of funds by the Town to the Department annually for review.

E. Other tangible benefits. The applicant has also agreed to provide $10,000 annually to the Acadia Area ATV Club to support its efforts to maintain trails, repair bridges, and perform stormwater management activities. Also, the applicant is evaluating the preliminary mapping of a "Ride the Wind" snowmobile trail that will link all the wind farms in the State, and the Hancock Wind project will provide $25,000 in seed money to finalize the snowmobile routes, create marketing materials and promote the trails.

Based on the proposed employment opportunities, energy generation, property tax revenue and the Community Benefits Agreements proposed by the applicant, the Department finds that the applicant has demonstrated that the proposed project will provide significant tangible benefits to the State, host communities and surrounding area pursuant to 35-A M.R.S.A. §3454, provided that annual payments are made to Osborn, Waltham, and Eastbrook as described above.

22. MAINE LAND USE PLANNING COMMISSION CERTIFICATION:

The proposed project was reviewed by the Land Use Planning Commission (LUPC) to determine if the project is an allowed use in the subdistricts affected and if the project meets the Commission's land use standards applicable to the project that are not considered in the Department's review. The LUPC standards for this project include land division history, vehicular circulation, access and parking, lighting, minimum dimensional requirements, vegetation clearing, signs, and general criteria for approval.

In a Commission Determination, dated April 5, 2013, and signed by LUPC Director Nicholas Livesay, the LUPC certified that the project is an allowed use in the subdistricts affected and complies with the LUPC standards, subject to conditions. An amended certification for the project was issued by the LUPC on June 24, 2013

for the two 60-meter temporary met towers. The conditions, detailed in the Commission Determination, may be enforced for compliance by the LUPC and/or DEP.

BASED on the above findings of fact, and subject to the conditions listed below, the Department makes the following conclusions pursuant to 38 M.R.S.A. § 480-A et seq. and Section 401 of the Federal Water Pollution Control Act:

A. The proposed activity will not interfere with existing recreational or navigational uses. The proposed activity will not significantly compromise views from an SRSNS and would not have an unreasonable adverse effect on the scenic character and existing uses related to scenic character of affected resources. The proposed activity will not unreasonably interfere with existing scenic and aesthetic uses of affected resources.

B. The proposed activity will not cause unreasonable erosion of soil or sediment.

C. The proposed activity will not unreasonably inhibit the natural transfer of soil from the terrestrial to the marine or freshwater environment.

D. The proposed activity will not unreasonably harm any significant wildlife habitat, freshwater wetland plant habitat, threatened or endangered plant habitat, aquatic habitat, travel corridor, freshwater, estuarine, or marine fisheries or other aquatic life provided that the applicant meets the turbine curtailment requirements of Finding 7 and marks all buffers as described in Finding 9.

E. The proposed activity will not unreasonably interfere with the natural flow of any surface or subsurface waters.

F. The proposed activity will not violate any state water quality law including those governing the classifications of the State's waters.

G. The proposed activity will not unreasonably cause or increase the flooding of the alteration area or adjacent properties.

H. The proposed activity is not on or adjacent to a sand dune.

I. The proposed activity is not on an outstanding river segment as noted in 38 M.R.S.A. Section 480-P.

BASED on the above findings of fact, and subject to the conditions listed below, the Department makes the following conclusions pursuant to 35-A M.R.S.A, §§ 3401-3457, and 38 M.R.S.A. § 481 et seq.:

A. The applicant has provided adequate evidence of financial capacity and technical ability to develop the project in a manner consistent with state environmental standards provided that the applicant meets the requirement of Finding 3.

B. The proposed activity will not significantly compromise views from an SRSNS and will not have an unreasonable adverse effect on the scenic character and existing uses related to scenic character of the resource. The applicant shall submit an application to the FAA for a radar-activated lighting system as described in Finding 6. The applicant has made adequate provisions for air quality, water quality, control of noise and other natural resources in the municipality or in neighboring municipalities provided that the applicant implements turbine curtailment as described in Finding 7; the post-construction sound level monitoring and complaint response protocol is implemented as described in Finding 5; and all buffers are marked prior to construction as described in Finding 9.

C. The proposed development will be built on soil types which are suitable to the nature of the undertaking and will not cause unreasonable erosion of soil or sediment nor inhibit the natural transfer of soil provided that the applicant meets the requirements of Finding 10.

D. The proposed development meets the standards for stormwater management in Section 420-D and the standard for erosion and sedimentation control in Section 420-C provided that the applicant meets the requirements of Finding 11.

E. The proposed development will not pose an unreasonable risk that a discharge to a significant groundwater aquifer will occur provided that the applicant meets the requirements of Finding 12.

F. The applicant has made adequate provision of utilities, including water supplies, sewerage facilities and solid waste disposal required for the development and the development will not have an unreasonable adverse effect on the existing or proposed utilities in the municipality or area served by those services.

G. The activity will not unreasonably cause or increase the flooding of the alteration area or adjacent properties nor create an unreasonable flood hazard to any structure.

H. The proposed development will not unreasonably cause shadow flicker effects to occur over adjacent properties.

I. The activity will not present an unreasonable safety hazard to adjacent properties or adjacent property uses.

J. The applicant has made adequate provisions to achieve decommissioning of the wind power facility provided the decommissioning plan is implemented as described in Finding 20 and financial assurance of funds for decommissioning is demonstrated as set forth in Finding 20.

K. The activity will provide significant tangible benefits to the host community and surrounding area, provided that the applicant implements the Community Benefit Agreement as discussed in Finding 21.

THEREFORE, the Department APPROVES the application of HANCOCK WIND, LLC to construct an eighteen turbine wind power facility known as the Hancock Wind project, SUBJECT TO THE FOLLOWING CONDITIONS and all applicable standards and regulations:

1. The Standard Conditions of Approval, a copy attached.

2. In addition to any specific erosion control measures described in this or previous orders, the applicant shall take all necessary actions to ensure that its activities or those of its agents do not result in noticeable erosion of soils or fugitive dust emissions on the site during the construction and operation of the project covered by this approval.

3. Severability. The invalidity or unenforceability of any provision, or part thereof, of this License shall not affect the remainder of the provision or any other provisions. This License shall be construed and enforced in all respects as if such invalid or unenforceable provision or part thereof had been omitted.

4. The applicant or other responsible party shall, within three months of the expiration of each five-year interval from the date of this Order, submit a report certifying that the items listed in Department Rules, Chapter 500, Appendix B(4) have been completed in accordance with the approved plans.

5. Prior the start of construction of the project, with the exception of the two 60-meter tall, temporary meteorological towers, the applicant shall conduct a pre-construction meeting. This meeting shall be attended by the applicant's representative, Department staff, the design engineer, the contractor, and the third-party inspector.

6. Prior to the start of construction, with the exception of the two 60-meter tall, temporary meteorological towers, a geotechnical report shall be submitted to the Department for review and approval.

7. The applicant shall identify locations for water withdrawal for dust control prior to use.

8. The applicant shall retain the services of a third-party inspector in accordance with the Special Condition for Third-Party Inspection Program, which is attached to this Order.

9. The applicant shall submit confirmation of the receipt of tangible benefits by the Towns of Osborn, Waltham, and Eastbrook to the Department annually for review.

10. Prior to the start of construction, with the exception of two 60-meter meteorological towers, the applicant shall submit evidence that it has been granted a line of credit or a loan by a financial institution authorized to do business in this State or evidence of any other form of financial assurance determined by Department Rules, Chapter 373(1), to be adequate to the Bureau of Land and Water Quality for review and approval.

11. Sound compliance testing shall be completed at Receptor H1. At least six of the 12 test periods used in the compliance test report shall represent the nighttime period (7 pm to 7 am) during which the sound level limit is 42 dBA. The compliance test report shall include a complete presentation of the data and calculations for the SDRS analysis performed.

12. Prior to operation of the development, the applicant shall submit an operational SPCC plan for the on-going operation of the project to the Department for review and approval.

13. The applicant shall implement the decommissioning plan as proposed and as discussed in Finding 20.

14. Wind turbines shall operate only at cut-in wind speeds exceeding 5.0 meters per second each night (from at least ½ hour before sunset to at least ½ hour after sunrise) during the period April 20 to October 15 over the life of the project. Cut-in speeds shall be determined based on mean wind speeds measured at hub heights of a turbine over a 10-minute interval. Turbines shall be feathered during these low wind periods to minimize risks of bat mortality.

15. Prior to construction in any area, the applicant shall clearly mark on the ground all visual screening buffers, stream buffers and other resource buffers , and the stormwater buffers. Additionally, prior to operation, the applicant shall record all deed restrictions for stormwater buffers and submit the recorded deeds along with plot plans to the Department within 60 days of recording.

16. The applicant shall implement the proposed vegetation management plan which requires no herbicide application within 100 feet of any known well or spring, or home or other dwelling, and also requires no herbicide application within 250 feet of any residence listed on the Board of Pesticide Control Notification Registry. These buffer limits shall be clearly marked in the field prior to any herbicide application.

17. The applicant shall maintain a 100-foot stream buffer/no-cut zone around any wild brook trout streams, except for road crossings. Permanent road crossings of streams shall have installed bridges, open-bottomed arch culverts, or three-sided box culverts of widths at least 1.2 times the bankfull width of the stream. Any work in a wild brook trout stream (such as a culvert installation) shall be done

within the standard work-window between July 15th and October 1st. All standard Best Management Practices for construction activity near streams are applicable.

18. The design engineer or a third-party engineer shall oversee the construction of the stormwater management structures according to the details and notes specified on the approved plans. Within 30 days of completion of the entire system of at least once per year, the applicant shall submit a log of inspection reports detailing the items inspected, photos and the dates of each inspection to the BLWQ for review.

19. The applicant shall submit an application to the FAA for a radar-activated lighting system within 6 months of FAA's adoption of the rules for these systems for wind power projects and must install the system within 1 year of FAA's approval.

THIS APPROVAL DOES NOT CONSTITUTE OR SUBSTITUTE FOR ANY OTHER REQUIRED STATE, FEDERAL OR LOCAL APPROVALS NOR DOES IT VERIFY COMPLIANCE WITH ANY APPLICABLE SHORELAND ZONING ORDINANCES.

DONE AND DATED IN AUGUSTA, MAINE, THIS 22 DAY OF July, 2013.

DEPARTMENT OF ENVIRONMENTAL PROTECTION

Filed
JUL 22 2013
State of Maine
Board of Environmental Protection

BY: Patricia W. Aho
Patricia W. Aho, Commissioner

PLEASE NOTE THE ATTACHED SHEET FOR GUIDANCE ON APPEAL PROCEDURES...

ME/L#25875ANBN/ATS75696&75697

Department of Environmental Protection

SITE LOCATION OF DEVELOPMENT (SITE) STANDARD CONDITIONS

A. **Approval of Variations from Plans**. The granting of this approval is dependent upon and limited to the proposals and plans contained in the application and supporting documents submitted and affirmed to by the applicant. Any variation from these plans, proposals, and supporting documents is subject to review and approval prior to implementation. Further subdivision of proposed lots by the applicant or future owners is specifically prohibited without prior approval of the Board, and the applicant shall include deed restrictions to that effect.

B. **Compliance with All Applicable Laws**. The applicant shall secure and comply with all applicable federal, state, and local licenses, permits, authorizations, conditions, agreements, and orders prior to or during construction and operation, as appropriate.

C. **Compliance with All Terms and Conditions of Approval**. The applicant shall submit all reports and information requested by the Board or the Department demonstrating that the applicant has complied or will comply with all preconstruction terms and conditions of this approval. All preconstruction terms and conditions must be met before construction begins.

D. **Advertising**. Advertising relating to matters included in this application shall refer to this approval only if it notes that the approval has been granted WITH CONDITIONS, and indicates where copies of those conditions may be obtained.

E. **Transfer of Development**. Unless otherwise provided in this approval, the applicant shall not sell, lease, assign or otherwise transfer the development or any portion thereof without prior written approval of the Board where the purpose or consequence of the transfer is to transfer any of the obligations of the developer as incorporated in this approval. Such approval shall be granted only if the applicant or transferee demonstrates to the Board that the transferee has the technical capacity and financial ability to comply with conditions of this approval and the proposals and plans contained in the application and supporting documents submitted by the applicant.

F. **Time frame for approvals.** If the construction or operation of the activity is not begun within four years, this approval shall lapse and the applicant shall reapply to the Board for a new approval. The applicant may not begin construction or operation of the development until a new approval is granted. A reapplication for approval may include information submitted in the initial application by reference. This approval, if construction is begun within the four-year time frame, is valid for seven years. If construction is not completed within the seven-year time frame, the applicant must reapply for, and receive, approval prior to continuing construction.

G. **Approval Included in Contract Bids.** A copy of this approval must be included in or attached to all contract bid specifications for the development.

H. **Approval Shown to Contractors**. Work done by a contractor pursuant to this approval shall not begin before the contractor has been shown by the developer a copy of this approval.

Natural Resource Protection Act (NRPA) Standard Conditions

THE FOLLOWING STANDARD CONDITIONS SHALL APPLY TO ALL PERMITS GRANTED UNDER THE NATURAL RESOURCE PROTECTION ACT, TITLE 38, M.R.S.A. SECTION 480-A ET.SEQ. UNLESS OTHERWISE SPECIFICALLY STATED IN THE PERMIT.

A. Approval of Variations From Plans. The granting of this permit is dependent upon and limited to the proposals and plans contained in the application and supporting documents submitted and affirmed to by the applicant. Any variation from these plans, proposals, and supporting documents is subject to review and approval prior to implementation.

B. Compliance With All Applicable Laws. The applicant shall secure and comply with all applicable federal, state, and local licenses, permits, authorizations, conditions, agreements, and orders prior to or during construction and operation, as appropriate.

C. Erosion Control. The applicant shall take all necessary measures to ensure that his activities or those of his agents do not result in measurable erosion of soils on the site during the construction and operation of the project covered by this Approval.

D. Compliance With Conditions. Should the project be found, at any time, not to be in compliance with any of the Conditions of this Approval, or should the applicant construct or operate this development in any way other the specified in the Application or Supporting Documents, as modified by the Conditions of this Approval, then the terms of this Approval shall be considered to have been violated.

E. Time frame for approvals. If construction or operation of the activity is not begun within four years, this permit shall lapse and the applicant shall reapply to the Board for a new permit. The applicant may not begin construction or operation of the activity until a new permit is granted. Reapplications for permits may include information submitted in the initial application by reference. This approval, if construction is begun within the four-year time frame, is valid for seven years. If construction is not completed within the seven-year time frame, the applicant must reapply for, and receive, approval prior to continuing construction.

F. No Construction Equipment Below High Water. No construction equipment used in the undertaking of an approved activity is allowed below the mean high water line unless otherwise specified by this permit.

G. Permit Included In Contract Bids. A copy of this permit must be included in or attached to all contract bid specifications for the approved activity.

H. Permit Shown To Contractor. Work done by a contractor pursuant to this permit shall not begin before the contractor has been shown by the applicant a copy of this permit.

STORMWATER STANDARD CONDITIONS

STRICT CONFORMANCE WITH THE STANDARD AND SPECIAL CONDITIONS OF THIS APPROVAL IS NECESSARY FOR THE PROJECT TO MEET THE STATUTORY CRITERIA FOR APPROVAL

Standard conditions of approval. Unless otherwise specifically stated in the approval, a department approval is subject to the following standard conditions pursuant to Chapter 500 Stormwater Management Law.

(1) Approval of variations from plans. The granting of this approval is dependent upon and limited to the proposals and plans contained in the application and supporting documents submitted and affirmed to by the applicant. Any variation from these plans, proposals, and supporting documents must be reviewed and approved by the department prior to implementation. Any variation undertaken without approval of the department is in violation of 38 M.R.S.A. §420-D(8) and is subject to penalties under 38 M.R.S.A. §349.

(2) Compliance with all terms and conditions of approval. The applicant shall submit all reports and information requested by the department demonstrating that the applicant has complied or will comply with all terms and conditions of this approval. All preconstruction terms and conditions must be met before construction begins.

(3) Advertising. Advertising relating to matters included in this application may not refer to this approval unless it notes that the approval has been granted WITH CONDITIONS, and indicates where copies of those conditions may be obtained.

(4) Transfer of project. Unless otherwise provided in this approval, the applicant may not sell, lease, assign, or otherwise transfer the project or any portion thereof without written approval by the department where the purpose or consequence of the transfer is to transfer any of the obligations of the developer as incorporated in this approval. Such approval may only be granted if the applicant or transferee demonstrates to the department that the transferee agrees to comply with conditions of this approval and the proposals and plans contained in the application and supporting documents submitted by the applicant. Approval of a transfer of the permit must be applied for no later than two weeks after any transfer of property subject to the license.

(5) Time frame for approvals. If the construction or operation of the activity is not begun within four years, this approval shall lapse and the applicant shall reapply to the department for a new approval. The applicant may not begin construction or operation of the project until a new approval is granted. A reapplication for approval may include information submitted in the initial application by reference. This approval, if construction is begun within the four-year time frame, is valid for seven years. If construction is not completed within the seven-year time frame, the applicant must reapply for, and receive, approval prior to continuing construction.

(6) Certification. Contracts must specify that "all work is to comply with the conditions of the Stormwater Permit." Work done by a contractor or subcontractor pursuant to this approval may not begin before the contractor and any subcontractors have been shown

a copy of this approval with the conditions by the developer, and the owner and each contractor and subcontractor has certified, on a form provided by the department, that the approval and conditions have been received and read, and that the work will be carried out in accordance with the approval and conditions. Completed certification forms must be forwarded to the department.

(7) Maintenance. The components of the stormwater management system must be adequately maintained to ensure that the system operates as designed, and as approved by the department.

(8) Recertification requirement. Within three months of the expiration of each five-year interval from the date of issuance of the permit, the permittee shall certify the following to the department.

(a) All areas of the project site have been inspected for areas of erosion, and appropriate steps have been taken to permanently stabilize these areas.

(b) All aspects of the stormwater control system have been inspected for damage, wear, and malfunction, and appropriate steps have been taken to repair or replace the facilities.

(c) The erosion and stormwater maintenance plan for the site is being implemented as written, or modifications to the plan have been submitted to and approved by the department, and the maintenance log is being maintained.

(9) Severability. The invalidity or unenforceability of any provision, or part thereof, of this permit shall not affect the remainder of the provision or any other provisions. This permit shall be construed and enforced in all respects as if such invalid or unenforceable provision or part thereof had been omitted.

November 16, 2005 (revised December 27, 2011)

Special Condition
for
Third Party Inspection Program

THIRD-PARTY INSPECTION PROGRAM

1.0 THE PURPOSE OF THE THIRD-PARTY INSPECTION

As a condition of this permit, the Maine Department of Environmental Protection (MDEP) requires the permit applicant to retain the services of a third-party inspector to monitor compliance with MDEP permit conditions during construction. The objectives of this condition are as follows:

1) to ensure that all construction and stabilization activities comply with the permit conditions and the MDEP-approved drawings and specifications,

2) to ensure that field decisions regarding erosion control implementation, stormwater system installation, and natural resource protection are based on sound engineering and environmental considerations, and

3) to ensure communication between the contractor and MDEP regarding any changes to the development's erosion control plan, stormwater management plan, or final stabilization plan.

This document establishes the inspection program and outlines the responsibilities of the permit applicant, the MDEP, and the inspector.

2.0 SELECTING THE INSPECTOR

At least 30 days prior to starting any construction activity on the site, the applicant will submit the names of at least two inspector candidates to the MDEP. Each candidate must meet the minimum qualifications listed under section 3.0. The candidates may not be employees, partners, or contracted consultants involved with the permitting of the project or otherwise employed by the same company or agency except that the MDEP may accept subcontractors who worked for the project's primary consultant on some aspect of the project such as, but not limited to, completing wetland delineations, identifying significant wildlife habitats, or conducting geotechnical investigations, but who were not directly employed by the applicant, as Third Party inspectors on a case by case basis. The MDEP will have 15 days from receiving the names to select one of the candidates as the inspector or to reject both candidates. If the MDEP rejects both candidates, then the MDEP shall state the particular reasons for the rejections. In this case, the applicant may either dispute the rejection to the Director of the Bureau of Land and Water Quality or start the selection process over by nominating two, new candidates.

3.0 THE INSPECTOR'S QUALIFICATIONS

Each inspector candidate nominated by the applicant shall have the following minimum qualifications:

1) a degree in an environmental science or civil engineering, or other demonstrated expertise,

2) a practical knowledge of erosion control practices and stormwater hydrology,

3) experience in management or supervision on large construction projects,

4) the ability to understand and articulate permit conditions to contractors concerning erosion control or stormwater management,

5) the ability to clearly document activities being inspected,

6) appropriate facilities and, if necessary, support staff to carry out the duties and responsibilities set forth in section 6.0 in a timely manner, and

7) no ownership or financial interest in the development other than that created by being retained as the

third-party inspector.

4.0 INITIATING THE INSPECTOR'S SERVICES

The applicant will not formally and finally engage for service any inspector under this permit condition prior to MDEP approval or waiver by omission under section 2.0. No clearing, grubbing, grading, filling, stockpiling, or other construction activity will take place on the development site until the applicant retains the MDEP-approved inspector for service.

5.0 TERMINATING THE INSPECTOR'S SERVICES

The applicant will not terminate the services of the MDEP-approved inspector at any time between commencing construction and completing final site stabilization without first getting written approval to do so from the MDEP.

6.0 THE INSPECTOR'S DUTIES AND RESPONSIBILITIES

The inspector's work shall consist of the duties and responsibilities outlined below.

1) Prior to construction, the inspector will become thoroughly familiar with the terms and conditions of the state-issued site permit, natural resources protection permit, or both.

2) Prior to construction, the inspector will become thoroughly familiar with the proposed construction schedule, including the timing for installing and removing erosion controls, the timing for constructing and stabilizing any basins or ponds, and the deadlines for completing stabilization of disturbed soils.

3) Prior to construction, the inspector will become thoroughly familiar with the project plans and specifications, including those for building detention basins, those for installing the erosion control measures to be used on the site, and those for temporarily or permanently stabilizing disturbed soils in a timely manner.

4) During construction, the inspector will monitor the contractor's installation and maintenance of the erosion control measures called for in the state permit(s) and any additional measures the inspector believes are necessary to prevent sediment discharge to off-site properties or natural resources. This direction will be based on the approved erosion control plan, field conditions at the time of construction, and the natural resources potentially impacted by construction activities.

5) During construction, the inspector will monitor the contractor's construction of the stormwater system, including the construction and stabilization of ditches, culverts, detention basins, water quality treatment measures, and storm sewers.

6) During construction, the inspector will monitor the contractor's installation of any stream or wetland crossings.

7) During construction, the inspector will monitor the contractor's final stabilization of the project site.

8) During construction, the inspector will keep logs recording any rain storms at the site, the contractor's activities on the site, discussions with the contractor(s), and possible violations of the permit conditions.

9) During construction, the inspector will inspect the project site at least once a week and before and after any significant rain event. The inspector will photograph all protected natural resources both before and after construction and will photograph all areas under construction. All photographs will be identified with, at a minimum the date the photo was taken, the location and the name of the individual taking the photograph. *Note: the frequency of these inspections as contained in this condition may be varied to best address particular project needs.*

10) During construction, the inspector will prepare and submit weekly *(or other frequency)* inspection reports to the MDEP.

11) During construction, the inspector will notify the designated person at the MDEP immediately of any sediment-laden discharges to a protected natural resource or other significant issues such as the improper construction of a stormwater control structure or the use of construction plans not approved by the MDEP.

7.0 INSPECTION REPORTS

The inspector will submit weekly written reports *(or at another designated frequency)*, including photographs of areas that are under construction, on a form provided by the Department to the designated person at the MDEP. Each report will be due at the MDEP by the Friday *(or other designated day)* following the inspection week (Monday through Sunday).

The weekly report will summarize construction activities and events on the site for the previous week as outlined below.

1) The report will state the name of the development, its permit number(s), and the start and end dates for the inspection week (Monday through Sunday).

2) The report will state the date(s) and time(s) when the inspector was on the site making inspections.

3) The report will state the date(s) and approximate duration(s) of any rainfall events on the site for the week.

4) The report will identify and describe any erosion problems that resulted in sediment leaving the property or sediment being discharged into a wetland, brook, stream, river, lake, or public storm sewer system. The report will describe the contractor's actions to repair any damage to other properties or natural resources, actions to eliminate the erosion source, and actions to prevent future sediment discharges from the area.

5) The report will list the buildings, roads, parking lots, detention basins, stream crossings or other features open to construction for the week, including those features or areas actively worked and those left unworked (dormant).

6) For each area open to construction, the report will list the date of initial soil disturbance for the area.

7) For each area open to construction, the report will note which areas were actively worked that week and which were left dormant for the week. For those areas actively worked, the report will briefly state the work performed in the area that week and the progress toward final stabilization of the area -- e.g. "grubbing in progress", " grubbing complete", "rough grading in progress", "rough grading complete", "finish grading in progress", "finish grading complete", "permanent seeding completed", "area fully stable and temporary erosion controls removed", etc.

8) For each area open to construction, the report will list the erosion and sedimentation control measures installed, maintained, or removed during the week.

9) For each erosion control measure in-place, the report will note the condition of the measure and any maintenance performed to bring it to standard.

Third Party Inspection Form

This report is prepared by a Third Party Inspector to meet the requirements of the Third Party Inspector Condition attached as a Special Condition to the Department Order that was issued for the project identified below. The information in this report/form is not intended to serve as a determination of whether the project is in compliance with the Department permit or other applicable Department laws and rules. Only Department staff may make that determination.

TO: *PM, Maine DEP (@maine.gov)*	FROM:
PROJECT NAME/ LOCATION:	DEP #:
DATE OF INSPECTION:	DATE OF REPORT:
WEATHER:	CONDITIONS:

SITE CHARACTERISTICS:

# ACRES OPEN:	# ACRES ACTIVE:	# ACRES INACTIVE:
LOCATION OF OPEN LAND:	LOCATION OF ACTIVE LAND:	LOCATION OF INACTIVE LAND:
OPEN SINCE:	OPEN SINCE:	OPEN SINCE:

PROGRESS OF WORK:

INSPECTION OF:	**Satisfactory**	**Minor Deviation** (corrective action required)	**Unsatisfactory** (include photos)
STORMWATER CONTROL (VEGETATIVE & STRUCTURAL BMP'S)			
EROSION & SEDIMENTATION CONTROL (TEMPORARY & PERMANENT BMP'S)			
OTHER: (PERMIT CONDITIONS, ENGINEERING DESIGN, ETC.)			

COMMENTS/CORRECTIVE ACTIONS TAKEN (attach additional sheets as necessary):

Photos (must be labeled with date, photographer and location):

Cc:		
Original and all copies were sent by email only.		

DEP INFORMATION SHEET
Appealing a Department Licensing Decision

Dated: March 2012 **Contact: (207) 287-2811**

SUMMARY

There are two methods available to an aggrieved person seeking to appeal a licensing decision made by the Department of Environmental Protection's ("DEP") Commissioner: (1) in an administrative process before the Board of Environmental Protection ("Board"); or (2) in a judicial process before Maine's Superior Court. An aggrieved person seeking review of a licensing decision over which the Board had original jurisdiction may seek judicial review in Maine's Superior Court.

A judicial appeal of final action by the Commissioner or the Board regarding an application for an expedited wind energy development (35-A M.R.S.A. § 3451(4)) or a general permit for an offshore wind energy demonstration project (38 M.R.S.A. § 480-HH(1)) or a general permit for a tidal energy demonstration project (38 M.R.S.A. § 636-A) must be taken to the Supreme Judicial Court sitting as the Law Court.

This INFORMATION SHEET, in conjunction with a review of the statutory and regulatory provisions referred to herein, can help a person to understand his or her rights and obligations in filing an administrative or judicial appeal.

I. ADMINISTRATIVE APPEALS TO THE BOARD

LEGAL REFERENCES

The laws concerning the DEP's *Organization and Powers*, 38 M.R.S.A. §§ 341-D(4) & 346, the *Maine Administrative Procedure Act*, 5 M.R.S.A. § 11001, and the DEP's *Rules Concerning the Processing of Applications and Other Administrative Matters* ("Chapter 2"), 06-096 CMR 2 (April 1, 2003).

HOW LONG YOU HAVE TO SUBMIT AN APPEAL TO THE BOARD

The Board must receive a written appeal within 30 days of the date on which the Commissioner's decision was filed with the Board. Appeals filed after 30 calendar days of the date on which the Commissioner's decision was filed with the Board will be rejected.

HOW TO SUBMIT AN APPEAL TO THE BOARD

Signed original appeal documents must be sent to: Chair, Board of Environmental Protection, c/o Department of Environmental Protection, 17 State House Station, Augusta, ME 04333-0017; faxes are acceptable for purposes of meeting the deadline when followed by the Board's receipt of mailed original documents within five (5) working days. Receipt on a particular day must be by 5:00 PM at DEP's offices in Augusta; materials received after 5:00 PM are not considered received until the following day. The person appealing a licensing decision must also send the DEP's Commissioner a copy of the appeal documents and if the person appealing is not the applicant in the license proceeding at issue the applicant must also be sent a copy of the appeal documents. All of the information listed in the next section must be submitted at the time the appeal is filed. Only the extraordinary circumstances described at the end of that section will justify evidence not in the DEP's record at the time of decision being added to the record for consideration by the Board as part of an appeal.

WHAT YOUR APPEAL PAPERWORK MUST CONTAIN

Appeal materials must contain the following information at the time submitted:

1. *Aggrieved Status.* The appeal must explain how the person filing the appeal has standing to maintain an appeal. This requires an explanation of how the person filing the appeal may suffer a particularized injury as a result of the Commissioner's decision.
2. *The findings, conclusions or conditions objected to or believed to be in error.* Specific references and facts regarding the appellant's issues with the decision must be provided in the notice of appeal.
3. *The basis of the objections or challenge.* If possible, specific regulations, statutes or other facts should be referenced. This may include citing omissions of relevant requirements, and errors believed to have been made in interpretations, conclusions, and relevant requirements.
4. *The remedy sought.* This can range from reversal of the Commissioner's decision on the license or permit to changes in specific permit conditions.
5. *All the matters to be contested.* The Board will limit its consideration to those arguments specifically raised in the written notice of appeal.
6. *Request for hearing.* The Board will hear presentations on appeals at its regularly scheduled meetings, unless a public hearing on the appeal is requested and granted. A request for public hearing on an appeal must be filed as part of the notice of appeal.
7. *New or additional evidence to be offered.* The Board may allow new or additional evidence, referred to as supplemental evidence, to be considered by the Board in an appeal only when the evidence is relevant and material and that the person seeking to add information to the record can show due diligence in bringing the evidence to the DEP's attention at the earliest possible time in the licensing process <u>or</u> that the evidence itself is newly discovered and could not have been presented earlier in the process. Specific requirements for additional evidence are found in Chapter 2.

OTHER CONSIDERATIONS IN APPEALING A DECISION TO THE BOARD

1. *Be familiar with all relevant material in the DEP record.* A license application file is public information, subject to any applicable statutory exceptions, made easily accessible by DEP. Upon request, the DEP will make the material available during normal working hours, provide space to review the file, and provide opportunity for photocopying materials. There is a charge for copies or copying services.
2. *Be familiar with the regulations and laws under which the application was processed, and the procedural rules governing your appeal.* DEP staff will provide this information on request and answer questions regarding applicable requirements.
3. *The filing of an appeal does not operate as a stay to any decision.* If a license has been granted and it has been appealed the license normally remains in effect pending the processing of the appeal. A license holder may proceed with a project pending the outcome of an appeal but the license holder runs the risk of the decision being reversed or modified as a result of the appeal.

WHAT TO EXPECT ONCE YOU FILE A TIMELY APPEAL WITH THE BOARD

The Board will formally acknowledge receipt of an appeal, including the name of the DEP project manager assigned to the specific appeal. The notice of appeal, any materials accepted by the Board Chair as supplementary evidence, and any materials submitted in response to the appeal will be sent to Board members with a recommendation from DEP staff. Persons filing appeals and interested persons are notified in advance of the date set for Board consideration of an appeal or request for public hearing. With or without holding a public hearing, the Board may affirm, amend, or reverse a Commissioner decision or remand the matter to the Commissioner for further proceedings. The Board will notify the appellant, a license holder, and interested persons of its decision.

II. JUDICIAL APPEALS

Maine law generally allows aggrieved persons to appeal final Commissioner or Board licensing decisions to Maine's Superior Court, see 38 M.R.S.A. § 346(1); 06-096 CMR 2; 5 M.R.S.A. § 11001; & M.R. Civ. P 80C. A party's appeal must be filed with the Superior Court within 30 days of receipt of notice of the Board's or the Commissioner's decision. For any other person, an appeal must be filed within 40 days of the date the decision was rendered. Failure to file a timely appeal will result in the Board's or the Commissioner's decision becoming final.

An appeal to court of a license decision regarding an expedited wind energy development, a general permit for an offshore wind energy demonstration project, or a general permit for a tidal energy demonstration project may only be taken directly to the Maine Supreme Judicial Court. See 38 M.R.S.A. § 346(4).

Maine's Administrative Procedure Act, DEP statutes governing a particular matter, and the Maine Rules of Civil Procedure must be consulted for the substantive and procedural details applicable to judicial appeals.

ADDITIONAL INFORMATION

If you have questions or need additional information on the appeal process, for administrative appeals contact the Board's Executive Analyst at (207) 287-2452 or for judicial appeals contact the court clerk's office in which your appeal will be filed.

Note: The DEP provides this INFORMATION SHEET for general guidance only; it is not intended for use as a legal reference. Maine law governs an appellant's rights.