

Appeal by Oscar E. Weigang, Jr.



957 Macomber Mill Rd.  
Eastbrook, ME 04634  
August 9, 2013

Robert A. Foley, Chair  
Board of Environmental Protection  
17 State House Station  
Augusta, Maine 04333-0017

RE: IN THE MATTER OF HANCOCK WIND, LLC, T1 6 MD/T22 MD/Aurora,  
Osborn, Hancock County WIND POWER FACILITY, L-25875-24-A-N  
(approval), L-25875-TF-B-N (approval)

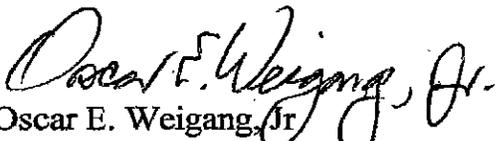
Dear Chairman Foley,

Enclosed please find the Applicant's REVIEW OR APPEAL OF FINDINGS,  
ORDER.

In the interest of an expeditious resolution, I would entertain any settlement proposal pursuant to 24. Appeal to the Board of Commissioner License Decisions, E. Alternative Dispute Resolution, DEP's Rules, ("Chapter 2"), 06-096 CMR 2 (May 29, 2013),

Please let me know if you have any questions.

Sincerely,

  
Oscar E. Weigang, Jr.  
Resident of Hancock County

cc (w/encls.): Commissioner Patricia Aho, Department of Environmental Protection  
David Fowler, Hancock Wind, LLC

FILED  
F.D.E.P.  
2013 AUG 12 AM 10:18

## IN THE MATTER OF

HANCOCK WIND, LLC	) SITE LOCATION OF DEVELOPMENT ACT
TI 6 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)	) <u>REVIEW OR APPEAL OF FINDINGS, ORDER</u>

Oscar E. Weigang, Jr. (Oscar Weigang) resident of Hancock County at 957 Macomber Mill Rd., Eastbrook, Maine, 04634, comes now to the Board of the Department of Environmental Protection requesting review by or, in the alternative, to assert jurisdiction over, or, in a final alternative, to appeal in this matter that concludes with "FINDINGS OF FACT AND ORDER", the Department Order of Patricia W. Aho, Department Commissioner, dated July 22, 2013 and filed by the Board on the same date.

**REQUEST TO SUPPLEMENT THE RECORD**

**Statutory Basis for Relief**

The Board is requested, pursuant to MRSA 38, sec. 341-D, subsec. 4. Appeal or review, D. to supplement the administrative record. That statute reads in pertinent part:

*D. License or permit decisions regarding an expedited wind energy development as defined in Title 35-A, section 3451, subsection 4 or a general permit pursuant to section 480-HH or section 636-A. In reviewing an appeal of a license or permit decision by the commissioner under this paragraph, the board shall base its decision on the administrative record of the department, including the record of any adjudicatory hearing held by the department, and any supplemental information allowed by the board for supplementation of the record. [Emphasis added.]*

Further, the statute reads there:

*A. .... The board may allow the record to be supplemented when it finds that the evidence offered is relevant and material and that:*

*(1) An interested party seeking to supplement the record has shown due diligence in bringing the evidence to the licensing process at the earliest possible time....*  
[Exhibit 1]

DEP's Rules Concerning the Processing of Applications and Other Administrative Matters ("Chapter 2"), 06-096 CMR 2 (May 29, 2013) states at p. 21:

D. *Record on Appeal, Supplemental Evidence.* The record for appeals decided by the Board is the administrative record prepared by Department staff in its review of the application, unless the Board admits supplemental evidence or decides to hold a hearing on the appeal. [Emphasis added.]

### **Procedural History** **Questions Raised**

At the public meeting June 6, '13 in Aurora, Maine, soliciting comment on the DEP Draft Analysis in this matter, Oscar Weigang submitted in writing, and confirmed the following day in an email to HancockWindProject.DEP three questions concerning Tangible Benefits, item 28 of the Draft:

*The Draft designates only Osborn, Waltham, and Eastbrook [as "Host Communities"] to receive a sum total of \$5,333 per turbine per year for 20 years.*

1. *Is not Hancock County also designated by law to be a Host Community?*
2. *If so, why is Hancock County not part of a Tangible Benefit Agreement?*
3. *Have any objections been raised about these issues?* [Exhibit 2]

In subsequent comment on the Draft, question 4. was raised:

4. *If Hancock County has been deemed to waive the requirement for its community benefits package, why does such explicit waiver not appear in the application of Hancock Wind ... as set out there in section 28, or otherwise in the application.* [Exhibit 3]

With the admission that "You raise a legitimate question that has also arisen in another project", Jim R. Beyer, Regional Licensing and Compliance Manager, on Friday June 21 to several parties posed these question(s) in a form included, at least in part, when stated:

*The question boils down to whether or not a developer is required to provide community benefits to every community (or the county in this case) where turbines are located.* [Exhibit 4]

The Commissioner's comments on this Procedural History in the Findings and Order are none, reading merely, at page 15:

**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.*

That omission occurred despite specific offers of the parts of MRSA 35-A, § 3451 and § 3454 likely to be most pertinent:

*MRSA 35-A §3451. DEFINITIONS*

**7. Host community.** "Host community" means:

A. The following entities:

....  
 (2) If the generating facilities of an expedited wind energy development are located in a township,

the county in which those facilities are located;

... and

B. When the generating facilities of an expedited wind energy development are located within the State's unorganized or deorganized areas and the developer selects a municipality; plantation; township; ...

for the purpose of providing specific tangible benefits:

....  
 (2) In the case of a township that is selected, the county in which that township is located;

....  
 An expedited wind energy development may have multiple host communities.

*MRSA 35-A §3454. DETERMINATION OF TANGIBLE BENEFITS; REQUIREMENTS*

**3. Community benefits package requirement; exceptions.** The community benefits package requirement under subsection 2:

....  
 B. Does not apply to those turbines included in the development that are located:

(1) In a host community in which the legislative body has voted to waive or reduce the community benefits package requirement [emphasis added] ....

[Exhibit 3]

**The full procedural history of exchanged emails is set out in Exhibit 6.**

Summary

**Questions Raised**

In brief summary, the underlying record as set out above at pages 2 and 3 in the **Procedural History, Questions Raised** and in the Commissioner's FINDINGS OF FACT AND ORDER shows no direct response with requisite authority to the "entry question": **1. Is not Hancock County also designated by law to be a Host Community?** It is the question upon which, in law, turns the remaining questions:

2. If so, why is Hancock County not part of a Tangible Benefit Agreement? 3. Have any objections been raised about these issues? 4. If Hancock County has been deemed to waive the

requirement for its community benefits package, why does such explicit waiver not appear in the application of Hancock Wind ...as set out there in section 28, or otherwise in the application? [Exhibit 3]

Nor does it respond to the question "that boils down to whether or not a developer is required to provide community benefits to every community (or the county in this case) where turbines are located." [Exhibit 4]

**Conclusion**

Substantive administrative dealings and questions should not be suppressed by omission of them in Commissioner's Findings of Fact and Order.

**PRELIMINARY RELIEF AND REMEDY SOUGHT**

Therefore, as preliminary relief, the Board is requested to supplement the administrative record with the material of Exhibit 6, including but not limited to its specific pertinent emails contained in Exhibits 2, 3, 4, 7, 9.

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\*\*\*\*\*  
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**APPLICATION FOR BOARD REVIEW**

**Statutory Basis for Relief**

As response to the application herewith for Board review, the Board is authorized to initiate a review *sua sponte* pursuant to MRSA 38, sec. 341-D, subsec. 4. , reading in part:

*4. Appeal or review. The board shall review, may hold a hearing at its discretion on and may affirm, amend, reverse or remand to the commissioner for further proceedings any of the following (emphasis added):*

....  
*D. License or permit decisions regarding an expedited wind energy development as defined in Title 35-A, section 3451, subsection 4 ....[If] reviewing an appeal ...*  
[Exhibit 1]

DEP's Rules Concerning the Processing of Applications and Other Administrative Matters ("Chapter 2"), 06-096 CMR 2 (May 29, 2013) states at pp. 24, 25:

*27. Criteria for Revocation, Suspension, Modification or Corrective Action*

*The Department may take action to revoke, suspend, or modify a license or prescribe necessary corrective action only if ... the Board, pursuant to section 26, finds that:*

*B. The licensee has obtained a license by misrepresenting or failing to disclose fully all relevant facts;*

....

*D. The license fails to include any standard or limitation legally required on the date of issuance;*

....

*G. The licensee has violated any law administered by the Department;*

....

### **Procedural History**

Incorporated here by reference is the previous section, **Procedural History**, Questions Raised, above at pages 2 and 3.

### **Findings, Conclusions Objected To or Erroneous**

As the full Procedural History, Exhibit 6, shows, timely objections were raised. In the reply of Weigang to Eggett of June 12, '13, he asserts:

*In my attachment to this email are set out the MRSA statutes which seem to bear directly on Questions 1. and 2. and a further Question 4. [Exhibit 3, re the earlier "attachment"]*

Also in that reply he raises the objection that:

*Your reply incorporates by its attachment a response of Amanda Rector, State Economist, which states in its first paragraph: "This is not a legal opinion.", notwithstanding its ultimate conclusion: "The community benefits package exceeds the minimum statutory requirements."*

*By its items 1. to 5., it appears to address, without depth requisite to the requirements of even the remainder of MRSA 35-A, sec 3454, only the items A. to E. of sec. 3454, 1. Documentation, of MRSA 35-A. [Exhibit 10] And the results are little more than an 'arithmetic accounting' that follows that of the Application by Hancock Wind in Section 28, Community Benefit Agreements.*

*While review by that office is mandated, it would be an office of legal counsel that is more appropriate to the Questions posed. [Exhibit 7]*

Nevertheless, the Commissioner's Findings of Fact and Order, at 21, page 31, Tangible Benefits reads, tracking closely just those items 1. to 5., originating in the licensee's Application:

- 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 storm water 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. [Exhibit 8]*

Its finding states, at page 32:

*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. [Exhibit 8]*

The concluding email exchanges (in chronological order) summarize the avoidance of relief that is objected to:

**From:** "Jim R Beyer" <Jim.R.Beyer@maine.gov>  
**To:** oweigang@rcn.com  
**Cc:** "Maria Lentine-Eggett" <Maria.Lentine-Eggett@maine.gov>, "HancockWindProject DEP" <HancockWindProject.DEP@maine.gov>  
**Sent:** Tuesday, July 9, 2013 11:23:54 AM  
**Subject:** Hancock Wind Community Benefits

Mr. Weigang,

I posed your question about whether or not Hancock Wind must include the county in the Community Benefits package and whether or not a wind developer had to provide a package to every community where there were turbines. The response I received from her was that it is not a requirement of the Wind Energy Act that the developer provide a benefit package to every community, just that the package meet the minimum requirement.

I hope this answers your questions concerning the proposed Community Benefit package for this project.

James R. Beyer  
 Regional Licensing and Compliance Manager  
 Division of Land Resources Regulation  
 Eastern Maine Regional Office

Oscar Weigang  
**From:** B J & Oscar Weigang  
**To:** Beyer, Jim R  
**Sent:** Tuesday, July 09, 2013 1:32 PM  
**Subject:** Re: Hancock Wind Community Benefits

Mr. Beyer,

I would appreciate seeing the actual written response of the Attorney General's office addressing each of the questions 1 to 4 that were raised.

Thank you.

**From:** B J & Oscar Weigang [mailto:oweigang@rcn.com]  
**Sent:** Tuesday, July 09, 2013 10:04 PM  
**To:** Bensinger, Peggy  
**Subject:** Fw: Hancock Wind Application

Ms. Bensinger,

Would you please confirm receipt and response, if any, to the following message(s)

.....  
 [Exhibit 9]

There was no further substantive response.

Objection is taken to the omission of a formal written response – authoritative, first hand, explicit, and direct – from an independent, outside legal authority. Even the most cursory examination of §3454 of M.R.S.A. 35-A, in light also of its §3451, suggests that there are more restraints and requirements applicable to the matter at hand than a conformity to one sub-section, 1. Documentation A. to E. [Exhibits 10, 5]

Project applications pursuant to 35-A M.R.S.A. §3454 (and §3451) clearly are subject to more restraints and requirements than a conformity to one sub-section, 35-A M.R.S.A. §3454, sub-section 1. Documentation A. to E

**Proposed Action of the Board**

Notwithstanding statutory allowance for a public hearing, no hearing is requested by the Applicant.

But, MRSA 5 §195, Opinions on questions of law, provides, in pertinent part that:

*The Attorney General shall give his written opinion upon questions of law submitted to him by the Governor, by the head of any state department or any of the state agencies or by either branch of the Legislature or any members of the Legislature on legislative matters. [Emphasis added.] [Exhibit 11]*

**RELIEF AND REMEDY SOUGHT**

**The relief and remedy sought is that the Board:**

**A. Avail itself of the counsel of the Attorney General’s Office pursuant to MRSA 5 §195, Opinions on questions of law, for a formal written opinion on the required and permissible actions of the Commissioner and Board under §3451 and §3454 of M.R.S.A. 35-A, at a minimum for the issues raised in this matter; and**

**B. Vacate the Commissioner’s FINDINGS OF FACTS AND ORDER, and remand to the commissioner for further proceedings and licensee actions to bring it into accord with that opinion.**

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**In the First Alternative:  
BOARD ASSUMPTION OF JURISDICTION**

**Statutory Basis for Relief**

The Board, pursuant to MRSA 38 §341-D: Board Responsibilities and Duties, subsection 2., is authorized as follows:

*2. Permit and license applications. Except as otherwise provided in this subsection, the board shall decide each application for approval of permits and licenses that in its judgment represents a project of statewide significance. A project of statewide significance is a project that meets at least 3 of the following 4 criteria:*

...  
*E. Will have an environmental or economic impact in more than one municipality, territory or county;*

...  
*G. Is likely to come under significant public scrutiny; and*

...  
*H. Is located in more than one municipality, territory or county.*

Further, in pertinent part, the statute reads there:

*The board may vote to assume jurisdiction of an application if it finds that at least 3 of the 4 criteria of this subsection have been met.*

[Exhibit 1]

**Supporting Facts**

**Environmental and Economic Impact**

The Application by Hancock Wind, on its face, and as attested to in the Commissioner's Findings of Fact and Order, clearly meets criteria of MRSA 38 §341-D, subsec 2. E.

E.g., see 5. NOISE (at p. 4), 6. SCENIC CHARACTER (at page 8), and further.

**Location in Multiple Districts**

The Application by Hancock Wind, on its face, and as attested to in Commissioner's Findings of Fact and Order, clearly meets criteria of MRSA 38 §341-D, subsec. 2. G.

E.g., see Exhibit 8

**Significant Public Scrutiny**

That the Application by Hancock Wind meets the criteria of subsec. 2. G. is supported by the following news publications and public official records that would prompt further news publications:

*"The Hancock County Commissioners voted unanimously Tuesday on \$102,000 worth of disbursements [from Community Benefit Funds in the Bull Hill project] to several municipalities and nonprofit organizations"*  
[Exhibit 14]

The minutes of the Hancock County Commissioners meeting for June 4, 2013 show a proposal by "Dave Fowler First Wind" that would:

*[expand] the Bull Hill TIF district, to include the Hancock Wind Farm project .... Commissioner Joy suggested the inclusion [of] Community Benefit funds which benefit county wide projects. .... A DEP amendment [to the Bull Hill TIF district] would be needed. .... Mr. Fowler will submit paperwork documenting changes in reimbursement fee. Once received, Attorney Stumpfel will be contacted to work with Bernstein Shur on an updated Community Benefit and TIF amendment.*  
[Exhibit 15]

The primary effect of such an anarchic proposed procedure is to circumvent the orderly application of MRSA 35-A §3454, and avoid facing the relevant question and its consequential ones, raised in this matter [*vide supra*]: "Is not Hancock County also designated by law to be a Host Community?"

#### **Procedural History** **Questions Raised**

Incorporated here by reference is the previous section, **Procedural History**, Questions Raised, at pages 2 to 3 above.

#### **Findings, Conclusions Objected to or Erroneous**

Incorporated here by reference is the section above, **Findings, Conclusions Objected to or Erroneous**, at pages 5 to 8 above.

#### **Proposed Action of the Board**

Notwithstanding statutory allowance for a public hearing, no hearing is requested by the Applicant.

Proposed is that the Board assume jurisdiction with a view to vacating those portions of the Commissioner's FINDINGS OF FACTS AND ORDER that do not comport with the relevant portions of Maine's statutes as determined by a written opinion of the Attorney General.

MRSA 5 §195, Opinions on questions of law provides that such counsel is available.

*The Attorney General shall give his written opinion upon questions of law submitted to him by the Governor, by the head of any state department or any of the state agencies or by either branch of the Legislature or any members of the Legislature on legislative matters. [Emphasis added.] [Exhibit 11]*

**RELIEF AND REMEDY SOUGHT**

**The relief and remedy sought is that the Board:**

**A. Avail itself of the counsel of the Attorney General's Office pursuant to MRSA 5 §195, Opinions on questions of law, for a formal written opinion on the required and permissible actions of the licensee, Commissioner, and Board under §3451 and §3454 of M.R.S.A. 35-A, at a minimum for the issues raised in this matter; and**

**B. Vacate the Commissioner's FINDINGS OF FACTS AND ORDER, and remand to the commissioner for further proceedings and licensee actions to bring it into accord with that opinion.**

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**IN THE SECOND ALTERNATIVE:  
APPLICATION FOR APPEAL TO THE BOARD**

**Basis for Appeal**

Appeal to the Board is made pursuant to that part D. of subsec. 4 of MRSA 38, sec. 341-D regarding appeal by aggrieved person(s).

MRSA 38, sec. 341-D, subsec. 4 reads in pertinent part:

*4. Appeal or review. The board shall review, may hold a hearing at its discretion on and may affirm, amend, reverse or remand to the commissioner for further proceedings any of the following [Emphasis added].*

*A. Final license or permit decisions made by the commissioner when a person aggrieved by a decision of the commissioner appeals that decision to the board within 30 days of the filing of the decision with the board staff. The board staff shall give written notice to persons that have asked to be notified of the decision. The board may allow the record to be supplemented when it finds that the evidence offered is relevant and material and that:*

*(1) An interested party seeking to supplement the record has shown due diligence in bringing the evidence to the licensing process at the earliest possible time;*

....  
[Exhibit 1]

Subsection 4. is supplemented by DEP INFORMATION SHEET, Appealing a Department Licensing Decision, Dated: March 2012 that accompanies the Commissioners' Findings of Fact and Order in this matter.

[However, note well that the information contained there appears to have been superseded by a later revision dated May 29, 2013 of DEP's *Rules Concerning the Processing of Applications and Other Administrative Matters* ("Chapter 2"), 06-096 CMR 2 (April 1, 2003). Also a rule change has been adopted by the Board in its meeting of July 18, '13 that the Board will interpret "aggrieved person" consistent with Maine court decisions on standing for appeals to final agency actions.]

Those DEP *Rules* (May 29, 2013), at: 24. *Appeal to the Board of Commissioner License Decisions, B. Content of Appeal, (I)*, read in part relevant here:

*The written appeal must include evidence demonstrating the appellant's standing as an aggrieved person; ....*

### Standing

"Taxpayer Standing and the Preventive-Remedial Distinction: A Call for Reform", vol. 41, Maine Law Review (1989), p. 137, states:

*The courts provide a forum for citizens to challenge the legality of official acts, and serve as a "means of correcting illegal practices of government officials which would otherwise be irreparable." ...*

...  
*The question of standing is a critical element of the court's task of balancing the individual's right to challenge municipal actions against the state's interest in protecting government officials from harassment by litigation. (Internal citations omitted).*

The Maine Law Court, in *Franklin Property Trust v. Foresite, Inc.*, 438 A.2d 218, 220 (Me. 1981) has observed that:

*Although we have declined to use a label to describe these rules [for standing], we have stated:*

...  
*While standing is an amorphous concept fraught with a plurality of meanings, its basic purpose and requirements are clear. A party must assert a personal stake in the outcome of the litigation and present a real and substantial controversy touching*

*on the legal relations of parties with adverse legal interests. (Internal citations omitted) [Emphasis added.]*

The Appellant asserts that as a resident and taxpayer (indirectly) of Hancock County he is aggrieved by matters affecting directly the financial capacities of the County.

He is further aggrieved as a resident taxpayer (directly) of the community of Eastbrook in Hancock County.

In support, he cites *Community Benefit Funds Awarded*, an announcement of July 13, 2013 by Hancock County that illustrates the County's utilization of benefit funds, in this instance the product of Blue Sky East's Bull Hill expedited license application:

*The Hancock County Commissioners voted unanimously Tuesday on \$102,000 worth of disbursements to several [County] municipalities and nonprofit organizations ....*  
[Exhibit 14]

In further support, he cites [Hancock County] Commissioner Agenda & Minutes, June 4, 2013 showing a proposal by "Dave Fowler First Wind" that would:

*[expand] the Bull Hill TIF district, to include the Hancock Wind Farm project .... Commissioner Joy suggested the inclusion [of] Community Benefit funds which benefit county wide projects. .... A DEP amendment [to the Bull Hill TIF district] would be needed. .... Mr. Fowler will submit paperwork documenting changes in reimbursement fee. Once received, Attorney Stumpfel will be contacted to work with Bernstein Shur on an updated Community Benefit and TIF amendment.*  
[Exhibit 15]

That proposal has the effect of avoiding the issue here:

*The question boils down to whether or not a developer is required to provide [the required] community benefits to every [host] community... where turbines are located.*  
[Exhibit 4]

It is an issue as yet unresolved for the Community Benefit Agreement between Blue Sky East and Eastbrook for the Bull Hill wind farm, involving \$56,000 as annual payments to the community over a period of 20 years.

#### **Procedural History** **Questions Raised**

Incorporated here by reference is the previous section, **Procedural History**, Questions Raised, at pages 2 and 3 above.

**Findings, Conclusions Objected to or Believed to be In Error**

DEP Rules (May 29, 2013), at 24. B. Content of Appeal, (1), reads in relevant part that the written appeal must include:

*the findings, conclusions or conditions objected to or believed to be in error;  
the basis of the objections or challenge; and the remedy sought.*

In brief summary, Appellant objects to and believes to be in error Commissioner's finding: "[that 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."  
[Exhibit 8]

For further matters objected to and believed in error, incorporated here by reference is the section above, **Findings, Conclusions Objected to or Erroneous**, at pages 5 to 7 above.

Project applications pursuant to 35-A M.R.S.A. §3454 (and §3451) clearly are subject to more restraints and requirements than a conformity to one sub-section, 35-A M.R.S.A. §3454, sub-section 1. Documentation A. to E

**Proposed Action of the Board**

Notwithstanding statutory allowance for a public hearing, no hearing is requested by the Applicant.

Proposed is that the Board assume jurisdiction with a view to vacating those portions of the Commissioner's FINDINGS OF FACTS AND ORDER that do not comport with the relevant portions of Maine's statutes as determined by a written opinion of the Attorney General.

MRSA 5 §195, Opinions on questions of law provides that such counsel is available.

*The Attorney General shall give his written opinion upon questions of law submitted to him by the Governor, by the head of any state department or any of the state agencies or by either branch of the Legislature or any members of the Legislature on legislative matters. [Emphasis added.] [Exhibit 11]*

**RELIEF AND REMEDY SOUGHT**

**The relief and remedy sought is that the Board:**

**A. Avail itself of the counsel of the Attorney General's Office pursuant to MRSA 5 §195, Opinions on questions of law, for a formal written opinion on the required and permissible actions of the Commissioner and Board under §3451 and §3454 of M.R.S.A. 35-A, at a minimum for the issues raised in this matter; and**

**B. Vacate the Commissioner's FINDINGS OF FACTS AND ORDER, and remand to the commissioner for further proceedings and licensee actions to bring it into accord with that opinion.**



IN THE MATTER OF

HANCOCK WIND, LLC  
TI 6 MD/T22 MD/Aurora  
Osborn, Hancock County  
WIND POWER FACILITY  
L-25875-24-A-N (approval)  
L-25875-TF-B-N (approval)

- ) SITE LOCATION OF DEVELOPMENT ACT
- ) NATURAL RESOURCES PROTECTION ACT
- ) FRESHWATER WETLAND ALTERATION
- ) WATER QUALITY CERTIFICATION
- )
- ) REVIEW OR APPEAL OF FINDINGS, ORDER

**EXHIBITS**



## EXHIBIT 1

**38 §341-D. BOARD RESPONSIBILITIES AND DUTIES**

The board is charged with the following duties and responsibilities. [1989, c. 890, Pt. A, §13 (NEW); 1989, c. 890, Pt. A, §40 (AFF).]

**1. Rulemaking.**

[ 1995, c. 347, §1 (AMD); T. 38, §341-D, sub-§1 (RP) .]

**1-A. Rulemaking.**

[ 1997, c. 364, §17 (AMD); T. 38, §341-D, sub-§1-A (RP) .]

**1-B. Rulemaking.**

[ 2011, c. 304, Pt. H, §4 (RP) .]

**1-C. Rulemaking.** The board shall adopt, amend or repeal rules in accordance with section 341-H.

[ 2011, c. 304, Pt. H, §5 (NEW) .]

**2. Permit and license applications.** Except as otherwise provided in this subsection, the board shall decide each application for approval of permits and licenses that in its judgment represents a project of statewide significance. A project of statewide significance is a project that meets at least 3 of the following 4 criteria:

A. [2011, c. 304, Pt. H, §6 (RP) .]

B. [2011, c. 304, Pt. H, §6 (RP) .]

C. [2011, c. 304, Pt. H, §6 (RP) .]

D. [2011, c. 304, Pt. H, §6 (RP) .]

E. Will have an environmental or economic impact in more than one municipality, territory or county; [2011, c. 304, Pt. H, §6 (NEW) .]

F. Involves an activity not previously permitted or licensed in the State; [2011, c. 304, Pt. H, §6 (NEW) .]

G. Is likely to come under significant public scrutiny; and [2011, c. 304, Pt. H, §6 (NEW) .]

H. Is located in more than one municipality, territory or county. [2011, c. 304, Pt. H, §6 (NEW) .]

The board shall also decide each application for approval of permits and licenses that is referred to it jointly by the commissioner and the applicant.

The board shall assume jurisdiction over applications referred to it under section 344, subsection 2-A when it finds that at least 3 of the 4 criteria of this subsection have been met.

The board may vote to assume jurisdiction of an application if it finds that at least 3 of the 4 criteria of this subsection have been met.

The board may not assume jurisdiction over an application for an expedited wind energy development as defined in Title 35-A, section 3451, subsection 4, for a certification pursuant to Title 35-A, section 3456 or for a general permit pursuant to section 480-HH or section 636-A.

Prior to holding a hearing on an application over which the board has assumed jurisdiction, the board shall ensure that the department and any outside agency review staff assisting the department in its review of the application have submitted to the applicant and the board their review comments on the application and any additional information

requests pertaining to the application and that the applicant has had an opportunity to respond to those comments and requests. If additional information needs arise during the hearing, the board shall afford the applicant a reasonable opportunity to respond to those information requests prior to the close of the hearing record.

[ 2011, c. 304, Pt. H, §6 (AMD) .]

**3. Modification or corrective action.** At the request of the commissioner and after written notice and opportunity for a hearing pursuant to Title 5, chapter 375, subchapter 4, the board may modify in whole or in part any license, or may issue an order prescribing necessary corrective action, whenever the board finds that any of the criteria in section 342, subsection 11-B have been met.

- A. [2011, c. 304, Pt. H, §7 (RP) .]
- B. [2011, c. 304, Pt. H, §7 (RP) .]
- C. [2011, c. 304, Pt. H, §7 (RP) .]
- D. [2011, c. 304, Pt. H, §7 (RP) .]
- E. [2011, c. 304, Pt. H, §7 (RP) .]
- F. [2011, c. 304, Pt. H, §7 (RP) .]
- G. [2011, c. 304, Pt. H, §7 (RP) .]

For the purposes of this subsection, "license" includes any license, permit, order, approval or certification issued by the department.

[ 2011, c. 304, Pt. H, §7 (RPR) .]

**4. Appeal or review.** The board shall review, may hold a hearing at its discretion on and may affirm, amend, reverse or remand to the commissioner for further proceedings any of the following:

A. Final license or permit decisions made by the commissioner when a person aggrieved by a decision of the commissioner appeals that decision to the board within 30 days of the filing of the decision with the board staff. The board staff shall give written notice to persons that have asked to be notified of the decision. The board may allow the record to be supplemented when it finds that the evidence offered is relevant and material and that:

- (1) An interested party seeking to supplement the record has shown due diligence in bringing the evidence to the licensing process at the earliest possible time; or
- (2) The evidence is newly discovered and could not, by the exercise of diligence, have been discovered in time to be presented earlier in the licensing process.

The board is not bound by the commissioner's findings of fact or conclusions of law but may adopt, modify or reverse findings of fact or conclusions of law established by the commissioner. Any changes made by the board under this paragraph must be based upon the board's review of the record, any supplemental evidence admitted by the board and any hearing held by the board; [1989, c. 890, Pt. A, §13 (NEW); 1989, c. 890, Pt. A, §40 (AFF) .]

B. [2011, c. 304, Pt. H, §8 (RP) .]

C. License or permit decisions appealed to the board under another law. Unless the law provides otherwise, the standard of review is the same as provided under paragraph A; and [2007, c. 661, Pt. B, §3 (AMD) .]

D. License or permit decisions regarding an expedited wind energy development as defined in Title 35-A, section 3451, subsection 4 or a general permit pursuant to section 480-HH or section 636-A. In reviewing an appeal of a license or permit decision by the commissioner under this paragraph, the board shall base its decision on the administrative record of the department, including the record of any adjudicatory hearing held by the department, and any supplemental information allowed by the board for supplementation of the record. The board may remand the decision to the department for further proceedings if appropriate. The chair of the Public Utilities Commission or the chair's designee serves as a nonvoting member of the board and is entitled to fully participate but is not required to attend hearings when the board considers an appeal pursuant to this paragraph. The chair's

participation on the board pursuant to this paragraph does not affect the ability of the Public Utilities Commission to submit information to the department for inclusion in the record of any proceeding before the department.  
[2011, c. 304, Pt. H, §9 (AMD).]

[ 2011, c. 304, Pt. H, §§8, 9 (AMD) .]

**5. Requests for reconsideration.**

[ 2011, c. 304, Pt. H, §10 (RP) .]

**6. Enforcement.** The board shall hear appeals of emergency orders pursuant to section 347-A, subsection 3.

A. [.] [2011, c. 304, Pt. H, §11 (RP) .]

[PL 2011, c. 304, Pt. H, § 11 (RP).]

B. [.] [2011, c. 304, Pt. H, §11 (RP) .]

[PL 2011, c. 304, Pt. H, § 11 (RP).]

C. [.] [2011, c. 304, Pt. H, §11 (RP) .]

[PL 2011, c. 304, Pt. H, § 11 (RP).]

D. [.] [2011, c. 304, Pt. H, §11 (RP) .]

[PL 2011, c. 304, Pt. H, § 11 (RP).]

[ 2011, c. 304, Pt. H, §11 (RPR) .]

**7. Reports to the Legislature.** The board shall report to the joint standing committee of the Legislature having jurisdiction over natural resource matters by January 15th of the first regular session of each Legislature on the effectiveness of the environmental laws of the State and any recommendations for amending those laws or the laws governing the board.

[ 2011, c. 304, Pt. H, §12 (AMD) .]

**8. Other duties.** The board shall carry out other duties as required by law.

[ 1989, c. 890, Pt. A, §13 (NEW); 1989, c. 890, Pt. A, §40 (AFF) .]

**SECTION HISTORY**

1989, c. 890, §§13,40 (NEW). 1991, c. 804, §1 (AMD). 1993, c. 328, §1 (AMD). 1993, c. 356, §1 (AMD). 1995, c. 347, §§1,2 (AMD). 1995, c. 642, §§1,2 (AMD). 1997, c. 364, §17 (AMD). 1999, c. 784, §6 (AMD). 2007, c. 661, Pt. B, §§1-4 (AMD). 2009, c. 121, §1 (AMD). 2009, c. 615, Pt. E, §§1, 2 (AMD). 2011, c. 304, Pt. H, §§4-12 (AMD).

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## EXHIBIT 2.

From : oweigang@rcn.com Fri, Jun 07, 2013 09:05 AM  
 Subject: Aurora Meeting (June 6, '13), Re DEP Draft Analysis,  
 Tangible Benefits  
 To : HancockWindProject.DEP  
 <HancockWindProject.DEP@maine.gov>  
 Bcc : oweigang <oweigang@rcn.com>

At least for the sake of correcting illegibility of the handwritten questions, they are set out below.

Thank you, in advance, for your responsiveness.

RE: Open Meeting of DEP in Aurora, Thursday June 6, '13  
 Question addressing DEP Draft Analysis, item number 28, Tangible Benefits

The Draft designates only Osborn, Waltham, and Eastbrook [as "Host Communities"] to receive a sum total of \$5,333 per turbine per year for 20 years.

Questions:

1. Is not Hancock County also designated by law to be a Host Community?
2. If so, why is Hancock County not part of a Tangible Benefit Agreement?
3. Have any objections been raised about these issues?

Oscar Weigang,  
 Resident of Hancock County  
 957 Macomber Mill Rd.  
 Eastbrook, ME  
 565-0992

EXHIBIT 3

**From:** B J & Oscar Weigang [mailto:oweigang@rcn.com]  
**Sent:** Friday, June 21, 2013 8:55 AM  
**To:** Beyer, Jim R  
**Subject:** Re: Hancock Wind Application

Mr Beyer,

It appears that you have not seen the attachment to my email of June 12, 2013 3:03:21 PM to Ms. Eggett (see below). I now set it out in full

.....  
**Reiterating Question 1.**

“1. Is not Hancock County also designated by law to be a Host Community?”

For your further response and comment there is:

**MRSA 35-A §3451. DEFINITIONS [Exhibit ??]**

1-B. **Community benefit agreement.** “Community benefit agreement” means an agreement between the developer of an expedited wind energy development and a host community that involves *payments* by the developer to the host community to be utilized for public purposes, ... and that specifies in writing:

A. The value of any lump sum *payments* made by the developer to the host community [*et seq.*, emphasis added].  
.....

7. **Host community.** “Host community” means:

A. The following entities:  
.....

(2) If the generating facilities of an expedited wind energy development are located in a township, the county in which those facilities are located;

... and

B. When the generating facilities of an expedited wind energy development are located within the State’s unorganized or deorganized areas and the developer selects a municipality; plantation; township; ... for the purpose of providing specific tangible benefits:  
.....

(2) In the case of a township that is selected, the county in which that township is located;  
.....

An expedited wind energy development may have multiple host communities.

**Reiterating Question 2.**

“2. If so, why is Hancock County not part of a Tangible Benefit Agreement?”

For your further response and comment there is:

**MRSA 35-A §3454. DETERMINATION OF TANGIBLE BENEFITS; REQUIREMENTS**

[Exhibit XX]  
.....

2. **Community benefits package requirement.** Except as provided in subsection 3, to demonstrate that an expedited wind energy development provides significant tangible benefits as required in ... Title 38, section 484, subsection 10, the applicant for an expedited wind energy development is required to establish a community benefits package valued at no less than \$4,000 per year per wind turbine included in the expedited wind energy development, averaged over a 20-year period. ....

3. **Community benefits package requirement; exceptions.** The community benefits package requirement under subsection 2:

...  
B. Does not apply to those turbines included in the development that are located:

(1) In a host community in which the legislative body has voted to waive or reduce *the community benefits package requirement* [emphasis added];

**THEREFORE,**

In light of the foregoing as to the statutory requirement of a community benefits package for the Host Community that is Hancock County, I raise an additional Question;

4. If Hancock County has been deemed to waive the requirement for its community benefits package, why does such explicit waiver not appear in the application of Hancock Wind:

<http://www.maine.gov/dep/ftp/WindPowerProjectFiles/HancockWind/application/>  
as set out there in section 28, or otherwise in the application?

For your further response and comment there is:

**MRSA 35-A §3454 [Exhibit XX]**

3. **Community benefits package requirement; exceptions.** The community benefits package requirement under subsection 2:

...  
B. Does not apply to those turbines included in the development that are located:

(1) In a host community in which the legislative body has voted to *wave* or reduce the community benefits package requirement [emphasis added];

Also, by the general terms of its Community Benefit Agreements, in section 28, with the other host communities, it appears that any such waiver should comply with its pertinent items there:

7. Modification

No waiver, alteration or modification of any of the provisions of this Agreement shall be enforced unless in writing and signed by both parties to this Agreement

.....  
10. Miscellaneous

(a) Exercise of Rights and Waiver: The failure of any Party to exercise any right under this Agreement shall not, unless otherwise provided or agreed to in writing, be deemed a waiver thereof; nor shall a waiver by any Party of any provisions hereof be deemed a waiver of any future compliance therewith, and such provisions shall remain in full force and effect.

I quote again DEP Rules, Chp 2, Rules Concerning the Processing of Applications and Other Administrative Matters, 4. D.:

**"D. Informal Staff Opinions.** Any person may informally inquire of the Department staff with respect to the applicability of any statute or rule administered by the Department. The staff may decline to respond to such requests because the facts are not sufficiently complete or detailed to form the basis of an opinion, because resources or time are not available to the staff for the purposes of preparing an opinion, or because the matter is properly the subject of an advisory ruling or legal opinion. A written or oral opinion provided by Department staff under this subsection does not bind the Department in any subsequent proceeding." (Emphasis added.)

Your comments are merely conclusory, do not address the applicability of the statutes cited, and take no note of my responses in my email of June 12, 2013 3:03:21 PM to Ms. Eggett. I trust that you will avail yourself, as necessary, of the full statutes as set out in MRSA. It seems that, upon your request, the Attorney General, as a matter of law, is available to address these questions.

Considering the unfortunate delays to date, I look forward to your soonest response.

Very sincerely,  
Oscar Weigang  
Resident of Hancock County.

## EXHIBIT 4

— Original Message —

**From:** Beyer, Jim R  
**To:** 'B J & Oscar Weigang' ; Bensinger, Peggy  
**Cc:** Brooke Barnes ; DEP, HancockWindProject  
**Sent:** Friday, June 21, 2013 12:35 PM  
**Subject:** RE: Hancock Wind Application

Mr. Weigang,

You raise a legitimate question that has also arisen in another project. Therefore, I am going to ask the Attorney General's Office to provide an answer.

Peggy, In the Hancock Wind Power project there are turbines located in two townships. The applicant negotiated Community Benefit packages with several surrounding communities, but not the county. The question boils down to whether or not a developer is required to provide community benefits to every community (or the county in this case) where turbines are located. See the e-mail chain below for an outline of Mr. Weigang's arguments that the developer must provide a benefit package to the county.

James R. Beyer  
Regional Licensing and Compliance Manager  
Division of Land Resources Regulation  
Eastern Maine Regional Office  
Maine Department of Environmental Protection  
(207) 446-9026

## EXHIBIT 5.

**35-A §3451. DEFINITIONS****35-A §3451. DEFINITIONS**

As used in this chapter, unless the context otherwise indicates, the following terms have the following meanings. [2007, c. 661, Pt. A, §7 (NEW).]

**1. Associated facilities.** "Associated facilities" means elements of a wind energy development other than its generating facilities that are necessary to the proper operation and maintenance of the wind energy development, including but not limited to buildings, access roads, generator lead lines and substations.

[ 2007, c. 661, Pt. A, §7 (NEW) .]

**1-B. Community benefit agreement.** "Community benefit agreement" means an agreement between the developer of an expedited wind energy development and a host community that involves payments by the developer to the host community to be utilized for public purposes, including, but not limited to, for property tax reductions, economic development projects, land and natural resource conservation, tourism promotion or reduction of energy costs, and that specifies in writing:

A. The value of any lump sum payments made by the developer to the host community; and [2009, c. 642, Pt. A, §2 (NEW).]

B. Any payment schedule and associated terms and conditions for payments to be made over time by the developer to the host community. [2009, c. 642, Pt. A, §2 (NEW).]

[ 2009, c. 642, Pt. A, §2 (NEW) .]

**1-C. Community benefits package.** "Community benefits package" means the aggregate collection of tangible benefits resulting from any of the following:

A. Payments, not including property tax payments, to the host community or communities, including, but not limited to, payments under community benefit agreements; [2009, c. 642, Pt. A, §3 (NEW).]

B. Payments that reduce energy costs in the host community or communities; and [2009, c. 642, Pt. A, §3 (NEW).]

C. Any donations for land or natural resource conservation. [2009, c. 642, Pt. A, §3 (NEW).]

[ 2009, c. 642, Pt. A, §3 (NEW) .]

**2. Department.** "Department" means the Department of Environmental Protection.

[ 2007, c. 661, Pt. A, §7 (NEW) .]

**3. Expedited permitting area.** "Expedited permitting area" means:

A. The organized areas of the State in their entirety, but not including waters subject to tidal influence, so that the edge of the area that is subject to tidal action during the highest tide level for the year in which an activity is proposed as identified in tide tables published by the United States Department of Commerce, National Oceanic and Atmospheric Administration, National Ocean Service defines the boundary of the expedited permitting area on lands abutting waters subject to tidal influence; and [2007, c. 661, Pt. A, §7 (NEW).]

B. Specific places within the State's unorganized and deorganized areas, as defined by Title 12, section 682, subsection 1, that are identified by rule by the Maine Land Use Planning Commission in accordance with this chapter. [2007, c. 661, Pt. A, §7 (NEW); 2011, c. 682, §38 (REV).]

[ 2007, c. 661, Pt. A, §7 (NEW); 2011, c. 682, §38 (REV) .]

**4. Expedited wind energy development.** "Expedited wind energy development" means a grid-scale wind energy development that is proposed for location within an expedited permitting area.

[ 2007, c. 661, Pt. A, §7 (NEW) .]

**5. Generating facilities.** "Generating facilities" means wind turbines and towers and transmission lines, not including generator lead lines, that are immediately associated with the wind turbines.

[ 2007, c. 661, Pt. A, §7 (NEW) .]

**6. Grid-scale wind energy development.** "Grid-scale wind energy development" means a wind energy development that is of a size that would qualify as a development of state or regional significance that may substantially affect the environment as defined under Title 38, section 482, subsection 2, paragraph A or paragraph C.

[ 2007, c. 661, Pt. A, §7 (NEW) .]

**7. Host community.** "Host community" means:

A. The following entities:

- (1) A municipality or plantation in which the generating facilities of an expedited wind energy development are located;
- (2) If the generating facilities of an expedited wind energy development are located in a township, the county in which those facilities are located;
- (3) If the generating facilities of an expedited wind energy development are located on Passamaquoddy Indian territory, as defined in Title 30, section 6203, subsection 6, the Passamaquoddy Tribe, if the Passamaquoddy Tribe notifies the primary siting authority that it chooses to be considered a host community for purposes of this chapter with respect to the expedited wind energy development;
- (4) If the generating facilities of an expedited wind energy development are located on Penobscot Indian territory, as defined in Title 30, section 6203, subsection 9, the Penobscot Nation if the Penobscot Nation notifies the primary siting authority that it chooses to be considered a host community for purposes of this chapter with respect to the expedited wind energy development; or
- (5) If the generating facilities of an expedited wind energy development are located on Qualifying Band Trust Land, the Aroostook Band of Micmacs, if the Aroostook Band of Micmacs notifies the primary siting authority that it chooses to be considered a host community for purposes of this chapter with respect to the expedited wind energy development; and [2009, c. 642, Pt. A, §4 (NEW).]

B. When the generating facilities of an expedited wind energy development are located within the State's unorganized or deorganized areas and the developer selects a municipality; plantation; township; Passamaquoddy Indian territory, as defined in Title 30, section 6203, subsection 6; Penobscot Indian territory, as defined in Title 30, section 6203, subsection 9; or Qualifying Band Trust Land proximate to the location of the generating facilities for the purpose of providing specific tangible benefits:

- (1) In the case of a municipality or plantation that is selected, the municipality or plantation;
- (2) In the case of a township that is selected, the county in which that township is located;
- (3) In the case of Passamaquoddy Indian territory that is selected, the Passamaquoddy Tribe if the Passamaquoddy Tribe notifies the primary siting authority that it chooses to be considered a host community for purposes of this chapter with respect to the expedited wind energy development;
- (4) In the case of Penobscot Indian territory that is selected, the Penobscot Nation if the Penobscot Nation notifies the primary siting authority that it chooses to be considered a host community for purposes of this chapter with respect to the expedited wind energy development; and
- (5) In the case of Qualifying Band Trust Land that is selected, the Aroostook Band of Micmacs, if the Aroostook Band of Micmacs notifies the primary siting authority that it chooses to be considered a host community for purposes of this chapter with respect to the expedited wind energy development. [2009, c. 642, Pt. A, §4 (NEW).]

An expedited wind energy development may have multiple host communities.

[ 2009, c. 642, Pt. A, §4 (AMD) .]

**8. Primary siting authority.** "Primary siting authority" means:

A. The department, in the case of an expedited wind energy development subject to the department's jurisdiction pursuant to Title 38, chapter 3, subchapter 1, article 6, including, but not limited to, a development subject to the department's jurisdiction pursuant to Title 38, section 488, subsection 9-A; or [2011, c. 682, §26 (AMD) .]

B. The Maine Land Use Planning Commission, in the case of a community-based offshore wind energy project as defined in Title 12, section 682, subsection 19 and a wind energy development in the unorganized and deorganized areas as defined in Title 12, section 682, subsection 1 that is not grid-scale wind energy development. [2011, c. 682, §26 (AMD) .]

[ 2011, c. 682, §26 (AMD) .]

**8-A. Qualifying Band Trust Land.** "Qualifying Band Trust Land" means Band Trust Land, as defined in the federal Aroostook Band of Micmacs Settlement Act, Public Law 102-171, 105 Stat. 1143 (1991), over which the Aroostook Band of Micmacs possesses municipal authority with respect to expedited wind energy development. For purposes of this subsection, "municipal authority" means the rights, privileges, powers and immunities of a municipality that are specified in legislation specifically authorizing the exercise of those government powers and that are equivalent to the rights, privileges, powers and immunities possessed by the Penobscot Nation and the Passamaquoddy Tribe with respect to expedited wind energy development within their respective Indian territories pursuant to Title 30, section 6206.

[ 2009, c. 642, Pt. A, §5 (NEW) .]

**9. Scenic resource of state or national significance.** "Scenic resource of state or national significance" means an area or place owned by the public or to which the public has a legal right of access that is:

A. A national natural landmark, federally designated wilderness area or other comparable outstanding natural and cultural feature, such as the Orono Bog or Meddybemps Heath; [2007, c. 661, Pt. A, §7 (NEW) .]

B. A property listed on the National Register of Historic Places pursuant to the National Historic Preservation Act of 1966, as amended, including, but not limited to, the Rockland Breakwater Light and Fort Knox; [2007, c. 661, Pt. A, §7 (NEW) .]

C. A national or state park; [2007, c. 661, Pt. A, §7 (NEW) .]

D. A great pond that is:

(1) 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

(2) One of the 280 great ponds in the State's unorganized or deorganized areas designated as outstanding or significant from a scenic perspective in the "Maine Wildlands Lakes Assessment" published by the Maine Land Use Regulation Commission in June 1987; [2007, c. 661, Pt. A, §7 (NEW) .]

E. A segment of a scenic river or stream identified as having unique or outstanding scenic attributes listed in Appendix G of the "Maine Rivers Study" published by the Department of Conservation in 1982; [2007, c. 661, Pt. A, §7 (NEW) .]

F. A scenic viewpoint 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 designates by rule adopted in accordance with section 3457; [2007, c. 661, Pt. A, §7 (NEW); 2011, c. 657, Pt. W, §5 (REV) .]

G. A scenic turnout constructed by the Department of Transportation pursuant to Title 23, section 954 on a public road that has been designated by the Commissioner of Transportation pursuant to Title 23, section 4206,

subsection 1, paragraph G as a scenic highway; or [2007, c. 661, Pt. A, §7 (NEW).]

H. Scenic viewpoints located in the coastal area, as defined by Title 38, section 1802, subsection 1, that are ranked as having state or national significance in terms of scenic quality in:

(1) 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," Dominic, 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

(2) A scenic inventory developed by or prepared for the Executive Department, former State Planning Office or the Department of Agriculture, Conservation and Forestry in accordance with section 3457. [2011, c. 655, Pt. KK, §22 (AMD); 2011, c. 655, Pt. KK, §34 (AFF); 2011, c. 657, Pt. W, §5 (REV).]

[ 2011, c. 655, Pt. KK, §22 (AMD); 2011, c. 655, Pt. KK, §34 (AFF); 2011, c. 657, Pt. W, §5 (REV) .]

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

[ 2009, c. 642, Pt. A, §6 (AMD) .]

**11. Wind energy development.** "Wind energy development" means a development that uses a windmill or wind turbine to convert wind energy to electrical energy for sale or use by a person other than the generator. A wind energy development includes generating facilities and associated facilities.

[ 2007, c. 661, Pt. A, §7 (NEW) .]

#### SECTION HISTORY

2007, c. 661, Pt. A, §7 (NEW). 2009, c. 642, Pt. A, §§2-6 (AMD). 2011, c. 655, Pt. KK, §22 (AMD). 2011, c. 655, Pt. KK, §34 (AFF). 2011, c. 657, Pt. W, §5 (REV). 2011, c. 682, §26 (AMD). 2011, c. 682, §38 (REV).

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**EXHIBIT 6.**  
**Administrative Record or**  
**Proposed Supplementation**  
 (N.B., Reverse Chronological Order, as in original email 'thread'.)

**From:** B J & Oscar Weigang [mailto:oweigang@rcn.com]  
**Sent:** Tuesday, July 09, 2013 10:04 PM  
**To:** Bensinger, Peggy  
**Subject:** Fw: Hancock Wind Application

Ms. Bensinger,

Would you please confirm receipt and response, if any, to the following message(s).

Oscar Weigang

**From:** B J & Oscar Weigang  
**To:** Beyer, Jim R  
**Sent:** Tuesday, July 09, 2013 1:32 PM  
**Subject:** Re: Hancock Wind Community Benefits

Mr. Beyer,

I would appreciate seeing the actual written response of the Attorney General's office addressing each of the questions 1 to 4 that were raised.

Thank you.

**From:** "Jim R Beyer" <Jim.R.Beyer@maine.gov>  
**To:** oweigang@rcn.com  
**Cc:** "Maria Lentine-Eggett" <Maria.Lentine-Eggett@maine.gov>, "HancockWindProject DEP" <HancockWindProject.DEP@maine.gov>  
**Sent:** Tuesday, July 9, 2013 11:23:54 AM  
**Subject:** Hancock Wind Community Benefits

Mr. Weigang,

I posed your question about whether or not Hancock Wind must include the county in the Community Benefits package and whether or not a wind developer had to provide a package to every community where there were turbines. The response I received from her was that it is not a requirement of the Wind Energy Act that the developer provide a benefit package to every community, just that the package meet the minimum requirement.

I hope this answers your questions concerning the proposed Community Benefit package for this project.

James R. Beyer  
 Regional Licensing and Compliance Manager  
 Division of Land Resources Regulation  
 Eastern Maine Regional Office  
 Maine Department of Environmental Protection

(207) 446-9026

----- Original Message -----

**From:** Beyer, Jim R  
**To:** 'B J & Oscar Weigang'; Bensinger, Peggy  
**Cc:** Brooke Barnes; DEP, HancockWindProject  
**Sent:** Friday, June 21, 2013 12:35 PM  
**Subject:** RE: Hancock Wind Application

Mr. Weigang,

You raise a legitimate question that has also arisen in another project. Therefore, I am going to ask the Attorney General's Office to provide an answer.

Peggy, In the Hancock Wind Power project there are turbines located in two townships. The applicant negotiated Community Benefit packages with several surrounding communities, but not the county. The question boils down to whether or not a developer is required to provide community benefits to every community (or the county in this case) where turbines are located. See the e-mail chain below for an outline of Mr. Weigang's arguments that the developer must provide a benefit package to the county.

James R. Beyer  
 Regional Licensing and Compliance Manager  
 Division of Land Resources Regulation  
 Eastern Maine Regional Office  
 Maine Department of Environmental Protection  
 (207) 446-9026

**From:** B J & Oscar Weigang [<mailto:oweigang@rcn.com>]  
**Sent:** Friday, June 21, 2013 8:55 AM  
**To:** Beyer, Jim R  
**Subject:** Re: Hancock Wind Application

Mr Beyer,

It appears that you have not seen the attachment to my email of June 12, 2013 3:03:21 PM to Ms. Eggett (see below). I now set it out in full

-----  
**Reiterating Question 1.**

"1. Is not Hancock County also designated by law to be a Host Community?"

For your further response and comment there is:

**MRSA 35-A §3451. DEFINITIONS**

**1-B. Community benefit agreement.** "Community benefit agreement" means an agreement between the developer of an expedited wind energy development and a host community that involves *payments* by the developer to the host community to be utilized for public purposes, ... and that specifies in writing:

A. The value of any lump sum *payments* made by the developer to the host community [*et seq.*, emphasis added].  
....

7. **Host community.** "Host community" means:

A. The following entities:

....

(2) If the generating facilities of an expedited wind energy development are located in a township, the county in which those facilities are located;  
... and

B. When the generating facilities of an expedited wind energy development are located within the State's unorganized or deorganized areas and the developer selects a municipality; plantation; township; ... for the purpose of providing specific tangible benefits:

....

(2) In the case of a township that is selected, the county in which that township is located;

....

An expedited wind energy development may have multiple host communities.

### Reiterating Question 2.

"2. If so, why is Hancock County not part of a Tangible Benefit Agreement?"

For your further response and comment there is:

### MRSA 35-A §3454. DETERMINATION OF TANGIBLE BENEFITS; REQUIREMENTS

....

2. **Community benefits package requirement.** Except as provided in subsection 3, to demonstrate that an expedited wind energy development provides significant tangible benefits as required in ... Title 38, section 484, subsection 10, the applicant for an expedited wind energy development is required to establish a community benefits package valued at no less than \$4,000 per year per wind turbine included in the expedited wind energy development, averaged over a 20-year period. ....

3. **Community benefits package requirement; exceptions.** The community benefits package requirement under subsection 2:

....

B. Does not apply to those turbines included in the development that are located:

(1) In a host community in which the legislative body has voted to waive or reduce *the community benefits package requirement* [emphasis added];

....

### THEREFORE,

In light of the foregoing as to the statutory requirement of a community benefits package for the Host Community that is Hancock County, I raise an additional Question;

4. If Hancock County has been deemed to waive the requirement for its community benefits package, why does such explicit waiver not appear in the application of Hancock Wind:

<http://www.maine.gov/dep/ftp/WindPowerProjectFiles/HancockWind/application/>

as set out there in section 28, or otherwise in the application?

For your further response and comment there is:

**MRSA 35-A §3454**

**3. Community benefits package requirement; exceptions.** The community benefits package requirement under subsection 2:

- ...
- B. Does not apply to those turbines included in the development that are located:
  - (1) In a host community in which the legislative body has voted to *waive* or reduce the community benefits package requirement [emphasis added];

Also, by the general terms of its Community Benefit Agreements, in section 28, with the other host communities, it appears that any such waiver should comply with its pertinent items there:

7. Modification

No waiver, alteration or modification of any of the provisions of this Agreement shall be enforced unless in writing and signed by both parties to this Agreement

10. Miscellaneous

(a) Exercise of Rights and Waiver: The failure of any Party to exercise any right under this Agreement shall not, unless otherwise provided or agreed to in writing, be deemed a waiver thereof; nor shall a waiver by any Party of any provisions hereof be deemed a waiver of any future compliance therewith, and such provisions shall remain in full force and effect.

.....  
I quote again DEP Rules, Chp 2, Rules Concerning the Processing of Applications and Other Administrative Matters, 4. D.:

**"D. Informal Staff Opinions.** Any person may informally inquire of the Department staff with respect to the applicability of any statute or rule administered by the Department. The staff may decline to respond to such requests because the facts are not sufficiently complete or detailed to form the basis of an opinion, because resources or time are not available to the staff for the purposes of preparing an opinion, or because the matter is properly the subject of an advisory ruling or legal opinion. A written or oral opinion provided by Department staff under this subsection does not bind the Department in any subsequent proceeding." (Emphasis added.)

Your comments are merely conclusory, do not address the applicability of the statutes cited, and take no note of my responses in my email of June 12, 2013 3:03:21 PM to Ms. Eggett . I trust that you will avail yourself, as necessary, of the full statutes as set out in MRSA. It seems that, upon your request, the Attorney General, as a matter of law, is available to address these questions.

Considering the unfortunate delays to date, I look forward to your soonest response.

Very sincerely,

Oscar Weigang  
Resident of Hancock County.

----- Original Message -----

**From:** Beyer, Jim R  
**To:** DEP, HancockWindProject ; 'oweigang@rcn.com'  
**Sent:** Thursday, June 20, 2013 3:51 PM  
**Subject:** RE: Hancock Wind Application

Mr. Weigang,

I am sorry it has taken so long to get you an answer to your questions, but here they are.

**1. Is not Hancock County also designated by law to be a Host Community?**

No communities or counties are required by law to be designated as Host Communities. If a developer chooses to meet the Tangible Benefit requirements by entering into an agreement with the county, they can do that, but it is not required.

**2. If so, why is Hancock County not part of a Tangible Benefit Agreement?**

The developer chose not to include Hancock County in their Tangible Benefits package. You should contact the developer directly to find out those reasons.

**3. Have any objections been raised about these issues?**

Prior to your e-mail, no others have raised a concern about the Tangible Benefits Package. I have attached comments from Amanda Rector, our review agent for the Tangible Benefits portion of the application. As you can see from her comments, the package meets the requirements of the Wind Energy Act.

If you have any other questions, please feel free to contact me or Maria.

James R. Beyer  
Regional Licensing and Compliance Manager  
Division of Land Resources Regulation  
Eastern Maine Regional Office  
Maine Department of Environmental Protection  
(207) 446-9026

**From:** DEP, HancockWindProject  
**Sent:** Thursday, June 20, 2013 11:19 AM  
**To:** Beyer, Jim R  
**Subject:** FW: Hancock Wind Application

**From:** oweigang@rcn.com [mailto:oweigang@rcn.com]  
**Sent:** Thursday, June 20, 2013 11:10 AM  
**To:** DEP, HancockWindProject  
**Subject:** Fwd: Hancock Wind Application

Ms. Eggett,

I still look forward to having your further response and comments, pursuant to DEP Rules, Chp 2, Rules Concerning the Processing of Applications and Other Administrative Matters, 4. D.:

**"D. Informal Staff Opinions.** Any person may informally inquire of the Department staff with respect to the applicability of any statute or rule administered by the Department. The staff may decline to respond to such requests because the facts are not sufficiently complete or detailed to form the basis of an opinion, because resources or time are not available to the staff for the purposes of preparing an opinion, or because the matter is properly the subject of an advisory ruling or legal opinion. A written or oral opinion provided by Department staff under this subsection does not bind the Department in any subsequent proceeding."

Have you declined to respond? If so, please advise and specify the reason(s).

Oscar Weigang

---

**From:** "B J & Oscar Weigang" <oweigang@rcn.com>  
**To:** "HancockWindProject DEP" <HancockWindProject.DEP@maine.gov>  
**Sent:** Wednesday, June 12, 2013 3:03:21 PM  
**Subject:** Re: Hancock Wind Application

Ms. Eggett,

Thank you for your prompt reply alluding to the "question[s] concern[ing] Hancock County receiving monies ... as part of a tangible benefits plan." I set out again those questions as they appeared in my email of June 7 to your office:

"RE: Open Meeting of DEP in Aurora, Thursday June 6, '13  
 Question addressing DEP Draft Analysis, item number 28, Tangible Benefits

The Draft designates only Osborn, Waltham, and Eastbrook [as "Host Communities"] to receive a sum total of \$5,333 per turbine per year for 20 years.

Questions:

1. Is not Hancock County also designated by law to be a Host Community?
2. If so, why is Hancock County not part of a Tangible Benefit Agreement?
3. Have any objections been raised about these issues?"

Your reply incorporates by its attachment a response of Amanda Rector, State

Economist, which states in its first paragraph: "This is not a legal opinion.", notwithstanding its ultimate conclusion: "The community benefits package exceeds the minimum statutory requirements."

By its items 1. to 5., it appears to address, without depth requisite to the requirements of even the remainder of MRSA 35-A, sec 3454, only the items A. to E. of sec. 3454, 1. Documentation, of MRSA 35-A. And the results are little more than an "arithmetic accounting" that follows that of the Application by Hancock Wind in Section 28, Community Benefit Agreements.

While review by that office is mandated, it would be an office of legal counsel that is more appropriate to the Questions posed above.

In my attachment to this email are set out the MRSA statutes which seem to bear directly on Questions 1. and 2. and a further Question 4.

The attachment is detailed. I hope that it is not regarded as merely a vexation but rather that attention to its points should help to guarantee that the end product of Hancock Wind's application will be valid as a matter of law.

I look forward to having your further response and comments.

Oscar Weigang  
Resident of Hancock County

----- Original Message -----

From: "DEP, HancockWindProject" <[HancockWindProject.DEP@maine.gov](mailto:HancockWindProject.DEP@maine.gov)>  
To: <[oweigang@rcn.com](mailto:oweigang@rcn.com)>  
Sent: Monday, June 10, 2013 7:39 AM  
Subject: Hancock Wind

Mr. Weigang,

You presented a question at Thursday's public meeting about the Hancock Wind project. The question concerned Hancock County receiving monies from the proposed project as part of a tangible benefits plan.

The Department has each tangible benefits proposal reviewed by a State Economist to assure that it complies with the requirements of the Wind Energy Act. I'm attaching the review\*\* which states the proposal complies.

Thank you,  
Maria Eggett

-----Original Message-----

From: [ricoh@mp4000.com](mailto:ricoh@mp4000.com) [<mailto:ricoh@mp4000.com>]

Sent: Monday, June 10, 2013 7:36 AM  
 To: Lentine-Eggett, Maria  
 Subject:

This E-mail was sent from "RNP314ECD" (Aficio MP 4000B).

**\*\*Attached Review**

Response of State Economist  
 Pursuant and subject to 38 M.R.S.A. §484, sub-§10

<i>PROJECT</i>		<i>APPLICANT</i>	
<i>Number:</i>	L-25875-24-A-N/L-25875-2F-B-N	<i>Name:</i>	Hancock Wind
<i>Name:</i>	Windpower Facility	<i>Contact</i>	Brooke Barnes
<i>Location:</i>	T16 MD/T22 MD		729-1199

After a thorough review of the above project, as presented to us, and consideration of our agency's standards, programs and responsibilities, and the following comments are submitted to the Department of Environmental Protection.

To: Maria Lentine-Eggett, Maine Department of Environmental Protection  
 From: Amanda Rector, State Economist  
 Date: March 13, 2013  
 Subject: Hancock Wind Project Review

Pursuant and subject to 38 M.R.S.A. §484, sub-§10, I am providing review comments regarding tangible benefits on the Hancock Wind Project application. **This is not a legal opinion.** Below are my comments based on review of the "tangible benefits" provisions from M.R.S.A. 35-A, Ch. 34-A.

Any permit application for an expedited wind energy development is required to include documentation of the following information:

1. Estimated jobs to be created statewide and in the host community or communities, as a result of construction, maintenance and operations of the project;
2. Estimated annual generation of wind energy;
3. Projected property tax payments;
4. A descriptions of the community benefits package, including but not limited to community benefit agreement payments, valued at no less than \$4,000 per year per wind turbine, averaged over a 20-year period; and
5. Any other tangible benefits to be provided by the project.

The application submitted by Hancock Wind, LLC, a wholly owned subsidiary of First Wind, regarding the Hancock Wind Project does address each of these required pieces of information.

The project is estimated to create 100 full-time equivalent jobs during development and construction, hired locally whenever possible, with three to six permanent employees post-construction to operate and maintain the facility, including on-site staff of the turbine manufacturer.

Estimated annual generation of wind energy from the project is approximately 150,000 MWh.

Unorganized Territory property tax payments are estimated in excess of \$350,000 per year in addition to average annual property tax payments of \$8,000 to Aurora.

The proposed community benefits package includes three Community Benefit Agreements totaling \$96,000 annually over 20 years. These agreements are with the Town of Osborn valued at \$56,000 annually over 20 years; with the Town of Waltham valued at \$20,000 annually over 20 years; and with the Town of Eastbrook valued at \$20,000 annually over 20 years. In all three cases, the payments are to be used at the town's discretion to either lower tax rates or for investment in municipal assets and/or services. The total value of this community benefits package is \$5,333 per year per wind turbine. This exceeds the minimum statutory requirement of \$4,000 per year per wind turbine.

Additional tangible benefits identified in the application include \$10,000 annually over 20 years to the Acadia Area ATV Club to support its efforts to maintain trails, repair trail bridges, and perform stormwater management activities and \$25,000 in seed money for the "Ride the Wind" Maine snowmobile wind farm trail as well as First Wind's traditional community outreach programs and support for the host communities of Osborn, Waltham, and Eastbrook.

The environmental tangible benefits are estimated at an additional 60,000 tons of CO<sub>2</sub>, 60 tons of NO<sub>x</sub>, and 200 tons of SO<sub>2</sub> avoided annually.

The tangible benefits described in the Hancock Wind Project application appear to meet the criteria established in 35-A M.R.S.A. §3454. The community benefits package exceeds the minimum statutory requirements.

From : oweigang@rcn.com Fri, Jun 07, 2013 09:05 AM  
 Subject: Aurora Meeting (June 6, '13), Re DEP Draft Analysis,  
 Tangible Benefits  
 To : HancockWindProject:DEP  
 <HancockWindProject:DEP@maine.gov>  
 Bcc : oweigang <oweigang@rcn.com>

At least for the sake of correcting illegibility of the handwritten questions, they are set out below.

Thank you, in advance, for your responsiveness.

RE: Open Meeting of DEP in Aurora, Thursday June 6, '13  
 Question addressing DEP Draft Analysis, item number 28, Tangible Benefits

The Draft designates only Osborn, Waltham, and Eastbrook [as "Host Communities"] to receive a sum total of \$5,333 per turbine per year for 20 years.

Questions:

1. Is not Hancock County also designated by law to be a Host Community?
2. If so, why is Hancock County not part of a Tangible Benefit Agreement?
3. Have any objections been raised about these issues?

Oscar Weigang,  
Resident of Hancock County  
957 Macomber Mill Rd.  
Eastbrook, ME  
565-0992

## EXHIBIT 7

**From:** "B J & Oscar Weigang" <[oweigang@rcn.com](mailto:oweigang@rcn.com)>  
**To:** "HancockWindProject DEP" <[HancockWindProject.DEP@maine.gov](mailto:HancockWindProject.DEP@maine.gov)>  
**Sent:** Wednesday, June 12, 2013 3:03:21 PM  
**Subject:** Re: Hanock Wind Application

Ms. Eggett,

Thank you for your prompt reply alluding to the "question[s] concern[ing] Hancock County receiving monies ... as part of a tangible benefits plan." I set out again those questions as they appeared in my email of June 7 to your office:

"RE: Open Meeting of DEP in Aurora, Thursday June 6, '13  
 Question addressing DEP Draft Analysis, item number 28, Tangible Benefits

The Draft designates only Osborn, Waltham, and Eastbrook [as "Host Communities"] to receive a sum total of \$5,333 per turbine per year for 20 years.

Questions:

1. Is not Hancock County also designated by law to be a Host Community?
2. If so, why is Hancock County not part of a Tangible Benefit Agreement?
3. Have any objections been raised about these issues?"

Your reply incorporates by its attachment a response of Amanda Rector, State Economist, which states in its first paragraph: "This is not a legal opinion.", notwithstanding its ultimate conclusion: "The community benefits package exceeds the minimum statutory requirements."

By its items 1. to 5., it appears to address, without depth requisite to the requirements of even the remainder of MRSA 35-A, sec 3454, only the items A. to E. of sec. 3454, 1. Documentation, of MRSA 35-A. And the results are little more than an "arithmetic accounting" that follows that of the Application by Hancock Wind in Section 28, Community Benefit Agreements.

While review by that office is mandated, it would be an office of legal counsel that is more appropriate to the Questions posed above.

In my attachment to this email are set out the MRSA statutes which seem to bear directly on Questions 1. and 2. and a further Question 4.

The attachment is detailed. I hope that it is not regarded as merely a vexation but rather that attention to its points should help to guarantee that the end product of Hancock Wind's application will be valid as a matter

of law.

I look forward to having your further response and comments.

Oscar Weigang  
Resident of Hancock County

## EXHIBIT 8

COMMISSIONER'S FINDINGS OF FACT AND ORDER in this matter, reads in pertinent part for this application for Review or Appeal,

At p. 15:

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.

At pp. 31-32:

19. 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 stonewater 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.

## EXHIBIT 9

**From:** "Jim R Beyer" <Jim.R.Beyer@maine.gov>  
**To:** oweigang@rcn.com  
**Cc:** "Maria Lentine-Eggett" <Maria.Lentine-Eggett@maine.gov>, "HancockWindProject DEP" <HancockWindProject.DEP@maine.gov>  
**Sent:** Tuesday, July 9, 2013 11:23:54 AM  
**Subject:** Hancock Wind Community Benefits

Mr. Weigang,

I posed your question about whether or not Hancock Wind must include the county in the Community Benefits package and whether or not a wind developer had to provide a package to every community where there were turbines. The response I received from her was that it is not a requirement of the Wind Energy Act that the developer provide a benefit package to every community, just that the package meet the minimum requirement.

I hope this answers your questions concerning the proposed Community Benefit package for this project.

James R. Beyer  
 Regional Licensing and Compliance Manager  
 Division of Land Resources Regulation  
 Eastern Maine Regional Office  
 Maine Department of Environmental Protection  
 (207) 446-9026

**From:** B J & Oscar Weigang  
**To:** Beyer, Jim R  
**Sent:** Tuesday, July 09, 2013 1:32 PM  
**Subject:** Re: Hancock Wind Community Benefits

Mr. Beyer,

I would appreciate seeing the actual written response of the Attorney General's office addressing each of the questions 1 to 4 that were raised.

Thank you.

**From:** B J & Oscar Weigang [mailto:oweigang@rcn.com]  
**Sent:** Tuesday, July 09, 2013 10:04 PM  
**To:** Bensinger, Peggy  
**Subject:** Fw: Hancock Wind Application

Ms. Bensinger,

Would you please confirm receipt and response, if any, to the following message(s).

Oscar Weigang

## EXHIBIT 10

**35-A §3454. DETERMINATION OF TANGIBLE BENEFITS; REQUIREMENTS**

In making findings pursuant to Title 12, section 685-B, subsection 4 or Title 38, section 484, subsection 3, the primary siting authority shall presume that an expedited wind energy development provides energy and emissions-related benefits described in section 3402 and shall make additional findings regarding other tangible benefits provided by the development. The Department of Labor, the Governor's Office of Policy and Management, the Governor's Energy Office and the Public Utilities Commission shall provide review comments if requested by the primary siting authority. [2011, c. 655, Pt. DD, §14 (AMD); 2011, c. 655, Pt. DD, §24 (AFF).]

In making findings pursuant to Title 38, section 484, subsection 3, the primary siting authority shall presume that an expedited wind energy development provides energy and emissions-related benefits described in section 3402 and shall make additional findings regarding other tangible benefits provided by the development. The Department of Labor, the Executive Department, State Planning Office and the Public Utilities Commission shall provide review comments if requested by the primary siting authority. [2011, c. 682, §27 (AMD).]

**1. Documentation.** As part of any permit application for an expedited wind energy development, the applicant shall include the following information regarding tangible benefits, except that the applicant may submit the information required under paragraph D as an addendum to the permit application during the period in which the application is pending:

- A. Estimated jobs to be created statewide and in the host community or communities, as a result of construction, maintenance and operations of the project; [2009, c. 642, Pt. A, §7 (NEW).]
- B. Estimated annual generation of wind energy; [2009, c. 642, Pt. A, §7 (NEW).]
- C. Projected property tax payments; [2009, c. 642, Pt. A, §7 (NEW).]
- D. A description of the community benefits package, including but not limited to community benefit agreement payments, to be provided in accordance with the requirements of subsection 2; and [2009, c. 642, Pt. A, §7 (NEW).]
- E. Any other tangible benefits to be provided by the project. [2009, c. 642, Pt. A, §7 (NEW).]

[ 2009, c. 642, Pt. A, §7 (NEW) .]

**2. Community benefits package requirement.** Except as provided in subsection 3, to demonstrate that an expedited wind energy development provides significant tangible benefits as required in Title 38, section 484, subsection 10, the applicant for an expedited wind energy development is required to establish a community benefits package valued at no less than \$4,000 per year per wind turbine included in the expedited wind energy development, averaged over a 20-year period. This subsection does not affect the property tax obligations of an expedited wind energy development.

[ 2011, c. 682, §28 (AMD) .]

**3. Community benefits package requirement; exceptions.** The community benefits package requirement under subsection 2:

A. Is waived for any expedited wind energy development that:

- (1) Has an installed capacity of less than 20 megawatts; or
- (2) Is owned by a nonprofit entity, a public entity or a quasi-public entity; and [2009, c. 642, Pt. A, §7 (NEW).]

B. Does not apply to those turbines included in the development that are located:

- (1) In a host community in which the legislative body has voted to waive or reduce the community benefits

package requirement;

(2) On Passamaquoddy Indian territory, as defined in Title 30, section 6203, subsection 6, unless the Passamaquoddy Tribe notifies the primary siting authority that it chooses to be considered a host community for the purposes of this chapter with respect to the expedited wind energy development;

(3) On Penobscot Indian territory, as defined in Title 30, section 6203, subsection 9, unless the Penobscot Nation notifies the primary siting authority that it chooses to be considered a host community for the purposes of this chapter with respect to the expedited wind energy development; or

(4) On Qualifying Band Trust Land unless the Aroostook Band of Micmacs notifies the primary siting authority that it chooses to be considered a host community for the purposes of this chapter with respect to the expedited wind energy development.

The community benefits package requirement applies to any turbines of the development that are not exempted under subparagraph (1), (2), (3) or (4). [2009, c. 642, Pt. A, §7 (NEW) .]

Nothing in this subsection limits a host community's authority to require an expedited wind energy development to enter into a community benefit agreement and to fulfill its property tax obligations.

[ 2009, c. 642, Pt. A, §7 (NEW) .]

**4. Community benefit agreement payments to counties.** When generating facilities of an expedited wind energy development are located within an unorganized or deorganized area other than within a plantation, community benefit agreement payments provided to the county as the host community in accordance with this section may be used for projects and programs of public benefit located anywhere within that county.

[ 2009, c. 642, Pt. A, §7 (NEW) .]

**5. Promoting economic development and resource conservation; assistance to host communities.** To the extent practicable within existing resources, the Department of Economic and Community Development, the Governor's Energy Office and the Governor's Office of Policy and Management shall provide, upon the request of a host community, assistance for the purpose of helping the host community maximize the economic development and resource conservation benefits from tax payments and payments made pursuant to a community benefit agreement or a community benefits package in connection with expedited wind energy developments. As part of this assistance, the department and the Department of Economic and Community Development shall support host communities in identifying additional funding and developing regional economic and natural resource conservation strategies.

[ 2011, c. 655, Pt. DD, §15 (AMD); 2011, c. 655, Pt. DD, §24 (AFF) .]

#### SECTION HISTORY

2007, c. 661, Pt. A, §7 (NEW). 2009, c. 642, Pt. A, §7 (AMD). 2011, c. 655, Pt. DD, §§14, 15 (AMD). 2011, c. 655, Pt. DD, §24 (AFF). 2011, c. 682, §§27, 28 (AMD).

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## EXHIBIT 11

**5 §195. OPINIONS ON QUESTIONS OF LAW**

The Attorney General shall give his written opinion upon questions of law submitted to him by the Governor, by the head of any state department or any of the state agencies or by either branch of the Legislature or any members of the Legislature on legislative matters. [1975, c. 771, §48 (RPR).]

## SECTION HISTORY

1973, c. 585, §§11,12,14 (AMD). 1973, c. 711, §3 (AMD). 1975, c. 771, §48 (RPR).

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**EXHIBIT 12**

**Reserved**

**EXHIBIT 13**

Reserved

**EXHIBIT 14**

*Exhibit 14 Not Admitted*

EXHIBIT 15  
[Proposal to Commissioners]

**“Dave Fowler First Wind:** Mr. Fowler presented the commissioners with a picture of the Bull Hill Wind Farm taken in October 2012. Expansion of the Bull Hill TIF district, to include the Hancock Wind Farm project, was discussed. Mr. Fowler offered ‘something like the Bull Hill project.’ Commissioner Joy suggested the inclusion Community Benefit funds which benefit county wide projects. Mr. Fowler discussed the importance of keeping Community Benefit funds local. Eastbrook has a Community Benefit agreement connected with the Bull Hill project. The Hancock project has agreements with Eastbrook, Waltham, Aurora and Osborne. The blueprint for TIF’s would expand due to the inclusion of the Hancock project. A DEP amendment would be needed. DEP has taken jurisdiction of most of the application process. LUPC has to weigh in on the DEP process. The second DEP public meeting will be held at the Airline Community School on June 6<sup>th</sup> at 6:00 p.m. Commissioner Blasi questioned ‘why didn’t a public hearing occur for the Notice of Certification on Hancock.’ Mr. Fowler stated, to his knowledge, there was no request and no request to DEP as well. Mr. Fowler will submit paperwork documenting changes in reimbursement fee. Once received, Attorney Stumpfel will be contacted to work with Bernstein Shur on an updated Community Benefit and TIF amendment.”

COMMISSIONER AGENDAS & MINUTES, June 4, 2013:  
Posted July 12, '13 at:

<http://co.hancock.me.us/site/index.php/2013-02-25-17-47-13/meeting-minutes/272-june-4-2013-crm>