

STATE OF MAINE  
DEPARTMENT OF ENVIRONMENTAL PROTECTION



PAUL R. LEPAGE  
GOVERNOR

PATRICIA W. AHO  
COMMISSIONER

MEMORANDUM

TO: The Board of Environmental Protection

FROM: Dan Courtemanch, Project Manager and Mark Bergeron, Division Director, Division of Land Resource Regulation, Bureau of Land and Water Quality

RE: Appeal filed by Friends of Maine's Mountains Appeal of Site Location of Development Law and Natural Resources Protection Act Approval, #L-25973-24-A-N/L-25973-TG-B-N for the Bingham Wind Project

DATE: March 5, 2015

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**Statutory and Regulatory References:** The applicable statutory and regulatory framework for the issues raised in this appeal are the Site Location of Development Law (Site Law), 38 M.R.S. §§481 et seq, Site Location of Development Rules (Chapters 372, 373 and 375); the Maine Wind Energy Act (WEA) 35-A M.R.S. §§3401-3457; and the Natural Resources Protection Act, 38 M.R.S. §§480 et seq. The Site Law contains standards for financial capacity, scenic character and wildlife and fisheries. The WEA sets forth the licensing criteria specific to applications for an expedited wind energy project, and contains standards for scenic character relating to wind projects, decommissioning and tangible benefits. The Natural Resources Protection Act contains standards pertaining to wildlife impacts. The Site Law rules interpret and elaborate on the Site Law criteria. Procedures for appeals before the Board are outlined in the Department's Rules Concerning the Processing of Applications, Chapter 2 §24.

**Location:** The turbine portion of the project will be located in the Town of Bingham, Mayfield Township and Kingsbury Plantation. The turbines will be placed on Johnson Mountain and on unnamed ridges and hills in the vicinity of State Route 16. The operations and maintenance (O&M) building and the project substation will be located in Mayfield Township. The project's transmission line will extend from the substation in Mayfield Township through Kingsbury Plantation and the Town of Abbot, and will connect to an existing Central Maine Power substation in the Town of Parkman.

**Procedural History and Description:** On April 19, 2013, Blue Sky West, LLC and Blue Sky West II, LLC filed applications under the Natural Resources Protection Act and Site Law for a permit to construct a 62 wind turbine, up to 206 megawatt (MW), wind energy development. Included in the development will be new and upgraded access roads, turbine pads, meteorological tower, operations and maintenance building, substation and a 17 mile long transmission line.

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The Department held public meetings on the proposed project on July 22, 2013 and February 12, 2014. A draft Department Order was issued for public comment on August 27, 2014.

On September 8, 2014, the Department approved the project.

A timely appeal was filed by the Friends of Maine's Mountains on October 6, 2014.

The Board also received a timely appeal of the Department's licensing decision from Alice McKay Barnett. On October 28, 2014, the licensee filed a motion to dismiss Ms. Barnett's appeal arguing that Ms. Barnett had not demonstrated a particularized injury as a result of the licensing decision and therefore lacked standing to bring an appeal. Following a review of the record, the Board Chair found that Ms. Barnett had not demonstrated that she was an "aggrieved person" and, in accordance with provisions of Chapter 2 §24(A), dismissed the appeal.

### **Environmental Issues:**

1. **FINANCIAL CAPACITY:** The appellant contends that the licensee did not meet the Department's financial capacity standard. In its appeal, it asserts that that the licensee's parent company (First Wind) is losing money at a rate of \$11 million per month. In addition, it asserts that a more rigorous financial capacity test is required. Lastly, it asserts that the wording in the Department Order allows the licensee to start construction prior to demonstration of final financial capacity, despite the requirements of Special Condition #5.

Under the Site Law, an applicant is required to demonstrate that it has the financial capacity to develop the project in a manner consistent with State environmental standards. The Site Law gives the Commissioner the discretion to issue a permit with a condition requiring an applicant to demonstrate evidence of final financial assurance prior to commencing construction.

As part of the application materials, the licensee submitted a plan for how the project will be financed. The financing for the project will include a combination of equity and third party debt financing. In addition, the licensee submitted a letter from RBS Securities, Inc. indicating that the licensee will likely be able to obtain financing for the project.

Based on this information, the Department determined that the financial assurances provided by the licensee met the financial capacity in the Site Law provided that prior to the start of construction, the licensee demonstrates that it has obtained financing for the project. Furthermore, the special condition attached to the Department Order clearly does not allow the licensee to start construction until it has demonstrated that it has obtained financing. The appellants also submitted comments during the Department's review of the application stating that the Department should require a more rigorous financial capacity test but did not indicate what that test should entail. The Department's review of the information submitted together with the condition on the permit provide adequate financial assurance and are consistent with the financial capacity test that is contained in the Site Law.

The Department recommends that the Board uphold the Department's finding that the licensee demonstrated adequate financial capacity to construct and operate the project.

2. SCENIC CHARACTER: The appellant asserts in its appeal that the Department should have assessed the cumulative scenic impacts on the Appalachian Trail from this project, the Kibby Wind Project, Roxbury Wind Project and Spruce Mountain Wind Project.

The WEA requires the Department to determine whether a project will significantly compromise views from a Scenic Resource of State or National Significance (SRSNS), such that the development will have an unreasonable adverse effect on scenic character or existing uses related to scenic character of the SRSNS. Furthermore, the WEA states that the project's effect on a SRSNS that is located greater than eight miles from the generating facility shall be considered insignificant.

The licensee submitted a Visual Impact Assessment (VIA) and the Department had the VIA peer reviewed by Scenic Quality Consultants (SQC). The Department and SQC concurred with the licensee's VIA, in that the project will not result in an unreasonable adverse effect on any SRSNS. Also the Department concurred with both the licensee and SQC that the project will not be visible from the Appalachian Trail.

The project is located approximately 40 miles from the Kibby Wind Project, which is the closest wind project to the Bingham project. In addition, there are no SRSNS that are located within eight miles of the Bingham project and any other wind project, so the Department concluded there would be no cumulative scenic impact from other wind energy projects.

The Department recommends that the Board uphold the Department's finding that the project will not result in an undue adverse impact on any SRSNS.

3. WILDLIFE AND FISHERIES: The appellant asserts that the Department did not adequately assess the project's impact on Bald Eagles, Golden Eagles and bats. The appellant also asserts that the special condition in the Department's Order requiring modified operation or deterrent for avian species will not provide adequate protections for those species. The appellant has not provided any details or pointed to any evidence in the record specifying evidence of the anticipated impact or how the Department erred in its decision.

The licensee conducted numerous studies of the project area to determine if the project would have an adverse effect on wildlife. These studies were reviewed by the Maine Department of Inland Fisheries and Wildlife (MDIFW). In MDIFW's review comments, it commented that it does not anticipate an adverse impact on wildlife provided that the licensee curtailed operations to limit the impact on bats and conducted three years of bird and bat mortality monitoring. Special conditions were incorporated into the Department Order to address MDIFW's comments. As an added level of protection for birds and bats, the Department incorporated a special condition into the permit that required the licensee to modify operations at the facility if the Department determined that one or more turbine(s) is having an adverse impact on birds or bats.

Based on MDIFW's comments and the special conditions incorporated into the Order, the Department found that the project would not result in an unreasonable adverse impact on birds or bats.

The Department recommends that the Board uphold the Department's finding that the project will not result in an undue adverse impact on wildlife or fisheries.

4. DECOMMISSIONING: The appellant asserts in its appeal that the licensee underestimated the cost of decommissioning the project. The appellant argues that the licensee's decommissioning plan used the wrong type of scrap steel, underestimated the cost of scrap steel, due to the market's volatility, and assumed an unrealistic amount of time to dismantle the turbines into scrap sizes. These concerns were articulated by the appellant in comments submitted during the Department's review of the application, but the appellant did not submit specific, conflicting information in support of these contentions.

The licensee submitted a decommissioning plan prepared by a professional engineering firm with knowledge in the construction of wind power projects. The licensee's plan estimates it will cost approximately \$1,605,410 to decommission the project if Vestas turbines are used and \$1,722,510 if Siemens turbines are used. These estimated costs take into account scrap steel value.

The Department determined that the applicant's decommissioning proposal met the applicable standard. The Department's submission requirements for applications allow for an applicant to include the salvage value of project components to partially offset the cost of decommissioning the project. The Department required the licensee to fully fund the decommissioning plan prior to the start of construction. To address concerns about the possibility of changing costs, the Department incorporated a special condition to require the licensee to re-evaluate the cost of decommissioning the project at years five, ten and fifteen. The licensee must also adjust the decommissioning fund appropriately to take into account any change in the cost to decommission the project. In addition, The Department recommends that the Board uphold the Department's finding that the licensee's decommissioning plan will provide for the adequate decommissioning of the project.

5. TANGIBLE BENEFITS: The appellant asserts that the Department erred in its evaluation of tangible benefits by not assessing the project's net tangible benefits (tangible benefits minus tangible impacts).

The WEA specifies that a project must provide a community benefits package worth at least \$4,000 per turbine per year for 20 years. The licensee entered into community benefit agreements with the Towns of Bingham (\$106,900/year), Moscow (\$20,000/year), Abbot (\$20,000/year), and Parkman (\$20,000/year). In addition, the licensee proposed to make annual payments to Kingsbury Plantation (\$176,000/year). All of the above payments will be made annually for 20 years. Annual payments made to Bingham, Moscow, Abbot, Parkman, and Kingsbury Plantation as part of the Community

Benefits Agreements total \$5,530 per turbine per year for 20 years, which exceeds the \$4,000 per turbine per year for 20 years required in 35-A M.R.S. § 3454(2).

The Department did not review the project's net tangible benefits as the appellant asserts should have been done. The WEA directs the Department to assume that energy and emissions-related benefits will accrue from the project. The law directs that the Department simply make findings pertaining to the types of tangible benefits listed in the WEA, and the law does not envision a weighing of potential impacts, such as to wildlife or scenic character, against the tangible benefits. The proposed project is assessed as to whether it meets each criterion independently and if any one criterion is not met the permit application would be denied.

The Department recommends that the Board uphold the Department's finding that the project will provide significant tangible benefits as required by the WEA.

**PUBLIC HEARING:** The appellant requests that the Board hold a public hearing on this appeal. In its appeal, it stated that there is "credible conflicting technical information regarding the licensing criteria" to warrant a public hearing. However, the appeal does not state what the credible conflicting technical information is, what evidence it would present at a hearing, what standard it would relate to, or how holding a public hearing will assist the Board in its decision making process.

During the licensing process, the Department held two public information meetings in the vicinity of the project, to give the public a chance to provide information to be included in Department Record.

The Board has the discretion to hold a public hearing on an appeal. The Department recommends that the Board finds that the appellant did not submit any credible conflicting technical information, or an offer of what it would submit, to warrant a public hearing.

**Department Recommendation:** The Department recommends that the Board deny the appellant's appeal and affirm the Department's decision to approve the Bingham Wind Project in Department Order #L-25973-24-A-N/L-25973-TG-B-N.

**Estimated Time of Agenda Item:** 2 Hours

