

# Rule-Making Fact Sheet

(5 MRSA §8057-A)

AGENCY: Department of Conservation

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CHAPTER NUMBER AND RULE TITLE: Proposed 04-056 Chapter 3, "Designated scenic viewpoints of state or national significance, located on Public Reserved Land or on a publicly accessible trail used exclusively for pedestrian use, for consideration in the permitting of expedited wind energy development."

STATUTORY AUTHORITY: Title 35-A M.R.S.A. section 3457(1) (PL 2007, Chapter 661)

DATE AND PLACE OF PUBLIC HEARING: January 12, 2010, 10am, Maine Department of Conservation, Harlow Building Room 109, Augusta

COMMENT DEADLINE: January 25, 2010

PRINCIPAL REASON OR PURPOSE FOR PROPOSING THIS RULE: The Department of Conservation (DOC) was directed by "An Act to Implement Recommendations of the Governor's Task Force on Wind Power Development", PL 2007, Chapter 661, Effective April 18, 2008 (the "Act") to adopt this rule. The Act recognizes a potential impact of wind energy development on scenic character from certain views. The Act requires the DOC to designate scenic viewpoints of state or national significance on public reserved lands and publicly accessible pedestrian trails, to be considered in the context of wind energy development in the expedited permitting area. Once the rule is adopted, if an expedited wind energy development is proposed up to 3 miles from a designated viewpoint, the applicant would be required to provide a visual impact assessment to the primary siting authority. If the development is proposed between 3 and 8 miles of the scenic viewpoint, a visual impact assessment may be required if the primary siting authority finds substantial evidence that it is needed to determine significant adverse impact to the scenic resource.

ANALYSIS AND EXPECTED OPERATION OF THE RULE: The DOC included in this rule scenic viewpoints of state or national significance on public reserved lands and publicly accessible pedestrian trails within or near the expedited permitting area. As directed by the Act, codified at 35-A M.R.S. § 3451(9), however, the DOC did not include viewpoints of state or national significance that are otherwise designated by law. Thus, DOC did not include viewpoints on publicly accessible pedestrian trails located in the coastal area as such viewpoints are governed by 35-A M.R.S. § 3451(9)(H) and 35-A M.R.S. § 3457, which direct the State Planning Office (SPO) to inventory the scenic resources of state or national significance that are located in the coastal area. Further, DOC did not include viewpoints on public reserved lands or publicly accessible trails located on rivers or streams or great ponds, as such viewpoints are governed by 35-A M.R.S. §§ 3451(9)(D) and (9)(E), and similarly, DOC did not include viewpoints on publicly accessible trails located on state parks lands, as such viewpoints are governed by 35-A M.R.S. § 3451(9)(C) and 12 M.R.S. § 1801(7) & § 1804(2). Thus this rule does not designate viewpoints on state park lands, including but not limited to the Mount Kineo parcel in Kineo Township in Piscataquis

County; the Concord Pond parcel in the Town of Woodstock in Oxford County; and Speckled Mountain in the Towns of Sumner and Peru in Oxford County.

FISCAL IMPACT OF THE RULE: This rule imposes no direct cost or other economic burden on municipalities.

## **DRAFT RULE**

**04 DEPARTMENT OF CONSERVATION**

**056 CONSERVATION - GENERAL**

**Chapter 3: DESIGNATED SCENIC VIEWPOINTS OF STATE OR NATIONAL SIGNIFICANCE, LOCATED ON PUBLIC RESERVED LAND OR ON A PUBLICLY ACCESSIBLE TRAIL USED EXCLUSIVELY FOR PEDESTRIAN USE, FOR CONSIDERATION IN THE PERMITTING OF EXPEDITED WIND ENERGY DEVELOPMENT**

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### **SECTION 1. APPLICABILITY**

As provided by PL 2007, c. 661, codified at 35-A M.R.S. § 3451(9) & § 3457(1), certain viewpoints are designated in this rule for consideration solely in the context of wind energy development sited within the expedited permitting area and up to 3 miles or up to 8 miles away from the designated viewpoints. For the purposes of this rule, Public Reserved Land is limited to Public Reserved Land owned in majority interest in fee by the State of Maine, Department of Conservation, Bureau of Parks and Lands.

### **SECTION 2. DESIGNATED SCENIC VIEWPOINTS OF STATE OR NATIONAL SIGNIFICANCE ON PUBLIC RESERVED LAND THAT ARE NOT OTHERWISE DESIGNATED AS SUCH BY LAW**

1. All viewpoints within 1000 feet of the Atlantic Ocean at high tide within the Cutler Unit (also known as the Cutler Coast or the Bold Coast Unit) which is located in the Town of Cutler in Washington County; and
2. All viewpoints in the Donnell Pond and Tunk Lake Units which are located in T10 SD, T7 SD, T9 SD, Town of Franklin, and Town of Sullivan in Hancock County.
3. All viewpoints in the Mahoosuc Unit which is located in Andover West Surplus Twp, Grafton Twp, Riley, Twp, and the Town of Newry, all in Oxford County;
4. All viewpoints in the T6 North of Weld Unit (also known as the Tumbledown Mountain Unit) which is located in T6 North of Weld and the Town of Phillips in Franklin County;

5. All viewpoints in the Mount Abram Unit which is located in Mount Abram Twp and Salem Twp in Franklin County;
6. All viewpoints in the Bald Mountain Rangeley Unit which is located in the Town of Rangeley in Franklin County;
7. All viewpoints in the Bigelow Preserve which is located in Wyman Twp, Bigelow Twp, the Town of Carrabassett Valley, and Dead River Twp in Somerset and Franklin Counties;
8. All viewpoints in the Upper Enchanted Township Unit (also known as the Coburn Mountain parcel) which is located in Upper Enchanted Township in Somerset County;
9. All viewpoints in the Little Moose Unit which is located in Big Moose Twp and Moosehead Junction Twp in Piscataquis County;
10. All viewpoints in the Deboullie Unit which is located in T15 R9 in Aroostook County;
11. All viewpoints in the Kennebec Highlands Unit which is located in the Towns of Vienna, Mount Vernon, Belgrade, Rome, and New Sharon in Kennebec and Franklin Counties.

**SECTION 3. DESIGNATED SCENIC VIEWPOINTS OF STATE OR NATIONAL SIGNIFICANCE ON A TRAIL OWNED BY THE PUBLIC OR TO WHICH THE PUBLIC HAS A LEGAL RIGHT OF ACCESS THAT IS USED EXCLUSIVELY FOR PEDESTRIAN USE THAT ARE NOT OTHERWISE DESIGNATED AS SUCH BY LAW**

1. All viewpoints on the Appalachian Trail;
2. All viewpoints in the State of Maine which are located in the White Mountain National Forest in Oxford County;
3. All viewpoints on land owned by the Appalachian Mountain Club or its affiliates and subsidiaries or successors or assigns in Bowdoin College Grant West (T8 R10 NWP), Bowdoin College Grant East (T7 R10 NWP), T7 R9 NWP, and Shawtown Township (TA R12 WELS), all in Piscataquis County, where the public has a legal right of public access;
4. All viewpoints on the Grafton Loop Trail, so-called, in the Town of Newry or the Town of Andover in Oxford County, where a trail segment is owned by the public or where the public has a legal right of public access, in addition to those viewpoints along the trail designated herein at Section 2 (3).