

BROWN & BURKE
ATTORNEYS AT LAW
85 Exchange STREET - P. O. BOX 7530
PORTLAND, MAINE 04112
www.brownburkelaw.com

TELEPHONE (207) 775-0265
FACSIMILE (207) 775-0266

RUFUS E. BROWN
M. THOMASINE BURKE

February 10, 2010

VIA E-Mail and U.S. Mail

Samantha Horn-Olsen,
Planning Division Manager
Land Use Regulation Commission
22 State House Station
Augusta, ME 04101

*RE: Comments of Friends of the Boundary Mountain on
Draft Guidance Document for Implementation of the Three
Statutory Criteria for Expanding the Expedited Permitting Area*

Dear Ms. Horn-Olson:

Friends of the Boundary Mountain ("FBM") has the following comments on the Draft Guidance Document dated January 25, 2010, being developed to assist the Land Use Regulatory Commission ("LURC") in implementing the delegation by the Legislature to LURC in PL 2007, Chapter 661 of authority to expand the Expedited Permitting Area in accordance with the three criteria set forth in 35-A M.R.S.A. §3453.

As a threshold matter, FBM takes the position that there is serious doubt whether the Legislature can make such a delegation of what is essentially a raw legislative power to a state agency consistent with the Separation of Powers provisions of the Maine Constitution. The first sentence of the Draft Guidance Document under the first criterion acknowledges this concern to a limited extent; FBM's view is that the concern applies to the entire issue of LURC approved expansions. In addition, FBM would remind you and LURC that if the delegation is constitutional, it must be accompanied by specific guidelines, which was not done by the Legislature and that this issue of overly broad legislative delegation to LURC is exacerbated if LURC proceeds without binding rules promulgated in accordance with the Maine Administrative Procedure Act, 5 M.R.S.A. §8001, et seq. Accordingly, once again we urge LURC to adopt rules, not guidelines. *See, Uliano v. Board of Environmental Protection*, 2009 ME 89. 977 A.2d 400.

Subject to the foregoing, FBM has no comment on the Draft Guidance Document's treatment of the first two of the three statutory criteria. However, FBM believes that the Draft Guidance is deficient in its treatment of the third criterion, namely, that LURC "must determine

that the proposed addition to the expedited permitting area:

Would not compromise the principal values and goals
identified in the comprehensive land use plan adopted by the Maine
Land Use Regulatory Commission pursuant to Title 12, §685-C.

The Draft Guidance Document gives no substantive content to this criterion. The principal values and goals of LURC's Comprehensive Land Use Plan ("CLUP") are sweepingly general and, in areas critical to the issue of windpower siting, are conflicting. FBM urges LURC to give more guidance in this important area.

1. The Broad Goals of CLUP.

The Broad Goals and Policies of CLUP are stated to be threefold: (1) to "support and promote the management of all resources, based on principles of sound planning and multiple uses," the "separation of incompatible uses" and the preservation of "outstanding ... natural resource values of the jurisdiction" (2) to "[c]onserve, protect and enhance the natural resources of the jurisdiction" and (3) to "[m]aintain the natural character" of areas "having significant natural values and primitive recreational opportunities." CLUP at 134. The emphasis here is to conserve and protect and develop in a compatible way.

2. The Specific Goals of the Commission.

The themes of conservation, protection and compatible uses are carried over to the Specific Goals and Policies of the Commission in Chapter 5 of CLUP. Under Natural Resources (Section I), the goals for Mountain Resources are to "[c]onserve and protect the values of high mountain areas from undue adverse impacts." CLUP at 137. [Emphasis added] The policies are to "[i]dentify and protect high mountain resources with particularly high natural resource values or sensitivity which are not appropriate for development." CLUP at 138. [Emphasis added.] Similar conservation and protection goals and policies are set for related recreational resources, CLUP at 138, wildlife and fisheries, CLUP at 139, and scenic resources, CLUP at 139. Under energy resources, the policies are stated to be to "prohibit energy developments and related land uses in areas identified as environmentally sensitive where there are overriding, conflicting environmental and other public values requiring protection," and to "[a]llow new or emerging technologies which do not have an undue adverse impact on existing uses and natural resources." CLUP at 136. Similarly under Development (Section II), CLUP states that the goal is to "[g]uide the location of new development in order to protect and conserve ... natural resources, to ensure compatibility of land uses" CLUP at 140.

3. Issue Discussions of Mountain Resources and Windpower.

Each of the Specific Goals and Discussions in CLUP cross reference Issue Discussions in CLUP. The Issue Discussions for Mountain Resource Issues (CLUP at 56-60) and Energy Resource Issues (CLUP at 40-41) are particularly instructive to the task presently before LURC. It is here that CLUP acknowledges a conflict between the goals of the development of wind power and goals and values of conservation and protection of valuable mountain resources and the potential incompatibility between the two. It is also here where CLUP gives direction to LURC on how to manage this conflict.

Even though the existing CLUP is several years old, it still recognized that “[w]indpower is the subject of considerable interest in Maine.” CLUP at 40. However, CLUP also recognized that “[l]arge windpower installations ... have the potential to conflict with other values of [LURC’s] jurisdiction, *particularly those associated with mountain areas.*” CLUP at 40. More specifically, CLUP explains that LURC created the Mountain Area Protection (P-MA) zone for lands at elevations above 2700 feet to “protect the fragile environment and values associated with mountain areas”. CLUP at 56. The P-MA zone “preserves mountain areas for their scenic and remote values, wildlife habitat, recreational opportunities and other uses.” Id. What is repeatedly stated and emphasized in CLUP is that “[m]ountains and the scenic, natural, recreational, economic and other values they possess are limited resources in Maine.” CLUP at 58. To state the obvious, CLUP continues by recognizing the threats to the value of mountain resources by development: “Mountain development carries a significant risk of erosion due to steep slopes and high erosion potential of many mountain soils. It also threatens to diminish many of the values associated with mountain areas, including scenic qualities....” The inevitable consequence of these values, according to CLUP, is that “proposed uses of mountain areas must be carefully evaluated to ensure that important values associated with these areas will be preserved for this and future generations.” CLUP at 58.

It is at this point of CLUP, in discussing the conflict between the goals of windpower and the values of the limited mountain resources, that guidance is given on how best to avoid “compromise[ing]” the “principal values and goals” of CLUP, to use the statutory language of Section 3453. CLUP states that while many of the mountain areas in LURC jurisdiction have “excellent wind energy resources” the “wind turbines and associated infrastructure have the potential to *compromise the values* the P-MA zone is designed to protect.” CLUP at 58. [Emphasis added.] Therefore, according to CLUP, in light of the limited supply of mountain areas and their high value, “it is unlikely that all such areas will be considered suitable for ... development by the Commission.” Id. The ultimate solution, according to CLUP, the “most reasonable approach to windpower siting issues,” according to CLUP, is to “conduct a comprehensive study of where [windpower development is] most and least appropriate” that would include “a broader study to identify high mountain resources with particularly high resource values which are not appropriate for most development. The Commission believes that such a study is best conducted as part of a statewide effort.” CLUP at 59.

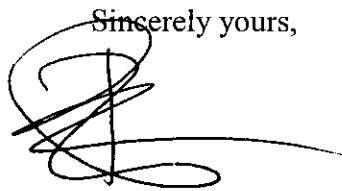
Samantha Horn-Olsen
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Pg.4

This approach clearly makes sense from a long terms planning standpoint. It should include consideration of off shore siting. LURC would be well advised to use existing state resources and perhaps a consultant to design and implement the study, using objective criteria. LURC already has a model for such a study in the Wildlands Lake Assessment. It recognizes conflict between the principal values and goals of CLUP and the objectives of windpower and offers a logical path to a solution. Through the comprehensive study recommended by CLUP, the limited mountain resources would be identified and prioritized and preserved while promoting wind power at the same time. This is how LURC should proceed or at least put in motion such a comprehensive study. In the short term, FBM urges LURC to expand the Draft Guidance Document as follows:

4. Proposed Short Term Additions to the Draft Guidance Document under the Third Criterion.

The Draft Guidance Document should be expanded, at a minimum, to include a requirement that any proposed expansion of the Expedited Permitting Area should include an evaluation of how the high mountain areas that would be negatively impacted by a windpower project compares to other mountain areas of the State in terms of importance of preserving the limited number of valuable high mountainous areas of the State and what alternative siting for expanded wind power projects is available that would protected and preserve the limited inventory of high mountain areas of the State. The petitioner's discussion of alternatives should (i) rigorously explore and objectively evaluate all reasonable alternatives, (ii) address at least three alternatives, (iii) briefly discuss why each alternative was eliminated and (iv) devote substantial treatment of each alternative considered in detail so that LURC may evaluate their comparative merits.

Sincerely yours,

A handwritten signature in black ink, appearing to be 'Rufus E. Brown', with a large, stylized initial 'R' and a long horizontal flourish extending to the right.

Rufus E. Brown

REB/

cc: Marcia Spencer-Famous
Bob Weingarten

Verrill Dana^{LLP}

Attorneys at Law

JULIET T. BROWNE
jbrowne@verrilldana.com
Direct: 207-253-4608

ONE PORTLAND SQUARE
PORTLAND, MAINE 04112-0586
207-774-4000 • FAX 207-774-7499
www.verrilldana.com

February 10, 2010

BY E-MAIL

Chairperson Gwen Hilton and Commissioners
c/o Catherine Carroll
Land Use Regulation Commission
22 State House Station
Augusta, ME 04333-0022

Re: Comments on Draft LURC Guidance

Dear Chairperson Hilton and Commissioners:

On behalf of TransCanada Maine Wind Development Inc. ("TransCanada"), we are providing comments on the draft "Guidelines for the Review of Petitions for the Addition of Lands to the Expedited Permitting Area for Wind Power Development" ("guidance") dated January 25, 2010. We appreciate the challenges the Commission faces in interpreting and applying statutory criteria for the first time but are concerned that the draft guidance will complicate instead of clarify the Commission's review of petitions to expand the expedited area. We believe the statutory criteria are straightforward and can be applied in an efficient manner consistent with the legislative intent of the statute and our comments are directed to that end.

When the Legislature considered and later adopted the recommendations of the Governor's Task Force on Wind Power Development ("Task Force"), it acknowledged that the process for identifying the boundaries of the newly created expedited permitting area located within the State's unorganized or deorganized areas lacked precision. By default, the Task Force often determined expedited permitting boundaries using political boundaries such as township lines. For this reason, the Wind Power Act expressly allows the Commission to consider requests to add a specific location to the expedited area provided a proponent's application satisfies the following statutory criteria:

- 1) the proposed area must involve a logical geographic extension of the currently designated permitting area;
- 2) the addition of a proposed expansion area to the expedited zone is important to meeting the State's goals for wind energy development set forth in 35-A M.R.S.A. § 3404; and
- 3) the addition of a proposed expansion area cannot compromise the principal values and goals of the Commission's Comprehensive Land Use Plan ("CLUP").

If LURC approves a petition to expand the expedited area pursuant to the above-referenced criteria, wind power would be an allowed use in the newly defined area. An applicant would subsequently file a development application for a specific wind power development project.

In June of 2009, TransCanada submitted the first petition to expand the expedited area for review under the Wind Power Act. During the course of that review, the Commission asked for input from Task Force members, legislators, staff and members of the public on how to apply the criteria. The draft guidance was developed in response to that request and our comments follow with respect to each criterion.

Criterion One: Logical Geographic Extension

With respect to the first criterion, the draft guidance states that the Commission “will evaluate the proportion of the project that will fall within the expedited area and any other relevant information.” The Commission will likely also require proponents to specify what percentage of a proposed project lies within the area originally designated as expedited by the Legislature. We think it is critical that the Commission retain flexibility in how it determines whether an applicant has met the test for “logical geographic extension” so that valuable projects that further the State’s energy goals and otherwise meet the statutory test for expansion may be considered by the Commission.

Specifically, we recommend that the Commission determine that a proponent has met the test for establishing logical geographic extension if the proposed permitting area: 1) is contiguous to the expedited permitting area in existence when the Wind Power Act went into effect (April 18, 2008); and 2) represents an extension of a natural geographic feature such as a ridgeline or a series of ridgelines that are located within the existing expedited permitting area. Consideration of a specific percentage of a proposed project that might be located in a potential expansion area goes beyond the language of the statute and is not necessary to determine if this criterion is met.

This is particularly the case if, as the Commission has indicated, it intends to use the rulemaking process to make minor adjustments to the existing expedited area and will not allow additions of broad geographic areas, such as entire townships, etc. Given the Commission’s inclination to make minor tweaks as opposed to wholesale additions to the expedited area, it is unlikely that a disproportionate request for expansion (e.g., 90 % outside of the existing expedited versus 10% inside) would be brought before the Commission or receive approval. Accordingly, we do not see a need for or benefit in an assessment of what percentage of a project would be located in the non-expedited area. Moreover, at the time a petition to expand the expedited area is submitted, an applicant may not know the extent to which a project would be located in the expanded area.

Criterion Two: Important to Meeting the State's Goals

The second criterion requires applicants to demonstrate that a proposed expansion is “important to meeting the State’s goals for wind energy development.” These goals, set forth in 35-A M.R.S.A. § 3404(2), require installed wind energy capacity of at least 2,000 megawatts by 2015 and at least 3,000 megawatts by 2020 and clearly establish the value the Legislature placed on wind energy generation in the State of Maine.

Despite this legislative directive, the draft guidance establishes a balancing test for the second criterion that requires applicants to undertake a cost/benefit analysis of a proposed expansion in order to demonstrate that a project is “important to meeting the State’s goals.” The balancing test requires applicants to submit information related to: 1) the progress the state has made in achieving the goals set forth in section 3404; 2) an assessment of the project’s potential for energy generation; 3) project viability (availability of transmission lines, quality of the wind resource, etc.) and the potential impact to public resources. Instead of clarifying the submission requirements that would assist the Commission’s review, the guidance introduces additional uncertainty as to what type of information will satisfy this balancing test and will require complicated fact finding by the Commission.

There is nothing in the language of section 3404 that suggests balancing is appropriate when assessing whether a proposed expansion satisfies the second criterion. See e.g., Letter dated February 2, 2010 from Senators Bartlett and Gooley and Representative Fitts and MacDonald (discussing legislative intent behind the Wind Power Act). The Commission should reject the proposed balancing test included in the guidance and instead determine that a proponent has met the test for advancing the State’s goals if they can demonstrate: that the State has not met or is not on track to meet the goals set forth in section 3404. We think it makes sense to receive input from the Governor’s Office of Energy Independence and Security (OEIS) in making this determination. In its recent “Report on State Progress Toward Meeting Wind Power Goals,” OEIS calculated that the State of Maine has met 5.17% of its wind power goals based on the 2015 goal. This percentage could rise to 34% if all projects currently in the discussion phase are actually constructed. OEIS determined that Maine would need to bring 253 megawatts of capacity every year, beginning in 2010, in order to meet the 2015 goals. The Task Force acknowledged and the OEIS Report reiterates that the State’s wind energy goals are “ambitious” but are not recommending revision at this time. See OEIS Report on State Progress Toward Meeting Wind Power Goals.

It is clear that the State has not met and is, at least at this time, not on track to meet its 2015 goals. We believe that the Legislature was clear in establishing the value of wind energy and in setting specific goals. As long as Maine has not met these goals, this should be the only factor considered in determining whether a proposed addition is important to meeting same.

Criterion Three: Cannot Compromise the Principal Values of the CLUP

The third criterion requires a proponent to demonstrate that a proposed expansion of the expedited area “would not compromise the principal values and goals of the CLUP.” The guidance document, however, changes the language to require a demonstration that a proposal for expansion be “consistent with the values and goals.” As an initial matter, we think the language of the guidance document should be changed to “compromise” to reflect the statutory language.

In order to satisfy the third criterion, the guidance requires proponents to submit “adequate information and analysis to allow the Commission to determine how the proposed project would generally affect existing uses and resources in the proposed expansion area, and to describe how the proposal is consistent with the principal values and the goals contained in the CLUP.” The Commission should clarify that the type of information required for submission in connection with a petition to expand the expedited area is at a “landscape level” only. Project specific information, including specific resource impacts, are appropriately submitted and reviewed in connection with a development application. At that time, the Commission will evaluate whether a project is consistent with the principal values and goals of the CLUP.

Thank you for your consideration of these comments.

Sincerely,



Juliet T. Browne



February 10, 2010

To: Commissioners, Maine Land Use Regulation Commission
cc: Marcia Spencer-Famous, Catherine Carroll

Re: Joint comments on draft guidance document for expedited area expansion petitions

To the Commission:

The Appalachian Mountain Club, Maine Audubon Society and the Natural Resources Council of Maine submit the following joint comments on the guidance document *Guidelines for the Review of Petitions for the Addition of Lands to the Expedited Permitting Area for Wind Energy Development* (January 25, 2010 draft).

Overall the draft document accurately reflects the concepts suggested to the Commission by our organizations in our joint letter to the Commission of December 11, 2009, as well as by the diverse group of invited panelists that addressed the Commission on December 16, 2009. We appreciate that the staff found these ideas of merit.

We offer the following specific suggestions to further refine the guidance on the three criteria:

Criterion 1

We strongly concur with the draft guidance that the petition process should not be used to add new sites to the expedited area, but should be limited to adjusting the expedited area boundary around sites that lie partially within and partially outside of the area. We also support the concept that sequential petitions should not be allowed, that is, that an expansion area granted by petition should not be used as the basis to grant further expansion beyond the original petition.

We do not recommend including a specific percentage (as suggested by the optional language in brackets) due to the fact that it may be an incentive to developers to expand that portion of the project area within the expedited area beyond that which is realistically or economically developable in order to ensure that the percentage requirement is met (essentially “gaming the system”). However, we agree that some further guidance is warranted. We support the language suggested by one of the Commissioners to the effect that a “significant” or “substantial” portion of the suitable project area be within the expedited area. This would allow the Commission flexibility to make appropriate judgments about individual cases. However, the guidance document must make clear that it is not appropriate to add by petition project areas that lie

substantially outside the expedited area. Merely having a small “toehold” within the expedited area must not provide a sufficient basis for granting an expansion petition.

Criterion 2

As we articulated in our previous comments on the statutory criteria, we believe the **primary** interpretation of this criterion relates to Maine’s overall “progress toward achieving the state goals.” An **additional** consideration in considering a proposed expansion’s “importance” is the relationship between benefits and impacts. Although this consideration is articulated in the draft document, we suggest—for the reasons described below—the second and third bullets be replaced with the following:

- The relative value or productivity of the wind resource in the petition area;
- Any opportunity the project presents to allow for greater utilization of existing infrastructure.

We do not believe this criterion calls for a detailed or rigorous cost-benefit analysis (which might be implied by the fourth bullet.) Such an analysis is likely to be unnecessarily burdensome on the Commission and other parties, especially since a petition for expansion will not contain precise information about benefits and costs.

In addition, the Wind Power Act was clear about some of the public benefits of and need for wind power. We recommend that the guidance document make reference to those legislative findings and avoid evaluations or questions that rehash those matters. For example, the Commission should avoid protracted investigations into the economic viability of wind power, the existence of emission or energy benefits, or the general desirability of further wind development in Maine. Instead we support a set of guiding questions or characteristics that will help the Commission and other parties identify petitions which offer a relatively good (or bad) balance of impacts and benefits.¹

Finally, we accept that LURC may seek expert opinion from the Public Utilities Commission. However, it must be made clear that such expert opinion would be limited to providing the background information that LURC would use to make its decision. The PUC has neither the statutory mandate to consider, nor the expertise to evaluate, the balance between renewable energy benefits and potential natural resource impacts. Although we respect the fact that the Commission may feel challenged to evaluate the technical aspects of those renewable energy benefits—thus the justification for seeking PUC opinions and the desirability of sharing expertise across agencies—the responsibility for striking that balance lies with LURC.

¹ Thus asking whether or not a project might allow for efficient use of existing transmission infrastructure should not preclude a project that will require a new transmission line, nor should it require a detailed analysis of how much capacity is on existing lines. Asking whether or not the land has good wind productivity should not preclude a project with average winds, nor should it require a detailed analysis of wind speeds and capacity factors.

Criterion 3

We believe the guidance provided for this criterion is appropriate. We are strongly supportive of the concept implied in the last sentence of this section – that while the statute specifically refers only to the “principal values and goals” of the CLUP, the entire document (and most importantly the policies set forth in a range of areas) informs how the Commission interprets its responsibilities relative to the principal values and goals. Maintaining this concept in the final guidance document is critical.

In addition, we believe that this criterion is the appropriate place for the Commission to consider the cumulative impact of the proposed expansion in combination with other existing or proposed projects. As the second criterion examines the cumulative benefit of the proposed project toward meeting the state’s renewable energy goals, it is appropriate to balance this with an examination of the cumulative impact of multiple projects.

We thank you for the opportunity to present these comments. If you have any questions please feel free to contact us.

Sincerely,



David Publicover
Appalachian Mountain Club



Jody Jones
Maine Audubon Society



Dylan Voorhees
Natural Resources Council of Maine



3 State House Station
Augusta, ME 04333-0003
(207) 287-1540

February 2, 2010

Chairman Bart Harvey and Commissioners
c/o Catherine Carroll
Land Use Regulation Commission
22 State House Station
Augusta, ME 04333-0022

Dear Chairman Harvey and LURC Commissioners:

We have reviewed the draft "Guidelines for the Review of Petitions for the Addition of Lands to the Expedited Permitting Area for Wind Power Development" ("draft guidance") (dated January 25, 2010) and are concerned that the guidance (i) is contrary to the express language and legislative intent of An Act to Implement Recommendation of the Governor's Task Force on Wind Power Development (the "Wind Power Act"), and (ii) will impede the State's progress in meeting the important goals set forth in the Act.

The Wind Power Act expressly allows the Commission to consider requests to add a specific location to the expedited area provided the request satisfies the following statutory criteria: 1) the proposed area must involve a logical geographic extension of the currently designated permitting area; 2) the addition of a proposed expansion area to the expedited zone is important to meeting the State's goals for wind energy development set forth in 35-A M.R.S.A. § 3404; and 3) the addition of a proposed expansion area cannot compromise the principal values and goals of the Commission's Comprehensive Land Use Plan ("CLUP").

The draft guidance, however, establishes a balancing test for the second criterion that is at odds with the clear language of the statute. Specifically, as described in the guidance document, "the Commission interprets the phrase 'important to meeting the state goals for wind energy development' to mean that projects that have a limited potential for energy generation and disproportionate impacts on public resources in the state are not important to meeting the state goals for wind energy development." The guidance document then lists four additional criteria that the Commission should balance when considering a request to expand the expedited permitting area, including an assessment of the project's potential for energy generation, the viability of the project (availability of transmission lines, quality of the resource, etc.), and the impact to public resources. There is nothing, however, in the language of section 3404 that requires or allows the Commission to undertake a balancing test or evaluate these factors when assessing

whether a proposed expansion is “important to meeting the State goals for wind energy development established in section 3404.” Section 3404(2) establishes the wind energy goals of at least 2,000 megawatts of installed wind energy capacity by 2015 and at least 3,000 megawatts by 2020. As of February 1, 2010, Maine had permitted or installed less than 500 megawatts (MW) of commercial wind energy and it is clear that the State is not currently on track to meet the goal of 2,000 MW of installed wind energy capacity by 2015. While the Task Force acknowledged and the Legislature understood that the energy goals set forth in section 3404 were “ambitious,” we also collectively determined that they are “realistic, achievable and necessary” if political subdivisions, agencies and public officials take “every reasonable action to encourage the attraction of appropriately sited development related to wind energy.” 35-A M.R.S.A. § 3404(1). As long as the goals set forth in section 3404 have not been met, which is currently the case, the second criterion has been satisfied and *no further analysis should be undertaken*.

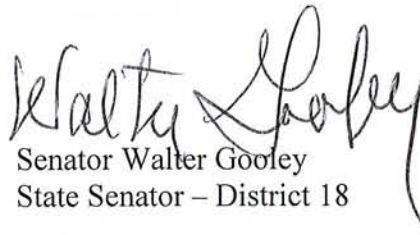
With respect to the first criterion, we believe that a proponent has met the test for establishing logical geographic extension if the proposed area to be added to the expedited permitting area is: 1) contiguous to the expedited permitting area in existence as of April 18, 2008, and; 2) represents an extension of a natural geographic feature such as a ridgeline or series of ridgelines that are within the existing expedited permitting area. These are the only relevant criteria and consideration of the number of turbines or percentage of a project that might be located in the area goes beyond the clear language of the statute.

We appreciate the time and effort the Commission and LURC staff have undertaken in the development of this guidance document; however, as members of the Task Force and legislators involved in passage of the Wind Power Act, we wanted to share our perspective on how these standards should be applied.

Best Regards,



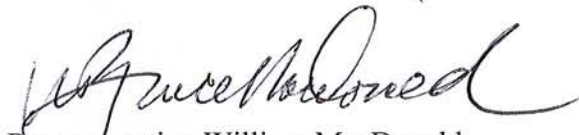
Senator Phil Bartlett
Senate Majority Leader



Senator Walter Gooley
State Senator – District 18



Representative Stacey Fitts
House District - 29



Representative William MacDonald
House District - 61



3 State House Station
Augusta, ME 04333-0003
(207) 287-1540

February 10, 2010

Chairperson Hilton and Commissioners
c/o Catherine Carroll
Land Use Regulation Commission
22 State House Station
Augusta, ME 04333-0022

Dear Chairperson Hilton and Members of the Commission,

After reviewing the LURC staff recommendation to the Commission regarding appropriate standards for amending the expedited zone¹ we felt it was important to explain the Committee's position with respect to the first two criteria. We hope our explanation will help to simplify the review process for you.

In 2008, our Committee reviewed and the Legislature adopted the Task Force's recommendation on wind power development. Included in this recommendation was a three part test that LURC may apply to future requests to expand the newly created expedited area. In our opinion, the three review criteria proposed by the Task Force and now adopted into law are very straightforward and the development of additional review criteria is not helpful or necessary.

Criterion One

In its interpretation of the first criterion, LURC staff is requiring a demonstration that a specific percentage of a proposed project be located inside the existing expedited area. We think the legislative intent here is clear and a proponent has met the test for establishing logical geographic extension as long as the proposed area is contiguous to the existing expedited area.

Criterion Two

In its effort to interpret the second criterion, LURC staff created what we consider a complicated balancing test.² Our legislative intent here is very straight forward. As stated in 35-A M.R.S.A.

¹ Maine Land Use Regulation Commission Guidelines for the Review of Petitions for the Addition of Lands to the Expedited Permitting Area for Wind Energy Development, Draft January 25, 2010

² The progress the state has made in achieving the goals set forth in § 3404;

- The project's potential for energy generation;
- The viability of the proposed project, including the availability of transmission lines to transfer the generated electricity, the quality of the wind resource, and other relevant information; and
- The impact to public resources and, if applicable, public infrastructure vs. the energy likely to be generated by the proposed project and the associated public benefits. Evaluation of the impact to public resources will include, in part, an identification of important natural, recreational, scenic, archaeological and historic resources in the area.

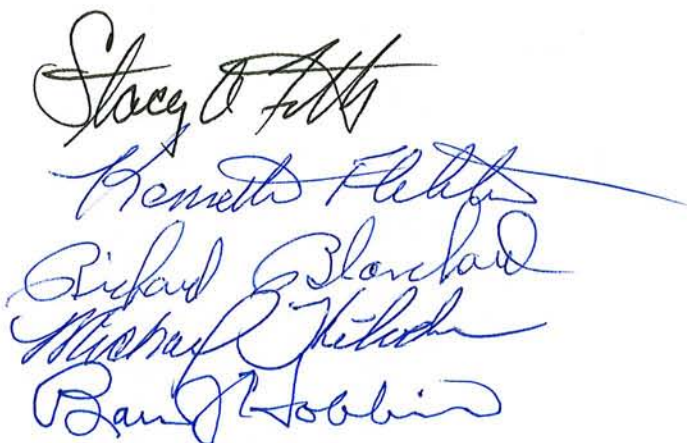
§ 3404, it is the policy of the State of Maine that political subdivisions and agencies do everything they can to approve appropriately located wind power development in the state in order to meet the goal of 2000 megawatts of installed capacity by 2015 and 3000 megawatts by 2020. It is our position that *every turbine proposed that leads the state towards the goal of 2000 megawatts of installed capacity by 2015 and towards 3000 megawatts of installed capacity by 2020 meets the state's public policy goal.* We suggest that every proposal that comes to you until we reach that threshold of installed capacity should immediately pass this part of the test.

That said, LURC possesses a number of tools to protect Maine's valuable natural resources and determine if a wind power development request is appropriately sited. We appreciate that in other stages of permitting the *entire project* LURC will weigh the natural resource impacts, site lines and other issues carefully. It is during that permitting of the entire project that those site specific issues are best considered.

The Legislature appreciates the role and challenge LURC faces in applying the statutory and regulatory criteria and in no way intends to interfere with that process. Instead, to the extent the Legislature may have unintentionally created ambiguity or suggested a more complicated process, we wanted to clarify our intent, specifically with respect to the second criterion. We urge the LURC to remove the specific percentage requirement in criterion one and reconsider their pending balancing test. These two changes should simplify your regulatory review. If it is helpful, please let us know and we can provide further statutory clarification in testimony.

Thank you for your attention to this matter, and thank you for your service to the People of Maine.

Sincerely,



Stacy A. Feltz
Kenneth Flaherty
Richard E. Blanchard
Michael J. Feltz
Dan J. Hobbin

From: Harley Lee [harley@endlessenergy.com]

Sent: Wednesday, February 10, 2010 3:07 PM

To: LURC; Spencer-Famous, Marcia; Horn-Olsen, Samantha

Subject: RE: LURC: Draft Guidance Document on Expanding the Expedited Permitting Area for Wind Energy Development

Dear Samantha,

Thanks for the opportunity to comment on your draft guidance document. Here are my thoughts:

It is not the Commission's intent to use the rulemaking process to add broad areas, such as entire ridgelines, to the expedited area as changes on this scale are properly referred to the legislature for consideration.

If the intent of adding to the expedited permitting area is to expedite and encourage more wind development, then precluding the addition of a whole ridge could be counterproductive. It is the ridges where the wind is. Precluding the addition of a whole ridge is precluding wind energy. I don't remember seeing any language in the legislation limiting the areas to be added by LURC.

Some adjustment to the expedited area boundary may be needed in instances where a potential project falls partially within the expedited area and partially outside of it. The Commission will evaluate the proportion of the project that will fall within the expedited area and any other relevant information. [optional % language: In general, the Commission will expect that at least 50% of a proposed project will lie within the area originally designated as expedited by the Maine Legislature.]

This language also seems to have little basis in the original legislation. It seems to be arbitrary and counterproductive to adding wind energy. A whole project could be located adjacent to an existing expedited area.

The Commission interprets the phrase "important to meeting the state goals for wind energy development" to mean that projects that have a limited potential for energy generation and disproportionate impacts on public resources in the state are not important to meeting the state goals for wind energy development. In contrast, projects that have the potential for exceptional power generation may be "important" even though they may have disproportionate impacts on public resources. In evaluating whether a proposed expansion is important to meeting the state goals for wind energy development, the Commission will consider the following factors:

- **The progress the state has made in achieving the goals set forth in § 3404;**

- **The project's potential for energy generation;**
- **The viability of the proposed project, including the availability of transmission lines to transfer the generated electricity, the quality of the wind resource, and other relevant information; and**
- **The impact to public resources and, if applicable, public infrastructure vs. the energy likely to be generated by the proposed project and the associated public benefits. Evaluation of the impact to public resources will include, in part, an identification of important natural, recreational, scenic, archaeological and historic resources in the area.**

These suggestions seem like good public policy...weighing the benefits vs. impacts of a proposed addition.

Thanks again for the opportunity to comment.

Harley Lee
Endless Energy Corporation
57 Ryder Road
Yarmouth, Maine 04096
voice: 207-847-9323
fax: 207-846-6081
web site: www.endlessenergy.com
harley@endlessenergy.com

From: Lapointe, Jeannine [mailto:Jeannine.Lapointe@maine.gov] **On Behalf Of** LURC
Sent: Monday, January 25, 2010 4:34 PM
To: undisclosed-recipients:
Subject: LURC: Draft Guidance Document on Expanding the Expedited Permitting Area for Wind Energy Development

BCC'd to Wind Power Rule Revision interested parties

LURC: Draft Guidance Document on Expanding the Expedited Permitting Area for Wind Energy Development

The following link will take you to our website where you will find our posting dated January 25, 2010 regarding the "Draft Guidance Document on Expanding Expedited Wind Areas" which will also be presented for discussion at the LURC February 3rd Commission Meeting. As indicated in the Notice of Agency Rulemaking, public comments on the draft Guidance Document are being solicited until the close of business on February 10th. Based on the discussion at the February 3rd

Commission Meeting and public comments received until February 10th, a revised draft Guidance Document will be brought back to the Commission for decision at our March 3rd Commission meeting. All comments should be directed to Samantha Horn Olsen at samantha.horn-olsen@maine.gov, or 22 State House Station, Augusta Maine 04333-0022.

<http://www.maine.gov/doc/lurc/projects/Transcanada/Transcanada.shtml>

Jeannine Lapointe
Secretary Associate
Maine Land Use Regulation Commission
22 State House Station
Augusta Maine 04333-0022
(207) 287-2632
www.maine.gov/doc/lurc

Samantha

Thank you for sending the draft guidance document. The following are my comments on Criterion 2. The PUC would be pleased to provide assistance to LURC on matters within its expertise. We would be able to provide assistance with the first 2 bullets. Regarding the 3rd bullet, we can provide assistance on access to transmission, transmission costs, and electricity price forecasts. However, we do not have any particular expertise in project development costs or wind resource quality. Finally, the PUC would have little to offer on the forth bullet.

Please let me know if you need further feedback.

Mitch

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

From: Horn-Olsen, Samantha

Sent: Wednesday, February 03, 2010 11:02 AM

To: Tannenbaum, Mitchell

Subject: Meeting Agenda

Mitch,

I wanted to make sure that you have seen this draft guidance document about expanding the expedited area for wind power, since it states that the Commission will ask the PUC for comments on one of the criteria in particular. If you look at the link, which is to the Commission agenda, you'll see two attachments for that item which are relevant.

Public comment is open until the 10th and then I'll rework it again. Can you take a look and give me your thoughts, particularly about PUC's role?

Thanks,

Samantha

<http://www.maine.gov/tools/whatsnew/attach.php?id=84615&an=1>

Gwen Hilton, Chair and Presiding Officer
Samantha Horn-Olsen, Planning Division Manager
March 1, 2010
Pg. 2

significant results in terms of power generation or emissions reductions. The original proposal for Criterion 2 provided a meaningful analytical framework for LURC to measure these factors, as does Option 2 with one change. It is critical to eliminate the added language: "**The primary factor will be the progress the state has made in achieving the goals** set forth in §3404." **Adding this language completely eviscerates the value of Option 2** because every application to expand will cite the need to add capacity to meet the wind energy goals and therefore Criterion 2, with this addition, removes all substantive guidance. Option 1 contains a similar defect by eliminating the cost benefit analysis and making the first consideration "the progress the state has made in achieving the goals set forth in §3404", but it at least does not state that such progress should be the "primary factor." We implore the Commission not to squander the excellent professional input into the Guidance Document by removing the heart of what it originally offered by adopting Option 2, but eliminating the added language.

2. *Additional Comments on Criterion No. 3.*

As originally drafted and as now put forth, no guidance whatsoever is given under the 3rd statutory criterion on how to (1) apply the generality of the CLUP principal values and goals and (2) how to resolve the conflict between the goals of promoting windpower with the goals of protecting and preserving limited and valuable mountain and natural resources, our heritage as a State. LURC needs guidance in this area, which is the most critical of the three criteria and the one most vague and contradictory. We have made prior suggestions. The most important point we wish to make is that LURC must have some means of evaluating **the comparative quality of the mountain resources and other wildlife and natural resources that a private windpower company is asking LURC to compromise**. Without such an analytical framework, LURC risks losing the focused analysis it needs to make important decisions it is being asked to make in the rulemaking process. Without some framework for analysis that recognizes the generality and conflicting CLUP goals and values, the work LURC embarks on will be subject to legal challenge that might be avoided, at least in part, by meaningful guidance.

Sincerely yours,



Rufus E. Brown

REB/

cc: Marcia Spencer-Famous via email
Dain Trafton ”
Juliet Browne, Esq. “



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FEB 12 2010

LURC-AUGUSTA

February 10, 2010

Chairperson Gwen Hilton and Commissioners
c/o Catherine Carroll
Land Use Regulation Commission
22 State House Station
Augusta, ME 04333-0022

Dear Chairperson Hilton and Commissioners:

The Maine Renewable Energy Association (“MREA”) is a not-for-profit association of renewable power producers, suppliers of goods and services to those producers, and other supporters of the industry. MREA members generate electricity in a sustainable manner from hydropower, biomass, wind, tidal, and waste to energy. On behalf of the members of the MREA with interests in renewable energy, we appreciate the opportunity to submit the following comments regarding the “draft guidance” document related to interpreting the statutory criteria for expanding the expedited wind permitting area.

We recall that the methodology used by the Governor’s Task Force on Wind Power Development, and the subsequent legislation, LD 2283 “An Act To Implement Recommendations of the Governor’s Task Force on Wind Power Development,” to identify areas to be placed in the expedited permitting areas was often based on township, or other political boundaries. The Legislature was also mindful of the fact their boundaries for the expedited area would more than likely need further refinement in the future, and chose to provide three criteria to assist LURC when reviewing requests to expand the expedited zone:

- 1) **Geographic extension** – involves a geographic extension of the currently designated expedite permitting area;
- 2) **Meets state goals** – is important to meeting the state goals for wind energy development established in 35-A § 3404; and
- 3) **Principal values and goals** – would not compromise the principle values and the goals identified in the comprehensive land use plan adopted by the Maine LURC pursuant to Title 12, section 685-C.

Recently, the Commission has received at least one request that we are aware of to add acreage to the expedited permitting area, and created draft guidance to be reviewed when considering said requests. We are very concerned that the draft document strays far from the legislative intent of the original Wind Energy Act, and may impede Maine’s progress toward meeting or exceeding its stated wind power policy goals of 2,000MW by 2015, and 3,000 by 2020.

www.renewablemaine.org

“Criterion 1” describes the need for a request for expansion to be a “Geographical extension” – we believe the Commission should afford itself the maximum amount of flexibility to evaluate the request given the inexact manner in which the original expedited areas were established. Moreover, there are a number of examples of ridgelines that are partially inside the expedited zone, and partially out. The seemingly arbitrary decision to require that a set percentage – “at least 50% of a proposed project will lie within the area originally designated by the Maine Legislature” – of the requested acreage addition reside in the expedited area does not appear to have statutory support for such a finding, nor does it provide the Commission with the flexibility it deserves in reviewing these petitions.

It seems both logical and reasonable to evaluate whether the requested expansion is part of a ridgeline that lies partially in and partially out of the expedited area; and whether the request is adjacent to the expedited area. Assuming the request passes those two tests it should be considered to have met the first criterion’s requirements of a “Geographical extension.”

“Criterion 2” compels a proponent to show that an expansion request is critical in “meeting state goals for wind energy development” as established by the Maine Legislature. The guidance document proposes to implement a four-part test in determining “whether a proposed expansion is important” to meet state goals, and we question under what statutory authority the Commission has in assessing the viability of projects based on these four criteria – until, and unless the state has achieved its stated wind power goals we believe the Commission’s decision-making should be focused on the status of the state’s progress toward its policy goals.

The third criterion requires the petitioner to demonstrate that the requested expansion “would not compromise the principal values and the goals identified in the comprehensive land use plan” – the draft guidance document then suggests requiring the proponent to submit “adequate information and analysis to allow the Commission to determine how the proposed project would generally affect existing uses and resources in the proposed expansion area.” We question whether this information should be a requirement prior to the actual project’s application having been submitted to the Commission for review. In other words, the information the draft guidance document has requested will certainly be received in exhaustive detail within the application for the wind power project itself. If in the Commission’s view there is information it views as critical for their understanding of the petitioner’s request, that information should be provided; however, we would suggest requiring significantly detailed information on the petition to expand the expedited zone prior to the submission of the application for the project itself is unnecessary.

Thank you for your time and consideration.

Sincerely,



Jeremy N. Payne
Executive Director