Peter Didisheim - Panel

Natural Resources Council of Maine

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Testimony to LURC Regarding the Wind Power Task Force
December 16, 2009

My name is Pete Didisheim. I am the Advocacy Director for the Natural Resources Council of Maine, and I served as a member of the Governor's Wind Power Task Force. I appreciate this opportunity to share thoughts about the work of the Wind Power Task Force.

From my perspective, the Task Force did three important things: 1) It updated the state's permitting process for wind power, 2) It developed a set of goals for wind power development for 2015 and 2020, and 3) It created a map that delineates expedited permitting areas. (A full summary of the Task Force's recommendations are attached to my testimony.)

Development of the wind power goals and of the expedited permitting area map were closely related efforts for the Task Force. The Governor specifically asked us to identify areas that were more appropriate for wind power, and also areas that were not appropriate. But before we could do that, and before we could understand what the goals should be, we first needed answers to two questions:

1) How much wind power is needed to meet our clean energy and greenhouse gas reduction goals?

2) How much wind power could be developed, and where would it likely be located, given the wind resource that exists?

To help answer these questions, we hired a consultant team, which ended up doing a very sophisticated modeling and wind resource analysis.

The analysis for the first question looked at a broad range of issues, including: the amount of renewable energy needed to satisfy the renewable energy portfolio standards adopted across the New England states; projections for electricity demand growth; how much of our greenhouse gas reduction goals can be addressed through transportation vs. the electricity sector; the extent to energy efficiency can reduce future electricity requirements; and how much renewable energy can we expect from solar, tidal, and on-shore vs. offshore wind power in the next decade or two.

Because Maine is part of the New England power grid, the analysis was New England-wide, since the task of reducing the environmental harm from electricity generation needs to happen through energy efficiency and renewable energy developments throughout the system.

The analysis for the second question – how much wind power can be developed in Maine, and where – also tackled a complex set of issues.

Without getting into all the details, the modeling concluded that New England needs to develop about 10,000 MW of wind power by 2020 to achieve the goal that has been adopted across all of New England of reducing our greenhouse gas reductions to 10% below 1990 levels by 2020, and

to meet other clean energy policy objectives adopted by the various states – such as the renewable portfolio standards that that electricity providers include a growing percentage of renewable energy. This goal assumes very aggressive energy efficiency accomplishments, and also very significant contributions from other renewable energy sources.

The consultants also developed a wind resource map, showing the areas across Maine where wind power projects <u>might</u> be economically viable, given the wind resource, and the absence of constraints such as steep slopes, urban development, and conservation easements or other legal prohibitions on development. That wind resource map showed a number of things:

First, it showed there are more economically-viable wind power projects in Maine today than there used to be, but it still amounts to only a small percentage of the state. Advances in wind technology have enabled projects to become viable at lower wind speeds and lower elevations, opening up more of Maine's landscape for the possibility of wind power. But we're still talking about a small amount of the state. After removing several million acres of conservation land and eliminating land where the wind is just too weak to sustain a project, only about 7% of the entire State could conceivably support wind power. If proximity to transmission lines also is considered, then the figure is probably more like 2-3%.

The wind assessment also showed how the wind resource is distributed across the State. Approximately 70% of the potentially viable wind resource is located in LURC jurisdiction; 30% is in DEP jurisdiction. Significant swaths of wind are found across Washington and Aroostook Counties, in a diagonal traverse following Maine's mountains in Oxford, Franklin, Somerset and Piscataquis; along the Canadian border near Rt. 27; and between the Allagash and the St. John Rivers.

Which gets me to the issue of how the Task Force dealt with all of this information, to create a map aimed at encouraging wind power developers to pursue areas more appropriate for wind power development, and to steer away from areas that are less appropriate.

In this regard, the Task Force had a strong preference to protect the core of LURC jurisdiction. Although LURC has 70% of the wind resource that potentially could support economically viable wind power projects, only 32% of LURC was included in the expedited permitting area. A full 7 million acres of LURC jurisdiction – including the contiguous core in the north and the west, and some 25 townships down east – are not in the expedited permitting area.

In addition to asking the Task Force to develop a plan to make Maine a leader in wind power development, the Governor also said that this should be done in a fashion that protects Maine's quality of place and natural resources. This is a tricky balancing act, but the Task Force concluded that the natural character and remote resource values across most of LURC jurisdiction should be held to a higher standard – and only available for wind power development through a petition for rezoning process, and the existing standards for review.

Which means that the state's wind power development goals will be achieved largely outside of LURC jursidiction, in the Aroostook County portions of LURC that have been included in the expedited permitting area, and also in a handful of LURC townships south of Moosehead Lake and along the border between LURC and DEP.

It is not certain that Maine can achieve 2,000 MW by 2015 and 3,000 MW by 2020 primarily (although not exclusively) within the expedited permitting areas, but that is the clear preference established by the Task Force and it is the signal that was sent to wind developers.

This is a very significant change from what existed 10 years ago, when there was a perception that all of Maine was potentially open for business for wind power developers. The expedited permitting area map encourages developers to seek sites away from most of LURC's jurisdiction, where one of the most important, primary values is remoteness.

Although the Task Force put a great deal of analysis into delineating the expedited permitting area, there were limits on the process: limited time and limited information about the specific location of viable wind resources and also of natural resources that should be protected.

Developing a finely-detailed expedited permitting area that reflected the suitability or unsuitability of every potential site was beyond the scope of what the Task Force could accomplish. In most cases, the line was drawn to follow a township line, even though potentially viable project sites will not always fit neatly along these political boundaries.

So the boundary was established based on the information that we had, and we recommended that LURC be granted with the authority to apply a finer lens to that line, prompted, for example, by a developer interested in a site that might straddle township boundaries, perhaps on a ridgeline partially within and partially outside of the expedited permitting area.

That is how we think the petition process for possible expansions should be handled – as a tool to "tweak" the boundaries of the unexpedited/expedited portions of the state. Any larger modifications to the border should wait until a more comprehensive assessment has been completed of Maine's progress toward meeting the established wind power goals, as called for in December 2013.

In summary: 1) The Task Force based its analysis on the best modeling available for how much wind power is needed to meet our clean energy and climate policy goals, and where that resource is located; 2) Wind power can only be developed where there is a strong wind resource, and this amounts to only a very small percentage of Maine's total acreage; 3) The Task Force gave strong deference to protecting the core of LURC jurisdiction from wind power development, by keeping 70% of LURC outside of the expedited permitting areas; and 4) The Task Force envisioned that expansions to the expedited permitting should be rare and relatively small in size, and that larger adjustments await the full analysis of Maine's progress in developing wind power, due in late 2013. Thank you for the opportunity to provide these remarks.

Report of the Governor's Task Force on Wind Power Development in Maine

Summary

The Task Force on Wind Power Development in Maine was established on May 8, 2007, by an Executive Order signed by Governor John Baldacci. After months of analysis, the Task Force concluded that each of the goals established by Governor Baldacci could be achieved: Maine can become a leader in wind power development, while protecting Maine's quality of place and natural resources, and delivering meaningful benefits to the economy, environment, and Maine people.

Wind Power Development Goals: The Task Force recommends that Maine seek to host at least 2000 MW of installed wind power capacity by 2015, and at least 3,000 MW by 2020. The Task Force believes that at least 300 MW of the 2020 goal could be achieved with projects built off-shore.

Energy and Climate Context: Wind power should be developed as part of a broad energy policy to reduce dependence on fossil fuels, increase energy security, diversify energy sources, and reduce impacts caused by energy generation. Increased energy efficiency, development of other renewable energy technologies, and reduction of greenhouse gases from all sources must also be pursued. Collectively, these strategies can help Maine meet a goal of reducing greenhouse gas emissions to 10% below 1990 levels by 2020 – a goal agreed to by all New England Governors and Eastern Canadian Premiers in 2001 and enacted into Maine law in 2003.

New England Wind Resource: Because of its size and geography, Maine has as much wind resource potential onshore as the rest of New England combined. Maine should be a leader in wind power development, but the Task Force believes that the other New England states must do their part in reducing our dependence on fossil fuel and meeting our climate goals. There may be a limit to how much wind power development the people of Maine will accept over time as part of their contribution toward the broader common purpose of addressing climate change, especially if other states are not also making similar commitments.

Expedited Permitting Areas: The Task Force identified Expedited Permitting Areas in Maine where streamlined permitting procedures would apply. The Expedited Permitting Areas would include all organized towns, portions of Maine's unorganized territories that generally are on the fringe of the Land Use Regulation Commission's jurisdiction, and areas within approximately one township of certain public highways. Approximately one-third of LURC jurisdiction is proposed to be included in the Expedited Permitting Areas, and about two-thirds (approximately 14 million acres) of the entire state.

Streamlined Permitting: Within Expedited Permitting Areas, the Task Force recommends that a project's effect on scenic character be limited to consideration of the visual impact of the wind turbines on public resources of statewide or national significance. The Task Force report includes a list of such resources (Attachment G). A visual impact assessment will only be required for projects within three miles of such a resource, unless otherwise determined necessary by the permitting agency. For projects in the expedited areas within the unorganized territories, rezoning would not be required. For such projects, the Department of Environmental Protection (DEP) may assume jurisdiction for permitting if transmission lines for the project extend into organized towns. The Task Force recommends that the DEP Commissioner be responsible for issuing all original permits from that agency, with an expedited process and decisions generally expected within 185 days. The Task Force recommends that Maine's Board of Environmental Protection serve as an appeals board to decisions made by the Commissioner, and that legal appeals from decisions go directly to the Law Court rather than to Superior Court.

Consistent Permitting Processes: The Task Force recommends that DEP and LURC harmonize their two regulatory approaches to wind power projects, to facilitate the process of reaching decisions as soon as practicable.

Permitting Standards: The Task Force recommends that LURC adopt DEP's approach and standards for the review of bird and bat impacts, noise, shadow flicker, and impacts on scenic resources of state and national significance. (See Attachments G and M of report).

Guidance for Bird and Bat Studies: The Task Force endorsed guidelines for assessing potential avian and bat impacts, noise impacts, and shadow flicker, and recommends that these approaches be utilized by review agencies – as deemed appropriate given professional and scientific judgment and changes in the state of the science on these issues.

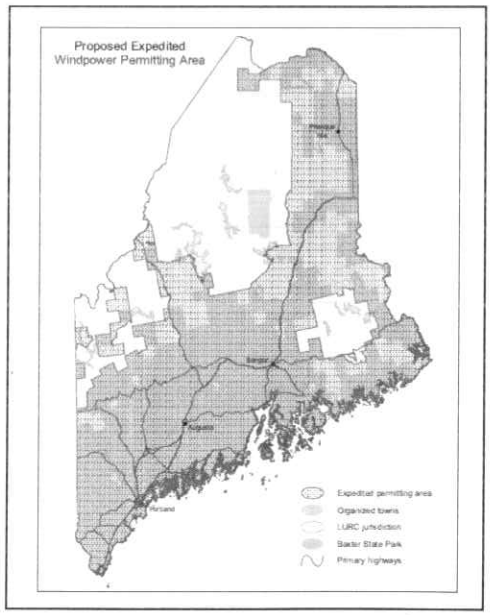
Tangible Benefits for Maine People: The Task Force believes that wind power can be developed in a fashion in Maine that contributes tangible benefits to Maine people and our economy. Consistent with this objective, the Task Force recommends adding regulatory review criteria for wind projects requiring applicants to provide a showing of significant benefits to Maine people and our environment, and to describe those benefits in their application. Such benefits may include construction-related employment; local purchase of materials; property taxes; reduced electrical rates; natural resource conservation; or other comparable benefits, with particular assurance of such benefits to the host community.

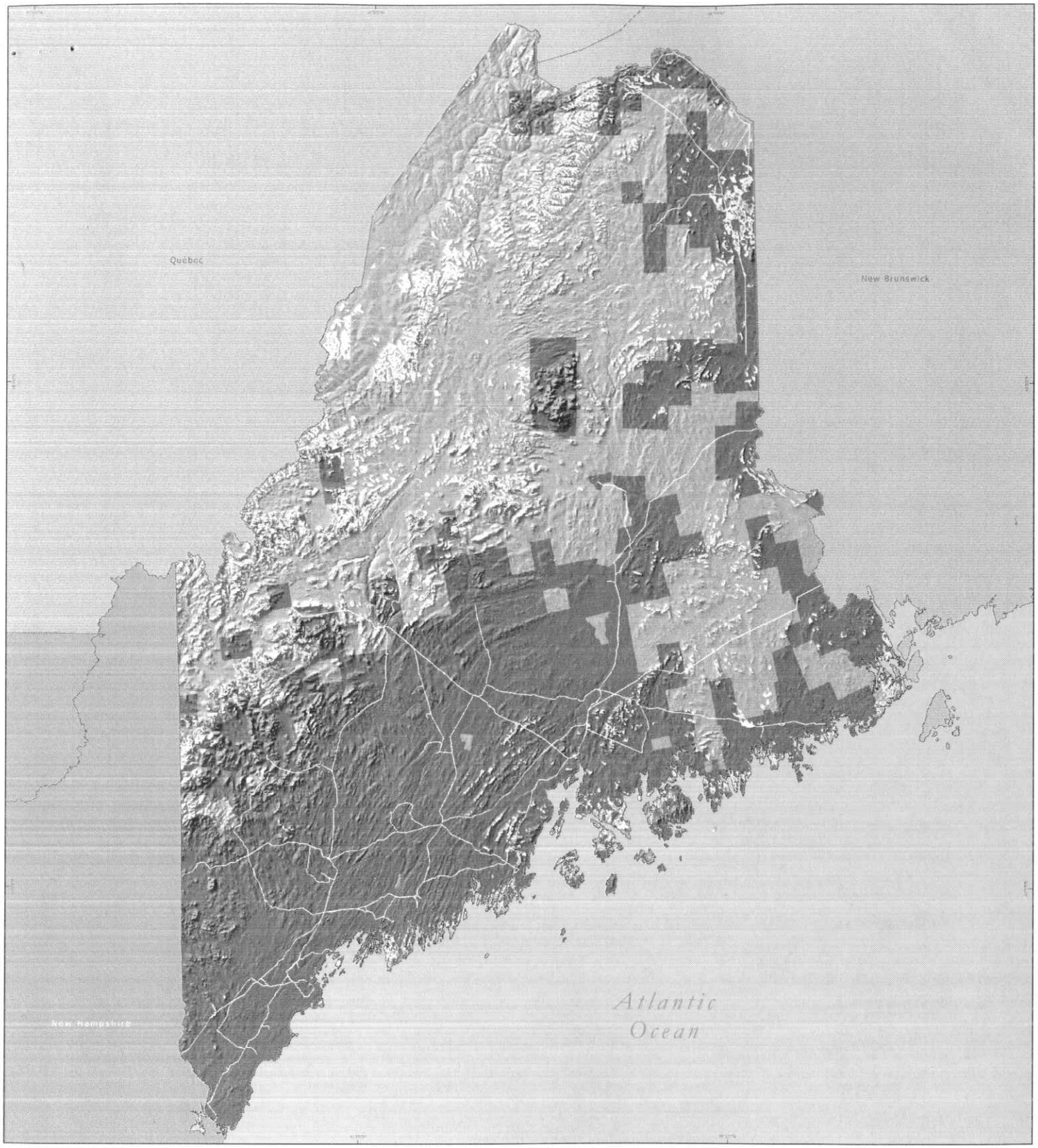
Economic Benefits: The level of wind power proposed by the Task Force could provide significant economic benefits for Maine. Construction of 3000 MW of wind farms would involve billions of dollars in capital investment and would generate more than $25 million in annual property payments. Lease payments also could be substantial. If projects are built in lower-lying areas, such as under consideration in Aroostook County, then lease payments to farmland owners could represent a significant new source of revenue. Construction of wind projects would involve dozens of Maine companies and employ hundreds of workers over an extended period. Each megawatt of installed capacity is likely to generate over $125,000 in construction wages.

Community Wind Power: The Task Force believes that small- and community-scale wind power projects have a meaningful role in Maine, and could be facilitated through development of a model municipal ordinance, actions to remove obstacles at the pre-construction stage, creation of a data clearinghouse, and establishment of a range of financial incentives. Specific recommendations are provided by the Task Force in each of these areas.

Offshore Wind Power: Offshore wind power projects may not be economically viable in the near term, yet the Task Force strongly recommends that Maine actively work to understand the potential for offshore projects and be in a position to promote such projects as the technology and economics allow. Specifically, the State should develop rules regarding leasing for large scale projects that would utilize the state's submerged lands; develop guidance regarding siting of offshore projects; monitor federal regulatory programs for offshore wind; and help Maine's universities, colleges, and private engineering and construction firms explore ways to become leaders in offshore wind power.

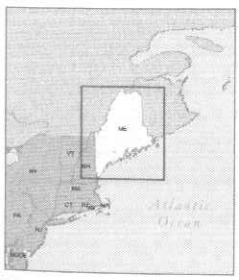
Tracking Progress: The Task Force recommends that the Office of Energy Independence and Security on an annual basis track progress toward meeting Maine's wind power development goals. The Task Force also recommends that a comprehensive assessment be conducted in five years, by December 2013. The full review should assess the status of meeting the 2015 goal and likelihood of achieving the 2020 goal; examine experiences in the permitting process; review technology trends and developer projections; and evaluate progress by Maine and each of the New England states in making progress toward reducing greenhouse gas emissions. The assessment should provide recommendations to the Legislature, including any revisions deemed appropriate to the wind power development goals, permitting process, and policies.





MAINE SITE SCREENING

Inset



Legend

Power Range @ 80m

- 300 - 400 W/m2
- 400 - 500 W/m2
- 500 - 600 W/m2
- 600 - 700 W/m2
- 700 - 800 W/m2
- > 800 W/m2
- LURC Juristiction

Transmission Lines 69 - 345kv

Product

SITE SCREENING

Originator

Date: 12/12/07
Department/Originator: GIS/IT
Map Class: Version 1
File Path: NE phase1 1a results.mxd
Client: Sustainable Energy Advantage

AWS Truewind
463 New Karner Rd, Albany, New York 12205
518.213.6044 | www.awstruewind.com

Reference

0 5 10 20 30 40 Kilometers

0 5 10 20 30 40 Miles

N

Wind Data Resolution: 200m
Coordinate System: UTM 19N
Datum: WGS 1984

Disclaimer

This map was created by AWS Truewind using the MetoMap system and historical weather data. Although it is believed to represent an accurate overall picture of the wind energy resource, estimates at any location should be confirmed by measurement.

The transmission line information was obtained by AWS Truewind from the Global Energy Decisions Velocity Suite. AWS does not warrant the accuracy of the transmission line information.
Source Date: August, 2007

David Publicover - panel
Jody Jones (4) - public

MAINE AUDUBON

Natural Resources Council of Maine

December 11, 2009

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

Re: Thoughts on additions to expedited wind power permitting area

Dear LURC Commissioners:

We have been following the Commission's discussions around TransCanada's rulemaking petition and are encouraged that the Commission recognizes that TransCanada's petition to expand the expedited permitting area will set important precedents for how all future petitions are considered. We appreciate that you are proceeding with careful and thorough deliberation.

As members of the Governor's Task Force on Wind Power Development in Maine, and active participants in its deliberations, we offer our input regarding how the Commission should consider such petitions. Our intent is to address the more general question of process but not the substance of the specific petition from TransCanada in regard to Sisk Mountain now before the Commission.

Background

As you know, the Governor's Wind Power Development Task Force recommended, and the legislation codified, a process for expanding the expedited area. This is described in Section A-8 of Public Law, Chapter 661 (2008), which provides for a full review of Maine's progress toward wind power development goals (including the goal of developing 2,000 MW by 2015) to take place five years after enactment of the legislation, in 2013. Part of this review process is to make recommendations regarding "Identification of places within the State's unorganized and deorganized areas for inclusion in the expedited permitting area."[1] This comprehensive review, not the petition process, is the appropriate venue for determining whether broad areas should be brought into the expedited area. In the meantime, the expansion petition process should only be used to fine-tune the edges of the existing expedited permitting area when it can be demonstrated, through information not available to the Task Force, that a site meets the criteria in statute. However, the petition process should not be use to expand the expedited area in any significant way.

[1] Section A-8(1)(E)(3) of Public Law, Chapter 661 (2008).

The Task Force exercised considerable thought and deliberation in delineating the expedited permitting area, but there were limits to the process—limited time and limited information about the location of viable wind resources and natural resources that should be protected. Developing a finely-detailed expedited permitting area that reflected the suitability or unsuitability of every potential site was beyond the scope of what the Task Force could accomplish. In most cases, the line drawn between the expedited and non-expedited areas follows township lines, although of course neither wind resources nor natural resources are distributed neatly along these boundaries. It was more efficient for the Task Force and the legislation to draw such boundaries, but LURC has the authority and opportunity to apply a finer lens to that line. Potential wind power sites (primarily ridgelines) often straddle township boundaries, partially within and partially outside of the expedited permitting area. Our understanding of the intent of the Task Force was that the expansion petition process was included in the legislation to deal with situations arising along the boundary, by applying these criteria:

1. Involve a logical geographic extension of the currently designated expedited permitting area;
2. Is important to meeting the state goals for wind energy development established in §3404; and
3. Would not compromise the principal values and the goals identified in the CLUP.

We recognize that the Commission is in the challenging position of responding to a request to expand the expedited area while developing its own guidance on what the criteria mean, and we appreciate that the Commission has crafted a public hearing and comment process to help address this.

Comments on Criteria

A core principle for considering an expansion petition is that the petition should not be a *de facto* determination of the suitability of a site for development. Granting an expansion petition should not bias the decision on the subsequent development application as to whether a site is suitable for development. Separating consideration of the expansion petition from the subsequent development application is the fine line that the Commission must walk. In summary, we believe the first criteria narrows the **scope** of applicability of an expansion, the second raises the question of whether it is **necessary and desirable**, and the third presents an essential **threshold** consideration of whether the site is broadly consistent with LURC policy.

Criteria One - logical geographic extension

The petition process in general is an appropriate tool to "tweak" the boundaries of the unexpedited/expedited portions of the state. Thus, for example, a petition to add an entire township to the expedited area should not be approved. The "logical geographic extension" criterion should only be applied at the individual site level on a case-by-case basis, not the broader regional (e.g., township) level.

"Logical geographic extension" should be limited to cases where a significant portion of a ridgeline and the proposed project development is within the currently designated expedited

area, but a portion of the ridgeline (which presumably shares many of the same characteristics), is outside that area. "Significant" would be determined on a case by case basis, but clearly if 90% of the ridgeline proposed for development was in the expedited zone it would qualify for inclusion by petition, but if 90% were outside the area it should not qualify. The Commission would not need to categorically reject petitions where more than half of the proposed development lay outside the expedited area, but would need to weigh such a petition most carefully, particularly with regard to the other two criteria. Independent ridgelines lying entirely outside of, though proximate to, the expedited area should not qualify for expansion by petition.

Criteria Two - important to meeting state goals for wind energy development

When the Task Force recommended the boundaries of the expedited area, it did so after an analysis of what our overall wind power goals should be and an analysis of where the windy resources in Maine were—including in relation to parts of the jurisdiction where wind power was much less likely to be preferred. However, at the conclusion of the Task Force there remained some degree of uncertainty about whether the expedited area would be sufficient to meeting the wind power goals. This explains the review in 2013 and the existence of this criteria for interim minor expansion of the expedited area.

It is possible to give two simple, extreme interpretations of what this criterion means. First, one could argue that unless and until we've actually met the state goal of 2,000 MW, *any* developable windy land is important to meeting the goal. Alternatively, one could argue because there is still undeveloped windy land in the expedited area it is premature to add any land to the expedited area until 2015 (i.e. only after having failed to meet the statutory goal). Neither of these interpretations is particularly satisfactory or useful in deciding a petition. A better interpretation should require consideration of our *progress* toward achieving the state goals and consideration of the *value* of a piece of land, to determine whether additional areas are important.

The Commission should require the applicant to assert whether or not Maine is "on track" to meeting its statutorily established wind power goals. Because the state's progress will not be linear or precisely predictable, this is not a black and white determination.[2] Furthermore, if we are not "on track", we suggest that the applicant be required to provide some of the key reasons why this is true, and whether and why the inclusion of the petitioned area is an appropriate response to those reasons.

Wind power, like other forms of generation, has environmental impacts. The proper siting of wind power involves a trade-off between different goals and a balancing between clean energy generation (benefits) and environmental impacts. It is important to meeting the state's goals that we use the land efficiently and allow development in the places where we can advance the goals with the least amount of harm. Under this criteria LURC should consider whether a piece of land may be important towards meeting our goals because it offers particular *value* in terms of

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[2] As an illustration, currently Maine has 177 MW of operating wind power, and an additional 200 MW under construction or having received permits (some of which are under appeal), for a total of about 380 MW, or about 20% of the way toward the 2015 goal. We are aware of 375-600 MW of additional projects in the near-term permitting or planning stages (which would bring us within 40-50% of the 2015 goal), but it is very unlikely that all of those will be constructed.

benefits vs. impacts. In other words, is the land especially productive for wind power without posing large potential adverse environmental impacts? Or would development in the area make use of some existing infrastructure that, if duplicated elsewhere, would create greater adverse impacts?

Criteria Three -would not compromise the principle values and goals identified in the CLUP

In its consideration of this criteria, LURC must consider its four principal values:

- Economic value for food and fiber production
- Diverse and abundant recreational opportunities
- Diverse, abundant and unique high value natural resources and features
- Natural character values, including a largely undeveloped forest remote from population centers (CLUP p. 114)

The Commission's three broad goals must also be considered:

- Support and promote the management of all the resources, based on the principles of sound planning and multiple use, and ensure the continued availability of outstanding quality in water, air, forest, wildlife and other natural values of the jurisdiction.
- Conserve, protect and enhance the natural resources of the jurisdiction primarily for fiber and food production, non-intensive outdoor recreation and fisheries and wildlife habitat.
- Maintain the natural character of certain areas within the jurisdiction having significant natural values and primitive recreation opportunities. (CLUP p. 134)

Furthermore, LURC's specific goals and policies must be considered including those addressing Air Resources, Energy Resources, Forest Resources, Mountain Resources, Recreational Resources, Special Natural Areas, Wetland Resources, Wildlife and Fisheries Resources, and Scenic Resources.

After reviewing the CLUP values and goals and considering the criteria and the legislation, we recommend that the evaluation of the third criteria be considered akin to the rezoning standard (consistency with the CLUP and its purpose) and its process. This approach would allow for consideration of landscape level and significant high value resource issues without becoming duplicative of the final development permit review. (We note that projects located in the expedited area go directly to the final development permit and skip this process.)

Issues that should be considered under this criteria are those considered under the rezoning criteria and would include but should not be limited to: suitability of the area including the broader region or landscape around the petitioned site (both within and outside of the expedited area), significant ecological, recreational and/or scenic resources, the presence or absence of rare natural communities and ecosystem types, high value wildlife habitats, or endangered or threatened species or species of special concern that are reasonably likely to be negatively impacted by development, and whether this is a migration passageway for migratory species.

Our recommendation is consistent with the Task Force's intent of delineating an expedited review process and accompanying expedited permitting area. Although the issues for petitions of areas on the fringe of the jurisdiction may be somewhat different than those in the core, both demand thorough review and consideration. For much of the non-expedited area the primary value is remoteness, while areas closer to the fringe of the jurisdiction were kept out of the expedited area because they comprise broad landscapes of high resource value. Such areas are those that possess multiple and broadly distributed significant ecological, recreational and/or scenic resources creating a geographically coherent high-value landscape, such that the overall integrity and value of the area would be degraded by the presence of significant development within it, even if the *site-specific* impacts of development in a particular location are not significant. It is entirely possible to have petitioned sites within such high-value areas that would be suitable for development if only site-specific impacts are considered in isolation, but whose petition should be rejected based on broader landscape-level considerations. Conversely, it would also be entirely consistent to grant a petition for expansion that is geographically logical and not located in a high-value area, but then deny the development permit on the basis of undue site-specific impacts.

Conclusion

We reiterate that these thoughts are only intended to give our perspective on how any petition for expansion should be considered, and do not reflect any position on the specifics of TransCanada's petition for Sisk Mountain. We hope that these thoughts are useful to the Commission's deliberations. We will continue to be actively involved in this matter and are prepared to contribute in any way that the Commission finds valuable.

Thank you for your consideration of these comments.

Sincerely,

David Publicover
Appalachian Mountain Club

Jody Jones
Maine Audubon Society

Dylan Voorhees
Natural Resources Council of Maine

Spencer-Famous, Marcia

From: Dave Publicover [dpublicover@outdoors.org]
Sent: Friday, December 11, 2009 1:49 PM
To: Spencer-Famous, Marcia; Carroll, Catherine M.
Cc: Cathy Johnson; Dylan Vorhees; Jody Jones; Jenn Burns Gray; Ken Kimball
Subject: Comments on process for expedited permitting area expansion petions
Attachments: Joint Comments to LURC re Expedited Area Petitions-12.11.09.pdf

Marcia and Catherine:

The Appalachian Mountain Club, Maine Audubon and Natural Resources Council of Maine submit the attached joint comments on the process for consideration of petitions to expand the expedited wind power permitting area by LURC. Please forward these to the Commissioners for their consideration prior to the December 16 hearing.

Thank you.

David Publicover, AMC

Rufus Brown (2) - Public

STATE OF MAINE
LAND USE REGULATORY COMMISSION

HEARINGS ON GUIDELINES FOR	)
RULEMAING TO EXPAND THE	)
EXPEDITED PERMITTING AREAS	)
UNDER 35-A M.R.S.A. §3453	)

TESTIMONY OF RUFUS E. BROWN, ESQ.
ON BEHALF OF FRIENDS OF THE BOUNDARY MOUNTAINS

INTRODUCTION

Friends of the Boundary Mountains ("FBM") submits the following testimony on how the Land Use Regulatory Commission ("LURC") should proceed when considering additions to the Expedited Permitting Area under 35-A M.R.S.A. §3453. Section 3453 provides that LURC may, by rulemaking, add to the Expedited Permitting Area if it determines that the proposed addition:

1. **Geographic extension**: Involves a logical geographic extension of currently designated permitting area;

2. **Meets state goals**: Is important to meeting the state goals for wind energy development established in Section 3404; and

3. **Principal values and goals**: Would not compromise the principal values and goals identified in the comprehensive land use plan adopted by [LURC].

I. LURC Should Adopt Rules Rather than Guidelines.

The first two of the three criteria in Section 3453 are relatively self-explanatory, but the third is enormously vague. In these circumstances, FBM repeats its recommendation that LURC adopt rules in accordance with the Maine APA to channel its discretion on requests to expand the Expedited Permitting Area rather than adopt non-binding guidelines. As explained in my letter to LURC dated October 30, 2009, The Maine Supreme Court has recently recognized the importance of the promulgation of rules in accordance with the Maine APA to protect and give procedural safeguards to the public when an agency has been delegated discretion to regulate without specific standards. *See, Uliano v. Board of Environmental Protection*, 2009 ME 89, ¶28, 977 A.2d 400, 411:

> [B]y providing significant protection against abuses of discretion by the Board in exercising its rule-making authority, the requirement that the Board promulgate rules subject to the Maine Administrative Procedure Act compensates "substantially for the want of precise [legislative] guidelines."

If LURC adopts guidelines only, it will lose the "compensating" benefit of rulemaking and render the process vulnerable to an attack of an unconstitutional delegation of legislative power.

Now that TransCanada has withdrawn its plans to build a wind turbine project in the portion of Chain of Ponds that is not expedited, there is no time pressure to formulate procedures for expanding the Expedited Permitting Area because there are no proposed projects outside of existing Expedited Permitting Areas. In short, LURC should take the time necessary to deliberately and carefully craft procedures for expansions because, once expansions take place, valuable natural resources may be lost forever.

II. LURC Should Be Careful About Relying on the "Panel" Discussion.

Also, FBM repeats its warning about the dangers of reliance on anecdotal comments from the proposed "Panel" on what the Legislature or the Governor's Task Force on Wind Power Development (the "Task Force") had in mind concerning the Expedited Permitting Area as provided for in Chapter 661, "An Act To Implement Recommendations of the Governor's Task Force on Wind Power Development" (the "Wind Power Act"). At LURC's November 4, 2009 meeting, the dangers of this kind of legislative history were shared by all who addressed the subject. Supreme Court Justice Kennedy's concerns about "strategic manipulations" from such sources as expressed in the case of *Exxon Mobile Corp. v. Allapattah Services, Inc.*, 545 U.S.

546, 568 (2005) are worth repeating:

> Judicial investigation of legislative history has a tendency to become, to borrow Judge Leventhal's memorable phrase, an exercise in "looking over a crowd and picking your friends." See Wald, Some Observations On the Use of Legislative History in the 1981 Supreme Court Term, *68 Iowa L.Rev. 195, 214 (1983*). Second, judicial reliance on legislative materials, like committee reports, which are not themselves subject to the requirements of Article 1 [of the U.S. Constitution granting Congress legislative power], **may give unrepresentative committee members – or worse yet, unelected staffers and lobbyists – both the power and the incentive to attempt strategic manipulations of legislative history to secure results they were unable to achieve through the statutory text.** [Emphasis added.]

Regardless of what members of the Panel may say about the third criterion for expansion of the Expedited Permitting Area, the Legislature was clear about one thing: LURC is required to look to the "principles and goals" of LURC's Comprehensive Land Use Plan ("CLUP") to guide its deliberations. That requires an affirmative undertaking to examine those principles and goals, which is a forward looking task, not looking back at what some Panel member may remember about what happened one or two years ago. If LURC loses focus by relying on the Panel discussion in formulating guidelines for the future expansion of the Expedited Permitting Area, it risks tainting the proceedings and any resulting guidelines.

III. Which CLUP Should LURC Look To?

The first issue that LURC must confront in giving content to the third criterion under Section 3453 is which CLUP to look at. The existing CLUP is 12 years old, last amended in 1997 (all references herein to "CLUP" shall be to this existing CLUP) and a new edition of CLUP (to be referred herein to as the "Draft Revised CLUP") is close to completion. So which version should be relied upon for purposes of developing rules or guidelines under the third

criterion of Section 3453?

The answer to this question is that the existing CLUP should be the primary resource for guidance for the third criterion unless LURC should decide to postpone the issue until the new CLUP revision process is completed. Given the absence of any pressing need to expand the Expedited Permitting Area, it would be prudent for LURC to postpone the current task until the latest version of CLUP can be used. If this course is not adopted, the existing CLUP should be the primary document. The latest version of the Draft Revised CLUP may be consulted, but only to supplement and not to supplant or contradict the guidance of the existing CLUP.

IV. The Teaching of CLUP For Purposes of Expanding the Expedited Permitting Area is to Evaluate Wind Power Siting Alternatives in the Context of a Comprehensive Study Identifying High Mountain Resources with Particularly High Resource Values.

By enacting Section 3453.3 in the Wind Power Act, the Maine Legislature mandated that LURC shall not compromise the "principal values and goals" indentified in CLUP when considering the expansion of the Expedited Permitting Area. The starting point, therefore, is to identify what CLUP says about values and goals. CLUP begins the discussion with the obvious, an overarching goal, repeatedly referred to in CLUP: *"The Commission is charged with planning for future growth, not just reacting to it."* CLUP at Chapter 5 (Goals and Policies for the Future) at 133. [Emphasis added.]

1. The Broad Goals of the Commission.

The Broad Goals and Policies of the Commission are then 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 40-1) 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. [Emphasis added.] 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.

This approach clearly makes sense. 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 next proceed.

V. <u>The Draft Revised CLUP Reinforces the Need for a Comprehensive Statewide Approach of the Existing CLUP</u>.

Like the existing CLUP, the Draft Revised CLUP emphasizes the mission of LURC to promote sound planning, Draft Revised CLUP at 1, including a commitment to "discourage growth which results in sprawling development patterns." Draft Revised CLUP at 4-4; *also see,*

Draft Revised CLUP at 1-4. Not surprisingly, the Draft Revised CLUP addresses wind power development more than the existing CLUP, but the principal core values and goals of preserving and conserving scarce mountain resources and managing the conflict with wind power development is not fundamentally different in the Draft Revised CLUP. The Draft Revised CLUP acknowledges the Expedited Permitting Area alters and streamlines consideration of scenic resources. Draft Revised CLUP at 5.5-5- 5.5-8. But it also notes that the Expedited Permitting Area created by the Legislature already includes *one-third* of the entire LURC jurisdiction. Id. at 5.5-5and 5.5-8 and 5.10-4. At the same time, the Draft Revised CLUP recognizes that "[m]ountaintops are fragile environments," Draft Revised CLUP at 5.7-3, and have important scenic and natural, recreational values and that they "are a limited resource in Maine." Draft Revised CLUP at 5.7-6. As in the existing CLUP, the Draft Revised CLUP cautions that "wind turbines and associated infrastructure have the potential to compromise the resources the P-MA zone is designed to protect, " Revised Draft CLUP at 5.7-7, and that "once degraded, those resources are difficult or impossible to restore." Id. at 5.10-2. Consequently,

> Given the finite number of high mountain areas and the value of their scenic, recreational and natural resources, it is unlikely that the Commission will consider all mountains areas in the jurisdiction suitable for wind power development.

Revised Draft CLUP at 5.7-7.

Finally, the Draft Revised CLUP points in the same direction as the existing CLUP on how to manage these conflicts. It states that there are "relatively objective ways to determine the scenic quality of landscape", Draft Revised CLUP at 5.10-1 and that "[i]deally a comprehensive inventory of significant scenic resources is the most effective way to plan for the protection of those resources from visual impacts due to non-forestry activities such as structural development." Draft Revised CLUP at 5.10-3.

VI. Likewise, the Report of the Governor's Task Force on Wind Power Development Advocates for such an Approach.

The Report of the Governor's Task Force on Wind Power (the "Task Force Report") also recognizes the incompatibility of the P-MA subdistricts and grid scale wind power development. Task Force Report at 15-16. ("grid-scale wind power projects are, in many cases, highly visible features of the landscapes where they occur as they consist of multiple turbines, often near a ridge line, and transmission lines to hook the power produced into Maine's electrical grid.*** A requirement that an applicant seeking rezoning for a planned development subdistrict demonstrate that a string of turbines, roads and transmission lines provides a substantially equivalent level of environmental protection to that provided in a P-MA zone is, in the judgment of the Task Force, inappropriate."). The Report further recognizes the need, in designating areas for expedited permitting, to exclude "broad areas that encompass concentrations of ecological, recreational and/or scenic values that are the most significant in the jurisdiction." Task Force Report at 18, N. 2. As described above under the existing CLUP and the Draft Revised CLUP, the Task Force Report also advocates for a "more comprehensive approach" to "help guide wind power development proposals, based on general compatibility with existing land uses", Task Report at 16, because designating an area for expedited permitting "send[s] a clear signal to wind power developers about the areas within the state that appear to be most appropriate for wind power development." Task Force Report at 6.

VII. Coordination of the Third Criterion with the Other Two.

Wind power developers will always seek to expand geographically from existing projects to take advantage of economies of existing infrastructure. So it is no surprise that Section 3453 recognizes geographic extensions as a criterion for expanding the Expedited Permitting Area. However, this criterion, as well as the second criterion for meeting the goals of wind power

development set by the Legislature, must be balanced against the need to preserve and protect Maine's unique and limited mountain resources. To give undue importance to geographic expansion will result in sprawl and potentially squandering limited natural resources. In the case of the Boundary Mountains, LURC has already approved a project for Kibby Mountain. TransCanada is now proceeding with another application Westward into Chain of Ponds on the portion of Sisk Mountain that lies in the Expedited Permitting Area. FBM unequivocally opposes this application and will participate fully as an interested party in opposition. If this project were to be approved, notwithstanding FBM's opposition, TransCanada would already be taking advantage of economies of geographic expansion. Even though one third of LURC's jurisdiction is already designated as an Expedited Permitting Area and even though, as represented to LURC at its November 4, 2009 meeting, there do not appear to be other wind projects on the horizon, TransCanada is nevertheless advocating for a further expansion of the Expedited Permitting Area further into the Chain of Ponds area of the Boundary Mountain. This would appear to represent classic development sprawl. A line has to be drawn somewhere and the existing line in the Chain of Ponds area of Maine should be carefully considered for its value in protecting a portion of the State of Maine with important mountain resources.

CONCLUSION

FBM urges LURC to proceed with the issue of expansion of the Expedited Permitting Areas in a careful, deliberate manner and to consider such expansions only after a comprehensive inventory is done that rates the mountain resources of the state on an objective basis and considers whether there is any need to expand the Expedited Permitting Area at all before removing more protection from mountain resources that may never recover if development is permitted.

Dated: December 16, 2009

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Meg Gilmartin (6) - Public

Testimony Regarding Expedited Areas Expansion

December 16, 2009; Senator's Inn, Augusta, Maine
Hello Commissioners, my name is Meg Gilmartin and I live in East Corinth. I will begin by saying that it seems only fitting that LURC would prioritize hearing from the same industry representatives, energy lobbyists and mainstream environmental groups that continue to dominate the airwaves on the debate over wind power development in Maine; while leaving comments by people of Maine second in line. I feel it must be noted that there is only one public hearing for this part of the process , located in Augusta, over two hours away from the communities in closest proximity to the proposal. This is another reminder that wind power is not about the people of Maine or protecting the environment, but more about supporting the economic interests of one industry. These same interests were the the core of the "Act to Implement Recommendations of the Governor's Task Force on Wind Power Development" (What I will refer to as the Wind Power Law for the remainder of this testimony), an unconstitutional law that grants law making power to an unelected regulatory commission. "The Wind Power Law" goes against many of LURCs' core principals. Because of this laws unconstitutional nature and the adverse impacts of wind power I do not feel that the expedited areas should be expanded in this instance, or any other. However, I will still go through the The Wind Power Laws criteria that the commission will use if they choose to expand the expedited areas to further emphasize these points.

The first of these criteria is geographical extension, encouraging the commission to make an addition to the expedited areas only where it is geographically logical. This criteria was created to discourage sprawl and keep remote, pristine areas intact. These are worthy goals for industrial wind power encouraging industry to use previously available resources and infrastructure and avoid ecological impact. However, to call the industrialization and development of remote and fragile Sisk Mountain for wind power geographically logical seems laughable at best. Sisk Mountain is located within the scenic Chain of Ponds region and overlooks a breathtaking ribbon of ponds that is often described as rugged and fjord-like. This area is prized for its remote recreational opportunities with hand carry boat access provided at two of the ponds on nearby public reserve lands, and countless hiking and hunting opportunities. Sisk Mountain is habitat for the listed endangered Canada Lynx and is home to historic golden eagle nesting sites. The development of Sisk Mountain would require two miles of new access road construction and considerable ridge grading and clearing within fragile alpine ecosystems. Sisk Mountain currently provides opportunities for recreation, primitive use, and forestry promoting LURC's core principals and values. The destruction of this remote ecosystem in an area with little to no current infrastructure is not a logical geographic expansion of the expedited areas.

The second criteria asks LURC to look at the projects contribution to meeting the states goals of 3,000MW by 2020. It must first be addressed that this goal of 3,000MW by 2020 is arbitrary and should be looked at with a critical eye. The wind power law aspired to grapple with the issues of our current energy crisis, climate change and Maine's health and economy, but wind power is not the answer to these problems. When I look at the wide variety of concerns associated with industrial wind power, environmental destruction, habitat loss, ecosystem fragmentation, corporate control, and the economic and health concerns being raised by people in every community where wind power is present, I must ask LURC, what price are you willing to pay to meet this arbitrary goal? Are you willing to watch our dark mountain skies disappear to the light pollution of wind turbines?, Are you willing to lose the golden eagle that has historically nested on Sisk Mountain? Or the endangered Canada lynx that calls Sisk Mountain home ? If this law was not enacted for the greater good of the people of Maine then what IS the motivation behind this law? One would think that climate change is the answer. However, LURC has proven their unwillingness to address climate change by making it nothing more than a footnote mention in the Plum Creek rezoning plan and an equally insignificant mention within the most recent draft of the CLUP. It has appeared to me over the years that LURC is guided more by their willingness to appease large corporations in exchange for the next 1.7million dollar check then they are interested in the people and environments of Maine. The same can be said of TransCanada, the corporation behind this proposal. TransCanada, the 35billion dollar oil company who's large role in tar sands, a mining procedure that releases 3 times the amount of carbon as regular oil production and the construction of their natural gas pipeline that travels from Alberta to Alaska is destroying indigenous lands and important ecosystems throughout this continent. With TransCanada's record of involvement in what is now being called, "single largest industrial contributor to climate change in North America" it is obvious that a solution to climate change is not a motivation for their request for expansion of the expedited areas.

The third and final criteria asks LURC to determine if the 631 acre addition of Sisk Mountain to the expedited areas would promote the principal values and goals laid out by the CLUP. You don't have to read between the lines to understand that the CLUP provides some serious critiques and concerns with industrial wind power including the following, "visual impacts, soil impacts, wildlife impacts and putting into question the technical feasibility of such projects". The CLUP even goes so far as to say that, "Large-scale wind power generation is an untested technology in harsh climates such as Maine's". Please commissioners allow for Sisk Mountain to stay a remote recreational treasure that LURC encourages and promotes within its core principals and guiding documents.

Our society is desperately trying to save itself from the impending climate catastrophe that is now recognized by the entire international scientific community; however, we can not look for these solutions under the guise of the corporate genie in the bottle offering to grant us our three wishes of energy security, a solution to climate change and a prosperous future. This genie in the bottle is no different from DDT or nuclear power with their false promises for a healthier and happier future. Please LURC don't leave us wishing that we had never trusted this "untested technology". The only appropriate solutions lie within our local communities, our willingness to make sacrifices, to change our individual lives drastically; reducing consumption while working to create intact ecosystems that will assist in stabilizing the worlds climate. Maine still has a wealth of undeveloped land that could provide important carbon sinks, don't destroy our current opportunities for climate stability for a false corporate solution. At this point I know speaking to the commission my words fall upon deaf ears, but to those members of the public here today, let us not destroy our mountains to save a sinking ship! The people of Maine have a long history of resistance and we can say no to TransCanada and save our mountains, even if LURC doesn't!

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Steve Bien (9) Public

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December 15, 2009

Testimony regarding Expedited Wind Energy Development Area Designation

I appreciate the opportunity to present my thoughts to the Commission. At issue are the three applicable criteria for extension of the expedited wind territories created by the legislature: geographic proximity to existing wind facilities, consistency with the state's wind power objectives, and consistency with LURC's Comprehensive Land Use Plan. I believe these criteria are vague, hard to apply, and insufficient to serve their purpose of land preservation.

The first criterion ostensibly is designed to prevent sprawl. Since the enormous divestiture of paper companies in the 90's, Maine's forest lands have faced unprecedented threats from encroaching development with drastic consequences for the woods industry and recreation. This is well detailed in your CLUP. The 2006 Brookings report, Charting Maine's Future: An Action Plan for Promoting Sustainable Prosperity and Quality Places focused on this topic and identified sprawl as the single biggest threat to Maine's future economic well being.

This criterion of geographic proximity must be spelled out more clearly lest it be cynically exploited to allow a domino like spread of development to pour across the state. In this case TransCanada seems to want to develop one part of Sisk Mountain through what it sees as a logical extension of its existing Kibby project. Then, arguing geographic proximity, it can leap from its project onto the unexpedited portion of the same mountain. Clearly this is an undesirable exploitation of this concept of proximity that we should seek to avoid. The geographic proximity criterion is weak and needs revision to clarify and strengthen its intent.

The second criterion relates to the value of the state's wind power goals and I think it is essential that the Commission look at these goals critically. To do so is not to step outside its bounds since LURC is the principal steward of our undeveloped lands and as such is in a prime and necessary position to balance the interests of developers with the needs for land protection. This too is a theme that runs through the CLUP.

Let me clarify. Currently we are understandably riveted by the problem of global climate change. I certainly don't doubt that climate change is occurring and that it is driven in large part by green house gases. To the contrary I am concerned that the scope and magnitude of the situation are often minimized so that gestures like wind farms can seem like real solutions, which they clearly are not. In fact, these are commercial enterprises much like any other and should be judged on clearly demonstrated benefits and costs. They are not solutions to global warming or unemployment in Maine and they should not receive the cursory scrutiny, minimal regulation, and excessive subsidy that they do. This is the sort of corporate giveaway that is only too familiar today. Imagining that wind turbines will significantly slow climate change is like thinking your teaspoon will successfully bail your sinking boat.

Why is this so? Because of the scale of the forces involved in the world's economies. For example, the Chinese put a new coal fired plant on line roughly every two weeks to power its expanding economy. India is not far behind. *Each* of these coal based plants has the capacity to power the city of Houston, a city with approximately the population of Maine. If all of the proposed wind projects go on line and deliver their stated capacity we can expect that to be perhaps 10% of our total state energy budget. But even that is wildly optimistic since these towers typically deliver between 25 and 30% of their stated capacity at best.

But isn't there significance in even small gestures? In this case, no. Find me a coal plant anywhere in the world that has been replaced or decommissioned because of wind power. It hasn't happened because wind power is unreliable and requires the backup power so often talked about. It hasn't happened because wind power generation peaks at night and during the winter. Our highest needs are during the day and during the summer. Nevertheless Maine's taxpayers will absorb all of the infrastructure costs because the transmission lines have to be upgraded to carry the promised load, not the actual load. Moreover, encouraging and subsidizing this sort of solution draws vital resources away from real energy solutions.

Wind requires back up power because of its inconstant nature and the power plants that run in parallel to wind facilities must operate in what is called wind shadowing mode. As the wind comes on these plants throttle down. While operating in this backup role the turbine plants must depart from their most efficient operating parameters and in doing so consume more fuel and produce more CO_2 emissions per MWh. In fact in some models the addition of wind power to a grid has been shown to increase the carbon emissions of the system.

But you don't have to take my word for it. Germany and Spain have had between them the greatest wind energy experience and neither one has been able to demonstrate carbon savings from wind. In fact the German experience proves the point that Tom Hewson made at the Redington hearings a few years ago: that wind energy accomplishes nothing in a cap and trade environment since the latter drives down carbon emissions through auctions at much lesser cost and the auction income is recycled constructively back into the economy.

As it turns out, like many of its other claims, the claim of economic benefit is also untested, unquestioned, and unsubstantiated. Wind power only exists because it is heavily subsidized, and you and I pay for these subsidies in our taxes. Wind energy is actually very expensive power, and the cost of the power has a retarding effect on the overall economy as surely as do surges in gas prices. A study of this phenomenon was also carried out in Germany, which is second only to the US in the number of on line wind turbines. Despite thousands of installed turbines and heavy subsidy, there was no net job creation. Rather the enterprise was viewed as having a retarding effect on the economy and job growth through higher taxes and energy costs. This too has been the German experience, which now has the most expensive electricity in Europe.

The Wind Power Task Force spoke of the importance of energy security in its mission statement, and this is a concept that LURC in turn takes seriously since it has expressed support for the Task Force's goals. But wind power does not address energy security since our electricity is already home grown,

based as it is on coal, natural gas, and hydropower. Imported fossil fuels drive cars and trucks, and wind will make no contribution there.

As for the promised economic boost - In Maine after the initial installation very few jobs remain at any of these sites and very few of them go to local people once the trees are cut down and the last of the gravel is poured. Yet these projects are touted as a great boon for the state. Not long after TransCanada sold the Kibby project to Franklin County as an economic cash cow they came back appealing for a TIF to make it affordable for them. They pleaded to the county commissioners that they could not carry on without the TIF. Now TransCanada is pushing to expand the same Kibby project in time to take advantage of stimulus money without which their expansion would not be possible. This does not even speak to the economic impact of turning our forest lands into industrialized landscapes.

While the benefits have been exaggerated the impacts have been minimized or frankly ignored. Here we turn to the third criterion, that the project not compromise the principal values and goals of the CLUP. Protection of wildlife resources is key among these. Unfortunately the track record on wind power shows too great a willingness to give this issue short shrift.

The Cornell Laboratory of Ornithology is this country's pre eminent bird research center. Their Autumn 2009 newsletter highlighted energy issues and their impacts on bird populations. In the opening paragraph they cite a 2006 National Academy research article on the impacts of wind power on birds and bats. That paper concluded

1. We lack adequate scientific data to make informed decisions on where to safely locate wind turbines.
2. We lack enough scientific evidence to accurately estimate the risks of wind turbines to individual birds and populations
3. Methods for obtaining data about the effects of wind power are not standardized making them difficult to use in policy making
4. Technology for monitoring and mitigating risk are poorly developed

Despite these realities and objections we seem to be in a race to get on with this ill conceived project as quickly as possible, the science be damned. The USFWS had suggested that 3 years of monitoring be a standard before any project is approved but no project has received more than 1 year of study and some of those studies are limited to a few days of bird tracking data. Do we know the effects of 400' turbines circling at 240mph on bird migration or the effect of the fluctuating wind pressure and noise on bird and other animal reproduction and behavior on the ground below?

Sisk historically has been a golden eagle nest and although none is active now we know that golden eagles, once common in Maine, often return to previously used nests. Mark McCullough of the USFWS recently gave a talk at UMF at which he displayed the results of tracking a single golden eagle along the eastern seaboard. The tracking data show that this bird has spent considerable time in the Boundary Mountains.

We have federal laws that are supposed to protect migrating birds generally and eagles particularly. These are the Migratory Bird Treaty Act and the Bald and Golden Eagle Protection Act, but they remain virtually unenforced in wind turbine siting. We know, although we can't quantify it, that these turbines exact a toll on migrating birds. And studies in Europe have shown that turbines interfere with eagle reproduction and cause direct mortality.

In sum, I believe that the wind industry has been given a pass on a number of key environmental and economic issues and the current expansion criteria are inadequate to the task of its regulation. Wind turbines affect not only wildlife populations and the use of our wild lands, but they also have the potential for enormous impacts on our state's economic health and prosperity. In exchange for this there is little public benefit. You, our LURC commissioners, are the key stewards of our natural resource assets and to you falls the difficult but necessary task of balancing development and preservation in vast parts of our state. The Wind Power Task Force has articulated goals that will forever alter the landscape of this state calling, as they do, for 100's of turbines across the ridges of Maine. I believe there are few land use questions in our time that will have greater impact on our future than the rules governing the expansion of wind power in the unexpedited areas of the state. At present these rules are inadequate to accomplish the task of guiding sensible development. Unless and until there is better methodology to evaluate the economic and environmental impacts of industrial wind installations, the unexpedited areas should remain off limits to wind development.

Respectfully submitted,

Steve Bien

Steve Bien

Nancy O'Toole(11) - public

I was watching a program called "Seven Mornings in Maine" this past Sunday. A clip was on about the industry of blueberries in Maine, and how there are 60,000 acres of blueberry barrens and a significant percentage of wild blueberries purchased in the world are from Maine. This is an industry to be proud of and it is sustainable. It not only fits into the natural environment, its part of the natural environment, and it creates jobs and the host community's benefit from taxes and tourist who come to pick wild blueberries. All this without expedited rules, mitigation funds, and mass subsides, hearings and lawsuits. How can LURC model this industry and apply the question of expanding an already huge industrial permitting area?

I can tell you how. Read the Comprehensive Land Use Plan! The old plan is very well suited to overseeing development; the new, NOT YET ADOPTED plan has windpower commercials throughout the document, yet it still speaks of approaching development with a balance of good science and reasonable foresight.

I say before we expand on an already large area of land, lets catch up on some of the ideals and wishes set forth in the draft land use plan, 2009.
In a perfect world we would take some of the mitigation money that is given to non-profit groups and use it to fill in the gaps and voids clearly stated in the CLUP.

In the draft CLUP, good science along with reasonable foresight is apparent in many sections. Under Soil and Mountain Resources, it states that soil mapping is incomplete and the commission is frequently without the benefit of a detailed analysis of soils to insure that a specific development is not placed in an inappropriate location. How can the developer perform proper erosion control measures without the correct data? The solution the developers have now; is relying upon the third party inspector to point out what is needed as the road is built. You need detailed information before you permit a project in the expedited zone.

Erosion is a major threat to land use and our water resources and significant threat to steep slopes and hydric soils in the mountain area protection zones. Disturbance by clearing, blasting, excavating for roads, expose fragile soil and altering or disrupting normal drainage patterns will increase erosion rates and adversely affect vegetative growth. As stated in the plan, wind turbines and associated infrastructure have the potential to compromise the resources the P-MA (mountain area protection) zone is designed to protect. It further states given the finite number of high mountain areas and the value of their scenic,

recreational, and natural resources, it is unlikely that the commission will consider all mountain areas suitable for wind power development.

I was surprised when I read a short section on "hill side development" admitting that improper sighting can have significant impacts on the natural resources and character of the area. Clearing associated with the lots, long gravel roads, often traversing steep slopes, can cause erosion, generate increased phosphorus, eliminate wildlife habitat and decrease visual quality of the landscape. The plan admits the need to upgrade standards for road construction in higher elevations. Let's fill in the gap for all roads in mountainous areas before we permit more development.

In the regulatory section for wetlands and vernal pools it states Maine has over 3 million acres of a variety of wetlands. More needs to be done to identify and classify wetlands and vernal pools, including upgrading tracking of wetland losses from small to large scale development. The Comprehensive plan states some of the value of wetlands in Maine; they filter out sediments, absorb pollutants by acting as settling basins and at peak flows reduce flooding by holding water, then slowly releasing it into streams or lakes. Traditional uses such as hunting, fishing, photography and environmental education provide indirect tangible benefits and direct benefits include harvesting of trees and peat from peatlands. There is at least 35,000 acres of commercially valuable peat deposits from peatlands in Maine. One-third of Maine's rare and endangered animal species are found in wetlands during some part of their life cycle. There is no mapping source for vernal pools and this adds to the challenge of qualifying, quantifying and protecting significant vernal pools in the commission's jurisdiction. There is no data on the effects of blasting and fracturing the connecting hydrology of wetlands on tops of mountains, yet you note in the comprehensive plan the possible wetland loss due to climate change and the effects of surface drying during growing season leading to habitat change.

Let's continue and expand the wetland regulatory program of 1998 even more to identify and protect wetlands and vernal pools from development and also provide the ACE or DEP with the necessary data to make a decision on good science. Let's do this in the expedited area first then expand, if necessary to other locations.

Last I am going to read the quote from the "Report on the Wildlands, Legislative Research Committee, 1969. It on the second page of the draft CLUP:

Maine has always been proud of its Wildlands – the Big Woods, land of Indian and trapper, of white pine tall enough for masts on His Majesty's ships, of mountain lion, moose, and eagle. Much of the wildness was still there when Thoreau went in by birchbark canoe, a little over a century ago. And much of it remains. There is spruce and fir, moose and beaver, lake and mountain and whitewater enough to satisfy generations of Americans. More and more, as northeastern U.S. develops, the Maine woods are becoming an almost unparalleled resource, both for tree production and for recreational opportunity. But who is to come forward to say that this resource must not be squandered? Can we guarantee that the next generations will be able to set out in a canoe and know that adventure is just around the bend?

Please represent us who feel we have lost our voice and vote from the expedited law and don't expand the already huge area for wind power, let's do our homework first, then let good science and reasonable foresight prevail.

Respectfully submitted,

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