



JANET T. MILLS
GOVERNOR

STATE OF MAINE
DEPARTMENT OF AGRICULTURE, CONSERVATION & FORESTRY
LAND USE PLANNING COMMISSION
22 STATE HOUSE STATION
AUGUSTA, MAINE 04333-0022

AMANDA E. BEAL
COMMISSIONER
JUDY C. EAST
EXECUTIVE DIRECTOR

Memorandum

To: LUPC Commissioners
CC: Judy C. East, Executive Director
Robert Gee, Downeast Wind
Maria Eggett, Maine DEP
From: Ben Godsoe, Chief Planner
Date: October 5, 2021
Re: DRAFT SLC-14 – Site Law Certification for Downeast Wind Power

Introduction

For your review, the staff has prepared a draft Site Law Certification for the Downeast Wind Project (SLC-14). In Site Law Certifications, the Commission is responsible for reviewing the project to determine if the proposed use meets those land use standards which are not considered in the DEP's review. In the case of wind energy development in the expedited permitting area, the Commission's review consists primarily of evaluating setbacks and other dimensional requirements as well as flood prone area requirements. Visual and noise impacts, erosion, storm water, and impacts to natural resources among other considerations are handled within the DEP review process.

At the October meeting, staff will present a recommendation on the one request for a public hearing that the Commission received. Depending on the Commission's decision on the hearing request, staff will also be prepared to present a draft Site Law Certification (SLC-14) for the Downeast Wind Project and answer any questions you may have.

Background

- The proposed Project is a 30 turbine, grid-scale wind energy development to be located in the expedited permitting area for wind energy development. The Project includes areas within: the Town of Columbia along the northern edges of the blueberry barrens and to the

north of Baseline Road; T18 MD BPP in the Thousand Hills area around Crebo Flat and Hawk Hill Rd; and T24 MD BPP in the southern and western portions of the township.

- On May 5, 2021, Downeast Wind LLC submitted to the Commission a Request for Certification including a Site Location Map, and a copy of a DEP Site Law/ Natural Resources Protection Act (NRPA) application for the Downeast Wind Project (the Project). These materials included “Section 31,” addressing the Commission’s criteria for certification.
- By letter dated May 19, 2021, the LUPC certified to the DEP that the Project is an allowed use in the subdistricts in which it is proposed. On June 4, 2021, the staff requested additional information from the applicant to allow for review of the proposal for conformance with the applicable standards in Chapter 10. The last of these additional materials were submitted on September 9, 2021.
- 31 written public comments were received by the staff before any application materials from Downeast Wind were filed with the LUPC. One written comment and request for a public hearing was received after the application materials were filed.¹

Public Comments and Request for a Public Hearing

All written comments received expressed a range of concerns about potential impacts to natural resources, fish and wildlife habitat, health and safety, and scenic character. Concerns raised by the commenters are relevant to the overall project but not to the specific standards applied by the Commission in a Site Law Certification process (see attached document summarizing which standards are applied by LUPC). The issues of concern are considered by the DEP in their review of the Project. As mentioned above, one written comment requested a public hearing.

Chapter 4, Rules of Practice, Section 4.11,(6) describes when to hold a public hearing on a request for site law certification:

“The Commission shall consider all requests for a hearing submitted in a timely manner. Hearings on a request for certification are at the discretion of the Commission unless otherwise required by the Constitution of Maine or statute. In determining whether a hearing is advisable, the Commission shall consider the degree of public interest and the likelihood that information presented at the

¹ Written comments can be viewed on the Commission’s website for this project:
https://www.maine.gov/dacf/lupc/projects/site_law_certification/slc14.html

hearing will be of assistance to the Commission in making its certification determination.” Section 4.11,(6),(b).

The staff does not believe a public hearing would provide additional information relevant to the Commission’s review as it pertains to the land use standards applied in a request for site law certification.

Certification

Staff have reviewed Downeast Wind LLC’s request for Site Law Certification and the relevant materials provided in support of the request. Based on that review, staff believe the applicant has met its burden of proof and that all relevant LUPC standards not considered by the DEP in its review have been met by the proposal.

Staff Recommendations

1. Staff recommends that the Commission not hold a public hearing on the Downeast Wind proposal.
2. Staff recommends approval of Downeast Wind LLC’s request for Site Law Certification of the Downeast Wind Project (SLC-14).

Attachments

1. Location Map
2. DRAFT SLC-14

Web Resources

1. [SLC-14 webpage](#) (includes application materials and written comments)
2. [Guidance Document on Site Law Certification, Land Use Standards](#)



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CERTIFICATION

COMMISSION DETERMINATION IN THE MATTER OF

Department of Environmental Protection
Request for Site Law Certification
Downeast Wind, LLC
Site Law Certification #SLC-14

Findings of Fact and Determination

The Maine Land Use Planning Commission, at a virtual meeting of the Commission held October 13, 2021, after reviewing the certification request and supporting documents submitted by Downeast Wind, LLC, for Site Law Certification SLC-14 and other related materials on file, pursuant to the Commission's Land Use Standards, finds the following facts:

1. *Person Requesting Certification:* Downeast Wind, LLC
PO Box 219
Columbia, ME, 04623

c/o Apex Clean Energy Inc
310 4th Street NE Suite 300
Charlottesville, VA 22902
2. *Accepted as Complete for Processing:* May 19, 2021
3. *Location of Proposal:* Town of Columbia (not in LUPC service area), T18 MD BPP Township, and T24 MD BPP Township, Washington County
 - A. T18 MD BPP:
 - (1) Map WA005 Plan 1 Lot 1 & Plan 1 Lot 8 (Wind Energy Lease, landowner Cherryfield Properties, LLC)
 - (2) Map WA005 Plan 1 Lot 3.1 (Wind Energy Lease, landowners Gary E. Strout, Frank L. Thompson, and Stephen E. Oliver)

B. T24 MD BPP

- (1) Map WA007 Plan 1, Lot 1 (Wind Energy Lease, landowner Cherryfield Properties, LLC)
- (2) Map WA007 Plan 1 Lot 2 (Wind Energy Lease, landowners Brett M. Cox and Elaine A. Caret)

C. Coordinates: UTM Northing 4953200N
UTM Easting 586600E

4. *Current Zoning:* (M-GN) General Management Subdistrict
(P-FP) Floodplain Protection Subdistrict
(P-GP) Great Pond Protection Subdistrict
(P-RR) Remote Recreation Protection Subdistrict
(P-SL) Shoreland Protection Subdistrict
(P-WL) Wetland Protection Subdistrict
Additionally, the Project will be located entirely within the expedited permitting area for wind energy development.
5. *Permanent Project Area.* Clearing of 98.8 acres for turbines and other permanent structures, including 24 miles of buried collector line corridor.

INTRODUCTION

6. Public Law 2011, Chapter 682 (enacting LD 1798) shifted the primary permitting authority for grid-scale wind energy development located in the unorganized areas of Maine from the Land Use Planning Commission (the Commission or the LUPC) to the Maine Department of Environmental Protection (DEP), effective September 1, 2012. When a grid-scale wind energy development in an unorganized area is proposed, the DEP reviews the project under the Site Location of Development Law (Site Law) for a Site Location of Development permit, and the Commission must review a request for certification that the project is an allowed use in the subdistricts affected and that the project meets the Commission’s Land Use Standards applicable to the project that are not considered in the DEP review.

The following Findings, Conclusions and Conditions constitute the Commission’s certification that the Downeast Wind Project, as currently proposed, meets the applicable Land Use Standards that are not considered in the DEP review. By letter dated May 19, 2021, the Commission, through its staff, certified to the DEP that the Project is an allowed use in the subdistricts in which it is proposed (letter attached as Appendix A).

PROPOSAL

7. On May 5, 2021, Downeast Wind LLC jointly submitted to the DEP and the LUPC a DEP Site Law/ Natural Resources Protection Act application for, and materials in support of, a request for LUPC certification of the Downeast Wind Project (the Project). On May 5, 2021, DEP submitted to the Commission a Request for Certification of the Project. The applicant’s submission included a Site Location Map, and a copy of Section 31 of the Site Law application addressing the Commission’s criteria for certification.
 - A. The proposed Project is a 30 turbine, 126 MW, grid-scale wind energy development in: the Town of Columbia along the northern edges of the blueberry barrens and to the north of Baseline

Road; in T18 MD BPP in the Thousand Hills area, around Crebo Flat and Hawk Hill Rd; and in the southern and western portions of T24 MD BPP.

- B. The proposed Project will connect to the New England electrical grid at a new substation in the Town of Columbia. The substation will transform power voltage from 34.5kV to 115kV, and the point of interconnection (POI) switchyard will interconnect with Versant's existing Downeast Loop 115kV transmission line in the town of Columbia at the Epping to Deblois line 52.
- C. The proposed Project's Operations & Maintenance (O&M) facility will be located in the organized town of Columbia and is not the subject of this certification.

8. *Project description.* The Project will consist of the following:

- A. *Turbines.* Twenty-three, Vesta V150 4.2 turbines are proposed in the LUPC service area, having a maximum height of 656 feet, each located on a turbine pad measuring up to 60-70 feet in diameter. The turbines will be grouped in four separate strings, connected by the Project access roads and collector lines. All turbines in the LUPC service area will be located in T18 MD BPP and T24 MD BPP.
- B. *Roads.*
 - (1) *Access.* There is a network of existing land management roads in the vicinity of the Project, some of which will be upgraded for the Project. There are 14.8 miles of access roads, 2.5 miles of which will be newly constructed. Existing private roads used for access to the Project include: Schoodic Lake Road, Schoodic Road (also called Long Pond Road), Hawk Hill Road, Beech Hill Road, and Bombing Range Road.
 - (2) *Road maintenance.* All new roads constructed for the Project will be maintained by Downeast Wind. Existing roads outside the Project area will continue to be maintained by the landowners.
 - (3) *Public right of access.* Although Schoodic Lake Road and Bombing Range Road are through roads and sometimes used by the public, there is no legal right of access for the public to these roads (or to the other land management roads connecting to them).
 - (4) *Crane paths and access roads.* Approximately 15.4 miles of new 40-foot wide crane paths and approximately 3.7 miles of new 24-foot wide roadway will be constructed to provide access to the turbines. After installation of the turbines, portions of the crane paths and access roads will be restored and the remainder used as permanent access roads, which will be gravel surfaced and typically 16-24 feet wide.
- C. *Power performance testing towers in the Commission's service area.* To support power performance testing of the facility, one temporary power performance towers will be sited in proximity to Turbine 15 in T18 MD BPP, and another will be cited in proximity to Turbine 7 in T24 MD BPP.
- D. *34.5kV Collection lines.* Approximately 24 miles of collections corridor containing about 45 miles of cable will be constructed to deliver power from the wind turbines to the collection substation. The Collection lines will be buried to a depth of 36-48 inches with a corridor of 50 feet cleared of large vegetation for the first circuit, and 15 feet for each additional circuit where they run side-by-side.
- E. *Substation.* The Project will connect to the existing 115 kV Deblois Line 52 in the Town of Columbia at Epping, at a substation which is outside of the Commission's service area.

- F. *Operations and maintenance (O&M) building.* The Project will include an O&M building located in the Town of Columbia outside of the Commission's service area.
- G. *Temporary laydown areas and trailers in LUPC service area.* Two temporary construction laydown areas will be established in the LUPC service area. A yard of approximately 15 acres will be established in T18 MD BPP, and another yard of approximately 20 acres will be established at the decommissioned military facility in T24 MD BPP. Temporary laydown and staging areas will accommodate construction trailers, storage containers, Project components, and parking for construction personnel, as well as be used for storage of cleared timber, soil, stumps, other material awaiting removal and storage, and staging of construction equipment.
9. *Public notice.* On March 1, 2021, an initial Notice of Intent to File and Notice of Public Information Meeting (to be held March 11) was sent to Project abutters and other parties by U.S. Postal Service mail. However, the applicant was not able to complete the application in time to file in early April as anticipated in the first notice. Therefore, an updated notice of intent to file reflecting a new anticipated filing date of April 30, 2021 was mailed to Project participants, abutters, and other stakeholders via certified mail on April 22, 2021. The updated notice was published in the Machias Valley News Observer on April 28, 2021. LUPC staff deemed the certification request complete for processing on May 19, 2021. Notice that the application was accepted for processing was sent through GovDelivery to 2,041 email addresses subscribed to the "Wind Power" and "Washington County" recipient lists on June 11, 2021.
10. *Public Comments and Request for a Public Hearing.* Thirty-one written public comments were received prior to receiving the application or accepting it for processing. One written comment and request for public hearing was received after the Commission accepted the application as complete for processing. The commenter expressed a range of concerns about potential impacts to natural resources, fish, and wildlife habitat. Concerns raised by the commenter are relevant to the overall project, but not to the specific standards applied by the Commission in a Site Law Certification process. The issues of concern are considered by the DEP in their review of the Project.
11. *Outside Agency Review.* Commission staff provided a copy of application materials to the Washington County Office of the Unorganized Territories for review and comment on June 6, 2021. No comments were received.

TITLE, RIGHT OR INTEREST

12. Downeast Wind elected to simultaneously apply to the DEP for a Site Location of Development permit for the Project. The DEP application was accepted as complete for processing on May 17, 2021. Based on these actions by Downeast Wind and the DEP, and provided the DEP finds in their review of the Project that Downeast Wind has sufficient title, right or interest, the Commission concludes that Downeast Wind has administrative standing for certification of the Project.

LUPC LAND USE STANDARDS

12. The Commission's Land Use Standards that are relevant to certifying compliance of the proposed Project are evaluated in Findings #13 through #20.
13. *Land division history.*
- A. *Review criteria.* 12 M.R.S. §682(2-A) and §685-B(1)(B); and §§10.24, F (quoting 12 M.R.S. §685-B(4)(F)) and 10.25,Q,1 of the Commission's Land Use Standards (01-672 CMR Chapter 10).

B. *Land division histories.* Downeast Wind provided land division histories for the four Project parcels in T18 MD BPP, and T24 MD BPP, evaluating the land transfers for each parcel during the preceding twenty years, noting where a land division had formed a lot, and evaluating whether that lot counted as a subdivision lot or was exempt. Application materials included four separate memos addressed to Mark Lyons at Apex Clean Energy Inc, from Anthony Calcagni, Esq., Verrill Dana LLP, regarding Downeast Wind, LLC 20-year land division history for: Cherryfield, LLC land in Townships 18 MD BPP and 24 MD BPP, and the Cox Trust Land in Township 24 MD BPP (all memos dated March 3, 2021). Upon request by the LUPC staff in a letter dated June 4, 2021, the applicant supplemented each memo by providing illustrations of the land division history for each parcel. Downeast Wind determined that no land divisions requiring a subdivision permit from the Commission had occurred for any of the Project parcels during the preceding 20 years. Specific land division histories for parcels in each township follow:

(1) *T18 MD BPP.* The Project will include two parcels in T18 MD BPP, for which the following 20-year land division history applies:

a. *Plan 01, Lot 1.*

1. 2002: Cherryfield Foods Inc. created one residential lease.
2. January 31, 2007: Cherryfield Properties LLC acquired the entire parent parcel from Cherryfield Foods Inc.
3. February 1, 2007: Cherryfield Foods Inc. leased the entire parent parcel from Cherryfield Properties LLC.
4. 2008: Cherryfield Properties created one residential lease.
5. October 28, 2016: Cherryfield Properties leased a portion of the parent parcel to Dawnland Solar, LLC. This transaction counts as a division.
6. December 15, 2016: Cherryfield Properties leased a portion of the parent parcel to Downeast Wind, LLC. This transaction counts as a division. The remaining portion of the parent parcel, not leased by Downeast Wind or Dawnland Solar, was retained by Cherryfield Properties and managed for forestry or agricultural uses.
7. On April 18, 2018: Cherryfield Properties and Downeast Wind entered into an additional lease agreement for the same portion of the parent parcel described in the December 15, 2016 lease.
8. On March 4, 2021: Cherryfield Properties and Downeast Wind superseded and replaced in their entirety, both prior leases (executed on December 15, 2016, and on April 19, 2018) with a new Memorandum of Lease Agreement. The Consolidated Memorandum of Lease Agreement describes the same portion of the parent parcel described in both prior leases, and includes language noting that the remainder of the parent parcel will be retained by Cherryfield Properties, will remain undivided for a period of five years, and will be managed for agricultural or forestry activities.

b. *Plan 01, Lot 8.*

1. December 10, 2013: the United States of America conveyed the entire parent parcel to Cherryfield Properties LLC.
2. March 4, 2021: Cherryfield Properties leases a portion of the parent parcel to Downeast Wind LLC. This transaction counts as a division.

(2) *T24 MD BPP.* The Project will include two parcels in T24 MD BPP, for which the following 20-year land division history applies:

a. *Plan 01, Lot 1.*

1. 2001: One new residential lease was created.

2. January 31, 2007: the entire parent parcel was acquired by Cherryfield Properties LLC, from Cherryfield Foods Inc.
3. February 1, 2007: the entire parent parcel was leased to Cherryfield Foods Inc.
4. 2008: Cherryfield Properties created two new residential leases. Following creation of the second residential lease, the remainder of the parent parcel was retained and not further divided for five years, and was managed for agricultural or forestry activities.
5. April 13, 2016: Cherryfield Properties exchanged land with the State of Maine (SOM) by transferring a 320-acre lot to SOM along Mopang Stream in exchange for the more or less equally sized "Public School Lot." This transaction counts as a division.
6. April 18, 2016: Cherryfield Properties leases a portion of the parent parcel to Downeast Wind LLC. This transaction counts as a division. The remaining portion of the parent parcel, not leased by Downeast Wind, was retained by Cherryfield Properties, remained undivided, and was managed for forestry or agricultural uses for a period of at least five years.
7. On March 4, 2021: Cherryfield Properties and Downeast Wind superseded, and replaced in its entirety, the prior lease (executed on April 18, 2016) with a new Memorandum of Lease Agreement. The Consolidated Memorandum of Lease Agreement affects the same portion of the parent parcel described in prior leases, and includes language noting that the remainder of the parent parcel will be retained by Cherryfield Properties, will remain undivided for a period of five years, and will be managed for agricultural or forestry activities.

b. *Plan 01 Lot 2.*

1. December 2005: the entire parent parcel was conveyed from Elmer M. Cox to the Elmer M. Cox Revocable Trust.
2. October 13, 2015: the entire parent parcel was conveyed to Brett M. Cox and Elaine A. Carey.
3. April 10, 2019: Brett M. Cox and Elaine A. Carey entered into a lease agreement with Downeast Wind. The lease applies to the entire parent parcel.

C. *Existing camp lease lots.* The existing camp lease lots on Project parcels were either created more than twenty years ago or occurred as discussed in the land division histories above. All lots leased or transferred during the previous 20 years were assessed to determine if any of the leases had lapsed for more than two years before being renewed, or before the lot was sold. (Reference §10.25,Q,1,e of the Commission's Standards). Downeast Wind concluded that all lease lots had been continuously leased with no gaps of two or more years.

D. *Conclusions.* Based on the materials supplied by Downeast Wind and review of Commission records, no land divisions requiring subdivision approval from the Commission occurred during the preceding 20 years (since 2001) for any of the Project parcels.

(1) *Camp lease lots.* The evidence in the record indicates all of the existing camp lease lots were either leased continuously or if transferred were exempt from being counted as a lot.

(2) *Use of subdivision exemptions.*

- a. Pursuant to Chapter 10, Section 10.25,Q,1,g,(2), Retained Lots, the division of parcel Map 1 Lot 01 in T18 MD BPP Township described above in finding #13,b,(1),6, does not qualify as a subdivision. Following lease of a portion of the parcel to Downeast Wind on April 18, 2018, the remaining area in the parent parcel was not divided further and was managed solely for forest or agricultural management activities.

- b. Pursuant to Chapter 10, Section 10.25,Q,1,g,(2), Retained Lots, the divisions of parcel Map 1 Lot 01 in T24 MD BPP Township, described above in finding #13,b,(2),6, do not qualify as a subdivision. Following lease of a portion of the parcel to Downeast Wind on April 18, 2018, the remainder of the parent parcel was retained by Cherryfield Properties, was not divided for a period of at least five years, and was managed solely for forest or agricultural management activities.

14. *Vehicular circulation, access and parking.* (See Finding #8 for the description of the Project roads)

- A. *Review criteria.* §§ 10.24,B [quoting 12 M.R.S. §685-B(4)(B)] and 10.25,D of the Commission's Land Use Standards.
- B. *Vehicular circulation and access – §§ 10.25,D,1; and 2,a,b and d.*
 - (1) *Access management.* All access points for the proposed Project are located outside of the Commission's service area in the town of Columbia. The Easement and Land Lease Agreements with the owners of the Project parcels include access easement rights over the existing private roads.
 - (2) *Traffic estimate.* Because the Project will not generate a significant amount of traffic, no traffic analysis was conducted. Downeast Wind anticipates that during peak construction there would be worker vehicles and large equipment moving on and off site, and back and forth between construction locations and laydown areas. Oversized loads will be escorted by chase vehicles who will spot other traffic and alert the oversized load driver. Once fully operational, the number of worker vehicle trips to the Project site will be between two and four per day to conduct routine oversight and maintenance.
 - (3) *Co-use of existing roads.* Existing roads within the Project area will be upgraded to accommodate construction and maintenance of the wind power development, but also will be co-used for agricultural management purposes. New roads being constructed within the Project area are largely beyond current agricultural management areas but will be constructed to accommodate co-use should it be necessary.
 - (4) *Intersection design.* Six existing intersections on main private agricultural management roads will be upgraded to accommodate the transportation of turbine components to their construction sites. Downeast Wind's access road design provides for roads to connect at an angle greater than 60 degrees. The curb radius will be greater than 15 feet to accommodate large vehicles. Throughout the Project area there are additional intersections with smaller roads providing access for agricultural management activities associated with the blueberry fields. These intersections will remain the same excepting the proposed widening and other upgrades to the wearing surface on the route designated as an access road/crane path.
- C. *Parking - §§ 10.25,D,3,a and e.* No new permanent parking area or on-street parking is proposed for the portions of the Project in the LUPC service area. During construction, construction crew parking will be primarily located at the office trailer sites in the laydown areas. To ensure safe ingress and egress, Downeast Wind has proposed to install warning signs to alert approaching vehicles on the access roads to construction traffic entering, and will manage the flow of traffic into and out of temporary laydown areas with designated entrance and exit locations.
- D. *Roadway Design – §§ 10.25,D,4,a-c.* Downeast Wind has designed the Project roadway system to meet the specific needs of the Project. The Project roadway system will be integrated with

existing private land management roads that have no legal public right of access. The Project will involve upgrading portions of the existing private land management roads to be 24 feet wide as well as construction of new 36.5-foot wide crane paths and new 24-foot wide access roads. Road cross-sections indicate a road surface of 12-18 ± inches of compacted 4 inch minus gravel or processed blast rock. One road turnout is proposed on a segment of Crane Path 1700+00 where the road width will be approximately 16 feet for 500 feet in length. The turnout will be located at station 1713+00, be 8 feet in width and 100 feet in length. Several areas along proposed access roads exceed a slope of 10%, but the maximum grade for Project access roads does not exceed a slope of 12%.

E. *Conclusions.* Based on information provided in Section 31 of the Site Location Application, and additional information submitted on September 9, 2021, Downeast Wind has demonstrated that the applicable criteria for vehicle circulation, access, parking, and roadway design in §10.24,B and §§10.25,D,1, 2, 3, and 4 of the Commission's Land Use Standards are met by the Project. Specifically:

- (1) *Vehicle circulation and access - §§ 10.25,D,1 and 2.* The proposed Project roadway system layout and design will meet the provisions of §§ 10.25,D,1 and D,2,a through e in that existing roadways will be used where practicable limiting the number of new entrances and exits, project roads will be co-used with agriculture operations, and intersections have been designed to meet the specific needs of the project.
- (2) *Parking - § 10.25,D,3,a.* Given the number of permanent parking spaces at the Columbia O&M building, and the size and number of temporary laydown areas proposed, the Commission concludes that parking for project construction and operation will meet the needs of the development. All temporary parking areas will be arranged such that vehicles entering and leaving the laydown areas do not create traffic congestion or hazards on the Project roads.
- (3) *Roadway design - §10.25,D,4,a-c.* The assignment of class to a roadway system is applicable to Level B and Level C road projects. For the proposed Project, the upgrading of the existing land management roads, if it were done separately from the rest of the Project, would constitute a Level A or B road project. The new Project roads constitute a Level C road project. For the purpose of this assessment, the sections of the existing land management roads that will be upgraded and integrated into the permanent Project roadway system are considered to be a part of the Level C road project.

In accordance with §§10.25,D,4, a and b, the Project roads will create a Class 1 roadway system serving a high-intensity commercial or industrial project, but will be located in a low-density area with sparse development, typically associated with a Class 3 roadway system. The roadway design and specifications proposed are appropriate for this Project with regard to: (a) the nature and level of use, particularly with regard to the large construction equipment that will be traveling on certain road segments and the low traffic volume once the Project is operational; (b) the nature of the roads accessing the site; (c) location relative to the sparse surrounding development; (d) the type and intensity of the proposed use; and (e) services and utilities likely to need access to the Project area in the future. The Commission has determined that the Project's roadway system will meet the needs of the Project and will not cause safety problems, if constructed and managed as proposed.

15. *Hillside Resources.*

A. *Review criteria.* §§10.25,E,2, and 10.02,98 of the Commission's Land Use Standards.

- B. *Exceptions to Hillside Resources Standards.* Pursuant to Section 10.25,E,2,a,(1), The Hillside Resource Standards do not apply to wind turbines. However, linear infrastructure within the Project, such as roads or collection line systems, are subject to Section 10.25,E,2,g.
- C. *Linear Infrastructure.* In two locations the underground collection system and access road will traverse areas that are two or more contiguous acres in size with sustained slopes greater than 15%.
- a. Location 1: Near Turbine #36, the collection line will extend northerly and descend a steep ridge, perpendicular to the contour lines, for approximately 500 feet. The line will be buried underground, and trees will be permanently removed in a 50-foot-wide corridor. Within 3 miles of this location are waterbodies, major flowing waters, and roads used for public access: Pretty Pond (~2.2 miles to the northeast); Unnamed Pond (under 10 acres) north of the location; Campsite at Beech Hill Heath (~2 miles); and nearby sections of the Pleasant River and the Beech Hill Dam Conservation Area (within ½ mile).
- The buried collection line in a 50-foot wide corridor, which will include maintained shrub vegetation, is not likely to be visible from scenic viewpoints farther away than one mile. From the Pleasant River and Beech Hill Dam Conservation Area, visibility would be minimal due to existing vegetation near the river.
- b. Location 2: Buried collection lines will run through a hillside resource approximately 0.4 miles east of Turbine #22 and near the Great Heath. Within one mile of this location is a campsite on the Great Heath (~1 mile east), and a boat launch (~0.5 miles north).
- Neither the boat launch nor campsite would have views of the 60-foot wide corridor in this location due to vegetation on slopes between the corridor and the Great Heath, the orientation of the corridor parallel to the contour lines, and because collection lines will be buried and there will be no structures located within the corridor.
- D. *Conclusion.* Given the findings above on minimizing the visibility of the linear infrastructure on hillsides, the Project as proposed meets the provisions of §10.25,E,2 of the Commission's Land Use Standards for Hillside Resources.

16. *Lighting.*

- E. *Review criteria.* §10.25,F,2 of the Commission's Land Use Standards.
- F. *Permanent lighting.* Permanent lighting associated with the Project includes lighting for turbines and meteorological towers as required for aviation safety by the Federal Aviation Administration (FAA). Lighting required by the FAA is exempt from the requirements of §10.25,F,2.
- C. *Temporary lighting during construction.* Temporary, portable trailer-mounted flood lights will be used during turbine installation, if necessary, to take advantage of low wind conditions. Additionally, limited nighttime security lighting may also be used during construction at the Project's access points.
- D. *Conclusion.* The Project as proposed will meet the provisions of §10.25,F,2 of the Commission's Land Use Standards for permanent lighting.

17. *Activities in flood prone areas.*

- A. *Review criteria.* §10.25,T of the Commission’s Land Use Standards.
- B. *Flood prone areas.* One stream crossing located on Crane Path 2500 at 2528+00, and near Beech Hill Road in T24 MD BPP, will be constructed within a floodplain protection subdistrict. Engineered designs for the crossing are being developed by Downeast Wind for application for a United States Army Corps of Engineers (USACE) Clean Water Act permit application.

The proposed crossing located in the Floodplain Protection Subdistrict (P-FP) must meet the Commission’s rules for activities in flood prone areas (specifically Sections 10.25,T,2,a,k, and m). These rules include that the bridge design must be signed by a professional engineer licensed to work in the state of Maine; have the lowest horizontal member at least one foot above base flood elevation (BFE); have a foundation and superstructure able to resist flood forces; and not result in any increase in flood elevation in T24 MD BPP Township during any 100-year flood event. Once completed, and prior to the start of construction, Downeast Wind will submit bridge designs to LUPC for review and approval.

- C. *Conclusion.* Provided that adequate designs for the bridge on Crane Path 2500 at 2528+00 are submitted to the Commission for review and receive approval once completed and prior to the start of construction, the Commission finds that the proposed stream crossing to be located at 2528+00 on Crane Path 2500 in the Floodplain Protection Subdistrict conforms with Section 10.25,T.

18. *Dimensional requirements.*

- A. *Review criteria.* §§10.26, A through G of the Commission’s Land Use Standards.
- B. *Minimum lot size - §10.26, A.* §10.26,A,2 specifies that the minimum lot size for commercial or industrial development is 40,000 square feet. All parcels containing areas to be developed for the Project exceed 40,000 square feet in size.
- C. *Minimum shoreline frontage - §10.26, B.* §§10.26,B,1,b and 2,b specify that the minimum shoreline frontage for a commercial or industrial development is 200 feet for parcels bordering a minor flowing water or standing body of water less than 10 acres in size; and 300 feet for a parcel located on a waterbody greater than 10 acres in size or a major flowing water. Long Pond, West Pike Brook Pond, East Pike Brook Pond, and Schoodic Lake are all greater than 10 acres in size and the Project has more than 300 ft of frontage on each waterbody. The Project also has more than 300 feet of frontage along the Pleasant River. There is greater than 200 feet of frontage on minor flowing waters and bodies of standing water less than 10 acres in size included within the Project boundaries.
- D. *Minimum road frontage – §10.26, C.* §10.26,C,1,b specifies that the minimum road frontage for commercial or industrial development is 200 feet for any road used for public access. The Project has greater than 200 feet of frontage on all roads used for public access, including: the Schoodic Lake, Schoodic (also called Long Pond Road), Beech Hill, Hawks Hill, and Bombing Range roads.
- E. *Minimum setbacks – §§10.26,D,2 and 3; and §10.26,G,5.* §10.26,D,2 specifies that the minimum setback for commercial or industrial development is 150 feet from major flowing waters or waterbodies greater than 10 acres in size; 100 feet from minor flowing waters, P-WL1 wetlands, and waterbodies less than 10 acres in size; 75 feet from roads used by the public for

access; and 25 feet from side and rear property boundary lines. §10.26,G,5 provides that an exception may be made for setbacks “where the Commission finds that such structures must be located near to the shoreline, road, or property line due to the nature of their use.”

- (1) *Turbines.* All turbines are proposed to be located in excess of the minimum setback requirements. The closest a turbine will be to a major flowing water is Turbine #14 at 520 feet from the Pleasant River. The closest a turbine will be to a waterbody greater than 10 acres in size is Turbine #26 at 475 feet from West Pike Brook Pond. The closest a turbine will be to a minor flowing water is Turbine #18 at 220 feet from a tributary to Fred Dorr Brook. The closest a turbine will be to a P-WL1 wetland is Turbine #25 at 180 feet. The closest a turbine will be to a waterbody less than 10 acres in size is Turbine #26 at 330 feet from Spring Hole Pond. The closest a turbine will be to a property boundary line is Turbine #2 at 1,369 feet. The closest a turbine will be to a road used for public access is Turbine #22 at 300 feet from Schoodic Road (also called the Long Pond Road).
 - (2) *Meteorological towers and power performance towers.* The two power performance towers proposed in the LUPC service area will be located in excess of the minimum setback requirements.
 - (3) *Collection lines.* The entirety of the 34.5 kV collection line system is proposed to be underground: in the shoulder of existing gravel roads; in the shoulder of proposed gravel roads; and also buried underground in cross-country runs and crossings of flowing waters or wetlands. There are no collection poles or above-ground structures associated with the Project collection lines located in the LUPC service area.
 - (4) *Temporary trailers.* All temporary trailers will be located within the two proposed laydown areas. Although final locations for trailers have not been determined, Downeast Wind has proposed that all office trailers will meet all dimensional setback requirements.
- F. *Maximum structure height - §10.26,F.* §§10.26,F,1,b and 3 specify that the maximum height for a commercial structure located farther than 500 feet from a waterbody greater than 10 acres in size is 100 feet, and that the maximum height for structures within 500 feet of a waterbody 10 acres or greater in size shall be 30 feet. However, the maximum structure height may be exceeded for structures with no floor area such as chimneys, towers, ventilators, spires, and free-standing towers and turbines with the Commission’s approval.
- (1) All but one of the Project structures will be located more than 500 feet from a great pond. The turbines will have a maximum height of 656 feet at the upward tip of the blade, and the meteorological towers and power performance towers will not exceed 200 feet in height (maximum of approximately 197 feet). Both the turbines and the power performance towers are free-standing structures and may exceed the maximum height of 100 feet with Commission approval.
 - (2) Turbine #26 is setback 470 feet from West Pike Brook Pond, which is a waterbody greater than 10 acres in size. The structure is constrained to this location to maximize distance from a wetland complex to the north containing mapped inland wading bird and waterfowl habitat (IWWH), and due to agricultural land management constraints to the west.
 - (3) In reviewing wind energy developments, the factors that the Commission evaluates to determine whether to approve a tower or turbine height in excess of 100 feet usually include visual impact and safety considerations. These factors are specifically considered in the DEP’s review. For that reason, the Commission, conditional upon DEP’s review and

approval of visual impact and safety considerations, has concluded that the turbines and meteorological towers comply with the Commission's structure height requirements.

- G. *Conclusion.* As proposed, the Project complies with all applicable dimensional requirements in §§10.26, A through G of the Commission's Land Use Standards, including minimum setbacks and maximum structure height provided that the DEP finds the Project turbines and towers do not have an unreasonable visual impact or impact on public safety.

19. *Vegetation clearing – §10.27,B of the Commission's Land Use Standards.*

- A. *Review criteria.* Based on the materials supplied by Downeast Wind, §§10.27,B,1 and 2 of the Commission's Standards are applicable to this Project.
- B. In total, 98.8 acres will remain permanently cleared for the proposed Project, specifically for the turbines, the crane path access roads, above ground 34.5 kV collector line, new and upgraded access roads, and power performance towers. Temporary clearing during construction, primarily for the laydown areas, and areas around turbines and power performance towers that will be re-vegetated will total approximately 237.3 acres. One laydown area is on a former decommissioned military installation which is largely gravel and has only scattered successional growth around the site that requires minimal removal.
- C. There will be no clearing of vegetation within 100 feet of any public roadway, waterbody, or flowing water for construction of the turbines, power performance towers, or laydown areas. When not buried in the shoulder of existing roads, the tree canopy over the 34.5 kV collection line system will be permanently removed, with shrub vegetation retained. Permanent or temporary clearing will be required within 75 feet of three streams where a 50-foot-wide collection corridor will be cleared to provide construction access. The collection line will then be installed under each flowing water by horizontal directional bore and then areas within 100 feet of each stream bank will be allowed to revegetate to a forested condition. The cleared corridor will be maintained as required by the DEP. Temporary clearing will also be required within 75 feet of 11 water crossings associated with upgraded access roads.
- D. *Conclusion.* The configuration of the Project will allow the stream buffers required by §10.27,B,1 of the Commission's Standards to be maintained, except as noted for the collection line corridor. Provided that the cleared corridor for the collection line is maintained as required by the DEP, the Project is not expected to cause an undue adverse impact to the affected stream or uses in the area.

20. *Signs – §10.27, J of the Commission's Land Use Standards.* §10.27.J of the Commission's Standards provides the standards for placement and sizing of signs used by the Project.

- A. Downeast Wind stated that all signs used on-site during construction will be informational signs associated with site activities, as provided for in §10.27,J,1,d and e, and that any permanent signs will be in compliance with §10.27, J.
- B. *Conclusion.* Provided Downeast Wind installs signs as proposed, all signs used for the Project during construction and operation will meet the provisions of §10.27,J of the Commission's Standards.

21. *General Criteria for Approval – 12 M.R.S. § 685-B(4) (incorporated in §10.24 of the Commission's Land Use Standards).* In evaluating the Project, the Commission considers and applies its land use standards not considered by the DEP in its review under 38 M.R.S.A. § 489-A-1(1).

- A. *Loading, parking and circulation – 12 M.R.S. § 685-B(4)(B) and Land Use Standard §10.24, B* specify that adequate provision must be made for transportation, including loading, parking and circulation of traffic in, on and from the site.
- (1) *Conclusion.* As proposed, and as discussed and concluded in Finding #14 above, the Project will meet the standards for loading, parking and circulation in 12 M.R.S.A. §685-B(4)(B) and §10.24, B of the Commission’s Land Use Standards.
- B. *Conformance with statute, regulations, standards and plans – 12 M.R.S.A. §685-B(4)(E) and Land Use Standard §10.24, E* specify that the Project must be in conformance with 12 M.R.S.A., Chapter 206-A and the regulations, standards and plans adopted thereto. As explained more fully in Findings #1 through #20 above, the Commission has reviewed the Project under applicable regulations and standards, specifically the Commission’s Land Use Standards contained in Chapter 10 of its rules, and, as articulated in the findings above, the Project conforms to these regulations and standards. Additionally, the Commission has more generally reviewed Title 12, Chapter 206-A and no Project components or features are out of conformance with any applicable statutory standards; for example, no spaghetti-lots are proposed. *See, e.g.,* 12 M.R.S. §682-A (prohibiting the creation of spaghetti-lots). Finally, in conducting its certification review, and reviewing and applying the applicable statutory provisions in Chapter 206-A and the applicable regulations and standards, the Commission interpreted and applied the statutory provisions, regulations and standards in light of the CLUP. *See* 12 M.R.S. §685-C(1) (“The [C]ommission must use the [CLUP] as a guide in . . . generally fulfilling the purposes of this chapter.”)
- (1) *Conclusion.* As proposed, the Project satisfies the conformity requirement in 12 M.R.S. §685-B(4)(E) and §10.24, E of the Commission’s Land Use Standards.
- C. *Placement of structures on lots in a subdivision – 12 M.R.S. §685-B(4)(F) and Land Use Standard §10.24, F* specify that placement of a structure on a lot in a subdivision may be allowed only after the subdivision has been approved by the Commission.
- (1) *Conclusion.* As proposed, and as discussed and concluded in Finding #13 above, the Project will not involve development within a subdivision.

FINAL CONCLUSION

Based on the findings set forth above, and in addition to the conclusions set forth above, the Commission concludes that, with respect to the 30-turbine Downeast Wind Project proposal, Downeast Wind has met its burden of demonstrating that the Project conforms with the applicable Commission statutory and regulatory requirements, and plans adopted pursuant to 12 M.R.S.A., Chapter 206-A; and meets the Commission’s Land Use Standards applicable to the Project that are not considered in the DEP review.

CONDITIONS

Therefore, the Commission CERTIFIES to the DEP that Site Law Certification SLC-14, submitted by Downeast Wind, LLC for the 22-turbine Downeast Wind Project, as proposed, complies with the relevant provisions of the Commission’s Land Use Standards, subject to the findings of fact and conclusions contained herein, and the following conditions:

1. *Vehicle circulation, access, and parking.* All Project traffic, access roads, and parking areas must meet the applicable provisions of §10.25,D of the Commission’s Land Use Standards. In particular:
 - A. *Vehicle circulation and access.*

- (1) During construction, warning signs must be installed to alert approaching vehicles on the access roads of construction traffic entering.
- (2) The flow of traffic into and out of temporary laydown areas must be managed with designated entrance and exit locations such that vehicles entering and leaving the laydown areas do not create traffic congestion or hazards on the Project roads.
- (3) A road turnout must be constructed on Crane Path 1700+00 approximately located at Station 1713+00 where the road width narrows to ~16 feet wide for a segment 500 feet long. The turnout must be at least eight feet wide and 100 feet in length and be designed to accommodate all anticipated traffic using Crane Path 1700+00.

2. *Lighting.*

- A. All Project permanent exterior lighting not specifically exempted by LUPC regulation must meet the standards of §§10.25,F,2,a, b and c of the Commission's Land Use Standards.
- B. Temporary lighting at Project access points as specified in Finding #16 must be limited to that which is needed to provide for safety and security during construction. The use of trailer-mounted floodlights must be limited to use during construction as needed to install the turbines during favorable wind conditions.

3. *Signs.* All Project signs must meet the provisions of §10.27,J of the Commission's Land Uses Standards.

4. *Setbacks.* All temporary and permanent structures must be located as described in Findings #8 and #18, and as depicted on Exhibit 1 of the Site Location of Development permit application. With respect to setbacks, all temporary and permanent structures must meet the provisions of §10.26,D,2 of the Commission's Land Use Standards as depicted on Exhibit 1.

6. *Water Crossing in the P-FP.* Prior to starting construction of the Project, Downeast Wind must receive Commission approval of the bridge design for the water crossing located in the P-FP subdistrict and on Crane Path 2500 at 2528+00 (near Beech Hill Road in T24 MD BPP). The bridge design must meet all applicable standards for activities in flood prone areas and described in Section 10.25,T of the Commission's Land Use Standards.

5. *Structure Height.* That the Department of Environmental Protection finds in its Site Location of Development permitting decision: all Project turbines and towers with proposed heights greater than 100 feet do not have an unreasonable visual impact or impact on public safety.

6. *Clearing.* Vegetated buffers along streams must be maintained in accordance with §10.27,B of the Commission's Land Use Standards, except that where the 34.5 kV collector line corridor crosses a stream the vegetation shall be managed as required by the Maine Department of Environmental Protection.

7. *Title, Right or Interest.* That the Department of Environmental Protection finds in its Site Location of Development permitting decision: Downeast Wind possesses sufficient title, right or interest to develop the Project.

This approval of a request for certification, issued to the Department of Environmental Protection, is not a final agency action. Pursuant to 5 M.R.S. §§ 11001 *et seq.*, a person aggrieved by a DEP Site Location

of Development permit decision containing this certification determination may appeal the DEP's final agency action to Superior Court. As part of such an appeal, a person aggrieved may seek judicial review of the components of the DEP's final agency action, including the Commission's certification determination that is incorporated into the DEP's permitting decision.

DONE AND DATED AT CALAIS, MAINE THIS 13th DAY OF OCTOBER, 2021.

By: _____
Judith C. East, Executive Director

DRAFT