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MEMORANDUM OF DECISION
IN THE MATTER OF

Petition to Remove Milton Township, Oxford County from the Expedited Permitting Area for Wind Energy Development

This memorandum of decision follows the Land Use Planning Commission's substantive review of the Petition to Remove Milton Township from the Expedited Permitting Area for Wind Energy Development pursuant to the provisions of Title 35-A, section 3453-A, the Commission's Chapter 4 '*Rules of Practice*', and the Commission's Chapter 5 '*Rules for the Conduct of Public Hearings*'; and in consideration of public hearing testimony and evidence, agency review comments, public comments and other related materials in the public hearing record.

After considering the above referenced information and applying the statutory criteria in 35-A M.R.S. § 3453-A(3)(A) & (B), the Commission is not able to make the requisite findings, and the petition to remove Milton Township from the expedited permitting area for wind energy development fails.

Procedural History

1. Petition Received: January 8, 2016.
2. Request for Substantive Review Filed: February 29, 2016.
3. Public Hearing: August 10, 2016, Bethel, Maine.
4. Public Comment Period Closed: August 22, 2016.
5. Rebuttal Comment Period Closed: August 29, 2016.

Summary of the Rulemaking Record

6. In total, the Commission received written submissions, testimony and comments from the Substantive Review Requestor, a potential wind power developer, the Petition Circulator, over 80 interested persons, and 8 governmental agencies.



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Review of Criterion B (35-A M.R.S. § 3453-A(3)(B))

Criterion B. The proposed removal is consistent with the principal values and the goals in the comprehensive land use plan adopted by the Maine Land Use Planning Commission pursuant to Title 12, section 685-C.

Framework for Review

7. For the Commission, through rulemaking, to remove a place from the expedited permitting area it must find the proposed removal satisfies the two criteria in § 3453-A(3) (Criterion A and Criterion B). The Commission begins its review with consideration of Criterion B, 35-A M.R.S. § 3453-A(3)(B).
8. The CLUP contains four principal values and multiple goals. Together, the principal values are intended to define the distinctive character of the unorganized and deorganized areas of the State, but it is recognized that these values are not represented equally across all towns, plantations, and townships served by the Commission. Retaining the principal values is an objective the CLUP is intended to further. The CLUP also is intended to provide a vision for the unorganized and deorganized areas. As stated earlier, the CLUP's goals are intended to help achieve this vision.
9. The principal values do not exist in isolation, are interconnected, and sometimes are in tension. The CLUP's goals may at times conflict with one another. Often, the specific goals of the CLUP themselves contain multiple factors that need to be weighed for consistency determinations. In some cases, important factors are included in more than one specific goal. As a result, evaluating the consistency of removing a place from the expedited permitting area with the principal values and goals in the CLUP involves a balancing. One of the Commission's primary roles is to interpret the CLUP and apply it in a manner consistent with State statute. This is a role called upon in the application of Criterion B.
10. All of the principal values and some of the goals contained in the CLUP are relevant to the expedited area removal process. The CLUP divides the goals into two general categories, broad goals and specific goals. The broad goals are furthered by the specific goals; thus, the evaluation of consistency with the goals of the CLUP called for in Criterion B is achieved through review and consideration of the specific goals that are relevant to the Commission's decision on the removal petition. Goals the Commission found to be irrelevant to the proceeding, for which removal would neither be consistent nor inconsistent include infrastructure; development rate, density, and type; affordable housing; land conservation; agricultural resources; coastal resources; historic resources; geologic resources; compliance goals; and cooperative initiatives. The goals relevant to the CLUP consistency analysis, along with the principal values, are further discussed in this memorandum.

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Consistency with the Principal Values of the CLUP

Economic Value of the Jurisdiction

“The economic value of the jurisdiction derived from working forests and farmlands, including fiber and food production, largely on private lands. This value is based primarily on maintenance of the forest resource and the economic health of the forest products industry. The maintenance of farmlands and the viability of the region's agricultural economy is also an important component of this value.”

11. There is testimony in the record about the downturn of the forest products industry and the associated economic impact on the region. There is also testimony and evidence to indicate that wind energy development can enhance the value of and help to maintain working forests. In support, a policy paper developed and submitted by the Maine Forest Products Council (MFPC), *Wind power in the managed forest*, states that “landowners need diverse income streams to balance the cyclical nature of wood pricing and long time frames for returns on investment.” The paper concludes that wind power can be part of a long-term sustainability plan for working forests and is compatible with other forest uses. There is no indication in the record that farmlands would be impacted by wind energy development in Milton or of a significant agricultural economy in region.
12. ***Finding:*** Based on the testimony and evidence in the record, in terms of wind energy development’s beneficial relationship with the working forest, removal of Milton from the expedited area would not be consistent with the economic value of the jurisdiction derived from working forests.

Diverse and Abundant Recreational Opportunities

“Diverse and abundant recreational opportunities, including many types of motorized and non-motorized activities. Unique opportunities exist for recreational activities which require or are significantly enhanced by large stretches of undeveloped land, ranging from primitive recreation in certain locations to extensive motorized trail networks. Recreation is increasingly an economic driver in the jurisdiction and the State.”

13. In terms of diverse and abundant recreational opportunities, there is conflicting testimony in the record on the potential impacts to various existing recreational uses and opportunities in Milton. (See paragraphs 43-49 below). An important consideration for this value is that Milton is surrounded by organized municipalities and bisected by public roads. Relatively speaking, the Township is not remote and has less opportunity for large blocks of undeveloped land. No unique recreational opportunities have been identified in the record.
14. Based on record evidence, recreation and tourism appear to be important economic drivers in the broader region. Within Milton and the nearby communities, particularly Woodstock, recreation opportunities are locally important, but testimony and evidence does not show it to be a significant economic driver.
15. ***Finding:*** It is apparent from the record that Milton and the nearby communities offer recreational opportunities that are highly valued by those living there, but these opportunities do not appear to be unique. While removal of Milton is consistent with this principal value, in that it would not reduce

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existing recreational opportunities, given the value's focus on large stretches of undeveloped land, which Milton is not characterized by, removal does little to promote this value either.

Diverse, Abundant and Unique High-value Natural Resources and Features

“Diverse, abundant and unique high-value natural resources and features, including lakes, rivers and other water resources, fish and wildlife resources, plants and natural communities, scenic and cultural resources, coastal islands, mountain areas and other geologic resources.”

16. There are no lakes or ponds located in Milton. Two rivers and multiple streams are located in the Township, but outside areas that would likely be proposed for wind energy development. Specific impacts to small streams and wetlands would be assessed and reviewed as part of a permit application review process. Milton does have wildlife resources, at least one of which is unique and of high value, the bat hibernaculum providing overwintering habitat for several species of threatened and endangered bat species. There are also locally significant scenic resources in the Township and surrounding area.
17. ***Finding:*** There are multiple natural resource components included in this principal value, which are also included in separate but related specific goals of the CLUP discussed later in this memorandum. Overall, removal of Milton from the expedited permitting area would be consistent with this principal value, protecting existing natural resources from potential adverse impacts associated with wind energy development. However, removal of Milton would only further this value to a limited extent. As discussed below, bats, including those that use the hibernaculum, are protected through the permitting process and the scenic resources in and around Milton are locally important, but not high-value when viewed in the context of the broader area served by the Commission.

Natural Character

“Natural character, which includes the uniqueness of a vast forested area that is largely undeveloped and remote from population centers. Remoteness and the relative absence of development in large parts of the jurisdiction are perhaps the most distinctive of the jurisdiction's principal values, due mainly to their increasing rarity in the Northeastern United States. These values may be difficult to quantify but they are integral to the jurisdiction's identity and to its overall character.”

18. This value speaks largely to remoteness and large blocks of undeveloped land. As noted previously, Milton is not, relatively speaking, a remote area. It is surrounded by organized municipalities. Existing development in Milton includes public roads, and seasonal and year-round residential homes. An existing wind energy project is located in the adjacent town of Woodstock, and is prominent in the landscape in certain places. However, the primary land use in Milton is forest management, there is a sizeable block of land in the center of the Township under conservation easement, and, as testified by the Petition Circulator, the Township has a relative absence of development compared to the municipalities that surround it. It is likely due to that relative absence of development that led a number of interested persons to comment on the “remoteness” of the area. In his public hearing testimony, Ed Rosenberg provided a number of photographs of the area showing old farms and other residential homes located primarily at the base of Chamberlain Mountain in the Towns of Milton, Woodstock, and Bethel. The photographs depict scattered rural residential development with backdrops of undeveloped mountainsides and ridgelines. Testimony in the record demonstrates that the surrounding mountain scenery contributes significantly to the natural character of the area.

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19. ***Finding***: Within the area served by the Commission, Milton is not remote or characterized by vast undeveloped forest land. Nevertheless, natural character is not only defined by remoteness and, among areas with resident populations, Milton has limited development. Wind energy development on the undeveloped ridgelines of Milton would alter the scenic quality of those ridgelines and adversely impact the character of the area. Therefore, the Commission finds that removal of Milton from the expedited area would be consistent with the natural character principal value.

Consistency with the Goals of the CLUP

Location of Development

“Guide the location of new development in order to protect and conserve forest, recreational, plant or animal habitat and other natural resources, to ensure the compatibility of land uses with one another and to allow for a reasonable range of development opportunities important to the people of Maine, including property owners and residents of the unorganized and deorganized townships.” (Goal I.A.)

20. The result of the Commission’s decision on the Milton removal petition will determine whether or not wind energy development will be an allowed use in Milton, which provides an opportunity for the Commission to proactively guide the location of windpower development. In considering this goal, the CLUP includes helpful language on siting energy and utility facilities. The CLUP recognizing that, “[g]enerally speaking, these facilities are best located in areas on the edge of the jurisdiction with good existing road access but low natural resource values.” (CLUP, 142.) A CLUP policy on the location of development guides development to areas near existing towns and communities (CLUP, 6). As already discussed, Milton is unique in its location, being completely surrounded by organized municipalities, and having good existing road access. In addition, there is an existing 115 kV transmission line located nearby. The record includes evidence on the compatibility of wind energy development with Milton’s primary land use, forest management. Recreational and natural resources are discussed in more detail under the specific goals for those resources.
21. ***Finding***: The CLUP speaks specifically to the location of energy and utility facility development. Given Milton’s location near existing towns, and the existing infrastructure in and near the Township, the Commission finds that Milton is a suitable location for wind energy development and the type of place that the CLUP envisions energy and utility facilities should be located. The single high-value resource, the bat hibernaculum, can be adequately protected in a permit review process. Removal of Milton from the expedited area is not consistent with this goal.

Economic Development

“Encourage economic development that is connected to local economies, utilizes services and infrastructure efficiently, is compatible with natural resources and surrounding uses, particularly natural resource-based uses, and does not diminish the jurisdiction’s principal values.” (Goal I.B.)

22. The record includes conflicting testimony relating to the potential impacts of the removal petition on two of the primary economic drivers in the region – forest products and tourism/recreation. Stantec Consulting Services (Stantec), on behalf of EverPower Wind Holdings, Inc. (EverPower), testified that the primary land use in Milton is forest management, and that wind energy development is compatible

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with that use. They further testified that wind energy development can provide an additional source of economic value for forest landowners, helping to preserve the forest economy, especially as the value derived from timber production declines. Stantec quoted as evidence a study coordinated and managed by the University of Maine's Center for Research on Sustainable Forests, *Keeping Maine's Forests: A Study of the Future of Maine's Forests*, November 2009 (the Sustainable Forests Report).

23. EverPower, as well as other interested persons, also testified on the economic benefits of wind energy development to local landowners, the host community, and the broader region from tangible benefits, taxes, annual project funds, and direct and indirect spending during construction and the operational life of a project. EverPower supported its testimony on economic impacts with data from a Job and Economic Development Impact model created by the United States National Renewable Energy Laboratory. Several interested persons cite a report by Charles S. Colgan, PhD, on the "Economic Impacts of Wind Energy Construction and Operation in Maine, 2006-2018." According to Constance Haas, a resident and property owner in Milton, removal of Milton from the expedited area would disadvantage the Township by eliminating a form of economic development that it desperately needs.
24. The Petition Circulator testified that tourism is the largest industry in Maine, providing data on payroll, and sales and services, which she stated directly affects people from local communities. Her conclusion was that tourism is much more important economically and should not be lost to wind energy development. The Maine Department of Economic and Community Development provided a copy of a report "Comprehensive Economic Development Strategy Update- March 2016," published by the Androscoggin Valley Council of Governments, containing information on the economic conditions within the Androscoggin Valley Economic Development District, which includes the Milton area. The report finds downtown services and healthcare employing the largest number of workers in the district, followed by post-secondary education, and tourism. The Town of Woodstock testified that their greater community gains from the economic vitality of outdoor activities and scenic views. Finally, the Bureau of Public Lands concluded in their review that commercial interests including skiing and tourism are central to the broader area's recreational character.
25. There is also testimony in the record from Scott Gould, owner of a bed and breakfast in Bethel, as well as rental properties on Concord Pond and North Pond, in Woodstock. Gould testified that the tourism industry is vital to the economics of the surrounding areas, the area needs economic growth in the tourism industry, and the important natural resources, particularly scenic mountain views, need to be conserved. In his opinion, wind energy development would have a negative impact on the area's tourism industry, diminishing the principal values on which the industry is based.
26. ***Finding:*** Given the existing road and transmission infrastructure in the area, it is likely that wind energy development in Milton could utilize services and infrastructure efficiently. Wind power is compatible with forestry and some types of surrounding recreational uses, such as snowmobiling, ATV riding, and hunting. Wind power development is not compatible with types of outdoor recreation that are more dependent on scenic resources. While tourism and outdoor recreation is important in the broader regional economy, that appears to be less the case in Milton and the nearby communities, such as Woodstock. Evidence indicates Milton is 10 miles or more from the majority of prominent public recreational features in the region. There is no evidence in the record that removal of Milton from the expedited area would encourage additional recreational development or growth in the regional tourism industry. The potential impact of wind power in Milton on the regional tourism economy appears limited. In contrast, there is evidence in the record that removal would discourage wind energy

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development that data shows would have a positive economic impact in Milton. Finally, while wind power development in Milton would not further all four of the principal values in the CLUP, on balance it does not appear to significantly diminish them either. Overall, removal would not be consistent with the economic development goal.

Site Review

“Assure that development fits harmoniously into the existing communities, neighborhoods and the natural environment.”
(Goal I.C.)

27. The Commission received conflicting testimony about how well or poorly a wind energy development would fit within the existing communities in the region. The record includes testimony on the compatibility of wind power with the primary land use, forest management, and other forest uses. The record also includes testimony and evidence on the character of existing communities and neighborhoods in and around Milton.
28. Michael Dunn described Milton this way, “Milton is a mere 15 square miles with the majority of its residents in two river valleys along the bases of Bryant and Chamberlain Mountains The total distance between Route 232 and the East Milton Road, where most residents live, is a little less than 2 miles.” Two mountains suitable for wind energy development in Milton are located between the two roads. One neighborhood, in particular, located on the Roger Farnum Road at the base of Chamberlain Mountain, Dunn described as a “quiet little community.” Ed Rosenberg provided a number of photographs showing old farms and other residential homes located primarily at the base of Chamberlain Mountain in Milton, and the Towns of Woodstock and Bethel. The photographs depict scattered rural residential development with backdrops of undeveloped mountainsides and ridgelines. According to Gould, “People travel here [the greater Bethel area] because of the Character displayed by Bethel Maine, ‘Maine’s Most Beautiful Mountain Village’ and for the wonderful scenery provided by the Androscoggin River Valley and the area’s tranquil ponds and lakes. The character of the area is built on beautiful mountain scenery... .”
29. **Finding:** In the CLUP, site review is discussed in Section 4.3.C (p. 64) and this discussion focuses on ensuring harmonious fit through the permitting process. The site review policies in the CLUP largely focus on requirements and objectives achieved through the application of permit review standards. With regard to wind power, since the last revision of the CLUP, the Department of Environmental Protection (DEP) now permits grid-sale wind energy development in the unorganized and deorganized areas of the State. Although DEP administers a statutory standard in the Site Location of Development Law that requires harmonious fit, it does not appear that this statutory provision and DEP administration of it fully captures and advances the Commission’s site review goal, with a focus on existing communities and neighborhoods, in addition to the natural environment. As a result, consistency with this goal cannot be achieved solely through reliance on the permitting process. The weight of the testimony and evidence in the record from local residences and communities suggests wind power in Milton would not fit harmoniously into the communities and neighborhoods around the base of the western mountains in the Township. As a result, removal of Milton from the expedited area would be consistent with this goal.

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Air and Climate Resources

“Protect and enhance the quality of air and climate resources throughout the jurisdiction.” (Goal II.B.)

30. There is credible testimony and evidence in the record on wind power’s beneficial effect on air and climate resources through reduction in greenhouse gas emissions. In particular, the Maine Renewable Energy Association provided data from the Sustainable Energy Advantage on reduced CO₂, SO_x and NO_x emissions from wind farms operating in Maine. Additionally, wind power’s beneficial effect on air and climate resources through the displacement of fossil fuel based energy generation and reduction in greenhouse gas emissions is well known. The CLUP acknowledges those benefits and recognizes wind power as “the most significant renewable source of electricity that is economically viable at the utility scale” (CLUP at 187). Given the higher bar associated with certain permitting standards applicable to wind energy projects that are located outside the expedited permitting area, testimony suggests that removal of a place from the expedited area will discourage the development of wind energy facilities.
31. ***Finding:*** Given the benefits of wind energy shown in the record, the Commission finds removal of Milton from the expedited area would not be consistent with the air and climate resources goal.

Energy Resources

“Provide for the environmentally sound and socially beneficial utilization of indigenous energy resources where there are not overriding public values that require protection.” (Goal II.E.)

32. The CLUP, while recognizing the statutory changes with respect to wind energy development in the expedited permitting area, provides for the environmentally sound and socially beneficial utilization of indigenous energy resources where there are not overriding public values that require protection. The CLUP explains that it seeks to accommodate energy generation installations that are consistent with the State’s energy policies, are suitable for the proposed locations, and designed to minimize intrusion on natural and cultural resources and values. (CLUP at 13.)
33. Other than wind energy development, no potential projects utilizing indigenous energy resources have been identified in the record for Milton. Removing Milton from the expedited permitting area would make projects using an indigenous energy resource, specifically wind, for renewable energy production no longer an allowed use in the Township.
34. ***Finding:*** By itself, removal is not supportive of environmentally sound and socially beneficial utilization of indigenous energy resources. Additionally, in considering a range of public resource values when applying Criterion B, the Commission has not found there are overriding public values that require protection. Removing Milton from the expedited permitting area is not consistent with the energy resources goal.

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Forest Resources

“Conserve, protect and enhance the forest resource in a way that preserves its important values, including timber and fiber production, ecological diversity, recreational opportunities, as well as the relatively undeveloped remote landscape that it creates.” (Goal II.F.)

35. As stated earlier, there is testimony and evidence in the record to indicate that wind energy development can enhance the value of and help to maintain the working forest. The policy paper developed and submitted by the MFPC, *Wind power in the managed forest*, concludes that wind power can be part of a long-term sustainability plan for working forests and is compatible with other forest uses. MFPC also commented that wind power development represents a small percentage of forest acreage, typically located in areas that are less suitable for growing trees, while providing improved access for landowners, enhanced firefighting capability, and increased access for traditional recreational uses.
36. ***Finding:*** Wind energy development would not preserve a relatively undeveloped remote landscape. However, as discussed above, Milton is not, relatively speaking, remote and undeveloped. Based on testimony in the record regarding the benefits of wind energy development in the working forest, the Commission finds that removal of Milton from the expedited area would not be consistent with the forest resources goal.

Plant and Animal Habitat Resources

“Conserve and protect the aesthetic, ecological, recreational, scientific, cultural and economic values of wildlife, plant and fisheries resources.” (Goal II.H.)

37. Goal relating to plant and fisheries resources: Conservation and protection of plant and fisheries resources is provided for at the permitting stage. Existing review criteria provide for the protection of these resources and these criteria are the same whether a place is in or outside the expedited permitting area.
38. Goal relating to wildlife resources: The Maine Department of Inland Fisheries and Wildlife (MDIFW) provided a review of wildlife species and habitats in Milton, including a list of 14 endangered, threatened, and special concern species that are confirmed or likely to be present in Milton. The list provided by MDIFW includes one federally listed threatened bat species, the northern long-eared bat; one State endangered bat species, the little brown bat; and one State threatened bat species, the eastern small-footed bat. In general, the wildlife species and habitats included in MDIFW’s review are not unique to Milton. Issues related to potential impacts to most wildlife species and habitats could be addressed in a permit application review process. However, according to MDIFW, the bat hibernaculum located in Milton is unique.
39. MDIFW bases their comments on the importance of the Milton hibernaculum on the following:
- Maine’s bat population has experienced a precipitous decline;
 - The State’s wintering population of cave bats has declined by 90% due mainly to the disease, white nose syndrome;
 - The surviving bats represent the only possibility to rebuild the population;
 - The cave in Milton is one of only three known in Maine;

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- The cave hosts the largest overwintering population of bats, including all three federally and state listed endangered and threatened species, and all five Maine cave-dwelling bat species; and
 - Wind energy development in Maine has caused mortality in bats including impacts to the endangered, threatened, and special concern species.
40. MDIFW is concerned that, with any additional wind energy development in the Milton area, cave-dwelling bats will be seasonally at increased risk due to staging and migration in and out of the hibernaculum. They stated that “...we are left with remnant numbers of several *Myotis* bats¹ for which any and all additional mortality should be avoided or minimized.”
41. EverPower contends that potential impacts to bats, including cave-dwelling bat species, can be adequately addressed in the permit application review process. Stantec testified on behalf of EverPower, concerning the status of the hibernaculum, threats to the hibernaculum, and threats to bats. Stantec provided that the hibernaculum is more than 2.5 miles away from potential wind energy development sites in western Milton, that the Concord River Easement property bisecting Milton provides a buffer for the hibernaculum from future development, and, due to foraging and flight behavior of cave-dwelling bats, they make up a small percentage of wind-related mortalities. Stantec further stated that ongoing research indicates a distinct relationship between bat activity and weather conditions, specifically wind speeds and temperatures. They conclude that the growing body of evidence offers greater opportunity to reduce the risk of collision-related bat mortality through project-specific operational curtailment (shutting down turbines during certain conditions to reduce potential impacts).
42. ***Finding:*** The bat hibernaculum is a resource of state-wide importance. The record contains credible evidence relating to this unique and valuable resource. However, wind energy development in Milton is not likely to have a direct impact on the hibernaculum itself. As stated by MDIFW, cave-dwelling bats will be seasonally at increased risk due to staging and migration in and out of the hibernaculum. The increased risk relates to bat mortality from collisions with operating wind turbines. Given that bat activity in and around the hibernaculum is seasonal, activity patterns and the range of movements from bats using the hibernaculum are site specific, and not well studied (Exhibit 8.2.2, MDIFW), and that project-specific operational curtailment and other best practical mitigation techniques can reduce the risk of bat mortality, potential impacts to cave-dwelling bats are best addressed using site specific data during a permit review process. Based on the record, the Commission concludes removal of Milton from the expedited area would be consistent with the habitat resources goal, specifically by eliminating wind energy development as an allowed use, and protecting wildlife resources from impacts associated with wind energy development. However, removal of Milton from the expedited area is not necessary to ensure consistency with this goal and the protection of plant and animal habitats, including the bat hibernaculum, because the protection of the habitat resources in Milton can be adequately addressed during a permit review process.

¹ *Myotis* bats include the northern long-eared bat; little brown bat; and eastern small-footed bat.

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Recreational Resources

“Conserve the natural resources that are fundamental to maintaining the recreational environment that enhances diverse, abundant recreational opportunities.” (Goal II.I.)

43. Stantec testified that there are limited recreational opportunities within Milton and the opportunities are likely similar to those popular elsewhere in the region. They also testified that the local opportunities are disconnected from other recreational opportunities located outside of Milton, specifically in the Mahoosuc Region to the west. Recreational opportunities they list in their testimony included hunting, trapping, snowmobiling, and ATV riding, primarily on private forest lands that are not posted. Stantec asserted, and its conclusion is supported by comments from a number of interested persons, that wind energy development, and snowmobile and ATV use are compatible. Interested persons also commented on the compatibility of wind energy development with hunting, which can provide increased access to forest lands.
44. Stantec limited its assessment of recreational opportunities to the boundaries of Milton. However, in considering potential impacts from wind energy development, the Commission considers potential impacts to significant recreational and scenic resources regardless of whether or not the resources are located in Milton or even in an area served by the Commission. The Land Use Planning Commission is a state agency charged with extending sound planning, zoning, and development to the unorganized and deorganized townships of the State for the public health, safety, and general welfare of the people of Maine. Additionally, extending the assessment of potential impacts to the communities surrounding Milton is consistent with past practice of the Commission in other development reviews.
45. The Maine Bureau of Parks and Lands (BPL) described Milton as being situated in a mountainous and recreationally significant region of Maine, and surrounded by a mosaic of differing types of nature-based outdoor recreational assets. A majority of the prominent public recreational features listed in their comments are located 10 or more miles from Milton. One exception is Little Concord Pond, an undeveloped State park property in Woodstock, approximately 1.5 miles from Milton. The park contains a hiking trail to the summit of Bald Mountain and Speckled Mountain. Based on LUPC staff knowledge and experience in the area, the existing wind project on Spruce Mountain in Woodstock is visibly prominent from the Bald Mountain trail and summit.
46. BPL also described trails in the region that are provided by private landowners and trail managers. Two in the Milton area included a trail to an open summit, managed by the Rumford Water District, on Mount Zircon; and the Androscoggin River Trail coordinated by the Androscoggin Watershed Council. BPL commented that driving for pleasure is also a component of recreation occurring in the region that relies on scenic values, and concludes that the mountains, woods, and waters serve as the foundation for the recreational values in the region.
47. The Petition Circulator testified that the greater Bethel area has a significant concentration of recreational values, and listed a number of resources described in her testimony as having “regionally important views,” including: the trails on Mount Zircon; North Pond, South Pond, and Round Pond; the University of Maine’s 4-H Camp and Learning Center on Bryant Pond; the Androscoggin River Trail; and pleasure driving along Route 26, Route 2, Route 232 and the Milton Road. Ed Rosenberg provided testimony on recreational resources and photographs of views from many of those resources. In

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particular, he provided testimony on nature trails that connect the Woodstock school to multi-use trails leading to Bucks Ledge, Lapham Ledge, Moody Mountain and the summit of Champlain Mountain; photographs from the Greenwood Town Beach on South Pond, with views of Moody and Chamberlain Mountains; and photographs from Mount Zircon toward Chamberlain and Bryant Mountains. Rosenberg referenced in his testimony two magazine articles featuring pleasure driving and hiking trips with views of the mountains and ridgelines of Milton. The articles were “5 Fall Journeys,” DownEast Magazine, September 2006, that, according to Rosenberg, highlighted the five best foliage routes to take in western Maine and included a photographic view of Bryant and Chamberlain Mountains from North Pond in Greenwood; and “13 Amazing Maine Mountain Top Views,” MaineToday, January 2016, that, according to Rosenberg, included views from Mount Zircon toward Bryant and Chamberlain Mountains.

48. According to the Woodstock Conservation Commission (WCC), that organization maintains the referenced trails on Bucks Ledge and Lapham Ledge, with expansion of trails planned for Moody Mountain. They testified that the trails are used for hiking and winter skiing, and that Moody Mountain offers one of the few places with views of scenic mountain tops in all directions. The WCC provided photographs showing views from the trails toward mountains and ridgelines in Milton. Further, they commented that the existing Spruce Mountain towers are not visible from their trail network, but that wind energy development in Milton would be in the direct viewscape.
49. ***Finding:*** Based on the testimony of BPL, the Petition Circulator, Ed Rosenberg, the Woodstock Conservation Commission, and other local residents, there are diverse recreational opportunities in Milton and the surrounding region. In addition the area’s woods, mountains and waters, especially the scenic views of and from those resources, appear to be fundamental to the recreational environment. Due to the relationship between the recreational resources and scenic views, there is a direct correlation between the value of and any potential adverse impacts to scenic resources, and the recreational resource values in Milton. As discussed below, the Commission finds the scenic resources in the Milton area are locally significant, but not high-value. Overall, the removal of Milton would be consistent with the recreational resources goal, but the extent to which this goal would be furthered is tempered by the absence of high-value scenic resources in the area that would contribute to and enhance the recreational environment.

Scenic Resources

“Protect the high-value scenic resources of the jurisdiction by fitting proposed land uses harmoniously into the natural environment.” (Goal II. J.)

50. In its consideration of this goal, the Commission recognizes the difference in the scenic standard that applies to projects inside versus those outside of the expedited area during a permit application review. The Commission notes what resources have been excluded from protection with the change in the scenic impact standard implemented under the Wind Energy Act (WEA), and considers the level of protection warranted for those resources.
51. The WEA replaced the usual standard by which the State evaluates potential visual impacts to scenic resources. While projects located outside of the expedited area must demonstrate that they fit in harmoniously with their surroundings, projects inside the expedited area are evaluated under a different standard, and must demonstrate that the development will not significantly compromise views from

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certain types of scenic resources. Under the WEA, the scenic impact standard only applies to scenic resources of state or national significance (SRSNS).

52. Stantec, testifying on behalf of EverPower regarding scenic resources, concluded that there are no identified scenic resources within Milton or other unorganized territories in the area. Because they referenced only certain resources in their testimony, it appears that they limited their assessment to resources that would qualify as SRSNS. In this proceeding, the Commission is not limited to considering potential impacts to SRSNS. In fact, it makes sense, given the different standards that apply inside and outside of the expedited area, for the Commission to consider high value resources that are not SRSNS.
53. The record for the Milton petition includes testimony and evidence from the Petition Circulator, state and local agencies, and interested persons on a number of recreational and scenic resources in and around Milton. Most of the identified resources do not meet the definition of scenic resources of state or national significance as defined in the WEA. For example, the trails maintained by the Rumford Water District on Mount Zircon, the trails maintained by the Woodstock Conservation Commission on Bucks Ledge and Lapham Ledge leading to Moody Mountain, the Androscoggin River Trail, local town beaches, and surrounding ponds such as North, South and Bryant Ponds are all resources that the Petition Circulator asserted are regionally important, but they are not SRSNS. Ed Rosenberg testified that, to those who live in the area, impacts to the scenic resources would have life changing significance. The Woodstock Conservation Commission provided several reasons why people use the local trails, stating “most climb to appreciate beauty,” and quoted comments that people say when they get to the top of Moody Mountain such as “I climb as often as I can to see this fantastic view.”
54. ***Finding:*** The Commission finds that Milton and the surrounding communities have scenic resources and those resources, based on credible testimony in the record, are of local significance. However, the record does not support a conclusion that those resources are of high value when considering the entirety of the Commission’s service area. There is little evidence that the scenic resources in the Milton area are used extensively by members of the general public from outside of the local area or that they have any outstanding or unique features. Additional protection for those resources does not appear to be warranted. While removal of Milton from the expedited permitting area would be consistent with the protection of scenic resources, because Milton and the surrounding area do not possess high-value scenic resources, removal would not significantly further this scenic resources goal.

Water Resources

“Preserve, protect and enhance the quality and quantity of surface waters and groundwater.” (Goal II.K.)

55. No lakes or ponds are located in Milton. Stantec testified that two rivers and multiple streams are located in Milton outside of areas that would likely be proposed for wind development. They further testified that any proposed project will be designed to minimize adverse impacts on water resources, including extensive protection measures to protect water quality.
56. ***Finding:*** Removal of Milton from the expedited area, such that wind energy development will no longer be an allowed use, will protect surface and groundwater from any potential adverse impacts during construction and operation of a wind energy project, supporting a finding that removal is

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consistent with the water resources goal. However, removal of Milton from the expedited area is not necessary to ensure protection of surface and groundwater resources in Milton. The type of review required for water resources relies on specific site plan details and the risks would be fully addressed under the DEP's rules for evaluating development permits.

Wetland Resources

“Conserve and protect the ecological functions and social and economic values of wetland resources.” (Goal II.L.)

57. Stantec's testimony concluded that, similar to most other areas in Maine, mapped wetlands and streams are located throughout Milton. Detailed wetland delineation surveys will be conducted as part of any permit application and any proposed project will need to minimize adverse impacts on wetland resources.
58. ***Finding:*** Removal of Milton from the expedited area, such that wind energy development will no longer be an allowed use, will protect wetlands from any potential adverse impacts during construction and operation of a wind energy project, supporting a finding that removal is consistent with the wetland resources goal. However, removal of Milton from the expedited area is not necessary to ensure protection of wetland resources in Milton. The type of review required for wetland resources relies on specific site plan details and the risks would be fully addressed under the DEP's rules for evaluating development permits.

Review of Criterion A (35-A M.R.S. § 3453-A(3)(A))

Criterion A. The proposed removal will not have an unreasonable adverse effect on the State's ability to meet the state goals for wind energy development in section 3404, subsection 2, paragraph C.

Framework for Review

59. Application of Criterion A involves developing an understanding of where the State stands with regard to achieving its goal for installed capacity of wind energy development by the year 2030. The greater the additional capacity needed to achieve this goal, the more important it is for there to be good locations available for wind power development. All areas within the existing expedited permitting area are not the same. For example, the wind resources, public resources, transmission infrastructure, and existing land uses all differ from place to place. As a result, some areas are better suited for wind power development than others. Removal of the better suited locations from the expedited permitting area could have an unreasonable adverse effect on the State's ability to meet its goal. This is because in the unorganized and deorganized areas of the State – the areas covering roughly half the State that is served by the LUPC – wind energy development is not an allowed land use activity outside the expedited permitting area.
60. In evaluating whether removing Milton would have an unreasonable adverse effect and fail to satisfy Criterion A, the first step is to assess the progress the State has made in achieving the 2030 goal. From there, the State's need for additional installed wind energy capacity in order to achieve its goal and Milton's potential for wind energy development is balanced against the impact to local communities and public resources, together characterized as public resource values.

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Progress Toward the State's 2030 Energy Goal

61. Title 35-A, section 3404(2)(C) establishes the 2030 goal for wind energy development in the State as 3,000 megawatts (MW) of installed onshore capacity. The record contains data compiled from submissions by DEP and the LUPC indicating that Maine currently has wind energy projects either operational, under construction, or permitted with name plate capacity of approximately 927 MW of wind energy. Therefore, to achieve its goal, the State will need an additional 2073 MW of installed onshore capacity by 2030.
62. There is testimony and evidence in the record showing that the Independent System Operator (ISO-NE) for the New England bulk power transmission system currently has 3,631 MW of onshore wind capacity projects pending interconnection requests in northern and western Maine. The Petition Circulator and other interested persons asserted that the pending capacity should be considered by the Commission, and, based on that pending capacity which exceeds 3,000 MW, removal of Milton from the expedited area would not have an unreasonable adverse impact on the State meeting its wind energy goal. However, the record also includes public hearing testimony indicating that proposed projects in the ISO Generator Interconnection Queue do not always advance to project development. According to ISO, the interconnection process consists of multiple phases including an interconnection studies phase, and, during that phase, infrastructure and upgrades are identified to ensure that the interconnection can be done reliably with no adverse impact on the existing power system. The cost of any necessary infrastructure and system upgrades to maintain system reliability are the responsibility of the project developer. According to the public hearing testimony of Jeffrey H. Fenn, P.E., a power systems engineer with SGC Engineering, less than 5,000 MW out of a total of 65,000 MW of proposed interconnections since 1996 proceeded to the next stage of filing an interconnection application.
63. ***Finding:*** Considerable progress remains necessary for the State to achieve its wind energy goal for 2030. Although there is a substantial amount of generating capacity in the ISO Interconnection Queue, it is likely that only a small fraction of that capacity will proceed to a project development stage based on the historical data in the record. Removal of areas better suited for wind power development from the expedited permitting area will, therefore, have an adverse effect on the State's ability to meet its 2030 goal.

Potential for Wind Energy Development in Milton

Availability of Sites

64. In pre-filed testimony, the Petition Circulator provided excerpts from a Maine Audubon report, *Wind Power and Wildlife in Maine*, that indicates there are 1.1 million acres of land in Maine that are viable for wind energy development, and only 15% of that acreage would have to be developed to meet the state wind energy goals. The Petitioner asserted, with the amount of land suitable for wind energy development, removal of Milton's 9,600 acres will not have an unreasonable adverse impact on the State's ability to meet its wind energy goals. The analysis on the amount of land area suitable for wind energy development in the Audubon report included land modeled as a viable wind resource (i.e., sufficient wind speeds), and excluded developed areas, conservation land, and steep slopes. However, the report recognizes that siting a wind energy development is a complex process, and lists other factors not included in the Audubon analysis, that would need to be considered.

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65. EverPower, a wind energy developer with 752 MW of operating wind energy capacity, described in its pre-filed testimony 10 major factors that the company uses to select areas for further development, including such factors as construction cost, economic competitiveness, large blocks of contiguous land perpendicular to the wind, regulatory setback requirements, and scenic resources. EverPower testified that, given all the factors limiting the availability of sites for wind energy development, all suitable areas need to remain available for development to make meaningful progress in meeting the State's wind energy goals.

Wind Resource

66. A key factor in determining if a site is suitable for wind energy development is the quality of the wind resource. EverPower testified that a site must have a minimum of 6.5 to 7.0 m/s annual average wind speeds to compete in the current market. The company provided site specific data from an ongoing meteorological data campaign on Bryant Mountain in Milton and a report from EverPower's Wind Resource Department Director predicting mean annual wind speeds in the range of 6.0 to 7.5 m/s at the expected hub height for a wind energy turbine. The report indicates that, based on the area studied, Milton is expected to be viable for a wind power project that will be able to use a wide variety of wind turbine generators.

Transmission Capacity

67. Another key factor in the viability of a wind site is the adequacy of transmission capacity. On this issue, EverPower testified that smaller wind energy projects cannot afford lengthy and costly generator lead lines, and that a project in Milton would have one of the shortest generator lead lines in Maine, approximately one mile in length, to connect to existing transmission infrastructure. Also, the company testified that Milton is located in the western part of the Maine ISO-NE system, which has the ability to flow the power into southern New England. EverPower's testimony is supported by a report from SGC Engineering on the proximity to the existing electrical grid and the adequacy of the existing transmission lines.

68. ISO-NE provided an overview of the existing transmission system and constraints in Maine. They commented that the transmission system in Maine is limited in places and faces numerous transmission security concerns, which could include lines that overheat when overloaded leading to damaged equipment. Further, the system often exceeds its ability to accommodate all the electricity produced. In some instances, ISO-NE reports having to curtail generators in the northern areas of the region because more power is being produced than the small, long transmission lines can handle safely. They conclude, "The existing transmission system is at its limit with no remaining margin. Significant infrastructure is needed to integrate the quantity of proposed new wind generation in Maine."

69. In response to ISO-NE testimony, Jeffrey Fenn provided that, although constraints exist, the existing transmission system should be able to accommodate a wind energy project in Milton. Supported by a March 28, 2016 ISO-NE report, *2015 Economic Study Strategic Transmission Analysis – Onshore Wind Integration Draft Results* ("ISO Economic Study"), Fenn testified that the most constrained interface in the New England system is the Orrington-South interface, in particular, north of Keene Road. A project in Milton, located in western Maine, would not be affected by the constraints in the system to the north. The record does show that a project in Milton would be subject to constraints at the Surowiec-South and

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Maine-New Hampshire interfaces. Fenn testified that the ISO-NE Economic Study looked at those constraints and the impact they might have on wind generation, and, that under most of the scenarios studied, concluded the impacts are minimal. Fenn further testified that the constraints do not significantly affect wind resources, which do not operate at peak capacity during periods of maximum constraint in the New England system (summer).

70. ***Finding:*** EverPower demonstrated, with a review of site selection factors, site specific wind resource data, and an analysis of transportation opportunities and constraints, that Milton has a reasonably good potential for wind energy development; the potential for wind energy development is neither limited nor exceptional. Whether removal of the Township will have an unreasonable adverse effect on the State's ability to achieve its 2030 goal then hinges on whether Milton is well suited for wind energy development when balancing its wind power potential and the need for additional megawatts of installed capacity with the potential impacts to public resource values.

Impacts to Public Resource Values

71. In applying Criterion A and evaluating the reasonableness of the impact that removal of Milton would have on the State's ability to meet its wind energy goal, the need and potential for wind energy development is balanced against the impact to local communities and public resources, together characterized as public resource values. Public resource values range from natural, scenic, recreational, and cultural resources, to energy and economic resources. The potential impact to those public resource values from wind energy development is discussed above in the review of Criterion B, as many of the CLUP's principal values and goals focus on public resources values.
72. ***Finding:*** As noted in the discussion of Criterion B, there are important public resource values in Milton and the surrounding area. Those resource values are most significant to the local community. For example, among those resource values that likely would be adversely impacted by wind energy development in Milton, community character is the most notable. Scenic and recreation resource values would be impacted, as well, but, the Commission finds those are not high-value resources in the Milton area. Important cultural resources in the area are not evident from the record and the Commission finds energy and economic resource values would not be adversely impacted. Given the balancing required to reach a decision in this matter and the weight given to factors supporting retention of Milton in the expedited area, such as location of development and economic value, there are no overriding public resource values in the Milton area.

Conclusions and Decision

73. **Removal by petition with review.** Pursuant to Title 35-A, section 3453-A, a person may, in writing, request substantive review of a petition for removal under subsection 1 by the Maine Land Use Planning Commission. Upon receipt of a timely filed request for substantive review, if the Commission finds the requirements of subsection 1, paragraphs A and B are satisfied, the Commission shall, by rule, remove a specified place in the unorganized and deorganized areas from the expedited permitting area if it finds the proposed removal:
- A. Will not have an unreasonable adverse effect on the State's ability to meet the state goals for wind energy development in section 3404, subsection 2, paragraph C; and
 - B. Is consistent with the principal values and the goals in the comprehensive land use plan

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adopted by the Maine Land Use Planning Commission pursuant to Title 12, section 685-C.

Criterion B

74. In its analysis and findings, the Commission has determined that removal of Milton from the expedited permitting area would be consistent with three principal values and six specific goals – the principal values for recreational opportunities, high-value natural resources, and natural character; and the specific goals for site review, habitat resources, recreational resources, scenic resources, water resources, and wetland resources. The Commission also has determined that removal would not be consistent with one principal value, and five specific goals – the principal value relating to economic value derived from working forests and the specific goals for location of development, economic development, air and climate resources, energy resources, and forest resources. Reaching a final conclusion on whether the proposed removal of Milton from the expedited permitting area is consistent with the principal values and the goals of the CLUP involves weighing and, ultimately, balancing these values and goals.
75. Among the principal values and goals that weigh in favor of removal, the site review (community character) goal is given the most weight. The testimony and evidence in the record indicates wind power would not fit harmoniously into the communities and neighborhoods at the base of the western mountains in the Township. The Commission gives limited weight to the other values and goals that weigh in favor of removal.
76. With regard to the principal value for natural character, key to reaching this weighting decision is Milton’s location in relation to the surrounding organized municipalities and the existing development pattern in the area. Particularly, Milton is not undeveloped and remote, and there is existing infrastructure and wind energy development nearby.
77. With regard to the principal values for recreational opportunities and high-value natural resources, and the specific goals relating to recreational resources and scenic resources, the Commission recognizes that Milton and nearby communities have recreational and scenic resources that are locally important. The Commission also recognizes the existence of the bat hibernaculum, a high value natural resource. However, the evidence does not support a conclusion that the identified resources, beyond the hibernaculum, are high-value when considering the entirety of Commission’s service area. The CLUP provides some guidance on what types of resources in the service area are considered high value. For recreational resources, one policy advises protection of the values in the service area that provide residents and visitors with a unique array of recreational experiences, especially high-value natural resources and remoteness where they exist (CLUP at 17). The CLUP also states that natural resources are generally enhanced when they are part of a large, relatively undeveloped area (CLUP at 2), and states “[s]ome areas have abundant high-value natural resources (e.g. numerous pristine ponds) or a unique physical feature (e.g. Gulf Hagus).” (CLUP at 3.) Milton is not characterized by those types of resources. As previously stated, Milton is not undeveloped or remote. In addition, there is little evidence in the record that the recreational and scenic resources in the Milton area are used extensively by members of the general public from outside the local area, or that the resources in and around Milton are unique in any way. Although there are several lakes in the area, these lakes were not rated as significant scenic resources and are not pristine ponds. While the scenic resources in the Milton area are locally significant, in the context of the broader area served by the Commission, the area to which the CLUP speaks, these scenic resources are not high value.

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78. Finally, with regard to the specific goals relating to habitat resources, including the bat hibernaculum in Milton, water resources, and wetland resources, the Commission assigns limited weight to these for the reason that protection of those resources in Milton would be adequately addressed during a permit review process. The type of review needed for those resources relies on specific, site plan details and risks to those resources are addressed under the DEP's rules for evaluating development permits, whether Milton is in or outside the expedited permitting area. Removal would not significantly further these goals.
79. Among the principal values and goals that weigh in favor of retaining Milton in the expedited permitting area, the Commission gives considerable weight to the location of development goal. In establishing policies to implement the goal, the CLUP states that development should be guided to areas near existing towns and communities. Also, specifically relating to the siting of energy generation facilities and associated utilities, the CLUP indicates that these facilities are best located in areas on the edge of the jurisdiction with good road access but low natural-resources values (CLUP at 142). Based on that guidance, the evidence in the record, and findings made by the Commission in this matter, Milton is a good location for wind energy development.
80. The Commission also concludes the air and climate resources, and the energy resources goals strongly weight in favor of keeping Milton in the expedited area. The record evidence demonstrates the air quality benefits of power generation from wind and the CLUP recognizes wind energy as a significant renewable source of electricity. Additionally, other than wind energy development, no indigenous energy resources have been identified in Milton, nor does the Commission find any overriding public values that require protection.
81. Finally, in light the record evidence on the downturn of the forest industry and the principal land use in the area, which is forestry, and given the economic benefit wind energy development has provided forest landowners and host communities, leaving Milton in the expedited area for wind energy development supports the economic value principal value, and the economic development and forest resources goals.
82. The proposed removal of Milton from the expedited permitting area is consistent with a greater number of the individual principal values and goals in the CLUP. However, in evaluating whether the proposed removal of Milton is consistent with the principal values and the goals of the CLUP, the Commission does not give equal weight to each value and goal. The Commission concludes, based on the testimony and evidence in the record, and upon balancing the values and goals in the CLUP, that the proposed removal of Milton from the expedited permitting area is not consistent with the principal values and the goals of the CLUP. Criterion B has not been met.

Criterion A

83. Considerable progress remains necessary for the State to meet its 2030 goal of having 3,000 MW of onshore installed capacity. Milton has reasonably good potential for wind energy development. There is a good wind resource in the Township and good proximity to important infrastructure such as roads and transmission lines. Removing such a place from the expedited permitting area would have an unreasonable adverse effect on the State's ability to meet its 2030 goal, unless the development of wind energy in the Township would have a disproportionately harmful impact on public resource values. The

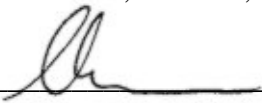
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Commission finds potential wind energy development would impact Milton and the surrounding area; some of those impacts would be adverse. Overall, however, the Commission finds those impacts are not disproportionately harmful, and do not outweigh the suitability of Milton for wind energy development, combined with the need to retain better suited places within the expedited permitting area in order for the State to meet its goal. While removal of a place from the expedited area does not forever prohibit wind energy development in that area, adding a place back into the expedited permitting area, or satisfying the criteria to establish a new, custom Planned Development Subdistrict that allows wind energy development, would be a significant hurdle that would greatly discourage, and in some instances could prohibit, wind energy development. Based on the testimony and record evidence, the Commission concludes the removal of Milton from the expedited permitting area would have an unreasonable adverse effect on the State's ability to meet its goals for wind energy development in 35-A M.R.S. § 3404(2)(C). Criterion A has not been met.

Therefore, the Commission is not able to make the requisite findings and the rulemaking petition to remove Milton Township from the expedited permitting area for wind energy development fails.

As provided in 12 M.R.S. § 689 and in accordance with 5 M.R.S. § 11002 and Maine Rules of Civil Procedure 80C, this decision by the Commission may be appealed to Superior Court within 40 days from the date of the decision by any aggrieved person.

DONE AND DATED AT BREWER, MAINE, THIS 17TH DAY OF DECEMBER, 2016.

By:  _____
for Nicholas D. Livesay, Executive Director