



PAUL R. LEPAGE
GOVERNOR

STATE OF MAINE
DEPARTMENT OF AGRICULTURE, CONSERVATION & FORESTRY
LAND USE PLANNING COMMISSION
106 HOGAN ROAD, SUITE 8
BANGOR, MAINE 04401

WALTER E. WHITCOMB
COMMISSIONER

NICHOLAS D. LIVESAY
EXECUTIVE DIRECTOR

Memorandum

To: Commissioners
From: Stacie R. Beyer, Chief Planner
Date: January 27, 2017
Re: Commission Decision on the Rulemaking Petition to Remove Carroll Plantation, Penobscot County, from the Expedited Permitting Area for Wind Energy Development

On January 4, 2016, the Commission received a petition to remove Carroll Plantation (Carroll) from the expedited permitting area for wind energy development (expedited area). Subsequently, the Commission received a timely request for substantive review of that petition. On September 28, 2016, the Commission held a public hearing to receive testimony and evidence from the Substantive Review Requestor, Petition Circulator, and members of the public. In addition, individuals and organizations submitted written comments and rebuttal during the publically noticed comment period.

At its December 17, 2016 meeting, the Commission considered the testimony and evidence received during the rulemaking proceeding and deliberated on whether the proposed removal of Carroll from the expedited area met the statutory criteria in 35-A M.R.S. § 3453-A(3). After that initial deliberation, staff prepared a draft decision document including a basis statement, response to comments, and proposed rule amendment, based on findings and conclusions that the statutory criteria are satisfied. This draft document is intended for consideration by the Commission at its February 8, 2017 meeting.

Please find attached the draft basis statement and response to comments explaining the basis for granting the rulemaking petition and removing Carroll from the expedited area. Also attached is a redline version of the proposed rule and tables listing the factors addressed in the Commission's deliberation summarizing how each of the factors were weighed. The table is not part of the draft decision document; it is intended only as a discussion aid.

Attachment 1: Draft Decision Document

Attachment 2: Summary Factor Tables



Maine Land Use Planning Commission
Substantive Review of the Carroll Removal Petition
Attachment 1

Draft Decision Document

Maine Land Use Planning Commission

Department of Agriculture, Conservation and Forestry



BASIS STATEMENT AND SUMMARY OF COMMENTS FOR

PROPOSED RULE REVISIONS: PETITION TO REMOVE CARROLL PLANTATION FROM THE EXPEDITED PERMITTING AREA FOR WIND ENERGY DEVELOPMENT

CHAPTER 10: LAND USE DISTRICTS AND STANDARDS

APPENDIX F

January 27, 2017- Draft

STATUTORY AUTHORITY: 35-A M.R.S. § 3453-A, Subsections (1) and (3)

EFFECTIVE DATE OF THE RULE AMENDMENT:

FACTUAL AND POLICY BASIS FOR THE RULE AMENDMENT:

Background:

In accordance with 35-A M.R.S. § 3453-A(3), the Maine Land Use Planning Commission (LUPC) shall, by rule, remove a specified place in the unorganized and deorganized areas from the expedited permitting area for wind energy development upon receipt of a complete and timely petition for removal of the specified place, and, in the case of a timely filed request for substantive review, if the Commission finds the requirements of subsection 1, paragraphs A and B and subsection 3, paragraphs A and B are satisfied. The description and map of the expedited area are included in the Commission's rules as Appendix F to Chapter 10, Land Use Districts and Standards.

On January 4, 2016, the Commission received a complete and timely petition to remove Carroll Plantation (Carroll) from the expedited permitting area for wind energy development (expedited area). Subsequently, the Commission received a timely request for substantive review of that petition. At its February 8, 2017 regular business meeting, the Commission found Section 3453-A(1)(A)&(B) were satisfied. The Commission also reviewed the testimony and evidence in the record and found the substantive review requirements of Section 3453-A(3)(A)&(B) (Criteria A and B) were satisfied.

Valid Petition:

Carroll is a plantation that is part of the expedited permitting area. See 35-A M.R.S. § 3453-A(1)(A). The Commission received a petition to remove Carroll from the expedited permitting area before the June 30, 2016 submission deadline. That petition clearly states the individuals signing the petition form are requesting removal of Carroll; is signed by ten registered voters residing in Carroll, a number that is greater than 10 percent of the number of registered voters residing in Carroll that voted in the most recent gubernatorial election; and is on a form provided by the LUPC. As a result, at its February 8, 2017 meeting, the Commission found Section 3453-A(1)(A)&(B) were satisfied. The Carroll removal petition is valid.

Substantive Review Decision Criteria:

Title 35-A, section 3453-A(3) contains two statutory criteria; both must be met during the substantive review process to remove a place from the expedited area.

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.

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.

Findings Regarding the Decision Criteria:

Criterion A. Ability to meet State goal. No unreasonable adverse effect on the State’s ability to meet it’s 2030 wind energy development goal, 35-A M.R.S. § 3404(2)(C).

Findings: The Commission concludes that the proposed removal of Carroll Plantation from the expedited area will not have an unreasonable adverse effect on the State’s ability to meet the 2030 wind energy goal, leading to a finding that Criteria A has been met in that:

- Considerable progress is needed for the State to meet its 2030 wind energy development goal;
- However, there is a relatively limited area in Carroll that has elevations suitable for wind energy generation;
- The wind resource in Carroll is not exceptional;
- The regulatory history of wind energy development in Carroll, that includes permit denials by both the Land Use Regulatory Commission and the Department of Environmental Protection for wind projects proposed in Carroll, discourages future proposals for wind energy development in the Plantation;
- Existing transmission system constraints limit transmission capacity to the south; and
- There are disproportionate impacts to public resource values, particularly the recreational, cultural, and scenic resources of the Downeast lakes, when compared to the limited potential benefits of wind energy generation in the Plantation.

Criterion B. Consistency with values and goals. Removal is consistent with the principal values and goals of the Commission’s Comprehensive Lane Use Plan adopted pursuant to 12 M.R.S. § 685-C.

Findings: The Comprehensive Land Use Plan (CLUP) addresses many different, and sometimes conflicting, values and goals. In its review of the removal petition, the Commission has determined that removal of Carroll from the expedited area would be consistent with three principal values and twelve specific goals: the principal values for recreational opportunities, high-value natural resources, and natural character; and the specific goals for location of development, economic development, site review, historic resources, habitat resources, recreational resources, scenic resources, water resources and wetland resources. The Commission has also determined that removal would not be consistent with one principal value, and three specific goals:

the principal value relating to economic value derived from working forests; and the specific goals for air and climate resources, energy resources, and forest resources. Therefore, reaching a final decision on the consistency of Carroll's removal from the expedited area with the principal values and goals of the CLUP involves a balancing. How the Commission has weighed the factors for each principal value and goal is central to the Commission's decision on whether or not the proposed removal of Carroll from the expedited area satisfies Criterion B.

Values: The values cited in the CLUP that were given the most weight during the Commission's rulemaking proceeding in this matter were two of the values with which removal would be consistent: (1) diverse and abundant recreational opportunities and (2) high-value natural resources and features.

On the whole, the Commission finds that the proposed removal would be consistent with the principal values in the CLUP based on the following factors relevant to recreational opportunities and high value natural resources:

- A variety of recreational opportunities exist in and to the south of Carroll, including unique opportunities for extended loop-paddling and access to primitive campsites;
- The recreational opportunities are enhanced by the vast amount of conserved land in the Downeast Lakes Region;
- The unique recreational opportunities are associated with a number of high value lakes with outstanding or significant scenic values that could be adversely impacted by wind energy development; and
- There is evidence that recreation and tourism appear to be important economic drivers in the broader region around Carroll.

Goals: The goals generally given more weight in this proceeding were: (1) air and climate resources, (2) recreational resources, and (3) scenic resources, with the first weighing in favor of Carroll remaining in the expedited permitting area and the second and third weighing in favor of removal.

Balancing all of the goals, the Commission finds that the proposed removal would be consistent with the specific goals of the CLUP based on:

- There are air quality benefits associated with wind energy generation and removal would not be consistent with the specific goal for air and climate resources; however, this is outweighed by evidence on the removal's consistency with the recreational and scenic resources goals;
- Regarding the recreational goal, the record shows there are diverse and abundant recreational opportunities in and near Carroll, particularly in the Downeast Lakes Region;
- Natural resources important to maintaining the recreational environment that supports those opportunities include the significant number of Downeast lakes, especially the nine lakes with scenic values rated as outstanding or of statewide significance;
- There is evidence that wind energy development is incompatible with and could adversely impact those natural resources on which many of the recreational opportunities rely, including adverse impacts to the high scenic value of the Downeast lakes that are used regularly by the public for fishing, boating, and camping; and
- The scope and scale of the potential impacts from wind energy development in Carroll on the public's continued use and enjoyment of the lakes could be significant as reflected in the findings made by the Land Use Regulation Commission's decision on the Bowers Wind Project (*DP 4889 at 19, 22, and 24*).
- Protection of high-value scenic resources is important at the landscape/ planning level in this matter due to the suitable area for wind energy development extending into the Downeast Lakes Region, a region identified in the CLUP as being unique; the number of high-value resources that would potentially be impacted; and the connectivity of those resources in the regional landscape.

Supported by testimony and evidence in the record and considering the balancing required to reach a consistency determination, the Commission finds that removal of Carroll from the expedited area, overall, is consistent with the principal values and the goals of the CLUP. Given that, Criterion B has been met.

Key Changes to the Rules Include:

- Chapter 10, Appendix F, Section 1. The revisions strike “Carroll Plantation, 19080” from the list of minor civil divisions in the expedited permitting area for wind energy development.

PUBLIC NOTICE OF RULEMAKING

At a meeting held on March 9, 2016, the Commission determined that public hearings on substantive review requests would provide information helpful to the Commission in its review and voted to hold a public hearing for each substantive review request.

Notice of the rulemaking was provided in the Secretary of State’s consolidated rulemaking notice on September 7, 2016. The Secretary of State’s notice appeared in the Bangor Daily News, Kennebec Journal, Portland Press Herald, Lewiston Sun-Journal, and the Central Maine Morning Sentinel. E-mail notice was also provided to approximately 392 individuals. These included the Commission’s mailing list of persons wishing to be contacted regarding LUPC wind power expedited area petitions. The notice of the rulemaking and the proposed revisions were also posted on the Commission’s web site.

The Commission held a public hearing in Lincoln, Maine on September 28, 2016. The record remained open until October 10, 2016 to allow interested persons to file written statements with the Commission, and for an additional 7 days until October 17, 2016 to allow interested persons to file written statements in rebuttal of statements previously filed with the Commission in the matter.

COMMENTS AND RESPONSES

CRITERIA A

Progress Toward the State’s 2030 Energy Goal

1. Interested persons and public comments
 - a. The record contains comments that removing Carroll Plantation from the expedited area for wind energy development would not have an unreasonable adverse effect on the State’s ability to meet its goals for wind energy development. A key basis for these comments is that the existing and planned wind energy projects in Maine already exceed the State’s 2030 goal of 3,000 MW making wind energy development in Carroll less critical to reaching the State goal.

Commenters: Partnership for the Preservation of the Downeast Lakes Watershed (PPDLW), Kay H. Campbell, Daniel P. Remian, and Martha W. Marchut.

- b. Two people commented that the State’s goal is questionable given fluctuations in energy costs and investor priorities.

Commenters: Peter and Mary Jane Fisher

- c. Those commenters also questioned if a large portion of the power generation is sold out of state, whether wind energy generation will reduce Maine’s dependence on coal and oil, or reduce electric rates.

Commenters: Peter and Mary Jane Fisher

Agency response:

In 2015, the legislature enacted “An Act To Improve Regulatory Consistency within the Jurisdiction of the Maine Land Use Planning Commission,” Public Law 2015, Ch. 265 that became effective January 1, 2016. The statutory change created an opportunity for registered voters in a given town, township, or plantation within the Commission’s service area to petition to have a place removed from the expedited area. The Wind Energy Act, Title 35-A, section 3453-A, describes the mechanism by which the petition process is to take place, and also provides an opportunity for any person to object to the removal of the specified place by requesting “substantive review” of the petition. When a substantive review is requested, the statute provides two criteria that the Commission must apply in reaching a decision on the petition. Criterion A addresses whether or not removal of the specified place will have an unreasonable adverse impact on the State’s ability to meet the State’s 2030 goal for wind energy development, and Criterion B address consistency of the removal with the principal values and goals of the Commission’s Comprehensive Land Use Plan. The State’s 2030 goal for wind energy development is established in Title 35-A, Section 3404(2)(C) as 3,000 megawatts (MW) of installed onshore capacity.

Given that the State goal for wind energy development has been established by State law and the decision making criteria provided in the Wind Energy Act, any determination on whether the State’s wind energy goal is reasonable or achievable is outside of the Commission’s purview. Also, the State’s wind energy goal references installed generation capacity in Maine. Neither the stated goal, nor the decision making criteria for substantive review speak to where the power will be consumed. Therefore, comments indicating that power will be sold out of state are not relevant to the proceeding.

The record contains data compiled from submissions by the Department of Environmental Protection (DEP) and the LUPC indicating that Maine currently has wind energy projects either operational, under construction, or permitted with a name plate capacity of approximately 927 MW. Based on this evidence, considerable progress remains necessary for the State to achieve its wind energy goal for 2030. Although there is a substantial amount of generating capacity for Maine in the planning stages and 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. Therefore, removal of areas better suited for wind power development from the expedited area will have an adverse effect on the State’s ability to meet its 2030 goal.

Potential for Wind Energy Development in Carroll

1. Government agencies
 - a. 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 in Maine was built to serve minimal local load and it is at its limit with no remaining margin. Significant infrastructure is needed to integrate the quantity of proposed new wind generation in Maine.”
2. Interested persons and public comments
 - a. The record includes anecdotal comments that there is sufficient wind in the mountains of Carroll to support wind energy development.

Commenter: Northern Starr Clough

- b. There are also comments that the wind resource in Carroll Plantation is not sufficient to support an economically viable wind project based on the limited area in Carroll that has suitable elevations for wind energy development, site specific data from the Bowers Mountain Wind Project showing an annual average wind speed of 7.5 m/s, pre-filed testimony by EverPower Wind Holdings for the Milton removal petition that indicates a need for a minimum wind speed of 6.5 - 7.0 m/s for a competitive wind project, a conclusion that a wind project in Carroll would be hampered by its ridgeline running east/west, as opposed to the north/south layout of existing wind projects that capture the prevailing winds of eastern Maine, and a statement that the current Maine Department of Inland Fisheries and Wildlife (IF&W) curtailment policy to protect bat species calls for cut-in speeds¹ exceeding 6.0 m/s.

Commenters: PPDW and Kay Campbell

- c. One interested person commented that Carroll, in its fairly remote location, lacks much in the way of infrastructure needed to support wind energy development.

Commenter: PPDW

- d. There are further comments that, given the history of wind energy development proposals in the southern part of Carroll, if there were to be a new proposal, it would need to be small and a project would be unlikely to contribute more than 1% of the State's goal for wind energy development; and that current technology is shifting wind energy development toward lower elevations, closer to end-users, and away from sites that prove difficult to permit.

Commenters: PPDW, and Steven and Diane Neil

Agency response:

There are existing public roads in Carroll, including State Route 6 that bisects the Plantation. In addition, there is an existing 115-kV transmission line approximately five miles from the ridgelines in southern Carroll, which would not be an unreasonable length for a new transmission line connection. There appears to be accessible infrastructure in or near Carroll. However, the transmission system south of Carroll could require extensive upgrades to overcome existing system constraints, particularly in the Keene Road export area and at the Orrington-South interface, based on the information provided by ISO-NE and the testimony by Jeffrey Fenn, P.E., SGC Engineering.

Given the relatively limited area in Carroll that has elevations suitable for wind energy generation; the regulatory history of wind power development in that area; the credible, site specific information on average wind speeds in Carroll, which are just above the minimum needed for a viable wind energy project; the less desirable orientation of the Plantation's ridgelines; and the constraints in the transmission system that would impact any proposed project in the Plantation, the Commission agrees that there is limited potential for wind energy generation in Carroll. Although there is need for additional wind energy to meet the State goal, the limited potential in Carroll weighs in favor of removing the Plantation from the expedited area.

¹ The minimum wind speed at which the turbine blades begin to rotate.

CRITERIA B

Location of Development

1. Interested persons and public comments

- a. There were numerous comments that keeping Carroll in the expedited area would be consistent with the land uses and activities in the area, including existing recreational activities and existing wind energy projects.

Commenters: Includes 60 residents of and/or landowners in a town near Carroll Plantation who submitted letters that were nearly identical in nature.

- b. There are other comments that Carroll is not a suitable place for wind energy development based on contentions that locating a wind project in Carroll would not protect natural resources or be compatible with existing uses of those resources; would severely impact the recreational resources in the region, particularly the network of lakes that provide rare opportunities for extended loop paddles on multiple lakes with access to primitive camp sites; and would significantly impact the outstanding or significant scenic resource value of those lakes.

Commenters: PPDW, and Steven and Diane Neil

- c. One person commented that the area south of Route 6, including portions of Carroll, Lakeville, and Kossuth, are considered part of the Downeast Lakes Region. Even though Carroll does not have a scenic resource of state or national significance lake within its borders, its proximity to the lakes makes it part of the lakes area.

Commenter: Frederick Costlow

- d. In addition, one commenter stated, in particular, that wind energy development is not compatible with traditional sporting camps, which the CLUP specifically recognizes as recreational and cultural resources worthy of protection from incompatible development.

Commenter: PPDW

Agency response:

In considering the goal for location of development, 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 at 142). A CLUP policy on the location of development guides development to areas near existing towns and communities (CLUP at 6).

Carroll is located adjacent to an organized town and has good existing road access with Route 6 bisecting the Plantation. The area, however, cannot reasonably be characterized as having low natural resource values based on testimony and evidence in the record on recreational, cultural and scenic resources in the area. Also, the southernmost portion of Carroll extends into the area referred to as the “donut hole,” an area that was excluded from the expedited area to protect the Downeast Lakes Region. This region is known for its vast lake resources and the recreational opportunities they provide. It is recognized by the CLUP as a unique region within the Commission’s service area (CLUP at 54).

Although there are various land uses in the area and wind energy development would be compatible with some of those uses, it is reasonable to conclude that Carroll is not a suitable location for wind energy development and removal of Carroll from the expedited area is consistent with the location of development goal. This conclusion is supported by: (1) the high recreational, cultural and scenic resource values in the area, particularly the Downeast lakes and sporting camps that utilize those lakes; (2) the incompatibility of wind energy development in Carroll with those resources and uses; and (3) the existing transmission system constraints south of Carroll.

Economic Value/ Economic Development

1. Interested persons and public comments

- a. Several comments in the record relate to the importance of new economic development for the Plantation and the need for local jobs, particularly with recent losses in the timber markets; and assert that allowing wind energy development in Carroll would provide jobs for local residents, attract visitors from away, boost the local economy, reduce the local tax rate, and provide for other community benefits. Commenters also assert that economic benefits of wind energy should outweigh the scenic impacts.

Commenters: Northern Starr Clough, Holly Worcester, Michael and Robin Corbin, Susan Osgood, and Elgin Turner.

- b. Numerous comments state that wind energy development would provide an important opportunity for a form of economic development that makes sense.

Commenters: Wayne and Deana Buck, and 60 residents of and/or landowners in a town near Carroll Plantation.

- c. One comment contends that a possible community benefit package for a host community is outside the scope of this proceeding and should be reserved for a permit application review process.

Commenter: PPDW

- d. There were also comments that the local economy is unusually dependent on tourism; that a wind energy development in Carroll is incompatible with and would cause irreparable damage to the existing tourism economy including guiding businesses; that Maine derives a huge economic benefit from its natural beauty and landscape which might greatly contribute to attracting new business and residents; and that economic benefits from a wind project and the number of jobs that it would create would be limited while the scenic/ economic damages would be significant.

Commenters: PPDW, Frederick Costlow, Peter and Mary Jane Fisher, and Daniel Remian.

Agency response:

The CLUP economic development goal speaks to encouraging economic development and includes several factors for determining consistency with the goal. Recreation appears to be an important economic driver in the broader region around Carroll. However, there is no evidence in the record that removal of Carroll from the expedited area would necessarily encourage additional recreational development or growth in the regional tourism industry. Keeping Carroll in the expedited area, allowing wind energy development in the Plantation, would encourage wind energy development that would be connected to the local economy, and would utilize services and infrastructure efficiently. As examples, local taxes and community benefit packages associated with wind projects are two ways wind energy development connects with the local economy making those factors relevant to the proceeding.

Wind power is compatible with forestry and some types of surrounding recreational uses, such as snowmobiling, ATV riding, and hunting. However, wind projects are not compatible with the high-value natural resources in the area, or surrounding uses that are more dependent on those natural resources. Specifically, wind energy development would not be compatible with the Downeast lakes, and scenic uses associated with those lakes. A wind project would also not be compatible with the recreational and cultural uses of the lakes including guided fishing trips and sporting camps that depend on the natural resource values and contribute to the regional economy.

Given the significance and regular public use of the natural resources in the Downeast Lakes Region, the Commission gives more weight to ensuring compatibility with those resources and furthering the principal values of the CLUP. Removal of Carroll from the expedited area would be consistent with the economic resources goal.

Community Character

1. Interested persons and public comments
 - a. There was one comment submitted raising concerns regarding potential wind energy development impacts in a rural residential area including noise, human health, and property values.

Commenter: Leonard Murphy

Agency response:

The Commission decision on the Bowers Wind Project (DP 4889 at 9) describes the region around Carroll as generally undeveloped, currently forested, and with commercial forestry as its dominant land use. Aside from roads and skidder trails, development in the area is limited to sparsely located year-round and seasonal properties. There is little testimony and evidence in the record from local residents and the community regarding how wind energy development in Carroll would fit with existing neighborhoods. Although, generally speaking, grid-scale wind energy projects do not fit harmoniously with existing rural residential communities and neighborhoods, leading to removal being consistent with this goal, the Commission has decided that less weight be given to the site review (community character) goal given the lack of specific evidence regarding incompatibility in this case.

Cultural, Archaeological and Historic Resources

1. Government agencies
 - a. The Maine Historic Preservation Commission commented that there has never been any survey work for and there are no known archaeological resources within Carroll. They reported three properties determined to be eligible for listing on the National Register of Historic Places. Portions of the township were surveyed for buildings during Stetson I Wind project development.

2. Interested persons and public comments

- a. Comments in the record question the value of the sacred ground in Carroll.

Commenter: Northern Starr Clough

- b. There are further comments that the region around Carroll was an ancient crossroads for Wabanaki people, containing native artifacts and ceremonial sites, and contending that a wind project in Carroll

would have a harmful effect on activities associated with those sites. There are also comments recommending that Native American use of hill tops in the area be properly evaluated.

Commenters: PPDW and Leonard Murphy

Agency response:

Removal of Carroll from the expedited area will help protect any archaeological and historic resources from potential adverse impacts during construction and operation of a wind energy project, supporting a finding that removal is consistent with the historic resources goal. However, the Commission has determined that the development permit application (if filed in the future) is the appropriate venue to evaluate specific risks of wind energy development to historic resources, as that type of review relies on specific site plan details and the risks are fully addressed under the Commission's rules for evaluating development permits. Therefore, the Commission gives limited weight to this goal in its balancing of all principal values and goals because the protection of any historic resources in Carroll can be adequately addressed during a permit review process. Removal of Carroll from the expedited area is not necessary to ensure protection of historic resources in Carroll.

Energy Resources

1. Interested persons and public comments

- a. Commenters indicate that other, less harmful, forms of renewable energy, such as solar and small hydropower, should be pursued instead of wind energy development.

Commenters: Leonard Murphy, and Chris and Patsy Flynn

- b. Another person commented that there are other energy sources that are much more harmful to the environment and dangerous to humans than wind energy development, indicating that it is time to embrace wind energy as a naturally renewable, environmentally friendly, safe energy source.

Commenter: Carol Graybeal

Agency response:

The CLUP provides for the environmentally sound and socially beneficial utilization of indigenous energy resources where there are not overriding public values that require protection. (CLUP at 13). The CLUP explains that it seeks to accommodate energy generation installations that are consistent with the State's energy policies, but that are also suitable for the proposed locations and designed to minimize intrusion on natural and cultural resources and values. (CLUP at 13).

Other than wind energy development, no potential projects utilizing indigenous energy resources have been identified in the record for Carroll. Removing Carroll from the expedited area would make projects using an indigenous energy resource, specifically wind, for renewable energy production no longer an allowed use in the Plantation. By itself, this would not be supportive of environmentally sound and socially beneficial utilization of indigenous energy resources.

Forest Resources

1. Interested persons and public comments

- a. The record includes comments that the roads and crane paths from a wind energy project would be visible on the landscape when viewed from Route 6, and that construction would diminish the sense of an undeveloped remote landscape that the forest resource creates.

Commenter: PPDW

Agency response:

The Commission agrees that wind energy development in Carroll would not preserve the relatively undeveloped remote landscape created by the forest resource. However, the Commission concludes that the benefits of wind energy development for the working forest, including providing economic relief to forest landowners helping them to maintain their land base, and providing increased access to the forest, carries more weight; and that removal of Carroll from the expedited area would not be consistent with the forest resources goal.

High-value Natural Resources/ Plant and Animal Habitat Resources

1. Government agencies

- a. The Maine Natural Areas Program (MNAP) provided information on plant resources in Carroll Plantation. They reported that comprehensive field surveys do not exist for all natural areas in Maine; therefore, MNAP cannot provide a definitive statement on the presence or absence of unusual natural features within Carroll. However, they have map data for one natural community, a 563 acre eccentric bog, and several rare plant populations including Male Wood Fern and Large Toothwort, Swamp Honeysuckle, and Orono Sedge.
- b. The Department of Inland Fisheries and Wildlife (IF&W) commented that wind power development impacts on wildlife species of concern have been documented not only in Maine but also across the country. They concluded that such impacts would not be unique to Carroll. In particular, IF&W stated that wind power development is documented to have caused mortality in bats, and projects without adequate curtailment practices have impacted endangered, threatened, and special concern (ET&SC) bats. However, in reviewing a proposed development, they would make recommendations to avoid and minimize potential impacts to bat species as they have done in other areas. IF&W provided a list of ET&SC species confirmed or likely to be present in Carroll. According to IF&W, other significant wildlife habitat in Carroll includes: a zoned deer wintering area, several mapped moderate and high value inland waterfowl and wading bird habitats, at least two mapped significant vernal pools, and numerous perennial and intermittent cold water streams. IF&W provided recommendations for minimizing impacts to those resources as well.

2. Interested person and public comments

- a. There were comments that regrowth after clearing for wind energy development and power-line right-of-ways will provide food and habitat for wildlife.

Commenters: Northern Starr Clough and Susan Osgood

- b. In contrast, the record also contains testimony that wind energy development has an adverse impact on wildlife, particularly birds and bats; and removing Carroll from the expedited area will protect the diverse, abundant and unique high-value natural resources and features of the area including lakes, ponds, streams, warm and cold-water fisheries, bald eagle nest sites, land for hunting, forestlands, rock outcroppings and glacial eskers, as well as primitive island campsites available to the public and easement lands owned by the Downeast Lakes Land Trust.

Commenters: PPDW, and Chris and Patsy Flynn

Agency response:

Overall, it is reasonable to conclude that removal of Carroll from the expedited area will be consistent with the habitat resources goal, specifically by eliminating wind energy development as an allowed use and protecting habitat resources from known impacts associated with wind energy development. As indicated by IF&W, there is an increased risk of ET&SC bat mortality from collisions with operating wind turbines. Given that bat activity is seasonal and activity patterns are site specific, and given that project-specific operational curtailment and other best practical mitigation techniques can reduce the risk of bat mortality, the Commission finds that potential impacts to bats, as well as other wildlife species, are best addressed using site specific data during a permit review process. By itself, it makes sense to give less weight to this goal in the Commission's balancing of all principal values and specific goals because protection of habitat resources in Carroll can be adequately addressed during a permit review process. Removal of Carroll from the expedited area is not necessary to ensure protection of the plant and animal habitat resources in the Plantation.

Recreational Opportunities/ Recreational Resources

1. Government agencies
 - a. The Maine Bureau of Parks and Lands commented that the region south and east of Carroll is highly significant from a conservation standpoint, and that a large swath of land has been protected, supporting the region's capacity to provide "(predominantly) primitive, disperse recreation in remote settings." BPL also commented on water-based recreation being the "calling card" of the region, the concentration of lakes with high scenic and recreational value proximal to Carroll, the development of the Downeast Lakes Water Trail, which takes advantage of the connectivity between several of the lakes in the area, and seasonal paddling opportunities on Baskahegan Stream. They note that State-funded snowmobile and ATV trails run throughout the region, with over 25 miles of ATV trails in Carroll.
2. Interested persons and public comments
 - a. The record includes comments that leaving Carroll in the expedited area would be consistent with the recreational values and goals of the CLUP based on contentions that 1) recreationalists can still use the lakes and forests, and enjoy nature after construction of a wind energy development, and 2) roads constructed for wind energy development would provide access for recreation, including hunting, fishing, picnicking, and enjoying scenic views.

Commenters: Northern Starr Clough and Susan Osgood

- b. The record also contains comments that removing Carroll from the expedited area would be consistent with the CLUP values and goals for recreation in that 1) the CLUP values diverse and abundant natural resource based recreational activities, 2) the Downeast Lakes Region has "an international reputation for providing outstanding outdoor experiences in a near-wilderness setting," 3) the nine scenic resources of state or national significance (SRSNS) lakes in the area provide connected waterways that allow for unique extended loop-paddling experiences and primitive island campsites that are available to the public at no charge, 4) camps and recreational opportunities exist in Carroll because of the view of the lake, 5) recreational users of the lakes would be less likely to use the resources after construction of a wind project, 6) lighting and clear-cuts associated with wind projects would have an adverse impact on the SRSNS lakes and the wilderness-like area visited by outdoor enthusiasts, and 7) removing Carroll from the expedited area will ensure that the region continues to offer diverse and abundant recreational opportunities.

Commenters: PPDW, Donald Moore, and Frederick Costlow

Agency response:

Based on the testimony of Northern Starr Clough, PPDW, other interested persons, and BPL, there are diverse recreational opportunities in the area, particularly in the Downeast Lakes Region. It is clear from the record that the natural resources important to maintaining the recreational environment that supports those opportunities are the Downeast lakes, especially those with scenic values rated as outstanding or of statewide significance, as well as the vast area of conserved forest land that exists in the region. Although some recreational uses are compatible with wind projects and would continue (and may be enhanced) if a project was constructed in Carroll, the weight of the evidence in the record, including references to testimony by Grand Lake Stream area guides and sporting camp owners from previous regulatory proceedings, particularly the Land Use Regulation Commission's review of the Bowers Wind Project (DP 4889, April 20, 2012) and findings made in the decision on that matter, indicates that wind energy development in Carroll would adversely impact existing recreational uses and the natural resources on which many of the recreational opportunities rely. Of significance is the likely adverse impact on the scenic value of the Downeast lakes used regularly by the public for fishing, boating and camping. Based on this, the Commission has found that removal of Carroll from the expedited area would be consistent with the recreational resources goal, and, given the high value and uniqueness of the recreational resources, particularly relating to the scenic value and connectivity of the lakes, the Commission has given this goal significant weight in considering all of the principal values and goals of the CLUP.

Natural Character/ Scenic Resources

1. Interested persons and public comments

- a. The record includes comments contending that a proposed wind project in Carroll would not have an adverse impact on scenic resources and uses of those resources based on assertions that wind energy development, like other forms of development, changes views but does not cause an adverse impact to scenic character; that forest regrowth will aid in buffering any scenic impacts of towers on local mountains; there is so much scenery around the shores and islands, as well as challenging navigation, that users do not have time to look at the sky line; the lakes region will still be beautiful; and wind projects create road access for visitors to new places for scenic views.

Commenters: Northern Starr Clough, and Susan Osgood

- b. There are also comments on the CLUP goals for protection of high-value natural resources, natural features, and natural character that raise concerns regarding the potential for a wind project in Carroll to adversely impact State scenic resources including the significant number of scenic resources of state or national significance lakes in the region. Comments indicate that Carroll Plantation's hills create a large portion of the horizon surrounding the Downeast Lakes Region; and that a significant number of people who use the SRSNS lakes expect a high quality experience and would recreate elsewhere, if turbines, their reflections, or the sound traveling over the water were noticeable, adversely impacting the local economy, professional guides, and small businesses.

Commenters: PPDW, Paula Moore, Peter and Mary Jane Fisher, Kay H. Campbell, Martha W. Marchut, Steven and Diane Neil, Chris and Patsy Flynn, and Gaby and Rainer Egle

- c. The record contains testimony that leaving Carroll in the expedited area does not make sense since it has already been shown that the site is not suitable for wind energy development due to its impact on qualified significant scenic State resources.

Commenters: Steven and Diane Neil, and Kay Campbell

Agency response:

The area south of Carroll, the Downeast Lakes Region, has scenic resources that are of high value, based on credible testimony and evidence in the record. These high-value scenic resources are also scenic resources of state or regional significance. While the scenic impact standard of the Wind Energy Act would apply to a proposed project in the expedited area, and potential impacts could be addressed during an individual permit application review, protection of the high-value scenic resources, in this case, is important at the landscape/planning level, as well. This is due to the location of the suitable area for wind energy development in Carroll extending into the Downeast Lakes Region, the number of high-value resources that would potentially be impacted, and the connectivity of those resources in the regional landscape. The record indicates that the scope and scale of the adverse impacts associated with wind energy development in Carroll on the typical viewer, and the public's continued use and enjoyment of the lakes would be significant. The value of the resources and the incompatibility of wind energy development with those resources are sufficient to conclude that removal of Carroll from the expedited area is warranted and consistent with the scenic resources goal. For the reasons discussed above, the Commission has given significant weight to this goal in its consideration of all of the factors in reaching a final decision on the removal petition.

Water Resources

1. Interested persons and public comments

- a. There is testimony that, in addition to the SRSNS lakes to the south, several brooks in Carroll provide habitat for native Brook trout that would be vulnerable to siltation from construction activities associated with a wind project.

Commenters: PPDWL, Donald Moore, and Frederick Costlow

Agency response:

The Commission has determined that a development permit application (if filed in the future) is the appropriate venue to evaluate specific risks of wind energy development to water resources, as that type of review relies on specific site plan details and the risks are fully addressed under the Commission's rules for evaluating development permits. The Commission agrees that removal of Carroll from the expedited area, such that wind energy development will no longer be an allowed use, would protect surface and groundwater from any potential adverse impacts during construction and operation of a wind energy project, supporting a finding that removal is consistent with the water resources goal. However, the Commission gives limited weight to this goal in its balancing of all principal values and goals because the protection of the water resources in Carroll can be adequately addressed during a permit review process. Removal of Carroll from the expedited area is not necessary to ensure protection of surface and groundwater resources in Carroll.

Review Processes and the Expedited Area

1. Interested persons and public comments

- a. There are comments that the removal of Carroll from the expedited area for wind energy development is an important issue that should be discussed and decided by the residents of Carroll.

Commenters: Northern Starr Clough and Susan Osgood

- b. One comment asks, if it makes no difference and the plantation can be added back into the expedited area,

what is the point of removing it?

Commenter: Northern Starr Clough

Agency response:

In the recent changes to the Wind Energy Act, the legislature provided a process for residents of a specified place to petition for its removal from the expedited permitting area for wind energy development, a process for requesting substantive review of a petition, and an opportunity for public comment and a public hearing, all of which were available to the residents of Carroll. However, the authority for determining whether or not the criteria for removal have been met falls within the jurisdiction of the Land Use Planning Commission. If a specified place is removed from the expedited area, there would need to be additional steps taken by the landowner before they could file for a permit to construct a wind project. Those steps would involve either a petition to add the place back into the expedited area, or a petition to rezone the place to a zoning subdistrict that would allow wind energy development, such as a planned development sub district. Although it is possible for a landowner to petition the Commission to add a place back into the expedited area, the criteria to add a place to the expedited area largely mirror those applicable to removal. Therefore, to add a place back, it is likely that there would need to be a significant change in circumstance or material fact since the original removal.

General Comments

1. Interested Persons and Public Comments

- a. Testimony and comments in general support of the removal petition.

Commenter: Timothy R. Peters

- b. Wind energy generators have taken away our State's constitutional rights of safety and freedom of choice.

Commenter: Leonard Murphy

Agency response:

The Commission has considered these comments, which express general support for the removal of Carroll Plantation from the expedited permitting area for wind energy development. These comments, however, do not raise specific issues relevant to the decision making criteria for the current proceeding.

Other Relevant Data and Information

In addition to public comment and testimony, the record contains data and other information that the Commission relied upon in reaching its decision on the petition to remove Carroll Plantation from the expedited permitting area for wind energy development including:

1. Installed wind capacity. The Maine DEP provided data on 14 wind energy developments within their jurisdiction that are operational, under construction or under review. The total generation capacity shown by the DEP's data for projects that are operational or under construction is 679 MW.

LUPC staff pre-filed data on four wind energy developments operating within the Commission's service area with installed capacity of 249 MW. The total generating capacity (nameplate) in Maine from the combined DEP/ LUPC data is 927 MW.

2. User surveys. The LUPC pre-filed two documents from the DEP administrative record for the Bowers Wind Project, the user surveys conducted by First Wind and the Partnership for the Preservation of the Downeast Lakes Watershed. The documents were 0578 First Wind Exhibit 2 03 15 2013, *Bowers Wind Project User Surveys*, and 0694 PPDLW Exhibit O 04 05 2013, *Downeast Lakes User Survey*.
3. Regional map. The LUPC added to the record a Carroll Plt, Penobscot County, Substantive Review map developed by the Land Use Planning Commission to show existing development and resources in the region.
4. Wind resource data. The LUPC added Table 1-Key Siting Considerations, an excerpt from the Pre-filed Direct Testimony of Matt Kearns, Neil Kiely, and Geoff West on behalf of Champlain Wind, LLC in the matter of Development Application DP 4889, Champlain Wind, LLC, Bowers Wind Project.
5. Transmission capacity. The LUPC added the public hearing testimony of SGC Engineering, LLC in the matter of the Petition to Remove Milton Township from the Expedited Permitting Area for Wind Energy Development.
6. Historic resources. The LUPC printed and added the MHPC, CARMA, Carroll Plt, map from the online Maine Department of Transportation CARMA database for Carroll Plt, http://www.maine.gov/mhpc/carma_disclaimer.html, accessed on September 21, 2016.

DEPARTMENT OF AGRICULTURE, CONSERVATION AND FORESTRY
MAINE LAND USE PLANNING COMMISSION

**Rule Revisions: Petitions For The Removal Of Certain Places
 From The Expedited Permitting Area For Wind Energy
 Development**

(Filing VI)

January 27, 2017

The following amendments propose changes to Chapter 10, Land Use Districts and Standards for Areas within the Jurisdiction of the Maine Land Use Planning Commission. This document only includes relevant sections of Chapter 10 and indicates additions in underline, deletions with a ~~strikethrough~~, and relocations in double underline and ~~double strikethrough~~.

**APPENDIX F EXPEDITED PERMITTING AREA FOR WIND ENERGY
 DEVELOPMENT**

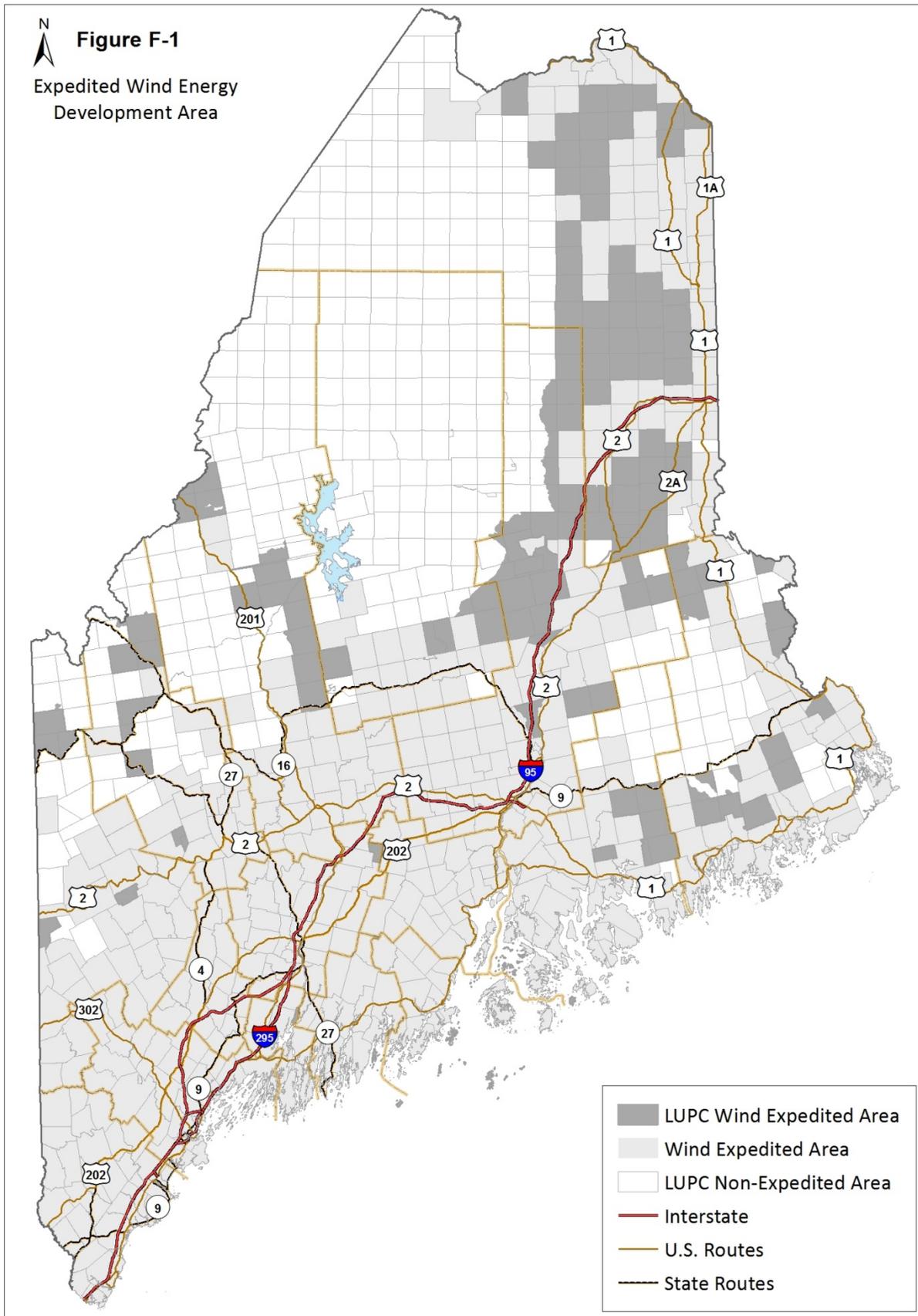
The following areas, not including areas below the high water mark of coastal wetlands, comprise the expedited permitting area for wind energy development to accomplish the purposes of “An Act to Implement Recommendations of the Governor’s Task Force on Wind Power Development”, P.L. 2007, ch. 661, and “An Act To Improve Regulatory Consistency within the Jurisdiction of the Maine Land Use Planning Commission,” P.L. 2015, ch. 265. The Commission may add and remove areas within its jurisdiction to and from the expedited permitting area for wind energy development in accordance with Title 35-A, Section 3453 and Section 3453-A.

1. Entire townships and plantations. The following entire townships and plantations:

...

~~Carroll Pkt., 19080;~~

...



Maine Land Use Planning Commission
Substantive Review of the Carroll Removal Petition
Attachment 2

Summary Factor Tables

Maine Land Use Planning Commission
Substantive Review of the Carroll Removal Petition
Factor Summary Tables

Background

The following summary tables are intended to be a visual guide to organize key factors and assist the Commission in reviewing the staff analysis for the Carroll removal petition. The tables are not intended to be used as a mathematical comparison of the total number of factors in each column. The Commission's decision on the petition will involve a weighing of all of these factors taken together in balance with one another. Different factors may be given different weight.

In general, all of the factors that staff believes are relevant to the Carroll removal petition are shown in the tables. Certain factors in the tables are shown in grayed text. Staff suggests those factors be given the least weight when considering the record evidence, all of the relevant goals in the CLUP, and the decision making criteria of the Wind Energy Act. Factors that staff recommend be given the most weight are shown in bold text. For reference, the first column of the tables provides the section and page numbers of the deliberation memo that contain a more detailed analysis of the factors under each criterion. A condensed version of the key questions from the Guide for Deliberation is provided after each table for the Commission's consideration in reaching a decision on each of the decision making criterion for the removal petition.

Maine Land Use Planning Commission

Substantive Review of the Carroll Removal Petition, Factor Summary Table

Criterion B

To remove Carroll from the expedited permitting area, the Commission must find: “The proposed removal is consistent with the principal values and the goals in the [CLUP] ”

Memo Reference	Supports Removal from the expedited area	Supports Retention in the expedited area
Sec. II, A, 1; pg. 10		Economic Value
Sec. II, A, 2; pg. 10	Recreational Opportunities	
Sec. II, A, 3; pg. 12	High-value Natural Resources	
Sec. II, A, 4; pg. 14	Natural Character	
Sec. II, B, 1,a; pg. 14	Location of Development	
Sec. II, B, 1,b; pg. 16	Economic Development	
Sec. II, B, 1,c; pg. 17	Site Review (Community Character)	
Sec. II, B, 2,a; pg. 18		Air and Climate Resources
Sec. II, B, 2,b; pg. 18	Historic Resources	
Sec. II, B, 2,c; pg. 19		Energy Resources
Sec. II, B, 2,d; pg. 20		Forest Resources
Sec. II, B, 2,e; pg. 20	Habitat Resources	
Sec. II, B, 2,f; pg. 21	Recreational Resources	
Sec. II, B, 2,g; pg. 22	Scenic Resources	
Sec. II, B, 2,h; pg. 24	Water Resources	
Sec. II, B, 2,i; pg. 24	Wetland Resources	

Key Questions:

- Given the value and character of the recreational resources in the Downeast Lakes Region, should more weight be given to the recreational opportunities value and recreational resources goal, when weighing all of the principal values and goals of the CLUP?
- Given the value and public use of the scenic resources in the Downeast Lakes Region, should more weight be given to the high-value natural resources value and scenic resources goal when weighing all of the principal values and goals of the CLUP?
- When taken together with all other values and goals, would removal of Carroll be consistent with the principal values and the goals of the CLUP, leading to a decision that Criterion B has been met?
 - If YES, proceed to Criterion A.
 - If NO, Criterion B has not been met, the petition should not be granted, and Carroll should remain in the expedited area.

Maine Land Use Planning Commission

Substantive Review of the Carroll Removal Petition, Factor Summary Table

Criterion A

To remove Carroll from the expedited permitting area the Commission must find: “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.”

Memo Reference	Supports Removal from the expedited area	Supports Retention in the expedited area
Sec. II, A; pg. 5		Progress Toward Goal
Sec. II, B; pg. 6	Wind Energy Potential	
Sec. II, C; pg. 8	Public Resource Values	

Key Questions:

- Are the impacts to natural resources and recreational resources associated with wind energy development in Carroll disproportionately harmful when compared to the opportunity to make progress toward the state goal for wind energy development?
 - If YES, Criterion A has been met, the petition should be granted, and Carroll should be removed from the expedited area;
 - If NO, Criterion A has not been met, the petition should not be granted, and Carroll should remain in the expedited area.