



STATE OF MAINE
DEPARTMENT OF CONSERVATION
MAINE LAND USE REGULATION COMMISSION
22 STATE HOUSE STATION
AUGUSTA, MAINE
04333-0022

PAUL RICHARD LEPAGE
GOVERNOR

WILLIAM H. BEARDSLEY
COMMISSIONER

Tenth Procedural Order

**In the Matter of
Development Permit DP 4889
Champlain Wind, LLC.
Bowers Wind Project
August 3, 2011**

To: Parties
Neil Kiely (Applicant)
Juliet Brown, Esq. (Counsel for Applicant)
Sean Mahoney, Conservation Law Foundation
Kevin Gurall, PPDLW
David Corrigan
Gordon Mott

cc: LURC Commissioners
Amy Mills, Maine Assistant AG
Catherine Carroll, LURC Director
Samantha Horn Olsen, LURC
Frederick Todd, LURC

From: Gwen Hilton, Presiding Officer

Subject: Reopen hearing record and move to strike testimony

I. Background

A. Reopening of record

Pursuant to the Third and Eighth Procedural Orders, the Public Hearing for Development Permit DP 4889 was held on June 27 and 28, 2011 at the Ella P. Burr Elementary School in Lincoln, Maine, and on July 6, 2011, at the Spectacular Events Center in Bangor, Maine.

The Eighth Procedural Order established Monday, July 18, 2011, as the close of the public comment period and Monday, July 25, 2011, as the deadline for accepting rebuttal comments. The Third Procedural Order established that after close of the record “no additional evidence or argument will be allowed into the record except by leave of the Presiding Officer.”

- The pre-filed testimony of the Partnership included a reference to a 2005 Downeast Lakes Land Trust Economic Report. The Report is currently in the record of this proceeding, but Appendices A-C of the Report were not submitted. In submitting its rebuttal comments on July 25, 2011, the applicant requested that the record remain open to receive copies of the Appendices. While the Appendices

appear to be contextually relevant to the Report in the record, neither the Partnership nor the Applicant has filed the Appendices with Commission staff.

- Also, in submitting its rebuttal comments on July 25, 2011, the Applicant requested that the record remain open for submission of a letter from the Sunrise County Economic Council reflecting the formal vote of the Board of Directors to accept tangible benefits funds from the Applicant and administer an Energy Fund for the benefit of Kossuth Township residents. That letter was received by Commission staff on August 1, 2011, and is attached to this order.
- On the last day of the public comment period, two sets of comments were received regarding Maine tribal concerns. One was a letter from the Maine Indian Tribal-State Commission (MITSC), and the other was a letter from the Passamaquoddy Tribe's Tribal Historic Preservation Office. Copies of these two letters are attached to this order. Both letters expressed concerns about potential impacts to tribal lands, plus the MITSC letter raised broader issues regarding consultation with the tribes in general. The Commission staff Director responded to both concerns in a letter of July 27, 2011, which is also attached to this order.

B. Partnership's objection to the Applicant's rebuttal comments and cross-examination testimony

By email dated July 29, 2011, the Partnership objected to one paragraph of post-hearing rebuttal comment filed by the Applicant's scenic consultant, LandWorks, and to a line of cross-examination questions asked by the Applicant of the Partnership at hearing. By email later on July 29th, the Applicant filed a response to the objection, and the Partnership replied.

By way of background, at hearing the Applicant introduced without objection an impeachment exhibit, namely a property owners association's October 16, 2003 letter, appealing a decision of the Commission to issue a development permit for a commercial sporting camp project in the DownEast area. At hearing, the Applicant, without objection, pursued a line of questioning with the Partnership's witness, Kevin Gurall, regarding the letter and Ms. Tracy Allen who, although not the principal author of the letter, signed her name to the letter in support of the appeal.

The Partnership stated at hearing that Ms. Allen is Vice President of the Partnership, but it asserts the October 16, 2003 letter cannot be attributed to the Partnership because she did not sign the letter in that capacity and because the Partnership was not incorporated until 2010. In that regard, the Commission intends to take official notice of Secretary of State records, namely the Partnership's 2010 Articles of Incorporation and 2011 Annual Report. 5 M.R.S. § 9058. Further, at hearing the Partnership stated the commercial sporting camp at issue was only open for approximately 9 or 10 months. Finally, the Partnership argues that the Applicant's rebuttal comment is inconsistent with the Chair's procedural orders regarding the purpose of the post-hearing comment period. See Third Procedural Order (April 29, 2011) at 10-11; Eighth Procedural Order (June 23, 2011) at 5 (post-hearing comment period for parties is not intended to provide opportunity for submissions that could have been presented at hearing).

The Applicant's rebuttal paragraph at issue, with references to the hearing transcript regarding the cross-examination of Mr. Gurall, states:

Intervenor PPDW even opposed construction of a commercial sporting camp, the Wild Fox Run Commercial Camp on Junior Horseshoe Lake, stating in an appeal to LURC to reverse approval of the Camp's permit, "if this project is allowed to go forward, it will be the turning point when the degradation of the wild and scenic nature of Junior Lake began, the commercial campground special permitting process will not have prevented the elimination of another rare wild and scenic resource in Maine. The precedence will be set for this time for Junior Lake." Tr.

at 265. When asked if the fears associated with the issuance of the Camp's permit were warranted, Mr. Gurrall testified that the fear expressed in PPDW's letter to LURC had not come to pass. Id. at 267.

II. Order.

A. Reopening the record:

The record shall be reopened and then immediately closed to accept:

- The letter from the Chair of the Sunrise County Economic Council (SCEC) Board of Directors accepting the tangible benefits funds from the applicant and agreeing to administer an Energy Fund for the benefit of Kossuth Township residents.
- The letter of July 27, 2011, from Catherine Carroll, Commission staff Director, addressing the tribal concerns raised in the letters about the Bowers project specifically and consultation generally.

With respect to the missing appendices of the Downeast Lakes Land Trust report, the Commission will retain the Report in the record without the appendices; the Commission, however, will treat the lack of Appendices as going to the weight the Report is entitled to receive.

B. Objections to portions of the record.

The Commission takes office notice of the attached Secretary of State records regarding the Partnership. Any party wishing to contest the substance or materiality of these records may do so no later than August 15, 2011.

The October 16, 2003 letter and cross-examination testimony at hearing came into the record without objection and shall remain in the record. Those pieces of evidence, together with the Secretary of State records attached to this order, speak for themselves, and the Commission is charged with determining the weight to be given such evidence. The Applicant's/LandWorks' rebuttal comments, however, are in the nature of legal argument and, in the context of post-hearing rebuttal comment, will not assist the Commission. Therefore, in accordance with the Third and Eight Procedural Orders, the Commission will disregard the rebuttal paragraph identified above.

III. Authority and Reservations

This procedural order is issued by the Presiding Officer pursuant to LURC Chapter 5, *Rules for the Conduct of Public Hearings*. All objections to matters contained herein should be timely filed in writing with the Commission but are not to be further argued except by leave of the Presiding Officer. All rulings and objections will be noted in the record. The Presiding Officer may amend this order at any time.

Questions regarding this Order or rulings of the Presiding Officer should be directed to Catherine Carroll, the Commission's Director, or Fred Todd, at the Commission's office in Augusta. No ex parte communication may occur with the Presiding Officer or any other Commission member.

DATED AT AUGUSTA, MAINE THIS 3rd DAY OF AUGUST, 2011



By: _____
Gwen Hilton, Presiding Officer

Attachments: Partnership's 2010 Articles of Incorporation
Partnership's 2011 Annual Report.
Letter from the Chair of the Sunrise County Economic Council (SCEC) Board of Directors, July
28, 2011
Letter from Catherine Carroll to MITSC, July 27, 2011

DOMESTIC
NONPROFIT CORPORATION

STATE OF MAINE

ARTICLES OF INCORPORATION

Filing Fee \$40.00

File No 20100248ND Pages 3

Fee Paid \$ 40

DCN 2100121600012 ARTI

FILED

01/04/2010

Julie R. Dwyer
Deputy Secretary of State

A True Copy When Attested By Signature

Deputy Secretary of State

Pursuant to 13-B MRSA §403, the undersigned incorporator(s) execute(s) and deliver(s) the following Articles of Incorporation

FIRST: The name of the corporation is *Partnership for the Preservation of the Downeast Lakes Watershed*

SECOND: ("X" one box only. Attach additional page(s) if necessary)

- The corporation is organized as a public benefit corporation for the following purpose or purposes:
dedication to the long-term preservation of the Downeast Lakes Watershed through conservation, environmental action and opposition to inappropriate industrial or commercial development.
- The corporation is organized as a mutual benefit corporation for all purposes permitted under Title 13-B or, if not for all such purposes, then for the following purpose or purposes

THIRD: The Registered Agent is a (select either a Commercial or Noncommercial Registered Agent)

Commercial Registered Agent CRA Public Number _____

(name of commercial registered agent)

Noncommercial Registered Agent

Lynne Williams, Esq.

(name of noncommercial registered agent)

13 Albert Meadow Bar Harbor, ME 04609

(physical location, not P.O. Box - street, city, state and zip code)

(mailing address if different from above)

FOURTH: Pursuant to 5 MRSA §108 3, the registered agent as listed above has consented to serve as the registered agent for this nonprofit corporation

Form No. MNPCA-6 (1 of 3)

FIFTH: The number of directors (not less than 3) constituting the initial board of directors of the corporation, if the number has been designated or if the initial directors have been chosen, is 4.

The minimum number of directors (not less than 3) shall be 5 and the maximum number of directors shall be 7.

SIXTH: Members: ("X" one box only.)

There shall be no members.
 There shall be one or more classes of members and the information required by 13-B MRSA §402 is attached.

SEVENTH: (Optional) (Check if this article is to apply.)

No substantial part of the activities of the Corporation shall be the carrying on of propaganda, or otherwise attempting to influence legislation, and the Corporation shall not participate in or intervene in (including the publication or distribution of statements) any political campaign on behalf of any candidate for public office.

EIGHTH: (Optional) (Check if this article is to apply.)

Other provisions of these articles including provisions for the regulation of the internal affairs of the corporation, distribution of assets on dissolution or final liquidation and the requirements of the Internal Revenue Code section 501(c) are set out in Exhibit _____ attached hereto and made a part hereof.

Incorporators*

Kevin M. Gurrall
(signature)

KEVIN M. GURRALL
(type or print name)

Judy L. Allen
(signature)

Judy L. Allen
(type or print name)

Gary A. Campbell
(signature)

Gary A. Campbell
(type or print name)

Dated December 31, 2009
Street 18 BAMA Rd
(residence address)

LAKEVILLE ME. 04487
(city, state and zip code)

Street 493 Brown Rd
(residence address)

Carroll Pt ME 04407
(city, state and zip code)

Street 30 Hancock Rd
(residence address)

Hingham MA 02043
(city, state and zip code)

For Corporate Incorporators*

Name of Corporate Incorporator _____

By _____
(signature of officer)

Street _____
(principal business location)

(type or print name and capacity)

(city, state and zip code)

Name of Corporate Incorporator _____

By _____
(signature of officer)

Street _____
(principal business location)

(type or print name and capacity)

(city, state and zip code)

***Articles are to be executed as follows:**

If a corporation is an incorporator (13-B MRSA §401), the name of the corporation should be typed or printed and signed on its behalf by an officer of the corporation. The articles of incorporation must be accompanied by a certificate of an appropriate officer of the corporation, not the person signing the articles, certifying that the person executing the articles on behalf of the corporation was duly authorized to do so.

Please remit your payment made payable to the Maine Secretary of State.

Submit completed form to.

Secretary of State
Division of Corporations, UCC and Commissions
101 State House Station
Augusta, ME 04333-0101
Telephone Inquiries (207) 624-7752 Email Inquiries: CEC.Corporations@Maine.gov

Maine Secretary of State



2011 Annual Report Electronic Filing Acknowledgment

For Nonprofit Corporations on file as of December 31, 2010

Charter Number: 20100248ND

DCN Number: 2110019097088

Legal Name: PARTNERSHIP FOR THE PRESERVATION OF THE DOWNEAST LAKES
WATERSHED

Registered Agent's Name and Address:

LYNNE WILLIAMS
13 ALBERT MEADOW
BAR HARBOR, ME 04609

Name and Address of Officers:

SECRETARY OR CLERK
GARY CAMPBELL
30 HANCOCK RD HINGHAM MA 02043
30 HANCOCK RD HINGHAM MA 02043

TREASURER
TAMMY LANE
1507 ROYALSBOROUGH RD DURHAM ME 04222
1507 ROYALSBOROUGH RD DURHAM ME 04222

PRESIDENT
KEVIN GURRAL
BROWN RD CARROL PLANTATION ME 04487
1507 ROYALSBOROUGH RD DURHAM ME 04222

Name and Address of Directors:

TRACY ALLEN
17 BAMA RD LAKEVILLE ME 04487

PETER FISHER
67 DEER RUN LAKEVILLE ME 04487

TAMMY LANE
1507 ROYALSBOROUGH RD DURHAM ME 04222

KEVIN GURRALL
18 BAMA RD LAKEVILLE ME 04487

GARY CAMPBELL
30 HANCOCK RD HINGHAM 02043

Date of Filing: June 20, 2011

Name and Capacity of Authorizing Party:

TAMMY A LANE, TREASURER



STATE OF MAINE
DEPARTMENT OF CONSERVATION
MAINE LAND USE REGULATION COMMISSION
22 STATE HOUSE STATION
AUGUSTA, MAINE
04333-0022

PAUL RICHARD LEPAGE
GOVERNOR

WILLIAM H. BEARDSLEY
COMMISSIONER

July 27, 2011

John Dieffenbacher-Krall
Executive Director
Maine Indian Tribal-State Commission
P.O. Box 241
Stillwater, ME 04489

Re: Your letter of July 18, 2011, regarding the Bowers Wind Project

Dear Mr. Dieffenbacher-Krall:

Thank you for your letter of July 18, 2011, regarding the Bowers Wind Project and general consultation issues with MITSC and/or the various Tribes. I'll respond to each issue separately.

General consultation with the Tribes: It is unfortunate that the Maine Indian Tribal-State Commission (MITSC) is dissatisfied with the level of consultation between the Wabanaki Tribes and the Land Use Regulation Commission regarding the Bowers Wind Project. We will, in the future, insure that MITSC is informed of all proposed rules or applications which come before the Commission for consideration. You can decide which of such proposals you wish to comment on from the notice we provide. We have a standard mailing and/or email list to provide notice for all such proposals that come before the Commission to which we will add the MITSC email address noted in your letter as well as those you mentioned with the various Tribes in your email of 7/20/2011 to Fred Todd of the LURC staff. We anticipate this will satisfy the government-to-government consultation you seek along with any comments you choose to provide on a case-by-case basis. We can also be available to meet and discuss a particular project if you feel such a meeting is necessary.

Your letter raises issues regarding consultation "on matters that significantly or uniquely affect those Tribes". As suggested above, it would seem logical to us that it should be the Tribes that determine, at least for the purpose of commenting or otherwise choosing to participate in the LURC review process, what will significantly or uniquely affect the Tribes, not LURC. For example, we review over 1,000 permit applications annually. If it is left to LURC to make that determination, we would, for example, most probably conclude that a residential dwelling permit application would not have such impact without knowing there is a significant sacred site nearby – only the particular tribe would be aware of the existence of such a site. For that reason, and as noted above, we propose to inform MITSC and the Tribes of all permit applications that are pending before the Commission on a weekly basis and it will be up to MITSC or the particular tribe to notify LURC of those permit applications which it wants to provide comment on. Be aware that we attempt to respond in a timely fashion to all permit applications, so it is important that we hear from MITSC or the particular tribe in a timely fashion – usually within a matter of days unless otherwise indicated.

CATHERINE M. CARROLL, DIRECTOR

www.maine.gov/doc/lurc
PHONE: (207) 287-2631
FAX: (207) 287-7439
TTY: (888) 577-6690

Also, under the Commission's enabling statute, the burden of proof is upon the applicant to demonstrate that the statutory criteria for approval have been met. That is why we encourage the applicant to contact all potentially affected parties before an application is filed to hear and hopefully address all concerns before an application is filed with the Commission – making for a more efficient process. It is, therefore, important for the Tribes to raise their concerns with the applicant during these preliminary discussions rather than waiting to be notified by the Commission that a particular application has been filed with this agency.

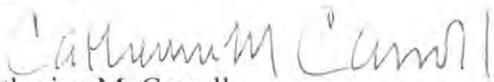
Bowers Wind Project: As for the Bowers Wind Project specifically, we had reason to believe that both the Passamaquoddy and Penobscot Tribes were aware of this project since according to the applicant, First Wind representatives had met with representatives of the Passamaquoddy (including the Chief and Deputy Chief) on May 3, 2010, and at least one Penobscot Nation staff member is on our email list of public hearing notice for Bowers. The applicant's consultant, Stantec, indicated that the Passamaquoddy Tribe did not express any concerns or objections about the project during that meeting. Also, a request for comments from Stantec to the Penobscot Nation was responded to with a "no objection" from the Nation. With this apparent knowledge of the project and no contact to LURC from either the Passamaquoddy Tribe or Penobscot Nation, we assumed there were no tribal concerns about the project.

As for your request under 30 MRSA §6212, §§, what specifically are you requesting -- a copy of the Bowers Wind Project application? If so, we can provide an electronic copy of the application (and supplemental submissions). This information is also on our web site if that is more convenient. If it is a paper copy you seek, we'll need to request that of the applicant.

As for the visual analysis performed by the applicant in their application, they are limited to consideration of those resources of state or national significance (see 35-A, MRSA, §3452) as defined in 35-A, §3451, §§9. To the best of our knowledge, those resource are limited to the Springfield Congregational Church (on the National Historic Register) and 14 lakes to the south of Bowers within 8 miles of the project. The applicant has completed a Visual Impact Assessment (VIA) of each of these resources, so we determined that the application was complete on this matter.

I hope that this letter addresses your concerns, and I would be happy to discuss this further if you feel that would be beneficial.

Sincerely,



Catherine M. Carroll

Director

Maine Land Use Regulation Commission

Board of Directors

Josh Bragg
Chair
CFS Engineers/Surveyors

Leola Carter
Vice Chair
Bayside Shop 'n Save
4 Corners Shop 'n Save

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Dr. Phil Grant
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Community College

David Morang
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Raye's Mustard

Sheridan Smith
Border Electric

Robert Tyler
Indian Township Planning
& Economic Development

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Representative David Burns
Washington County
Legislative Delegation

Chris Gardner
Washington County
Commissioners

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AUG 01 2011

LURC-AUGUSTA



Sunrise County Economic Council

July 28, 2011

Catherine M. Carroll
Director
Land Use Regulatory Commission
22 State House Station
Augusta, Maine 04333

Dear Ms. Carroll:

On July 27, 2011, the Sunrise County Economic Council (SCEC) Board of Directors formally voted 11-0 to accept tangible benefits funds from the Bowers Mountain Wind Project and administer an Energy Fund for the benefit of Kossuth Township residents.

Please feel free to contact me or SCEC Executive Director Harold Clossey if you have any questions concerning this matter.

Sincerely,

A handwritten signature in black ink, appearing to read "J Bragg".

Josh Bragg
Chair