

STATE OF MAINE  
MAINE LAND USE REGULATION COMMISSION  
DEVELOPMENT PERMIT APPLICATION DP4889  
CHAMPLAIN WIND LLC---BOWERS WIND PROJECT

Testimony Of David P. Corrigan, Registered Maine Master Guide

June 2011

Commissioners,

Thank you for the opportunity to address you and to provide this testimony for the record.

My testimony and that of my witnesses will concentrate on three primary areas--- the potential effects of this project on wildlife, the potential effects of this project on traditional uses and the local economy, and the burden of proof. These are all interrelated, as I do not believe that the applicant has met the burden of proof for either effects on wildlife, or effects on traditional uses of the area and the resource, as required under the applicable laws and rules.

I was at the Commission's March 2011 meeting when Department of Conservation Commissioner Bill Beardsley spoke to you. He said, and I quote:

**“And I think that the classic example is the expedited wind process where there was a subject, there were stimuli, there's a crisis in the Middle East, there's all of those, you know you need to get off carbon, there are all of those factors crept in there, and if one goes through another six years to modify the CLUP to accommodate wind and all of that kind of stuff it would take a long time. The important factor to me is that your board, you all can say 'no'. There is nothing about the expedited process that says it's easier to get a 'yes'. It's clearer, it's faster, you know where you will have some legitimacy, but you've still got to meet LURC standards.”**

[Direct quote taken from the official recording of the March 2, 2011 LURC Commissioners meeting in Bangor]

That really says it all. You CAN say no---and you MUST say no, if ALL of the LURC standards are not met. In this case, I do not believe that they have been met. It is important to remember that it is not up to me, or any intervener to prove that. It is up to the applicant to prove that ALL standards have been met. If they can't do that, if there is even one thing that isn't up to par, then this Commission is required to deny the permit.

As the Commissioners well know, wildlife is one of my primary concerns with this project. On June 2, 2011, I had a telephone conversation with Mark McCollough at the US Fish and Wildlife Service. Mr. McCollough had previously sent me some information about lynx in Washington County, and we discussed the issue at some length. On May 27, 2011, Mr McCollough had sent me an email in which he provided the document entitled "Bowers initial wind project letter 2009"--dated November 17, 2009. This document is included with my testimony for the record. This document was addressed to Sean Casto, at Normandeau Associates, as the applicants consultant. This May 27 email with the attached document was copied to several people, including Fred Todd of LURC, Sean Casto of Normandeau, Jenifer Vashon and Steve Timpano at the State of Maine, as well as Shawn B. Mahaney, whom I believe is with the Army Corps of Engineers. I believe that Fred Todd later forwarded it to all Parties in this case.

Among other things, this document asked that the applicant consult with Maine DIF&W, and/or conduct their own surveys to determine if lynx were in the area, and that they report this information back to US Fish and Wildlife. I find nothing about lynx, or even bobcat, in either the application or the DIF&W agency comments, even though we have ample evidence that lynx exist in the area. And as of my June 2 phone conversation with Mr. McCollough, he tells me that he has nothing in his records indicating that the applicant or their consultant ever provided that information to his office. It makes me wonder why information on a federally listed Threatened Species that is known to use the area, is totally lacking from both the applicant and the Maine Department of Inland Fisheries and Wildlife.

According to Mr. McCollough, who is the US Fish and Wildlife specialist for lynx in this area, lack of funding and manpower have kept his department from doing the field research, but there is evidence to suggest that this project area might possibly qualify as critical habitat, if the proper studies were completed. I believe it is incumbent on this Commission to ask why those studies, or at least preliminary studies, were not completed by the applicant, or commented on by MDIF&W.

I have also spoken with many local people, including Paul Farrington, the local Game Warden. Warden Farrington concurs with Mr. McCollough that at least one lynx was accidentally caught by a trapper in WMD 19 last season. There are also rumors that up to five lynx may have been caught in the surrounding area in the last year, but no one has done the research to track them down. Why not? Isn't it important for this Commission to know if there are likely to be adverse impacts on a Federally Threatened Species? The Maine Department of Inland Fisheries and Wildlife was concerned enough about these accidental catches, that in December of 2010, they issued an emergency rule change to the trapping regulations for this area, in an attempt to limit these accidental catches. They are obviously aware that this area has a population of

lynx living in it, and yet the Lynx is not mentioned, anywhere that I saw, in this application or DIF&W Agency Comments.

The burden of proof is on the applicant to show that this project will not adversely effect the local wildlife, including the Threatened Canada Lynx. If they have made no effort to do so, we must ask; why not? And if they have made an effort, we must ask; was it enough, and what were the results?

Birds are another important form of wildlife that we must be concerned about with this project. While I am aware that the applicant has commissioned avian studies, and they have included quite a lot of information in their application, two questions remain unanswered.

First, what really happens if Bald Eagles continue to populate the known habitat near the project area? The Grand Lake Stream area has long been known for its Eagle population, and in fact, was one of the few bright spots in Maine back in the days when Eagle numbers were low nationwide. The studies may well show no nests within four miles of the project, but does that mean that the Eagles don't use the area, or that in future years, as the population continues to expand, that Eagles won't be nesting or flying much closer to the turbines? Studies are great, but how many Eagles will we have to loose before the effect is considered adverse? How many Eagles is too many to allow to be killed at this site? I don't believe that these questions have been adequately addressed.

As for the various smaller birds, I have one great concern that can be summed up in three words: Single--Catastrophic--Event. On some foggy night, with low pressure bearing down, are we going to see an entire flock of migrating songbirds, or waterfowl, forced into the turbines and killed? I don't know..... Apparently, neither does the applicant or the Commission. But I would bet that if you were to directly question any independent Biologist or Ornithologist, or even the Biologists at The Maine Department of Inland Fisheries and Wildlife, or the US Fish and Wildlife Service, that they would admit that this is a legitimate concern. So, why has it not been adequately addressed?

Again, the burden of proof is on the applicant.

Although often lumped with birds in these discussions, bats are a special concern in themselves. We know that wind projects cause bat mortality—the applicant readily admits this in their own application. The question is how much mortality will this project likely cause, and is that amount too much? We know that MDIF&W is concerned with bat mortality, especially now that White Nose Syndrome has been documented in Maine. This infection is killing bats in frightening numbers, and is perhaps the leading reason why the US Fish and Wildlife Service has been petitioned to

put two species, the Northern Long Eared Bat, and the Small Footed Bat, on the fast track for listing as Federally Endangered Species. During my phone conversation with Mr. McCullough of USF&WS, he also told me that while the Little Brown Bat has not been officially petitioned for listing, that a group of Scientists has compiled research and submitted it to USF&WS in hopes that the Service will move forward with that listing.

There is real concern that the Little Brown Bat may become extinct within 15 years.

With this in mind, we must ask if ANY avoidable mortality is too much mortality. Is turning off the blade rotation on the turbines at speeds under 5 kilometers per hour so as to avoid most of the bats enough, when we know that bats routinely fly at higher wind speeds? Just how many bats can we afford to let be killed by wind turbines, before the net effect is depopulation and/or extinction? I don't believe that these questions have been adequately answered, and until they are, I don't believe that is reasonable or responsible to allow the construction of a project that we know has a high likelihood of killing some number of bats. Again, the burden of proof is on the applicant, and the ultimate responsibility is on the Commissioners of the Land Use Regulation Commission.

While we are on the subject of possibly turning off the turbines to avoid bat mortality, it brings up the question of electricity production. This Commission is charged, in part, with considering if this project will help the State to meet its renewable energy goals. I submit two things; first, that there is no solid proof that this project, even running without any operational controls to limit bat mortality, can produce any significant amount of electricity. And second; that by implementing mitigation measures to help lessen bat mortality, that whatever amount of electricity it does produce will be further reduced, meaning that it has even less of a chance of contributing any significant amount of electricity to the State's renewable goals.

If the applicant wishes to dispute this claim, there is one simple way to do it: Introduce the met tower data that has already been collected, into the record. If the Commissioners could see, in black and white, the hourly and daily wind speeds for the the project area, for a time period of a year or more, then they could make an informed decision about the feasibility of the project, both running at full production, as well as running at any reduced mode. This information must be accurate, and readily available, as it is the same information that the applicant bases all its claims on.

To date, First Wind has always claimed that such data is 'proprietary' and can not be shared. This argument defies logic. They already have the land tied up, they have already run their own studies, and they already have a permit application before this Commission. They also claim that wind speeds are in the range needed for commercial wind projects to run effectively. Introducing the actual met tower data into the record

would not put them at any competitive disadvantage, but it would allow objective consideration of the facts. To refuse to provide this data--these facts--means that they are simply asking the Commission, and the People of Maine, to 'take their word for it.' That is not acceptable, and that does not meet the burden of proof.

My final comments about wildlife have to do with our fisheries. This area of Maine is home to world famous fish and fishing. All of these fish depend on clean, cold water for their survival, and the Guides in the area depend on the the fish, the animals, the lakes, and the surrounding lands for their survival.

What is going to happen to to the water quality when the applicant starts drilling and blasting down into the bedrock to build the foundations for the turbines? We hear a lot about surface runoff and all of the things that are required to ensure that surface waters are not contaminated or adversely effected, but what about those bedrock aquifers? Do we have any guarantee that when the drilling and blasting starts, that they won't do irreparable damage to the ground waters at the head of this watershed, the same cold waters that sustain all of the life in the area? It is not reasonable to expect that you can drill, blast, and pour cement into the the ground in massive quantities, and not have some effect on that subsurface water. Where are the studies? Where are the guarantees that no springs or aquifers will be effected? Where are the guarantees that the waters flowing underground into in the surrounding lakes and streams will not warm, or even be diverted by this construction? Where are the guarantees that the massive amounts of cement in the turbine foundations will not leach mercury and other contaminants into this important resource? Where is the research? Where are the answers? This is much too important a watershed to allow such questions to go unanswered. The burden of proof is on the applicant, and the ultimate responsibility is on the Commissioners of the Land Use Regulation Commission.

As the Commissioners know, visual impact is not my main argument against this, or any wind project, although I do believe it is important, especially as it relates to traditional uses and effects on the Tourism and Guiding Industry. I'm sure that others who are more qualified to speak on the technical aspects of such things will be providing you with information, but I have just a few comments that I would like the Commissioners to keep in mind as they deliberate on the idea of unreasonable adverse scenic impact.

First and foremost is the fact that adverse scenic impact has absolutely nothing to do with how many people use a resource. Impacts to wild, little used areas, can be even more devastating than impacts to heavily used 'tourist' areas. The very charm of these more remote areas, is, frankly, their remoteness. And it doesn't take much intrusion before the impact becomes extreme to those who do use the area. For me and my clients, some of the most valuable scenic resources in Maine are the ones that are hard to get to, and that do not receive heavy traffic. For anyone to suggest that scenic impacts to

these places can not be considered unreasonably adverse simply because they see fewer users, is to overlook the entire reason why people come to Maine in the first place.

The other thing that I would like for you to keep in mind is that most of the resources that we are concerned with in this particular case, are Great Ponds. Maine has a long history of guaranteed public access to Great Ponds. This tradition, and law, goes back to the first English settlements in what is now Maine. Access and enjoyment of great ponds has been guaranteed by the various governing bodies going back to the 1600's. It doesn't get any more traditional than that.

At the Recent Bull Hill Wind Project Hearing in Ellsworth, on May 17 of this year, I listened and took notes as LURC Consultant James Palmer and First Wind Consultant Terry DeWan spoke, for the record, about what would constitute an unreasonable adverse scenic impact. Neither seemed very sure of just what the ultimate criteria would be, but Mr. DeWan offered that perhaps if there were an historic Inn whose front window looked directly at the turbines, that that might constitute an unreasonable adverse scenic impact.

I contend that in the Bowers Project, we have the practical equivalent of dozens of historic Inns directly overlooking the project. I say this in reference to the boats of the local Guides, which have been plying these waters and attracting paying guests since the 1800's. The individual Guides and their boats have changed over the years, and none of them are listed on the National Register, but I contend that there is a long and famous history and tradition of those Guides and those boats taking paying clients out on those lakes. Those clients came, and continue to come, not only to enjoy the fishing on these lakes that qualify to be listed as of State or National significance, but they also come specifically for the view, and the entire experience---An experience which is at least as valuable monetarily, traditionally, and spiritually, as sitting in the front window of an historic Inn and looking out at the Mountains.

There are, in my view, many reasons to deny this permit application. I believe that the many impacts to wildlife, traditional uses, the local economy, the view, and the fact that the applicant has provided no solid data showing that the project is even viable, are all legitimate, legal reasons for the Commissioners to deny this permit. As Department Of Conservation Commissioner Bill Beardsley said to you on March second of this year:

**“The important factor to me is that your board, you all can say ‘no’. There is nothing about the expedited process that says it’s easier to get a ‘yes’. It’s clearer, it’s faster, you know where you will have some legitimacy, but you’ve still got to meet LURC standards.”**

The burden of proof is on the applicant. I don't believe that they have met that burden,

and unless it has been met---fully and unconditionally---then there are no grounds for issuing a permit for this project.

Respectfully submitted, Friday, June 10, 2011,

David P. Corrigan