



STATE OF MAINE
DEPARTMENT OF CONSERVATION
22 STATE HOUSE STATION
AUGUSTA, MAINE
04333-0022

JOHN ELIAS BALDACCI
GOVERNOR

ELIZA TOWNSEND
ACTING COMMISSIONER

To: Marcia Spencer-Famous, LURC
From: Alan Stearns, Deputy Director, BPL *ABS*
Date: February 26, 2010
Re: BPL review & comment re DP4860 Kibby Expansion (Transcanada & Chain of Ponds)

Please find here the Bureau of Parks & Lands (BPL's) agency review and comment of the pending application DP4860 Kibby Expansion (Transcanada & Chain of Ponds).

This is the first time that BPL has commented on a wind power development proposal. This is for three reasons:

- A. The pending application has a direct scenic impact on land owned by the BPL, more significant than we have seen in previous wind power applications across the state (DEP or LURC) under the newly adopted wind power laws.
- B. BPL is increasingly interested in shaping the precedent being set with respect to both scenic analysis and tangible benefits under the newly adopted wind power laws. BPL drafts our comments today with an eye toward consistent comments on future or pending wind power applications both under DEP and LURC jurisdiction. BPL generally does not want to position BPL as the scenic police, as scenic experts, or as guardians of the public viewshed across private lands. In fact we genuinely fear the implications of BPL needing to comment on private viewsheds since it might actively make more difficult our relations with our abutters or our ability to acquire conservation lands. Yet with no apparent precedent and no apparent yardstick by which to objectively measure pending applications, and with few other entities stepping to the plate for agency scenic comment, BPL is gravely concerned that regulators and landowners and recreationists and advocates and applicants will face moving targets and shifting standards which benefit no one.
- C. BPL may or may not become an implementing party (landowner) with respect to any mitigation or tangible benefits in the future.

BPL's expertise on these issues is limited. At the same time -- frankly -- BPL seems to possess as much expertise as offered by the applicant in this application. We are not intimately familiar with rapidly changing laws, rules, zones, and criteria. We have not followed closely LURC's recent debates on expedited zone changes, or legislative history. We did not follow LURC's analysis of the scenic impact of Kibby One under previous laws. We are not expert to review

many wind power impacts that might affect recreational quality including noise and light. We do not have the resources or the authority to raise resources to commission expert comment beyond those comments offered today. We strongly urge LURC to consider public comment, comment from other agencies, LURC's own professional staff, and LURC's own resources to more fully analyze the pending application.

BPL REVIEW OF SCENIC CHARACTER EVALUATION

BPL #1: Overall scenic comments: The entirety of the scenic character evaluation is difficult to read to the extent that it does not clearly define the existing scenic impact of existing turbines (Kibby One), the imminent scenic impact of permitted but not built turbines (Kibby One), the proposed scenic impact from the pending application (Kibby Expansion), and the likely scenic impact from planned turbines under pending expedited zoning changes (Transcanada X). These four phases of impact speak clearly for the need for a regulatory discussion of cumulative impact, but the application doesn't even lay out enough information to begin an analysis of existing conditions and delta, let alone a full scope of likely build-out by Transcanada alone. Additional landowners or developers may also have planned developments within the same viewshed.

The rigor or quality of the applicant's analysis -- irrespective of the cumulative impact issue -- is poor as detailed further below. The entirety of the analysis and submission by the applicant is absent any expert analysis, conclusive facts, mere facts, depth of reasoning, or rational or objective standard upon which to base a precedent or finding. The rigor of the scenic evaluation in this application is dramatically different from this rigor and methodology used in the pending (not yet reviewed) Highland Plantation application. It may be different from the rigor and methodology used by other commenters. LURC should send a message to future applicants that it is the applicant's burden to provide good solid professional scenic analysis. To assist the applicants and reviewers, LURC should make clear a uniform expectation of methodology that will allow objective, rather than subject, analysis and precedent of the ultimate LURC regulatory standards of "significant compromise" and "unreasonable adverse effect."

BPL #2: Kibby Stream impacts. The applicant's discussion of Kibby Stream impacts is so vague as to disallow any conclusion. As such, without more information from the applicant or other sources, the LURC Commission should conclude that the applicant has failed to meet its burden of proof regarding significant compromise of view and unreasonable adverse impact. On Page 2 and 8 of Attachment A.1, the applicant says there "may" be visibility from the Stream. On Page 3 the applicant says "yes" re visibility. On page 9 and 10 the applicant says the project is "not likely to dominate views from Kibby Stream." On page 9 the suggestion is that "most likely" views from roads across the stream are somehow to be discounted, because the landscape is already modified by the road, and the landscape is already modified by existing Kibby Turbines. On page 11 we learn visibility is expected to be "extremely minimal."

BPL objects to the suggestion that views from an existing road across a scenic stream should be discounted because there is an existing road. The suggestion is that once a scenic is compromised at all, further compromise is not adverse. This would be a deeply troubling precedent for LURC to adopt. The applicant's proposed finding (page 11) that views

"in areas where other human landscape disturbance is evident" should not be adopted as a LURC finding, so simply.

BPL objects to the suggestion that views of existing turbines (Kibby One) from a viewpoint should allow LURC to discount additional compromise from new or additional turbines (Kibby Expansion). Similarly, this would be a deeply troubling precedent. There would be no end to the domino effect of turbines, with no construct in place for reviewing cumulative impact.

BPL has no vested interest in Kibby Stream; BPL is not a landowner of Kibby Stream, or guardian of scenic streams generally. Yet we are unsure what commenters might have this interest so we weigh in. LURC should demand a rigorous analysis of the reasons for the scenic designation, and consideration of offset mitigation. Is the stream primarily an angling stream? Is there opportunity for on-site mitigation to salvage the aesthetic angling experience? Are land protection and trail construction or parking turnouts on-site tools to save the stream from incremental or cumulative compromise? Or is the scenic nature of the stream so compromised by the industrialization of the watershed that off-site mitigation is appropriate?

BPL #3: Scenic impacts from a scenic road turnout. The applicant minimizes the existence of a state scenic byway, and the relationship of the byway to other scenic viewpoints. While the jurisdictional relevance of the byway by itself is limited to scenic turnouts, the existence of the scenic byway is important regarding statutorily required analysis of "viewer expectations" and other factors for other jurisdictional viewpoints. Instead, the applicant tries to dissect the viewpoints as separate and seldom overlapping. On page three, there is the dissection of the byway being of statewide significance, but the Arnold Trail being of national significance. From a viewers perspective or expectation, the scenic byway and the Arnold Trail are so intertwined that they both should be considered of equal significance. The introduction of the scenic byway (page 3) provides absolutely no context on the reasons for creation of the byway, the management plans for the byway, or the potential of the byway, because the applicant merely wants to dismiss the scenic turnouts as having no views of the Project. On Page 6 and 7 and 10 and 11, the audible presence of traffic is emphasized in order to discount views from the Chain of Ponds, yet BPL argues that the existence of a scenic byway has the exact opposite effect; the views from Chain of Ponds should have enhanced significance because of the goal or tourism and experience from a marketed and designated scenic byway. The applicant's proposed finding (page 11) that "Chain of Ponds is scenic but not remote, being adjacent to Route 27..." should be rewritten to emphasize the enhanced value of Chain of Ponds due to the existence of the scenic byway.

BPL #4: Scenic impact from the Arnold Trail. The applicant minimizes the amazing international military, literary, and historic significance of the Arnold Trail. BPL is but one de facto guardian of the Arnold Trail because of our landownership up and down the trail of key facilities including Coburn House, because of our on-staff expertise with BPL's staff historian Dr. Thomas Desjardin, because of BPL's collaborations with the scenic byway and Arnold Trail groups, and because of our ownership here at Chain of Ponds. The fact that "no associated structures exist in the study area" (page 5) is irrelevant or misplaced to the extent that the historic significance of the trail, especially in the study area, is precisely the vast

wilderness military march with no structures, no food, no footwear, but rich and robust literary and historic record.

The applicant's review of documentation of the Arnold Trail (page 6) is cursory and minimal. Where is the location of the Native American Natannis's former lodge? Where is the location of the treasonous decisions of Arnold's subordinates? Where is the location of key decision points resulting in starvation and abandonment of bateaux? What was the narrative as Arnold travelled the Chain of Ponds and Arnold's Pond?

The lack of detail on the significance of the views in one document should not cause this country or this state to forget the wilderness experience of this military venture.

BPL's management plan document (page 6) did not discuss the significance of the views, because BPL does not own the views; BPL's management plans are first and foremost documents regarding BPL fee ownership. The Maine Legislature has now deemed the views to be protected within reason from wind turbines. The discussion of the Arnold Trail (page 6 and 7) makes no reference to the companion scenic byway and the cross-facility interpretive potential and reality. The applicant seems to separate the impact on Chain of Ponds from the impact on the Arnold Trail. On page 10 "historical associations add to the experience" should instead read that "international historic and literary and military significance dramatically escalates viewer expectations and experience and potential for enhancement."

On page 11, the applicant's proposed findings should be rewritten to strike any suggestion that this Arnold Trail is not integrally related to Chain of Ponds views, and to strike any suggestion that Chain of Ponds is not of national significance. LURC should demand a rigorous analysis of the role of the Arnold Trail related to project impacts. The Arnold Trail -- if compromised by viewshed impacts -- is deserving of significant on-site mitigation to allow the public to better appreciate the history, even as the scenery is compromised.

BPL #5: Scenic impact from the Chain of Ponds. Beyond the points above, the application suffers from narrative specificity or objectivity. "May be visible" (page 7) is not adequately detailed for analysis. "Portions of the project would be visible" is not adequate. Those who "hug" the shore "might" see no turbines (p.10). What percentage of the viewshed is compromised to what level, by what professional and objective standard? If LURC plans to allow this compromise, what objective precedent is set, which what rigorous review of mitigating strategies? The applicant concedes that the "primary" visual impact of the project would occur on Chain of Ponds, with a mere one sentence (page 11). The proposed findings should be amended to remove words like "extremely limited."

BPL objects to the suggestion that mobile seasonal campers compromise views (p10). BPL argues the exact opposite: Modest income camping and temporary campers on a scenic byway and nationally registered historic trail are evidence that the view should be protected, rather than dismissed.

BPL #6: Scenic impact from Arnold Pond. The pond was named after Benedict Arnold, because of the drama of Arnold's wilderness experience coming to a turning point at this

point. Even modest impacts to this pond deserve rigorous analysis and exploration of mitigation. If the entirety of the wilderness scenic experience on this wilderness military trail is thrown under the bus for modern industrial development, we will have lost a piece of history forever. Mitigation strategies should include protection of some of the bleak grandeur of Arnold's period, at some location.

BPL #7: Scenic Viewpoints from Maine Reserve Lands (P3, P7) It is technically correct (p3) that there are no (regulatorily) identified scenic viewpoints of Maine Public Reserve Lands in the study area. Yet the applicant accurately points out that there are (perhaps non-regulatorily) identified scenic viewpoints on Maine Public Reserve Lands in the study area (p7).

The distinction between regulatory identification and non-regulatory identification is confusing and seemingly contradictory and worth clarity in any revised documents, but ultimately moot since the applicant discusses the arguably non-regulatory sites on p7 and p8. Most noteworthy are the three BPL campsites at Upper Farm where there "may be minimal project visibility...if they are located very close to Route 27...." (p8). The application should be asked conclusively whether there will be visibility, from where the campsites are actually located. Regardless, the applicant notes the poor condition of the campsites. There is an obvious opportunity for mitigation -- for the applicant to improve and appropriately locate the campsites in a location with no project visibility. These are public campsites located on a scenic byway. LURC should treat them as the applicant has, but note their statewide significance and potential. The proposed findings on page 11 should accurately reflect the impact (if any) on these campsites.

BPL #8: General BPL comments on scenic mitigation. The applicant makes no attempt whatsoever to mitigate admitted scenic impacts. BPL is well aware that there is precious little defined precedent for scenic mitigation, and that some authorities including applicants will resist the terminology, let alone its application. LURC Commissioners should be aware that LURC's staff approaches the issue with a conservative reading of LURC's power. In comments above BPL lays out some "on-site" mitigation opportunities, which might be legally distinct from "off-site" requirements or offerings. If LURC or the applicant is unable to structure mitigation or quasi-mitigation which ameliorates the obvious scenic impacts, then we shall have a failure of public purpose. LURC might be backed into a corner with a required up or down vote, with no opportunity for compromise through mitigation. To be clear, BPL does not oppose the Kibby Expansion. We merely seek to make the project something other than a net loss for Maine's Quality of Place. With no new precedent for mitigation of scenic impacts of state and national significance, Maine will suffer a significant and cumulating net loss of scenery of state and national significance. Or we will lose compelling renewable energy opportunities. It's that simple.

BPL #9: General BPL comments on cumulative impacts. Above in introductory comments, BPL raises the issue of cumulative impacts. The project-by-project or phase-by-phase increasing impacts of wind turbines in viewsheds simply must be scoped out for regulatory construct and regulatory precedent. If not, Maine will need to oppose reasonable projects for fear of future projects. Or in the alternative Maine will need to approve future projects for equitable treatment. And at some point the laws might need to be changed to give new tools, or in response to overwhelming public concern with permitted or foreseeable cumulative impacts. Cumulative impacts from a regulatory perspective sometimes seem academic or too

complex to address. With wind turbines, a solution should be achievable and perhaps must be achieved to prevent future backlash. Otherwise our most scenic viewpoints will become unintentionally dominated by multiple sequential decisions.

BPL #10: Stranded BPL assets, stranded recreational assets. This issue does not appear to raise itself in this application. It is an issue BPL will raise in other pending applications before LURC and/or DEP. Public comment may reveal stranded assets related to this application. Are there features or potential features on Maine Public Reserve Land (picnic site potential or trail potential or campsite potential) that effectively disappears because of viewshed impacts?

BPL #11: Impact on BPL conservation strategies. BPL has not in the past three years had active conservation land acquisition goals in the project area. As such, the scenic degradation will not specifically impact BPL's conservation or acquisition priorities or programs. At the same time, if developed with wind turbines, land in the region will "score" less well for any future momentum toward acquisition of conservation lands, and may be less likely to generate popular or institutional momentum for conservation. In some limited areas of Maine, the converse is true that windpower development has stimulated community momentum for land conservation as a competitive strategy for land use. BPL doesn't see this converse reaction happening in this project area. Other entities might be expected to comment on the impact of this project on other entities' conservation strategies. Importantly, BPL notes apparent significant Canadian conservation lands nearby, and wonders what nearby private conservation strategies or priorities might exist. Mitigation efforts of windpower developers, thus, become an important potential tool for the project area if there are goals for conservation acquisitions in the future, rather than stagnation of conservation acquisition activity. Transcanada has the opportunity to prove that windpower development can be "win-win" for land conservation in the affected region. If windpower development ends up being disconnected from Maine's land conservation strategies, there will be a building popular disconnect or resentment.

BPL REVIEW OF TANGIBLE BENEFITS

BPL #12: Tangible benefits: The applicant offers no tangible benefits that relate to recreation or land conservation. BPL urges review of legislative and regulatory intent. My impression is that the tangible benefits requirement is designed to off-set or quasi-mitigate the negative effect of turbines on the host location, including but not limited to scenic impact. To the extent that the application proposes a negative effect on the Chain of Ponds region, tangible benefits for Stratton and Eustis should not suffice.

BPL requests the opportunity for ample time to review and comment on any late-submissions of tangible benefits packages that relate to recreation or conservation. Jointly with SPO, BPL plans to increasingly comment on issues including land conservation permanence, adequacy, stewardship, credibility of holders of conservation easements, and other factors. One-time cash settlements with NGOs for programmatic needs or simple brochures should not suffice, unless with credible demonstration and affirmative reporting requirements of measurable (tangible) results (benefits.)

Last-minute submissions of conservation packages – either tangible benefits or mitigation – which are negotiated “off-campus” with NGOs or potential opponents should be reviewed suspiciously by LURC. If LURC can establish clear regulatory standards, precedent, or expectations then relatively routine windpower development applications such as Kibby Expansion would not need to be treated as case-by-case off-campus deal-making exercises.

LURC’s establishment of precedent should be carefully crafted. The Kibby One project included an escrow payment for alpine conservation. It’s not my impression that that precedent originated as a result of scenic impact analysis. “Double counting” or blurring of various mitigation requirements and tangible benefits should be actively discouraged through objective accounting and delineation.

The fact that the applicant can credibly start out of the gates with no land conservation or scenic or recreational tangible benefits or mitigation --- for a project with obvious negative effects -- illustrates a flaw in the process or law that must be remedied by some party, especially to prepare for future project applications or currently pending much more significant (from a scenic perspective) project applications .