



Maine Land Use Regulation Commission
Guidelines for the Review of Petitions for the Addition of Lands to the Expedited
Permitting Area for Wind Energy Development
Adopted March 3, 2010. Revised April 6, 2011

Background

The 123rd legislature enacted, “An Act to Implement Recommendations of the Governor’s Task Force on Wind Power Development”, Public Law 2007, Ch. 661 that became effective April 18, 2008. The purpose of the statutory changes was to expedite wind energy development in places most compatible with existing patterns of development and resource values. To that end, the Task Force recommended and the Legislature adopted a modified application process and revised certain criteria for evaluating the appropriateness of wind energy developments within specific geographic areas that are identified as the “expedited permitting area”.

The Act established the expedited permitting area for wind energy development, encompassing all of the organized area of the State, and, in part, the jurisdiction of the Land Use Regulation Commission. Subsequently the Commission adopted through rule-making the description and map of the expedited permitting area. The description and map of the expedited permitting area were placed into the Commission’s rules as Appendix F to Ch. 10, Land Use Districts and Standards. 12 M.R.S.A. § 685-A(13) provides for expansion of the expedited permitting area by the Commission in accordance with 35-A M.R.S.A. § 3453, which states:

“The Maine Land Use Regulation Commission may, by rule adopted in accordance with Title 5 Ch. 375, add a specified place in the State’s unorganized or de-organized areas to the expedited permitting area. In order to add a specified place to the expedited permitting area, the Maine Land Use Regulation Commission must determine that the proposed addition to the expedited permitting area:

1. Geographic extension. Involves a logical geographic extension of the currently designated expedited permitting area;
2. Meets state goals. Is important to meeting the state goals for wind energy development established in §3404; and
3. Principal values and goals. Would not compromise the principal values and the goals identified in the comprehensive land use plan adopted by the Maine Land Use Regulation Commission pursuant to Title 12, §685-C.

Rules adopted by the Maine Land Use Regulation Commission pursuant to this section are routine technical rules as defined in Title 5, Ch. 375, subchapter 2-A.”

Expansion of the expedited permitting area does not constitute an approval of a particular project, rather it changes the application review process and certain criteria for any wind energy development projects proposed in that location. A wind energy development may still be proposed even if the

expedited area is not expanded, although it will be reviewed under different criteria and processes. The Commission does not have the authority to reduce the expedited area through rulemaking.

This document is intended solely for guidance to Commission staff and the public when interpreting the statutory criteria for expanding the expedited area. The document may not be relied upon to create rights, substantive or procedural. The Commission reserves the right to act in accordance with its statute and regulations, including in a manner that may vary from this document. Nothing in this document shall be construed to supersede or replace the statute, rules and Comprehensive Land Use Plan administered by the Commission. The Commission will review petitions for rulemaking to expand the expedited area in accordance with the legislature's direction in 35-A M.R.S.A. § 3453. The Commission will endeavor to render its determination on a petition to expand an expedited area within 240 days after receipt of the petition. In order to clarify the criteria set forth in § 3453, the Commission adopts the following.

Interpreting the Statutory Criteria

The Commission will conduct its analysis of the proposed expansion in the context of the general nature of the proposed project, including consideration of the approximate impact area for turbines and associated facilities. While specific project design and layout is not required for this rulemaking process, generalized information about the impact area of the proposed project will be necessary.

Criterion 1. Geographic extension. Involves a logical geographic extension of the currently designated expedited permitting area;

It is not the Commission's intent to use the rulemaking process to add broad areas, such as entire ridgelines, to the expedited area as changes on this scale are properly referred to the legislature for consideration. In addition, the Commission is unlikely to grant petitions that propose a further expansion tacked on to an earlier expansion (a "leapfrog" effect), farther from the original expedited area boundary set by the legislature.

Portions of the expedited area were designated using township or other political boundaries, which may cut across ridgelines or other naturally occurring geographic features relevant in the siting of wind power. Some adjustment to the expedited area boundary may be needed in instances where a potential project falls partially within the expedited area and partially outside of it. The Commission will evaluate the proportion of the project that will fall within the expedited area and any other relevant information. The Commission will require that a majority of a proposed project will lie within the area originally designated as expedited by the Maine Legislature.

Criterion 2. Meets state goals. Is important to meeting the state goals for wind energy development established in §3404; and

The Commission interprets the phrase "important to meeting the state goals for wind energy development" to mean that projects that have a limited potential for energy generation and disproportionate impacts on public resources in the state are not important to meeting the state goals for wind energy development. In contrast, projects that have the potential for exceptional power generation may be "important" even though they may have disproportionate impacts on public resources. In evaluating whether a proposed expansion is important to meeting the state goals for wind energy development, the Commission will consider the following factors:

- The primary factor will be the progress the state has made in achieving the goals set forth in § 3404; also
- The entire project's potential for energy generation, including the portion to be constructed in the original expedited area; and
- The viability of the proposed project, including the availability of transmission lines to transfer the generated electricity, the quality of the wind resource, a demonstration of title, right or interest, a demonstration of financial and technical capacity, and other relevant information; and
- The impact to public resources and, if applicable, public infrastructure vs. the energy likely to be generated by the proposed project and the associated public benefits which are assumed in 35-A MRSA §3402¹. Specific tangible benefits proposed by the developer in accordance with Title 35-A §3454² will be evaluated at the Development Permit stage and are not the subject of this criterion. Evaluation of the impact to public resources will include, in part, an identification, at a landscape level, of important natural, recreational, scenic, archaeological and historic resources in the area. Detailed assessments of specific resources are more appropriate at the Development Permit Application stage of review.

The Commission intends to request the expert opinion of the Public Utilities Commission in evaluating this criterion.

Criterion 3. Principal values and goals. Would not compromise the principal values and the goals identified in the comprehensive land use plan adopted by the Maine Land Use Regulation Commission pursuant to Title 12, §685-C.

The principal values and the goals contained within the Comprehensive Land Use Plan, taken together and in balance with one another, provide guidance to the Commission. The Commission will request comments from other government agencies and interested persons with expertise in subject areas referenced in the goals. A rulemaking petitioner must submit adequate information and analysis to allow the Commission to determine how the proposed project would generally affect existing uses and resources in the proposed expansion area, and describe how the proposal would or would not compromise the principal values and the goals contained in the CLUP. At a minimum, this should include a general description of the character, resources, and uses of the area. The information submitted should particularly address existing uses and resources that are relevant to the principal values and the goals of the CLUP, including but not limited to location of residential uses, scenic resources, recreational uses and resources, plant and animal resources, and other natural resources. The Commission also wishes to emphasize the following points:

- When a wind energy development permit application is evaluated, the standards for review of natural resource impacts are the same whether a development permit application is being considered in the expedited or the unexpedited areas of the jurisdiction. A detailed evaluation of those impacts is conducted in either case. Therefore the Commission's review of potential impacts on natural resources when considering a change to the expedited area boundary will be at the landscape level, and for the purpose of determining whether there is an overriding issue that would result in compromise of the principal values or goals. To accomplish such a landscape evaluation, a petitioner should include a general description of the natural resources in the area; responses from natural

¹ 35-A, M.R.S., Chapter 34 "The Maine Wind Energy Act"

² 35-A, M.R.S., Chapter 34-A, "Expedited Permitting of Grid-Scale Wind Energy Development"

resource agencies regarding the presence, potential presence, or absence of natural resources of concern; and the results of any subsequent field surveys. The petitioner should provide any mapping data received from natural resource agencies regarding the presence or absence of natural resources in the area but need not undertake time-consuming or costly resource surveys or mapping projects unless warranted by some unique circumstances.

- Because of the differences in scenic resource decision criteria depending on whether a development is proposed in the expedited or unexpedited areas, particular attention should be paid to identifying scenic resources in the area and their uses, even if they would not be considered of “state or national significance” and how the change in designation would affect those resources and uses. However, a detailed scenic review, including visualization of the appearance of a proposed project, and detailed noise and shadow flicker analyses, are more appropriately conducted at the development permit application stage, and are not required for an expansion petition.
- Particular attention should be paid to areas above 2700 feet in elevation because of the emphasis on these areas in the Comprehensive Land Use Plan.

The statutory criteria for adding lands to the expedited area for wind energy development are different from the criteria for rezoning pursuant to 12 M.R.S.A. §685-A (8-A) in a number of ways. Specifically with regard to Criterion #3, in the case of the statutory criteria for adding lands to the expedited area, it is the principal values and the goals that are referenced in the statute. In the case of a rezoning petition, the standard is consistency with the entire CLUP. However, as the entire CLUP provides support and explanation for the values and goals contained within it, the entire document may inform the Commission’s interpretation of the principal values and the goals when reviewing a petition to expand the expedited area.

Processing Expansion Petitions and Development Permits

The commission has considered how best to coordinate the sequence for reviewing development applications in an existing expedited area with a petition for expansion of that expedited area. The commission has concluded it would prefer, and generally will require, that a developer complete the petition process for the expansion of the expedited area prior to applying for a development permit for the wind power project. The commission believes that in most instances this will be the most efficient and clearest process for the commission, the public, and the parties, and that this process will also minimize burdens on developers.

The commission will also permit a developer, at its choosing, to go through the permitting process in the existing expedited area and, at some later time after that permit has been granted, petition the commission for an expansion of the expedited area. The commission does not intend, by allowing this sequencing option, to suggest that a development permit for the existing expedited area is a prior condition for a petition to expand an expedited area.

The commission has also concluded that simultaneous review - processing the expansion proposal and the development review concurrently - is inefficient, a poor use of agency resources, and potentially confusing to the parties, the commission, and the public and therefore will not be considered by the commission.