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DEPARTMENT OF CONSERVATION
MAINE LAND USE REGULATION COMMISSION
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PATRICK K. MCGOWAN
COMMISSIONER

TO: Commission Members
FROM: Marcia Spencer Famous, Senior Planner
DATE: January 13, 2009
SUBJECT: Request for public hearing; Stetson Wind II, LLC; Development Permit DP 4818; T8 R4 NBPP, Washington County

Background

On November 25, 2008 staff accepted for processing an application for Development Permit DP 4818, submitted by Stetson Wind II, LLC (a subsidiary of First Wind Energy, LLC) for a 17 turbine wind energy facility to be located on Owl and Jimmey Mountains in T8 R4 NBPP, Washington County. The 25.5 megawatt wind energy facility would be connected to the existing Stetson Wind Project in T8R3 NBPP and T8R4 NBPP (reference Development Permit DP 4788). Both projects are located within the area designated under PL 2008, Chapter 661 for expedited permitting (“An Act To Implement Recommendations of the Governor's Task Force on Wind Power Development”, signed into law by legislature on April 18, 2008 and effective immediately).

The proposed development area lies to the west of Lower and Upper Hot Brook Lakes, which are located partly in T8 R4 NBPP and partly in the Town of Danforth. The distance to the lakes from the proposed turbines ranges from approximately one to two miles. Residences, primarily seasonal, are located along the shoreline of both lakes. Neither lake was rated by LURC’s “Wildlands Lakes Assessment” as having outstanding or significant scenic resources.

Prior to the permit application being accepted as complete for processing, the applicant published a Notice of Intent to File in the Bangor Daily newspaper, and also sent the notice by mail to 54 landowners with parcels in the general vicinity of the proposed development site. The Notice stated that requests for public hearing must be submitted to LURC within 2 weeks of the application being accepted for processing. The final date for accepting requests for public hearing was December 9th.

Request for Public Hearing

Staff received one request for a public hearing, and three other letters in opposition (attached) from the owners of camps on Upper and Lower Hot Brook Lakes. The applicant responded in writing to the concerns raised in the request for a public hearing (attached).

The request for public hearing was based on concerns for visual impact, noise (in particular traveling over water), and shadow flicker; the potential for adverse effects on property values and on recreational uses of the lakes due to the presence of the wind energy facility; and the assertion that the project would not provide tangible benefits. Another concern raised by a person expressing opposition, but not requesting a public hearing, was that alternative sites should be considered.

In addition to the letters received, three phone calls from camp owners were received: one from a Maine resident expressing opposition to the project; one from a person living in Kansas who did not oppose the project; and one from a camp owner living in Massachusetts requesting information but expressing no opinion.

Review Criteria

Chapter 4 of the Commission's rules, Section 4.04(5)(a) and (b)

“(5) When to Hold a Public Hearing:

- (a) As provided by these rules, interested persons may prepare and submit evidence and argument to the agency and request a hearing on an application.
- (b) The Commission shall consider all requests for a hearing submitted in a timely manner. Hearings on an application are at the discretion of the Commission unless otherwise required by the Constitution of Maine or statute. In determining whether a hearing is advisable, the Commission shall consider the degree of public interest and the likelihood that information presented at the hearing will be of assistance to the Commission in reaching its decision.”

Staff Recommendation

1. Section 4.04(5)(b) of the Commission's rules states that when considering whether to hold a public hearing, the Commission shall consider “the degree of public interest” for holding a public hearing. Regarding the application for Development Permit DP 4818, while five landowners have expressed opposition, only one has requested a public hearing. Furthermore, of the 54 landowners who were sent a copy of the Notice Intent to File, seven have responded, of which five expressed opposition.
2. Section 4.04(5)(b) also states that when considering whether to hold a public hearing, the Commission shall consider “the likelihood that information presented at the hearing will be of assistance to the Commission in reaching its decision”. The application and other information currently in the DP 4818 file address the concerns raised by the camp owners.
 - A. Three of the areas of concern raised are required by Public Law 2008 Chapter 661 or LURC's Land Use Districts and Standards to be evaluated by the Commission for a wind energy development; specifically, noise, shadow flicker, and tangible benefits (including effects on property values and recreational uses), and the applicant has submitted information on these issues.

- (1) *Noise*. The noise assessment submitted by the applicant addresses the effect of noise from the turbines traveling over water. The noise assessment was prepared in accordance with the requirements of Chapter 661 that the project must meet the Board of Environmental Protection's noise control rules. [See Title 12, § 685-B(4-B)(A)]ⁱ The applicant also submitted an explanation of under what circumstances low frequency sound is produced by wind turbines, and stated that it is not an issue for the Stetson II Wind Project (see attached letter).
 - (2) *Shadow flicker*. An assessment of the effects of shadow flicker was submitted by the applicant, in accordance with Chapter 661, to demonstrate that no receptors are located within the area likely to be affected by shadow flicker from the proposed turbines. [See Title 12, § 685-B(4-B)(B)]
 - (3) *Tangible benefits*. An assessment of the tangible benefits to be realized as a result of the project was submitted by the applicant, in accordance with Chapter 661, including a discussion of any effect on property values. [See Title 12, § 685-B(4-B)(D)]
- B. Two of the concerns raised are not required under Chapter 661 or LURC's Land Use Districts and Standards to be evaluated; specifically the scenic impact to the views from Upper and Lower Hot Brook Lakes, and an assessment of alternative sites. The applicant has, however, submitted information regarding these concerns (see letter received December 31, 2008, attached).
- (1) *Scenic*. Chapter 661 requires a visual assessment be conducted for any "scenic resource of state or national significance" located within 3 miles of a proposed wind energy development, or within 8 miles, if required by the Commission. [See Title 35-A, § 3452] Chapter 661 defines a "scenic resource of state or national significance", and among other things specifies "great ponds in the State's unorganized or de-organized areas designated as outstanding or significant from a scenic perspective in the "Maine Wildlands Lakes Assessment" published by the Maine Land Use Regulation Commission in June 1987". [See Title 35-A, § 3451(9)] Further, LURC's statute has been amended such that with respect to scenic impact by wind energy development, harmonious fit is no longer considered. See Title 12, §685,B(4)(C) and Title 35-A, § 3452(1)ⁱⁱ
The applicant submitted a visual assessment with the application for the impact to any scenic resources of state or national significance within 8 miles of the development site, but because the "Wildlands Lakes Assessment" did not designate Lower and Upper Hot Brook Lakes as having outstanding or significant scenic resources, they are not by statutory definition scenic resources of state or national significance, and therefore neither was included in the assessment.
 - (2) *Alternative sites*. With the exception of the requirements regarding shadow flicker, no other provision of Chapter 661 or LURC's Land Use Districts and Standards, requires an applicant for wind energy development to conduct and submit with the application an evaluation of alternative sites. The applicant

noted that the location of the proposed project is within the area of the State designated by the Legislature for expedited permitting.

Conclusion

Staff does not recommend that a public hearing be held on Stetson Wind II, LLC's application for Development Permit DP 4818 because of the small number of individuals who have expressed opposition, and because there is adequate information in the DP 4818 file to provide the Commission with the information it will need to reach a decision on this application.

Enc:

- Three letters from Mr. and Mrs. Harrison Roper, including request for a public hearing
- Letter from Stetson II wind LLC in response to the Ropers' letter, received December 31, 2008 (attachments not included)
- Three letters from other camp owners

ⁱ [Emphasis added] "4-B. Special provisions; wind energy development. In the case of a wind energy development, as defined in Title 35-A, section 3451, subsection 11, with a generating capacity greater than 100 kilowatts, the developer must demonstrate, in addition to requirements under subsection 4, that the proposed generating facilities, as defined in Title 35-A, section 3451, subsection 5:

- A. Will meet the requirements of the Board of Environmental Protection's noise control rules adopted pursuant to Title 38, chapter 3, subchapter 1, article 6;
- B. Will be designed and sited to avoid undue adverse shadow flicker effects;
- C. Will be constructed with setbacks adequate to protect public safety, as provided in Title 35-A, section 3455. In making findings pursuant to this paragraph, the commission shall consider the recommendation of a professional, licensed civil engineer as well as any applicable setback recommended by a manufacturer of the generating facilities; and
- D. Will provide significant tangible benefits, as defined in Title 35-A, section 3451, subsection 10, within the State, as provided in Title 35-A, section 3454, if the development is an expedited wind energy development, as defined in Title 35-A, section 3451, subsection 4."

ⁱⁱ Title 12, § 685-B(4)(C), p 2: "In making a determination under this paragraph regarding an expedited wind energy development, as defined in Title 35-A, § 3451, subsection 4, the commission shall consider the development's effects on scenic character and existing uses related to scenic character in accordance with Title 35-A, § 3452."

Title 35-A, § 3452(1): "*Application of standard.* In making findings regarding the effect of an expedited wind energy development on scenic character and existing uses related to scenic character pursuant to Title 12, § 685-B, subsection 4 or Title 38, § 484, subsection 3 or § 480-D, the primary siting authority shall determine, in the manner provided in subsection 3, whether the development significantly compromises views from a scenic resource of state or national significance such that the development has an unreasonable adverse effect on the scenic character or existing uses related to scenic character of the scenic resource of state or national significance. Except as otherwise provided in subsection 2, determination that a wind energy development fits harmoniously into the existing natural environment in terms of potential effects on scenic character and existing uses related to scenic character is not required for approval under either Title 12, § 685-B, subsection 4, paragraph C or Title 38, § 484, subsection 3."