



April 28, 2010

Marcia Spencer Famous
Senior Planner
Land Use Regulation Commission
Department of Conservation
22 State House Station
Augusta, ME 04333-0022

RE: Ch. 10, Land Use Districts and Standards: Amendments to Appendix F, Expedited Wind Energy Development Area Designation

Dear Marcia:

On behalf of Maine Audubon, the Natural Resources Council of Maine and the Appalachian Mountain Club, we are writing in opposition to TransCanada's petition to amend the expedited wind energy development area designation for the Sisk Mountain area. We believe that the petition does not meet Criteria 3, and that the development of this area would compromise the principal values and goals of the Commission's Comprehensive Land Use Plan (CLUP).

The Governor's Wind Power Task Force and the Legislature took a broad, township level approach to identifying areas more likely to be appropriate for wind power at the landscape level. The purpose of the expedited permitting zone is to draw developers toward those areas—it does not mean wind power is *automatically* allowed inside the zone or prohibited outside it. We do not believe it was the Legislative intent that the Commission expand the expedited area into locations which possess the level of likely conflict with natural, scenic and recreational resources present on Sisk.

There are three specific issues within the petition area that would be compromised by changing the proposed area to an expedited area for wind power: a rare natural community located throughout most of the petition area, the location of state-listed threatened species habitat in the central portion of the petition area, and the scenic impact on a highly significant area.

The CLUP's third broad goal is to "Maintain the natural character of certain areas within the jurisdiction having *significant natural values* and primitive recreational opportunities."¹ Nearly two-thirds of the proposed expansion area consists of rare Fir-Heartleaved Birch Subalpine Forest natural community. As noted by the Maine Natural Areas Program (MNAP) in their comments on the proposed Kibby expansion development permit application (Attachment 1), the eighteen documented examples of this community make up less than 1/5 of 1% of the state's land area, three-quarters of which occurs in just three area (Katahdin, the Mahoosucs and the Bigelow Range). *Even within the western Maine mountains region*² they are very uncommon, comprising just 1% of the area.

The expansion area encompasses a portion of a larger expanse of this community extending along much of the Sisk ridgeline. At 358 acres, the occurrence on Sisk Mountain is in the middle of the size range for documented occurrences (Attachment 2). At the lower end of the list, the size drops off dramatically – the seven smallest documented occurrences are less than half the size of Sisk, and five are less than 100 acres. Sisk should not be considered a small or insignificant example of this community.

MNAP has described this occurrence as a good quality example (B ranking) of this community type. This ranking is based on three factors – condition, size and landscape context. It does not meet the criteria for an A (Exemplary) rank for size (minimum of 750 acres) or landscape context (because it is surrounded by managed forest rather than undisturbed land). However, it was given the highest ranking for condition ("the site being an undisturbed ridge line and the community composition being representative for the type"). As a good quality, undisturbed and natural occurrence, Sisk should be considered a significant example of this rare community.

High-elevation subalpine forests are recognized as a distinct and significant habitat in state and regional conservation plans (primarily because they provide the essential habitat for Bicknell's thrush, the Northeast's rarest migratory songbird and a species of highest conservation concern in Maine's Comprehensive Wildlife Conservation Strategy). Mountaintop Forest (forested areas above 3,000 feet in elevation) is listed as a distinct key habitat (separate from the broader Coniferous Forest habitat) in the Comprehensive Wildlife Conservation Strategy³. One of the conservation strategies for this task is to

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¹ CLUP Chp. 1 P. 5 (emphasis added).

² Defined here as those portions of the Maine Central Mountains, Mahoosuc-Rangeley Lakes, White Mountains,, Connecticut Lakes and Western Maine Foothills ecological subsections within the state, which collectively encompass all of Maine's major mountainous areas

³ See Chapter 5 pages 86-88

http://www.state.me.us/ifw/wildlife/groups_programs/comprehensive_strategy/table_contents.htm.

“Identify priority habitats for protection.” One of the tasks listed under this strategy is to “Initiate efforts to ‘officially’ recognize Bicknell’s Thrush and mountaintop habitat as a high conservation priority in public agency and private land-use planning efforts.”(page 87) The CWCS lists wind power development as a threat to this habitat (page 87).

Subalpine forests have an important role to play in allowing Maine’s ecosystems to adapt to a future warmer climate. During a major period of warmer climate following the last glacial episode, spruce-fir forests remained at higher elevations while being greatly diminished at lower elevations⁴. Similar conditions will prevail in the future, and these areas may serve as important refugia for spruce-fir dependent species whose habitat is likely to shrink considerably. Maintaining the ecological integrity of these subalpine forests is thus an important component of an adaptive strategy to future climate change.

A primary reason we were able to support the original Kibby project was that it avoided significant impact to this community on Kibby Mountain. Such is not the case here. The community runs in a relatively narrow band along the ridgeline. It would be impossible to develop this area without creating extensive and unavoidable impacts to large parts of the community. We believe this alone is sufficient reason to reject this petition. However, there are other considerations as well.

The CLUP’s second broad goal is to “Conserve, protect and enhance the natural resources of the jurisdiction primarily for fiber and food production, outdoor recreation and plant and *animal habitat*.”⁵ This subalpine forest community provides the primary habitat for Bicknell’s thrush, one of the northeast’s rarest migratory songbirds and a Highest Priority species in Maine’s Comprehensive Wildlife Conservation Strategy.⁶ While the supplemental material filed by the applicant indicates that suitable habitat is not currently present in the proposed expansion area, this is likely to be a temporary condition. This community is dynamic, with its structure constantly changing due to the extensive natural disturbance (primarily wind and ice) that characterizes high-elevation ridgelines. The fact that suitable habitat is not currently present (due to the relatively mature condition of the community in this area) does not mean that suitable habitat will not be present in the future. In fact it is likely that such habitat will be created as areas of mature forest blow down, creating the younger regenerating habitat favored by the thrush.

In addition, a *large* wetland complex suitable for the Northern bog lemming, a listed Maine threatened species, is centrally located in the petition area. Given the location and significant size of the habitat, avoidance of impacts is highly unlikely. Developing a wind project within the habitat will pose a substantial threat to the lemming. Specifically, a project would likely alter drainage patterns so as to either flood the sphagnum wetland or dry it out, rendering it unsuitable for the lemming and impacts the foraging habitat of lemmings that occurs outside of the wetland complex. Furthermore, fragmentation of the

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⁴ This topic is discussed in greater detail in the pre-filed testimony of Dr. David Publicover to the Kibby Expansion development permit application (DP 4860) (Attachment 3).

⁵ CLUP Chp. 1 P. 5 (emphasis added).

⁶ See Susan Gallo’s pre-filed testimony to the Kibby Expansion development permit application (DP 4860) for more details about Bicknell’s thrush (Attachment 4).

lemming habitat would produce deleterious edge effects that include microclimate change, increased predation, and invasion from competing species. Blasting from the road and turbine pad construction could also have negative physical and acoustic consequences for the lemming population. Because the lemming's habitat requirements are highly specialized, successful relocation would not be possible if it is forced from its current habitat.

We also have concerns about potential impacts to migratory bird and bats, the Roaring brook mayfly, and the Golden eagle that may or may not be possible to address but we do not have sufficient information at this time upon which to draw a conclusive determination about the likely impacts.

Finally, we are concerned about the potential scenic impact to the Chain of Ponds region. We recognize that the revised scenic evaluation standards are not intended to prevent all scenic impacts. However, the Chain of Ponds is an area of particularly high significance. It is highly accessible and receives considerable public use. The Maine Wildland Lakes Assessment characterizes Chain of Ponds as having outstanding scenic value with very dramatic relief. The Sisk ridgeline is an important part of this dramatic relief. The Applicant's supplemental material indicates that turbines within the proposed expansion area would be visible from portions of the Chain of Ponds. They state that the ridgeline proposed for development is subordinate to the more prominent summits of Sisk and Pisgah mountains. However, this ridgeline lies between these two summits. The development would not be a peripheral part of the view, but would lie in the center of the field of vision when the view is drawn to these two prominent features. The centrally located scenic impacts of this development would significantly compromise the quality of this outstanding view. Although we do not possess specific turbine locations or visual simulations for development in the petition area, most of the findings and conclusions we have made regarding the related permit application on scenic and recreational impacts apply to the petition.⁷

We also note that TransCanada asserts on page 2 of its March 10 filing that approval of the petition would allow an expansion of the Kibby Expansion project and/or flexibility for siting the turbines. It is difficult to separate consideration of this petition from the Kibby expansion development permit application currently before the Commission. Our position on that project is that we believe the northernmost eight turbines are appropriately sited, and we would support an application that was limited to those eight turbines. However, we oppose the permitting of the southernmost seven turbines, for the same reasons that we oppose this petition—the southern area of the proposed project and the petition area form a contiguous block with extremely similar natural and scenic characteristics.

Because there is a permit application pending, we support the decision of the Commission to determine the fate of the permit application before making a decision on the petition, and believe this is most likely to lead to a coherent planning outcome.

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⁷See Attachment 5, pre-filed testimony of Cathy Johnson to the Kibby Expansion development permit application (DP 4860).

We will share our concerns with a significant portion of the proposed project in the project hearing context. In the absence of a specific development application that includes the proposed expansion, the Commission should not make a decision on expanding the expedited area based on speculation about what may or may not happen in the future. Rather, the Commission must either deny or approve the petition based on the ability of the applicant to meet the statutory criteria.

In summary, we do not believe that a high-elevation area dominated by a rare natural community that provides habitat for the Northeast's rarest migratory songbird (Bicknell's thrush), which overlays habitat for a Maine listed threatened wildlife species (northern bog lemming), and which is an important component of the viewshed of an outstanding scenic area, is an appropriate location for development. Simply put, the petition fails to meet criteria three as adding this area to the expedited area would compromise the second and third goals of the Commission's Comprehensive Land Use Plan. We urge the Commission to reject this petition.

Thank you for your consideration.

Sincerely,



David Publicover
Appalachian Mountain Club



Jody Jones
Maine Audubon



Dylan Voorhees
Natural Resources Council of Maine

ATTACHMENTS

1. Maine Natural Areas Program comments on Kibby Expansion development permit application (DP 4860).
2. Maine Natural Areas Program list of documented occurrences of Fir-Heartleaved Birch Subalpine Forest community
3. Dr. David Publicover's pre-filed testimony for Kibby Expansion development permit application (DP 4860).
4. Susan Gallo's pre-filed testimony for Kibby Expansion development permit application (DP 4860).
5. Cathy Johnson's pre-filed testimony for Kibby Expansion development permit application (DP 4860).