



DEPARTMENT ORDER

IN THE MATTER OF

WESTERN MAINE RENEWABLES, LLC) SITE LOCATION OF DEVELOPMENT ACT
Moscow, Somerset County) NATURAL RESOURCES PROTECTION ACT
WIND ENERGY FACILITY) FRESHWATER WETLAND ALTERATION
L-29026-24-A-N (approval))
L-29026-TF-B-N (approval))
L-29026-TG-C-N (approval)) WATER QUALITY CERTIFICATION
L-29026-2G-D-N (approval)) FINDINGS OF FACT AND ORDER

Pursuant to the provisions of the Maine Wind Energy Act, 35-A M.R.S. §§ 3401–3404, the Expedited Permitting of Grid-Scale Wind Energy Development Law, 35-A M.R.S. §§ 3451–3459¹, Chapter 382, Wind Energy Act Standards, Site Location of Development Act (“Site Law”), 38 M.R.S. §§ 481–490, the Natural Resources Protection Act, 38 M.R.S. §§ 480-A–480-JJ, Section 401 of the Federal Water Pollution Control Act (33 U. S. C. § 1341), and Chapters 310, 315, 335, 373, 375, and 500 of its rules, the Department of Environmental Protection (“Department”) has considered the application of WESTERN MAINE RENEWABLES, LLC with the supportive data, agency review comments, public comments and other related materials on file and FINDS THE FOLLOWING FACTS:

1. PROJECT DESCRIPTION:

- A. Summary. The applicant proposes to construct a 14-turbine, 58.8 megawatt (MW), wind energy development which is an “expedited wind energy development” as defined in the WEA, 35-A M.R.S. § 3451(4). In addition to the generating facilities, the project will include new roads, upgrades to existing roads, and the construction of a new substation. The project will also include the renovation of an existing structure to function as an operations and maintenance (O&M) building for the project. The overall proposed project will include 11.4 acres of new impervious and new developed area. The project also includes 46.2 acres of existing developed area
1. Turbines. The applicant proposes to construct 14 wind turbines, Vestas V150-4.2 MW, with Serrated Trailing Edge (STE) turbine blades. The turbines will have a maximum height of 591 feet. The turbines will be located in the Town of Moscow.
 2. Turbine Pads. Each turbine pad measures between 70,000 to 143,000 square feet in size.
 3. Access Roads. The applicant proposes to upgrade 6.4 miles of existing roads to access the turbine locations. The applicant also proposes to construct 3.7

¹ The Maine Wind Energy Act and the Expedited Permitting of Grid-Scaled Wind Energy Development Law are collectively known as the Wind Energy Act (WEA).

miles of new roads, with an average width of 38 feet during construction, minimized to a 12 to 24-foot width after construction.

4. Electrical Transmission Lines. The applicant proposes to construct approximately 5.45 miles of underground and aboveground 34.5 kilovolt (kV) collector line. The project includes the construction of a new substation with 76,293-square feet of impervious area, including driveways.
5. O&M Building. The applicant proposes to renovate an existing structure to serve as an O&M building for the project. The renovation of the O&M building will result in approximately 0.41 acres of new impervious area.

The applicant is also requesting approval under the Natural Resources Protection Act (NRPA) to fill 72,081 square feet of forested, scrub shrub, and emergent freshwater wetland and to clear approximately 18,098 square feet of forested wetlands for the construction of the project. Approximately 13,566 square feet of the fill impacts and 4,088 square feet of cleared area, are proposed in wetland of special significance (WOSS), located within 25 feet of a stream. Additionally, the applicant submitted Permit-by-Rule #72701 for five stream crossings. The PBR was accepted by the Department on June 30, 2021.

The details of the turbines, access roads, and associated facilities are provided on the set of plans entitled “Western Maine Renewable Energy Project” prepared by Engineering & Management Services, Inc. and dated May 2021.

- B. Current Use of Site. The project site contains a former United States Air Force radar station and forested timberland.

2. FINANCIAL CAPACITY:

The total cost of the project is estimated to be \$81.9 million. The applicant submitted a letter from Customers Bank, dated March 8, 2021 indicating an interest in providing financing for this project. Prior to the start of construction, the applicant must submit evidence that it has been granted a line of credit or a loan by a financial institution authorized to do business in this State or evidence of any other form of financial assurance consistent with Department Rules, Chapter 373, § 1, to the Department for review and approval.

The Department finds that the applicant has demonstrated adequate financial capacity to comply with Department standards provided that proof of final financing is submitted to the Department prior to the start of construction.

3. TECHNICAL ABILITY:

The applicant provided resume information for key persons involved with the project and a list of projects it has successfully constructed. The applicant retained the services of the following companies to prepare the application:

- Tetra Tech, Inc. – permitting, historic/archaeological resources, natural resource assessment, shadow flicker assessment
- Engineering & Management Services, Inc. – civil engineering and stormwater analysis
- RLC Engineering, Inc. – electrical engineering
- TJD&A Landscape Architects and Planners – visual impact analysis
- Market Decisions, LLC – user surveys
- Resource Systems Group, Inc. – sound assessment
- Public Archaeology Laboratory, Inc. – historic architecture survey
- Verrill Dana – legal counsel
- Broadwater Environmental, LLC - soil surveys

Based on the experience and expertise of the applicant and its retained consultants, the Department finds that the applicant has demonstrated adequate technical ability to undertake the project in compliance with Department standards and provisions of the Site Law.

4. NOISE:

To address the Site Law standards pertaining to the control of noise, 38 M.R.S. § 484(3), and the Department’s pertinent rule in Chapter 375, § 10, the applicant submitted a sound level assessment entitled “Western Maine Renewable Energy Sound Analysis,” completed by Resource Systems Group and dated May 2021. The sound level assessment was conducted to predict expected sound levels from the proposed project, and to compare the model results to the applicable requirements of Chapter 375, § 10.

The project must comply with Department regulations applicable to sound levels from construction activities between 7:00 p.m. and 7:00 a.m. (nighttime hours), routine operation, and routine maintenance. Chapter 375, § 10 applies sound level limits (L_{eqA-Hr}) at facility property boundaries and at “protected locations.” Chapter 375, § 10(G)(16) defines a protected location as “[a]ny location accessible by foot, on a parcel of land containing a residence or planned residence or approved subdivision near the development site at the time a Site Law application is submitted...”. In addition to residential parcels, protected locations include, but are not limited to, schools, state parks, and designated wilderness areas. For the proposed project, the nearest protected location is 0.8 mile from the closest turbine.

As outlined in Chapter 375, § 10(I)(2), the sound levels resulting from routine operation of a wind energy development are limited to 75 decibels (dBA) at any time of day at any development property boundary. At any protected location, the limit is 55 dBA between

7:00 a.m. and 7:00 p.m., and 42 dBA between 7:00 p.m. and 7:00 a.m. at protected locations within 500 feet from living and sleeping quarters. At distances beyond 500 feet, the daytime hourly sound level limit applies regardless of the time of day.

The Town of Moscow has a sound ordinance. Chapter 375, § 10(I)(2) states that when a proposed development is located in a municipality that has duly enacted by ordinance an applicable quantifiable noise standard, which (1) contains limits that are not higher than the sound level limits contained in this regulation by more than 5 dBA, and (2) limits or addresses the various types of noises contained in this regulation or all the types of noises generated by the development, that local standard, rather than this regulation, shall be applied by the Department within that municipality for each of the types of sounds the ordinance regulates. Therefore, the turbines are subject to the Moscow Wind Energy Facility Ordinance. The Moscow ordinance states sounds levels may not exceed 75 dBA at any property line. It also states sound levels at any protected location may not exceed 45 dBA within 500 feet of living and sleeping quarters between 7:00 pm and 7:00 am and may not exceed 55 dBA between 7:00 am and 7:00 pm.

To assist with the review of the application, the Department retained an independent noise consultant, Tech Environmental, Inc., to review the applicant's prediction model and associated data as well as other evidence received on the issue of noise.

A. Sound Level Modeling. The applicant's noise consultant, Resource Systems Group, developed a sound level prediction model to estimate sound levels from the operation of the proposed project. The sound model for the project was created using Cadna/A software developed by DataKustik of Germany. Cadna/A allows the consultant to construct topographic surface models of area terrain for calculating sound attenuation from multiple sound sources such as wind turbines. The locations of the proposed turbines, roads, parcels, land uses, and waterbodies were entered into Cadna/A in order to calculate sound levels at various points within the proposed project area. Sound level predictions were calculated in accordance with ISO 9613-2, which is an international standard for calculating outdoor sound propagation.

This computerized model can predict sound levels at specific receiver positions originating from a variety of sound sources. Applicable national or international standards can also be included in the analysis as described above. Cadna/A accounts for such factors as:

- Distance attenuation;
- Geometrical characteristics of sources and receivers;
- Atmospheric attenuation (i.e., the rate of sound absorption by atmospheric gases in the air between sound sources and receptors);
- Ground attenuation (effect of sound absorption by the ground as sound passes over various terrain and vegetation types between source and receptor);
- Screening effects of surrounding terrain; and
- Meteorological conditions and effects.

Sound associated with the operational phase of the project was modeled excluding other existing sound sources. Modeling the sound generated from the operation of the 14 turbines was conducted using the manufacturer's full rated sound level output. Vestas V150 turbines with STE blades have a full rated sound level output of 104.9 dBA. In addition, the applicant added 3.0 dBA to the turbine sound power output to compensate for any uncertainty in the model. The model was run with all 14 turbines operating at full sound power output. For locations subject to the Town of Moscow Ordinance, the highest predicted sound level at a protected location was 36 dBA. At a property line, the highest predicted sound level was 56 dBA.

The applicant concluded that the proposed project will result in sound levels below the required 75 dBA at any property line, 45 dBA within 500 feet of living and sleeping quarters between 7:00 pm and 7:00 am, and 55 dBA between 7:00 am and 7:00 pm.

B. Tonal Sound. As defined in Chapter 375, § 10(I)(3), a tonal sound exists if:

at a protected location, the 10-minute equivalent average one-third octave band sound pressure level in the band containing the tonal sound exceeds the arithmetic average of the sound pressure levels of the two contiguous one-third octave bands by 5 dB for center frequencies at or between 500 Hz and 10,000 Hz, by 8 dB for center frequencies at or between 160 and 400 Hz, and by 15 dB for center frequencies at or between 25 Hz and 125 Hz. 5 dBA shall be added to any average 10-minute sound level ($Leq_{A 10-min}$) for which a tonal sound occurs that results from routine operation of the wind energy development.

The applicant's May 2021 sound level assessment states that the Vestas turbines will not produce a tonal sound as it is defined by the Department's Noise Regulations. In its review of the applicant's sound level assessment on behalf of the Department, Tech Environmental, Inc. confirmed that an analysis of the sound power level spectrum for the turbines revealed that they have no potential for creating a tonal sound as defined in the Department's Noise Regulations. The applicant states that the substation transformer will generate tonal sound; however, cooling fans and background sounds will buffer the sound at protected locations.

C. Short Duration Repetitive Sound. Chapter 375, § 10(I)(4) defines short duration repetitive sound (SDRS) as:

a sequence of repetitive sounds that occur within a 10-minute measurement interval, each clearly discernible as an event resulting from the development and causing an increase in the sound level of 5 dBA or greater on the fast meter response above the sound level observed immediately before and after the event, each typically ± 1 second in duration, and which are inherent to the process or operation of the development.”

Chapter 375, § 10(I)(4) requires that if any defined SDRS results from routine operation of a development, 5 dBA must be added to the average 10-minute sound level ($Leq_{A 10 \text{ min}}$) measurement interval in which greater than 5 SDRS events are present.

The May 2021 sound level assessment submitted by the applicant summarized measurements of the operational Spruce Mountain wind turbines in Maine. The applicant's noise consultant completed compliance testing at Spruce Mountain in 2012. Based on the applicant's sound level assessment and the assessment of the Department's noise consultant, the proposed project will be unlikely to generate SDRS that will result in sound levels above the applicable limits. Compliance testing for SDRS must be incorporated into the post-construction noise monitoring program (discussed in Section 5.E. below) after project completion to provide assurance that SDRS is not occurring at a rate that will result in sound levels above the applicable limits.

- D. Peer Review and Analysis. Tech Environmental, Inc. reviewed Section 1, Project Description, as well as Section 5, Noise, of the project application. Section 5 contains the report by Resource Systems Group and entitled "Western Maine Renewable Energy Sound Analysis." Tech Environmental, Inc. concluded that the Vestas V150 turbine maximum sound power levels with conservative uncertainty factors were used in the analysis; the acoustic models and their assumptions are appropriate; the sound receiver locations are appropriate; the decibel contour maps adequately cover the potential impact area; and Chapter 375, § 10 and Town of Moscow Wind Energy Facility requirements have been properly interpreted and applied by the applicant.
- E. Post-construction Monitoring Program. Post-construction monitoring is required for all wind power projects and must meet all applicable standards of Chapter 375, § 10(I)(8), which specifies the methods for measuring sound. Chapter 375, § 10(I)(5)b states that compliance will be demonstrated when the arithmetic average of the sound level of, at a minimum, twelve, 10-minute measurement intervals in a given compliance measurement period is less than or equal to the sound level limit set forth in subsection I(2). Due to the projected sound levels and prevailing wind at the project site, the applicant proposes the minimum number of allowable 10-minute valid periods be reduced from 12 to six. If during the first week of monitoring, the proper conditions do not occur for at least six valid ten-minute periods, then during the second week of sound monitoring the Operator will conduct at least one wind park shut down for a 15-minute period during a period when hub-height winds of the closest turbines are at or above 8 m/s. If these steps still do not produce sufficient valid periods after 14 days of sound monitoring, then the Operator will contact DEP to discuss whether the data collected is sufficient to determine compliance, whether other criteria or methodologies can be used, and whether additional monitoring will be required. In its review, Tech Environmental, Inc. stated that to ensure that the sound level predictions submitted by the applicant are accurate, and to ensure compliance with the Department's and the Town of Moscow's Noise Regulations, including the provisions regarding SDRS and tonal sound, it recommended that the

Department require post-construction sound monitoring at the north corner of the project parcel. Tech Environmental, Inc. also stated that the above proposed revisions are appropriate for the project.

The Department finds that the applicant must demonstrate compliance with the Department's and the Town of Moscow's Noise Regulations once during the first year of operation and every fifth year thereafter until the facility is decommissioned. The results of the post-construction monitoring program must be submitted to the Department within 60 days of completion. To ensure compliance, post-construction monitoring must meet all applicable standards of Chapter 375, § 10(I)(8), which specifies the methods for measuring sound and the information to be reported to the Department for review with the above noted exceptions.

- F. Sound Complaint Response and Resolution Protocol. The applicant proposes to implement a formal protocol for responding to sound complaints. Prior to the start of commercial operation, the applicant must submit to the Department for review and approval a sound complaint response and resolution protocol. The proposed protocol must meet all applicable standards of Chapter 375, § 10(I)(7)(j). The applicant must notify the Department of any complaints within three business days of receiving them and must notify the Department of the outcome of its investigation within three business days of completing the investigation.

Based on the applicant's submissions and the review of those submissions by the Department's noise consultant, the Department finds that the proposed project meets all applicable standards of Chapter 375, § 10, including tonal sound and SDRS, as well as the Town of Moscow's Noise Regulations. To ensure that the project operates in compliance with this Order and the Department's and the Town of Moscow's Noise Regulations, the applicant must submit to the Department for review and approval a sound complaint response and resolution protocol and implement the post-construction monitoring program described above. The applicant must investigate all complaints and must notify the Department of any complaints within three business days of receiving them, and must notify the Department of the outcome of its investigation within three business days of completion; and the applicant must submit sound level monitoring reports in accordance with the post-construction monitoring program described above.

Upon any finding of non-compliance by the Department, the applicant must take short-term action immediately to adjust operations to reduce sound output to applicable limits under Chapter 375, § 10 or the Moscow Noise Regulation. Within 60 days of a determination of non-compliance by the Department, the applicant must submit, for review and approval, a mitigation plan that proposes actions to bring the project into compliance. The Department will review any such mitigation plan and may require additional mitigation or alternative measures. The Department may take such enforcement action as it finds appropriate to ensure compliance with the Site Law, applicable provisions of Chapter 375, § 10, and this Order.

5. SCENIC CHARACTER:

The Site Law, 38 M.R.S. § 484(3), and the NRPA, 38 M.R.S. § 480-D, both have standards pertaining to scenic impacts that must be satisfied in order to obtain a permit for a wind energy development. The Site Law requires an applicant to demonstrate that the developer has made adequate provision for fitting the development harmoniously into the existing natural environment and that the proposed project will not adversely affect existing uses or scenic character. Pursuant to the NRPA, an applicant must demonstrate that a proposed project will not unreasonably interfere with existing scenic, aesthetic or recreational uses of a protected natural resource. The WEA further specifies those standards and states that when expedited wind energy developments are being evaluated:

[T]he [Department] 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... 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... Title 38, section 484, subsection 3.

35-A M.R.S. § 3452(1).

The proposed project contains “generating facilities,” including wind turbines as defined by 35-A M.R.S. § 3451(5) and “associated facilities,” such as buildings, access roads, and collection lines as defined by 35-A M.R.S. § 3451(1). With regard to the associated facilities, the WEA, 35-A M.R.S. § 3452(2), provides in pertinent part that:

The [Department] shall evaluate the effect of associated facilities of a wind energy development in terms of potential effects on scenic character and existing uses related to scenic character in accordance with... Title 38, section 484, subsection 3, in the manner provided for development other than wind energy development if the [Department] determines that application of the standard in subsection 1 to the development may result in unreasonable adverse effects due to the scope, scale, location or other characteristics of the associated facilities. An interested party may submit information regarding this determination to the [Department] for its consideration. The [Department] shall make a determination pursuant to this subsection within 30 days of its acceptance of the application as complete for processing. The Department determined that the associated facilities should be evaluated pursuant to the standards in the WEA as opposed to Title 38, section 484 subsection 3.

The WEA, 35-A M.R.S. § 3452(3), further provides that:

A finding by the [Department] that the development's generating facilities are a highly visible feature in the landscape is not solely sufficient basis for determination that an expedited wind energy project has an unreasonable adverse effect on the scenic character and existing uses related to scenic character of a scenic resource of state or national significance. In making its determination under subsection 1, the [Department] shall consider insignificant the effects of portions of the development's generating facilities located more than 8 miles, measured horizontally, from a scenic resource of state or national significance.

Pursuant to the Department's regulations, Chapter 382, Wind Energy Act Standards, the Department considers evidence regarding the significance of the Scenic Resources of State or National Significance (SRSNS); the existing character of the area surrounding the SRSNS; and the expectations of the typical user of the SRSNS, to inform a rating of the value of the SRSNS as low, medium, or high.

The Department also evaluates the evidence regarding the purpose and context of the proposed wind energy development; the extent, nature and duration of public uses of the SRSNS and the potential effect of the proposed development on that public use and enjoyment; the scope and scale of the potential impacts of the proposed development; and any cumulative impacts on the scenic character or existing uses related to scenic character of the SRSNS, to inform a rating of the significance of the impacts as low, medium, or high. The value of the SRSNS and the significance of the impacts are factors in the determination of the reasonableness of the scenic impacts of a proposed project.

To address the scenic impact criteria, the applicant submitted a Visual Impact Assessment (VIA) entitled "Visual Impact Assessment," prepared by TJD & A Landscape Architects and Planners, and dated May 2021. The VIA examined the potential scenic impact of the generating facilities and associated facilities on SRSNS within eight miles of the proposed project using the evaluation criteria contained in the WEA. The applicant identified seven SRSNS within eight miles of the proposed generating facilities.

The applicant's VIA for the generating facility and associated facilities addressed the criteria set forth in 35-A M.R.S. § 3452(3):

- (A) The significance of the potentially affected scenic resource of state or national significance;
- (B) The existing character of the surrounding area;
- (C) The expectations of the typical viewer;
- (D) The expedited wind energy development's purpose and the context of the proposed activity;
- (E) The extent, nature, and duration of potentially affected public uses of the scenic resource of state or national significance and the potential effect of the generating facilities' presence on the public's continued use and enjoyment of the scenic resource of state or national significance; and

(F) The scope and scale of the potential effect of views of the generating facilities on the scenic resource of state or national significance, including but not limited to issues related to the number and extent of turbines visible from the scenic resource of state or national significance, the distance from the scenic resource of state or national significance and the effect of prominent features of the development on the landscape.

A. Scenic Resources of State or National Significance. SRSNS are defined in 35-A M.R.S. § 3451(9). The following is a description of what constitutes each type of SRSNS and the applicant's assessment of potential impacts to each of the SRSNS within eight miles of the proposed generating facilities:

1) National Natural Landmarks. A federally designated wilderness area or other comparable outstanding natural and cultural features, such as the Orono Bog or Meddybemps Heath.

The applicant did not identify any national natural landmarks within eight miles of the project.

2) Historic Places. Properties listed on the National Register of Historic Places pursuant to the National Historic Preservation Act of 1966, as amended.

The applicant identified two places listed on the National Register of Historic Places located within eight miles of the project. One site, the Bingham Free Meetinghouse, will not have any views of the project. The second site, the Arnold Trail, will have limited views of the project, although vegetation will provide screening in some areas. The applicant rated the overall scenic impact on the Trail from the project to be Low.

3) National or state parks.

The applicant did not identify national or state parks within eight miles of the project.

4) Great ponds. A great pond is a SRSNS if it is:

- a. one of the 66 great ponds located in the State's organized area identified as having outstanding or significant scenic quality in the "Maine's Finest Lakes" study published by the Executive Department, State Planning Office in October 1989; or,
- b. one of the 280 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" (MWLA) published by the Maine Land Use Regulation Commission in June 1987.

There are two great ponds within eight miles of the generating facilities designated as outstanding in the “Maine Wildlands Lakes Assessment”, Jackson Pond and Moxie Pond.

Jackson Pond

Jackson Pond is a 31-acre pond located in Concord Township. The nearest turbine would be approximately 7.6 miles away. The applicant stated that due to intervening vegetation and topography, the project will not be visible from Jackson Pond.

Moxie Pond

Moxie Pond is a 2,370-acre pond located in East Moxie Township, The Forks Plantation, and Bald Mountain Township. Approximately 18% of the Pond is located within 8 miles of the project. There is a public boat launch and approximately 175 camps on the Pond. Moxie Pond is rated as “outstanding” for scenic quality in the MWLA. The applicant rated the lake as Medium for resource value due to the large number of camps along the shoreline. The applicant rated the overall scenic impact on the Pond from the project to be Low.

The applicant’s VIA states that approximately 1.4% of Moxie Pond (8% of the pond located within 8 miles of the project) would have views of the blades of two turbines at a distance of 7.7 miles. The applicant concluded that the project impact will be minimal due to the distance to the project, the limited number of turbines visible, and the nature of the visibility.

- 5) Scenic Rivers or Streams. A segment of a scenic river or stream is a SRSNS if it is identified as having unique or outstanding scenic attributes listed in the 1982 “Maine Rivers Study” by the Department of Agriculture, Conservation and Forestry.

The applicant identified the Kennebec River, including a portion in Wyman Lake, as a SRSNS. The project will not be visible from two public boat launches located within 8 miles of the project. The blades of six turbines will be visible from the Wyman Lake Recreation Area/Pleasant Ridge Swim Area at a distance of 3.2 miles; however, the surrounding area is developed with the Wyman Dam, a transmission line, and the Bingham Wind project. The project will be also be visible from the River below the Dam. Three to five turbines will be visible at a distance of five miles or more. The applicant rated the overall scenic impact on the River from the project to be Low.

- 6) Scenic Viewpoints. A scenic viewpoint is a SRSNS if it is located on state public reserved land or on a trail that is used exclusively for pedestrian use, such as the Appalachian Trail, that the Department of Agriculture, Conservation and Forestry designates by rule adopted in accordance with 35-A M.R.S. § 3457.

The proposed project is located within 8 miles of the Appalachian National Scenic Trail; however, no turbines will be visible from the trail due to topography and vegetation.

- 7) Scenic Turnouts. A scenic turnout is a SRSNS if it has been constructed by the Department of Transportation pursuant to 23 M.R.S. § 954 on a public road designated as a scenic highway.

An 18-mile portion of the Old Canada Road National Scenic Byway is located within 8 miles of the proposed project. The Wyman Lake scenic turnout is located along that portion of the Byway. The nearest turbine will be located 4.1 miles from the turnout; however, no turbines will be visible due to topography and vegetation.

- 8) Coastal Scenic Viewpoints. To qualify as a SRSNS, a scenic viewpoint located in the coastal area, as defined by 38 M.R.S. § 1802((1)), must be ranked as having state or national significance in terms of scenic quality in:

- (a) one of the scenic inventories prepared for and published by the Executive Department, State Planning Office: “Method for Coastal Scenic Landscape Assessment with Field Results for Kittery to Scarborough and Cape Elizabeth to South Thomaston,” Dominic, et al., October 1987; “Scenic Inventory Mainland Sites of Penobscot Bay,” Dewan and Associates, et al., August 1990; or “Scenic Inventory: Islesboro, Vinalhaven, North Haven and Associated Offshore Islands,” Dewan and Associates, June 1992; or
- (b) a scenic inventory developed by or prepared for the Executive Department, State Planning Office in accordance with 38 M.R.S. § 3457.

The applicant did not identify any coastal scenic viewpoints within eight miles of the turbines.

- B. Peer Review of the Visual Impact Assessment. The Department hired Scenic Quality Consultants, an independent scenic consultant, to assist in its review of the evidence submitted on scenic character. Scenic Quality Consultants visited the site of the proposed project on October 1, 2021. Scenic Quality Consultants reviewed the VIA for adequacy and provided the Department with comments dated November 9, 2021. In its comments, Scenic Quality Consultants stated the VIA meets or exceeds the professional standards for conducting and reporting a wind energy project VIA.
- C. Cumulative Impact. Pursuant to Chapter 382, the Department takes into consideration the cumulative scenic impact or effect of the proposed development under both daytime and nighttime conditions in conjunction with scenic impacts from other wind energy developments located within eight miles of each SRSNS addressed by the applicant’s VIA. The Department takes into consideration existing, approved,

or projects pending review within eight miles of any portion of any SRSNS addressed by the applicant's VIA. The applicant stated that 6% of Wyman Lake will have views of both the proposed project and the Bingham Wind project.

- D. Night Lighting. To reduce scenic impacts of night lighting on SRSNS, the applicant proposes to install a radar-assisted lighting (RAL) system upon receiving Federal Aviation Administration (FAA) approval. With RAL, safety lights remain off until activated by aircraft operating in the vicinity of the turbines. RAL must be installed and operational within one year of the commencement of commercial operations. In the event FAA approval is not received, the applicant must submit a copy of the FAA denial to the Department within 30 days of receipt, along with a statement on other available technologies that may reduce the visual impacts of night lighting. The Department's finding of no unreasonable impact is based, in part, on satisfactory mitigation for visual impacts from night lighting.

If RAL is installed, the applicant must notify the Department within 72 hours if the system is rendered inoperable due to malfunction or damage and is anticipated to be inoperable for a period of longer than 15 days.

- E. Department Analysis and Findings. In its analysis, the Department considered the evidence pertaining to scenic impacts submitted by the applicant, the comments of its independent scenic consultant, and the evidence gathered by Department staff. The Department visited the project area on October 1, 2021.

In making its determination of whether the proposed project will cause an unreasonable adverse effect on scenic character or existing uses related to scenic character, the Department evaluated the relevant evidence in the record regarding each of the statutory criteria in 35-A M.R.S. § 3452(3) for each of the SRSNS. For the Bingham Free Meetinghouse, Jackson Pond, Appalachian National Scenic Trail, and Wyman Lake scenic turnout, the Department considered the evidence in the record that there will be no visibility of the generating facilities from these SRSNS. On that basis, the Department determined that the proposed project will not cause an unreasonable adverse effect on scenic character or existing uses related to scenic character for any of those four SRSNS.

For the Kennebec River, Moxie Pond, and the Arnold Trail, the Department finds the scenic impact of the project will be Low because of the distance to the proposed turbines (3.2 to 7.5 miles to the closest turbine) and the number of turbines visible from the SRSNS. The Department concluded that the overall scenic impact will be Low and will not constitute an unreasonable adverse effect on scenic character or existing uses related to scenic character for any of these SRSNS.

Based on the evidence in the record, the Department finds that the proposed project will not have an unreasonable adverse effect on scenic character or existing uses related to scenic character of the SRSNS within eight miles of the generating facilities nor will the

project pose an unreasonable cumulative impact, provided the applicant meets the conditions described above for night lighting.

6. WILDLIFE AND FISHERIES:

Applicants for grid scale wind energy permits are required to demonstrate that the proposed project will adequately provide for the protection of wildlife and fisheries and will not cause unreasonable harm to any significant wildlife habitat; freshwater plant habitat; threatened or endangered plant habitat; aquatic or adjacent upland habitat; travel corridor; freshwater, estuarine or marine fisheries; or other aquatic life pursuant to the Site Law Rules, Chapter 375, § 15, and the NRPA, 38 M.R.S. § 480-D(3). The applicant retained TetraTech to conduct wildlife surveys; wetland delineations; rare, threatened and endangered plant and animal surveys; and vernal pool surveys. The applicant consulted with the Department and other federal and state natural resource agencies during the preparation of the applications. The Maine Department of Inland Fisheries and Wildlife reviewed the proposed project and submitted comments to the Department on September 1 and October 8, 2021.

- A. Vernal Pools. The applicant identified one Significant Vernal Pool in the project area. No impacts are proposed to the pool or within the 250-foot Critical Terrestrial Habitat of the pool.
- B. Migrating Birds. The applicant retained Tetra Tech to conduct bird and bat surveys to identify species that occur in the area of the proposed project; the extent that they use the project site; and potential impacts from the proposed project. The applicant conducted the following studies: eagle surveys (January to June and August to December 2020, plus surveys in 2021); acoustic bat survey (summer 2020); and breeding bird surveys (May and June 2020). During the surveys, 11 bird species of Special Concern and 23 species of Greatest Conservation Need were observed. Other than one incidental heron sighting, no blue herons or upland sandpipers were observed. One golden eagle and 15 bald eagles, plus 10 additional raptor species were observed during the surveys. No bald or golden eagle nests were observed within four miles of the project. MDIFW stated they have no information that the project presents significant adverse impacts or risks to migrating birds at this time.
- C. Bats. Eight species of bats reside in Maine, two species are listed as Endangered and one species is listed as Threatened under the Maine Endangered Species Act (12 M.R.S., §§ 12801 et. seq.). The five remaining Maine bat species are considered Species of Special Concern. Pre-construction acoustic studies were completed in 2012-2013 and in July 2020. The applicant also surveyed the project site for rocky features, such as talus slopes, that may provide winter habitat for bats. The applicant identified 29 rocky features with adequate sun exposure and elevation, but determined that canopy density would likely render the sites less than ideal for bats.

Based on the recommendation of MDIFW, the applicant proposes to curtail turbines nightly between April 15 and September 30 each year from at least ½ hour before sunset to at least ½ hour after sunrise when ambient temperatures are above 32 degrees Fahrenheit, subject to the following ambient wind speeds. Turbines will only operate at cut-in wind speeds exceeding 6.0 meters per second (m/s) from April 15 through July 15, as well as from September 16 through September 30. Turbines will only operate at cut-in wind speeds exceeding 6.5 m/s from July 16 through September 15. Cut-in speeds will be determined based on mean wind speeds measured at nacelle hub heights of a turbine over a 10-minute interval. Ambient air temperature will be measured at both ground level from a central location within the project parcel and at nacelle hub height. Turbines will be feathered during curtailment and allowed to turn at no more than one revolution per minute to minimize risks of bat mortality.

MDIFW does not recommend formal Post-Construction Mortality Monitoring for either bats or birds. However, MDIFW recommends that the applicant require facility staff to record all discovered mortalities of bats and birds in an annual log. Whenever possible, any carcasses (especially bats) should be collected, stored in plastic bags, and frozen with labels noting the date, time, and nearest turbine number. A “Scientific Collection Permit” would need to be obtained from MDIFW for this collection of specimens. Through this separate permitting process, MDIFW may authorize the salvage and temporary possession of such specimens with an annual reporting requirement. The applicant must report any bat carcasses, or more than 10 bird carcasses found during any operator inspection within 24 hours to MDIFW and the Department.

- D. Fisheries. A total of 8 streams will be impacted by crossings for the project. Of the eight streams, one was characterized by the applicant as perennial; five were characterized as intermittent; and 2 were characterized as ephemeral.

MDIFW has documented wild brook trout in Bassett Brook and notes the existence of wild brook trout habitat throughout the region. Further, Chase Pond is annually stocked with brook trout. For the protection of coldwater fisheries, MDIFW recommends that any instream work during construction should occur only during the standard summer work window of between July 15 and September 30 of any calendar year.

- E. Northern Spring Salamander. Northern Spring Salamander surveys were completed by the applicant in July 2020. Salamanders were found to be present in Bassett Brook. In its comments, MDIFW recommended that contiguous forested riparian buffers remain intact for a distance of at least 250-feet from each bank for streams where this species has been documented or assumed to occur. Additionally, MDIFW recommended maintaining 100-foot undisturbed, forested buffers from the upland edge of all intermittent and perennial streams and any contiguous wetlands. MDIFW stated that any areas where such buffer characteristics are not achieved should be considered as resource impacts and appropriately mitigated.

For riparian buffers on streams with no documented or assumed presence of rare, threatened, or endangered (RTE) species, MDIFW recommended a 1:1 mitigation ratio. For documented/assumed presence of Rare (Special Concern) species, MDIFW recommended a 4:1 mitigation ratio. And for documented/assumed presence of Endangered or Threatened species, MDIFW recommended an 8:1 mitigation ratio. Northern Spring Salamanders are a Rare (Special Concern) species.

In response, the applicant submitted a proposed mitigation proposal dated December 20, 2021. The mitigation proposal includes the restoration of stream channel and riparian buffers, as well as deed restrictions to protect riparian buffers for the life of the project. The proposed mitigation restores 1.09 acres of riparian habitat and preserves 7.91 acres of riparian habitat. The applicant proposes to monitor the restored area annually. MDIFW recommended that if, after three monitoring seasons, riparian restoration areas have not attained an evenly distributed stand of healthy native tree species of at least shrub stage height and reasonable indications that they will continue to grow and thrive, the applicant should undertake additional plantings, monitoring, and reporting annually until this result is achieved. Proposed deed restrictions must be submitted to the Department for review and approval prior to the commencement of commercial operations.

- F. Invasive Species. MDIFW recommends that all construction vehicles be cleaned prior to initiating work on the construction site, or reentering if they have left the site, to remove all soil, seeds, vegetation, or other debris that could contain seeds or reproductive portions of invasive plants.

The Department considered the submittals from the applicant and MDIFW's review of the proposed project in its analysis of the proposed project's potential adverse impacts to wildlife. Based on the information in the record, the Department finds the applicant has demonstrated that the proposed project will not result in significant adverse impacts to wildlife. The Department finds the proposed mitigation plan for stream impacts is adequate to offset any anticipated potential adverse impacts to Northern Spring Salamander. The Department also finds the proposed turbine curtailment regime is adequate to minimize potential adverse impacts to bats.

The Department finds that the applicant has made adequate provision for the protection of wildlife and fisheries provided the mitigation restoration and preservation is completed as proposed, and the turbine curtailment is executed as proposed.

7. HISTORIC SITES:

The Maine Historic Preservation Commission reviewed the proposed project and stated that it will have no effect upon any structure or site of historic, architectural, or archaeological significance as defined by the National Historic Preservation Act of 1966.

The Department finds that the proposed development will not have an adverse effect on the preservation of any historic sites either on or near the development site.

8. UNUSUAL NATURAL AREAS:

The applicant completed field surveys in 2020 and 2021 to determine the existence of rare or unique botanical features on the project site. Both surveys indicated no rare or unique botanical features were present in the project footprint. The surveys were submitted to, and reviewed by, the Maine Natural Areas Program.

The Department finds that the proposed development will not have an adverse effect on unusual natural areas on the development site.

9. BUFFER STRIPS:

As described in Findings 6 and 11, buffers for streams and for stormwater management are proposed for the project.

The Department finds that the applicant has made adequate provision for buffer strips.

10. SOILS:

The applicant submitted a soil survey map and report based on the soils found at the project site. This report was prepared by a certified soils scientist and reviewed by staff from the Division of Environmental Assessment (DEA) of the Bureau of Water Quality (BWQ). The applicant also submitted a blasting plan. The plan includes the proposed assessment of bedrock conditions for potentially acid-generating rock that could be encountered during site development and that could present limitations for exposure and reuse of such materials. This assessment, as well as any other geotechnical assessments of the project area, should be submitted for review and approval prior to construction.

All blasting on-site will comply with 38 MRSA § 490-Z(14).

The Department finds that, based on this report and Blasting Plan, and DEA's review, the soils on the project site present no limitations to the proposed project that cannot be overcome through standard engineering practices provided that the any geotechnical reports and bedrock assessments are submitted to the Department for review and approval prior to the start of construction.

11. STORMWATER MANAGEMENT:

The proposed project includes approximately 11.4 acres of new developed and impervious area. It lies within the watersheds of Chase Stream, Bassett Brook, Austin Stream, and Mint Brook – all of which flow to the Kennebec River. The applicant submitted a stormwater management plan based on the Basic, General, and Flooding Standards contained in Chapter 500 Stormwater Management rules (06-096 C.M.R. ch.

500, effective August 12, 2015). The proposed stormwater management system consists of 15 level spreader buffers, eight roadside buffers, and four standard buffers.

A. Basic Standards:

(1) Erosion and Sedimentation Control: The applicant submitted an Erosion and Sedimentation Control Plan (Section 14 of the application) that is based on the performance standards contained in Appendix A of Chapter 500 and the Best Management Practices outlined in the Maine Erosion and Sediment Control BMPs, which were developed by the Department. This plan and plan sheets containing erosion control details were reviewed by the Department.

Erosion control details will be included on the final construction plans and the erosion control narrative will be included in the project specifications to be provided to the construction contractor. Prior the start of construction, the applicant must conduct a pre-construction meeting to discuss the construction schedule and the erosion and sediment control plan with the appropriate parties. This meeting must be attended by the applicant's representative, Department staff, the design engineer, the contractor, and the third-party inspector. Given the size and nature of the project site, the applicant must retain the services of a third-party inspector in accordance with the Special Condition for Third Party Inspection Program, which is attached to this Order.

(2) Inspection and Maintenance: The applicant submitted a maintenance plan that addresses both short and long-term maintenance requirements. The maintenance plan is based on the standards contained in Appendix B of Chapter 500. This plan was reviewed by the Department. The applicant will be responsible for the maintenance of all common facilities including the stormwater management system.

(3) Housekeeping: The proposed project will comply with the performance standards outlined in Appendix C of Chapter 500.

Based on its review of the erosion and sedimentation control plan and the maintenance plan, the Department finds that the proposed project meets the Basic Standards contained in Chapter 500, § 4(B).

B. General Standards:

The applicant's stormwater management plan includes general treatment measures that will mitigate for the increased frequency and duration of channel erosive flows due to runoff from smaller storms, provide for effective treatment of pollutants in stormwater, and mitigate potential temperature impacts. This mitigation is being achieved by using Best Management Practices (BMPs) that will control runoff from no less than 95% of the impervious area and no less than 80% of the developed area for the non-linear portion of the project. The applicant is proposing to control runoff volume from no less than 75% of the impervious area and no less than 50% of the developed area for the linear portion of the project.

The forested, limited disturbance stormwater buffers will be protected from alteration through the execution of a deed restriction. The applicant proposes to use the deed restriction language contained in Appendix G of Chapter 500 and submitted a draft deed restriction that meets Department standards. Prior to the start of construction, the locations of the buffers must be identified and marked.

The applicant must execute and record all required deed restrictions prior to the commencement of commercial operations. The applicant must submit a copy of the recorded deed restrictions to the Department within 60 days of its recording.

The stormwater management system proposed by the applicant was reviewed by, and revised in response to comments from, the Department. After a final review, the Department commented that the proposed stormwater management system is designed in accordance with the General Standards contained in Chapter 500, § 4(C) and recommended the design engineer oversee the installation of the BMPs. At least once per year or within 30 days of the completion of construction, the applicant must submit as-built plans or an update.

Based on the stormwater system's design and the Department's review, the Department finds that the applicant has made adequate provision to ensure that the proposed project will meet the General Standards contained in Chapter 500, § 4(C).

C. Flooding Standard:

The applicant is proposing to utilize a stormwater management system based on estimates of pre- and post-development stormwater runoff flows obtained by using Hydrocad, a stormwater modeling software that utilizes the methodologies outlined in Technical Releases #55 and #20, U.S.D.A., Soil Conservation Service and detains stormwater from 24-hour storms of 2-, 10-, and 25-year frequency. The post-development peak flow from the site will not exceed the pre-development peak flow from the site and the peak flow of the receiving waters will not be increased as a result of stormwater runoff from the development site.

The Department commented that the proposed system is designed in accordance with the Flooding Standard contained in Chapter 500, § 4(F).

Based on the system's design and its review, the Department finds that the applicant has made adequate provision to ensure that the proposed project will meet the Flooding Standard contained in Chapter 500, § 4(F) for peak flow from the project site, and channel limits and runoff areas.

12. GROUNDWATER:

The project site is not located over a mapped sand and gravel aquifer.

The applicant intends to conduct an inventory of the O&M building structure to identify any hazardous wastes or other materials posing potential risk to human health or the environment prior to the start of construction. A detailed list of any identified hazardous materials, estimated quantities, and proposed means of disposal, must be submitted to the Department prior to the start of any construction at the O&M building. The applicant also proposes to determine the location of any floor drains in the existing building and develop a mitigation plan, if necessary, “to address any drains identified in coordination with the Department’s Underground Injection Control Program.”

The applicant submitted a Vegetation Management Plan (VMP) titled “Post-Construction Vegetation Management Plan,” prepared by Tetra Tech, Inc., and revised July 2021. The plan was reviewed by, and revised in response to the comments of, DEA.

The applicant submitted a draft Operational Spill Prevention, Control, and Countermeasures (SPCC) plan for the project. A final site-specific Construction SPCC plan must be submitted to the Department for review and approval prior to the start of construction. A final site-specific Operation SPCC plan must be submitted to the Department for review and approval prior to the start of commercial operations.

The Department finds that the proposed project will not have an unreasonable adverse effect on ground water quality provided that the applicant meets the above requirements.

13. WATER SUPPLY:

When completed, the proposed O&M building is anticipated to use 120 gallons of water per day. Water will be supplied by an existing well. The applicant submitted an assessment of groundwater supplies that are available on the project site. This assessment was prepared by a well driller and was reviewed by, and revised in response to comments from, the DEA. Groundwater at the site contains higher arsenic levels than legal limits. Therefore, the well water will be considered non-potable, and staff will be provided with bottled drinking water. The applicant must inform employees of the issue and label all the taps for any sinks, hoses, etc. as non-potable water. The applicant must ensure sufficient potable water is available, particularly during high demand times.

The Department finds that the applicant has made adequate provision for securing and maintaining a sufficient and healthful water supply provided that the applicant meets the above requirements.

14. WASTEWATER DISPOSAL:

Wastewater from the O&M building will be disposed of by an individual subsurface wastewater disposal system. The applicant submitted the soil survey map and report discussed in Finding 9. The system must be designed to meet the requirements of the Maine State Plumbing Code. This information was reviewed by DEA.

Based on DEA's comments, the Department finds that the proposed wastewater disposal system will be built on suitable soil types.

15. SOLID WASTE:

When completed, the proposed O&M building is anticipated to generate 211 cubic yards of general office solid waste per year. All general solid wastes from the proposed project will be disposed of at Crossroads Landfill, which is currently in substantial compliance with the Maine Solid Waste Management Rules.

All stumps and grubblings generated will be disposed of on-site in compliance with the Maine Solid Waste Management Rules. Cleared vegetation will be sold or used on-site as well.

The proposed project will generate approximately 600 cubic yards of construction debris and demolition debris. All construction and demolition debris generated will be disposed of at Crossroads Landfill, which is currently in substantial compliance with the Maine Solid Waste Management Rules.

Based on the above information, the Department finds that the applicant has made adequate provision for solid waste disposal.

16. FLOODING:

The proposed project is not located within the 100-year flood plain of any river or stream.

The Department finds that the proposed project is unlikely to cause or increase flooding or cause an unreasonable flood hazard to any structure.

17. WETLAND IMPACTS:

The applicant proposes to directly alter 72,081 square feet of forested, scrub shrub, and wet meadow wetland and to convert an additional 18,098 square feet of forested wetland to scrub shrub and wet meadow wetland.

The Wetland and Waterbodies Protection Rules, 06-096 C.M.R. ch. 310 (effective November 11, 2018), interpret and elaborate on the Natural Resources Protection Act (NRPA) criteria for obtaining a permit. The rules guide the Department in its determination of whether a project's impacts would be unreasonable. A proposed project would generally be found to be unreasonable if it would cause a loss in wetland area, functions and values and there is a practicable alternative to the project that would be less damaging to the environment. Each application for a NRPA permit that involves a freshwater wetland alteration must provide an analysis of alternatives in order to demonstrate that a practicable alternative does not exist.

A. Avoidance. No activity may be permitted if there is a practicable alternative to the project that would be less damaging to the environment. The applicant submitted an alternative analysis for the proposed project completed by Tetra Tech, Inc. and dated June 2021. The purpose of the project is to construct a windpower facility. The applicant considered alternate sites and project layouts during the planning phase. The project site was chosen based on wind resources, transmission availability, and existing access. Additionally, the project site was previously developed and contains a structure that can be used for operations and maintenance. The final project layout was determined to maximize project feasibility while avoiding protected natural resources to the greatest extent possible.

B. Minimal Alteration. The amount of freshwater wetland to be altered must be kept to the minimum amount necessary for meeting the overall purpose of the project. The applicant proposes to utilize numerous measures to minimize wetland impacts, including minimizing slopes and grading, narrowing road widths, utilizing existing roads and overhead distribution lines, and reducing vegetative clearing. The applicant also sited turbine pads in upland when possible, and reduced or redesigned pads when necessary to minimize wetland impacts.

C. Compensation. Compensation is required to achieve the goal of no net loss of wetland functions and values. The primary functions and values for the impacted wetlands are wildlife habitat, sediment/shoreline stabilization, and sediment/toxicant retention. For the impacts to freshwater wetland, the applicant proposes to make a contribution into the In-Lieu Fee program of the Maine Natural Resource Conservation Program in the amount of \$340,945. Prior to the start of construction, the applicant must submit a payment in the amount of \$340,945, payable to "Treasurer, State of Maine," and directed to the attention of the In-Lieu Fee Program Administrator at 17 State House Station, Augusta, Maine 04333.

The Department finds that the applicant has avoided and minimized wetland impacts to the greatest extent practicable, and that the proposed project represents the least environmentally damaging alternative that meets the overall purpose of the project provided that the applicant makes the above contribution to the In-Lieu Fee program.

18. AIR QUALITY:

The Department finds that no significant source of air emissions has been identified.

19. SHADOW FLICKER:

In accordance with 38 M.R.S. § 484(10) and Chapter 382, § 4, an applicant must demonstrate that a proposed wind energy development has been designed to avoid unreasonable adverse shadow flicker effects. Shadow flicker means alternating changes in light intensity caused by rotating wind turbine blades casting shadows on the ground or a stationary object. Shadow flicker occurs as the shadows of the blades move past the observation point, when the rotor is directly between the observer and the sun, and the

rotor is spinning. An applicant must demonstrate that the project will not generate more than 30 hours per year of shadow flicker on any occupied building on property not owned by the applicant, or subject to an easement for shadow flicker.

The applicant submitted a shadow flicker analysis with its application. The applicant used WindPRO, a wind modeling software program, to model expected shadow flicker effects on adjacent properties from all 14 proposed turbine locations. The applicant assumed a worst-case scenario, that all receptors have a direct in-line view of the incoming shadow flicker sunlight and did not take into account any existing vegetative buffers.

The Department generally recommends that applicants conduct a shadow flicker model out to a distance of 1,000 feet or greater from a residential structure, and the applicant's model did so. The applicant modeled 37 receptors. There are no properties on which the applicant has obtained an easement for shadow flicker. The applicant's WindPRO analysis concludes that no occupied building on property not leased by the applicant will receive shadow flicker in excess of 30 hours per year.

The Department finds the shadow flicker modeling conducted by the applicant is credible. Based upon the proposed project's location and design, the distance to the nearest shadow flicker receptor, and results of the shadow flicker analysis, the Department finds that the proposed project will not unreasonably cause shadow flicker to occur over adjacent properties.

20. PUBLIC SAFETY:

Pursuant to the Department's Chapter 382 Rules, applicants for wind energy developments must demonstrate that the project will be constructed with setbacks and other considerations that are adequate to protect public safety.

The applicant proposes to use Vestas V150 4.2 wind turbines. The turbines' conformity with International Electrotechnical Commission standards has been certified by Det Norske Veritas. The applicant provided a copy of the certification.

The Department recognizes that locating wind turbines a safe distance away from any occupied structures, public roads, or other public use areas is extremely important for public safety. Pursuant to the Department rules, Chapter 382, § 5, the Department established the minimum setback for generating facilities. The Department requires that all wind turbines be set back from property lines, occupied structures, or public areas, a minimum of 1.5 times the sum of the hub height plus the rotor diameter, or the normal setback requirement for the local zoning classification as dictated by local municipal zoning ordinance or the LUPC, whichever is greater. Based on the Department setback specifications, the minimum setback distance to the nearest property line should be 1,254 feet. A review of the application shows that all turbines are set back more than 1,254 feet from the nearest non-participating landowners and public roads or are subject to safety setback waivers.

The turbines are equipped with conditional monitoring systems. The applicant proposes to monitor the turbines remotely 24 hours a day, and states that the turbines will automatically shut down in the event of an abnormal sensor reading.

The applicant submitted an Emergency Preparedness Plan. The plan details best management practices for both construction and operation as well as emergency procedures. The applicant must notify the Department within 48 hours of any fire event that causes one or more turbines to cease generating electricity.

Based on the information submitted in the application, the proposed continuous monitoring of the turbines, the submission of an Emergency Preparedness Plan, and the requirement of a timely notification of any fire event, the Department finds that the applicant has demonstrated that the development will not adversely impact public safety.

The Department finds that the applicant provided adequate documentation for the turbines to demonstrate that they comply with applicable industry safety standards. The Department further finds that the applicant has demonstrated that the proposed project will be sited with appropriate safety setbacks from adjacent properties and existing uses.

21. DECOMMISSIONING PLAN:

Pursuant to P.L. 2007, ch. 661, § B-13(6) and Department Rule Chapter 382, § 7, the applicant must demonstrate adequate financial capacity to decommission the proposed wind energy development if required at any time during construction or operation of the development, or upon termination of development operations. This must include a demonstration that this financial capacity will be unaffected by any future changes in the applicant's financial condition. The obligation to decommission the development must be transferred to any future owner of the development in the event of a transfer of title. The financial capacity demonstrated must be sufficient to fully fund any necessary decommissioning costs commensurate with the wind energy development's scale, location and other relevant considerations, including but not limited to those associated with site restoration and turbine removal.

The applicant submitted a decommissioning plan which includes a description of the trigger for implementing the decommissioning, a description of the work required, an estimate of decommissioning costs, a schedule for contributions to its decommissioning fund, and a demonstration of financial assurance.

- A. Trigger for implementation of decommissioning. The proposed wind turbine generators are designed and certified by independent agencies for a minimum expected operational life of 20 years, however other factors may trigger the requirement for decommissioning before 20 years have passed.

After the commencement of commercial operations, decommissioning of the entire facility will begin if no generation occurs for a period of twelve consecutive months.

- Decommissioning of one or more individual turbines must begin if 12 consecutive months of no generation occurs at that turbine. The exception is if one or more turbines are rendered inoperable by unanticipated mechanical or structural failures, or by fire, earthquake, flood, tornado, or other natural disaster; or war, civil strife or other similar violence, and if it will take more than twelve months to repair or replace the inoperable turbine(s). In that instance, the applicant may request an additional twelve months to accomplish the repair or replacement without triggering the decommissioning requirement. The applicant must request an extension within six months of the event which renders the turbine(s) inoperable. To obtain an extension, the applicant must submit to the Department, for review and approval, a plan establishing a reasonable assurance that the turbine(s) will be brought back into operation within 24 months of the event. If the extension request is denied, the decommissioning of the inoperable turbine(s) must be initiated within 18 months of the event.
- B. Description of work. The description of work contained in the application outlines the applicant's proposal for the manner in which the turbines and other components of the proposed project will be dismantled and removed from the site. Subsurface components will be removed to a minimum of 24 inches below grade, generating facilities will be removed and possibly salvaged, and disturbed areas will be re-seeded. At the time of decommissioning, the applicant must submit a plan for continued beneficial use of any wind energy development components proposed to be left on-site to the Department for review and approval.
- C. Financial Assurance. The applicant proposes to provide financial assurance in the amount of \$1,960,000 in the form of (i) a performance bond, (ii) a surety bond, or (iii) an irrevocable letter of credit, or other acceptable form of financial assurance. The applicant proposes to provide financial assurance prior to the commencement of any construction. Proof of acceptable financial assurance of funds must be submitted to the Department for review and approval. The applicant must reevaluate the decommissioning costs at least once every two years to account for price fluctuations and submit a report and updated financial assurance to the Department for review. The cost estimate for decommissioning the entire development must also be reevaluated, and a report submitted to the Department for review, after any decommissioning of one or more individual turbines occurs.
- D. Notification. The applicant must notify the Department within two business days of any catastrophic turbine failure. Catastrophic turbine failure shall include the voluntary or involuntary shut-down of a turbine due to a fire event, structural failure or accidental event resulting in a turbine collapse, a force majeure event, or any mechanical breakdown the applicant anticipates will result in a turbine being off-line for a period greater than six months.

Based on the applicant's proposal outlined above, the Department finds that the applicant's proposal will adequately provide for decommissioning, provided the applicant submits evidence of financial assurance for decommissioning costs as set forth above;

and, at the time of decommissioning, submits a plan for continued beneficial use of any wind energy development components proposed to be left on-site.

22. TANGIBLE BENEFITS:

Pursuant to 35-A M.R.S. § 3454 and Department Ch. 382, §7, an applicant must demonstrate that a proposed wind energy development will establish environmental and economic improvements or benefits to the citizens of Maine attributable to the construction, operation, and maintenance of the proposed development.

In its application, the applicant described tangible benefits that the project will provide to the State of Maine and to the host community, including economic benefits and environmental benefits.

- A. Job Creation. The applicant states that its proposal will benefit the host community and surrounding areas through construction-related employment opportunities. The applicant has indicated that they will hire local workers when feasible for the project. Additionally, local businesses such as lodging, restaurants, and fuel supply may receive increased revenue due to the project. The applicant estimates the project will create up to 75 full-time jobs during project construction/development and five permanent jobs for maintenance of the facility after construction.
- B. Generation of Wind Energy. The applicant estimates that the proposed project will provide an approximate average output of 160,000 MW hours of electricity per year.
- C. Property Tax Payments. The applicant estimates property tax payments to the Town of Moscow will total approximately \$7.9 million over the life of the project. The applicant must report on taxes paid on the project as part of its tangible benefits report.
- D. Community Benefits Agreement. The applicant proposes a community benefit agreement with the Town of Moscow for \$4,000 per year, per turbine for the first 15 years of the life of the project and \$6,000 per year, per turbine for the remainder of the project life. The payments must average no less than \$4,000 per turbine, per year over 20 years. The Town may use the funds at their discretion for public purposes including lowering tax rates or investment in municipal assets and/or services. Annual payments made to the Town of Moscow as part of the Community Benefits Agreement equal or exceed the \$4,000 per turbine per year for 20 years required in 35-A M.R.S. § 3454(2).
- E. Tangible benefit reporting. The applicant must submit information annually on the tangible benefits realized from the operation and maintenance of the project including but not limited to reporting on payments made in connection with the community benefits package requirements set forth in 35-A M.R.S. § 3454. The report must be received by the Department for review no later than March 1 of the subsequent year.

Based on the predicted employment opportunities, energy generation, property tax revenue and the community benefits agreements proposed by the applicant, the Department finds that the applicant has demonstrated that the proposed project will provide significant tangible benefits to the State, host community, and surrounding area pursuant to 35-A M.R.S. § 3454, provided that annual payments are made to the Town of Moscow and that the applicant submits annual reports on the tangible benefits, all as described above.

23. BEST PRACTICAL MITIGATION:

In 35-A, M.R.S. §3459, the Legislature requires applicants to submit information on best practical mitigation for all aspects of construction and operation of generating facilities. The Department must consider the following:

- A. The existing state of technology;
- B. The effectiveness of available technologies or methods for reducing impacts; and,
- C. The economic feasibility of the type of mitigation under consideration.

The applicant designed the project to minimize permanent fill in freshwater wetlands and to minimize intrusion into significant wildlife habitats. Detailed erosion and sediment control plans have been developed to minimize soil erosion in and near resources during and after construction.

The applicant proposes to curtail the project to minimize impacts to bat populations and proposes a mitigation package to offset impacts to Northern Spring Salamander habitat.

Radar-assisted lighting is proposed to minimize the visual impacts from the project on nearby scenic resources. The applicant located the proposed turbines to minimize visual impacts to the scenic resources and submitted a detailed analysis of scenic impacts.

Based on the applicant's project design, natural resource impact mitigation, and scenic analysis, the Department finds the applicant has mitigated project impacts to the best practical extent.

BASED on the above findings of fact, and subject to the conditions listed below, the Department makes the following conclusions pursuant to 38 M.R.S. §§ 480-A–480-JJ and Section 401 of the Clean Water Act:

- A. The proposed activity will not unreasonably interfere with existing scenic, aesthetic, recreational, or navigational uses provided that the applicant meets the requirements of Finding 5.
- B. The proposed activity will not cause unreasonable erosion of soil or sediment.
- C. The proposed activity will not unreasonably inhibit the natural transfer of soil from the terrestrial to the marine or freshwater environment.

- D. The proposed activity will not unreasonably harm any significant wildlife habitat, freshwater wetland plant habitat, threatened or endangered plant habitat, aquatic habitat, travel corridor, freshwater, estuarine, or marine fisheries or other aquatic life provided that the applicant meets the requirements of Finding 6 and 17.
- E. The proposed activity will not unreasonably interfere with the natural flow of any surface or subsurface waters.
- F. The proposed activity will not violate any state water quality law including those governing the classifications of the State's waters.
- G. The proposed activity will not unreasonably cause or increase the flooding of the alteration area or adjacent properties.
- H. The proposed activity is not on or adjacent to a sand dune.
- I. The proposed activity is not on an outstanding river segment as noted in 38 M.R.S. § 480-P.

BASED on the above findings of fact, and subject to the conditions listed below, the Department makes the following conclusions pursuant to 38 M.R.S. §§ 481–489-E:

- A. The applicant has provided adequate evidence of financial capacity and technical ability to develop the project in a manner consistent with state environmental standards provided that the applicant meets the requirement of Finding 2.
- B. The applicant has made adequate provision for fitting the development harmoniously into the existing natural environment and the development will not adversely affect existing uses, scenic character, air quality, water quality or other natural resources in the municipality or in neighboring municipalities provided that the applicant meets the requirements of Findings 4 and 5.
- C. The proposed development will be built on soil types which are suitable to the nature of the undertaking and will not cause unreasonable erosion of soil or sediment nor inhibit the natural transfer of soil provided that the applicant meets the requirement of Finding 10.
- D. The proposed development meets the standards for storm water management in 38 M.R.S. § 420-D and the standard for erosion and sedimentation control in 38 M.R.S. § 420-C provided that the applicant meets the requirements of Finding 11.
- E. The proposed development will not pose an unreasonable risk that a discharge to a significant groundwater aquifer will occur provided that the applicant meets the requirements of Finding 12.

- F. The applicant has made adequate provision of utilities, including water supplies, sewerage facilities and solid waste disposal required for the development and the development will not have an unreasonable adverse effect on the existing or proposed utilities in the municipality or area served by those services provided that the applicant meets the requirements of Finding 13.
- G. The activity will not unreasonably cause or increase the flooding of the alteration area or adjacent properties nor create an unreasonable flood hazard to any structure.
- H. The activity will not present an unreasonable safety hazard to adjacent properties or adjacent property uses provided that the applicant meets the requirements of Finding 20.
- I. The applicant has made adequate provisions to achieve decommissioning of the wind power facility provided that the applicant meets the requirements of Finding 21.
- J. The applicant has made adequate provision for tangible and community benefits, provided the applicant meets the requirements in Finding 22.

THEREFORE, the Department APPROVES the application of WESTERN MAINE RENEWABLES, LLC to construct a wind energy facility as described in Finding 1, SUBJECT TO THE FOLLOWING CONDITIONS and all applicable standards and regulations:

1. The Standard Conditions of Approval, a copy attached.
2. In addition to any specific erosion control measures described in this or previous orders, the applicant shall take all necessary actions to ensure that its activities or those of its agents do not result in noticeable erosion of soils or fugitive dust emissions on the site during the construction and operation of the project covered by this approval.
3. Severability. The invalidity or unenforceability of any provision, or part thereof, of this License shall not affect the remainder of the provision or any other provisions. This License shall be construed and enforced in all respects as if such invalid or unenforceable provision or part thereof had been omitted.
4. The applicant shall submit proof of final project financing to the Department for review and approval prior to the start of construction.
5. The applicant shall demonstrate compliance with the Department's and the Town of Moscow's Noise Regulations once during the first year of operation and every fifth year thereafter until the facility is decommissioned. The results of the post-construction monitoring program shall be submitted to the Department within 60 days of completion. To ensure compliance, post-construction monitoring must meet all applicable standards of Chapter 375, § 10(I)(8), which specifies the methods for measuring sound and the information to be reported to the Department for review with the noted exceptions in Finding 4.

6. The applicant shall use at least six valid nighttime 10-minute Leq measurements in the compliance demonstration, following the procedures in Chapter 375, §10(I)(8)(e). The applicant shall not use a background-adjusted sound level in the compliance calculations.
7. Prior to the start of commercial operation, the applicant shall submit to the Department for review and approval a sound complaint response and resolution protocol. The proposed protocol must meet all applicable standards of Chapter 375, § 10(I)(7)(j).
8. The applicant shall notify the Department of any noise complaints within three business days of receiving them and shall notify the Department of the outcome of its investigation within three business days of completing the investigation.
9. Upon any finding of sound level non-compliance by the Department, the applicant shall take short-term action immediately to adjust operations to reduce sound output to applicable limits under Chapter 375, § 10 or the Moscow Noise Regulation.
10. Within 60 days of a determination of sound level non-compliance by the Department, the applicant shall submit, for review and approval, a mitigation plan that proposes actions to bring the project into compliance.
11. RAL shall be installed and operational within one year of the commencement of commercial operations. In the event FAA approval is not received, the applicant shall submit a copy of the FAA denial to the Department within 30 days of receipt, along with a statement on other available technologies that may reduce the visual impacts of night lighting.
12. The applicant shall notify the Department within 72 hours if the RAL system is rendered inoperable due to malfunction or damage and is anticipated to be inoperable for a period of longer than 15 days.
13. The applicant shall curtail turbines nightly between April 15 and September 30 each year from at least ½ hour before sunset to at least ½ hour after sunrise when ambient temperatures are above 32 degrees Fahrenheit, subject to the following ambient wind speeds. Turbines shall only operate at cut-in wind speeds exceeding 6.0 meters per second (m/s) from April 15 through July 15, as well as from September 16 through September 30. Turbines shall only operate at cut-in wind speeds exceeding 6.5 m/s from July 16 through September 15.
14. The applicant shall report any bat carcasses, or more than 10 bird carcasses found during any operator inspection within 24 hours to MDIFW and the Department.
15. Any instream work during construction shall occur only between July 15 and September 30 of any calendar year.

16. Draft deed restrictions for riparian habitat preservation shall be submitted to the Department for review and approval prior to the commencement of commercial operations.
17. Final deed restrictions for the riparian habitat preservation shall be recorded within 60 days of acceptance by the Department.
18. If, after three monitoring seasons, riparian restoration areas have not attained an evenly distributed stand of healthy native tree species of at least shrub stage height and reasonable indications that they will continue to grow and thrive, the applicant shall undertake additional plantings, monitoring, and reporting annually until this result is achieved.
19. The acid rock assessment and any geotechnical assessments of the project area shall be submitted for review and approval prior to construction.
20. Prior to the start of construction, the locations of any buffers shall be identified and marked.
21. The applicant shall execute and record all required deed restrictions prior to the commencement of commercial operations. The applicant shall submit a copy of the recorded deed restrictions to the Department within 60 days of its recording.
22. The design engineer shall oversee the installation of the BMPs. At least once per year or within 30 days of the completion of construction, the applicant shall submit as-built plans or an update to the Department for review.
23. A detailed list of any identified hazardous materials from the O&M structure, estimated quantities, and proposed means of disposal, shall be submitted to the Department prior to the start of any construction at the O&M building.
24. A final site-specific Construction SPCC plan shall be submitted to the Department for review and approval prior to the start of construction.
25. A final site-specific Operation SPCC plan shall be submitted to the Department for review and approval prior to the start of commercial operations.
26. The applicant shall inform employees that the well water is non-potable and shall label all the taps for any sinks, hoses, etc. as non-potable water. The applicant shall ensure sufficient potable water is available, particularly during high demand times.
27. Prior to the start of construction, the applicant shall submit a payment in the amount of \$340,945, payable to "Treasurer, State of Maine," and directed to the attention of the In-Lieu Fee Program Administrator at 17 State House Station, Augusta, Maine 04333.

- 28. The applicant shall notify the Department within 48 hours of any fire event that causes one or more turbines to cease generating electricity. The applicant shall notify the Department within two business days of any catastrophic turbine failure.
- 29. At the time of decommissioning, the applicant shall submit a plan for continued beneficial use of any wind energy development components proposed to be left on-site to the Department for review and approval.
- 30. Prior the start of construction, the applicant shall conduct a pre-construction meeting. This meeting shall be attended by the applicant's representative, Department staff, the design engineer, the contractor, and the third-party inspector.
- 31. Prior to the start of construction, the applicant shall provide financial assurance for decommissioning in the amount of \$1,960,000 in the form of (i) a performance bond, (ii) a surety bond, or (iii) an irrevocable letter of credit, or other acceptable form of financial assurance to the Department for review and approval.
- 32. The applicant shall reevaluate the decommissioning costs at least once every two years to account for price fluctuations and submit a report and updated financial assurance to the Department for review. The cost estimate for decommissioning the entire development shall also be reevaluated, and a report submitted to the Department for review, after any decommissioning of one or more individual turbines occurs.
- 33. The applicant shall submit information annually on the tangible benefits realized from the operation and maintenance of the project including but not limited to reporting on payments made in connection with the community benefits package requirements set forth in 35-A M.R.S. § 3454. The report shall be received by the Department for review no later than March 1 of the subsequent year.
- 34. The applicant shall retain the services of a third-party inspector in accordance with the Special Condition for Third-Party Inspection Program, which is attached to this Order.

THIS APPROVAL DOES NOT CONSTITUTE OR SUBSTITUTE FOR ANY OTHER REQUIRED STATE, FEDERAL OR LOCAL APPROVALS NOR DOES IT VERIFY COMPLIANCE WITH ANY APPLICABLE SHORELAND ZONING ORDINANCES.

DONE AND DATED IN AUGUSTA, MAINE, THIS 2ND DAY OF MARCH, 2022.

DEPARTMENT OF ENVIRONMENTAL PROTECTION

BY: 
For: Melanie Loyzim, Commissioner

<p>FILED March 3rd, 2022 State of Maine Board of Environmental Protection</p>

PLEASE NOTE THE ATTACHED SHEET FOR GUIDANCE ON APPEAL PROCEDURES.
ME/L29026ANBNCNDN/ATS87757, 87759, 87876, 87877

Department of Environmental Protection
SITE LOCATION OF DEVELOPMENT (SITE)
STANDARD CONDITIONS

- A. Approval of Variations from Plans.** The granting of this approval is dependent upon and limited to the proposals and plans contained in the application and supporting documents submitted and affirmed to by the applicant. Any variation from these plans, proposals, and supporting documents is subject to review and approval prior to implementation. Further subdivision of proposed lots by the applicant or future owners is specifically prohibited without prior approval of the Board, and the applicant shall include deed restrictions to that effect.
- B. Compliance with All Applicable Laws.** The applicant shall secure and comply with all applicable federal, state, and local licenses, permits, authorizations, conditions, agreements, and orders prior to or during construction and operation, as appropriate.
- C. Compliance with All Terms and Conditions of Approval.** The applicant shall submit all reports and information requested by the Board or the Department demonstrating that the applicant has complied or will comply with all preconstruction terms and conditions of this approval. All preconstruction terms and conditions must be met before construction begins.
- D. Advertising.** Advertising relating to matters included in this application shall refer to this approval only if it notes that the approval has been granted WITH CONDITIONS, and indicates where copies of those conditions may be obtained.
- E. Transfer of Development.** Unless otherwise provided in this approval, the applicant shall not sell, lease, assign or otherwise transfer the development or any portion thereof without prior written approval of the Board where the purpose or consequence of the transfer is to transfer any of the obligations of the developer as incorporated in this approval. Such approval shall be granted only if the applicant or transferee demonstrates to the Board that the transferee has the technical capacity and financial ability to comply with conditions of this approval and the proposals and plans contained in the application and supporting documents submitted by the applicant.
- F. Time frame for approvals.** If the construction or operation of the activity is not begun within four years, this approval shall lapse and the applicant shall reapply to the Board for a new approval. The applicant may not begin construction or operation of the development until a new approval is granted. A reapplication for approval may include information submitted in the initial application by reference. This approval, if construction is begun within the four-year time frame, is valid for seven years. If construction is not completed within the seven-year time frame, the applicant must reapply for, and receive, approval prior to continuing construction.
- G. Approval Included in Contract Bids.** A copy of this approval must be included in or attached to all contract bid specifications for the development.
- H. Approval Shown to Contractors.** Work done by a contractor pursuant to this approval shall not begin before the contractor has been shown by the developer a copy of this approval.



Natural Resources Protection Act (NRPA) Standard Conditions

THE FOLLOWING STANDARD CONDITIONS SHALL APPLY TO ALL PERMITS GRANTED UNDER THE NATURAL RESOURCES PROTECTION ACT, 38 M.R.S. § 480-A ET SEQ., UNLESS OTHERWISE SPECIFICALLY STATED IN THE PERMIT.

- A. Approval of Variations From Plans. The granting of this permit is dependent upon and limited to the proposals and plans contained in the application and supporting documents submitted and affirmed to by the applicant. Any variation from these plans, proposals, and supporting documents is subject to review and approval prior to implementation.
- B. Compliance With All Applicable Laws. The applicant shall secure and comply with all applicable federal, state, and local licenses, permits, authorizations, conditions, agreements, and orders prior to or during construction and operation, as appropriate.
- C. Erosion Control. The applicant shall take all necessary measures to ensure that his activities or those of his agents do not result in measurable erosion of soils on the site during the construction and operation of the project covered by this Approval.
- D. Compliance With Conditions. Should the project be found, at any time, not to be in compliance with any of the Conditions of this Approval, or should the applicant construct or operate this development in any way other the specified in the Application or Supporting Documents, as modified by the Conditions of this Approval, then the terms of this Approval shall be considered to have been violated.
- E. Time frame for approvals. If construction or operation of the activity is not begun within four years, this permit shall lapse and the applicant shall reapply to the Board for a new permit. The applicant may not begin construction or operation of the activity until a new permit is granted. Reapplications for permits may include information submitted in the initial application by reference. This approval, if construction is begun within the four-year time frame, is valid for seven years. If construction is not completed within the seven-year time frame, the applicant must reapply for, and receive, approval prior to continuing construction.
- F. No Construction Equipment Below High Water. No construction equipment used in the undertaking of an approved activity is allowed below the mean high water line unless otherwise specified by this permit.
- G. Permit Included In Contract Bids. A copy of this permit must be included in or attached to all contract bid specifications for the approved activity.
- H. Permit Shown To Contractor. Work done by a contractor pursuant to this permit shall not begin before the contractor has been shown by the applicant a copy of this permit.

STORMWATER STANDARD CONDITIONS

STRICT CONFORMANCE WITH THE STANDARD AND SPECIAL CONDITIONS OF THIS APPROVAL IS NECESSARY FOR THE PROJECT TO MEET THE STATUTORY CRITERIA FOR APPROVAL

Standard conditions of approval. Unless otherwise specifically stated in the approval, a department approval is subject to the following standard conditions pursuant to Chapter 500 Stormwater Management Law.

- (1) Approval of variations from plans. The granting of this approval is dependent upon and limited to the proposals and plans contained in the application and supporting documents submitted and affirmed to by the permittee. Any variation from these plans, proposals, and supporting documents must be reviewed and approved by the department prior to implementation. Any variation undertaken without approval of the department is in violation of 38 M.R.S. §420-D(8) and is subject to penalties under 38 M.R.S. §349.
- (2) Compliance with all terms and conditions of approval. The applicant shall submit all reports and information requested by the department demonstrating that the applicant has complied or will comply with all terms and conditions of this approval. All preconstruction terms and conditions must be met before construction begins.
- (3) Advertising. Advertising relating to matters included in this application may not refer to this approval unless it notes that the approval has been granted WITH CONDITIONS, and indicates where copies of those conditions may be obtained.
- (4) Transfer of project. Unless otherwise provided in this approval, the applicant may not sell, lease, assign, or otherwise transfer the project or any portion thereof without written approval by the department where the purpose or consequence of the transfer is to transfer any of the obligations of the developer as incorporated in this approval. Such approval may only be granted if the applicant or transferee demonstrates to the department that the transferee agrees to comply with conditions of this approval and the proposals and plans contained in the application and supporting documents submitted by the applicant. Approval of a transfer of the permit must be applied for no later than two weeks after any transfer of property subject to the license.
- (5) Time frame for approvals. If the construction or operation of the activity is not begun within four years, this approval shall lapse and the applicant shall reapply to the department for a new approval. The applicant may not begin construction or operation of the project until a new approval is granted. A reapplication for approval may include information submitted in the initial application by reference. This approval, if construction is begun within the four-year time frame, is valid for seven years. If construction is not completed within the seven-year time frame, the applicant must reapply for, and receive, approval prior to continuing construction.
- (6) Certification. Contracts must specify that “all work is to comply with the conditions of the Stormwater Permit.” Work done by a contractor or subcontractor pursuant to this approval may not begin before the contractor and any subcontractors have been shown a copy of this approval with the conditions by the permittee, and the permittee and each contractor and sub-contractor has certified, on a form provided by the department, that the approval and conditions have been received and read, and that the work will be carried out in accordance with the approval and conditions. Completed certification forms must be forwarded to the department.

- (7) Maintenance. The components of the stormwater management system must be adequately maintained to ensure that the system operates as designed, and as approved by the Department. If maintenance responsibility is to be transferred from the permittee to another entity, a transfer request must be filed with the Department which includes the name and contact information for the person or entity responsible for this maintenance. The form must be signed by the responsible person or agent of the responsible entity.
- (8) Recertification requirement. Within three months of the expiration of each five-year interval from the date of issuance of the permit, the permittee shall certify the following to the department.
- (a) All areas of the project site have been inspected for areas of erosion, and appropriate steps have been taken to permanently stabilize these areas.
- (b) All aspects of the stormwater control system are operating as approved, have been inspected for damage, wear, and malfunction, and appropriate steps have been taken to repair or replace the system, or portions of the system, as necessary.
- (c) The stormwater maintenance plan for the site is being implemented as approved by the Department, and the maintenance log is being maintained.
- (d) All proprietary systems have been maintained according to the manufacturer's recommendations. Where required by the Department, the permittee shall execute a 5-year maintenance contract with a qualified professional for the coming 5-year interval. The maintenance contract must include provisions for routine inspections, cleaning and general maintenance.
- (e) The Department may waive some or all of these recertification requirements on a case-by-case basis for permittees subject to the Department's Multi-Sector General Permit ("MSGP") and/or Maine Pollutant Discharge Elimination System ("MEPDES") programs where it is demonstrated that these programs are providing stormwater control that is at least as effective as required pursuant to this Chapter.
- (9) Transfer of property subject to the license. If any portion of the property subject to the license containing areas of flow or areas that are flooded are transferred to a new property owner, restrictive covenants protecting these areas must be included in any deeds or leases, and recorded at the appropriate county registry of deeds. Also, in all transfers of such areas and areas containing parts of the stormwater management system, deed restrictions must be included making the property transfer subject to all applicable terms and conditions of the permit. These terms and conditions must be incorporated by specific and prominent reference to the permit in the deed. All transfers must include in the restrictions the requirement that any subsequent transfer must specifically include the same restrictions unless their removal or modification is approved by the Department. These restrictions must be written to be enforceable by the Department, and must reference the permit number.
- (10) Severability. The invalidity or unenforceability of any provision, or part thereof, of this permit shall not affect the remainder of the provision or any other provisions. This permit shall be construed and enforced in all respects as if such invalid or unenforceable provision or part thereof had been omitted.

Special Condition
for
Third Party Inspection Program

THIRD-PARTY INSPECTION PROGRAM

1.0 THE PURPOSE OF THE THIRD-PARTY INSPECTION

As a condition of this permit, the Maine Department of Environmental Protection (MDEP) requires the permit applicant to retain the services of a third-party inspector to monitor compliance with MDEP permit conditions during construction. The objectives of this condition are as follows:

- 1) to ensure that all construction and stabilization activities comply with the permit conditions and the MDEP-approved drawings and specifications,
- 2) to ensure that field decisions regarding erosion control implementation, stormwater system installation, and natural resource protection are based on sound engineering and environmental considerations, and
- 3) to ensure communication between the contractor and MDEP regarding any changes to the development's erosion control plan, stormwater management plan, or final stabilization plan.

This document establishes the inspection program and outlines the responsibilities of the permit applicant, the MDEP, and the inspector.

2.0 SELECTING THE INSPECTOR

At least 30 days prior to starting any construction activity on the site, the applicant will submit the names of at least two inspector candidates to the MDEP. Each candidate must meet the minimum qualifications listed under section 3.0. The candidates may not be employees, partners, or contracted consultants involved with the permitting of the project or otherwise employed by the same company or agency except that the MDEP may accept subcontractors who worked for the project's primary consultant on some aspect of the project such as, but not limited to, completing wetland delineations, identifying significant wildlife habitats, or conducting geotechnical investigations, but who were not directly employed by the applicant, as Third Party inspectors on a case by case basis. The MDEP will have 15 days from receiving the names to select one of the candidates as the inspector or to reject both candidates. If the MDEP rejects both candidates, then the MDEP shall state the particular reasons for the rejections. In this case, the applicant may either dispute the rejection to the Director of the Bureau of Land Resources or start the selection process over by nominating two, new candidates.

3.0 THE INSPECTOR'S QUALIFICATIONS

Each inspector candidate nominated by the applicant shall have the following minimum qualifications:

- 1) a degree in an environmental science or civil engineering, or other demonstrated expertise,
- 2) a practical knowledge of erosion control practices and stormwater hydrology,
- 3) experience in management or supervision on large construction projects,
- 4) the ability to understand and articulate permit conditions to contractors concerning erosion control or stormwater management,
- 5) the ability to clearly document activities being inspected,
- 6) appropriate facilities and, if necessary, support staff to carry out the duties and responsibilities set forth in section 6.0 in a timely manner, and
- 7) no ownership or financial interest in the development other than that created by being retained as the third-party inspector.

4.0 INITIATING THE INSPECTOR'S SERVICES

The applicant will not formally and finally engage for service any inspector under this permit condition prior to MDEP approval or waiver by omission under section 2.0. No clearing, grubbing, grading, filling, stockpiling, or other construction activity will take place on the development site until the applicant retains the MDEP-approved inspector for service.

5.0 TERMINATING THE INSPECTOR'S SERVICES

The applicant will not terminate the services of the MDEP-approved inspector at any time between commencing construction and completing final site stabilization without first getting written approval to do so from the MDEP.

6.0 THE INSPECTOR'S DUTIES AND RESPONSIBILITIES

The inspector's work shall consist of the duties and responsibilities outlined below.

- 1) Prior to construction, the inspector will become thoroughly familiar with the terms and conditions of the state-issued site permit, natural resources protection permit, or both.
- 2) Prior to construction, the inspector will become thoroughly familiar with the proposed construction schedule, including the timing for installing and removing erosion controls, the timing for constructing and stabilizing any basins or ponds, and the deadlines for completing stabilization of disturbed soils.
- 3) Prior to construction, the inspector will become thoroughly familiar with the project plans and specifications, including those for building detention basins, those for installing the erosion control measures to be used on the site, and those for temporarily or permanently stabilizing disturbed soils in a timely manner.
- 4) During construction, the inspector will monitor the contractor's installation and maintenance of the erosion control measures called for in the state permit(s) and any additional measures the inspector believes are necessary to prevent sediment discharge to off-site properties or natural resources. This direction will be based on the approved erosion control plan, field conditions at the time of construction, and the natural resources potentially impacted by construction activities.
- 5) During construction, the inspector will monitor the contractor's construction of the stormwater system, including the construction and stabilization of ditches, culverts, detention basins, water quality treatment measures, and storm sewers.
- 6) During construction, the inspector will monitor the contractor's installation of any stream or wetland crossings.
- 7) During construction, the inspector will monitor the contractor's final stabilization of the project site.
- 8) During construction, the inspector will keep logs recording any rain storms at the site, the contractor's activities on the site, discussions with the contractor(s), and possible violations of the permit conditions.
- 9) During construction, the inspector will inspect the project site at least once a week and before and after any significant rain event. The inspector will photograph all protected natural resources both before and after construction and will photograph all areas under construction. All photographs will be identified with, at a minimum the date the photo was taken, the location and the name of the individual taking the photograph.
Note: the frequency of these inspections as contained in this condition may be varied to best address particular project needs.
- 10) During construction, the inspector will prepare and submit weekly (*or other frequency*) inspection reports to the MDEP.

- 11) During construction, the inspector will notify the designated person at the MDEP immediately of any sediment-laden discharges to a protected natural resource or other significant issues such as the improper construction of a stormwater control structure or the use of construction plans not approved by the MDEP.

7.0 INSPECTION REPORTS

The inspector will submit weekly written reports (*or at another designated frequency*), including photographs of areas that are under construction, on a form provided by the Department to the designated person at the MDEP. Each report will be due at the MDEP by the Friday (*or other designated day*) following the inspection week (Monday through Sunday).

The weekly report will summarize construction activities and events on the site for the previous week as outlined below.

- 1) The report will state the name of the development, its permit number(s), and the start and end dates for the inspection week (Monday through Sunday).
- 2) The report will state the date(s) and time(s) when the inspector was on the site making inspections.
- 3) The report will state the date(s) and approximate duration(s) of any rainfall events on the site for the week.
- 4) The report will identify and describe any erosion problems that resulted in sediment leaving the property or sediment being discharged into a wetland, brook, stream, river, lake, or public storm sewer system. The report will describe the contractor's actions to repair any damage to other properties or natural resources, actions to eliminate the erosion source, and actions to prevent future sediment discharges from the area.
- 5) The report will list the buildings, roads, parking lots, detention basins, stream crossings or other features open to construction for the week, including those features or areas actively worked and those left unworked (dormant).
- 6) For each area open to construction, the report will list the date of initial soil disturbance for the area.
- 7) For each area open to construction, the report will note which areas were actively worked that week and which were left dormant for the week. For those areas actively worked, the report will briefly state the work performed in the area that week and the progress toward final stabilization of the area – e.g. “grubbing in progress,” “grubbing complete,” “rough grading in progress,” “rough grading complete,” “finish grading in progress,” “finish grading complete,” “permanent seeding completed,” “area fully stable and temporary erosion controls removed,” etc.
- 8) For each area open to construction, the report will list the erosion and sedimentation control measures installed, maintained, or removed during the week.
- 9) For each erosion control measure in-place, the report will note the condition of the measure and any maintenance performed to bring it to standard.

Third Party Inspection Form

This report is prepared by a Third Party Inspector to meet the requirements of the Third Party Inspector Condition attached as a Special Condition to the Department Order that was issued for the project identified below. The information in this report/form is not intended to serve as a determination of whether the project is in compliance with the Department permit or other applicable Department laws and rules. Only Department staff may make that determination.

TO: <i>PM, Maine DEP (@maine.gov)</i>	FROM:
PROJECT NAME/ LOCATION:	DEP #:
DATE OF INSPECTION:	DATE OF REPORT:
WEATHER:	CONDITIONS:

SITE CHARACTERISTICS:

# ACRES OPEN:	# ACRES ACTIVE:	# ACRES INACTIVE:
LOCATION OF OPEN LAND:	LOCATION OF ACTIVE LAND:	LOCATION OF INACTIVE LAND:
OPEN SINCE:	OPEN SINCE:	OPEN SINCE:

PROGRESS OF WORK:

INSPECTION OF:	Satisfactory	Minor Deviation (corrective action required)	Unsatisfactory (include photos)
STORMWATER CONTROL (VEGETATIVE & STRUCTURAL BMP'S)			
EROSION & SEDIMENTATION CONTROL (TEMPORARY & PERMANENT BMP'S)			
OTHER: (PERMIT CONDITIONS, ENGINEERING DESIGN, ETC.)			

COMMENTS/CORRECTIVE ACTIONS TAKEN (attach additional sheets as necessary):

Photos (must be labeled with date, photographer and location):

Cc:		
<i>Original and all copies were sent by email only.</i>		



DEP INFORMATION SHEET

Appealing a Department Licensing Decision

Dated: August 2021

Contact: (207) 314-1458

SUMMARY

This document provides information regarding a person's rights and obligations in filing an administrative or judicial appeal of a licensing decision made by the Department of Environmental Protection's (DEP) Commissioner.

Except as provided below, there are two methods available to an aggrieved person seeking to appeal a licensing decision made by the DEP Commissioner: (1) an administrative process before the Board of Environmental Protection (Board); or (2) a judicial process before Maine's Superior Court. An aggrieved person seeking review of a licensing decision over which the Board had original jurisdiction may seek judicial review in Maine's Superior Court.

A judicial appeal of final action by the Commissioner or the Board regarding an application for an expedited wind energy development ([35-A M.R.S. § 3451\(4\)](#)) or a general permit for an offshore wind energy demonstration project ([38 M.R.S. § 480-HH\(1\)](#)) or a general permit for a tidal energy demonstration project ([38 M.R.S. § 636-A](#)) must be taken to the Supreme Judicial Court sitting as the Law Court.

I. ADMINISTRATIVE APPEALS TO THE BOARD

LEGAL REFERENCES

A person filing an appeal with the Board should review Organization and Powers, [38 M.R.S. §§ 341-D\(4\)](#) and [346](#); the Maine Administrative Procedure Act, 5 M.R.S. § [11001](#); and the DEP's [Rule Concerning the Processing of Applications and Other Administrative Matters \(Chapter 2\)](#), 06-096 C.M.R. ch. 2.

DEADLINE TO SUBMIT AN APPEAL TO THE BOARD

Not more than 30 days following the filing of a license decision by the Commissioner with the Board, an aggrieved person may appeal to the Board for review of the Commissioner's decision. The filing of an appeal with the Board, in care of the Board Clerk, is complete when the Board receives the submission by the close of business on the due date (5:00 p.m. on the 30th calendar day from which the Commissioner's decision was filed with the Board, as determined by the received time stamp on the document or electronic mail). Appeals filed after 5:00 p.m. on the 30th calendar day from which the Commissioner's decision was filed with the Board will be dismissed as untimely, absent a showing of good cause.

HOW TO SUBMIT AN APPEAL TO THE BOARD

An appeal to the Board may be submitted via postal mail or electronic mail and must contain all signatures and required appeal contents. An electronic filing must contain the scanned original signature of the appellant(s). The appeal documents must be sent to the following address.

Chair, Board of Environmental Protection
c/o Board Clerk
17 State House Station
Augusta, ME 04333-0017
ruth.a.burke@maine.gov

The DEP may also request the submittal of the original signed paper appeal documents when the appeal is filed electronically. The risk of material not being received in a timely manner is on the sender, regardless of the method used.

At the time an appeal is filed with the Board, the appellant must send a copy of the appeal to: (1) the Commissioner of the DEP (Maine Department of Environmental Protection, 17 State House Station, Augusta, Maine 04333-0017); (2) the licensee; and if a hearing was held on the application, (3) any intervenors in that hearing proceeding. **Please contact the DEP at 207-287-7688 with questions or for contact information regarding a specific licensing decision.**

REQUIRED APPEAL CONTENTS

A complete appeal must contain the following information at the time the appeal is submitted.

1. *Aggrieved status.* The appeal must explain how the appellant has standing to bring the appeal. This requires an explanation of how the appellant may suffer a particularized injury as a result of the Commissioner's decision.
2. *The findings, conclusions, or conditions objected to or believed to be in error.* The appeal must identify the specific findings of fact, conclusions of law, license conditions, or other aspects of the written license decision or of the license review process that the appellant objects to or believes to be in error.
3. *The basis of the objections or challenge.* For the objections identified in Item #2, the appeal must state why the appellant believes that the license decision is incorrect and should be modified or reversed. If possible, the appeal should cite specific evidence in the record or specific licensing criteria that the appellant believes were not properly considered or fully addressed.
4. *The remedy sought.* This can range from reversal of the Commissioner's decision on the license to changes in specific license conditions.
5. *All the matters to be contested.* The Board will limit its consideration to those matters specifically raised in the written notice of appeal.
6. *Request for hearing.* If the appellant wishes the Board to hold a public hearing on the appeal, a request for hearing must be filed as part of the notice of appeal, and it must include an offer of proof regarding the testimony and other evidence that would be presented at the hearing. The offer of proof must consist of a statement of the substance of the evidence, its relevance to the issues on appeal, and whether any witnesses would testify. The Board will hear the arguments in favor of and in opposition to a hearing on the appeal and the presentations on the merits of an appeal at a regularly scheduled meeting. If the Board decides to hold a public hearing on an appeal, that hearing will then be scheduled for a later date.
7. *New or additional evidence to be offered.* If an appellant wants to provide evidence not previously provided to DEP staff during the DEP's review of the application, the request and the proposed supplemental evidence must be submitted with the appeal. The Board may allow new or additional evidence to be considered in an appeal only under limited circumstances. The proposed supplemental evidence must be relevant and material, and (a) the person seeking to add information to the record must show due diligence in bringing the evidence to the DEP's attention at the earliest possible time in the licensing process; or (b) the evidence itself must be newly discovered and therefore unable to have been presented earlier in the process. Requirements for supplemental evidence are set forth in [Chapter 2 § 24](#).

OTHER CONSIDERATIONS IN APPEALING A DECISION TO THE BOARD

1. *Be familiar with all relevant material in the DEP record.* A license application file is public information, subject to any applicable statutory exceptions, and is made accessible by the DEP. Upon request, the DEP will make application materials available to review and photocopy during normal working hours. There may be a charge for copies or copying services.

2. *Be familiar with the regulations and laws under which the application was processed, and the procedural rules governing the appeal.* DEP staff will provide this information upon request and answer general questions regarding the appeal process.
3. *The filing of an appeal does not operate as a stay to any decision.* If a license has been granted and it has been appealed, the license normally remains in effect pending the processing of the appeal. Unless a stay of the decision is requested and granted, a licensee may proceed with a project pending the outcome of an appeal, but the licensee runs the risk of the decision being reversed or modified as a result of the appeal.

WHAT TO EXPECT ONCE YOU FILE A TIMELY APPEAL WITH THE BOARD

The Board will acknowledge receipt of an appeal, and it will provide the name of the DEP project manager assigned to the specific appeal. The notice of appeal, any materials admitted by the Board as supplementary evidence, any materials admitted in response to the appeal, relevant excerpts from the DEP's administrative record for the application, and the DEP staff's recommendation, in the form of a proposed Board Order, will be provided to Board members. The appellant, the licensee, and parties of record are notified in advance of the date set for the Board's consideration of an appeal or request for a hearing. The appellant and the licensee will have an opportunity to address the Board at the Board meeting. The Board will decide whether to hold a hearing on appeal when one is requested before deciding the merits of the appeal. The Board's decision on appeal may be to affirm all or part, affirm with conditions, order a hearing to be held as expeditiously as possible, reverse all or part of the decision of the Commissioner, or remand the matter to the Commissioner for further proceedings. The Board will notify the appellant, the licensee, and parties of record of its decision on appeal.

II. JUDICIAL APPEALS

Maine law generally allows aggrieved persons to appeal final Commissioner or Board licensing decisions to Maine's Superior Court (see [38 M.R.S. § 346\(1\)](#); 06-096 C.M.R. ch. 2; [5 M.R.S. § 11001](#); and M.R. Civ. P. 80C). A party's appeal must be filed with the Superior Court within 30 days of receipt of notice of the Board's or the Commissioner's decision. For any other person, an appeal must be filed within 40 days of the date the decision was rendered. An appeal to court of a license decision regarding an expedited wind energy development, a general permit for an offshore wind energy demonstration project, or a general permit for a tidal energy demonstration project may only be taken directly to the Maine Supreme Judicial Court. See 38 M.R.S. § 346(4).

Maine's Administrative Procedure Act, DEP statutes governing a particular matter, and the Maine Rules of Civil Procedure must be consulted for the substantive and procedural details applicable to judicial appeals.

ADDITIONAL INFORMATION

If you have questions or need additional information on the appeal process, for administrative appeals contact the Board Clerk at 207-287-2811 or the Board Executive Analyst at 207-314-1458 bill.hinkel@maine.gov, or for judicial appeals contact the court clerk's office in which the appeal will be filed.

Note: This information sheet, in conjunction with a review of the statutory and regulatory provisions referred to herein, is provided to help a person to understand their rights and obligations in filing an administrative or judicial appeal. The DEP provides this information sheet for general guidance only; it is not intended for use as a legal reference. Maine law governs an appellant's rights.
