

Section 31. LUPC CERTIFICATION

The Applicant has proposed development of a grid-scale wind energy development facility, the Downeast Wind Project (Project), as defined under 35-A MRS §3451(6) and portions of the Project are located in the unorganized or de-organized areas of Maine. Pursuant to Public Law 2017, Chapter 682, 12 MRS §685-B (2-C) and 38 MRS §489-A-1(1,2), such projects are reviewed, and permits are issued by the MDEP. The MDEP may not issue a permit until the Land Use Planning Commission (LUPC) has certified that the proposed development is an allowed use within the sub-district(s) for which it is proposed and meets any LUPC land use standard that is applicable to the Project and not considered under MDEP review.

31.1. PROJECT DESCRIPTION

Section 1 of this application includes a description of the Project. As noted in Section 1, the Project will include 30 turbine sites with 3 alternate turbine locations. The substation and switchyard, a permanent meteorological tower, the O&M facility, and 7 of the turbines are located in the Town of Columbia and not within LUPC jurisdiction. The portions of the proposed Project located within LUPC jurisdiction include the following components:

- Township 18 MD BPP: Contains 12 turbine locations, 1 alternate turbine location, 13.1 miles of associated crane paths and access roads, and 13 miles of electrical collections corridor containing about 24.3 miles of line, one temporary power performance tower, and a temporary laydown yard for construction staging.
- Township 24 MD BPP: Contains 11 turbine locations, 2 alternate turbine locations, 9.1 miles of associated crane paths and access roads, and 7.8 miles of collection corridor containing just over 11 miles of line, and 1 temporary power performance tower.

31.2. LUPC ZONING COMPLIANCE

The Project area within LUPC jurisdiction, in T18 and T24, is located within the expedited wind permitting area. The Project extends through areas zoned as General Management Subdistrict (M-GN), Flood Prone Protection Subdistrict (P-FP), Great Pond Protection Subdistrict (P-GP), Recreation Protection Subdistrict (P-RR), Shoreland Protection Subdistrict (P-SL), and Wetland Protection Subdistrict (P-WL) (Figure 31-1). Grid-scale wind energy development, including both the generating and associated facilities, is an allowed use in each of the subdistricts.³³

Based on consultation with LUPC, there are standards that are not included in the Maine DEP review process that are uniquely LUPC review standards. Otherwise, Maine DEP addresses the other LUPC standards. A description of each of these reviews follows.

31.2.1. OVERVIEW OF LUPC LAND USE STANDARDS

The applicable LUPC land use standards identified in consultation with LUPC staff and that are not wholly considered in MDEP's process include the following:

- Land Division History, as required by the LUPC definition of subdivision (01-672 CMR 10.24,F);

³³ 01-672 CMR 10.22,A(3)(c)(28)(M-GN); 10.23,C(3)(c)(22)(P-FP); 10.23,E(3)(c)(24)(P-GP); 10.23,I(3)(c)(10)(P-RR); 10.23,L(3)(c)(26); and 10.23N(3)(c)(17).

- Vehicular Circulation, Access, and Parking (01-672 CMR 10.24,B and 10.25,D);
- Lighting (01-672 CMR 10.25,F.2);
- Subdivision and Lot Creation (01-672 CMR 10.25,Q);
- Activities in Flood Prone Areas (01-672 CMR 10.25,T);
- Dimensional Requirements (01-672 CMR 10.26);
- Vegetation Clearing (01-672 CMR 10.27.B);
- Signs (01-672 CMR 10.27,J);

31.2.2. STANDARDS CONSIDERED IN REVIEW BY MDEP

The following LUPC standards are considered by MDEP in the review of the project:

- Technical and Financial Capacity, Solid Waste, and Water Supply (01-672 CMR 10.24,A) and (38 M.S.A. § 484 (1),(4),(6); 06-096 CMR 373,375.6, 376);
- Existing Uses, Scenic Character, and Natural and Historic Resources (01-672 CMR 10.24,C) and (38 M.R.S.A. § 484(3); 06-096 CMR 375. 11);
- Soil Erosion, Soil Capacity, and Sewage Disposal (01-672 CMR 10.24,D) and (38 M.R.S.A. § 484(4); 06-096 CMR 376);
- Technical and Financial Capacity (01-672 CMR 10.25,C) and (38 M.R.S.A. § 484(4); 06-096 CMR 373);
- Scenic Character, Natural and Historic Features (01-672 CMR 10.25,E) and (38 M.R.S.A. § 484; 06-096 CMR 375.11,12,14);
- Noise (01-672 CMR 10.25,F.1) and (38 M.R.S.A. § 484(3); 06-096 CMR 375.10);
- Soil Suitability (01-672 CMR 10.25,G) and (38 M.R.S.A. § 484(4); 06-096 CMR 376);
- Solid Waste Disposal (01-672 CMR 10.25,H) and (38 M.R.S.A. § 484(6));
- Wastewater Disposal (01-672 CMR 10.25,I) and (38 M.R.S.A. § 484(6); 06-096 CMR 376);
- Water Supply (01-672 CMR 10.25,J) and (38 M.R.S.A. § 484(6); 06-096 CMR 375.7,8);
- Surface Water Quality (01-672 CMR 10.25,K) and (38 M.R.S.A. § 484(4-A); 06-096 CMR 375.6);
- Phosphorus Control (01-672 CMR 10.25,L) and (38 M.R.S.A. § 484(4-A); 06-096 CMR 500);
- Erosion and Sedimentation Control (01-672 CMR 10.25,M) and (38 M.R.S.A. § 484(4-A); 06-096 CMR 375.5);
- Groundwater Quality (01-672 CMR 10.25,N) and (38 M.R.S.A. § 484(3),(5); 06-09 CMR 375.7,8);
- Air Quality (01-672 CMR 10.25,O) and (38 M.R.S.A. § 484; 06-096 CMR 375.1);
- Protected Natural Resources (01-672 CMR 10.25,P) and (38 M.R.S.A. § 480-A et seq.; 06-096 CMR 310);

- Vegetation Clearing (01-672 CMR 10.27,B) and (38 M.R.S.A. § 484; 06-096 CMR 375.9)
- Roads and Water Crossings (01-672 CMR 10.27,D) and (38 M.R.S.A. § 484, 06-096 CMR 375.3, 377); and
- Filling and Grading (01-672 CMR 10.27,F) and (38 M.R.S.A. § 484(4-A)).

31.3. APPLICABLE LUPC LAND USE STANDARDS

The applicable LUPC standards not considered in MDEP's review of the Project are discussed below.

31.3.1. LAND DIVISION HISTORY

The LUPC standard of subdivision requires that applicants demonstrate that any division of land does not create a subdivision.

Subdivision: Except as provided in 12 M.R.S.A. 682-B, "subdivision" means a division of an existing parcel of land into 3 or more parcels or lots within any 5-year period, whether this divisions is accomplished by platting of the land for immediate or future sale, by sale of land or by leasing. The term subdivision also includes the division, placement or construction of a structure or structures on a tract or parcel of land resulting in 3 or more dwelling units within a 5-year period. 12 M.R.S.A. 682(2-A).

The Applicant must demonstrate that the project does not create a subdivision. The Applicant has obtained title, right, or interest for the 4 parcels in LUPC jurisdiction (see Section 2 of the Site Law application).

Exhibit 31-1 is a 20-year land division analysis demonstrating that none of the title, right, or interest agreements create a subdivision.

31.3.2. DIMENSIONAL REQUIREMENTS

- *Minimum Lot Size:* The minimum lot size for commercial or industrial development involving one or more buildings is 40,000 square feet (01-672 CMR 10.26,A,2). While the Project does not include development of any buildings within LUPC jurisdiction, the Project is proposed on lots that exceed the minimum lot size for commercial or industrial development.
- *Minimum Shoreline Frontage:* The minimum road frontage for commercial or industrial development is 200 feet for parcels bordering a minor flowing water or standing body of water less than 10 acres in size, and frontage for a parcel located on a waterbody greater than 10 acres in size is 300 feet (01-672 CMR 10.26,B,1,b and 2,b). The Cherryfield Properties, LLC leased parcel in T18 MD BPP is the only project parcel within LUPC jurisdiction, with shoreline frontage on a waterbody greater than 10 acres, which in this case is Long Pond, West Pike Brook Pond, East Pike Brook Pond, and Schoodic Lake. This Parcel (WA005011) has well in excess of 200 feet frontage along Long Pond, West Pike Brook Pond, East Pike Brook Pond, Schoodic Lake, and the Pleasant River.
- *Minimum Road Frontage:* The minimum road frontage for commercial or industrial development is 200 feet for any road used for public access (01-672 CMR 10.26,C,1,b).

All existing and proposed project roads within LUPC territory are privately owned with no legal right of public access.

- **Minimum Setbacks:** 01-672 CMR 10.26,D,2, 10.26,D,3, and 10.26,G,5 specify the relevant minimum setbacks. Sections 10.26,D,2, and D,3 specify that the minimum setback for commercial or industrial development is 100 feet from flowing waters draining less than 50 square miles and P-WL1 wetlands and waterbodies less than 10 acres in size; 150 feet from flowing water draining 50 square miles or more and water bodies greater than 10 acres in size; 75 feet from roads used by the public for access; and 25 feet from side and rear property boundary lines. Section 10.26,G,5 allows an exception for structures that must be located less than the setbacks specified due to the nature of their use. Table 31-1 summarize the setbacks for the project components.
 - *Turbines:* All turbines are in compliance with the minimum setback requirements in 10.26,D.
 - The closest flowing water draining less than 50 square miles to turbines is an intermittent tributary to Fred Dorr Brook (Turbine 18, approximately 220 feet)
 - All P-WL1 wetlands and waterbodies less than 10 acres in size are greater than the minimum setback (Turbine 25, approximately 180 feet);
 - The closest flow water draining 50 square miles or more is the Pleasant River (Turbine 14, approximately 520 feet).
 - The closest water body greater than 10 acres to a turbine is West Pike Brook Pond (Turbine 26, approximately 470 feet).
 - All the roads in LUPC territory are private roads with no legal right to public access. Turbine 22 is the closest turbine to an existing private road and is 300 feet from that road.
 - Turbine 02 is the closest turbine to a non-participating property line and is approximately 1,369 feet from the nearest property line.
 - *Temporary Power Performance Towers:* Two temporary power performance towers are proposed, one in T18 and another in T24, and both exceed minimum setbacks.
 - *Collection Lines and Poles:* The 34.5kV collector lines are proposed to be underground in the shoulder of existing gravel roads, in the shoulder of proposed gravel roads, and are also all underground in cross-country runs. There are no collection poles or above ground structures associated with the Project collection lines in LUPC territory, so minimum setbacks are not applicable to the collection lines.
 - *Laydown Areas and Temporary Trailers:* Both laydown areas are in excess of the minimum setback requirements. There are two temporary laydown areas proposed in T24 MD BPP. One of the laydown areas is located on the property line of Cox and Cherryfield Foods, LLC, both of which are leased parcels of the Project. The other laydown yard is approximately 1,500 feet from a property line.
- **Maximum Lot Coverage:** The maximum lot coverage is 30 percent for all uses involving one or more buildings (01-672 CMR 10.26,E,1). There are no lots with buildings within LUPC jurisdiction.

- Maximum Structure Height:** Structures within 500 feet of the normal high water mark of a body of standing water 10 acres or greater shall be no higher than 30 feet (01-672 10.26, F,2). The maximum height of structures which contain no floor area such as freestanding towers and turbines may exceed these maximum heights with the Commission’s approval (01-672 CMR 10.26,F,3). The maximum height of the turbines will be 656 feet. One turbine, Turbine 26, is setback approximately 470 feet from West Pike Brook Pond, which is a waterbody greater than 10 acres in size, and therefore will not meet LUPC requirements without Commission approval pursuant 10.26.F,3. The structure is constrained to this location due attempting to increase setback from a wetland complex to the north of the turbine that contains mapped IWWH and landowner land management constraints to the west..

Table 31-1. Minimum Setbacks for all Project Components in LUPC Jurisdiction

| Chapter 10.26 Reference | Project Setback Requirement | Distance of Closest Project Component that Exceed Minimum Setbacks | Project Component |
|-------------------------|---|--|---|
| | | | Turbines and Meteorological Towers |
| D.3.a | Shoreline setbacks: (1) 150 feet from each flowing water draining 50 square miles or more and of a body of standing water 10 acres or greater in size; (2) 100 feet from each flowing water draining less than 50 square miles; body of standing water less than 10 acres in size except for constructed ponds; coastal wetland; and non-forested wetlands located in P-WL1 subdistricts. | (1) 470 feet (2) 220 feet | All turbines and meteorological towers exceed minimum setbacks. |
| D.3.b | Roadway setbacks: (1) 75 feet from all roadways except as provided for in Section 10.26D,3,b,(2) and (3). | 300 feet | All turbines and meteorological towers exceed minimum setbacks. |
| D.3.c | 25 feet from the side and rear property lines. | 1,369 feet | All turbines and meteorological towers exceed minimum setbacks. |

| Chapter 10.26 Reference | Project Setback Requirement | Distance of Closest Project Component that Exceed Minimum Setbacks | Project Component |
|-------------------------|--|--|--|
| | | | Turbines and Meteorological Towers |
| F.2. & F.3 | 500 feet from the normal high water mark of a body of standing water 10 acres or greater, Section 10.26,F.2; features of structures that contain no floor area such as chimneys, towers, ventilators, and spires and free standing towers and turbines may exceed these maximum heights with the Commission’s approval, Section 10.26,F.3. | 470 feet | Turbine 26 is within 500 feet of the normal high water mark of a body of standing water 10 acres or greater (West Pike Brook Pond) due to a wetland complex to the north and land management constraints to the west |

31.3.3. VEHICULAR CIRCULATION, ACCESS, AND PARKING

All of the existing and proposed roads are privately owned, with no legal right of public access.

This area of the Project contains no public roads and is not expected to generate a significant amount of traffic, therefore no traffic study has been commissioned. During peak construction, worker vehicles will be traveling to and from the project site with construction machinery, vehicles, and equipment moving to and from the designated laydown facility and installation sites.

Once the project is operational, there will be 2 to 4 worker vehicles traveling to the Project site per day to conduct routine oversight and maintenance.

To assist with traffic management at the proposed temporary laydown yard, warning signs will be installed on the private road to alert approaching vehicles of entering construction traffic. Standard sized loads and unescorted loads will be managed by the truck driver (i.e. rules of the road apply and driver will be responsible for safety). Oversized loads escorted by a chase vehicle will have the assistance of the chase vehicle to spot other traffic and alert the oversized vehicle driver.

The temporary construction trailers will be located at the laydown site in T18. There will be no on-street parking associated with the project.

Development roadways, access roads, and crane paths associated with the project will be reviewed by the MDEP with regard to road, grading, and erosion and safety standards. Lengths of roads within LUPC jurisdiction include:

- New crane paths, approximately 10.2 miles;
- New access roads, approximately 1.7 miles;
- New temporary met tower road, approximately 0.3 miles;

- Existing roads to be upgraded for crane paths, approximately 2.7 miles; and
- Existing roads to be upgraded for access roads, approximately 9.3 miles.

It is expected that road maintenance and minor regrading will be performed on other existing roads in the Project area.

31.3.4. NOISE AND LIGHTING

MDEP will evaluate the noise impacts from the project in Section 5 of this application, therefore 01-672 CMR 10.25, F.1 is not applicable.

The project is exempt from LUPC lighting standards (01-672 CMR 10.25.F.2.e.1) since the lighting associated with the turbines and met towers will be regulated by the FAA (Section 27). The only other lighting associated with the turbines is the motion sensitive entry lights adjacent to the stairs at the base of each turbine.

Turbine erection will occur in low wind conditions. Therefore, it is likely nighttime lighting will be used in order to utilize favorable construction conditions. If required, portable trailer-mounted flood light systems will be used. Each tower location would require approximately three of these portable flood lights. Additionally, the access points for the project may be lit with temporary nighttime security lighting.

31.3.5. ACTIVITIES IN FLOOD PRONE AREAS

MDEP generally regulates flooding (38 M.R.S.A. § 484.7) but MDEP is not authorized to regulate compliance with FEMA standards and does not specifically consider FEMA standards under the National Flood Insurance Program (44 C.F.R. Parts 59-149). LUPC has authorization to do so pursuant to their specific flood prone area requirements (01-672 CMR 10.25,T).

The only project component within a flood-prone area is an access road. The access road is not expected to cause or increase flooding or create a flood hazard to any existing structure and any other undue adverse impacts.

31.3.6. VEGETATION CLEARING

Permanent clearing for the project within LUPC jurisdiction will consist of approximately 98.8 acres. Vegetation will need to be cut and maintained to prevent dense growth from overwhelming roadside ditched and turbine pad areas. Temporary clearing for the project will consist of approximately 237.3 acres. This acreage will be cleared primarily for areas around the turbine locations, crane paths, access roads and laydown areas. One laydown area is on a former decommissioned military installation which is largely gravel and has only scattered successional growth around the site that will require minimal removal.

There will be no clearing within 100 feet of any public roadway, waterbody or flowing water for construction of the turbines, met towers, or laydown areas, therefore, the standards in 01-672 CMR 10.27,B are not applicable to clearing for the construction of those Project components. There will be permanent or temporary clearing within 75 feet of 3 streams (flowing waters draining less than 50 square miles) for underground collection construction access, which does not meet the standard in 10.27,B.1. A collector line corridor that is 50 feet wide will be cleared to provide for construction access across these three streams. The underground collection line will be

installed under the streams by horizontal directional bore, with no impacts to the stream banks or channel from the installation. Though there will be clearing to provide for access, there will be no stumping or grubbing within 100 feet of the streams. The bore pits will be sited greater than 100 feet from each side of the streams, and erosion controls will be installed to prevent sedimentation of the streams from the disturbed soils associated with the bore pits. A temporary construction access bridge will be installed over these streams to provide for construction access along the collection line corridor. Once construction is complete, the temporary construction access bridges will be removed and any disturbed soils will be seeded and mulched. The collection corridor will be allowed to revegetate through natural succession to a forested condition. The area within 100 feet of the streams, which have not been stumped or grubbed, is expected to readily revegetate into a forested condition. These construction methods are intended to avoid creating an undue adverse impact to these streams. This clearing is also specifically regulated by the Maine DEP in their review under the Natural Resources Protection Act.

31.3.7. PESTICIDE APPLICATION

If any pesticide application is necessary, it will be done in conformance with applicable State and Federal statutes and regulations.

31.3.8. SIGNS

Signage on leased areas will be limited to informational signs associated with site activities. Any permanent signs will comply with the standards described in 01-672 CMR 10.27, J.

Figure 31-1. Maine Land Use Planning Commission Land Use Subdistricts
 Placeholder (42 pages)

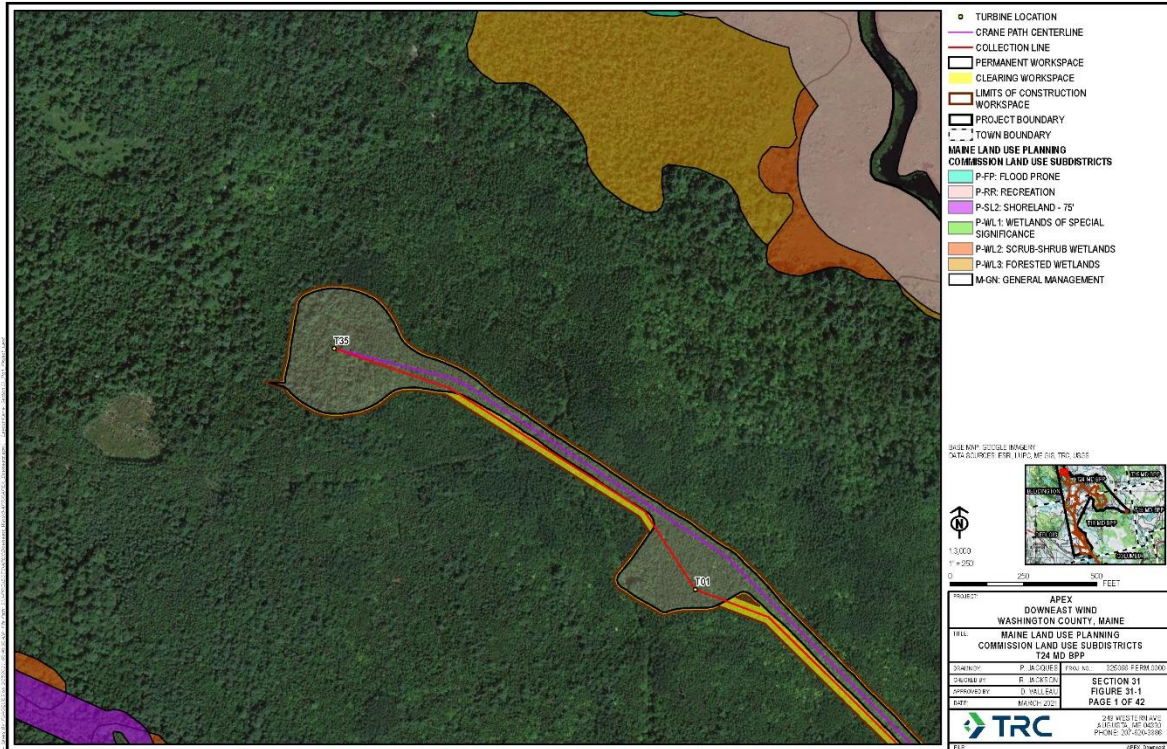




EXHIBIT 31-1: 20 YEAR LAND DIVISION HISTORY

Memorandum

To: Mark Lyons, Apex Clean Energy, Inc.

From: Anthony Calcagni, Verrill

Date: March 3, 2021

Re: Downeast Wind, LLC
20-Year Land Division History
Cherryfield Properties, LLC land in Twp. 18 MD, Washington County

The following is a twenty-year land division history report through March 3, 2021 for the parent parcel in **Twp. 18 MD** Washington County, known as **WA005 Plan 01 Lot 1**, now owned by **Cherryfield Properties, LLC**.

In March 2001, Cherryfield Foods, Inc. holds title to the parent parcel by virtue of a Deed from The Hearst Corporation (a/k/a Pejepscot Paper Division-The Hearst Corporation (and a/k/a Down East Timberlands Division of the Hearst Corporation) to Cherryfield Foods, Inc. dated 10/02/1989 and recorded at the Washington County Registry of Deeds in Book 1601 Page 292. The parent parcel has been conveyed as follows in chronological order since March 2001:

- January 2007: Cherryfield Properties, LLC acquires title to the entire parent parcel by Quitclaim Deed with Covenant from Cherryfield Foods, Inc. to Cherryfield Properties, LLC dated 01/31/2007 and recorded at the Washington County Registry of Deeds in Book 3247 Page 238. The subject parcel, T18MD WA005011 (Hearst Lots) is identified in the deed as Parcel #31/Property #29.
- February 2007: The entire parent parcel is leased from Cherryfield Properties, LLC as landlord to Cherryfield Foods, Inc. as tenant, as evidenced by Memorandum of Lease dated February 1, 2007 and recorded at said Registry in Book 3248 Page 63; as affected by a Subordination, Non-Disturbance and Attornment Agreement dated February 9, 2007 and recorded in Book 3262 Page 51; and as affected by an Amended Memorandum of Lease dated December 17, 2013 and recorded in Book 4026 Page 228, and Second Amended Memorandum of Lease dated April 15, 2016 and recorded at said Registry in Book 4248 Page 133. *It appears the entire parent parcel is leased under this Lease.*

- December 2013: The entire parent parcel is mortgaged, as set forth in the following security instruments:
 - Collateral Trust Agreement among Oxford Frozen Foods Limited, Cherryfield Properties, LLC and Cooperatieve Centrale Raiffeisen-Boerenleenbank BA (o/a Rabobank Nederland, Canadian Branch) dated 12/17/2013 and recorded in Book 4027 Page 1.
 - Mortgage, Security Agreement and Financing Statement from Cherryfield Properties, LLC to Cooperatieve Centrale Raiffeisen-Boerenleenbank BA in the original principal amount of \$65,000,000.00 dated December 20, 2013 and recorded at said Registry in Book 4027 Page 84, as amended by Mortgage Amendment Agreement dated April 19, 2016 and recorded at said Registry on Book 4248 Page 129.
 - Collateral Assignment of Leases and Rents from Cherryfield Properties, LLC to Cooperatieve Centrale Raiffeisen-Boerenleenbank BA dated 12/20/2013 and recorded at said Registry in Book 4027 Page 150.
 - Subordination, Non-Disturbance and Attornment Agreement among Cooperatieve Central Raiffeisen-BoerenleenBank BA, Cherryfield Properties, LLC and Cherryfield Foods, Inc. dated 12/17/2013 and recorded at said Registry in Book 4027 Page 215.
 - UCC Financing Statement from Cherryfield Properties LLC to Cooperatieve Centrale Raiffeisen-Boerenleenbank BA recorded 01/08/2014 at said Registry in Book 4027 Page 225 as continued and amended by UCC recorded on 4/20/2016 in Book 4248 Page 37 and on 12/05/2018 in Book 4518 Page 84.
 - UCC Financing Statement from Cherryfield Foods Inc to Cooperatieve Centrale Raiffeisen-BoerenleenBank BA recorded 01/08/2014 at said Registry in Book 4027 Page 228. (This is a UCC executed by the lessee under the lease in Book 3248 Page 63.)

- June 2016: Cherryfield Properties, LLC granted to Downeast Wind, LLC an Entry and Testing Agreement dated June 3, 2016 and recorded in said Registry in Book 4272 Page 170. *This is an access agreement and does not create a division for subdivision purposes.*

- October 2016: Cherryfield Properties, LLC enters into a lease agreement with Dawn Land Solar, LLC, as tenant, as evidenced by Memorandum of Lease Agreement dated 10/28/2016 and recorded at said Registry in Book 4321 Page 106, as amended by First Amendment to Memorandum of Lease Agreement dated 3/31/2017 and recorded at said Registry in Book 4373 Page 181, and Second Amendment to Memorandum of Lease Agreement dated February 26, 2021 and to be recorded at said Registry (a copy of which was provided to us by Cherryfield Properties, LLC). *This is a lease of a portion of the parent parcel and therefore constitutes a division; it should not be counted after October 28, 2021.*

- December 2016: Cherryfield Properties, LLC enters into a lease agreement with Downeast Wind, LLC, as tenant, as evidenced by Memorandum of Lease Agreement dated 12/15/2016 and recorded at said Registry in Book 4342 Page 151.

This lease, and a second lease agreement with Downeast Wind, LLC evidenced by Memorandum of Lease Agreement dated 04/18/2018 and recorded at said Registry in Book 4466 Page 259, both were superseded and replaced in their entirety by a Consolidated, Amended and Restated Wind Energy Lease to Downeast Wind, LLC dated March 4, 2021, as evidenced by Memorandum dated March 4, 2021 and recorded at said Registry in Book 4762 Page 147 (the "Consolidated Memorandum"). *This is a lease of a portion of the parent parcel, and therefore constitutes a second division. However, as described in the Consolidated Memorandum, for a period of at least five years after the effective date of the Consolidated Memorandum the remaining portion of the parent parcel in T18MD (not leased to either Dawn Land Solar, LLC or Downeast Wind, LLC) is being (i) retained by Cherryfield Properties, LLC and not further divided, and (ii) used for forest or agricultural management activities in accordance with the exemptions of Maine LUPC Rules Section 10.25,Q,1,g,(2) (Retained Lots), or Section 10.25,Q,1,g,(7) (Large Lots Managed for Forest or Agricultural Management Activities or Conservation).*

There are no other divisions or grants of the parent parcel recorded at the Washington County Registry of Deeds through our review period.

Cherryfield Properties, LLC has represented that it has entered into unrecorded lease agreements with third parties for the use of portions of the parent parcel (each such lease a "Camp Lease"), as follows: Landlord has (a) seven Camp Leases which are allowed without subdivision review pursuant to LUPC Rules Section 10.25,Q,1.e, having been renewed for at least twenty (20) years; and (b) one Camp Lease created in 2002, and another Camp Lease created in 2008. Although the last two Camp Leases were not created within five years of each other, Cherryfield Properties, LLC also has represented that Landlord's remaining portion of the parent parcel was, for the five years after the creation of the second such Camp Lease, retained by Landlord and not further divided, and used for forest or agricultural management activities in accordance with the exemption of LUPC Rules Section 10.25,Q,1,g,(7) (Large Lots Managed for Forest or Agricultural Management Activities or Conservation).

Based on the foregoing, there does not appear to be any subdivision of the parent parcel requiring LUPC approval during the twenty-year review period.

Memorandum

To: Mark Lyons, Apex Clean Energy, Inc.

From: Anthony Calcagni, Verrill

Date: March 3, 2021

Re: Downeast Wind, LLC
20-Year Land Division History
Cherryfield Properties, LLC land in Twp. 18 MD, Washington County

The following is a twenty-year land division history report through March 3, 2021 for the parent parcel in **Twp. 18 MD** Washington County, known as **WA005 Plan 01 Lot 8**, now owned by **Cherryfield Properties, LLC**.

In March 2001, the United States of America holds title to the parent parcel by virtue of a Deed from The Hearst Corporation, successor in interest by merger to The Pejepscot Paper Company, dated September 24, 1987 and recorded at the Washington County Registry of Deeds in Book 1471 Page 292. The parent parcel has been conveyed as follows in chronological order since March 2001:

- December 2013: The United States of America conveys the entire parent parcel to Cherryfield Properties, LLC by Quitclaim Deed dated December 10, 2013 and recorded at the Washington County Registry of Deeds in Book 4023 Page 74.
- February 2014: Cherryfield Properties, LLC grants a Declaration of Environmental Covenant burdening the entire parent parcel to the Maine Department of Environmental Protection dated February 12, 2014 and recorded at said Registry in Book 4038 Page 200. *Not a division for subdivision purposes.*
- March 4, 2021: Cherryfield Properties, LLC enters into a Consolidated, Amended and Restated Wind Energy Lease with Downeast Wind, LLC dated March 4, 2021, as evidenced by Memorandum dated March 4, 2021 and recorded at said Registry in Book 4762 Page 147 (the "Consolidated Memorandum"). *This is a lease of a portion of the parent parcel, and therefore constitutes a first division.*

There are no other divisions or grants of the parent parcel recorded at the Washington County Registry of Deeds through our review period.

Cherryfield Properties, LLC has represented that there are no other lease agreements to third parties for the use of portions of the parent parcel.

Based on the foregoing, there does not appear to be any subdivision of the parent parcel requiring LUPC approval during the twenty-year review period.

Memorandum

To: Mark Lyons, Apex Clean Energy, Inc.

From: Anthony Calcagni, Verrill

Date: March 3, 2021

Re: Downeast Wind, LLC
20-Year Land Division History
Cherryfield Properties, LLC land in Twp. 24 MD, Washington County

The following is a twenty-year land division history report through March 3, 2021 for the parent parcel in **Twp. 24 MD** Washington County, known as **WA007 Plan 01 Lot 1**, now owned by **Cherryfield Properties, LLC**.

In March 2001, Cherryfield Foods, Inc. holds title to the parent parcel by virtue of a Warranty Deed from Arthur M Elbthal, Louisa C Elbthal and Lawrence J Elbthal, Trustees of the Elbthal Realty Trust, to Cherryfield Foods, Inc. dated 05/24/1993 and recorded at the Washington County Registry of Deeds in Book 1847 Page 304. The parent parcel has been conveyed as follows in chronological order since March 2001:

- January 2007: Cherryfield Properties, LLC acquires title to the entire parent parcel by Quitclaim Deed with Covenant from Cherryfield Foods, Inc. to Cherryfield Properties, LLC dated 01/31/2007 and recorded at the Washington County Registry of Deeds in Book 3247 Page 238. The subject parcel, T24MD WA007011 (Elbthal Lots) is identified in the deed as Parcel #26/Property #38.
- February 2007: The entire parent parcel is leased from Cherryfield Properties, LLC as landlord to Cherryfield Foods, Inc. as tenant, as evidenced by Memorandum of Lease dated February 1, 2007 and recorded at said Registry in Book 3248 Page 63; as affected by a Subordination, Non-Disturbance and Attornment Agreement dated February 9, 2007 and recorded in Book 3262 Page 51; and as affected by an Amended Memorandum of Lease dated December 17, 2013 and recorded in Book 4026 Page 228, and Second Amended Memorandum of Lease dated April 15, 2016 and recorded at said Registry in Book 4248 Page 133. *It appears the entire parent parcel is leased under this Lease.*
- December 2013: The entire parent parcel is mortgaged, as set forth in the following security instruments:

- Collateral Trust Agreement among Oxford Frozen Foods Limited, Cherryfield Properties, LLC and Cooperatieve Centrale Raiffeisen-Boerenleenbank BA (o/a Rabobank Nederland, Canadian Branch) dated 12/17/2013 and recorded in Book 4027 Page 1.
 - Mortgage, Security Agreement and Financing Statement from Cherryfield Properties, LLC to Cooperatieve Centrale Raiffeisen-Boerenleenbank BA in the original principal amount of \$65,000,000.00 dated December 20, 2013 and recorded at said Registry in Book 4027 Page 84, as amended by Mortgage Amendment Agreement dated April 19, 2016 and recorded at said Registry on Book 4248 Page 129.
 - Collateral Assignment of Leases and Rents from Cherryfield Properties, LLC to Cooperatieve Centrale Raiffeisen-Boerenleenbank BA dated 12/20/2013 and recorded at said Registry in Book 4027 Page 150.
 - Subordination, Non-Disturbance and Attornment Agreement among Cooperatieve Central Raiffeisen-BoerenleenBank BA, Cherryfield Properties, LLC and Cherryfield Foods, Inc. dated 12/17/2013 and recorded at said Registry in Book 4027 Page 215.
 - UCC Financing Statement from Cherryfield Properties LLC to Cooperatieve Centrale Raiffeisen-Boerenleenbank BA recorded 01/08/2014 at said Registry in Book 4027 Page 225 as continued and amended by UCC recorded on 4/20/2016 in Book 4248 Page 37 and on 12/05/2018 in Book 4518 Page 84.
 - UCC Financing Statement from Cherryfield Foods Inc to Cooperatieve Centrale Raiffeisen-BoerenleenBank BA recorded 01/08/2014 at said Registry in Book 4027 Page 228. (This is a UCC executed by the lessee under the lease in Book 3248 Page 63.)
- April 2016: By exchange with the State of Maine, the State acquires the 320-acre parcel described in the Release Deed from Cherryfield Properties, LLC to Cherryfield Foods, Inc dated April 13, 2016 and recorded at said Registry in Book 4248 Page 56, and Cherryfield Properties, LLC acquires the 320-acre parcel described in the Release Deed from the State of Maine to Cherryfield Food, Inc. dated April 13, 2016 and recorded at said Registry on Book 4248 Page 66. In connection with this exchange:
 - Certain 2013 security instruments were amended to add the parcel in and subtract the parcel out – see Mortgage Amendment Agreement dated 04/19/2016 and recorded at said Registry in Book 4248 Page 129, and UCC recorded 04/20/2016 in Book 4248 Page 37.
 - The 2007 Lease to Cherryfield Foods, Inc. was amended to add the parcel in and subtract the parcel out – see Second Amended Memorandum of Lease dated 04/15/2016 and recorded at said Registry in Book 4248 Page 133.

Unless exempt pursuant to LUPC Rules Section 10.25, Q, 1, g, (6) (Transfer to Governmental Entity) or otherwise, this conveyance is the first division within a 5-year period, and should not be counted after April 13, 2021.
 - April 2018: Cherryfield Properties, LLC enters into a lease agreement with Downeast Wind, LLC, as tenant, as evidenced by Memorandum of Lease dated

04/18/2018 and recorded at said Registry in Book 4466 Page 259. This lease was superseded and replaced in its entirety by a Consolidated, Amended and Restated Wind Energy Lease to Downeast Wind, LLC dated March 4, 2021, as evidenced by Memorandum dated March 4, 2021 and recorded at said Registry in Book 4762 Page 147 (the "Consolidated Memorandum"). *This is a lease of a portion of the parent parcel, and therefore constitutes a second division if the 2016 exchange with the State of Maine was not exempt. However, as described in the Consolidated Memorandum, for a period of at least five years after the effective date of the Consolidated Memorandum the remaining portion of the parent parcel in T24MD (not leased to Downeast Wind, LLC) is being (i) retained by Cherryfield Properties, LLC and not further divided, and (ii) used for forest or agricultural management activities in accordance with the exemptions of Maine LUPC Rules Section 10.25,Q,1,g,(2) (Retained Lots), or Section 10.25,Q,1,g,(7) (Large Lots Managed for Forest or Agricultural Management Activities or Conservation).*

- May 2019: Cherryfield Properties, LLC enters into a Boundary Agreement with Mitchell Beal and D'Anna Beal dated 05/20/2019 and recorded at said Registry in Book 4587 Page 206, to clarify their mutual boundary. *Not a division for subdivision purposes.*

There are no other divisions or grants of the parent parcel recorded at the Washington County Registry of Deeds through our review period.

Cherryfield Properties, LLC has represented that it has entered into unrecorded lease agreements with third parties for the use of portions of the parent parcel (each such lease a "Camp Lease"), as follows: Landlord has (a) four Camp Leases which are allowed without subdivision review pursuant to LUPC Rules Section 10.25,Q,1.e, having been renewed for at least twenty (20) years; (b) one Camp Lease created in 2001; and (c) two Camp Leases created in 2008, which were allowed without subdivision review since Landlord's remaining portion of the parent parcel was, for the five years after the creation of the second such Camp Lease, retained by Landlord and not further divided, and used for forest or agricultural management activities in accordance with the exemption of LUPC Rules Section 10.25,Q,1,g,(7) (Large Lots Managed for Forest or Agricultural Management Activities or Conservation).

Based on the foregoing, there does not appear to be any subdivision of the parent parcel requiring LUPC approval during the twenty-year review period.

Memorandum

To: Mark Lyons, Apex Clean Energy, Inc.

From: Anthony Calcagni, Verrill

Date: March 3, 2021

Re: Downeast Wind, LLC
20-Year Land Division History
Cox Trust land in Twp. 24 MD, Washington County

The following is a twenty-year land division history report through March 3, 2021 for the parent parcel in **Twp. 24 MD** Washington County, known as **WA007 Plan 01 Lot 2**, now owned by **Brett M. Cox, as Trustee and Elaine A. Carey, as Trustee**.

In March 2001, Elmer M. Cox holds title to the parent parcel by virtue of a Deed from Elwin Albee and Beatrice Albee dated September 22, 1983 and recorded at the Washington County Registry of Deeds in Book 1244 Page 185. The parent parcel has been conveyed as follows in chronological order since March 2001:

- December 2005: Elmer M. Cox conveys the entire parent parcel to Elmer M. Cox, as Trustee of the Elmer M. Cox Revocable Trust, by Deed dated December 28, 2005 and recorded at the Washington County Registry of Deeds in Book 3102 Page 193.
- February 2008: By recorded Notice Not to Renew Lease Exchange between Elmer M. Cox, as Trustee, and Cherryfield Foods Inc. dated February 25, 2008 and recorded at said Registry in Book 3385 Page 138, an existing 1999 lease agreement with Cherryfield Foods Inc. is automatically renewed on a year-to-year basis, until either party elects to terminate. *This renewal agreement pertains to a 1999 lease agreement that expired years ago, according to a representative of Cherryfield Foods; it does not affect the subdivision analysis during the twenty-year review period.*
- October 2015: The entire parent parcel is conveyed by Deed from Brett Michael Cox, Substitute Trustee under Revocable Trust Agreement of Elmer M. Cox, to Brett M. Cox, Trustee under Revocable Trust Agreement of Brett M. Cox, and Elaine A. Carey, Trustee under Revocable Trust Agreement of Elaine A. Carey, dated October 13, 2015 and recorded at said Registry in Book 4204 Page 183.

- April 2019: Brett M. Cox, Trustee under Revocable Trust Agreement of Brett M. Cox, and Elaine A. Carey, Trustee under Revocable Trust Agreement of Elaine A. Carey, enter into a lease agreement with Downeast Wind, LLC, as tenant, as evidenced by Memorandum of Lease dated April 10, 2019 and recorded at said Registry in Book 4552 Page 23. *This is a lease of the entire parent parcel.*

There are no other divisions or grants of the parent parcel recorded at the Washington County Registry of Deeds through our review period.

Based on the foregoing, there does not appear to be any subdivision of the parent parcel requiring LUPC approval during the twenty-year review period.