



DEPARTMENT ORDER

IN THE MATTER OF

DOWNEAST WIND, LLC) SITE LOCATION OF DEVELOPMENT ACT
Columbia, T18 MD BPP) NATURAL RESOURCES PROTECTION ACT
T24 MD BPP, Washington, County) FRESHWATER WETLAND ALTERATION
WIND ENERGY FACILITY) SIGNIFICANT WILDLIFE HABITAT
L-29007-24-A-N (approval)) STREAM ALTERATION
L-29007-L6-C-N (approval)) WATER QUALITY CERTIFICATION
L-29007-TH-D-N (approval))
L-29007-IW-E-N (approval))
L-29007-VP-F-N (approval))
L-29007-2G-G-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, 500, and 502 of its rules, the Department of Environmental Protection (Department) has considered the application of DOWNEAST WIND, LLC (applicant) 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 30-turbine, 126-megawatt (MW) wind energy development, which is an “expedited wind energy development” as defined in the WEA¹, 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 an operations and maintenance (O&M) building in the Town of Columbia. The overall proposed project will include 78.8 acres of new impervious and developed area and 114.1 total impervious and developed area.

1. Turbines. The applicant proposes to install 30 wind turbines (with three alternative sites), Vestas V150-4.2 MW with Serrated Trailing Edge (STE) turbine blades. The turbines will have a maximum height of 656 feet. Seven turbines (including four proposed sites and three alternative sites) will be located in the Town of Columbia, 13 will be located in T18 MD BPP, and 13 will be located in T24 MD BPP. The turbines will be placed on Beech Hill, Hawk Hill, Ben Tucker Mountain, and additional unnamed hills.

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).

2. Turbine Pads. Each turbine pad will be up to approximately 134,000 square feet in size. After completion of construction, the turbine pads will be allowed to revegetate except for the following: a 50-foot radius around the base of each turbine foundation, the 75-foot by 120-foot crane pad at each turbine, and a 24-foot access drive leading to each crane pad.
3. Access Roads and Crane Paths. The applicant proposes to upgrade approximately 15.0 miles of existing gravel roads to serve as access roads or crane paths to access turbine locations. The applicant also proposes to construct approximately 15.1 miles of new access roads/crane paths. Access roads may vary in width between 16 feet and 24 feet. Crane paths will be approximately 36.5 feet wide. Portions of crane paths will be narrowed upon completion of construction to accommodate engineered stormwater and drainage design features as shown in the civil design drawing package.
4. Electrical Transmission Lines. The applicant proposes to construct approximately 24 miles of underground 34.5 kilovolt (kV) collector line. The project also includes the construction of a new substation with a 132,442 -square foot fenced footprint.
5. O&M Building. The applicant proposes to construct a 4,400-square foot O&M building in the Town of Columbia. The development of the O&M building will result in approximately 0.77 acre of impervious area.
6. Meteorological/Power Performance Towers. The applicant proposes to construct one permanent meteorological (met) tower and two temporary power performance towers throughout the project site. Each tower will have a maximum height of 60 meters.
7. Temporary Laydown Yard. A 9.7-acre temporary laydown yard will be constructed in Columbia for parking, trailers, and project component storage. The yard will be fully restored upon project construction completion.

The applicant is also requesting approval under the Natural Resources Protection Act (NRPA) for 67,998 square feet of wetland fill and 82,430 square feet of wetland clearing. This total includes 22,182 square feet of clearing in wetlands of special significance (WOSS). Additionally, the applicant proposes to impact streams and significant wildlife habitats, namely a significant vernal pool and Inland Waterfowl and Wading Bird Habitat (IWWH). On May 17, 2021, the Department accepted NRPA Permits-By-Rule #72713, 72714, and 72715 for Activities in, on or over significant vernal pool habitat.

The details of the turbines, access roads, and associated facilities are provided on the set of plans entitled “Apex Clean Energy, Inc. Downeast Wind Farm,” prepared by James W. Sewall Company and with a last revision date of September 16, 2022.

B. Current Use of Site: The project site currently contains gravel roads and blueberry barrens.

2. FINANCIAL CAPACITY:

The total cost of the proposed project is estimated to be \$188 million. The applicant intends to self-finance as well as to incorporate outside funding. The applicant submitted combined balance sheets showing available assets in excess of the project cost.

The Department finds that the applicant has demonstrated adequate financial capacity to construct and operate the development in compliance with Department standards.

3. TECHNICAL ABILITY:

Pursuant to Chapter 373 §3, an applicant must demonstrate the technical ability to design, construct, operate, and maintain the proposed development in a manner consistent with the permit and state environmental standards.

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:

- Stantec Consulting – biology, soil surveys, and natural resource assessment
- James W. Sewall Company – construction services, civil engineering, stormwater analysis
- Epsilon Associates, Inc. – shadow flicker assessment
- Terrence J. DeWan & Associates – visual impact analysis
- Bodwell EnviroAcoustics, LLC – sound assessment
- TRC Solutions – historic architectural resources, archaeological resources, natural resource assessment, aerial photography interpretation, project management

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, Chapter 375 §10, the applicant submitted a sound level assessment entitled "Sound Level Assessment, Downeast Wind Project," completed by Bodwell EnviroAcoustics LLC, and dated March 2021. The sound level assessment was conducted to predict expected sound levels from the proposed project, and it compared the model results to the applicable requirements of Chapter 375 §10.

The Downeast Wind 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 2,470 feet 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.

Additionally, turbines located within the Town of Columbia are subject to the Columbia Wind Energy Facility Ordinance. The Town of Columbia’s Ordinance has sound limits identical to those in Department regulations. The Columbia Ordinance states the sound level resulting from routine operation of described standards shall not exceed the following limits:

- a.) 75 dBA at any time of day at any property line of the development or contiguous property owned or controlled by the developer, whichever is farther from the proposed development’s regulated sound; and
- b.) 55 dBA between 7:00 a.m. and 7:00 p.m. (“daylight limit”) and 42 dBA between 7:00 p.m. and 7:00 a.m. (“nighttime limit”) within 500 (five hundred) feet of any protected location (i.e. residence with living and sleeping quarters).

The Town ordinance does not regulate tonal or short duration repetitive (SDR) sounds; therefore, the Department standards for both apply for turbines located in Columbia.

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, Bodwell EnviroAcoustics LLC, developed a sound level prediction model to estimate sound levels from the operation of the proposed project. Sound levels were modeled using all 33 possible turbine locations. 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. 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.

Modeling the sound generated from the operation of turbines at the 33 potential sites 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 with a manufacturer uncertainty value of 2.0 dBA. In addition, the applicant added 1.0 dBA to the turbine sound power output to compensate for any uncertainty in the model. The model was run with 33 turbines operating at full sound power output, although only 30 turbines are proposed. The highest predicted sound level for a turbine subject to the Department's 42 dBA standard is 37.4 dBA at Receptor R1. At Receptor R3, which is subject to Columbia's 42 dBA limit, the predicted sound level is 41.3 dBA. At Receptor R4, which is also subject to Columbia's 42 dBA limit, the predicted sound level is 40.8 dBA.

The applicant concluded that the proposed project would result in sound levels below the required daytime sound level limit of 55 dBA and the nighttime (7:00 p.m. to 7:00 a.m.) sound level limit of 42 dBA at all protected locations. The applicant also concluded that the proposed project would result in sound levels below the Town of Columbia's Ordinance daytime sound level limit of 55 dBA and the nighttime (7:00 p.m. to 7:00 a.m.) sound level limit of 42 dBA within 500 feet of any protected location for all turbines located in the Town of Columbia.

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 ($Leq_{A 10\text{-min}}$) for which a tonal sound occurs that results from routine operation of the wind energy development.

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.

- 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 March 2021 sound level assessment submitted by the applicant summarized measurements of operating wind turbines in Maine and data from published literature that indicates that sound level fluctuations during the blade passage of wind turbines typically range from 2 to 5 dBA, with an occasional event reaching 6 dBA or more. Based on the applicant's sound level assessment and the assessment of the Department's noise consultant, it appears that 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.G. 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 Bodwell EnviroAcoustics, LLC, and entitled “Sound Level Assessment Downeast Wind Project.” 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 Columbia's noise requirements have been properly interpreted and applied by the applicant.
- E. Winter Operating Protocol. Turbine blade icing can increase sound levels. Previous analyses have shown Turbine Power Degradation (TPD) is an effective indicator of increased sound output. In its review, Tech Environmental states that light icing conditions can be difficult to detect and, due to the very small safety margin for the turbine layout for this project, could lead to a noise violation. Tech Environmental

recommends that any permit approval prohibit winter nighttime operation of the six southern turbines in the Town of Columbia closest to receptors R3 and R4 until such time that an acceptable Winter Operating Protocol has been developed by the applicant and fully reviewed and approved by the Department.

- A. Post-construction Monitoring Program. 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 Columbia's Wind Ordinance, including the provisions regarding SDRS and tonal sound, it recommended that the Department require post-construction sound monitoring at Receptor R3 and Receptor R4. Tech Environmental, Inc. also recommended that at least six of the 12 test periods to be used in the compliance test report represent nighttime (7:00 p.m. to 7:00 a.m.) conditions during which the sound level limit is 42 dBA. In addition, it recommended that the compliance test report include a complete presentation of the data and calculations for the SDRS analysis.

The Department finds that the applicant must demonstrate compliance with the Department's and the Town of Columbia's Wind Ordinance 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. At least six of the 12 test periods to be used in the compliance test report must represent nighttime (7:00 p.m. to 7:00 a.m.) conditions during which the sound level limit is 42 dBA, and the compliance test report must include a complete presentation of the data and calculations for the SDRS analysis. Additionally, the applicant must determine the best times of year to achieve the test protocol conditions, specifically southerly winds at receptors R3 and R4, and submit a report prior to commercial operation of the facility to the Department for review and approval.

- B. 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 Columbia's Noise Regulations. To ensure that the project operates in compliance with this Order, and the Department's and the Town of Columbia's Wind

Ordinance, 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. The applicant must develop and submit a Winter Operating Protocol to the Department for review and approval prior to the commencement of commercial operation of the development.

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 Columbia Wind Ordinance. 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 & Planners. 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 one 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 Great Heath is located within eight miles of the project. In January 2021, the applicant submitted a memorandum stating the Great Heath should not be considered a SRSNS by the Department. The applicant cited the WEA and stated the Heath did not meet the threshold as a "national natural landmark, federally designated wilderness area or other comparable outstanding natural and cultural feature, such as the Orono Bog or Meddybemps Heath." The applicant stated the intention of the WEA was to include parcels with both natural and cultural features, and the Heath is lacking cultural features.

The Department considered the information submitted by the applicant and the Wind Energy Act and determined that the intention of the WEA was to include parcels with comparable outstanding natural and/or cultural features. Therefore, the Department determined the Great Heath should be designated as a SRSNS.

The Maine Bureau of Parks and Lands owns approximately 6,000 acres of the Great Heath. The Pleasant River flows through the parcel and access by watercraft is allowed. No public entryways to the Heath or the portion of the river contained within the public lands exist. Access to launch and landing sites for the river require permission from a private landowner. The Heath is used for recreation by hunters, birdwatchers, fishermen, and others. Chapter 382, Wind Energy Act Standards, states the Department will consider evidence regarding the significance of the 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.

In making a determination of the value, the Department considered the restrictive access and the surrounding area, which consists largely of commercially farmed blueberry fields. The Department also considered that the Heath is visited by a limited amount of the public for recreation. The Department also determined the Heath has significant value ecologically and potential value culturally and scenically. Finally, the Department considered the expectations of a typical user of the SRSNS through user surveys submitted by the applicant and the Department staff site visit on October 28, 2021. The Pleasant River is the main access to the Great Heath and is not considered a SRSNS. Department staff documented dense vegetation along the Pleasant River that obscured views of the Heath for much of the length of the river.

A total of six turbines will be visible from the Heath at distances between 0.6 to 3.8 miles. The Department considered the scope and scale of the project as well as the distance to the turbines. Chapter 382, the WEA Standards, states that there is a rebuttable presumption that placement of turbines within three miles of viewpoints within the SRSNS would cause a high impact to the scenic character of the SRSNS. The Department considered the purpose and context of the proposed activity; extent, nature and duration of public uses; scope and scale; and cumulative impacts to rate the significance of impacts to the Heath as medium.

Chapter 382 states that a finding of medium scenic impact to an SRSNS with medium value will require further evaluation by the Department of the evidence to make a determination as to whether the proposed impact would be unreasonably adverse. The Department determined that based on the difficulty accessing the site, limited amount of public using the site, and limited views from the river due to dense vegetation adjacent to the river, the project will not constitute an unreasonable impact to the Great Heath.

- 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 16 structures and one historic district listed on the National Register of Historic Places located within eight miles of the project. Of these, two potentially have views of the project. The Columbia Union Church,

located in Columbia, is 2.5 miles from the nearest proposed turbine site. The applicant's viewshed analysis showed no visibility from the church, but potential views of nacelles (the covered portion of a turbine that houses all of the generating components in the wind turbine, including the generator, gearbox, drive train, and brake assembly) and blade tips from the surrounding fields. The Gallison Memorial Library, located in Harrington, is 3.9 miles from the nearest proposed turbine site. According to a 3D model analysis, blade tip visibility will be limited due to existing vegetation.

The Cherryfield Historic District is located 5.7 miles from the nearest proposed turbine site. Due to surrounding structures and vegetation, no project visibility is anticipated.

The applicant concluded that the proposed project should not have an unreasonable adverse effect on the scenic character or existing uses related to the scenic character of these historic places.

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 listed in the "Maine's Wildland Lakes Assessment" as outstanding or significant for scenic quality, Upper Cranberry Lake and Mopang Lake. According to the applicant's VIA, the project will not be visible from Upper Cranberry Lake.

Mopang Lake is a 1,487-acre lake located in Devereaux Township and located about 7.7 to 8+ miles northwest of the project. The applicant described the shoreline as less developed, with several camps on the northern and southern shore. A small conservation area and boat launch are located on the southern shore. Mopang Lake is rated as "significant" for scenic quality in the MWLA. The applicant rated the lake as medium for resource significance.

The applicant's VIA indicates that the closest turbine visible from Mopang Lake is approximately 7.7 miles away. The viewshed analysis, using a maximum 40-foot tree height, concluded that blades from one turbine may be visible from the southwestern side of the lake. On this basis the applicant concluded that the proposed project should not have an unreasonable adverse effect on the scenic character or existing uses related to the scenic character of Mopang Lake because it rated the significance of the project impact as Low to None.

- 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 Machias River as a SRSNS. The proposed project will not be visible from the Machias River or from a 1,000-foot conservation corridor adjacent to the river.
- 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.

There are no qualifying scenic viewpoints from which turbines would be visible for this project.

- 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.

There are two scenic highways in the project area; however, neither has designated scenic turnouts.

- 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," Dominie, 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 that qualify as SRSNS 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 July 16, 2021. Scenic Quality Consultants reviewed the VIA for adequacy and provided the Department with comments dated July 31, 2021. In its comments, Scenic Quality Consultants stated that 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 states that there are three other wind energy developments, Weaver Wind, Hancock Wind, and Bull Hill Wind, with overlapping 8-mile study areas. However, no SRSNS for the proposed project are located within the overlapping study areas and no cumulative impacts are anticipated.
- 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 July 16 and October 28, 2021. The Department compared the current views of the project area from the scenic resources to the projected views depicted in the photo simulations.

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 16 structures and one historic district listed on the National Register of Historic Places located within eight miles of the project, the Department considered the evidence in the record that, except for the Gallison Memorial Library, there will be no visibility of the generating facilities from these SRSNS. The Department determined that, although the project will be partially visible from the Gallison Memorial Library, the scenic impact of the project will be Low because of the distance to the proposed turbines (3.9 miles to the closest turbine) and the number of turbines visible from the 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 these 17 SRSNS.

No project visibility is anticipated for the Machias River or Upper Cranberry Lake. For Mopang Lake, the Department finds the scenic impact of the project will be Low because of the distance to the proposed turbines (7.7 miles to the closest turbine) and the number of turbines visible from the SRSNS. The Department concluded that the overall scenic impact 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 TRC Solutions and Stantec Consulting 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. For each of the significant wildlife habitats or other subject wildlife discussed below, the Department determined that, through the final design of the project, the applicant has avoided and minimized alteration of the habitat and disturbance of subject wildlife to the minimum amount necessary to construct the project.

The Maine Department of Inland Fisheries and Wildlife (MDIFW) reviewed the proposed project and submitted comments to the Department.

- A. Vernal Pools. The applicant identified seven Significant Vernal Pools (SVP) plus two potential SVPs in the project area. The applicant proposes to directly impact one SVP depression directly adjacent to an existing road. The pool was previously altered by ditching along the existing road and the proposed impacts are confined to this area. The natural portion of the pool will remain intact. The impacts to this SVP did not qualify for a Permit-by-Rule (PBR) pursuant to Chapter 305 of the Department's rules. The impacts will include 0.02 acres of clearing and 0.02 acres of fill in the vernal pool and 32,359 square feet of impacts to the Critical Terrestrial Habitat of the SVP. The applicant proposes to make a contribution into the In-Lieu Fee program of the Maine Natural Resource Conservation Program (MNRCP) in the amount of \$7,991.77 to compensate for impacts to the SVP. The applicant applied for impacts to four significant vernal pools that qualify under PBR.
- B. Inland Waterfowl and Wading Bird Habitat. The applicant proposes to clear approximately 2.12 acres of upland located in a mapped Inland Waterfowl and Wading Bird Habitat (IWWH) and permanently alter 3.73 acres of upland area. The applicant also proposes to clear 0.12 acres of wetlands located in IWWH and permanently impact 0.31 acres of wetlands located in IWWH. The applicant proposes to use existing roads where possible and is proposing directional drilling for portions of the collector line to minimize impacts to IWWH. The applicant proposes to make a contribution into the In-Lieu Fee program of the MNRCP in the amount of \$120,738 to compensate for impacts to IWWH.
- C. Migrating Birds. The applicant retained Stantec 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 (spring 2016 and September 2015 to September 2016); breeding bird surveys (May and June 2016); grassland bird surveys (May to September 2016); acoustic bat survey (September 2015 to October 2016); and a nocturnal migration radar survey (September 2015 to October 2016). During the surveys, 10 bird species of Special Concern were observed in the project area. Seven bald eagle nest sites were observed during the surveys, the closest located within the project site. A great blue heron rookery is located 2.2 miles from the project. During surveys, seven heron nests were documented.

In comments to the applicant dated June 28, 2019, MDIFW expressed concerns about the proposed project's location in the Maine Coastal Plain. The comments cited MDIFW guidance that states "*The concentration of migratory birds in the coastal plain is greater than in other areas of Maine and the seasonal and daily movement patterns are unique for represented guilds, creating a very complex dynamic. . . concerns with migratory birds in the coastal plain involve passerines and shorebirds that are migrating through Maine at different times and from*

different directions.”² MDIFW stated that pre-construction nocturnal radar data collected at three proposed or operational wind project sites located in proximity indicated that the area has among the highest spring and fall passerine migration rates in New England, as well as low migrating bird flight heights relative to turbine heights. Additionally, the Downeast Coastal Plain region is prone to weather conditions that push migrating birds to lower flight heights.

MDIFW review comments dated September 23, 2020 reiterated concerns about impacts to migrating songbirds and the potential need for mitigation. In an email dated October 14, 2021, MDIFW stated that adequate and appropriate mitigation of anticipated and potential impacts to songbirds involves acquisition and active management of a sufficient quality and quantity of land for stop-over, refueling, and other critical needs, for land-bird migrants in the Downeast Coastal Plain.

To offset potential adverse impacts to migrating songbirds, the applicant proposes to purchase the approximate 692-acre parcel in Jonesport for preservation, proposed to be protected with a conservation easement held by Maine Coast Heritage Trust (MCHT) or other approved organization.

The applicant proposes to conduct a detailed field survey at the Jonesport mitigation site to establish the baseline of existing areal tree coverage, age, class, and species prior to submission of the final habitat management plan for the parcel. This information will be shared with Department and MDIFW and reflected in the final habitat management plan, which would be submitted to the Department for review and approval prior to commencement of commercial operation of the Project.

MDIFW commented that a land management plan should be designed and executed for the Mitigation parcel, and recommended that:

- All 325 acres of upland habitat (200 acres Mixed Shrubland/Early Successional Woodland; 125 acres Mixed Forested Upland) should be managed to achieve 20% shrub stage (3-4 ft.), 40% high shrub stage (6-8 ft.), and 40% sapling stage (10-20 ft.) within 15 years and maintained as such going forward. Minor modifications of these goals may be proposed for review and approval after collection of detailed site information on vegetational strata/habitat types.
- The site should be arranged in a mosaic pattern, with contiguous plot sizes of no more than 15 acres for shrub stage, 75 acres for high shrub stage, and 75 acres for sapling stage.
- The vegetation within each strata plot should consist of at least 50% native, energy dense, soft fruit or berry producing species.

² Maine Department of Inland Fisheries and Wildlife, *Avian Resources in Maine's Coastal Plain*, updated March 5, 2018.

- Vegetation monitoring should be conducted every three years. Any plots in which the 50% goal is not achieved should be augmented by planting container stock of suitable native soft fruit or berry producing species or suitable specimens from overstocked areas onsite such as, but not limited to, viburnum (wild raisin, arrowwood), high bush blueberry, winterberry, dogwood (silky, red osier), spicebush, raspberry, blackberry, etc. known to be of value to migrating songbirds.
- Deed restrictions/covenants must specify that the property is to be managed for migrating songbird habitat in perpetuity with dispersed recreational use only.

The land management plan must be developed and submitted to the Department for review and approval prior to commercial operation of the project.

The applicant must acquire the Mitigation parcel within six months of permit issuance and must provide evidence at that time to the Department that (a) the Mitigation parcel includes legal access from Indian River Road all the way to the Mitigation parcel boundary, or (b) to the extent that the Mitigation parcel does not include the legal right or if an existing road does not extend all the way to the Mitigation parcel boundary, then the applicant must provide additional surveyed access so that there is continuous legal access from Indian River Road to the Mitigation parcel boundary.

The project also has documented use by upland sandpipers. Upland sandpipers (UPSA), a State Threatened species, nest only on the ground and use both native and cultivated grasslands for nesting sites. UPSA are protected under Maine's Endangered Species Act and, as such, are afforded special protection against activities that may cause "take" (kill or cause death), "harassment" (create injury or significantly disrupt normal behavior patterns), and other adverse actions.

In review comments dated June 28, 2019, MDIFW stated there are significant concerns with potential direct impacts (collision, habitat loss) and indirect impacts (habitat displacement) to UPSA from a wind energy facility in this proposed project area. These concerns are unique to this area of the state based on the significance of the Downeast Coastal Plain to UPSA, as well as habitat preferences and behavioral traits of this species. Studies have reported displacement of UPSA at distances from 100-800 meters of turbines.

As noted in MDIFW's Avian Resource Guidance, "*Upland sandpipers are grassland birds that are easily displaced from their habitats and placed at risk during characteristic aerial courtship displays and local movements of broods during the nesting and premigration season, if in proximity to large structures.*" Upland sandpipers (and whimbrels, a bird species of special concern) "have

unique habits that subject them to increased risks, with the potential for population-level changes in Maine.”³

Through modification in the design process, the applicant was able to site all of the turbines outside of UPSA habitat. To offset potential adverse impacts to UPSA, the applicant proposes to protect a 504-acre parcel in T18 MD BPP through the execution of deed restrictions. Draft deed restrictions were submitted to the Department for review. The land must be actively managed for blueberry cultivation or maintained as an open landscape to provide suitable UPSA habitat.

Within 30 days from the date of this Order, the applicant must record the deed restrictions for the UPSA mitigation parcel and submit the recorded deed restrictions to the Department within 30 days of the recording. The deed restrictions must be binding for the life of the project, including if the project is transferred to a different owner. At the time the project is successfully decommissioned, the deed restrictions may be removed from the parcel.

- D. 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 2015-2016. There are no known hibernacula in the project area.

The applicant proposes to follow MDIFW’s 2018 Guidance that recommends turbines operate only at cut-in wind speeds exceeding 6.0 meters per second (m/s) from at least ½ hour before sunset to at least ½ hour after sunrise during the period from April 15 to September 30, when the ambient air temperature is at or above 32 degrees Fahrenheit (F), measured at both ground level and nacelle hub height. MDIFW subsequently recommended increased curtailment during the period July 16 to September 15 for the proposed project. Accordingly, the applicant proposes to implement MDIFW’s recommended curtailment of 6.0 m/s for the period April 15 to July 15; 6.5 m/s for the period July 16 to September 15; and 6.0 m/s for the period September 16 to September 30; from ½ hour before sunset to ½ hour after sunrise and when ambient temperatures are at or above 32 degrees F.

MDIFW did not recommend formal Post-Construction Mortality Monitoring for either bats or birds. However, MDIFW recommended 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” will 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

³ Maine Department of Inland Fisheries and Wildlife, *Avian Resources in Maine’s Coastal Plain*, updated March 5, 2018.

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.

- E. Fisheries. A total of 19 streams are located in the project area. Of the nineteen streams, ten were characterized by the applicant as perennial; eight were characterized as intermittent; and one was characterized as ephemeral. Seven bridge or box culvert crossings of six perennial streams and one intermittent stream are proposed, as well as one culvert crossings of an ephemeral stream and two temporary mat crossings of one perennial and one intermittent stream.

MDIFW recommended maintaining 100-foot undisturbed, forested buffers from the upland edge of all intermittent and perennial streams and any contiguous wetlands. MDIFW also recommended that the applicant implement StreamSmart crossing standards and construction BMPs, that any necessary instream work to occur between July 15 and October 1. The applicant stated that all stream crossings will be installed to meet the MDIFW recommendations. MDIFW noted the extent to which the applicant had gone to avoid and minimize impacts to riparian buffer areas but stated that if the proposed buffers are not able to be maintained as recommended, that these areas may require mitigation. The applicant commented that almost all of the proposed stream crossings are proposed at existing crossing sites and will not impact riparian buffers with the exception of two new crossings. The proposed new crossings are not in any areas with documented Rare, Threatened or Endangered (RTE) species. The Department considered MDIFW comments and determined that mitigation is not required because the applicant has demonstrated avoidance and minimization in the design of the crossings and was able to design the project using many existing crossings.

The project is located in the Machias, Pleasant, and Narraguagus Rivers watersheds, which are designated as critical habitat for Atlantic Salmon. The proposed project was reviewed by the Department of Marine Resources (DMR). DMR stated they have no concerns regarding this project.

- F. Invasive Species. In its comments, MDIFW stated that invasive plant species have the potential to diminish the habitat values currently found on site and that care should be taken to avoid the introduction of invasive plant species during construction. MDIFW recommended that all construction vehicles be cleaned prior to initiating work on the construction site, or re-entering to remove soil, seeds, vegetation, and other debris. In addition, MDIFW recommended that all equipment is inspected prior to off-loading to ensure cleanliness.
- G. Meteorological Towers. The project includes one permanent Meteorological Tower. MDIFW recommends that the tower height is less than 200 feet, as towers below this height do not require lighting which can attract birds and result in increased mortality. If a reduction in height is not possible, MDIFW recommends that the tower lighting be flashing white strobe lights with a

maximum off period between flashes. Consistent with U.S. Fish and Wildlife Service guidelines, MDIFW also recommends the use of Aircraft Detection Lighting System (ADLS) and stated that monopole designs are preferred over lattice-type towers. If guy wires must be used, MDIFW recommends that bird diverters (of the “flapper” variety) be installed on the guy wires as per the U. S. Fish and Wildlife Service Recommended Best Practices for Communication Tower Design, Siting, Construction, Operation, Maintenance, and Decommissioning (April 2018) guidelines. MDIFW further recommended that towers be inspected annually for the life of the project, prior to the Spring migration season, and if it is discovered that more than 20 percent of the installed diverters are no longer on the guy lines or are otherwise inoperable, the diverters should be immediately repaired or replaced so that the tower is restored to being fitted with the original number of diverters. If greater than 80 percent of the diverters still remain appropriately attached during the inspection and are operational, any repairs or replacements should be made during regularly scheduled tower maintenance visits. MDIFW also recommended that the sleeves over the guy wires extend from the ground level up to approximately 12-15 feet in vertical height. All loops of excess wire should be eliminated, but if excess wire is required for future application, then loops of excess wire should be tied off at a height of 20-25 feet above the ground (well above snowpack) instead of near ground level to isolate it from wildlife. Additionally, MDIFW recommended that all construction materials (i.e., cable, rope, loose fencing) is either cleaned up and removed from the site or adequately stored and secured to further prevent/reduce entanglement of wildlife.

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. The Department finds the proposed turbine curtailment regime is adequate to minimize potential adverse impacts to bats provided that the applicant records all discovered bat or bird mortalities as described above.

Based on the information in the record, the Department finds that the applicant has demonstrated that the proposed project has avoided and minimized impacts to significant wildlife habitats. The Department further finds that the proposed project will not result in significant adverse impacts to fisheries and wildlife provided that the applicant follows MDIFW’s invasive species and meteorological tower recommendations, that the In-Lieu Fee contributions for impacts to IWWH and vernal pools are made prior to the start of project construction, that the deed restrictions for the upland sandpiper mitigation parcel are recorded within 30 days from the date of this Order, that the migratory bird mitigation parcel in Jonesport is acquired allowing for adequate legal access within six months from the date of this Order, and that a land management plan for the migratory bird mitigation parcel is developed and submitted to the Department for review and approval prior to commercial operation of the project, all as described above.

7. HISTORIC SITES:

The Maine Historic Preservation Commission reviewed the proposed project as well as a Phase 1 archaeological survey report 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 also determined that the proposed project is not anticipated to have an unreasonable adverse effect on existing uses related to the scenic character of nearby historic places discussed in Finding 5(A)(2) above.

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 Maine Natural Areas Program (MNAP) reviewed the proposed project. In its review comments, MNAP stated that based on survey results by Stantec in 2016 and 2019, the project site contains two rare plant species, Canada Mountain-rice Grass (*Piptatheropsis canadensis*) and Bog Jacob's-ladder (*Polemonium vanbruntiae*).

The applicant submitted the "Downeast Wind Project Vegetation Management Plan" (VMP), dated March 2021, detailing methods for clearing, restoring, and maintaining vegetation, including in areas near rare plant communities.

To avoid impacts to the Bog Jacob's-ladder, the applicant proposes to use horizontal directional drilling for collection line installation. The VMP proposes a 50-foot consultation area around Bog Jacob's-ladder. MNAP stated the consultation area should be expanded to 250 feet. Prior to the application of herbicide or the removal of vegetation with 250 feet of Bog Jacob's-ladder, the applicant must contact MNAP and request a consultation.

Canada Mountain-rice Grass will experience both temporary and permanent impacts from the proposed project. However, MNAP states that the proposed project will create potentially suitable habitat in excess of the disturbed area. The applicant proposes to use a restoration seed mix in areas where soil is disturbed during construction. Details of the seed mix, including species contained, must be submitted to the Department for review prior to application.

All mowing of the underground collection line corridor must be completed before June 1 or after August 15 of any calendar year.

The Department finds that the proposed development will not have an adverse effect on unusual natural areas either on or near the development site provided that the applicant meets the above requirements.

9. BUFFER STRIPS:

The applicant proposes to establish buffers for stormwater management and streams. Stormwater buffers are discussed in Finding 11. The applicant submitted the Downeast VMP, dated March 2021, detailing methods of removing and maintaining vegetation in stream buffers and near State-listed rare plants. With the exception of stream crossings, minimal disturbance is proposed within 100 feet of all streams.

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 Bureau of Land Resources (BLR). The applicant stated that a final Blasting Plan will be submitted if blasting is necessary to construct the project. BLR stated that the plan needs to be submitted only if blasting for construction will occur within 500 feet of non-owned off-site structures (buildings and wells). If submitted, the plan must include a map showing anticipated blast locations and must be prepared and signed by a qualified blaster. The plan must include blasting standards set forth in 38 MRS §490-Z (14) and include an anticipated blast design/shot pattern specifically tailored to the project site. If a rock crusher is being utilized on site, the applicant must ensure that the crusher is licensed by the Department's Bureau of Air Quality and is being operated in accordance with that license.

The Department finds that, based on survey map and report and BLR'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 applicant meets the above requirements if blasting will occur within 500 feet of non-owned off-site buildings or wells.

11. STORMWATER MANAGEMENT:

The proposed project includes approximately 114.1 acres of developed area, of which 114.1 acres is impervious area. It lies within the watershed of Mopang Stream, Upper Pleasant River, Lower Pleasant River, Harrington River, and Schoodic Lake. The applicant submitted a stormwater management plan based on the Basic, General, Phosphorus 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 25 ditch turnout buffers, 117 buffers with level spreaders, 51 roadside buffers, six underdrained soil filters and 23 infiltration trenches.

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, and revised in response to the comments of, the Bureau of Land Resources (BLR).

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.

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. 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.

(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, and revised in response to the comments of, BLR. The applicant will be responsible for the maintenance of the stormwater management system.

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

Based on BLR's 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), provided the applicant retains a third-party engineer and conducts a pre-construction meeting as described above.

B. General and Phosphorus 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 for the Mopang Stream, Upper Pleasant River, Lower Pleasant River, and Harrington River watersheds. 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 portions of the proposed project in these watersheds that meet the definition of "a linear portion of a project" in Chapter 500, 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.

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 construction, the location of buffers must be permanently marked on the ground. The applicant must execute and record all required deed restrictions prior to the commencement of commercial operations and must submit a copy of the recorded deed restrictions to the Department within 60 days of the recording.

The proposed infiltration system was reviewed by staff from BLR. The applicant must ensure that the discharge of soluble pollutants to the infiltration area is minimized, and that the infiltration area is maintained to assure that its capacity is unimpaired. Based on BLR's review, the Department does not anticipate that the infiltration area will adversely impact groundwater quality.

Because of the proposed project's location in the watershed of Schoodic Lake, stormwater runoff from the project site will be treated to meet the phosphorus standard outlined in Chapter 500, § 4(D). The applicant's phosphorus control plan was developed using methodology developed by the Department and outlined in "Phosphorus Control in Lake Watersheds: A Technical Guide for Evaluating New Development". For the portion of the proposed project in the Town of Columbia, the Permitted Phosphorus Export is .077 pounds of phosphorus per year. The predicted phosphorus export for the project site based on the applicant's model is .056, which meets the standard. For the portion of this project in T 18 MD, the Permitted Phosphorus Export (PPE) is 2.31 pounds of phosphorus per year. The predicted phosphorus export for the project site based on the applicant's model is 1.12, which meets the standard. The applicant also proposes to treat 2.18 acres of existing road, which assigns a mitigation credit of 1.15 pounds of phosphorus per year. This results in a reduction of 0.03 pounds of phosphorus per year below the PPE and it meets the standard. The proposed stormwater treatment will be able to reduce the export of phosphorus in the stormwater runoff below the maximum permitted phosphorus export for the site.

The stormwater management system proposed by the applicant was reviewed by, and revised in response to comments from, BLR. After a final review, BLR commented that the proposed stormwater management system is designed in accordance with the General and Phosphorus Standards contained in Chapter 500, § 4(C) and recommended that the applicant retain the design engineer or other qualified professional to oversee the construction of the stormwater management structures according to the details and notes specified on the approved plans. Within 30 days of completion of the entire system, as-built plans must be submitted to the Department. If the project takes more than one year to complete, then at least once per year, the applicant must submit a log of inspection reports detailing the items inspected, photographs taken, and dates of each inspection to the BLR for review.

Based on the stormwater system's design and BLR's review, the Department finds that the applicant has made adequate provision to ensure that the proposed project will meet the General and Phosphorus Standards contained in Chapter 500, § 4(C) provided that, prior to the start of construction, the buffer locations are marked on the ground, deed restrictions are recorded, and the installation of the stormwater management system is overseen by the design engineer and as-built plans or annual reports are submitted as described above.

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.

BLR 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 BLR's 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 located over several significant mapped aquifers as confirmed by a BLR geologist. The proposed project does not propose any withdrawal from, or discharge to, groundwater.

The applicant submitted a draft Spill Prevention and Countermeasure Control plan (SPCC) dated May 2020. The plan details protocol for preventing spills as well as response measures. A final SPCC plan must be submitted to the Department prior to operation of the facility for review and approval. The final SPCC plan must include locations of any temporary construction support or materials storage buildings.

The Department finds that the proposed project will not pose an unreasonable risk that a discharge to a significant groundwater aquifer will occur. Therefore, the Department further finds that the proposed project will not have an unreasonable adverse effect on ground water quality provided that prior to operation, the final SPCC plan is submitted to the Department for review and approval.

13. WATER SUPPLY:

When completed, the proposed O&M building is anticipated to use 281 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 by a well driller and this information was reviewed by, and revised in response to comments from, BLR.

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

14. WASTEWATER DISPOSAL:

Wastewater for 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 10. The individual system must be designed to meet the requirements of the Maine State Plumbing Code. This information was reviewed by, and revised in response to comments from, BLR.

Based on BLR'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 30 cubic yards of general solid waste per year. All general solid wastes from the proposed project will be disposed of at Penobscot Energy Recovery Company, which is currently in substantial compliance with the Maine Solid Waste Management Rules.

The proposed project will generate approximately 30,150 tons of stumps and grubbings. If material is hauled off-site for processing, the applicant must submit a proposed disposal plan to the Department for review and approval prior to any removal from the project site. If material will be processed on-site, and the chipper will be there for more than 30 days, the site will need a processing facility license from the Department's Bureau of Remediation and Waste Management. The processing facility license must be obtained prior to the use of a chipper on-site, and a copy provided to the Department for review within 30 days of issuance.

The proposed project will generate approximately 2,600 cubic yards of construction debris and demolition debris. All construction and demolition debris generated will be disposed of at Juniper Ridge 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 provided that prior to moving stumps and grubbings off-site, the applicant submits a disposal plan for review and approval or if the material is processed on site, the applicant obtains a processing facility license from the

Bureau of Remediation and Waste Management and submits a copy of that license to the Department.

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 67,998 square feet of forested, scrub shrub, and emergent wetland and to clear 82,430 square feet of forested wetland to construct the wind energy facility. Of the direct wetland impacts, 22,182 square feet are impacts proposed to wetlands of special significance, including wetlands subject to flooding and wetlands containing aquatic vegetation.

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. Additionally, for activities proposed in, on, or over wetlands of special significance the activity must be among the types listed in Chapter 310, § 5(A) or a practicable alternative less damaging to the environment is considered to exist and the impact is unreasonable. Impacts to wetlands of special significance for crossings by road and utility are among the activities specifically provided for in Chapter 310, § 5(A)(1)(b).

The applicant submitted an alternatives analysis for the proposed project completed by TRC. The purpose of the project is to construct a renewable energy facility. The applicant used multiple criteria when determining a suitable project site, including proximity to the electrical grid connection, wind resources, and site viability. After completing wildlife surveys, wetland delineation, and consultation with MDIFW, the applicant reduced the proposed number of turbines from an initial number of 57 to 30 to avoid wetland and wildlife impacts. The applicant designed the turbine pads to avoid any impacts to wetlands.

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 use existing roads, when possible, for access and to co-locate electrical collection lines to minimize impacts. Additionally, the applicant proposes to utilize horizontal directional drilling for the collection line installation to reduce impacts to streams by 9,609 square feet; wetland impacts by 167,798 square feet; vernal pool critical terrestrial habitat impacts by 71,819 square feet; and IWWH by 104,322 square feet.

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 and groundwater recharge/discharge. 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 \$331,504. Prior to the start of construction, the applicant must submit a payment in the amount of \$331,504, 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 the applicant makes the In-Lieu Fee contribution prior to the start of construction.

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 proposed 33 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 220 receptors. There are no properties on which the applicant has obtained an easement for shadow flicker. The applicant's WindPRO analysis concluded 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 1,107 feet. A review of the application shows that all turbines (other than the three alternate turbine locations) are set back more than 1,200 feet from the nearest non-participating landowner and approximately 3,225 feet from the nearest private residence.

Prior to the start of construction at any of the alternate turbine locations, the applicant must submit evidence to the Department that the alternate turbine location meets all setback specifications for review and approval.

The turbines are equipped with monitoring systems. The applicant proposes to monitor the turbines remotely 24 hours a day and stated that the turbines will automatically shut down in the event of an abnormal temperature, voltage, or current reading. The turbines will also be equipped with an ionization smoke detector. A turbine will cease operation if smoke or heat are detected or in the event of a detection system failure.

The applicant submitted letters from the Maine Forest Service, the Epping Volunteer Fire District, and the Deblois Fire Department, all of which state that none of the agencies anticipate an adverse impact on fire services from the proposed project. The applicant submitted a draft Emergency Action Plan. The applicant proposes to submit a final Emergency Action Plan once developed. The plan must be submitted to the Department prior to the commencement of commercial operations at the facility. The applicant must notify the Department within 48 hours of any fire event that causes one or more turbines to cease generating electricity.

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, provided that the applicant submits a final Emergency Action Plan prior to the commencement of commercial operations and notifies the Department in the event of a fire as described above.

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 has provided financial assurance in the amount of \$3,103,900 in the form of a surety bond. 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 at the time of decommissioning, the applicant submits a plan for continued beneficial use of any wind energy development components proposed to be left on-site and that the applicant reevaluates the decommissioning costs at least once every two years and submits a report and updated financial assurance to the Department for review.

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 host communities, including economic benefits and environmental benefits.

- A. Job Creation. The applicant states that its proposal will benefit the host communities and surrounding areas through construction-related employment opportunities. The applicant has indicated that they will hire local vendors when feasible for supplies related to 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 approximately 164 full-time jobs during project construction/development and six permanent jobs for the operation and 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 417 gigawatt-hours per year.
- C. Property Tax Payments. The applicant has executed 20-year Tax Increment Financing (TIF) agreements with the Town of Columbia and Washington County in the amount of \$1,952,503 and \$3,006,357 respectively over 20 years. Upon Year 21 of operation, the applicant will begin to pay an anticipated annual payment of approximately \$150,000 to the Town of Columbia and \$231,000 to Washington County for property taxes for the life of the project. The applicant must report on taxes paid on the project, broken down by taxing jurisdiction, as part of its annual tangible benefits report, described below.
- D. Community Benefits Agreement. The applicant proposes community benefit agreements with the Town of Columbia (\$181,398/year) and Washington County (\$328,440/year). The above payments will be made yearly for 20 years. The communities 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 Columbia and Washington County as part of the Community Benefits Agreements total approximately \$17,000 per turbine per year for 20 years, which exceeds the \$4,000 per turbine per year for 20 years required in 35-A M.R.S. § 3454(2). Additionally, the applicant proposes a one-time payment in the amount of \$250,000 to the Town of Columbia and a one-time payment in the amount of \$500,000 to Washington County.
- E. Other tangible benefits. The applicant administers a Community Grant Program, as well as various community support efforts including a scholarship program.

- F. Tangible benefit reporting. The applicant proposes to submit a report to the Department regarding the tangible benefits realized from the project. The applicant proposes that no later than March 31 following the first year of commercial operation (denoted as Year 1 of operation), the applicant will report on the tangible benefits realized from the construction of the project and provide documentation of the project's community benefits packages and any payments made pursuant to such packages at the time of reporting. The applicant will 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.

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 communities and surrounding area pursuant to 35-A M.R.S. § 3454, provided that annual payments are made to the Town of Columbia and Washington County and that the applicant submits annual reports on the tangible benefits, all as described above.

23. MAINE LAND USE PLANNING COMMISSION CERTIFICATION:

The proposed project was reviewed by the LUPC to determine whether the project is an allowed use in the subdistricts affected and whether the project meets the LUPC's land use standards applicable to the project that are not considered in the Department's review. The LUPC standards applicable to this project include land division history; vehicular circulation, access, and parking; lighting; minimal dimensional requirements; vegetation clearing; signs; activities in flood prone areas; and general criteria for approval.

In Commission Determination #SLC-14, dated October 13, 2021, and signed by Judith C. East, Executive Director, the LUPC certified that the project conforms with the applicable regulatory and statutory requirements, and plans adopted pursuant to 12 M.R.S. Chapter 206-A, and meets the Commission's Land Use Standards applicable to the project that are not considered in the Department's review, subject to conditions of approval. The conditions of approval, detailed in the Commission Determination, may be enforced by either the LUPC or the Department.

24. 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 fill in freshwater wetlands and to minimize intrusion into significant wildlife habitats. Buffers are proposed to minimize impacts to streams and wetlands and 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 migrating birds.

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.
- 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 outlined in Findings 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.
- 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 outlined in Findings 4, 5 and 8.
- 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.
- 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 outlined in 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 outlined in 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 15.
- 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 DOWNEAST WIND, LLC to develop 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. 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 that meets all applicable standards of Chapter 375, § 10(I)(7)(j).
5. 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.
6. Within 60 days of a determination of sound level non-compliance by the Department, the applicant shall submit to the Department, for review and approval, a mitigation plan that proposes actions to bring the project into compliance.
7. The applicant shall demonstrate compliance with the Department's and the Town of Columbia's Noise Regulations once during the first year of operation and every fifth year thereafter until the facility is decommissioned. The applicant shall include post-construction sound monitoring at Receptor R3 and Receptor R4. At least six of the 12 test periods to be used in the compliance test report shall represent nighttime (7:00 p.m. to 7:00 a.m.) conditions during which the sound level limit is 42 dBA, and the applicant shall include a complete presentation of the data and calculations for the SDRS analysis. 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 shall meet all applicable standards of Chapter 375, § 10(I)(8), which specify the methods for measuring sound and the information to be reported to the Department for review.
8. The applicant shall determine the best times of year to achieve noise post-construction test protocol conditions and submit a report prior to commercial operation of the facility to the Department for review prior to commercial operation.

9. The applicant shall submit a Winter Operating Protocol to the Department for review and approval prior to the commencement of commercial operation of the development.
10. The applicant shall not operate the six southern turbines in the Town of Columbia closest to receptors R3 and R4 during the nighttime winter operations until a Winter Operating Protocol is approved by the Department.
11. If land clearing debris is hauled off-site for processing, the applicant shall submit a proposed disposal plan to the Department for review and approval prior to any removal from the project site. If material will be processed on-site, and the chipper will be there for more than 30 days, the applicant shall obtain a processing facility license from the Bureau of Remediation and Waste Management prior to the use of a chipper on-site and submit a copy to the Department for review within 30 days of issuance.
12. Radar Assisted Lighting 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.
13. 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.
14. Prior to construction the applicant shall make a contribution of \$485,934 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 to compensate for impacts to vernal pools, freshwater wetlands and IWWH.
15. Within 30 days of the date of this Order, the applicant shall record the deed restrictions for the upland sand piper mitigation parcel and submit the recorded deed restrictions to the Department within 30 days of the recording.
16. The applicant shall acquire the migratory songbird Mitigation parcel within six months of the date of this Order and shall provide evidence at that time to the Department that (a) the Mitigation parcel includes legal access from Indian River Road to the Mitigation parcel boundary, or (b) to the extent that the Mitigation parcel does not include the legal right to use the entirety, or if an existing road does not extend all the way to the Mitigation parcel boundary, then the applicant must provide additional surveyed access so that there is continuous legal access from Indian River Road to the Mitigation parcel boundary.
17. The applicant shall submit for review and approval a final management plan for the migratory songbird mitigation parcel and receive approval prior to commercial operation.


18. The applicant shall require facility staff to record all discovered mortalities of bats and birds in an annual log. Whenever possible, any carcasses (especially bats) must be collected, stored in plastic bags, and frozen with labels noting the date, time, and nearest turbine number. A "Scientific Collection Permit" shall be obtained from MDIFW for this collection of specimens. 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.
19. All construction vehicles shall be cleaned prior to initiating work on the construction site, or reentering to remove soil, seeds, vegetation and other debris and all equipment shall be inspected prior to off-locating to ensure cleanliness.
20. The applicant shall implement MDIFW's recommended curtailment of 6.0 m/s for the period April 15 to July 15; 6.5 m/s for the period July 16 to September 15; and 6.0 m/s for the period September 16 to September 30; from ½ hour before sunset to ½ hour after sunrise and when ambient temperatures are at or above 32 F.
21. The meteorological towers shall be less than 200 feet in height or lighted and inspected annually. If more than 20% of the installed diverters are no longer on the guy lines, the diverters shall be immediately repaired or replaced. The sleeves over the guy wires shall extend from the ground level up to approximately 12-15 feet in vertical height and if there is any excess wire, then loops of excess wire should be tied off at a height of 20-25 feet above the ground.
22. Prior to the application of herbicide or the removal of vegetation with 250 feet of Bog Jacob's-ladder, the applicant shall contact MNAP and request a consultation.
23. Details of the restoration seed mix, including species contained, shall be submitted to the Department for review prior to application.
24. All mowing of the underground collection line corridor shall be performed before June 1 or after August 15 of any calendar year
25. 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.
26. 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.
27. The design engineer or other qualified professional shall oversee the construction of the stormwater management structures according to the details and notes specified on the approved plans. Within 30 days of completion of the entire system, as-built plans shall be submitted to the Department. If the project takes more than one year to complete, at least once per year, the applicant shall submit a log of inspection reports detailing the items inspected, photographs taken, and dates of each inspection to the BLR for review.

28. The applicant shall execute and record all required stormwater buffer 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.
29. The applicant shall submit a final SPCC Plan to the Department for review and approval prior to operation of the facility.
30. If blasting for construction will occur within 500 feet of non-owned off-site structures (buildings and wells), the applicant shall submit a final blasting plan to the Department for review. If submitted, the plan shall include a map showing anticipated blast locations and shall be prepared and signed by a qualified blaster. The plan shall include blasting standards in the statute, 38 MRS §490-Z (14), and include an anticipated blast design/shot pattern specifically tailored to the project site.
31. 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.
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 submit evidence to the Department that the any of the three alternates turbine locations meet all setback specifications for review and approval prior to start of construction at any of the three alternate turbine locations.
35. The applicant shall submit a final Emergency Action Plan to the Department prior to the commencement of commercial operations at the facility.
36. 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.

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 9th DAY OF DECEMBER 2022.

DEPARTMENT OF ENVIRONMENTAL PROTECTION

BY: 

For: Melanie Loyzim, Commissioner

FILED
December 9th, 2022
State of Maine
Board of Environmental Protection

PLEASE NOTE THE ATTACHED SHEET FOR GUIDANCE ON APPEAL PROCEDURES.

JD/L29007ANCNDNENFNGN/ATS#87565&87619&87620&87621&87622&87623

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.
