



STATE OF MAINE
DEPARTMENT OF AGRICULTURE, CONSERVATION & FORESTRY

PAUL R. LEPAGE
GOVERNOR

22 STATE HOUSE STATION
AUGUSTA, MAINE 04333-0022

WALTER E. WHITCOMB
COMMISSIONER

NICHOLAS LIVESAY
EXECUTIVE DIRECTOR

Maria Lentine-Eggett
Maine Department of Environmental Protection
Eastern Maine Regional Office
106 Hogan Road
Bangor, ME 04401

June 24, 2013

RE: Amendment A to Site Law Certification SLC-2, Hancock Wind Project, Hancock Wind, LLC; T16 MD BPP, T22 MD BPP, and Osborn, Hancock County

Dear Maria:

Enclosed is a copy of Amendment A to Site Law Certification SLC-2 for the Hancock Wind Project that will be located in T16 MD BPP, T22 MD BPP and Osborn, Hancock County. Amendment A to SLC-2 was approved by the LUPC staff on June 20, 2013. This certification is not a final agency action, as it will be contained within any Department of Environmental Protection Site Location of Development permitting decision for this project. Also, please note that because this amendment to the certification is a staff decision, within 30 days of the date of the approval of the amended certification an aggrieved person may request that the Commission review the decision. *See* final paragraph of the amended certification, page 7.

Should you have any further questions or if I may be of assistance, please contact me at the LUPC's Augusta office, at (207) 287-4933.

Sincerely,

A handwritten signature in black ink that reads 'Marcia Spencer-Famous'.

Marcia Spencer-Famous, Senior Planner
Planning Division

Enclosure: LUPC Amendment A to Site Law Certification SLC-2

xc: SLC-2 file
DEP Site Location of Development permit L-25875-24-A-N

cc: Dave Fowler, First Wind
Josh Bagnato, First Wind
Kelly Boden, Esq., Verrill Dana
Brooke Barnes, Stantec
Joy Prescott, Stantec





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Certification

Department of Environmental Protection
regarding:
Hancock Wind, LLC
Amendment A to Site Law Certification SLC-2

The staff of the Maine Land Use Planning Commission, after reviewing the application and supporting documents submitted by Hancock Wind, LLC for Amendment A to Site Law Certification SLC-2, finds the following facts:

1. *Person Requesting the Amendment to the Certification:* Hancock Wind, LLC
129 Middle Street, 3rd Floor
Portland, ME 04101
2. *Accepted as Complete for Processing:* May 30, 2013
3. *Location of Proposal:* T16 MD BPP and T22 MD BPP, Hancock County
 - A. T16 MD BPP – Plan 1, Lot 1– Lease agreement with landowner Lakeville Shores, Inc.; and easement agreement with Lakeville Shores, Inc. and Blue Sky East, LLC (Bull Hill Wind Project owner and lease holder)
 - B. T22 MD BPP – Plan 1, Lot 1 (Easement agreement, landowner Ursa Major, LLC)
4. *Current Zoning:* (M-GN) General Management Subdistrict
Additionally, the Project will be located entirely within the expedited permitting area for wind energy development.
5. *Permanent project area.* Clearing of 54 acres for turbines and other permanent structures, excluding the above-ground 34.5 kV collector line corridor

INTRODUCTION

6. Public Law 2011, Chapter 682 (enacting LD 1798) shifted the primary permitting authority for grid-scale wind energy development located in the unorganized areas of Maine from the Land Use Planning Commission (the Commission or the LUPC) to the Maine Department of Environmental Protection (DEP), effective September 1, 2012. When a grid-scale wind energy development in an unorganized area is proposed, the DEP reviews the project under the Site Location of Development Law (Site Law) for a Site Location of Development permit, and the Commission must review a request for certification that the project is an allowed use in the subdistricts affected and that the project meets the Commission's Land Use Standards applicable to the project that are not considered in the DEP review. *See* 12 M.R.S.A. § 685-B(1-A)(B-1).

The following Findings, Conclusions and Conditions constitute Amendment A to the Commission's Site Law Certification SLC-2 that the Hancock Wind Project, as proposed to be amended by adding two temporary meteorological towers, is a use allowed in the affected General Management Subdistrict (M-GN), and meets the applicable Land Use Standards that are not considered in the DEP review.

PROPOSAL

7. *Administrative history.* On January 14, 2013, Hancock Wind, LLC submitted to the Commission a copy of a DEP Site Law/ Natural Resources Protection Act (NRPA) application¹ for the Hancock Wind Project (the Project), which included Section 31 addressing the Commission's criteria for certification.
 - A. *Project description.* The proposed Project is a grid-scale wind energy development to be located in the expedited permitting area for wind energy development in T22 MD BPP, T16 MD BPP, and the Town of Osborn² in Hancock County. The Project will consist of eighteen (18) 3.0 megawatt wind turbines; up to two (2) 344 foot tall permanent met towers; up to three (3) 344 foot tall temporary met towers to be placed within the turbine pads and removed prior to operation; new and upgraded access roads; 34.5 kV collector lines; a substation to be located at the site of the existing substation serving the Bull Hill Wind Project; up to ten (10) temporary office/storage trailers; and up to thirteen (13) temporary lay-down areas. The Project will connect to the New England electrical grid by the existing 115 kV Bangor Hydro Electric Company's Line 66 transmission line, at the same location as the existing Bull Hill Wind Project. The Project's Operations & Maintenance facility will be located in the organized town of Aurora, and is not the subject of the certification. *See* Finding #8 of SLC-2 for a more detailed description of the Project features.
 - B. *Affected subdistricts.* The proposed Project will be located within the following subdistricts: General Management Subdistrict (M-GN) and Shoreland Protection Subdistrict (P-SL2). There are jurisdictional wetlands identified by on-site delineation within the Project area, but none of the Wetland Protection Subdistricts (P-WL) mapped by the Commission will be affected.
 - C. *Public notice.* On January 5, 2013, a combined DEP/ LUPC public notice of intent to file the Site Location of Development permit application and the certification request was published in the Bangor Daily News. The notice was sent on January 2, 2013 by Hancock Wind to abutters to the proposed

¹ DEP #L-25875-24-4-N/L-25875-2F-B-N

² The Town of Osborn is organized, with the Land Use Planning Commission providing land use planning, zoning, permitting and enforcement functions.

Project and to other parties by U.S. Postal Service mail. The public notice stated that anyone wishing to request a public hearing on the certification and to petition the Commission for leave to intervene must do so within 20 days of the certification materials being accepted by the LUPC as complete for processing. No public comments, requests for a public hearing or petitions to intervene were received by LUPC staff.

- C. *DEP request for certification.* On January 16, 2013, the DEP requested that the Commission review Hancock Wind's Site Law application materials applicable to the request for certification, and provide a certification determination to the DEP for inclusion in the DEP's Site Location of Development permitting decision stating whether the Project is an allowed use in the subdistricts affected and whether the Project complies with the Commission's Land Use Standards not also considered by the DEP.
 - D. *Allowed use determination.* By letter dated January 24, 2013, the Commission, through its staff, certified to the DEP that the Project is an allowed use in the subdistricts in which it is proposed. LUPC staff also deemed the certification request complete for processing on January 24th.
 - E. *Title, Right or Interest.* On January 17, 2013, the DEP accepted Hancock Wind's application as complete and ready for processing. Based on the actions by the DEP and Condition #6 of SLC-2, the Commission concluded that Hancock Wind has administrative standing to request certification of the Project.
 - F. *Certification determination.* On April 5, 2013, the Commission granted approval for Site Law Certification SLC-2, which was then sent to the DEP staff for inclusion in the Site Location of Development permit decision for this Project.
 - G. *Application for a development permit submitted to the LUPC and withdrawn.* In January 2013, Hancock Wind submitted to the LUPC staff a development permit application for two temporary meteorological towers that would have been located within the Project area being reviewed by the DEP under Site Law. On January 31st, DEP determined that the two proposed temporary met towers would need to be included as a part of the pending Site Location permit application and could not be treated as a stand-alone permit application submitted to the LUPC. DEP referenced 38 M.R.S.A. section 485-A, stating, "Any person who has notified the commissioner, pursuant to section 485-A, of intent to construct or operate a development shall immediately defer or suspend construction or operation of that development until the department has issued an order." On February 15th, the applicant withdrew its proposal before the LUPC, and then on May 30th submitted the request to the DEP to add the two temporary met towers to the pending Site Location of Development permit application.
8. *Proposed addition of two temporary met towers to the Project.* The applicant proposes to add two (2) temporary met towers to the Project: Met tower site #1584 in T16 MD BPP, and met tower site #1585 in T22 MD BPP. The met tower at site #1584 will be located 600 feet from Turbine #2; and the met tower at site #1585 will be located 1360 feet from Turbine #12. Both temporary met towers will be located within the M-GN Subdistrict. See Finding #11,A, below, for setbacks in accordance with Section 10.26,D of the Commission's Standards.
- A. The two proposed met towers will be 60 meters (198 feet) tall, consisting of an 8-inch diameter pole resting on the ground on a 7.7 square foot metal plate, supported by four (4) sets of guy wires, and including various equipment used for assessing the wind resource at the site such as anemometers. Each met tower will be located in the middle of a 2.88 acre cleared area.
 - B. The applicant expects that the guy wires will be secured using rock or screw anchors; however buried concrete dead-men anchors may be used for some of the guy wires. Both proposed met tower sites are

located along existing gravel logging roads; no additional access ways are proposed. Only minimal soil disturbance will occur for the installation of the guy wire anchors. No other activities requiring soil disturbance are proposed.

- C. The guy wires will be outfitted with bird diverters and sleeves to prevent wildlife entanglement up to a height of 12 feet measured vertically.
- D. Because the temporary met towers will be less than 200 feet in height, Federal Aviation Administration aviation safety lighting is not required.
- E. As opposed to the temporary met towers reviewed as a part of the Project for SLC-2 that will be located within the turbine pads and removed prior to operation of the wind power facility, the two proposed additional temporary met towers will be located separately from the footprint of the Project, installed prior to construction of the Project, and left in place for up to two years.
- F. The applicant's consultant, Stantec, visited the proposed met tower sites on May 5, 2013, to assess each site for possible impacts to natural resources. Two forested wetlands were identified near Site #1585. The applicant has proposed to flag the wetland/upland boundaries within 50 feet of the site prior to clearing, and all clearing will be kept at least 10 feet from the wetland boundaries. No wetlands or streams will be affected by the proposed addition of the two temporary met towers to the Project.

Certification of compliance with the Commission's Land Use Standards

9. The Commission's Land Use Standards that are relevant to certifying compliance of the proposed addition of two temporary met towers to the Project are evaluated in Findings #10 through #13.

10. *Land Division History.*

- A. *Review Criteria.* 12 M.R.S.A. § 682(2-A) and § 685-B(1)(B); and §§10.24, F (quoting 12 M.R.S.A. § 685-B(4)(F)) and 10.25,Q,1 of the Commission's Land Use Standards.
- B. The two additional temporary met towers will be located on Lot 1 of Map 1 in T16 MD BPP, and Lot 1 of Map 1 in T22 MD BPP. The additional temporary met towers will not require or result in a change to the Project parcels that were evaluated in SLC-2. As such, no additional evaluation of the land division histories for this Project is required. *See* Findings #13,B(3) and (4), and #13,C(3) and (4) of SLC-2.

11. *Minimum dimensional requirements: Minimum setbacks and maximum structure height - §§10.26, D and F of the Commission's Land Use Standards.*

A. *Minimum setbacks.*

- (1) *Review criteria – §§10.26,D,2 and 3.* §10.26,D,2 specifies that the minimum setback for commercial or industrial development is 150 feet from waterbodies greater than 10 acres in size; 100 feet from minor flowing waters, P-WL1 wetlands and waterbodies less than 10 acres in size; 75 feet from roadways used by the public for access; and 25 feet from side and rear property boundary lines.
- (2) *Met towers.* The two proposed additional temporary met towers will be located well in excess (*i.e.*, 1000 feet or more) of the minimum setback requirements. The clearing for both sites will be immediately adjacent to the existing private land management roads that will be used to access the sites, but there is no legal right of access for the public for these roadways. *See* Finding #8,B(3) in SLC-2. As such, the met tower clearing is not subject to the roadway setback requirement in Section

10.26,D,2,c of the Commission's Standards. *See also* Sections 10.26,D,3 and 10.27,B,1,a of the Commission's Standards. Nevertheless, both of the proposed met tower structures will be located 200 feet from the edge of the land management roads.

- (3) *Conclusion.* As proposed, the temporary met towers will meet the standards for minimum setbacks in §10.26, D,2.

B. *Maximum structure height.*

- (1) *Review criteria.* §§10.26,F,1,b and F,3 specify that the maximum height for a structure located further than 500 feet from a waterbody greater than 10 acres in size is 100 feet; except that the maximum structure height may be exceeded for structures with no floor area such as chimneys, towers, ventilators, spires, and free-standing towers and turbines with the Commission's approval.
- (2) The proposed two additional temporary met towers will be located more than 500 feet from a great pond. The met towers will have a maximum height of 198 feet, and are free-standing structures. As such, the met towers, which exceed the maximum height of 100 feet, may be allowed in accordance with Section 10.26,F,3.
- (3) *Conclusion.* In reviewing wind energy developments, the factors that the Commission evaluates to determine whether to approve a tower or turbine height in excess of 100 feet usually include visual impact and safety considerations. These factors are specifically considered in the DEP's review. For that reason, the Commission, conditioned upon DEP's review and approval of visual impact and safety considerations, concludes that the two additional temporary met towers comply with the Commission's structure height standard.

12. *Vegetation clearing – §10.27,B of the Commission's Land Use Standards.*

- A. *Review criteria.* Based on the materials supplied by Hancock Wind, §§10.27,B, 1, 2 and 3 of the Commission's Standards are applicable to this Project.
- B. *Temporarily cleared areas.* The Project certified under SLC-2 included temporary clearing of 74 acres of forest during construction, primarily for the lay-down areas, and areas around turbines and met towers that will be re-vegetated. Each of the circular cleared areas for the proposed additional met towers will be approximately 2.8 acres in size. The total additional clearing will be 5.75 acres, which when combined with the previously certified 74 acres, brings the revised total of temporarily cleared areas to 79.75 acres.
- (1) Both met tower sites will be in areas that have subject to on-going timber harvesting. Met tower site #1854 will be located in a regenerating mixed coniferous/hardwood forest with a canopy height of 10 to 20 feet. Met tower site #1585 will be located in an area of second growth coniferous forest with a canopy height of 25 to 35 feet.
- (2) The proposed met tower cleared areas will both be located well in excess of the minimum setback requirements (*See* Finding #10) and will not impact the buffer areas of any waterbody, flowing water, P-WL1 wetland, or public road.
- C. *Conclusion.* The location and configuration of the proposed temporary met tower sites will allow the buffers required by §10.27,B,1 of the Commission's Standards to be maintained.

13. *General Criteria for Approval – 12 M.R.S.A § 685-B(4) (incorporated in § 10.24 of the Commission's Land Use Standards).* To evaluate the proposal, staff has considered the Commission's Land Use Standards not considered by the DEP in its review under 38 M.R.S.A. § 489-A-1(1).

- A. *Conformance with statute, regulations, standards and plans.* 12 M.R.S.A. § 685-B(4)(E) and Land Use Standard §10.24, E specify that the Project must be in conformance with 12 M.R.S.A., Chapter 206-A

and the regulations, standards and plans adopted thereto. Applicable statutory criteria for approval are discussed in this Finding #13.

- (1) As explained more fully in Findings #1 through #7 above, the Commission reviewed and certified the Project under the applicable regulations and standards, specifically the Commission's Land Use Standards contained in Chapter 10 of its rules, and determined that the Project conforms with these regulations and standards. In conducting its certification review and applying the applicable statutory provisions in Chapter 206-A, and the applicable regulations and standards, the Commission interpreted and applied the statutory provisions, regulations and standards in light of the CLUP. See 12 M.R.S.A. § 685-C(1) ("The [C]ommission must use the [CLUP] as a guide in . . . generally fulfilling the purposes of this chapter.")
- (2) In addition to the standards assessed in Findings #10 to #12, staff has more generally reviewed the addition of the two temporary met towers with regard to 12 M.R.S.A., Chapter 206-A. The addition of the met towers will not be, or result in any of the Project components or features being out of conformance with any of the applicable statutory standards.
- (3) *Conclusion.* As proposed, the addition of the two temporary met towers does not change the Commission's determination that the Project satisfies the conformity requirement in 12 M.R.S.A. § 685-B(4)(E) and § 10.24, E of the Commission's Land Use Standards.

FINAL CONCLUSION

Based on the findings set forth above, and in addition to the conclusions set forth above, staff concludes that, with respect to the addition of two temporary met towers to the 18-turbine Hancock Wind Project proposal, the Project as revised continues to be an allowed use in the affected subdistricts. Further, Hancock Wind has met its burden of demonstrating that the Project, as revised, conforms with the applicable regulatory and statutory requirements and plans adopted pursuant to 12 M.R.S.A., Chapter 206-A and meets the Commission's Land Use Standards applicable to the Project that are not considered in the DEP review.


CONDITIONS

Therefore, the staff CERTIFIES to the DEP that Amendment A to Site Law Certification SLC-2, submitted by Hancock Wind, LLC, for the addition of two temporary met towers to the 18-turbine Hancock Wind Project, as proposed, complies with the relevant provisions of the Commission's Land Use Standards, subject to the findings of fact and conclusions contained herein, and the following conditions:

1. *Setbacks.* The two temporary met towers must be located as described in Finding #8, and as depicted on Figures 1, 2, and 3 of the additional materials submitted on May 30, 2013 for the Site Location of Development permit application with respect to setbacks, in accordance with §10.26,D,2 of the Commission's Land Use Standards.
2. *Clearing.* Clearing for met tower site #1858 must not extend into the adjacent forested wetland. Vegetated buffers must be maintained in accordance with §10.27,B of the Commission's Land Use Standards, except as provided for by the DEP in the Site Location of Development permit.
3. *Title, Right or Interest.* The DEP finds in its Site Location of Development permitting decision that Hancock Wind possesses sufficient title, right or interest to develop the Project.

This approval of a request for Amendment A to Site Law Certification SLC-2, issued to the Department of Environmental Protection, is not final agency action. Pursuant to 5 M.R.S.A. §§ 11001 *et seq.*, a person aggrieved by a DEP Site Location of Development permit decision containing this certification determination may appeal the DEP's final agency action to court. As part of such an appeal, a person aggrieved may seek judicial review of the components of the DEP's final agency action, including this staff certification determination that is incorporated into the DEP's permitting decision. Additionally, a person aggrieved by this staff certification determination, Amendment A to Site Law Certification SLC-2, may request Commission review of this staff determination. Such a request must be made in writing within 30 days of the determination. Any Commission review of this staff determination would not be final agency action and only would be appealable to court as part of an appeal of the DEP's final Site Location of Development permit decision containing Amendment A to Site Law Certification SLC-2.

DONE AND DATED AT AUGUSTA, MAINE THIS 21 DAY OF JUNE, 2013.

By: 

Nicholas D. Livesay, Executive Director

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