



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

Dan Courtemanch  
Maine Department of Environmental Protection  
17 State House Station  
Augusta, ME 04333

September 11, 2013

RE: Site Law Certification SLC-3, Bingham Wind Project, Blue Sky West, LLC and Blue Sky West II, LLC; Mayfield Township, Somerset County and Kingsbury Plantation, Piscataquis County

Dear Dan:

Enclosed is a copy of Site Law Certification SLC-3 for the Bingham Wind Project, portions of which will be located in Mayfield Township, Somerset County and Kingsbury Plantation, Piscataquis County. SLC-3 was approved by the Commission on September 9, 2013 at their regular monthly business meeting, which was held in Houlton, Maine. 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.

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 cursive script that reads 'M. Spencer-Famous'.

Marcia Spencer-Famous, Senior Planner  
Planning Division

Enclosure: LUPC Site Law Certification SLC-3

xc: SLC-3 file  
DEP Site Location of Development permit #L-25973-24-A-N/L-25973-TG-B-N

cc: Josh Bagnato, First Wind  
Dave Fowler, First Wind  
Kat Joyce, Esq., Bernstein Shur

Dale Knapp, Stantec

Joy Prescott, Stantec

Lou Sidell, First Assessor, Kingsbury Plantation

Eliza Donoghue, NRCM

Marilyn Tourtelotte, Piscataquis County Commissioners Office

Somerset County Commissioners Office

Dr. Donald Champlin, DVM, 57 Pease Bridge Road, Parkman, ME 04443

Anne Louisa Pepper, 76 Magnolia Street, Arlington, MA 02474



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## Certification

COMMISSION DETERMINATION  
IN THE MATTER OF

Department of Environmental Protection  
regarding:  
Blue Sky West, LLC  
and Blue Sky West II, LLC  
Site Law Certification SLC-3  
Bingham Wind Project

### Findings of Fact and Determination

The Maine Land Use Planning Commission, at a meeting of the Commission held on September 9, 2013, at Houlton, Maine, after reviewing the certification request and supporting documents submitted by Blue Sky West, LLC and Blue Sky West II, LLC for Site Law Certification SLC-3 and other related materials on file, pursuant to the Commission's Land Use Standards, finds the following facts:

1. *Persons Requesting Certification:* Blue Sky West, LLC  
Blue Sky West II, LLC  
129 Middle Street, 3<sup>rd</sup> Floor  
Portland, ME 04101
2. *Accepted as Complete for Processing:* May 10, 2013
3. *Location of Proposal:* A. Mayfield Township, Somerset County  
(1) Plan 1, Lots #1, #2, #5, #6, #7, #8, #10, and #19 – Easement agreement with landowner Plum Creek Maine Timberland LLC;  
and

(2) Plan 1, Lots #15 and #16 - Lease agreement with landowner E.D. Bessey & Sons, Inc.

B. Kingsbury Plantation, Piscataquis County

(1) Plan 5, Lot #2 - Easement agreement with landowner Plum Creek Maine Timberlands, LLC;

(2) Plan 1, Lot #1 and Plan 4, Lot #5 – Lease agreement with landowner Linkletter & Sons, Inc.

(3) Plan 1, Lot #4 – Easement agreement with landowner Linkletter Timberlands, LLC.

C. UTM 4,996,127 Northing

UMT 444,891 Easting

4. *Current Zoning:* (M-GN) General Management Subdistrict  
(P-WL) Wetland Protection Subdistrict  
(P-SL2) Shoreland Protection Subdistrict  
(P-FW) Fish and Wildlife Protection Subdistrict  
(P-RP 013) Resource Protection Subdistrict – “*Foss Pond, Hilton Ponds and Portions of Whetstone Pond Concept Plan*” (“the Concept Plan”) (reference Zoning Petition ZP 693)

Additionally, the Project will be located entirely within the expedited permitting area for wind energy development (reference Appendix F to the Chapter 10 of the Commission’s Land Use Districts and Standards).

5. *Permanent Project Area:* Approximately 77 acres for the turbines and other permanent structures, excluding the above-ground utility line corridors.

## 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.

The following Findings, Conclusions and Conditions constitute the Commission’s certification that the Bingham Wind Project, as proposed, meets the applicable Land Use Standards that are not considered in the DEP review. By letter dated May 10, 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 (attached as Appendix A). See Finding #10.

## PROPOSAL

7. On April 19, 2013, Blue Sky West, LLC and Blue Sky West II, LLC (“the Applicants”) submitted to the Commission a copy of a DEP Site Law/ Natural Resources Protection Act (NRPA) application for the Bingham Wind Project (“the Project”), which includes Section 31 addressing the Commission’s criteria for certification. Applicant Blue Sky West will construct and operate the portion of the Project comprised of the turbines, 34.5 kV collector lines, access and crane roads, substation, met towers, and the Operations & Maintenance Building. Applicant Blue Sky West II will construct and operate the 115 kV generator lead (transmission) line. See Findings #13 and #14 for a complete description of the Project features.
8. **Project location and surrounding area.** The proposed Project is a grid-scale wind energy development to be located in the expedited permitting area for wind energy development on unnamed ridgelines in Kingsbury Plantation<sup>1</sup>, Piscataquis County; and in Mayfield Township, Somerset County. The Project turbines will be located on ridges and hills in the vicinity of Johnson Mountain, and extend to unnamed hills north and northeast of Johnson Mountain, and an unnamed ridge north of State Route 16.
  - A. Portions of the proposed Project will also be located in the organized towns of Bingham, Moscow, Parkman and Abbot, but are not the subject of this certification.
  - B. The 115 kV generator lead line will start at the new Project substation in Mayfield Township, extending west onto Kingsbury Plantation, and then into the organized towns of Abbot and Parkman. The Project will connect to the New England electric power grid at the Guilford substation in Parkman.
  - C. Ponds and lakes located near the Project turbines include Withee Pond, Otter Pond, Mayfield Pond, and Kingsbury Pond (in part) in Mayfield Township; and Kingsbury Pond (in part), Foss Pond and the Hilton Ponds in Kingsbury Plantation.
9. **Subdistricts affected.** The proposed Project will be located within the following subdistricts: (M-GN) General Management Subdistrict, (P-SL2) Shoreland Protection Subdistrict, (P-RP 013) Resource Protection Subdistrict, (P-FW) Fish and Wildlife Protection Subdistrict, and (P-WL) Wetland Protection Subdistrict (P-WL).
  - A. **P-WL Wetland Protection Subdistrict.** Within the Project area, P-WL Wetland Protection Subdistricts, including stream channels, both shown and not shown on the Commission’s zoning maps, will be affected by the Project. Stream channels, which are P-WL1 Wetlands of Special

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<sup>1</sup> Kingsbury Plantation is organized, but the Land Use Planning Commission provides the land use planning, zoning, permitting and enforcement functions.

Significance by definition, will be crossed by the Project roads and utility lines (*i.e.*, the collector lines and the generator lead line). P-WL2 wetlands shown on the Commission's zoning map will be impacted by the pads for Turbines #33 and #44. In addition to the stream channel crossings, P-WL2 and P-WL3 wetlands shown on the Commission's zoning maps will be crossed in several places by the proposed roads and utility lines. All wetlands and streams to be affected by the Project were identified and delineated in the field by the Applicants' consultant, Stantec. All of the wetland areas and streams affected by the Project are subject to the Commission's rules and standards for P-WL Subdistricts and P-SL Subdistricts.

B. ***P-FW Fish and Wildlife Protection Subdistrict.*** The Project will be located within the northeast corner of the Maine Department of Inland Fisheries and Wildlife (IFW) Deer Wintering Area (DWA) #080604, which is shown on the Kingsbury Plantation zoning map as a P-FW Subdistrict. The components of the Project to be located within this P-FW Subdistrict are approximately 500 linear feet of the 115 kV generator lead line, and one utility pole. Based upon surveys conducted by the Applicant's consultant, Stantec, in March 2013, no deer use was documented in this P-FW Subdistrict in the area affected by the Project. Three other IFW DWAs not shown on the Commission's zoning maps will also be affected.

C. ***P-RP 013 Resource Protection Subdistrict.*** Where the Project will be located in Kingsbury Plantation, it will be within the Concept Plan's "Area A", but not within the portions of the parcel identified in the Concept Plan for the conservation easement, for camp development, or as common area. The Concept Plan parcel is comprised of Lot #1 on Plan 1, and Lot #5 on Plan 4 in Kingsbury Plantation.

10. ***Certification of allowed use.*** On May 2, 2013, the DEP requested that the Commission review the Applicants' 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. Specifically, the DEP requested that the Commission determine 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. On May 10, 2013, the LUPC staff provided a letter to the DEP concluding that the Project is an allowed use with a permit in the subdistricts affected (attached as Appendix A).
11. ***Public notice of intent to file.*** On March 4, 6, and 8, 2013, the Applicants sent a combined DEP/LUPC notice of the intent to file to abutters (on 3/4/2013) of the proposed Project and to other parties by U.S. Postal Service mail; and had the public notice published in newspapers (on 3/6 and 3/8). A revised public notice was sent to the abutters (on 4/10) and published in the newspapers (on 4/11 and 4/12). 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. LUPC staff deemed the certification request complete for processing on May 10<sup>th</sup>. No public comments, requests for a public hearing or petitions to intervene were received by LUPC staff.

- A. The Applicants communicated directly with Kingsbury Plantation, most recently on December 15, 2012 when the community benefits agreement was voted on. Prior to that, the Applicants held two public information meetings, and notified the taxpayers in Kingsbury Plantation of those meetings. The Applicants noted that no one attending the various meetings had raised questions related to the Concept Plan.
- B. The Applicants forwarded the notification to the Small Woodlot Owners Association of Maine (SWOAM) and to the Maine Bureau of Parks and Public Lands (BPPL) at LUPC staff's request. SWOAM is the holder of the conservation easement component of the Concept Plan, and BPPL is the third party for that easement.

12. **Title, Right or Interest.** On May 2, 2013, the DEP requested that the Commission provide to the DEP a certification determination with regard to the Project. On May 10, 2013, the DEP accepted the Site Location of Development application as complete and ready for processing. Based on these actions by the DEP and Condition #6, below, the Commission concludes that the Applicants have administrative standing to request certification of the Project. The Project will be located on portions of two Project parcels in Mayfield Township and three Project parcels in Kingsbury Plantation that held by the Applicants by lease and/or easement agreement (*See Findings #3 and #16*).

#### Project description

13. The Applicants propose to construct the approximately 191 megawatt (MW) Bingham Wind Project, consisting of up to sixty-two (62) turbines<sup>2</sup> (each approximately 3 MW); a roadway system comprised of new crane and access roads and upgraded existing access roads; above-ground and underground 34.5 kV electrical collector lines; an Operations & Maintenance (O&M) building; a collector substation and a DRD<sup>3</sup>; up to five temporary met towers and up to five permanent met towers; and a 115 kV generator lead line (collectively, "the Project"). The Applicants have estimated that the Project construction period is expected to be approximately 87 weeks.
- A. **Mayfield Township.** Within Mayfield Township, the Project features will include: Twenty-nine (29) turbines, and associated access roads and crane paths; underground and above-ground 34.5 kV collector lines; a portion of the 115 kV generator lead line; up to three permanent met towers and up to three temporary met towers; the O&M Building; the collector substation and DRD; and temporary lay-down areas.
  - B. **Kingsbury Plantation.** Within Kingsbury Plantation, the Project will be located both within Area A of Resource Protection Subdistrict P-RP 013, the *Whetstone, Foss and Hilton Ponds Lake Concept Plan* ("the Concept Plan" *See Zoning Petition ZP 693*); and outside of the P-RP Subdistrict boundaries.
    - (1) The Project features within the P-RP Subdistrict will include nineteen (19) turbines and associated crane and access roads; underground 34.5 kV collector lines; a portion of the 115

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<sup>2</sup> Up to 63 potential turbine locations have been identified, of which 62 will be used.

<sup>3</sup> A dynamic reactive device such as a synchronous condenser, used to help meet the Independent System Operators of New England and Central Maine Power's interconnection requirements.

kV above-ground generator lead line; temporary lay-down areas; and up to one permanent met tower and up to one temporary met tower.

- (2) Outside of the P-RP Subdistrict, the Project features will include three turbines and associated access road and crane paths, underground 34.5 kV collector line, a portion of the 115 kV generator lead line; and temporary laydown areas.

14. The portions of the proposed Project that will be in Mayfield Township and Kingsbury Plantation will consist of the following features:

A. **Turbines.** Up to sixty-two (62) 3 MW turbines are proposed, having a maximum height of either 489 feet or 492 feet, depending on the type of turbine used, each located within a turbine pad measuring up to approximately 375 feet in diameter, at elevations less than 1800 feet above mean sea level. The Project turbines are grouped in ten strings, eight of which will be located in Mayfield Township and Kingsbury Plantation (three south of Route 16, and five north of Route 16). The turbines will be connected by the Project crane and access roads and the 34.5 kV collector line. Twenty-nine (29) turbines will be located in Mayfield Township (Turbines 12 to 25 and 73 to 77) and twenty-two (22) turbines will be in Kingsbury Plantation (Turbines 36 to 51 and 53 to 58).<sup>4</sup>

- (1) The turbine pads will be circular and up to 375 feet in diameter, with the exception of nine pads, which will be smaller to help minimize impacts to wetlands and wildlife habitat, or to intercept with the Project roadway system.<sup>5</sup> For example, the pad for Turbine 16 will be reduced in size to avoid directly impacting a sensitive wildlife habitat, and the pad for Turbine 31 will be reduced in size to accommodate an access road and avoid a wetland impact.
- (2) The closest turbine to the Foss Pond Conservation District, which is the conservation easement area within the Concept Plan area in Kingsbury Plantation, is Turbine 58, at a distance of approximately 810 feet.

B. **Project roads and stream crossings.** (Also see Finding #17, below)

(1) **Permanent Project roadways - crane roads and access roads.** A crane road (aka crane path) is the portion of the Project roadway system connecting the turbines within each string, and an access road leads to the crane road or other Project feature. The proposed permanent Project crane and access roads will in part be new roads, and in part will be co-located with existing roads that are being upgraded. The following are the permanent Project roads to be located in Mayfield Township and Kingsbury Plantation:

- (a) **Crane roads.** A total of 14.74<sup>6</sup> miles of crane roads that will be 38 feet wide during construction will be constructed, including both new roads and segments that will be co-located with existing roads. After construction, the sides of the crane roads will be re-vegetated so that the permanent traveled surface will be 24 feet wide.
- (i) **New crane roads.** The new crane roads to be constructed will total 12.87 miles. Of the crane roads, only South Crane Road 8 (0.88 mile) will serve as a primary point of Project access from Route 16.

<sup>4</sup> The remaining 12 turbine sites, 11 of which will be used, will be located in the organized town of Bingham.

<sup>5</sup> Impacts to wetlands, waterbodies, and sensitive wildlife habitat are reviewed by DEP under Site Law.

<sup>6</sup> Including the proposed crane road in Bingham, the total length of crane road for the Project will be 17 miles.



- (ii) **Co-located crane roads.** A total of 1.57 miles of crane road will be co-located with existing roads that will be upgraded to be 38 feet wide.
      - (b) **Permanent access roads.** A total of 4 miles of permanent access roads with a 24 foot wide or 12 foot wide traveled surface will be constructed, including both new roads and segments that will be co-located with the existing roads that are being upgraded.
        - (i) **New permanent access roads.** A total of 0.5 mile of new access roads will be constructed, of which 0.42 mile will be 12 feet wide, and 0.08 mile will be 24 feet wide.
        - (ii) **Co-located permanent access roads.** A total of 3.5 miles of 24 foot wide permanent access roads will be co-located with existing roads that will be upgraded.
    - (2) **Temporary Project roads to be used during construction.** Nine existing land management roads will provide access from State Route 16 to the Project generator lead line, of which one, AR 390, will require upgrading to be 12 feet wide. There are four additional spur roads that are not directly connected to Route 16 which will also provide access to the generator lead line during construction, of which two will be upgraded to 12 feet wide: AR 460B and AR 355. Access Roads AR 390 and AR 460B are located within Area A of the Concept Plan area in Kingsbury Plantation. The total distance of land management roads being upgraded to be 12 feet wide for temporary use during construction is 0.54 mile.
    - (3) **Permanent stream crossings.** The Applicants have designed the Project such that no in-stream work is proposed for the road stream crossings. Clearing will occur within the vegetated stream buffers of 34 perennial streams (*see* Finding #20, below). Much of the project area is located within designated critical habitat for Atlantic salmon, which is considered by the DEP under Site Law.
    - (4) **Road maintenance.** All new permanent Project roads will be maintained by Applicant BSW. Existing roads outside the Project area will continue to be maintained by the landowners.
  - C. **Met towers.** Up to five permanent meteorological (met) towers and up to five temporary met towers having a maximum height of 104 meters (344 feet) are proposed. Of these, one permanent and one temporary met tower will be in an organized township.
    - (1) **Permanent.** Three of the proposed permanent met towers will be in Mayfield Township, one will be in Kingsbury Plantation. The areas cleared for the permanent met tower sites are included in the total permanent Project cleared area (*also see* Finding #20, below).
    - (2) **Temporary.** Up to one temporary met tower will be located in Mayfield Township and up to one will be located in Kingsbury Plantation. The temporary met towers will be placed within the turbine pads and removed prior to installing the turbines.
  - D. **Substation and DRD.** The proposed substation will be located in Mayfield Township; and will include a DRD (*see* footnote #3, page 5). The substation will “step up” the power generated by the turbines and collected using the 34.5 kV collector lines, and then transmit the power to the grid using the 115 kV generator lead line. The substation and DRD will be located to the west of Turbine 31, along North Access Road 4 which coincides with the existing Hayden Pond Road. The substation will be located within a fenced crushed stone yard measuring 300 feet by 400 feet. The DRD will be housed in a one-story metal clad wood frame building within a separate 80 foot by 150 foot fenced enclosure.

- E. **34.5 kV collector lines.** The 34.5 kV collector lines will connect the Project turbines to the proposed substation in Mayfield Township. A total of approximately 10 miles of 34.5 kV collector line will be buried underground along the Project roads in Mayfield Township and Kingsbury Plantation. A total of 10 miles of 34.5 kV collector line will be located above-ground, of which 3.56 miles will run parallel to the north side of Route 16. The cleared corridor for the above-ground portions of the line will be 80 feet wide.
- (1) **Stream crossings.** The above-ground sections of the collector lines and the generator lead line in Mayfield Township will cross over many small P-SL2 streams. The distances of the utility poles to streams, roads, and other features for which there is a minimum setback are described in Finding #19,E(4), below.
- F. **115 kV generator lead line.** The Project will include a 17 mile long above-ground generator lead line connecting the proposed collector substation in Mayfield Township to Central Maine Power's existing Guilford substation in Parkman. Of the 17 miles, 9.25 miles will be located in Mayfield Township and Kingsbury Plantation. The cleared corridor for the generator lead line will be 100 feet wide.
- G. **Operations & Maintenance (O&M) Building.** The O&M Building will be a one-story building up to 5,880 square feet (70 feet x 84 feet) in size. The O&M Building will be located on the south side of Route 16 in Mayfield Township, and will be accessed using the O&M Building Access Road, which meets South Crane Road 7 at the point of exit onto Route 16 (see Finding #17,C, below). The parking area at the O&M Building will be a 0.8 acre gravel area, of which 0.25 acre will be used for equipment storage. All parking at this location will be entirely off-road. The Applicants asserted that the location currently has limited visibility from Route 16, and is not adjacent to residential structures or uses.
- H. **Temporary lay-down areas and trailers.** The applicants propose twelve (12) temporary lay-down areas, of which two (2) will be within existing cleared areas, and ten (10) will be located in areas that are not yet cleared. The lay-down areas will be used for equipment storage, soil and overburden storage, temporary trailers and parking during construction. A total of up to 20 trailers will be placed in the lay-down areas, at the O&M building site, or at the substation site, for use during construction. The trailers will be removed from the site after construction is completed. The trailers will be set back at least 75 feet from all public roadways, and from existing private roadways used by the public.

#### Certification of compliance with the Commission's Land Use Standards

15. The Commission's Land Use Standards that are relevant to certifying compliance of the proposed Project are evaluated in Findings #16 through #23.
16. **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. **Land division histories for the five Project parcels.** The Applicants provided land division histories for the two Project parcels consisting of a total of ten (10) lots in Mayfield Township in Somerset County (hereinafter “Project parcel A” and “Project parcel B”); and the three Project parcels consisting of a total of four (4) lots in Kingsbury Plantation in Piscataquis County (hereinafter “Project parcel C”, “Project parcel D”, and “Project parcel E”). The Applicants evaluated the land transfers for each Project parcel during the 20 years prior to the submittal of the certification request on April 19, 2013, noting where a land division had formed a lot and whether that lot counted as a subdivision lot or was exempt. The Applicants’ assessment indicated that all land divisions were either exempt from, or did receive a subdivision permit from the Commission for all of the Project parcels during the preceding 20 years.

(1) **Mayfield Township.**

(a) **Project parcel A.** The Project parcel in Mayfield Township, consisting of Lots #1, #2, #5, #6, #7, #8, #10, and #19 on Plan 1, is owned by Plum Creek Maine Timberlands, Inc. (Plum Creek), and has been held by easement agreement by Applicant BSW since October 1, 2010. The easement agreement applies to the entire parcel, providing the exclusive right to Applicant BSW to develop the parcel with a wind energy development, and includes an option for an easement to be granted to Applicant BSWII for the generator lead line. The easement agreement also includes a provision that within one year of project completion BSW will reduce the size of the easement area to include just the Project area, and will release the remaining easement rights back to Plum Creek.

(i) In 1993, the parent parcel was owned by SD Warren Co., which it had purchased from Scott Paper in 1986. In 1998, the parent parcel was sold to SWD Timber II, LLC, which subsequently changed its name to Plum Creek Maine Timberlands, LLC.

(ii) In 2000, Plum Creek conveyed 3 lease lots to Plum Creek Land Company. The lots were existing pre-Commission lease lots, were not contiguous, and were acquired by Plum Creek from Skylark in 1998. The Applicants stated that their records suggest these lots were continuously leased at the time they were conveyed.

(iii) In 2011, Plum Creek conveyed to Mayfield Corner LLC in 2011 the portion of its parcel in Mayfield Township south of Route 16 and Route 151. Not knowing the ownership status of Route 16, the Applicants assumed that this was the first division in a five year period.

(b) **Project parcel B.** The Project parcel in Mayfield Township consisting of Lots #15 and #16 on Plan 1 is owned by E.D. Bessey & Sons, Inc., and has been held by Applicant BSW by lease agreement for wind energy development since May 1, 2009. The lease agreement is exclusive, and is for wind energy development on E.D. Bessey’s entire ownership in Mayfield Twp. for a term of 27 years, with the option to extend the lease for an additional 20 years. The only other land transfers occurring during the 20 year period prior to submitting the application were several transfers of the entire parcel in 2009, 2011 and 2012.

(2) **Kingsbury Plantation.**

(a) **Project parcel C.** The Project parcel consisting of all of Lot #1 on Plan 1 and Lot #5 on Plan 4 in Kingsbury Plantation is owned by Linkletter & Sons, Inc., and has been held by Applicant BSW by lease agreement for exclusive development with a wind energy facility on the entire parcel since April 10, 2009. An easement for the generator lead line was granted to Applicant BSWII on April 2, 2013. Project parcel C is the parcel that was rezoned to P-RP-013 Resource Protection Subdistrict in 2005 (*reference* ZP 693; and also

see Findings #4 and #9,C). Prior to January 27, 2000, Project parcels C and D were contiguous and held by one landowner. As such, land divisions that occurred before 2000 affected both Project parcels C and D. Project parcel D, consisting of Lot #4 on Plan 1, is addressed in subsection (2)(b), below.

- (i) As of April 19, 1993, the parent parcel, consisting of Lots #1 and #4 on Plan 1, Lot #5 on Plan 4, and several of the lots on Plan 6, was owned by Diamond Occidental and Moosehead Manufacturing Co. In September of 1993, Moosehead Manufacturing conveyed its interests to Diamond Occidental, and then on October of that year, Diamond Occidental sold the parent parcel to John Hancock Mutual Life Insurance Co.
- (ii) In May of 1993, a parcel of land comprised of five contiguous lots on Plan 6 was conveyed to El Shaddai, Inc. and YPC Forest Products, Inc. (*reference* LDP 0030, which depicts these lots when they were sold in 1998). The retained lot was used solely for forestry and not further divided for 5 years.
- (iii) In 1996 and 1997, two pre-Commission camp lease lots located on Whetstone Pond, Lots #50 and Lot #62, were conveyed by John Hancock. Lots #50 and #62 are depicted on map L-94, dated 1995; and are also shown on a 1963 plat, both of which are in the County Registry of Deeds.
- (vi) On January 27, 2000, the portion of the parent parcel south of Route 16 (Lot #4 on Plan 1) was conveyed to Great Eastern Timber Co. On November 28, 2000, the portion of the parent parcel north of Route 16 (Lots #1 on Plan 1 and #5 on Plan 4) was conveyed to Linkletter & Sons, the current owner.
- (v) In 2002, camp Lots #5 and #6 on the southeast side of Whetstone Pond were conveyed, creating two non-exempt lots in a five year period, with the third retained lot to be used solely for forest management for a period of five years. At the time of these transfers, the retained lot would have been treated as exempt under the provisions of §10.25,Q,2 of the Commission's Land Use Standards (*reference* Enforcement Case EC 03-060, resolved). Lots #5 and #6 were adjacent to the six lots approved under Subdivision Permit SP 4065, and are depicted on the plat as existing lots not owned by Linkletter & Sons (*see* subsection (vii), below).
- (vi) In 2003, two lots located on the southeast side of Whetstone Pond were transferred to the owners of Lots #50 and #62 (*see* subsection (iii), above), each constituting a transfer to an abutter and therefore exempt from being counted as lots for subdivision.
- (vii) On May 19, 2005, the Commission approved Zoning Petition ZP 693, which created P-RP 013, the "*Foss Pond, Hilton Ponds and Portions of Whetstone Pond Concept Plan*" consisting of Lots #1 on Plan 1, and #5 on Plan 4. The Concept Plan parcel consisted of the same tax lots as the third retained lot in 2002 (*see* subsection (v), above). When ZP 693, the Concept Plan, was approved, the status of the retained lot as exempt under §10.25,Q,2 changed, becoming a land division granted approval by the Commission with areas to be developed with fee and lease lots.
  - The Concept Plan encompasses approximately 11,920 acres, and is comprised of approximately 1,055 acres in two parcels subject to a conservation easement; approximately 86 acres for development of lots to be sold or leased; a 9 acre common area; and Area A, consisting of the remaining approximately 10,765 acres.

- Subdivision Permits SP 4065 (Lots #1E to #6E on Whetstone Pond, 7/2006), SP 4066 (Lots #1W to #6W and common area on Whetstone Pond, 1/2007), SP 4067 (lots on Foss Pond, 5/2007), and SP 4077 (woodland lots, 3/2009) were approved by the Commission for the Concept Plan's development areas (lots to be sold or leased) and the 9 acre common area on Whetstone Pond. The land division history supplied by the Applicants included the conveyance of Lots #1E, #2E and #3E; and Lots #1W, #2W, #4W, and the common lot.
  - (viii) In 2009 a lease was granted to Applicant BSW for the ownership of Linkletter & Sons in Kingsbury Plantation, consisting of the Concept Plan's Area A, for the purpose of developing a wind energy facility on the parcel. In 2013, an easement for the generator lead line was granted to Applicant BSWII.
  - (b) **Project parcel D.** The Project parcel consisting of Lot #4 on Plan 1 in Kingsbury Plantation is owned by Linkletter Timberlands, LLC, has been held by Applicant BSWII by an exclusive easement agreement since April 10, 2013 for transmission and telecommunication facilities for a wind energy development.
    - (i) The conveyances listed in subsections (a)(i), (ii) and (iii), above, are applicable to Project parcel D prior to its conveyance on January 27, 2000 to Great Eastern Timber Co.
    - (ii) On May 13, 2002, Project Parcel D was conveyed to the current owner, Linkletter Timberlands.
  - (c) **Project parcel E.** The Project parcel consisting of Lot #2 on Plan 5 in Kingsbury Plantation is owned by Plum Creek Maine Timberlands, LLC, and has been held by Applicant BSW by easement since October 1, 2010 for development of a wind energy facility. The easement agreement applies to the entire parcel, providing the exclusive right to Applicant BSW to develop the parcel with a wind energy development, and includes an option for the conveyance of an easement to Applicant BSWII for the generator lead line. The easement agreement also includes a provision that within one year of project completion BSW will reduce the size of the easement area to include just the Project area, and will release the remaining easement rights back to Plum Creek.
    - (i) In 1993, Project parcel E was owned by S.D. Warren, and was adjacent to its ownership in Mayfield Township (*see* Project parcel A, section B(1)(a), above).
    - (ii) In 1998, the entire parcel was conveyed to S.D.W. Timber II, LLC, which then changed its name to Plum Creek.
    - (iii) No other conveyances from this parcel occurred until the easement agreement was granted to Applicant BSW in 2010. No other conveyances have occurred since 2010.
- C. **Conclusions.** Based on the materials supplied by the Applicants and other Commission records, no land divisions requiring, but having not obtained, subdivision approval from the Commission for any of the Project parcels occurred during the 20 years prior to April 19, 2013, which is the date the application was submitted to the DEP and the Commission.
- (1) **Project parcel C, Lots #1 on Plan 1 and #5 on Plan 4, Kingsbury Plantation.** The records showed that a Notice of Violation (NOV) (*reference* Enforcement Case EC 03-060) was sent to landowner Linkletter & Sons in 2003 for the conveyance and advertisement of camp lots from Lot #1 on Plan 1. The NOV included the transfer of Lots #5 and #6 on Whetstone Pond in 2002, and the advertisement for the sale of several other lots on Whetstone Pond prior to permit approval. The lots being advertised for sale were removed from the market until a

permit could be obtained. The retained parcel was exempt at the time, in accordance with §10.25,Q,2 of the Commission's Land Use Standards.

In 2005 and 2006, less than five years later, the retained lot no longer met the provisions of §10.25,Q,2 for an exempt retained lot when the Concept Plan (*reference* ZP 693, approved by the Commission in 2005) and subsequent Subdivision Permits SP 4065 and SP 4066 for camp lots on Whetstone Pond were approved by the Commission. However, these land divisions were granted approval by the Commission. Staff reviewed the enforcement case file, and the subsequent approvals by the Commission, and determined that EC 03-060 was resolved when ZP 693, SP 4065 and SP 4066 were approved.

- (2) *Project parcels A (Lots #1, #2, #5, #6, #7, #8, #10, and #19 on Plan 1) and E (Lot #5 on Plan 2, Mayfield), owned by Plum Creek.* The easement agreement for Project parcels A and E, granted by Plum Creek to Applicant BSW, includes a provision that within one year of completion of the Bingham Wind project, the size of the easement area will be reduced to only included the Project area, and the remaining easement rights will be deeded back to Plum Creek. Because the easement agreements apply to the entire parcel, no land division was formed. Future changes in the easement should be evaluated to determine whether a land division would result.

17. *Vehicular circulation, access and parking.* There is a network of existing roads in the vicinity of the Project, some of which will be upgraded for the Project (*See* Finding #14,B for the description of the Project roadway system).

A. *Review criteria.* §§10.24,B (quoting 12 M.R.S.A. §685-B(4)(B)); §10.25,D of the Commission's Land Use Standards; and §10.02, 181 of the Commission's Land Use Standards, which defines a roadway as "a public or private road including any land management road."

B. *Vehicular circulation and access – §§10.25,D,1; and 2, a, b and d.*

(1) *Permanent Project access points.* There will be five permanent Project points of access from State Route 16, which is the primary public roadway in Mayfield Township and Kingsbury Plantation. Of these five points of access, four will be co-located with existing land management roads that will be upgraded to be 24 feet wide, and one will be a new road. Existing roadways were used for the permanent Project access roads to the extent possible, but the one new Project primary access road, South Crane Road 8, is proposed because the distance from the next nearest existing access road is more than 2 miles.

(a) *South of State Route 16, Mayfield Township.* In Mayfield Township, there will be four permanent Project access roads on the south side of State Route 16:

- (i) South Crane Road 8 will be an entirely new road constructed for the Project (*see* Finding #14, B(1)).
- (ii) South Access Road 2, South Crane Road 7, and the O&M Building Access Road will be co-located with existing, unnamed land management roads that will be upgraded to be 24 feet wide.
- (iii) The existing T Road, which would also serve as a Project access road, is located primarily in the organized towns of Moscow and Bingham, but includes a short segment in Mayfield Township. Although this road segment coincides with temporary laydown area S1, no upgrade to the existing road segment in Mayfield Township is proposed.

- (b) **North of State Route 16, Mayfield Township.** The existing New Hayden Pond Road will be upgraded to be 24 feet wide, and will serve as permanent Project North Access Road 3 providing access to the Project areas on the north side of State Route 16.
  - (c) **North of State Route 16, Kingsbury Plantation, Concept Plan Area A.** While access to the Project will be possible using the existing Old Mountain Road, which will be upgraded for a distance of 0.16 miles where it coincides with Crane Road 12, and will be used during construction as AR 480 to access the generator lead line; this road has not been designated as one of the permanent Project access roads from Route 16.
- (2) **Temporary Project access during construction** (see Finding of Fact #14,B(2)). Nine existing land management roads will provide access to the Project from State Route 16 to the generator lead line, of which one, AR 390, will be upgraded to 12 feet wide. There are four additional spur roads not directly connected to Route 16 that will also be used to access the generator lead line during construction, of which two will be upgraded to 12 feet wide: AR 460B and AR 355. Access Roads AR 390 and AR 460B are located within the Concept Plan area.
- (3) **Public right of access.**
- (a) **Permanent Project roadways.** Except for South Crane Road 7 (an unnamed forest management road), all of the existing roads that will become part of the permanent Project roadway network are known to be privately owned, with no legal right of public access. Because the legal rights of the public to access the unnamed land management road referred to herein as South Crane Road 7 are unknown, the Applicants assumed that the public has access rights for the entire distance of that road. Based on this assumption of public use, the Commission evaluated compliance with the applicable review criteria.
  - (b) **Temporary access roadways.** All of the land management roads to be used for temporary access to the generator lead line during construction are private with no public right of access, with the exception of AR 480 (aka Old Mountain Road) for which the public access rights of access are unknown. As such, the Applicants assumed that this portion of the Old Mountain Road has a legal right of passage by the public for the purposes of the Project. Based on this assumption of public use, the Commission evaluated compliance with the applicable review criteria.
- (4) **Sight distance and turning radii.** All fourteen (14) temporary and permanent Project access roads will have adequate sight distances at the intersections with Route 16, as required by §10.25,D,2 of the Commission's Land Use Standards. The corner radii at each intersection will be more than 15 feet, which is necessary to accommodate the large vehicles that will deliver the crane and turbine components to the Project area.
- (5) **Traffic estimate.** Because the Project will not generate a significant amount of traffic, no traffic analysis was conducted. The Applicants estimated that during peak construction, approximately 250 worker vehicles per day will be traveling to the portions of the Project site within Mayfield Township and Kingsbury Plantation. Once fully operational, the number of worker vehicles traveling to the Project site will be approximately six to twelve per day. For a 24 week period during construction, up to 40 large vehicles on some days are anticipated for turbine delivery and installation. The Applicants asserted that this increase in traffic constitutes a minor traffic demand on Route 16.

C. **Parking layout and design - §§10.25,D,3, a, d, e and f.** The permanent parking area at the O&M Building site will be within a 0.8 acre gravel area, of which 0.25 acre will be used for equipment

storage. All parking at this location will be entirely off-road and accessed using the O&M Building Access Road, which joins with South Crane road 7 where it exits onto Route 16 (*see Roads and O&M Building, Findings #14,B and G, respectively*). No permanent on-street parking is proposed. During construction, temporary parking areas will be located in the lay-down areas, which will be located to meet or exceed the required minimum setback distance from the traveled surface of the roads (*see Temporary lay-down areas, Finding #14,H, and Setbacks, Finding #19,E*). The Commission's standards in §10.25,D,3,b regarding stormwater runoff from parking areas will be reviewed by the DEP.

**D. Roadway design and classification – §§10.25, D, 4, a, b, e and f.** The Applicants designed the Project roadway system to meet the specific needs of the Project, integrating the existing private land management road network into the Project roadway system wherever possible. The proposed new roads and road upgrades have been sized to accommodate wood haulers and other large vehicles without the need for turn-outs. The existing roads within the Project area that will provide access during construction, and will become a part of the permanent Project roadway system, will also continue to be used for forest management purposes. *See Section B(3) of this Finding, above, regarding the public rights of access for the existing roads proposed to be integrated into the permanent Project road network.*

**E. Conclusions.** The Applicants have demonstrated that the applicable criteria for vehicle circulation, access, parking and roadway design in §10.24,B and §§10.25,D, 1, 2, 3, and 4 of the Commission's Land Use Standards will be met by the Project.

- (1) **Vehicle circulation and access - §§ 10.25,D, 1 and 2.** The proposed Project roadway system layout and design will meet the provisions of §§10.25, D, 1 and D, 2, a, b and d, which are the standards for vehicle circulation and access applicable to the Project. In particular:
  - (a) Adequate sight distances at the five roads providing Project access from Route 16 will be maintained for traffic entering and leaving the Project areas;
  - (b) The number of new Project access roads has been limited to one, with existing roads used for the other four access roads;
  - (c) The Project roads will be co-located with existing roads wherever possible;
  - (d) Provisions have been made for the corner radii where the Project access roads intersect with Route 16 to be at least 15 feet;
  - (e) The Project roads have been sized large enough to allow safe passage of large vehicles using the roads such that turn-outs will not be necessary; and
  - (f) Informational signs alerting motorists to the construction activities will be posted on existing roads during construction (*see Finding #21*).
- (2) **Parking - §10.25, D, 3.** The Project will meet the applicable standards for parking, which are §§10.25,D,3,a, d, e and f of the Commission's Land Use Standards.
  - (a) The permanent Project parking area will be located at the O&M Building site, off-road, smaller than one acre in size, and screened from public view by vegetation in the buffer area between the parking area and Route 16. No residential uses or structures are located adjacent to the proposed O&M Building site.
  - (b) The proposed temporary parking areas to be used during construction will be located off-road in the temporary lay-down areas, and arranged such that parked vehicles or vehicles entering and leaving the lay-down areas will not create traffic congestion or hazards on



the Project roads. Adequate sight distances will be maintained at the point where vehicles leave and enter the temporary parking areas.

- (3) **Roadway design and classification - §10.25,D,4.** (See Finding #14,B for the description of the Project roadway system.) The Project will meet the applicable standards for roadway design and classification, which are §§10.25,D,4,a, b, e and f of the Commission's Land Use Standards. The Project's roadway system will meet the needs of the Project and will not cause safety problems, if constructed and managed as proposed.
- (a) The assignment of class to a roadway system is applicable to Level B and Level C road projects. For the proposed Project, the upgrading of segments of existing land management roads, if each were done separately and not a part of the Project, would constitute a Level A or B road project. However, the new Project roads constitute a Level C road project. For the purpose of this assessment, the sections of the existing land management roads that will be upgraded and integrated into the permanent Project roadway system are considered to be a part of the Level C road project
- (b) In accordance with §§10.25,D,4, a, b, e and f, the permanent Project roads will create a Class 1 roadway system serving a high-intensity commercial or industrial project, but will be located in a low-density area with sparse development, typically associated with a Class 3 roadway system. The roadway design and specifications proposed are appropriate for this Project with regard to: (a) the nature and level of use, particularly with regard to the large construction equipment that will be traveling on certain road segments; (b) the nature of the roads accessing the site; the Project location relative to the sparse surrounding development; (c) the type and intensity of the proposed use; and (d) the services and utilities likely to need access to the Project area in the future. In addition, the new and upgraded existing Project roads will be sized such that turn-outs to accommodate co-use of the Project roads for land management activities will not be necessary.
- (4) Stormwater and erosion/sedimentation control associated with Project roads and parking areas are considered by the DEP in its Site Law review.

## 18. **Lighting.**

- A. **Review criteria.** §10.25,F,2 of the Commission's Land Use Standards.
- B. **Permanent lighting.** Other than the aviation safety lighting required by the Federal Aviation Administration for the proposed turbines and met towers, which is exempt from the requirements of §10.25,F,2, permanent lighting proposed for the Project will be at (1) the substation, which will have pole-mounted floodlights that are only on during nighttime work at the substation; (2) the DRD; (3) the O&M Building, and (4) potentially motion-sensitive entry lights at the stairs at the base of each turbine. All permanent exterior lighting used for the Project will meet the requirements of §10.25, F, 2.
- C. **Temporary lighting during construction.** Temporary lighting to be used during turbine installation will only be necessary to take advantage of favorable construction conditions, specifically, low wind conditions. Portable trailer-mounted flood lights will be used, with approximately three of these systems needed at any one turbine location. Limited nighttime

security lighting may also be used during construction at the Project's five primary access points (see Finding #17,B(1)).

- D. **Conclusion.** The Project as proposed will meet the provisions of §10.25,F,2 of the Commission's Land Use Standards for permanent lighting.
- (1) Motion sensor activated lighting is exempt from the requirements of §10.25,F,2.
  - (2) *Temporary lighting.* Although the temporary lighting proposed by the Applicants is not permanent exterior lighting, the nature or time frame of the lighting is such that it is reasonable to expect it meet the applicable standards for exterior lighting in §10.25,F,2 where possible.
    - (a) The temporary security lighting at the Project's five primary access roads to be used during the approximately 87 month construction period must meet the applicable standards in §10.25,F,2,a, b and c where possible and must be removed once construction of the Project has been completed.
    - (b) The temporary floodlights that may be used during nighttime erection of the turbines must meet the applicable provisions of §10.25,F,2,b where possible; must only be used on a case-by-case basis if nighttime construction of any of the turbines becomes necessary due to weather conditions; and must be discontinued upon installation of the turbine.

19. **Minimum dimensional requirements.**

- A. **Review criteria.** §§10.26, A through G of the Commission's Land Use Standards.
- B. **Minimum lot size - §10.26, A.** §10.26,A,2 specifies that the minimum lot size for commercial or industrial development involving one or more buildings is 40,000 square feet. All parcels having areas to be developed for the Project exceed 90 acres in size.
  - (1) **Conclusion.** As proposed, the Project will meet the standard for minimum lot size in §10.26,A,2 of the Commission's Land Use Standards.
- C. **Minimum shoreline frontage - §10.26, B.** §§10.26,B,1,b; 2,b; and 3 specify that the minimum shoreline frontage for a commercial or industrial development is 200 feet for parcels bordering a minor flowing water or standing body of water less than 10 acres in size; for a parcel located on a waterbody greater than 10 acres in size or a major flowing water the minimum shoreline frontage is 300 feet; and for lots bordering "more than one waterbody, the shoreline frontage requirement must be met on each waterbody bordered by the lot."
  - (1) Because the Project parcels are the entire ownership of each landowner in each township, there are several standing bodies of water, and many flowing waters on each Project parcel (see Finding #16,B for the description of the Project parcels). The ponds on the Project parcels in Kingsbury Plantation include Whetstone Pond, Foss Pond, and the Hilton Ponds (Lot #1 on Plan #1 and Lot #5 on Plan 4); and in Mayfield Township include Palmer Pond, Little Palmer Pond, Baker Flowage (Lot #1 on Plan 1), and Withee Pond (Lot #5 on Plan 1). Of these, Withee Pond and Hayden Pond are closest to the Project area. The shoreline frontage of the Project parcels containing Withee Pond and Hayden Pond both exceed 300 feet.

- (2) Because the Project parcels encompass large areas, it is not practical to list all of the streams located on each parcel. Two of the larger streams located near the Project area in Kingsbury Plantation are Pottle Brook and Bog Brook; and in Mayfield Township are Bigelow Brook and Gulf Stream.
- (2) *Conclusion.* As proposed, the Project will meet the requirements for minimum shoreline frontage in §§10.26,B,1,b; 2,b; and 3 of the Commission's Land Use Standards.

D. *Minimum road frontage – §10.26, C.* §10.26,C,1,b specifies that the minimum road frontage for commercial or industrial development is 200 feet for any road used for public access.

- (1) Four of the five Project parcels (*see* Finding #16,B for the description of the Project parcels) have frontage on a road used for public access, in this case Route 16, in excess of 200 feet. Project parcel E, comprised of Lot #5 on Plan 2 in Kingsbury Plantation, does not border on Route 16. However, this parcel has more than 200 feet of frontage on the Old Mountain Road, which has portions with no public right of access, and other portions of the road for which the public right of access is unknown.
- (2) *Conclusion.* As proposed, the Project will meet the standard for road frontage in §10.26,C,1,b of the Commission's Land Use Standards.

E. *Minimum setbacks.*

- (1) *Review criteria – §§10.26,D,2 and 3; §10.26,G,5; and Appendix 4,D,2 of the Concept Plan P-RP-013.*
  - (a) §10.26,D,2 of the Commission's Land Use Standards 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 of special significance, and waterbodies less than 10 acres in size; 75 feet from roads used by the public for access; and 25 feet from side and rear property boundary lines.
  - (b) Appendix 4,D,2 of the Concept Plan specifies the minimum setback distances for structures located within the Concept Plan area. The minimum setback from minor flowing waters, P-WL1 wetlands, and waterbodies smaller than 10 acres in size, waterbodies greater than 10 acres, and major flowing waters is 150 feet. The minimum road setback is 75 feet, and the minimum property line setback is 25 feet.
  - (c) §10.26,G,5 of the Commission's Land Use Standards provides that an exception may be made "where the Commission finds that such structures must be located near to the shoreline, road, or property line due to the nature of their use." Appendix 4,G,4 of the Concept Plan provides for the same exceptions to setbacks.
- (2) *Turbines.* The proposed turbines will be located in excess of the minimum setback requirements of 10.26.D; and for the portions of the Project within Concept Plan Area A, the turbines will be located in excess of the minimum setback requirements in Appendix 4,D,2 of the Concept Plan. For example, Turbine 45, which will be located in Kingsbury Plantation within Concept Plan Area A, is the turbine closest to a minor flowing water at a distance of 227 feet. Turbine 31, which is located in Mayfield Township, is the closest turbine to a P-WL1 wetland of special significance at a distance of 164 feet.
- (3) *Met towers.* Because the temporary met towers would be located within the turbine pads, like the turbines, each would be located well in excess of the minimum setback requirements. The permanent met towers will also be located well in excess of the minimum required setback distances.

- (4) **34.5 kV collector line and utility poles.** Other than where the 34.5 kV collector line crosses a property line, road, stream, or P-WL1 wetland, the proposed line and its utility poles will be located in excess of the minimum setback requirements, including the setback distances required for structures within Concept Plan Area A. For example, one of the collector line poles is the Project feature located closest to a body of water greater than 10 acres in size, at 1,200 feet from Foss Pond within Concept Plan Area A in Kingsbury Plantation.
- (a) However, where the collector line crosses P-SL2 streams (minor flowing waters), 22 of the utility poles will need to be located closer than the minimum setback, between 33 feet and 84 feet. One pole will need to be located approximately 90 feet from a P-WL1 wetland. These pole locations are necessary to provide adequate support for the collector line pole-to-pole spans.
- (b) At the request of the Maine Department of Inland Fisheries and Wildlife (IFW), the utility line poles that would be located less than the minimum setback distance will be taller to provide for higher clearance across streams, which in turn will allow the canopy cover along streams to be maintained at the crossing locations.
- (5) **115 kV generator lead line and utility poles.** Other than where the 115 kV generator lead line crosses a property line, road, stream, or P-WL1 wetland, the proposed line and its utility poles will be located in excess of the minimum setback requirements, including the setback distances required for structures within Concept Plan Area A. For example, the closest the generator lead line would be to a waterbody less than 10 acres in size would be 1,400 feet. However, where the line crosses a P-SL2 stream, nine (9) of the utility poles will need to be located less than 100 feet from the stream channel, at distances ranging from 32 to 98 feet; and four (4) of the utility poles within Concept Plan Area A will need to be located less than 150 feet from minor flowing waters (P-SL2 streams) at distances ranging from 111 feet to 146 feet. Like the collector line poles, the reduced stream setback distances are needed to provide adequate pole-to-pole support where the line crosses the stream.
- (6) **O&M Building, substation and DRD, temporary lay-down areas, and temporary trailers.** The O&M Building and parking area, substation, DRD, and temporary lay-down areas will meet or exceed the required minimum setback distances. During construction, the temporary office and storage trailers will be located within the temporary lay-down areas, the O&M Building site, and the substation site (*see Findings #14, D, G, and H*).
- (7) **Conclusion.** As proposed, the Project will meet the standards for setbacks in §10.26, D,2 and §10.26,G,5 of the Commission's Land Use Standards; and in Appendices 4,D,2 and 4,G,4 of the Concept Plan. The utility line poles proposed to be closer to P-SL2 streams, and in one case a P-WL1 wetland, meet the exception criteria in Section 10.26,G,5 for structures that need to be closer to a resource due to the nature of their use. Specifically, the distances to the streams and wetland are a result of providing adequate support for the lines. The Applicants have included increasing the height of the poles near the stream crossings, as suggested by MDIFW, which would allow the tree canopy near the streams to remain intact.

F. **Maximum lot coverage - §§10.26, E,1 and 2.** §10.26,E,1 specifies that the maximum lot coverage is 30% for all uses involving one or more buildings, including driveways, sidewalks, parking lots, and other impervious surfaces. The maximum lot coverage for any of the Project parcels will be less than 1%. As proposed, the Project complies with the maximum lot coverage requirements in §10.26, E,1 of the Commission's Land Use Standards.

**G. Maximum structure height - §10.26,F of the Commission's Land Use Standards.**

- (1) **Review criteria.** §§10.26,F,1,b and 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) All proposed Project structures will be located more than 500 feet from a great pond. The turbines will have a maximum height of 512 feet at the upward tip of the blade, and the met towers will have a maximum height of 334 feet. Both the turbines and the met towers are free-standing structures, and may exceed the maximum height of 100 feet with Commission approval.
- (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 Project complies with the Commission's structure height standard.

20. **Vegetation clearing – §10.27,B of the Commission's Land Use Standards.** In total, 77 acres will remain permanently cleared for the proposed turbines, permanent road network, permanent met towers, O&M Building and parking area, and substation and DRD. Temporarily cleared areas that will be re-vegetated after construction include the lay-down areas, areas around the turbines and met towers, and the edges of the 38-foot wide crane roads that will be reduced to be 24 feet wide.

- A. **Review criteria.** Based on the materials supplied by the Applicants, §§10.27,B,1 and 2, in part, of the Commission's Land Use Standards are applicable to this Project. Specifically, this includes vegetation clearing activities for any purpose other than road construction, with the exception of clearing within 75 feet of most bodies of standing water and flowing waters, which are mentioned here in order to describe the Project, but are reviewed by DEP.<sup>7</sup>
- B. **Clearing within 75 feet of a P-SL2 minor flowing water.** Clearing that will occur within the vegetated stream buffers of 34 perennial streams is being reviewed by the DEP under Title 38, the Natural Resources Protection Act (NRPA). The Applicants also assessed clearing within 75 feet of four intermittent stream crossings not assessed by the DEP under NRPA: three P-SL2 streams crossed by the above-ground portions of the collector line (streams S008, S017, and S018), and the access road near Turbine 31 where it crosses stream S035. For the collector line and generator lead line utility pole setbacks near streams, *see* Finding #19,E(4) and (5), above.
- C. **Clearing within a 50 foot road buffer.** The applicants have proposed clearing within 50 feet of Route 16 for the crossings by the collector line and the generator lead line. The clearing is associated with providing adequate support for the utility lines' pole-to-pole spans across the road.
  - (1) In Kingsbury Plantation, approximately 0.10 acres (4,562 square feet) of clearing will occur within 50 feet of Route 16 at the crossing of the generator lead line.

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<sup>7</sup> Based on the "Guidance Document on Site Law Certification, Land Use Standards", adopted by the Commission on August 14, 2013, DEP will apply clearing standards for NRPA resource areas, and LUPC will apply clearing standards for other areas, and the two agencies will coordinate review.

(2) In Mayfield Township, approximately 0.31 acres (13,367 square feet) of clearing will occur within 50 feet of Route 16 at two crossings by the collector line.

D. Except as noted in sections B and C above, all other clearing for the permanent Project features will exceed the required minimum buffer width from any public roadway, waterbody, or flowing water. Within the utility line corridors, the tree canopy will be permanently removed, with shrub vegetation retained. The cleared corridors will be maintained as required by the DEP.

E. **Conclusion.** The configuration of the Project features will allow the stream buffers required by §10.27,B,1 of the Commission's Standards to be maintained.

(1) *P-SL2 stream buffers.* As noted in subsection B, clearing for the collector line corridor and for one road crossing within 75 feet of a P-SL2 minor flowing water will be done in accordance with the recommendations made by IFW, and the corridors will be maintained as required by DEP.

(2) *Road buffers.* As noted in subsection C, the clearing associated with the utility line crossings of Route 16 is associated with the locations of the poles necessary to provide an adequate pole-to-pole span, which is allowed in accordance with 10.26,G,5.

(3) *Lake or pond buffers.* No Project features will be located within 250 ft. of a lake, pond, or river (*See Finding #19,E, Setbacks*).

(4) The Project features will meet the applicable provisions of §10.27,B, or if in excess of these standards as noted in Section B, are not expected to cause an undue adverse impact to the affected streams.

21. **Signs – §10.27, J of the Commission's Land Use Standards.** §10.27.J of the Commission's Standards provides the standards for placement and sizing of signs used by the Project. The Applicants stated that all signs used on-site during construction will be informational and safety signs associated with site activities, as provided for in §10.27,J,1,d and e; and that any permanent signs will be in compliance with §10.27, J.

(1) **Conclusion.** All signs used for the Project during construction and operation will meet the provisions of §10.27,J of the Commission's Standards.

22. **Concept Plan, Appendix I.F, development restrictions.** The following Sections A through G discuss the restrictions for development in the Concept Plan's Area A, found in Appendix I.F of the Concept Plan, followed by the Conclusions in Section H:

A. **No further divisions of Area A, but may be transferred in its entirety.** The lease granted to the Applicants by landowner Linkletter & Sons includes the entirety of Area A.

B. **Wind power as an allowed use in P-RP013.** During the review of Development Permit DP 4856, it was determined that in 2008, when the Legislature provided that wind energy development is an allowed use in all subdistricts located within the expedited permitting area for wind energy development (*see* PL 2007 Ch. 661), that decision generally also applied to the existing P-RP Subdistricts. It was further determined during the review of DP 4856 that the conservation easement areas, the development areas, and the common area designated by the Concept Plan could not be developed with a wind energy facility, but that Area A could be (*reference* Conclusions #1 through #5 of DP 4856). As such, wind energy development is an

allowed use in Area A of the P-RP 013 Subdistrict (*also see* Appendix A, Certification of Allowed Use, attached to this certification).

- C. **Road and surface alterations, in compliance with P-RP zoning and §10.27,D of the Commission's Land Use Standards.** The Applicants stated that the new road and road upgrade construction associated with the Project is being reviewed by the DEP.
- D. **No limits on road or trail use.** The Applicants stated that they do not intend to limit the use by the public of the private land management roads and ATV trails within the project area, and that the landowner retains the right to limit such use. During construction, the Applicants also intend to post the land management roads within the project area with informational and safety signs.
- E. **Commercial timber harvesting.** All commercial timber harvesting to be conducted in Area A of the Concept Plan will be conducted by the landowner, not by the Applicants. Commercial timber harvesting is not proposed as a part of the Project.
- F. **Public use of Area A for recreation.** The applicants stated that they will not prohibit or discourage public use of Area A. However, during construction, safety and informational signs will be posted, and there will be limited access to some Project areas for safety or security purposes. The landowner retains the right to regulate public use of Area A during construction and operation of the Project.
- G. **Solid waste disposal.** The Applicants do not propose overboard or direct discharge of treated or untreated black or grey water; or disposal or permanent storage of rubbish, garbage, debris, or abandoned vehicles in Area A.
- H. **Conclusion.** The Applicants have designed the Project and made provisions for the restrictions on development in Area A, in accordance with Appendix 1.F of the Concept Plan, to the extent the restrictions are applicable to a wind energy development. With regard to the compliance of the Project roads with §10.27,D of the Commission's Standards, as provided for in 12 MRSA, §685,B(1-A)(B-1):

“The Department of Environmental Protection must receive certification from the commission that the proposed development is an allowed use within the subdistrict or subdistricts for which it is proposed and the proposed development meets any land use standard established by the commission that is not considered in the department's review under Title 38, section 489-A-1, subsection 1 before issuing a permit.”

As agreed to by DEP and the Commission, and documented in the *“Guidance Document on Site Law Certification, Land Use Standards”*, adopted by the Commission on August 14, 2013, with limited exceptions the DEP will review roads and water crossings associated with Site Law Projects (*also see* footnote #7, page 19). However, compliance with the §10.25,D of the Commission's standards in §10.25,D for vehicle circulation, access and parking is reviewed by the Commission (*see* Finding #17, above).

23. **General Criteria for Approval - 12 M.R.S.A §685-B(4) (incorporated in §10.24 of the Commission's Land Use Standards).** In evaluating the Project, the Commission considers and

applies its land use standards not considered by the DEP in its review under 38 M.R.S.A. §489-A-1(1).

A. ***Loading, parking and circulation.*** 12 M.R.S.A. §685-B(4)(B) and Land Use Standard §10.24, B specify that adequate provision must be made for transportation, including loading, parking and circulation of traffic in, on and from the site.

(1) ***Conclusion.*** As proposed, and as discussed and concluded in Finding #17, above, the Project will meet the standards for loading, parking and circulation in 12 M.R.S.A. §685-B(4)(B) and §10.24, B of the Commission's Land Use Standards.

B. ***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 #23. Additionally, the Commission has more generally reviewed Title 12, Chapter 206-A and no Project components or features are out of conformance with any applicable statutory standards. As explained more fully in Findings #16 through #22 above, the Commission has reviewed the Project under applicable regulations and standards, specifically the Commission's Land Use Standards contained in Chapter 10 of its rules, and, as articulated in the findings above, the Project conforms with these regulations and standards. Finally, in conducting its certification review and reviewing 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.")

(1) ***Conclusion.*** As proposed, 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.

C. ***Placement of structures on lots in a subdivision.*** 12 M.R.S.A. §685-B(4)(F) and Land Use Standard §10.24, F specify that placement of a structure on a lot in a subdivision only may be allowed after the subdivision has been approved by the Commission.

(1) ***Conclusion.*** As proposed, and as discussed and concluded in Finding #16, above, the Project will not be located on any parcel associated with a subdivision that has not been reviewed and approved by the Commission.

## FINAL CONCLUSION

Based on the findings set forth above, and in addition to the conclusions set forth above, the Commission concludes that, with respect to the Bingham Wind Project proposal, the Applicants have met the burden of demonstrating that the Project 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 Commission CERTIFIES to the DEP that Site Law Certification SLC-3, submitted by Blue Sky West, LLC and Blue Sky West II, LLC for the Bingham 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. **Vehicle circulation, access, and parking (see Finding #17).** All Project traffic, roads and parking areas must meet the applicable provisions of §10.25,D of the Commission's Land Use Standards. In particular:

- A. **Vehicle circulation and access.**

- (1) During construction, informational signs to assure traffic safety must be placed at Project entrances and along any Project roads that are also used by the public or used for forest operations.
    - (2) During construction and operation, adequate sight distances must be provided where a Project road enters onto a road used by the public.
    - (3) A 25-foot long sight triangle must be maintained on each side of the O&M Access Road where it enters on to South Crane Road 7 and Route 16, in accordance with §10.25,D,3,e of the Commission's Land Use Standards.
    - (4) The corner radii where the permanent Project access roads intersect with Route 16 must be at least 15 feet.
    - (5) During construction and operation, Project traffic must be coordinated with any forest operations vehicles also using the Project access roads.
    - (6) With the exception of the 12 foot wide met tower access roads, new or upgraded permanent Project roads must be at least 24 feet wide, and must be configured to allow for safe passage by wood haulers or other large vehicles and the public.

- B. **Parking areas.** The permanent Project parking area located at the O&M Building site must be set back at least 75 feet from Route 16. All designated temporary parking areas used during construction must be set back at least 75 feet from the traveled portion of roads used by the public and roads used for forest management activities.

2. **Lighting (see Finding #18).**

- A. **Permanent lighting.** With the exception of the avian safety lighting on the turbines and met towers required by the Federal Aviation Administration, which is exempt from the provisions of §10.25,F,2, all Project permanent exterior lighting must meet the standards of §10.25,F,2,a, b and c of the Commission's Land Use Standards. Outside lighting at the turbine bases must be motion-sensitive or manually-operated, and turned off when not in use. Outside permanent lighting at the substation must be turned off when not in use.

- B. **Temporary lighting.** Temporary lighting at the five Project access roads must be limited to only that which is needed to provide for security during the approximately 87 month construction period. The temporary security lighting at the Project access roads must meet the applicable

standards of §10.25,F,2,a, b and c of the Commission's Land Use Standards; and must be removed once construction of the Project has been completed.

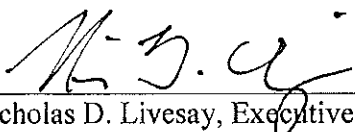
The use of trailer-mounted floodlights is limited to during construction, as needed to install the turbines. The temporary floodlight use must meet the applicable provisions of §10.25,F,2,b of the Commission's Land Use Standards; must only be used on a case-by-case basis if nighttime construction of any of the turbines becomes necessary due to weather conditions; and must be discontinued upon installation of the turbines.

3. **Signs (see Finding #21).** All Project signs must meet the provisions of §10.27,J of the Commission's Land Use Standards.
4. **Setbacks.** All temporary and permanent structures must be located as described in Findings #14 and #19,E, and as depicted on Exhibit 1 of 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, or with §10.26,G,5 for the utility line poles, where needed.
  - A. The identified utility poles for the 34.5 kV collector line and the 115 kV generator lead line may be located closer than 100 feet to P-SL2 streams, and in one case a P-WL1 wetland, if needed to provide adequate support for the line, in accordance with §10.26,G,5 (see Finding #19,E).
  - B. Temporary parking areas, trailers, and equipment storage must be setback at least 75 feet from a roadway used by the public; or if located on a private road, must be located in a manner that will not interfere with the flow of traffic on that road.
5. **Clearing.** Vegetated buffers along streams must be maintained as agreed to with IFW, and managed as required by DEP (see Finding #20). A vegetated buffer to provide visual screening must be maintained between the O&M Building site and parking area and Route 16, in accordance with §10.25,D,f of the Commission's Land Use Standards.
6. **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 certification, 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 Superior 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 the Commission's certification determination that is incorporated into the DEP's permitting decision.

DONE AND DATED AT HOULTON, MAINE THIS 9 DAY OF SEPTEMBER, 2013.

By:

  
\_\_\_\_\_  
Nicholas D. Livesay, Executive Director

APPENDIX A



PAUL R. LEPAGE  
GOVERNOR

STATE OF MAINE  
DEPARTMENT OF AGRICULTURE, CONSERVATION & FORESTRY  
LAND USE PLANNING COMMISSION  
22 STATE HOUSE STATION

AUGUSTA, MAINE 04333-0022

WALTER E. WHITCOMB  
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For

Bingham Wind Project (Site Law Certification SLC-3)  
Blue Sky West, LLC and Blue Sky West II, LLC  
Mayfield Township, Somerset County; and Kingsbury Plantation, Piscataquis County

### Certification of Allowed Use

May 10, 2013

Dear Dan:

On April 19, 2013, Blue Sky West, LLC and Blue Sky West II, LLC (collectively "the Applicants") subsidiaries of First Wind represented by their agent Stantec Consulting, submitted to the Department of Environmental Protection (DEP) a combined Site Location of Development Law (Site Law)/Natural Resources Protection Act (NRPA) application for the proposed Bingham Wind Project ("the Project"). In addition to the organized towns of Moscow, Bingham, Parkman and Abbott, the proposed Project will be located within Mayfield Township in Somerset County, and Kingsbury Plantation in Piscataquis County, both of which are in the portion of the State subject to the Land Use Planning Commission's (the LUPC) jurisdiction. The proposed Project is a grid-scale wind energy development to be located entirely within the expedited permitting areas for wind energy development.

Also on April 19<sup>th</sup>, the Applicants provided copies of portions (Section 1 and Section 31) of the combined DEP Site Law/NRPA application to the LUPC. On May 2, 2013, the DEP requested that the LUPC review these materials to determine whether to certify to the DEP that the Project (a) is an allowed use within the subdistricts in which it is proposed and (b) meets the land use standards established by the LUPC that are not considered in the DEP's permit review. See 12 M.R.S. § 685-B(1-A)(B-1) and (2-C)A and B. The Applicants included their public notice of intent to file and maps indicating the location of the proposed development with its DEP

application; the notice and maps were also included in the portions of the application provided to the LUPC.

### Proposal and subdistricts affected

1. *Project description.* The Applicants propose to construct the approximately 191 megawatt (MW) Bingham Wind Project, consisting of up to 63 turbines (each approx. 3.0 MW); new roads and crane paths, and upgraded existing access roads; above-ground and underground 34.5 kV electrical collector lines; an Operations & Maintenance (O&M) building; a collector substation and a DRD<sup>1</sup>; up to 5 temporary met towers and up to 5 permanent met towers; and a 115 kV generator lead (transmission) line which will connect the Project to the New England electric power grid at the Guilford substation in Parkman (collectively, "the Project").
  - A. Within Mayfield Township, the Project features will include: Twenty-nine (29) turbines, and associated access roads and crane paths; underground and above-ground 34.5 kV collector lines; a portion of the 115 kV generator lead line; up to three (3) permanent met towers and up to three (3) temporary met towers; the O&M building; and the collector substation and DRD.
  - B. Within Kingsbury Plantation<sup>2</sup>, the Project will be located both within Area A of the *Whetstone, Foss and Hilton Ponds Lake Concept Plan*, P-RP 013 ("the Concept Plan"), and outside of the P-RP Subdistrict boundaries. *See* Zoning Petition ZP 693.
    - (1) The Project features in Kingsbury Plantation within the P-RP Subdistrict will include nineteen (19) turbines and associated access roads and crane paths; underground 34.5 kV collector lines; a portion of the 115 kV above-ground generator lead line; temporary lay-down areas; and up to one permanent met tower and up to one temporary met tower.
    - (2) Outside of the P-RP Subdistrict, the Project features will include three (3) turbines and associated access road and crane paths, underground 34.5 kV collector line, a portion of the 115 kV generator lead line; and temporary laydown areas.
2. *Subdistricts affected.* The LUPC zones to be affected by the Project are the General Management Subdistrict (M-GN), Shoreland Protection Subdistrict (P-SL2), Resource Protection Subdistrict (P-RP 013), Fish and Wildlife Protection Subdistrict (P-FW), and Wetland Protection Subdistrict (P-WL).
  - A. *Wetland Protection Subdistrict (P-WL).* Within the Project area, P-WL2 and P-WL3 Subdistricts both shown and not shown (but delineated on the ground) on the LUPC zoning maps will be affected by the Project. Stream channels, which are P-WL1 Subdistricts by definition, both shown and not shown on the LUPC zoning map, will be

<sup>1</sup> A "DRD" is a dynamic reactive device such as a synchronous condenser, used to help meet ISO-NE and CMP interconnection requirements.

<sup>2</sup> Kingsbury Plantation is partially organized, with the Land Use Planning Commission serving as its planning board.

crossed by the collector line and the generator lead line. All of the wetland areas, including streams, affected by the Project are subject to the LUPC's rules and standards for P-WL Subdistricts.

- B. *Fish and Wildlife Protection Subdistrict (P-FW)*. The Project will be located along the edge of Maine Department of Inland Fisheries and Wildlife (IFW) Deer Wintering Area (DWA) #080604, which is shown on the Kingsbury Plantation zoning map as a P-FW Subdistrict. Three other IFW DWAs not shown on the LUPC zoning maps will also be affected.
  - C. *Resource Protection Subdistrict (P-RP 013)*. Where the Project will be located in Kingsbury Plantation, it will be within the Concept Plan's "Area A", but not within the portions of the parcel identified in the Concept Plan for the conservation easement, for camp development, or as common area.
3. *Public notice of intent to file*. On March 4, 6, and 8, 2013, the Applicant sent notice of the intent to file to abutters (on 3/4/2013), and had the public notice published in local newspapers (on 3/6 and 3/8). A revised public notice was sent to the abutters (on 4/10) and published in the newspapers (on 4/11 and 4/12).
- A. The Applicant communicated directly with Kingsbury Plantation, most recently on December 15, 2012 when the community benefits agreement was voted on. Prior to that, the Applicant held two public information meetings, and notified the taxpayers in Kingsbury Plantation of those meetings. The Applicant noted that no one attending the various meetings had raised questions related to the Concept Plan.
  - B. The Applicant forwarded the notification to the Small Woodlot Owners Association of Maine (SWOAM) and to the Maine Bureau of Parks and Public Lands (BPPL) at staff's request. SWOAM is the holder of the conservation easement component of the Concept Plan, and BPPL is the third party for that easement.

#### Review criteria

The following statutory provisions are relevant to the determination of whether the Project is an allowed use in the subdistricts in which it is proposed to be located:

1. *12 M.R.S. § 685-B(1-A)(B-1)*. "Except for projects that are located in a planned subdistrict that was approved or accepted by the commission for processing prior to September 1, 2012, a permit from the commission is not required for a development of state or regional significance that may substantially affect the environment as defined in Title 38, section 482, subsection 2. A project meeting that definition is reviewed under Title 38, section 489-A-1. A person submitting a development proposal to the Department of Environmental Protection under Title 38, section 489-A-1 shall file a notice of the intent to develop and a map indicating the location of the proposed development with the commission prior to or concurrently with submission of a development application to the Department of Environmental Protection. The Department of Environmental Protection must receive certification from the commission that the proposed development is an allowed use within

the subdistrict or subdistricts for which it is proposed and the proposed development meets any land use standard established by the commission that is not considered in the department's review under Title 38, section 489-A-1, subsection 1 before issuing a permit. Nothing in this subsection may be construed as prohibiting the commission from enforcing the land use standards certified to the Department of Environmental Protection under this paragraph."

2. *12 M.R.S. § 685-B(2-C), A and B. "Wind energy development; community-based offshore wind energy projects; determination deadline.* For purposes of this subsection, 'expedited permitting area,' 'grid-scale wind energy development' and 'wind energy development' have the same meanings as in Title 35-A, section 3451. The following provisions govern wind energy development."
  - A. "The commission shall consider any wind energy development in the expedited permitting area under Title 35-A, chapter 34-A with a generating capacity of 100 kilowatts or greater or a community-based offshore wind energy project a use requiring a permit, but not a special exception, within the affected districts or subdistricts."
  - B. "All grid-scale wind energy development proposed for the unorganized or deorganized areas of the State is reviewed and permits are issued by the Department of Environmental Protection under Title 35-A, chapter 34-A and Title 38, section 489-A-1."
3. *35-A M.R.S., Ch. 34-A, § 3451, sub-§§ 3, 6, and 11.* "As used in this chapter, unless the context otherwise indicates, the following terms have the following meanings."
  - A. "*3. Expedited permitting area.* 'Expedited permitting area' means:
    - A. The organized areas of the State in their entirety, but not including waters subject to tidal influence, so that the edge of the area that is subject to tidal action during the highest tide level for the year in which an activity is proposed as identified in tide tables published by the United States Department of Commerce, National Oceanic and Atmospheric Administration, National Ocean Service defines the boundary of the expedited permitting area on lands abutting waters subject to tidal influence; and
    - B. Specific places within the State's unorganized and deorganized areas, as defined by Title 12, section 682, subsection 1, that are identified by rule by the Maine Land Use Planning Commission in accordance with this chapter."
  - B. "*6. Grid-scale wind energy development.* 'Grid-scale wind energy development' means a wind energy development that is of a size that would qualify as a development of state or regional significance that may substantially affect the environment as defined under Title 38, section 482, subsection 2, paragraph A or paragraph C."
  - C. "*11. Wind energy development.* 'Wind energy development' means a development that uses a windmill or wind turbine to convert wind energy to electrical energy for sale or use by a person other than the generator. A wind energy development includes generating facilities and associated facilities."

4. *Wind Energy Act, expedited permitting area for wind energy development.* On April 18, 2008, the Wind Energy Act (2007 Public Law, Chapter 661) was signed into law, establishing the expedited permitting area for wind energy development in the state of Maine. The Act required that the Commission adopt the designated expedited permitting area into its rules (reference 35-A M.R.S., Chapter 34-A, Section C-6), including Kingsbury Plantation, and add wind energy development (as defined in 35-A M.R.S., Chapter 34-A, Section 3451(11)) as an allowed use by permit in all subdistricts within the expedited area (reference 12 M.R.S., Section 685-B(2-C)).
  - A. “*Sec. C-6. Expedited permitting area designation; permitted use.* No later than September 1, 2008, the Maine Land Use Regulation Commission shall adopt a rule listing the following specific places within the State's unorganized and deorganized areas, which comprise the expedited permitting area for purposes of this Act, except that the commission may subsequently add additional areas to this list by rule in the manner provided by this Act:”
  - B. Subsequently, the Commission adopted the expedited permitting area for wind energy development as Appendix F to Chapter 10 of its rules.
  - C. On March 3, 2010, the Commission voted to adopt a rule change to make rule certain corrections to the written description of the expedited permitting area that were identified in LD 1475 (PL 2009, Ch. 415). The effective date of this rule change was April 7, 2010. However, none of the corrections affected Kingsbury Plantation.
5. *Zoning Petition ZP 693, Whelstone, Foss & Hilton Ponds Concept Plan.*
  - A. *Finding of Fact #34,C of Zoning Petition ZP 693.* “Conservation measures apply in perpetuity for 1,055 acres of the Plan Area under the protection of a conservation easement to be held by the Small Woodlot Owners Association, with the Bureau of Parks and Lands as the back-up holder and third party enforcer of the easement Conservation measures fully provide for long-term protection of 9 acres of the Plan Area by means of deed restrictions and home owners association bylaws. In addition, conservation measures apply for the 15-year term of the Plan for 10,765 acres of the Plan Area [the so-called Area A] under the regulatory protection of the Concept Plan.”
  - B. *Appendix 1, Section F, Additional Restrictions for Area A.*
    - (1) *Page 1-6: Structures.* “Structural development, commercial and residential, industrial, energy generation, quarrying, mining, landfill, and waste disposal activities are prohibited within “Area A’ during the life of the Concept Plan unless expressly stated to the contrary herein.”
    - (2) *Page 1-7: Reserved rights.* “Landowner(s) reserves to itself, and to its personal representatives, successors, and assigns, all rights accruing from ownership of “Area A”, including the right to engage in, or permit or invite others to engage in, all uses of “Area A” that are not expressly prohibited herein.”



### Assessment of the Project as an Allowed Use in the Subdistricts in Which Development is Proposed

Based on the materials submitted by Blue Sky West, LLC and Blue Sky West II, LLC, the LUPC, through its staff, determines that:

1. All parts of the Project, as proposed, are a wind energy development.
2. Portions of the Project, as proposed, will be located in the unorganized townships of Mayfield Township, Somerset County, and Kingsbury Plantation, Piscataquis County.
3. The portions of Mayfield Township and Kingsbury Plantation in which the Project is proposed to be located are within the expedited permitting area for wind energy development.
4. In the zones in which the Project is proposed to be located, specifically General Management Subdistrict (M-GN), Fish and Wildlife Protection Subdistrict (P-FW), Shoreland Protection Subdistrict (P-SL2), Wetland Protection Subdistrict (P-WL), and Resource Protection Subdistrict (P-RP 013), wind energy development is an allowed use requiring a permit as a result of being located within the expedited permitting area for wind energy development. See Chapter 10 of the LUPC's Land Use Districts and Standards, Sections 10.22,A,3,c(27) [M-GN]; 10.23,D,3,c(14) [P-FW] 10.23,L,3,c(24) [P-SL2]; and 10.23,N,3,c(18) [P-WL].

For P-RP 013, see Conclusions #5 to #7, below, regarding wind energy development as an allowed use in the *Foss Pond, Hilton Ponds and Portions of Whetstone Pond Concept Plan* ("the Concept Plan") Area A.

5. 2007 Public Law, Chapter 661 (the Wind Energy Act) designated a portion of the LUPC (then LURC) jurisdiction, including all of Kingsbury Plantation (except as noted below), to be included in the expedited permitting area for wind energy development. With the passage of that law, all LUPC subdistricts, including P-RPs, falling within the designated expedited permitting area included wind energy development as a use allowed by permit (See Appendix F to Chapter 10 of the Commission's Land Use Standards).

Therefore, wind energy development is now a use allowed by permit within Area A of the Concept Plan Area. The Permanent Conservation Area within the Concept Plan Area is subject to a conservation easement held in perpetuity by the Small Woodlot Owners Association of Maine (SWOAM), with third party rights held by the Maine Bureau of Parks and Public Lands (BPPL). The lots on Whetstone and Foss Ponds are subject to deed restrictions that are privately enforceable and, like the permanent conservation easement area, are not impacted by the Wind Energy Act (both the designated "development areas" and the "common areas").

6. Zoning Petition ZP 693 provided that Area A was to be protected under the regulatory provisions of the Concept Plan (i.e., Resource Protection Subdistrict P-RP 013). The proposed wind energy development will be located within the 10,765 acre Area A parcel.

The terms of concept plans, however, do not constrain future legislative activity, and thus while the terms of concept plans are binding on the Commission and the landowner, the Legislature's authority to enact statutory changes applicable to an area regulated under a concept plan is undiminished. Therefore the terms of the Wind Energy Act are applicable within the Concept Plan's Area A.

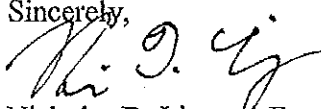
7. With due consideration of the above, the proposed wind energy development is a use allowed by permit within Area A of the Concept Plan Area P-RP 013. Wind energy development, including certain structures associated with such development, has been designated by the Legislature as a use allowed by permit in all subdistricts falling within the designated expedited permitting area, including existing P-RP Subdistricts such as this Concept Plan in Kingsbury Plantation. Thus, the Wind Energy Act intended for wind energy development to be a structural use allowed by permit within all existing P-RP Subdistricts located within the expedited permitting area.

Therefore, the LUPC certifies to the DEP that the Project is an allowed use in the subdistricts in which it is proposed. Neither special exception approval nor rezoning is required for the Project.

Please note that this certification is not final agency action and pertains only to the staff's determination of the use proposed by Blue Sky West, LLC and Blue Sky West II, LLC. The LUPC will conduct a further review of the request for certification, including all application and administrative record materials to determine whether to certify to the DEP that the Project meets the land use standards established by the LUPC that are not considered in the DEP's permit review.

If you have any questions or would like to further discuss this matter, please contact Marcia Spencer-Famous at the Augusta office by email [ [Marcia.spencer-famous@maine.gov](mailto:Marcia.spencer-famous@maine.gov) ] or at (207) 287-4933.

Sincerely,



Nicholas D. Livesay, Executive Director  
Maine Land Use Planning Commission

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