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**Subject:** FW: Post-Hearing Brief of EverPower Maine  
**Date:** Monday, August 29, 2016 4:52:52 PM  
**Attachments:** [EverPower Post Hearing Brief 8-29-2016.pdf](#)  
[Executive Summary.pdf](#)  
[Exhibits A - C.pdf](#)

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Attached please find EverPower's Post Hearing Brief along with an Executive Summary and Exhibits A-C.

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STATE OF MAINE  
LAND USE PLANNING COMMISSION

Substantive Review, Milton Township	)	Post-Hearing Brief
Petition to Remove Milton from the Expedited	)	of EverPower Maine, LLC
Permitting Area for Wind Energy Development	)	

**INTRODUCTION**

Wind power is an increasingly important form of economic development, especially in Maine’s rural communities where economic opportunities are limited. Wind power is also compatible with and helps to sustain Maine’s working forests, which are a cornerstone of the Maine economy. Comments of the Maine Forest Products Council (MFPC) at 1. The economic benefits of wind power coupled with its synergistic relationship with the forest products industry are overarching considerations that touch on core Commission values. Eliminating wind power as an allowed use in Milton Township (“Twp.”) would compromise those key values and prevent landowners from realizing an economic opportunity that is consistent with the general location and development objectives of the Comprehensive Land Use Plan (CLUP). Moreover, there are no overriding public resource values that require protection and outweigh the economic, energy, forest resource and development policies of the CLUP. Consistent with the Legislature’s direction that the Commission should place increased emphasis on encouraging and facilitating economic viability and honoring the rights of landowners and residents in the unorganized area, EverPower Maine, LLC (“EverPower”) respectfully requests that the Commission maintain the existing zoning in Milton Twp.

**I. REMOVAL OF MILTON TWP IS INCONSISTENT WITH THE CLUP**

The CLUP is a guidance document whose goals and policies at times conflict and, as a result, the Commission must “balance the various policies so as to best achieve its vision for the jurisdiction.” CLUP at 5. That balancing is informed and circumscribed by significant statutory

changes to the Commission’s governing statute enacted in 2012. P.L. 2011, ch. 682 (An Act to Reform Land Use Planning in the Unorganized Territory, or the “LURC Reform Bill”). These changes arose out of concerns relating to: **private property rights; decision-making that was inattentive to local interests; and a general lack of consideration for economic vitality in the unorganized territory.** See December, 2011 Final Report of the Commission on Reform of the Governance of Land Use Planning in the Unorganized Territory (“Commission Report”) at 4 (emphasis added). Following enactment of these statutory changes the Commission adopted guidance on how the changes affected interpretation of the CLUP. Maine Land Use Planning Commission Guidance for Interpreting the 2010 Comprehensive Land Use Plan, Approved October 5, 2012 (“CLUP Guidance”) at 3. As that guidance states:

In conducting the balancing that is necessarily part of its planning and zoning responsibilities, the Commission interprets the CLUP in a manner consistent with the Commission’s revised purpose and scope, which, as discussed below, places increased emphasis on:

- Serving the regions in which the unorganized and deorganized areas are located,
- Honoring the rights and participation of residents and property owners and,
- Encouraging and facilitating regional economic vitality.

Id.

Maintaining the existing zoning respects private property rights and advances meaningful economic development in Milton Twp., an area of sparse economic opportunity. In contrast, eliminating wind power as an allowed use in Milton Twp. is inconsistent with the CLUP because it would compromise the specific policies and goals in the CLUP that advance these statutory

reforms.<sup>1</sup> Neither the presence of a single ecological resource that would be appropriately managed during any permitting process, nor objections of residents primarily from the surrounding organized towns who object to visibility of turbines, outweighs the important economic and landowner rights at stake here.

A. Location of Development/Economic Development

The CLUP directs development to locations near organized areas and other forms of compatible development, and specifically directs energy facilities to the edge of the jurisdiction in areas with existing road access and low natural resource values. CLUP at 6, 142; Stantec Pre-Filed Testimony at 8-10 and Exhibit 3 at 7-8. Milton Twp. is precisely the type of location where wind energy development within the unorganized jurisdiction should occur. It is surrounded by organized towns that host significant development, including a wind power project in the adjacent town of Woodstock. Stantec Pre-Filed Testimony at 9-10 and Exhibit 3 at 7-8.

Maintaining the existing zoning in Milton Twp. also advances the important economic development objectives in the CLUP. Specifically, a potential wind power project would result in the following economic benefits:

- Significant annual payments to participating landowners;
- Annual estimated taxes of at least \$320,000 per year;
- Minimum of \$48,000 annually in community benefit agreement payments;

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<sup>1</sup> Petitioners argue that removal is consistent with certain policies of the CLUP considered in isolation and, as a result, the standard for removal is met. Consistency with the CLUP, however, is a holistic exercise that takes into account all of the CLUP, including sometimes competing policies, and must be informed by the recent legislative changes. Changing the zoning in Milton Twp. would be inconsistent with the CLUP because it would compromise key policies that the Legislature has directed the Commission to give greater weight when interpreting the CLUP. These policies are not outweighed by the limited ecological or scenic values relied on by Petitioners.

- \$40-50,000 annually to a community fund to be administered locally;
- Estimated \$13.1 million in construction wages;
- Estimated \$900,000 in annual wages during operation; and,
- Additional local spending during construction and operation.

EverPower Pre-Filed Testimony at 11-14 and Hearing Testimony.

The economic benefits associated with the wind industry, including benefits to Oxford County from existing projects, have been significant. Stantec Pre-Filed Testimony Exhibit 3 at 8. A project in Milton Twp. would bring this important form of economic development to a township that does not have other economic opportunities, and which is an area that meets the development criteria in the CLUP. In contrast, eliminating wind power as an allowed use in Milton Twp. is inconsistent with the location and economic development policies and goals of the CLUP.

B. Energy Goals

Maintaining the existing zoning in Milton Twp. is also consistent with and advances the CLUP's energy goals. The CLUP supports renewable energy resources as part of the State's broader policy to promote energy independence, diversity and long-term sustainability, and specifically incorporates the State's broader energy goals. CLUP at 13. The CLUP specifically adopts the goals reflected in the Wind Energy Act in an effort to provide a more predictable framework for evaluating wind power projects, and seeks to accommodate energy development in areas where there are not overriding public values that require protection. CLUP at 13, 193-94. The existing zoning advances all of these objectives, whereas elimination of wind power as an allowed use would be inconsistent with and would compromise these objectives.

C. Scenic and Recreational Resources

Limited scenic or recreational resources exist in Milton Twp. There are no lakes or ponds and only two rivers or streams, neither of which have been identified for scenic value. The nearest scenic resources in the unorganized jurisdiction are located approximately ten miles away in Albany Twp. See generally Stantec Pre-Filed Testimony at 10-12 and Exhibit 3 at 10-14. Petitioners argue that Milton Twp. is the gateway to the recreational resources located in the Mahoosuc region to the west, and that visibility of turbines as people drive toward that region will degrade the quality of the scenery on that route. Petitioners' Post-Hearing Brief at 13. Petitioners ignore the fact that the Spruce Mountain turbines are already visible along that route. Likewise, there are several other wind projects that are also visible as people travel to the region, including the Record Hill project in Roxbury, the Saddleback project in Carthage, and soon the Canton project in Canton. Stantec Pre-Filed Testimony at 1; Wind Energy Development Projects in Maine ("Maine Wind Projects"), included as Attachment 2 to LUPC Additional Materials for the Public Hearing. This is not an area untouched by human development, as Petitioners suggest, and the residents and landowners in Milton Twp. should have the same ability to derive economic value from their land that residents and landowners in the surrounding townships have had.

Petitioners also reference views of Chamberlain and Bryant mountain that are important to landowners, primarily landowners who live in Woodstock. See Petitioners' Post-Hearing Brief at 13-14; Presentation by Ed Rosenberg during the public hearing. Again, landowners in Woodstock, as well as landowners in Milton Twp., already have visibility of turbines on Spruce Mountain. While some residents may currently enjoy unobstructed views of Bryant and Chamberlain mountains, the Commission must balance those personal preferences with the rights

of the landowners who own those mountains and seek to derive reasonable economic value from their property.

Many parts of Maine, particularly within the unorganized jurisdiction, are known for their rolling hills and generally undeveloped character, and it is impossible to site a wind project in a location that is not within someone's favorite view. What is compelling here is that Milton Twp., unlike many other areas in the jurisdiction, does not host sensitive scenic or recreational resources.

D. Plant and Animal Habitat Resources

Milton Twp. also does not host significant sensitive plant or animal habitat resources that require protective zoning. There is no critical habitat, rare or exemplary natural communities or ecosystems, mapped significant vernal pools, or high elevation areas that are called out for special protection in the CLUP. See Stantec Pre-Filed Testimony at 13 and Exhibit 3 at 11-12; June 29, 2016 Comments of IFW. The only unique ecological resource present in Milton Twp. is the bat hibernaculum. Although it is one of only three identified hibernacula in Maine, there are many other natural and man-made locations in Maine where bats hibernate. S. Pelletier Hearing Testimony. Moreover, the Concord River Easement property, which abuts the hibernaculum, already provides an important protective buffer. Development is prohibited on the conserved land generally, and timber harvesting is prohibited within 150 feet of the cave. See Concord River Easement (attached to Petitioners' Post-Hearing Brief) at 1-7 (noting that one of the purposes of the easement is to promote a buffer around the bat hibernaculum and prohibiting harvesting within 150 feet of it).<sup>2</sup>

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<sup>2</sup> The Concord River Easement fee interest is held by Concord River Holdings, LLC. See Quitclaim Deed with Covenant from The Nature Conservancy to Concord River Holdings, LLC recorded at Book 4599, Page 140 in the Oxford County Registry of Deeds on June 21, 2010.

In any event, and as discussed more fully below, the hibernaculum does not require protective zoning because any potential impacts from development of a wind power project in Milton Twp. would be addressed through the comprehensive permitting process governing that form of development.

1. The Presence of the Bat Hibernaculum

The presence of the bat hibernaculum is not a reason to prohibit wind power in Milton Twp. Although wind turbines can present a risk to bats, cave bats are generally less susceptible to wind power mortality than tree bats. August 22, 2016 Stantec Memorandum at 3; see also August 22, 2016 IFW Comments at 2. Moreover, the closest turbine would be more than ten times the ¼ mile protective zone identified by United States Fish and Wildlife Service, and the presence of the Concord River Easement property adjacent to the hibernaculum provides an additional important protective buffer.<sup>3</sup> Stantec Pre-Filed Testimony, Exhibit B at 12 and Hearing Testimony; Concord River Easement. Nonetheless, proximity to a known hibernaculum and risks to bats more generally will be evaluated fully during the permitting process to ensure that sensitive bat species are protected. Stantec Pre-Filed Testimony at 2-7, 13 and Exhibit 3 at 11-12, and Hearing Testimony; August 22, 2016 Review Comments by IFW. Specifically, as part of the review of any wind power project, the developer must demonstrate that the project will not have an unreasonable adverse impact on wildlife, including the bat species that

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<sup>3</sup> Spruce Mountain, which is located 3.5 miles from the bat hibernaculum in Milton Twp. has not documented increased mortality of cave dwelling bats. In fact, the project with the most significant mortality of cave bats is the Bull Hill project, which is not located near any known bat hibernaculum. See Table 1 in August 22, 2016 Stantec Memorandum. That project has accounted for more than 50% of the documented *Myotis* fatalities from operating wind projects in Maine. Any project located in or beyond Milton Twp. would be required to curtail do as a condition of any DEP permit, which should reduce mortality on projects going forward. (In contrast, Spruce Mountain is not required to curtail because it was permitted prior to development of IFW's guidelines on curtailment.)

overwinter in the hibernaculum, and that it is employing “best practical mitigation” to reduce impacts to wildlife. 38 M.R.S. § 484; 35-A M.R.S. § 3459; 02-069 CMR 375.15.

To meet these permitting standards wind developers have been required to conduct comprehensive pre-construction surveys to assess avian and bat use of the project area. For example, IFW recommends at least two consecutive years and at least six seasons of acoustic bat monitoring to capture both migrants and local bat populations. See Maine Department of Inland Fisheries and Wildlife Curtailment Policy and Wind Power Preconstruction Study Recommendations, Updated June 2015 (“IFW Requirements”) (attached as Exhibit A). The pre-construction surveys provide baseline information on use of the project area by various bat species and would allow an informed analysis of the extent to which a particular project presents risks to species that may be present.

In addition to the surveys that will be conducted to assess use of the project area, any project going forward will be required to curtail during periods of increased bat activity. IFW Recommendations at 1. Curtailment has been shown to significantly reduce bat mortality at operating wind projects. August 22, 2016 Stantec Memorandum at 5. IFW acknowledges that the exact level of curtailment that offers the greatest level of protection is still being studied. August 22, 2016 IFW Comments at 2. In light of that uncertainty IFW has erred on the side of caution, and its recommendations are among the most stringent curtailment requirements in North America. August 22, 2016 Stantec Memorandum at 5. In addition to curtailment, additional protective measures could be implemented to address the possibility that bat species recover in the future. Such measures could include post-construction monitoring to assess whether the species are recovering and, if so, the extent to which they are using the project area, as well as more tailored curtailment during periods of increased risk.

There are additional protections and requirements that apply because the *Myotis* species present in Maine have now been listed as threatened or endangered under state law, which prohibits the negligent or intentional take of the species. June 29, 2016 IFW Comments at 2; August 22, 2016 IFW Comments at 2. The standard for obtaining an incidental take permit, should one be required, is that the take will not “impair the recovery of the species,” and that it be accompanied by an incidental take plan that addresses cumulative impacts to the species as well as recovery measures the applicant will implement to prevent, minimize and mitigate the individual and cumulative effects to the species. 12 M.R.S. § 12808.3.

In summary, as part of the permitting under the Site Law as well as the requirements under the Maine Endangered Species Act, the potential risks to bats will be fully evaluated and measures implemented to ensure the risks are appropriately avoided, minimized and mitigated.

As IFW states:

. . . any proposed development in proximity to hibernacula, including the hibernaculum in Milton Township, will be thoroughly reviewed by this Agency and recommendations will be evaluated to protect the integrity of the site and the habitat features it represents, for the protection of the animals utilizing this site now and over the life of the project into the future.

August 22, 2016 IFW Comments at 3.

In making a zoning decision it is also important to consider the risks presented by wind power in the broader context of other threats to the species. White Nose Syndrome (WNS) has been the cause of the precipitous decline in *Myotis* species, and humans are suspected of having transported the fungus to some sites. August 22, 2016 Stantec Memorandum at 3. In evaluating whether to designate critical habitat for the Northern Long-Eared Bat, the Department of the Interior noted that human disturbance of hibernating bats was the second greatest risk to *Myotis* species behind WNS. August 27, 2016 Federal Register at 24713. As Petitioners concede, the

federal government declined to designate winter habitat as critical habitat because doing so would disclose hibernacula location information and thereby increase the risks associated with human disturbance. Id. at 24713-24714; Petitioners' Post-Hearing Brief at 13. Ironically, evidence of past and recurring vandalism and disturbance is readily available at the former mine side. A slide shown by the Woodstock Conservation Commission during the public hearing of the bat hibernaculum highlights the issue, depicting someone in the cave. This type of disturbance activity presents a greater and more direct risk to the species than a potential wind power project. As that slide depicts, the risks associated with human disturbance in bat caves are difficult to manage. In contrast, the risks associated with an operating wind project located 2.5 miles from a hibernaculum can and will be managed through the permitting process.<sup>4</sup>

Finally, Petitioners have argued that eliminating wind power as an allowed use is necessary to "protect" the bat hibernaculum. Petitioners' Post-Hearing Brief at 10. However, whereas the law previously required that the Commission "protect" ecological and natural values, the 2012 Legislation eliminated the word "protect" and replaced it with "conserve." 12 M.R.S. § 681; CLUP Guidance at 6. This change in language was consistent with direction to the Commission to give increased weight to regional economic vitality and a recognition that conservation and economic vitality are not mutually exclusive. E.g., CLUP Guidance at 6. Consistent with the 2012 Legislative changes, development in Milton Twp. should be encouraged, but in a manner that is appropriately protective of the bat hibernaculum and its resident species. The review process described above will ensure that is the case and allows the

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<sup>4</sup> EverPower is committed to working with the resource agencies to address not only risks associated with a wind project in Milton Twp., but other risks to bats, including those resulting from human disturbances. For example, gating or establishing other barriers is an effective means for limiting human disturbances to hibernating bats and could be implemented at the cave in Milton Twp.

Commission to implement the goal of long-term economic health of the region without compromising important ecological values.

E. The Importance of Landowner Rights

The 2012 Legislation also placed increased emphasis on the rights and participation of residents and property owners. 12 M.R.S. § 681; CLUP Guidance at 3. This change was in response to concerns relating to private property rights in the unorganized territory and a perception that the Commission had been inattentive to local concerns. Final Report at 4. Although zoning decisions should not be made based solely on numbers and who succeeds in “getting out the vote,” the voices of residents and landowners in Milton Twp. should be given particular weight when undertaking the balancing that is required by the CLUP. Petitioners erroneously state that the region’s residents “overwhelmingly favor removal.” Petitioners’ Post-Hearing Brief at 15. In fact, residents and landowners in Milton Twp. who participated in this process are relatively evenly divided between whether the existing zoning should remain or be changed. See Exhibit B attached (26 residents/landowners in Milton Twp. testified or submitted written comments in favor of keeping the existing zoning, 30 testified or submitted written comments in support of removal).<sup>5</sup>

When evaluating the impact to landowners whose land would be affected by the Commission’s decision, however, it is clear that landowner interests do overwhelmingly favor maintaining the existing zoning. The landowners who seek to change the zoning own a small fraction of the land that would be affected. Specifically, the owners of just 347 acres (less than

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<sup>5</sup> The total population in Milton Twp. is estimated at 141, Stantec Pre-Filed Testimony at 2, with 108 registered voters (based on data provided by the Secretary of State’s office to LUPC in the petition process), so those supporting removal do not represent even a majority of the residents or registered voters, let alone an overwhelming majority. Moreover, people opposed to projects are much more likely to participate in the public process. The silent majority are often supportive or neutral, but have little incentive to participate in the process.

4% of the land in Milton Twp.) favor removal. In contrast, the owners of approximately 4,936 acres of land in Milton Twp. (approximately 52% of all the land in Milton Twp.) favor maintaining the existing zoning. See Exhibit C.<sup>6</sup> Landowner rights are compromised when a minority is able to rezone land over the objections of those whose land would be affected by the rezoning. See Comments of the Maine Forest Products Council at 3 (stressing the importance of honoring the rights of landowners and the concerning precedent of individuals rezoning large swaths of land that they do not own). Accordingly, in interpreting whether removal is consistent with the CLUP, the Commission should give careful consideration to the voices of the landowners whose land will be adversely affected.

Finally, a number of the people who testified at the public hearing or submitted comments are not residents or landowners from Milton Twp., but are from the surrounding communities, primarily Woodstock. The residents of Woodstock benefit financially from the existing Spruce Mountain Project located in Woodstock. They could have but did not exercise local permitting authority to prevent or limit that project. Yet Woodstock residents now ask the Commission to prevent Milton Twp. from having the same economic opportunities they have enjoyed, primarily because they object to visibility of turbines on Chamberlain and Bryant Mountains. The residents of Woodstock did not, however, acquire view easements or otherwise protect those ridges from development. As Deena Buck testified, it is frustrating that she has views of the Spruce Mountain Project from her property but residents of Woodstock seek to prevent that same form of development from occurring on her land in Milton Twp.

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<sup>6</sup> This calculation and assessment of land owned by persons supporting and opposing removal was prepared in response to the statements by Petitioners in their post-hearing brief that the regions' residents overwhelmingly favor removal, Petitioners' Post-Hearing Brief at 15, and repeated statements by those supporting removal (and typically living outside of Milton Twp.) during the hearing and in written submissions that the Commission must speak for the residents and landowners in Milton Twp. EverPower agrees that the voices of residents and landowners in Milton Twp. are important. Those voices weigh in favor of maintaining the existing zoning.

The 2012 Legislation directs the Commission to honor the rights of landowners and residents in the unorganized areas. The Commission should not elevate the voices of Woodstock residents over the rights and economic opportunities for residents and landowners in Milton Twp.

**II. REMOVAL OF MILTON TWP. WOULD HAVE AN UNREASONABLE ADVERSE EFFECT ON THE STATE’S ABILITY TO MEET ITS GOALS FOR WIND ENERGY DEVELOPMENT**

EverPower has not, as Petitioners allege, argued that removal of Milton Twp. would prevent the State from meeting its wind energy goals. Petitioners’ Post-Hearing Brief at 5. Rather, the test is whether removal would have an “unreasonable adverse impact” on the State’s ability to meet those goals. Application of this standard involves consideration of (i) where the State stands with respect to achieving its wind energy goals, and (ii) a balancing between the area’s potential for wind energy generation and impact on public resource values. December 2015 Overview of the Process for the Maine Land Use Planning Commission’s Review of Petitions for the Removal of Places from the Expedited Permitting Area for Wind Development (“Petition Guidance”) at 5.

With only 930 MW of installed capacity, the State is far short of its goal of 2,700 MW by 2020, and 3,000 MW by 2030. EverPower has demonstrated that Milton Twp. has the potential to host a 40 MW project. That conclusion is based on collection of site-specific wind data, a professional analysis of transmission opportunities and constraints, and consideration of economic and siting factors that are critical to successful development. See EverPower Pre-Filed Testimony at 4-10 and Exhibits A and B, and Hearing Testimony. Although a project in Milton Twp. may represent a relatively small percentage of the total amount of wind power needed to meet the 2030 goals, mid-sized projects such as is proposed for Milton Twp. have contributed significantly to the existing installed capacity. Fourteen of the seventeen projects that are

operating or under construction are 60 MW or less. See Maine Wind Projects. While a larger project would make greater progress toward meeting the State's wind energy goals, larger projects are also harder to site and have greater potential environmental and resource impacts.<sup>7</sup>

As discussed in the Stantec Pre-Filed Testimony and Hearing Testimony, and summarized in Section I above, there are no overriding public resources values that would be disproportionately impacted by development of a project in Milton Twp. Thus, under the guidance developed by the Commission, removal of Milton Twp. would have an unreasonable adverse impact on the State's ability to meet its wind energy goals.<sup>8</sup>

It has been suggested, albeit without any specific analysis or supporting evidence, that there are plenty of other areas in Maine that could be developed for wind power and therefore removal of Milton Twp. will not have an unreasonable effect on the State's ability to meet its wind energy goals. The facts are to the contrary. Four years ago EverPower undertook a comprehensive analysis of the State of Maine to identify potential areas suitable for wind development. Many good sites (the low hanging fruit) have already been developed. Others were eliminated due to inadequate wind resource, transmission constraints, or public resource

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<sup>7</sup> Petitioners reference wind power in the ISO-NE queue as evidence that a project in Milton Twp. is not needed to meet the State goals. Petitioners' Post Hearing Brief at 6. The test is not whether this particular project is necessary to meet the State goals, but whether removal would have an unreasonable adverse impact on meeting the State goals. Moreover, only a small percentage of the projects in the ISO queue will proceed to the next stage of an interconnection request. As Mr. Fenn testified, less than 8% of the projects in the interconnection queue from 1996 have proceeded to the stage of filing an Interconnection Application. August 10, 2016 SGC Submission at 2-3. If that trend continued, less than 300 MW of the currently pending interconnection queue requests for wind power in Maine would proceed to the next stage. While we are not suggesting that only 300 MW of the pending queue positions will materialize, the point is that many more projects are pending in the queue than will ever be built.

<sup>8</sup> Friends of Maine's Mountains (FMM) asserts that the State goals will never be met and the statute should be amended to reflect more realistic goals. August 4, 2016 Comments from FMM at 2. FMM goes on to conclude that because the goals are unattainable, the contribution of 40 MW from a project in Milton Twp. is not significant. Id. The statutory test for removal, however, is whether removal would have an unreasonable adverse impact on the State's ability to meet its existing statutory goals, not goals that FMM believes are more appropriate. If, as FMM believes, the goals are difficult to reach, it is all the more critical to allow viable projects such as the one proposed for Milton Twp. to proceed.

values such as high value scenic or recreational resources. As a result of its comprehensive suitability analysis, EverPower identified only four available sites in Maine, including Milton Twp., that warranted additional evaluation. EverPower's analysis, which took into account the myriad of factors that are necessary for wind development, demonstrates that there are not many viable sites for development. See generally EverPower Pre-Filed Testimony at 4-11 and Hearing Testimony.

The Maine Audubon siting study relied on by petitioners in support of removal is consistent with EverPower's analysis. The Maine Audubon study evaluated the amount of land potentially available for development based solely on the wind resource and then removed from that total acreage areas with overriding wildlife resource values. Approximately 418,000 acres remained available for development of wind power in the expedited permitting area.<sup>9</sup> Maine Audubon Study at 24. Since the Maine Audubon study was published, more than 770,000 acres have been removed from the expedited permitting area in the unorganized jurisdiction, thereby reducing further the 418,000 acres that Maine Audubon previously identified as potentially available for development.<sup>10</sup> Most importantly, Maine Audubon's determination of areas that are available for development did not take into account site specific wind data, transmission,

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<sup>9</sup> It would be very difficult if not impossible to site a project outside the expedited permitting area. In establishing the expedited permitting area, the Task Force and Legislature intentionally excluded large areas of LUPC jurisdiction on the basis of landscape level considerations such as the existence of unique or high value scenic and recreational resources and the absence of surrounding development or infrastructure. A project located outside the expedited permitting area would have to overcome the presumption that the area was intentionally excluded because it was determined to be inappropriate for wind development. It is noteworthy that since it was created, no project has been proposed outside the expedited permitting area. Moreover, the early projects such as Kibby and Stetson that went through the rezoning process did so *before* the Task Force and Legislature evaluated where wind development should occur. Those projects were ultimately included in the expedited permitting area, an indication that the Task Force and Legislature concluded they were sited appropriately.

<sup>10</sup> There is overlap between the 418,000 acres identified by Maine Audubon as available for wind development and the acreage that has since been removed from the expedited permitting area pursuant to the petition process. Due to the coarseness of the maps included in the Maine Audubon Study, it is not possible to identify the amount of acreage included in that overlap.

project economics, scenic or recreational resources, public support, or site specific wildlife and habitat surveys, all of which further reduce the acreage that is available to host a wind project.

As Maine Audubon acknowledges:

Siting wind projects is a long and complex process that requires consistent wind, willing landowners, support of local communities, adequate distance from existing development, roads, infrastructure and feeder lines to the grid, and an assessment of impacts to scenic values, among many other things, to even get started.

Maine Audubon Report at 29; see also EverPower Pre-Filed Testimony at 4-11 (describing factors that are necessary for successful project siting). When all of those factors are considered, as they were by EverPower in its analysis, it is clear that viable sites are limited.

Removal of Milton Twp. also must be viewed in the context of what else is occurring that affects wind development in Maine. The Commission has removed approximately 800,000 acres from the expedited permitting area, reducing by more than 20% the area in LUPC jurisdiction where wind power is an allowed use. The 2015 Maine Comprehensive Energy Plan Update acknowledges that any attempt to expand the expedited permitting area would be met with “very strong resistance at the local level, and possibility at the state Legislature.” Plan Update at 58.<sup>11</sup> Thus, the areas where wind power is likely to occur has not only been reduced, but it is unlikely to increase in the future.

If the Commission were to eliminate wind power as an allowed use in Milton Twp. it would send a very clear message to any developer that Milton Twp. is not appropriate for wind power. Any suggestion that a developer could simply rezone the area in the future or add it to the expedited permitting area fails to give the appropriate deference to the decision that the Commission would be making here, both in terms of legal precedent, as well as the practical

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<sup>11</sup> This was included as an attachment to Petitioners’ Post-Hearing Brief.

realities of project development.<sup>12</sup> The CLUP specifically recognizes the importance of providing a more predictable framework for evaluating grid-scale wind development both in and outside the expedited permitting area and the importance of meeting the State's wind energy goals. CLUP at 194. Changing the zoning in Milton Twp. would do neither. To the contrary, it would eliminate a potential 40 MW project in an area that is appropriate for wind development and that would make meaningful progress toward meeting the State's wind energy goals.

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<sup>12</sup> It is disingenuous to suggest, as Petitioners and FMM do, that the decision to eliminate wind power as an allowed use would not be a significant barrier to future development. Petitioners' Post-Hearing Brief at 2-3; FMM Comments at 2. The process for rezoning is expensive, lengthy, and subject to an uncertain outcome under even the best of circumstances. If the Commission removes Milton Twp. from the expedited permitting area it will necessarily have concluded that wind power is not an appropriate land use there, creating an additional obstacle not present in the more typical rezoning. As Commission staff correctly noted in their presentation at the hearing, any attempt to add even a portion of Milton Twp. back into the expedited permitting area would require, at a minimum, significantly changed circumstances. As EverPower testified, it could not justify spending the significant capital necessary to develop the project if the Commission concludes that wind power is not an appropriate use in Milton Twp. EverPower Pre-Filed Testimony at 3-4. It is hard to imagine that any developer would do so.

## CONCLUSION

For the reasons set forth above, EverPower requests that the Commission deny petitioners' request to remove Milton Twp. from the expedited permitting area. Removal would be inconsistent with the principal values and goals of the CLUP and would have an unreasonable adverse impact on the State's ability to reach its wind energy goals.

Respectfully submitted,



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Juliet T. Browne  
Attorney for EverPower Maine, LLC

Dated: August 29, 2016

STATE OF MAINE  
LAND USE PLANNING COMMISSION

Substantive Review, Milton Township	)	Post-Hearing Brief
Petition to Remove Milton from the Expedited	)	of EverPower Maine, LLC
Permitting Area for Wind Energy Development	)	

**EXECUTIVE SUMMARY**

In 2012, the Legislature directed the Commission to place increased emphasis on encouraging and facilitating economic vitality in the unorganized jurisdiction and honoring the rights of property owners and residents. Maintaining wind power as an allowed use in Milton Township (Twp.) advances those twin goals; eliminating wind power as an allowed use undermines those objectives.<sup>1</sup>

First, a project in Milton Twp. would bring economic benefits to participating landowners, to the host community and broader region through payments associated with tangible benefit packages, annual taxes, and creation of an annual project fund, and would result in significant direct and indirect spending during the construction phase and then more limited but still significant spending during the operational life of the project. Second, it is the owners of only a small fraction of the land in Milton Twp. that seek to change the zoning. Persons owning less than 4% of the land in Milton Twp. support eliminating wind power as an allowed use whereas the persons owning approximately 52% of the land in Milton Twp. seek to maintain the

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<sup>1</sup> Petitioners erroneously accuse EverPower of articulating the wrong legal standard. EverPower has demonstrated that the existing zoning advances important economic, energy, forest resource and development policies and goals of the CLUP; it is axiomatic that eliminating wind power as an allowed use compromises or is inconsistent with those same goals and policies. Consistency with the CLUP is a holistic exercise that requires balancing of sometimes competing objectives. The ecological and scenic issues raised by Petitioners do not outweigh the important economic, energy, forest resource and development goals that would be advanced by maintaining the existing zoning. This would be true even absent the Legislative changes that directed the Commission to place increased emphasis on landowner rights and economic vitality, both of which further weigh in favor of maintaining the existing zoning.

existing zoning. Eliminating windpower as an allowed use will have a significant adverse impact on the rights of those landowners.

Keeping wind power as an allowed use is also consistent with the broader goals and policies of the CLUP. Wind power is compatible with and helps to sustain Maine's working forests, which are a cornerstone of the Maine economy and a core CLUP value. Maintaining the existing zoning also is consistent with and advances the general development, location, energy, and economic goals of the CLUP. Importantly, there are no overriding public resource values that require protection and outweigh these policies and objectives. Neither the presence a single ecological resource, the bat hibernaculum, which would be appropriately managed during any permitting process, nor objections of residents primarily from the surrounding organized towns who object to visibility of turbines, outweighs the important economic and landowner rights at stake here.

Changing the existing zoning would also have an unreasonable adverse effect on the State's ability to meet its wind energy goals. The test is not whether the goals could be achieved without this particular project, as suggested by petitioners. Rather, as the Commission guidance states, the test involves consideration of (i) where the State stands with respect to achieving its goals, and (ii) a balancing between the area's potential for wind generation and the impact on public resource values that would result from that generation. With only 930 MW of installed capacity, the State is far short of its goal of 2,700 MW by 2020, and 3,000 MW by 2030. EverPower has demonstrated through collection of site-specific wind data, a professional analysis of transmission opportunities and constraints, and consideration of economic and siting factors that are critical to successful development, that Milton Twp. has the potential to host a 40 MW project.

Mid-sized projects have contributed significantly to the existing installed capacity and will be critical to meeting the State's goals. Moreover, Milton Twp. does not host overriding public resources values that would be compromised by maintaining the existing zoning. There are no lakes or ponds in Milton Twp. or other sensitive scenic or recreational resources. With the exception of the one bat hibernaculum, no sensitive animal, plant or wildlife habitat are present. Potential impacts to the bat hibernaculum will be thoroughly revised during the DEP permitting process. As IFW states:

. . . *any* proposed development in proximity to hibernacula, including the hibernaculum in Milton Township, will be thoroughly reviewed by this Agency and recommendations will be evaluated to protect the integrity of the site and the habitat features it represents, for the protection of the animals utilizing this site now and over the life of the project into the future.

August 22, 2016 IFW Comments at 3.

Milton Twp. has a wind resource and other factors necessary to host a mid-sized wind energy project; Milton Twp. does not host overriding public resource values that would be unreasonably affected by such development. Thus, under the test articulated by the Commission, removal of Milton Twp. from the expedited permitting area would have an unreasonable adverse impact on the State's ability to meet its wind energy goals.

EverPower respectfully requests that the Commission maintain the existing zoning in Milton Twp. and allow it to proceed to the next phase of development, which will include comprehensive pre-constructions surveys, stakeholder outreach, and scenic analyses to evaluate fully a project's potential impact.

## EXHIBIT A

**Maine Department of Inland Fisheries and Wildlife**  
**Curtailment Policy**  
**and**  
**Wind Power Preconstruction Study Recommendations**

*Updated June 2015*

Maine Turbine Curtailment Recommendations to Decrease Bat Mortality Policy (January 2014)

Wind turbines will operate only at cut-in wind speeds exceeding 6.0 meters per second each night (from at least ½ hour before sunset to at least ½ hour after sunrise) during the period April 20 – October 15. Cut-in speeds are determined based on mean wind speeds measured at hub heights of a turbine over a 10-minute interval. Turbines will be feathered during these low wind periods to minimize risks of bat mortality. These cut-in speeds are independent of ambient air temperature.

The following list consists of Maine Department of Inland Fisheries and Wildlife (MDIFW) preconstruction study recommendations for proposed wind power projects in Maine.

- Specifics of recommended studies (i.e. seasonality, timing and duration of studies, elevation guidelines, etc.) may vary depending on the project's location in the State.
- Additional study recommendations or species concerns may need to be addressed depending on the location of the project in the State.

*Note that these recommendations should not be considered all-inclusive or final. It is strongly recommended that the developer contact MDIFW for the most up-to-date recommendations and current study protocols and methodologies prior to the study design phase. Failure to collect adequate and accurate data, or collecting data that is not consistent with MDIFW methodologies, can limit and/or delay MDIFW's assessment of the project.*

**Nocturnal radar:** MDIFW typically recommends *at least 20 nights each* in both the spring (April 15 – June 1) and fall (August 15 – October 31) seasons, and *at least 3 years* (3 spring seasons, 3 fall seasons) of data collection per project. Note that additional seasons may be recommended depending on site specifics, project location in the State, etc.) To ensure that applicants sample nights with representative migration activity, we recommend comparisons to other studies or to Nexrad data. We also recommend the use of X-Band radar systems. If radar units are placed at sites with more than 30% ground clutter, site selection must be pre-approved by MDIFW staff often following a site visit. For verification purposes, an image of the radar screen during a high migration event and a series of photos showing surrounding landscape/ground clutter must be submitted with any report.

**Acoustic Bat monitoring:** MDIFW recommends *at least 2* consecutive years and *at least 6* seasons (spring, summer, and fall) to capture both migrants and local bat populations. Timing:

April 15 – October 15. Number: Varies depending on the scale of the project, single ridge projects with <10 proposed turbines should have *a minimum* of 1-high and 1-low detector. Placement: High detector at 20 meters (typically placed in the temporary met. tower); a low detector at tree height (5-8m) placed at the edge of an opening, typically the temporary met. tower opening. Some applicants also choose to place a detector at 40 meters near the top of the met. tower--this detector will be in addition to the 20 meter and tree-height detectors; it is not meant to be a replacement for either detector. Monitoring is done regardless of curtailment recommendations. Prior to monitoring, the applicant should consult with the MDIFW Regional Wildlife Biologist regarding the number and placement of monitoring stations, which will vary depending on project specifics. All raw acoustic monitoring data will be provided to MDIFW.

**Raptor Migration Surveys<sup>1</sup>**: MDIFW recommends *at least 2 years* of pre-construction monitoring because of high year-to-year variability in the numbers of migrants (Strickland et al. 2011). The Hawk Migration Association of America (HMANA) asserts that three years of pre-construction study data are important for projects where data suggest raptor concentration is possible (HMANA Industrial Wind Turbine Siting and Monitoring Policy 2013). Surveys are conducted in the spring (March - June 15) and fall (August - Nov 30), two or more times a week in weather conducive to migratory activity, from 9 a.m. until 2 hours before sunset, or later if birds are moving through the area, from one or more prominent locations within the project area. Information on the species, number of individuals, behavior, flight height and direction, time of sighting, and location of each bird relative to the project area should be recorded.

**Raptor Nest Surveys<sup>1</sup>**: Raptor nest surveys are conducted during *at least* one breeding season, within a 1-mile radius to quantify abundance and species composition of breeding raptors in the study area, as well as to map nest locations so wind energy facilities can be sited to avoid impacts to nesting raptors (Strickland et al. 2011). A larger survey area is recommended if there is likelihood or knowledge of nesting bald eagles or state and/or federally threatened and endangered raptor species (see Eagle Surveys). Depending upon species nesting in the area, one or more surveys within a breeding season may be necessary to detect all nesting species. Aerial surveys should be followed by ground surveys to detect species that may be missed and to verify occupancy. Surveyors should record and report survey points and transects.

**Eagle Surveys<sup>1</sup>**: Bald eagle survey effort is guided by the Eagle Conservation Plan Guidance (ECPG) Tier classification (USFWS 2013). We request the contractor meet with agency staff prior to conducting surveys and provide a report of the Stage 1 Site Assessment (Appendix B) which informs the site-specific surveys and assessment (Appendix C). Surveys may include point counts (Appendix C, section 1a.), migration counts and concentration surveys (Appendix C, section 1b.), utilization distribution assessment (Appendix C, section 1c.), or nesting territory occupancy (Appendix C, section 2) to determine important eagle use areas, and migration concentration sites for the project-area eagle population of breeding, resident non-breeding, migrating, and wintering

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<sup>1</sup> State raptor survey guidelines are currently under development--we provide a brief description here and request that contractors work closely with MDIFW to establish an appropriate sampling design and deliverables based on site-specific conditions (e.g. project size, proximity to an existing wind farm, topography, and presence of species or habitat of interest) prior to initiating pre-construction surveys.

birds. Surveys should be conducted at a minimum of two years across all seasons, with one year of robust survey including multiple survey approaches (ECPG, USFWS 2013).

To evaluate siting options and assess impacts to breeding eagles, MDIFW concurs with ECPG and we recommend surveys for *at least 2 years* prior to construction, within a 10-mile radius of the project site, during spring, summer, and fall (March - Nov 30). Agency staff can provide guidance on the number and timing of visits (see Appendix C, section 2). If a Bald Eagle nest has been recorded within 4 miles, nest searches may be expanded and fledgling activity documented. Knowledge of Golden Eagle use in the project vicinity may also call for additional nest searches.

HMANA (Hawk Migration Association of North America). 2013. Industrial Wind Turbine Siting and Monitoring Policy. 4pp.

Strickland, M.D., E.B. Arnett, W.P. Erickson, D.H. Johnson, G.D. Johnson, M.L., Morrison, J.A. Shaffer, and W. Warren-Hicks. 2011. Comprehensive Guide to Studying Wind Energy/Wildlife Interactions. Prepared for the National Wind Coordinating Collaborative, Washington, D.C., USA. 289pp.

USFWS (U.S. Fish and Wildlife Service). 2013. Eagle Conservation Plan Guidance, Module 1-Land-based Wind Energy. Version 2. Washington, D.C., USA. 118pp.

**Breeding Bird Surveys:** MDIFW requests some effort for breeding bird surveys, and to ensure that the point count string covers the project area.

**Great Blue Heron Surveys:** MDIFW recommends an aerial survey area within 4-miles of proposed turbine locations to look for new and existing colonies and level of use, include ridgeline sightings in raptor survey work. Surveys should be conducted between April 20 and May 31 (later in northern Maine and in Downeast Maine).

**Bicknell's Thrush Surveys:** At sites believed to support Bicknell's Thrush (~2,700 ft. elevation and above), a series of surveys should be conducted to assess the abundance and distribution of the population at that site. Surveys initially entail a series of point counts with broadcast to determine presence. If present (either by survey or anecdotal observation), surveys are followed by spot mapping to identify core areas for protection. Surveys for Bicknell's Thrush should involve close coordination with MDIFW staff to ensure consistent timing and level of effort with past studies.

**Roaring Brook Mayfly Surveys:** If the project area is high elevation (>1,000 feet) and within the species' currently known distribution, potentially suitable habitat should be identified during stream delineations and surveyed during the appropriate timing window (September).

**Spring Salamander Surveys:** If the area is high elevation (>1,000 feet) and within the species' known distribution, potentially suitable habitat should be identified during stream delineations and surveyed during the appropriate timing window (mid-May to mid-September).

**Vernal Pool Surveys:** Vernal pool surveys should be conducted within 250 feet of any proposed project impact and during the recommended egg mass periods. These surveys should extend up to 250 feet beyond the anticipated project footprint because of potential impacts to off-site Significant Vernal Pools, assuming such pools are located on land owned or controlled by the applicant. A MEDEP Maine State Vernal Pool Assessment Form should be filled out for each pool and submitted to MDIFW for pool status determination well before the project application is submitted to MDEP.

**Northern Bog Lemming Surveys:** As part of wetland delineations (>2,700 el, or those wetlands that show characteristics) MDIFW recommends that the applicant note any potential habitat supporting Northern Bog Lemming, and that they perform a meandering-type survey to document lemming presence through run-ways, latrines, and greed scat. We do not recommend snap-trapping, or box trapping the wetland. If it has evidence of lemmings is present, MDIFW will consider the area as occupied and buffer accordingly. MDIFW recommendations will be to avoid these wetlands, or to prove that bog lemmings are not present.

**Rare Animal Forms:** MDIFW requests that the applicant/consultants document any Rare, Threatened, or Endangered Species they may encounter during course of other surveys.

**Baseline Water Quality and Stream Assessment Surveys<sup>2</sup>:** To assess possible impacts resulting from large-scale wind power development on mapped and unmapped intermittent and perennial streams, MDIFW recommends the Applicant develop a baseline water quality study plan, based in part on the Maine Department of Environmental Protection's (MDEP) standardized methods to collect and analyze aquatic life in flowing waters, for the purpose of comparing possible during- and post-construction impacts to pre-construction baseline information.

## **OBJECTIVES**

The objective of the water quality and stream assessment surveys is to establish baseline information regarding water quality, including aquatic life, and physical stream characteristics before, during, and after construction at pre-determined locations at the project, and compare these sites to control sites for the purpose of assessing potential impacts of the project. Baseline information collected as part of this work is intended to provide a basis for comparison with water quality conditions and stream channel metrics during and after project construction.

Stream monitoring locations will be identified, in conjunction with MDIFW biologists, within the project area using information obtained during wetland and water course delineations. Water quality monitoring and stream assessments will be initiated prior to construction to develop baseline conditions of the stream habitats. Monitoring will continue during construction (assumed one season) and will be completed on an annual basis for three years following construction for a total of five seasons of monitoring. Sampling locations

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<sup>2</sup> Baseline Water Quality and Stream Assessment Survey guidelines are currently under development--we provide a brief description here and request that contractors work closely with MDIFW to establish an appropriate sampling design and deliverables based on site-specific conditions (e.g. project size, watershed(s) in the proximity of the project, topography, and presence of species or habitat of interest) prior to initiating pre-construction surveys.

will include both perennial and intermittent streams. For purposes of this assessment, stream crossings may include:

- Temporary stream crossings during construction (i.e. with crane mats)
- Permanent stream crossings (i.e. with culverts)
- Generator lead electrical line crossings of streams

#### Chemical and Physical Parameters

At a minimum, the following water quality and stream habitat assessment parameters will be collected. Location maps and representative photographs for each sampling location will be included.

- A table of the sampling locations to include name of stream (if named); stream type (intermittent/perennial); subwatershed; bankfull width; substrate characteristics; overall gradient; statutory stream classifications per Maine Revised Statutes Title 38 §467;
- Pre- and post-construction assessment of physical parameters including an assessment of the sediment characteristics; evidence of bank erosion; evidence of channel widening; evidence of channel down-cutting (i.e., headcuts); evidence of armoring or embeddedness of substrate; evidence of sediment deposition resulting from project activities; evidence of change in substrate type
- Water temperature. Install water temperature data loggers at each of the identified stream monitoring locations. At proposed stream crossings, water temperature data will be obtained at sample locations located upstream (where possible) and downstream of the proposed crossing using data-logging temperature sensors installed in the watercourse at each monitoring location. The data logger temperature sensors will record water temperature at intervals of 30 minutes. Data should be downloaded at intervals of approximately six months. It is recommended that each data logger be collected prior to spring high water levels (e.g., early April) and again in late-summer (e.g., October). Data loggers should be in weighted protective housings (e.g., iron pipe) attached to fixed anchors (e.g., steel rods) attached to the streambed and/or bank. Locations of the installed equipment should be obtained using GPS receivers. The equipment should be installed in relatively deep locations at each site to prevent exposure.
- specific conductance
- dissolved oxygen
- pH
- total dissolved solids

#### **BIOLOGICAL MONITORING**

To monitor potential changes in stream classification, biological monitoring will be conducted at the monitoring in the summer prior to construction. Biological monitoring will be conducted in accordance with the methodology outlined in Methods for Biological Sampling and Analysis of Maine's Rivers and Streams. Pursuant to the methodology, one

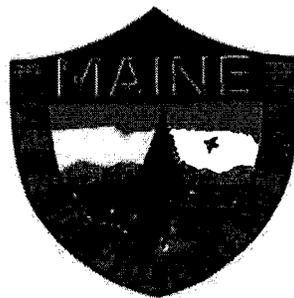
set of rock bags or rock baskets (i.e., three individual samplers) will be deployed within suitable sampling habitat at each of the stream monitoring locations subsequent to July 1, to sample the benthic macroinvertebrate species composition within each stream. If the potential stream sample locations are dry or otherwise do not provide suitable benthic macroinvertebrate sampling habitat at the time of sampler deployment, additional potential stream sampling areas farther downstream or nearby within the associated watershed will be investigated. Samplers will remain in the stream between 24 and 32 days and will be retrieved no later than September 30. MDEP Biological Unit Stream Macroinvertebrate Field Data Sheets will be completed at the time of sampler deployment and retrieval. Samples will be preserved in the field and submitted to a qualified firm for sorting and taxonomic identification and enumeration. The subsequent macroinvertebrate data will be submitted to the Maine Department of Environmental Protection to determine the stream classification.

In addition, MDIFW recommends stream fish assemblage surveys (e.g., electrofishing) at sampling locations to determine presence/absence of species (mainly coldwater species distribution). We recommend that you contact the appropriate MDIFW Regional Fisheries Biologist for the most recent survey protocol and necessary scientific permits prior to the sampling events.

#### **REPORTING**

The results of the stream monitoring will be included in an annual monitoring report by March 1 of the year following the monitoring event. The report will include the methodology, results, and analyses of the stream monitoring activities as well as recommendations for changes to the monitoring program or potential remedial actions.

*Updated June 2015*



**EXHIBIT B**

## **Milton Township Residents and Landowners**

The following is a list of persons who submitted comments to LUPC either in support of removal or opposed to removal and either live in or own property in Milton Township. This list is compiled from the list of petition circulators, written comments submitted to LUPC and available as of noon on August 29, 2016, or testified during the public hearing. It should be noted that this is a conservative list that includes only known landowners, residents, or individuals who identified themselves as being from Milton. It does not include family members of landowners unless we knew them to physically reside in Milton Twp. The list of persons supporting removal may include family members who do not live in or own property in Milton Twp., but because we could not verify their status we assumed they lived in Milton Twp. if they indicated they were from Milton Twp. in their public comments. As a result, it is possible some names on the list of persons supporting removal do not in fact live in or own property in Milton Twp. This same list was used for determining the acreage of land owned by persons opposing and supporting removal.

### **Persons Opposed to Removal of Milton Township from the Expedited Permitting Area**

Andrew Benson

Deana and Wayne Buck

Jenifer and Wayne Buck, Jr.

Llewellyn Buck

E. Stanley Dodge

Trey Dodge

Constance Haas

Richard and Brenda Halacy

John Halacy

Paula Lamb

Cristian Mata—Concord River Holdings, LLC

William and Lynn McAloney

David and Carolyn Powell

Charles Thornton

Michele Richardson

Neal and Florine Van Lieu

Merle Perry

Laura and Gerald McKenna

Abbie Kain

**Persons Supporting Removal of Milton Township from the Expedited Permitting Area**

Garry Billings

Kathryn Billings

Lloyd Billings

Lynne Billings

Reginald and Valerie Billings

Sue Billings

Jessica Billings

Scott Billings

Beth Gurney

Ben Hutchins

Mike Dunn

Rev. Ronnie P. Floyd

Thomas Hemmingway

Norman and Nancy Marin

Neil and Heather McKenna

Bettina and William Testerman

Jason and Mandy Rand

Elaine Roberts

Clifford and Tracy King

James Martin

Carol and William Waite

Marius Wierzbicki

Violetta Wierzbicka

## EXHIBIT C

## Memorandum

**To:** EverPower internal Memo

**From:** Kristin Peyton, Development Department

**Date:** August 29, 2016

**Subject:** Summary of the Percent of Land Owned by Persons In Support of or Opposed to Removing Milton Township From the Expedited Permitting Area

I have prepared a table of the land owners in Milton that either support the removal of Milton Township from expedited permitting area, or oppose the removal of Milton Township from expedited permitting area. The shapefiles that I used to determine the acreage calculations were found on the Maine Geographic Information Systems (GIS) website, and the unorganized territory land ownership data was provided to me by the LUPC GIS Programmer Analyst in March 2016. There is a total of 9533.77 acres in Milton Township. I used the Unorganized Territory ownership information to analyze the acreage owned by the supporters and opponents for the removal of Milton Township from the Expedited permitting area. I included all people that have submitted written comments to the record for the LUPC Milton Township Substantive Review process or testified at the substantive review hearing. There may be landowners who submitted comments that were not available to me, although my understanding is that I had available to me all public comments submitted to LUPC as of August 29, 2016. There may be some inaccuracies in my list as the land ownership is not fully up to date and therefore some individuals who testified (both supporters and opponents) do not show up on my list. Those land owners are as follows: Reverend Ronnie P. Floyd, Beth Gurney, and Abbie Kain. Mr. Floyd and Ms. Gurney testified in support of removal, and Ms. Kain testified in opposition to removal, but the records available to me did not identify them as owning land in Milton Township and as a result they are not included in this analysis.

To determine the total percentage of Milton owned by supporters I added the acreage for all parcels owned by supporters together, and divided by the total acreage of the town. The same was done for land owned by the opponents. The percent of land owned by those that oppose the removal of Milton Township from the expedited wind permitting area is 51.77%. The percent of land owned by those that support the removal of Milton Township from the expedited wind permitting area is 3.64%.



<b>Milton Landowners: Support Removal of Milton from Expedited Area</b>	
<b>Name &amp; Address</b>	<b>Acreage</b>
BILLINGS DENNIS E & KATHRYN A, 29 BILLINGS-WELCH ROAD, MILTON TWP, ME 04219	34.547
BILLINGS DENNIS E & KATHRYN A, 29 BILLINGS-WELCH ROAD, MILTON TWP, ME 04219	3.479359
BILLINGS GARRY & LYNNE E, 38 ROGER FARNUM RD, MILTON TWP, ME 04219	3.968573
BILLINGS GARRY & LYNNE E, 38 ROGER FARNUM RD, MILTON TWP, ME 04219	2.503837
BILLINGS GARRY, 38 ROGER FARNUM RD, MILTON TWP, ME 04219	13.229305
BILLINGS LLOYD JR & SUZANNE, 639 MILTON ROAD, MILTON TWP, ME 04219-3611	39.217444
BILLINGS LLOYD JR & SUZANNE, 639 MILTON ROAD, MILTON TWP, ME 04219-3611	4.463132
BILLINGS LLOYD JR & SUZANNE, 639 MILTON ROAD, MILTON TWP, ME 04219-3611	0.95087
BILLINGS REGINALD B & VALERIE J, 555 MILTON ROAD, MILTON TWP, ME 04219	28.501936
BILLINGS REGINALD B & VALERIE J, 555 MILTON ROAD, MILTON TWP, ME 04219	6.453003
BILLINGS SCOTT B SR, PO BOX 54, BRYANT POND, ME 04219	3.805471
BILLINGS SCOTT B SR, PO BOX 54, BRYANT POND, ME 04219	1.234553
DUNN SHIRLEY A, 97 ROGER FARNUM RD, MILTON TWP, ME 04219	7.03389
HEMINGWAY JAMES F & CHONG S, 5804 SE 84 , OKLAHOMA CITY, OK 73135	32.08281
HUTCHINS KRISTIE, 1023 STATE RT 232, MILTON TWP, ME 04219-6102	3.734696
HUTCHINS KRISTIE, 1023 STATE RT 232, MILTON TWP, ME 04219-6102	3.44378
HUTCHINS KRISTIE, 1023 STATE RT 232, MILTON TWP, ME 04219-6102	1.055562
KING TRACY & CLIFFORD F, 100 POTATO HOUSE RD, MILTON TWP, ME 04219	1.835367
KING TRACY, 100 POTATO HOUSE RD, MILTON TWP, ME 04219	3.345135
MARIN NORMAN & NANCY E, 108 ROGER FARNUM RD, MILTON TWP, ME 04219	4.929763
MARIN NORMAN & NANCY E, 108 ROGER FARNUM RD, MILTON TWP, ME 04219	3.560647
MARIN NORMAN & NANCY E, 108 ROGER FARNUM RD, MILTON TWP, ME 04219	1.316723
MARTIN JAMES W, 101 POLAND ROAD, MILTON TOWNSHIP, ME 04219	67.154223
MCCAULEY RITA A, 12 VILLA AVE, EVERETT, MA 02149	0.435087
MCKENNA NEIL & HEATHER, 271 EAST MILTON ROAD, MILTON TWP, ME 04219	2.315556
MCKENNA NEIL & HEATHER, 271 EAST MILTON ROAD, MILTON TWP, ME 04219	2.033562
NIELSEN CHARLES C & LEE C GRAHAM, 511 FARNUM RD, WOODSTOCK, ME 04219	11.291526
NIELSEN CHARLES C & LEE C GRAHAM, 511 FARNUM RD, WOODSTOCK, ME 04219	4.697925
RAND JASON B & MANDY A, 1062 RT 232, MILTON TWP, ME 04219-3805	13.527964
RAND MANDY, 1062 ROUTE 232, BRYANT POND, ME 04219	4.406721
ROBERTS ELAINE C, 156 ROGER FARNUM ROAD, MILTON TWP, ME 04219-3603	0.552313
TESTERMAN BETTINA, 156 ROGER FARNUM RD, MILTON TWP, ME 04219	3.158141
WAITE WILLIAM J & CAROLE ANN, 534 MILTON ROAD, MILTON TWP, ME 04219	21.593785
WAITE WILLIAM J & CAROLE ANN, 534 MILTON ROAD, MILTON TWP, ME 04219	4.421001
WIERZBICKI MARIUSZ Z & RONNIE P FLOYD, 4 CANNONBERRY WAY, WAREHAM, MA 02571	4.087958
WIERZBICKI MARIUSZ Z & RONNIE P FLOYD, 4 CANNONBERRY WAY, WAREHAM, MA 02571	3.383819
<b>Total Acres=</b>	<b>347.752437</b>

**From:** [Vanderwood, Sara](#)  
**To:** [Beyer, Stacie R](#)  
**Cc:** [Browne, Juliet](#)  
**Subject:** Milton Township  
**Date:** Monday, August 29, 2016 11:34:22 AM  
**Attachments:** [LUPC Stakeholder letters.pdf](#)

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Stacie,

Attached please find additional letters opposing the removal of Milton Township from the expedited permitting area. I'll also hand-deliver the packet to the LUPC office here in Augusta.

Please let me know if you have questions.

Best,  
Sara

**Sara Vanderwood**  
**Government Affairs Consultant**  
Maine Street Solutions  
Government Relations | Public Affairs  
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45 Memorial Circle  
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Stacie R. Beyer  
Maine Land Use Planning Commission  
106 Hogan Road, Suite 8  
Bangor, ME 04401  
[Stacie.R.Beyer@maine.gov](mailto:Stacie.R.Beyer@maine.gov)

Dear Stacie:

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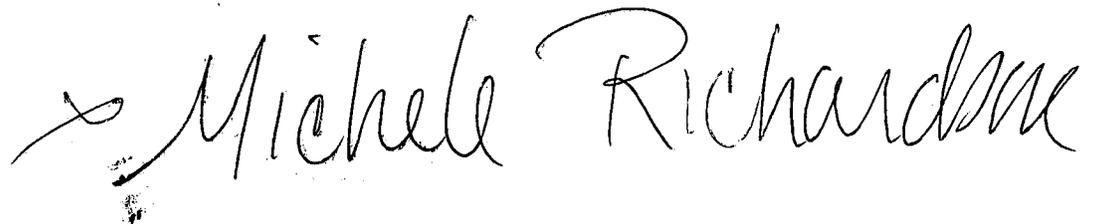
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Please don't change the process and zoning for Milton Twp.

Respectfully submitted,

Resident/Landowner

Milton Township



Michele Richardson  
50 Roger Farnum Rd  
Milton, ME 04219  
207 381-7352

Neal and Florine Van Lieu  
438 Milton Road  
Milton Township, Maine 04219

Stacie R. Beyer  
Maine Land Use Planning Commission  
106 Hogan Road, Suite 8  
Bangor, ME 04401  
[Stacie.R.Beyer@maine.gov](mailto:Stacie.R.Beyer@maine.gov)

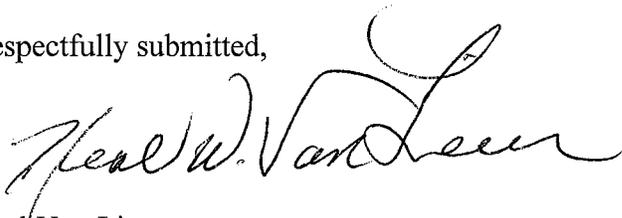
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Respectfully submitted,



Neal Van Lieu  
Resident/Landowner



Florine Van Lieu  
Resident/Landowner

Stacie R. Beyer  
Maine Land Use Planning Commission  
106 Hogan Road, Suite 8  
Bangor, ME 04401  
[Stacie.R.Beyer@maine.gov](mailto:Stacie.R.Beyer@maine.gov)

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Respectfully submitted,

  
Resident/Landowner

Milton Township

MERLE PERRY  
51 Roger Farnum Rd  
Milton Twp Me  
04219

Stacie R. Beyer  
Maine Land Use Planning Commission  
106 Hogan Road, Suite 8  
Bangor, ME 04401  
[Stacie.R.Beyer@maine.gov](mailto:Stacie.R.Beyer@maine.gov)

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Respectfully submitted,

  
Resident/Landowner

Milton Township

Laura McKenna  
80 Roger Farmum Rd  
Milton Twp ME 04219

Stacie R. Beyer  
Maine Land Use Planning Commission  
106 Hogan Road, Suite 8  
Bangor, ME 04401  
[Stacie.R.Beyer@maine.gov](mailto:Stacie.R.Beyer@maine.gov)

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Respectfully submitted,



Resident/Landowner

Milton Township

GERALD MCKENNA

80 ROYER FARROW RD.

MILTON ME 04219

Stacie R. Beyer  
Maine Land Use Planning Commission  
106 Hogan Road, Suite 8  
Bangor, ME 04401  
[Stacie.R.Beyer@maine.gov](mailto:Stacie.R.Beyer@maine.gov)

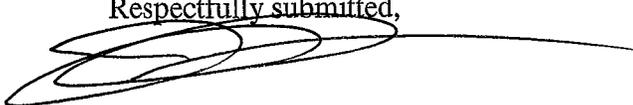
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Respectfully submitted,



Deana Buck

Resident/Landowner  
48 Buck Rd  
Milton Township

Stacie R. Beyer  
Maine Land Use Planning Commission  
106 Hogan Road, Suite 8  
Bangor, ME 04401  
[Stacie.R.Beyer@maine.gov](mailto:Stacie.R.Beyer@maine.gov)

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Please don't change the process and zoning for Milton Twp.

Respectfully submitted,



David Powell

Resident/Landowner  
31 Back Rd  
Milton Township

Stacie R. Beyer  
Maine Land Use Planning Commission  
106 Hogan Road, Suite 8  
Bangor, ME 04401  
[Stacie.R.Beyer@maine.gov](mailto:Stacie.R.Beyer@maine.gov)

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Respectfully submitted,

*Carolyn Powell*  
CAROLYN POWELL

Resident/Landowner  
31 Buck Rd  
Milton Township

Stacie R. Beyer  
Maine Land Use Planning Commission  
106 Hogan Road, Suite 8  
Bangor, ME 04401  
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Respectfully submitted,

*Abbie Kain*

*Abbie Kain*

Resident/Landowner  
*1215 Rt 232 Milton Twp*  
Milton Township

Stacie R. Beyer  
Maine Land Use Planning Commission  
106 Hogan Road, Suite 8  
Bangor, ME 04401  
[Stacie.R.Beyer@maine.gov](mailto:Stacie.R.Beyer@maine.gov)

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Respectfully submitted,



Charles Thornton

Resident/Landowner  
MILTON TWP  
Milton Township

Stacie R. Beyer  
Maine Land Use Planning Commission  
106 Hogan Road, Suite 8  
Bangor, ME 04401  
[Stacie.R.Beyer@maine.gov](mailto:Stacie.R.Beyer@maine.gov)

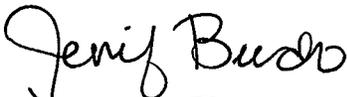
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Please don't change the process and zoning for Milton Twp.

Respectfully submitted,

  
Jenifer Buch

Resident/Landowner  
1073 Rte 232  
Milton Township

Richard and Brenda Halacy  
452 Milton Road  
Milton Township, Maine 04219

Stacie R. Beyer  
Maine Land Use Planning Commission  
106 Hogan Road, Suite 8  
Bangor, ME 04401  
[Stacie.R.Beyer@maine.gov](mailto:Stacie.R.Beyer@maine.gov)

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Respectfully submitted,

Richard Halacy  
Resident/Landowner  


Brenda Halacy  
Resident/Landowner  


John Halacy  
433 Milton Road  
Milton Township, Maine 04219

Stacie R. Beyer  
Maine Land Use Planning Commission  
106 Hogan Road, Suite 8  
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Respectfully submitted,

A handwritten signature in black ink that reads "John Halacy". The signature is written in a cursive style with a large initial "J".

John Halacy  
Resident/Landowner

William McAloney  
410 Milton Road  
Milton Township, Maine 04219

Stacie R. Beyer  
Maine Land Use Planning Commission  
106 Hogan Road, Suite 8  
Bangor, ME 04401  
[Stacie.R.Beyer@maine.gov](mailto:Stacie.R.Beyer@maine.gov)

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Respectfully submitted,

A handwritten signature in cursive script that reads "William D. McAloney". The signature is written in black ink and is positioned above the typed name and title.

William McAloney  
Resident/Landowner

Stacie R. Beyer  
Maine Land Use Planning Commission  
106 Hogan Road, Suite 8  
Bangor, ME 04401  
[Stacie.R.Beyer@maine.gov](mailto:Stacie.R.Beyer@maine.gov)

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Respectfully submitted,

Jerry Bernier    Nicole Bernier  
224 Billings Hill Rd    Woodstock, ME

Resident/Landowner

Stacie R. Beyer  
Maine Land Use Planning Commission  
106 Hogan Road, Suite 8  
Bangor, ME 04401  
Stacie.R.Beyer@maine.gov

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Respectfully submitted,

Fran Buck  
co-owner of Mallyocket Motel + Grosstone Restaurant

Resident/Landowner

1132 S Main St.  
Woodstock Me  
04219

Stacie R. Beyer  
Maine Land Use Planning Commission  
106 Hogan Road, Suite 8  
Bangor, ME 04401  
[Stacie.R.Beyer@maine.gov](mailto:Stacie.R.Beyer@maine.gov)

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Respectfully submitted,



Resident/Landowner

John M. Piantoni  
310 Billings Hill Rd.  
Bryant-Pond, ME. 04219

Stacie R. Beyer  
Maine Land Use Planning Commission  
106 Hogan Road, Suite 8  
Bangor, ME 04401  
[Stacie.R.Beyer@maine.gov](mailto:Stacie.R.Beyer@maine.gov)

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Respectfully submitted,

*John E Cox III*

Resident/Landowner

*John Cox III  
202 Perkins Valley Rd  
Bryans Pond Me. 04219*

Stacie R. Beyer  
Maine Land Use Planning Commission  
106 Hogan Road, Suite 8  
Bangor, ME 04401  
[Stacie.R.Beyer@maine.gov](mailto:Stacie.R.Beyer@maine.gov)

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Respectfully submitted,

*Laura A. Bellegarde*  
*LAURA A Bellegarde*

Resident/Landowner

*51 Wymann Hill*  
*Rumford Me 04276*

Stacie R. Beyer  
Maine Land Use Planning Commission  
106 Hogan Road, Suite 8  
Bangor, ME 04401  
[Stacie.R.Beyer@maine.gov](mailto:Stacie.R.Beyer@maine.gov)

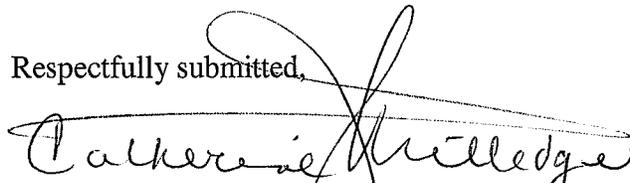
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Please don't change the process and zoning for Milton Twp.

Respectfully submitted,

  
Catherine J. Milledge  
Resident/Landowner  
105. Wyman Hill Road  
Dumfries, Me  
04274

Stacie R. Beyer  
Maine Land Use Planning Commission  
106 Hogan Road, Suite 8  
Bangor, ME 04401  
[Stacie.R.Beyer@maine.gov](mailto:Stacie.R.Beyer@maine.gov)

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Respectfully submitted,

*Joan M. Frisbie*  
Joan M. Frisbie

Resident/Landowner

*30 WYMAN HILL RD.*  
*Den Ford, Me.*  
*-04576-*

Stacie R. Beyer  
Maine Land Use Planning Commission  
106 Hogan Road, Suite 8  
Bangor, ME 04401  
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Respectfully submitted,

*William G. Frisbie*

*William A Frisbie*

Resident/Landowner

*30 Wymon Hill Rd  
Rumford ME  
04276*

Stacie R. Beyer  
Maine Land Use Planning Commission  
106 Hogan Road, Suite 8  
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Respectfully submitted,

*Pamela Hutchins*  
Pamela Hutchins

Resident/Landowner

*86 Wyman Hill Rd  
Rumford me 04276*

Stacie R. Beyer  
Maine Land Use Planning Commission  
106 Hogan Road, Suite 8  
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Respectfully submitted,



Resident/Landowner

Sherrie Hansen  
550 HENNEBAC ST  
RUMFORD, ME 04276

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Maine Land Use Planning Commission  
106 Hogan Road, Suite 8  
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I believe keeping Milton Twp. zoned for wind power is appropriate. Doing so is consistent with the land uses and activities in the area, which include several wind power projects, and would provide an opportunity for a form of economic development that makes sense. I understand that some people object to the views of turbines, but there are already turbines in the area and allowing another project would not harm the recreational activities that currently exist.

Please don't change the process and zoning for Milton Twp.

Respectfully submitted,

*Madeline J. Arseault*  
MADELINE J. ARSENAULT

Resident/Landowner

*688 Kennebec Street*  
*Orford, ME 04276*

Stacie R. Beyer  
Maine Land Use Planning Commission  
106 Hogan Road, Suite 8  
Bangor, ME 04401  
[Stacie.R.Beyer@maine.gov](mailto:Stacie.R.Beyer@maine.gov)

Dear Stacie:

I'm writing to request that the Commission keep Milton Twp. in the expedited permitting area for wind power. I'm a resident of and/or own property in a town near Milton Township and care about the future of the people who live and work in the area.

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Please don't change the process and zoning for Milton Twp.

Respectfully submitted,

*Teresa Petrie*  
Teresa Petrie

Resident/Landowner

231 Rte 108  
Rumford

Stacie R. Beyer  
Maine Land Use Planning Commission  
106 Hogan Road, Suite 8  
Bangor, ME 04401  
[Stacie.R.Beyer@maine.gov](mailto:Stacie.R.Beyer@maine.gov)

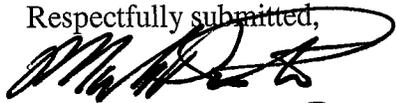
Dear Stacie:

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I believe keeping Milton Twp. zoned for wind power is appropriate. Doing so is consistent with the land uses and activities in the area, which include several wind power projects, and would provide an opportunity for a form of economic development that makes sense. I understand that some people object to the views of turbines, but there are already turbines in the area and allowing another project would not harm the recreational activities that currently exist.

Please don't change the process and zoning for Milton Twp.

Respectfully submitted,



Mark D Petric

Resident/Landowner

231 RT 108

Rumford Me.

04276

Stacie R. Beyer  
Maine Land Use Planning Commission  
106 Hogan Road, Suite 8  
Bangor, ME 04401  
[Stacie.R.Beyer@maine.gov](mailto:Stacie.R.Beyer@maine.gov)

Dear Stacie:

I'm writing to request that the Commission keep Milton Twp. in the expedited permitting area for wind power. I'm a resident of South Paris and my mother is a landowner in Milton Twp. She has signed on as a cooperating landowner for the currently proposed wind project.

Part of her reason for signing is that it will benefit the future of her children. I am currently completing my college degree in Construction Management at UMO. I also work for Bancroft Contracting and plan to continue working for them after I graduate. A large portion of the work that Bancroft does is constructing and maintaining alternative energy power plants. The future of wind power is the future of employment for me.

I believe keeping Milton Twp. Zoned for wind power is appropriate. Doing so is consistent with the land uses and activities in the area, which include other wind power projects, and would provide an opportunity for a form of economic development that makes sense. I understand that some people object to being able to see turbines, but there are other turbines in the area and allowing another project would not harm the recreational activities that currently exist.

Please don't change the process and zoning for Milton Twp.

Respectfully submitted,



Kyle E. Lamb  
51 Hill Street  
South Paris, Maine 04281

Stacie R. Beyer  
Maine Land Use Planning Commission  
106 Hogan Road, Suite 8  
Bangor, ME 04401  
[Stacie.R.Beyer@maine.gov](mailto:Stacie.R.Beyer@maine.gov)

Dear Stacie:

I'm writing to request that the Commission keep Milton Twp. in the expedited permitting area for wind power. I'm a resident of South Paris and my mother is a landowner in Milton Twp. She has signed on as a cooperating landowner for the currently proposed wind project.

Part of her reason for signing is that it will benefit the future of her children. I am currently completing my college degree in Environmental Engineering at UNH. I plan to focus my career on alternative energy. The future of wind power is the future of employment for me.

I believe keeping Milton Twp. Zoned for wind power is appropriate. Doing so is consistent with the land uses and activities in the area, which include other wind power projects, and would provide an opportunity for a form of economic development that makes sense. I understand that some people object to being able to see turbines, but there are other turbines in the area and allowing another project would not harm the recreational activities that currently exist.

Please don't change the process and zoning for Milton Twp.

Respectfully submitted,



Carolyn F. Lamb  
51 Hill Street  
South Paris, Maine 04281

**From:** [Sarah McDaniel](#)  
**To:** [Beyer, Stacie R](#)  
**Subject:** RE: Milton Township petition submission  
**Date:** Monday, August 29, 2016 12:48:00 PM  
**Attachments:** [RebuttalSubmission-McDaniel-082916.pdf](#)

---

Dear Stacie,

Please enter the attached rebuttal comments into the record and provide them to the Commissioners to guide in their rulemaking.

Regards,  
Sarah

\* \* \* \* \*

**Sarah A. McDaniel**

Douglas McDaniel Campo & Schools LLC, PA  
90 Bridge Street, Suite 100  
Westbrook ME 04092  
(o) 207-591-5747, x 115  
(f) 207-591-5752  
[smcdaniel@douglasmcdaniel.com](mailto:smcdaniel@douglasmcdaniel.com)  
[www.mainelandlaw.com](http://www.mainelandlaw.com)  
[www.douglasmcdaniel.com](http://www.douglasmcdaniel.com)

---

**From:** Sarah McDaniel  
**Sent:** Monday, August 22, 2016 4:42 PM  
**To:** 'Beyer, Stacie R' <Stacie.R.Beyer@maine.gov>  
**Subject:** Milton Township petition submission

Dear Stacie,

Please enter the attached comments into the record and provide them to the Commissioners to guide in their rulemaking.

Attached to this email is my testimony and the 2015 Energy Plan. I will send the other attachments by separate emails to ensure that they get through.

Regards,  
Sarah



**Sarah A. McDaniel**

Douglas McDaniel Campo & Schools LLC, PA

90 Bridge Street, Suite 100

Westbrook ME 04092

(o) 207-591-5747, x 115

(f) 207-591-5752

[smcdaniel@douglasmcdaniel.com](mailto:smcdaniel@douglasmcdaniel.com)

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**STATE OF MAINE  
LAND USE PLANNING COMMISSION**

Substantive Review, Milton Township )  
Petition to Remove Milton from the Expedited )  
Permitting Area for Wind Energy Development )

**REBUTTAL SUBMISSION ON  
BEHALF OF PETITION CIRCULATOR  
AND LOCAL RESIDENTS**

As previously noted, I represent Violetta Wierzbicki, landowner in Milton Township who was one of the lead circulators of the *Petition to Remove Milton Township from the Expedited Permitting Area for Wind Energy Development*. I also represent Peter Fetchko and Warren Hillquist, residents of Woodstock who both own land in Milton and Woodstock where they reside on the sides of Champlain Mountain.

Only two issues require any rebuttal, one for each of the two criteria that this Commission must apply:

- (1) Does removal of Milton Township have an unreasonable adverse effect on the State's ability to meet its wind capacity goals?
- (2) Is removal of Milton Township consistent with the principal values and goals of the Comprehensive Land Use Plan?

35-A M.R.S. § 3453-A(3).

**TRANSMISSION CAPACITY LIMITATIONS SUPPORT THE CONCLUSION THAT  
REMOVAL OF MILTON WILL NOT UNREASONABLY IMPAIR THE STATE'S ABILITY TO  
MEET ITS WIND CAPACITY GOALS.**

As the ISO-NE presentation indicates, transmission problems in Northern *and Western Maine* require the construction of new transmission infrastructure in order to accommodate continued expansion of wind development in these areas. See ISO-NE slide

PDF page 3.<sup>1</sup> Because ISO-NE is beginning to study this issue in 2016, it is unlikely that improvements to the interfaces will be constructed and fully operational in time to impact the 2020 wind goals. See ISO-NE slide PDF pages 8 - 14. Consequently, the only goals that matter for the LUPC's consideration are the State's 2030 goals. By 2030 (in 14 years) the State aims to have 3,000 MW of land-based wind capacity.

Because the only goal of pertinence is the 2030 goal, removing Milton Township from the expedited permitting area will not have any unreasonable adverse impact on the State's ability to achieve its goal. As noted in my August 22 testimony, the existing capacity without the Bryant-Chamberlain project exceeds Maine's 2030 goals (see also ISO-NE slide PDF pages 11-12 with 3,631 MW pending requests), and ISO-NE won't even *start* its review of the Bryant-Chamberlain project before 2018. However, even in the unlikely event that the wind resource in Milton somehow becomes critical, the time from now to 2030 is sufficient for a developer to complete its preliminary analysis, then request re-addition of a specific project area back into the expedited permitting area, before submitting its application without unreasonably impairing the State's 2030 goals.

The ISO-NE presentations note that "the first-in wind developers have exhausted limited existing system margins, resulting in more significant system upgrades for subsequent generators." ISO-NE slide PDF page 28. This means that the real impediment to achieving the State's wind goals is *not* whether or not Milton is available, but it is when the transmission infrastructure is upgraded. Consequently, removal of Milton from the

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<sup>1</sup> References herein to "ISO-NE slide PDF" are to the PDF titled "govt\_agencies\_submission" posted to the LUPC website on August 22.

expedited permitting area will not unreasonably adversely affect the State reaching its 2030 wind capacity goals.

**OBJECTIVE TESTIMONY ON THE HIBERNACULUM SUPPORTS THE CONCLUSION THAT REMOVAL OF MILTON TOWNSHIP IS CONSISTENT WITH THE CLUP**

Maine IF&W staff noted that bats concentrate around their hibernacula – including within a 5 mile radius – during the winter and spring seasons at the start and end of their hibernating seasons. IF&W PDF at page 56.<sup>2</sup> Their objective testimony should have much greater weight than the assertions of EverPower’s consultant who tries to suggest that only activities within a quarter mile of the hibernaculum could have a negative impact. Stantec PDF at page 4.<sup>3</sup> Obviously, the mortalities at Spruce Mountain (which had the greatest bat fatality rate of all Maine wind projects in 2012, according to Stantec’s table) undermine any suggestion that distance from the proposed project on Bryant/Chamberlain Mountains is sufficient protection. Stantec PDF at page 7. Additionally, there are unprotected ridgelines on Mount Zircon, Little Mount Zircon and Bean Mountain within Milton Township that are much closer to the hibernaculum that pose an even greater threat to bats unless Milton Township is removed from the expedited area. See LUPC staff map (at page 1 in PDF titled “Hearing Posters”).

Maine IF&W go on to note that, following the white-nose syndrome outbreak, Maine is “left with remnant numbers of several *Myotis* bats for which any and all additional ***mortality should be avoided or minimized.***” IF&W PDF at page 57 (emphasis added).

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<sup>2</sup> References herein to “IF&W PDF at page” are to the PDF titled “govt\_agencies\_submission” posted to the LUPC website on August 22.

<sup>3</sup> References herein to “Stantec at page” are to the PDF titled “2016-08-22\_SubRev\_MiltonRequestor\_posthearing” posted to the LUPC website on August 22.

This is a pro-active approach to planning that favors avoiding any mortality risk for these depleted populations. In contrast, Stantec’s focus on “very low levels of bat mortality” looks at deaths per turbine or deaths per megawatt. Stantec PDF at 7. This ignores the threatened and endangered status of these mammals for which even one death may have a significant adverse impact on the ability of the populations to rebound.

Critically, Maine IF&W conclude that “The fate of Little Brown Bats and Northern Long-eared Bats is uncertain and **losses that are avoidable may be considered ‘negligent’ take**: a prohibition of the Maine Endangered Species Act.” IF&W PDF at page 57 (emphasis added). 12 M.R.S. § 12808(1)(B) (Class E crime to negligently take a threatened or endangered species.) The negligent take of threatened and endangered bat species may be permitted (at the development permit stage, not at the rezoning stage) if the Commissioner of IF&W approves an “incidental take” plan. 12 M.R.S. § 12808(3). Notably, as part of the incidental take plan, the developer must demonstrate how it will “prevent, minimize and mitigate the individual and cumulative effects” of any incidental take. 12 M.R.S. § 12808(3)(B)(3). This is an echo of the “avoid, minimize, mitigate” approach to environmental harm that I discussed at the public hearing.

The Maine IF&W’s statement that it will “thoroughly review” any wind development proposed near a hibernacula, and EverPower’s focus on new curtailment technology is a red herring. IF&W PDF at 58; Stantec PDF at 8. The LUPC need not determine whether those factors are sufficient to protect the Milton bats from wind development on Bryant Mountain, because **there is no wind application pending review**. The effectiveness of any proposed mitigation is not an appropriate discussion in this proceeding. While the IFW regulations and review will come into play at the stage of an actual development permit

application, at the planning and zoning stage where we find ourselves now, LUPC has the opportunity to ***prevent and avoid the risk of incidental take*** by removing Milton Township from the expedited permitting area.

Here, LUPC must determine whether removing Milton Township from the expedited permitting area is consistent with the CLUP. Because doing so will significantly reduce the chance that wind will be proposed and developed in proximity to the Milton hibernaculum, removal of Milton is consistent with the CLUP's principal values and goals, as summarized in my PowerPoint presentation at the hearing.

### **CONCLUSION**

Removing Milton Township from the expedited permitting area will not have an unreasonable adverse effect on the ability of the State of Maine to meet its land-based wind capacity goals of 2,700 MW by 2020 and 3,000 MW by 2030. The small adverse effect is completely reasonable in light of the significant wildlife resource that is directly threatened by wind turbines and the regional recreational resources.

Removing Milton Township from the expedited permitting area will discourage wind development on its many ridges and, in so doing, reduce the mortality risk faced by the federally threatened and state endangered bat species who rely on the hibernaculum, as well as protect natural character of the many nearby recreational resources. This is consistent with the principal values and goals of the CLUP.

For all of the above reasons, I respectfully request that the Commission find that removal of Milton Township from the expedited permitting area for wind development satisfies the Legislative standards and enact a rule removing Milton Township.

Dated: August 29, 2016



---

Sarah A. McDaniel, Maine Bar No. 9506  
*Attorney for Petitioner Violetta Wierzbicki and  
Peter Fetchko and Warren Hillquist*

DOUGLAS MCDANIEL CAMPO & SCHOOLS, LLC, PA  
90 Bridge Street, Suite 100  
Westbrook ME 04092  
(207) 591-5747  
[smcdaniel@douglasmcdaniel.com](mailto:smcdaniel@douglasmcdaniel.com)

**From:** [Alan Michka](#)  
**To:** [Beyer, Stacie R](#)  
**Subject:** Milton rebuttal comments  
**Date:** Monday, August 29, 2016 11:54:58 PM  
**Attachments:** [Rebuttal comments v2.pdf](#)

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Stacie, please make the attached comments available to the Commissioners.

Thank you.

Alan Michka  
Lexington Twp.

August 29, 2016

**Rebuttal comments of Alan Michka**

**RE: Substantive Review – Removal of Milton Twp. from the expedited permitting area**

Introduction

I am offering the following rebuttal comments to oral and written statements made by persons opposing the removal of Milton Twp. from the expedited permitting area (expedited area).

Notably, most arguing against the Milton Twp. removal petition failed to even address the specific criteria established by the Legislature.

1. Criteria A and B were not correctly applied by opponents to the removal.

A.) Misapplication of Criterion A

*These goals include 2,000 megawatts (MW) of installed capacity by 2015, and 2,700 MW of installed capacity by 2020. (Joy Prescott, Stantec)*

Neither Prescott, nor others commenting, referenced the 2030 wind power capacity goal, the only goal found in Criterion A, and the only one relevant to this proceeding. Prescott, and several other commenters addressed only the goals for 2015 and 2020 - goals that are not germane to this review. Other commenters, including the developer's representative, made no date or quantitative reference to the goal at all.

Even in their testimonies on the wrong capacity goals, no specific evidence was offered to show that the removal of Milton from the expedited area would have a significant negative influence on the State's ability to meet those goals, much less the 2030 goal.

*A lot of projects in Maine bid in there [Clean Energy RFP]. (Harry Benson, EverPower Wind Holdings)*

Ironically, Benson *did* provide evidence suggesting that the removal of Milton from the expedited area would be consistent with Criterion A. He correctly noted that many projects, not including his company's Milton proposal, submitted bids in the recent New England Clean Energy Request for Proposals (RFP).<sup>1</sup> These Maine projects, existing and proposed, represent approximately 2,100 megawatts of wind power capacity and would be enough to fulfill Maine's 2030 capacity goal, *without* a wind project in Milton.<sup>2</sup>

*If it's a small project like this one... (Harry Benson, EverPower Wind Holdings)*

Benson further demonstrated that a Milton wind project would have little effect on the State's 2030 wind goal by confirming that his company's proposed 40 megawatt project is "small" compared to other projects. As such, it would have little relative influence on

whether or not the State meets its goal. (Individual projects greater than 200 megawatts accounted for 90% of the capacity proposed for Maine in the RFP)<sup>2</sup>

## B.) Misapplication of Criterion B

*For this criterion, LUPC must evaluate whether keeping wind power as an allowed use in Milton Twp. is consistent with the principal values and goals of the CLUP. (Joy Prescott, Stantec)*

*I'd like to take a few minutes to illustrate why keeping wind power, as an allowed use, is consistent with the principal values of the CLUP. (Joy Prescott, Stantec)*

Among those opposing the removal of Milton from the expedited area, Prescott provided the most detailed comments with regard to the values and goals of the Comprehensive Land Use Plan (CLUP). The problem is that, along with other commenters, she didn't address Criterion B, as dictated by statute.

Prescott provided written and oral testimony in support of her argument that keeping Milton in the expedited area would be consistent with the CLUP's values and goals. But, that's not what the statute asks. Criterion B asks whether or not *removing* Milton from the expedited area is consistent with the CLUP's values and goals. These two approaches may sound similar, but the difference between them is quite significant.

We don't know what Prescott intended when she used the wrong criterion in her argument. If Prescott is asserting that keeping Milton in the expedited area is consistent with the CLUP, and, therefore, removing it must necessarily be inconsistent with the CLUP, she provides no basis for her logic. Such an assertion would be too absolute, and does not allow for consideration that both - removing and keeping Milton in the expedited area - *can* be consistent with the CLUP. In any case, no attempt was made to support such an assertion, and Prescott's argument should be disregarded, as it does not address Criterion B in accordance with statute. Therefore, her argument is not relevant to this review.

Though the misuse of Criterion B by Prescott and others may have been innocent mistakes, the criterion must be addressed correctly, consistent with statute, before conclusions about it can be drawn.

## 2. Public participation opportunities were mischaracterized.

*DEP includes multiple points within the permitting process for the public, including municipalities and non-profit organizations, to provide input on the project. (Joy Prescott, Stantec)*

*We would submit an application to DEP at that time and there would be a complete and robust review process with an opportunity of the public and agency to input to ensure that the project is permitted only if it is appropriate for wind energy development in that area. (Harry Benson, EverPower Wind Holdings)*

*So, again, ample opportunity for public input. (Juliet Browne, Verrill Dana)*

This topic is at the core of the legislation that created the expedited area removal process. The Maine Legislature was fully informed about what opportunities existed for public participation in cases of expedited wind power, and they recognized that these were inadequate. Thus, the removal process was created as a way to restore a *meaningful, effective*, public participation opportunity, while preserving the opportunity for developers and landowners to pursue wind projects at these same locations.

Expedited permitting for wind projects was enacted in 2008. For residents and property owners of the Commission's jurisdiction, it resulted in the denial of an important opportunity to participate in wind power zoning decisions. Since that time, grossly overstating the public's opportunity to factor into decisions made by the respective permitting authority has been an ongoing tactic used to deflect attention away from this lack of opportunity for effective participation.

The requestors have employed that tactic in these proceedings, presumably, to create the illusion that the public has a substantial opportunity to change the outcome of wind project permitting decisions.

The requestors' comments evoke a forum for generous public input on which the DEP can base its permitting decision. They project discretionary latitude on the DEP that it does not have in permitting decisions. What the requestors know, but don't include in their comments, is that the DEP can only act on specific pieces of information directly related to the technical standards on which a development permit is based. This effectively, and severely, restricts the public's realistic chance of having any influence on permitting decisions.

While the DEP can be commended for its accommodations for public comment during the permitting phase, the likelihood of the public providing technical information resulting in a permit denial is slim. Despite the fact that many of the existing wind projects in Maine were quite controversial during the permitting phase, only one out of fourteen applicants failed to secure a license to operate as a result of a permit denial under expedited permitting.<sup>3</sup> Public participation at the permitting level poses little risk to a developer, so it's understandable that they would want to retain the current arrangement.

The DEP is not a zoning authority. It does not have the freedom to consider the wide range of legitimate issues members of the public may have about zoning their community for grid-scale wind development. None of the permitting criteria, separately or combined, are intended to determine whether wind development is appropriate for the affected community, as Benson insists. No matter how inappropriate a wind project might be, or how strongly the affected community opposes it, it would still be entitled to a permit if it satisfied the applicable criteria.

So, the problem is not the DEP or the permitting process itself. The problem is that the DEP permitting process is the wrong place to consider community values, perspectives, and a host of issues not included under the DEP's permitting criteria. That type of consideration can only take place before the Commission, which serves as the zoning authority for

residents and property owners in its jurisdiction. However, under expedited permitting rules, residents and property owners are blocked from this more appropriate type of participation. This is exactly the problem the Legislature was attempting to resolve by creating the removal process.

### 3. A removal does not determine appropriateness of development.

*If the Commission were to remove Milton Twp. from the expedited permitting area, it is a very clear indication, from a landscape zoning level, that the area is not appropriate for wind development. (Juliet Browne, Verrill Dana)*

*If LUPC makes the findings necessary for removal it will be an indication to us that LUPC does not believe the area is appropriate for development. (Harry Benson, EverPower Wind Holdings)*

The Legislature did not ask the Commission to make a determination about any given location's appropriateness for wind development during the removal process. Drawing this conclusion is inconsistent with how the Legislature addressed this subject when it created the removal process.

If the Legislature had intended the Commission to use a substantive review to determine Milton's appropriateness for wind development, there would have been no logical reason to continue to allow for the addition of lands in Milton to the expedited area, following a removal, under Section 3453 (Additions to the Expedited Permitting Area).

On the contrary, by including the following language in statute, the Legislature took an extraordinary step to protect a landowner or developer in the event they choose to petition the Commission for the addition of land to the expedited area, subsequent to a removal. Clearly, the Legislature viewed these removals and additions as unique processes with significantly different purposes.

The removal of a specified place from the expedited permitting area under this subsection may not prejudice any subsequent petition presented to the Maine Land Use Planning Commission to add the specified place back into the expedited permitting area under section 3453. (35-A MRSA §3453-A, sub-§1.)

Removing Milton from the expedited area is a means of restoring a missing public participation opportunity, in a broader wind power zoning type decision, *prior* to the permitting phase of development. The Legislature's actions clearly demonstrate that it is not intended to be a ruling on Milton's appropriateness for wind development.

### 4. The removal and addition criteria are not mirror images of one another.

*The standards for removal really do mirror the standards for adding to the expedited [permitting area]. (Juliet Browne, Verrill Dana)*

*The statutory criteria for adding an area like Milton Twp. to the expedited permitting area*

*require LUPC to find that doing so is (i) important to meeting the State's wind energy goals, and (ii) consistent with the principal values and goals of the CLUP. 35-A M.R.S.A. § 3453. These are the same criteria LUPC is considering as part of this process. (Joy Prescott, Stantec)*

These comments fail to recognize the literal, functional, and contextual differences between the criteria in Section 3453 (Additions to the Expedited Permitting Area) and Section 3453-A (Removals from the Expedited Permitting Area). On a casual glance, the criteria used in this substantive review seem remarkably similar to those found in Section 3453, but distinct and important differences exist.

Briefly, one section contains three criteria versus two, in the other. The goals under consideration in each section, and the standard for evaluating those goals are different. The actions under consideration with regard to CLUP consistency are also different.

The most significant difference, however, is in the context of how and when the criteria are used, and the directions given to the Commission by the Legislature.

The opportunity for residents to be removed from the expedited area was important to the Legislature. They set a low bar for removal. They made challenges to the removal, using the two applicable criteria, an exceptional circumstance. The Legislature made the removal imperative once the Commission determined that statutory conditions had been met.

Under the addition process, *every* addition to the expedited area must satisfy the three applicable criteria.<sup>4</sup> Still, even if the criteria are satisfied, the Legislature did not make the addition imperative, allowing the Commission some discretion in reaching their decision.

Most importantly, the Legislature gave specific instructions to the Commission prohibiting them from showing prejudice in an addition proceeding that involves a location previously removed under the Section 3453-A removal process. (See Section 3 above.) Had the Legislature viewed these two sets of criteria as mirror images, which would ultimately lead to the same conclusion, there would have been no logical reason to specifically include this directive in statute.

#### 5. The scenic evaluation is inappropriate.

*No identified scenic resources are located within Milton, such as lakes or ponds, scenic byways, state or national parks, viewpoints within national forests, or structures on the National Register of Historic Places. (Joy Prescott, Stantec)*

*Pursuant to the landscape-level analysis described in the Overview, there are no recognized scenic resources in Milton Twp., and the closest scenic resource with potential visibility in LUPC jurisdiction is in Albany Twp. at a distance of more than 10 miles. A detailed survey of scenic and cultural resources, including a visual impact assessment, will be conducted as part of any permit application and any proposed project will be designed to minimize adverse impacts on scenic and cultural resources. (Joy Prescott, Stantec)*

In her comments, Prescott inexplicably uses a statutory definition of scenic resources that

applies *only to a permit proceeding under expedited permitting rules*.<sup>5</sup> By doing so, her comments give the impression that there are very few scenic resources in the Milton area, and that those which do exist have no value because they're not specifically listed in the expedited permitting statute.

As background, the scenic standards for expedited wind project review, as crafted, significantly limit the number and type of scenic resources that can be considered in a permit review. In turn, this greatly decreases the possibility that the scenic impacts of a wind project will prevent it from receiving a development permit.

Public comments in this substantive review reveal there are many scenic resources in the Milton area, which are important to residents, property owners and visitors. Though Prescott inappropriately conflates the criteria for expedited permitting with those pertinent to this review, in doing so, she indirectly points out that the scenic resources valued by Milton area citizens would be disregarded as insignificant under expedited permitting's limited and more permissive scenic standard. This further illustrates why it is important to return the missing opportunity for effective public participation by removing Milton from the expedited area.

The expedited permitting standards are not relevant to the CLUP or this substantive review, and Prescott has not given any basis for using them here. Her scenic description relies on a scenic standard that enhances her argument, but has no relation to this proceeding and could easily mislead the Commission to erroneous conclusions.

## Notes and References

1. <https://cleanenergyrfp.com>
2. <https://cleanenergyrfp.com/bids/> and  
<http://bangordailynews.com/2016/02/01/business/cmp-emera-proposal-would-double-maine-wind-power>
3. The Bowers Mt. wind project was first denied a permit by the Land Use Regulation Commission. After the DEP assumed authority for expedited wind power permitting, a new application was submitted, and was also denied by the Department.
4. Public Law 2015, Chapter 265 eliminated the first criteria under Section 3453, Additions to the expedited permitting area, for petitions involving locations that were previously removed from the expedited area without substantive review.
5. <http://legislature.maine.gov/legis/statutes/35-A/title35-Asec3451.html>