



STATE OF MAINE
DEPARTMENT OF CONSERVATION
MAINE LAND USE REGULATION COMMISSION
22 STATE HOUSE STATION
AUGUSTA, MAINE
04333-0022

PAUL RICHARD LEPAGE
GOVERNOR

WILLIAM H. BEARDSLEY
COMMISSIONER

Fourth Procedural Order

In the Matter of
Development Permit DP 4862
Highland Wind, LLC
Highland Wind Project
May 11, 2011

To: Service list

cc: Commissioners of the Land Use Regulation Commission (LURC)
Amy B. Mills, AAG
Catherine Carroll, LURC Director
Samantha Horn-Olsen, LURC Planning Division Manager
Marcia Spencer Famous, LURC Senior Planner
Jim Palmer, LURC Scenic Quality Consultant
Warren Brown, LURC Noise Consultant

From: Gwen Hilton, Land Use Regulation Commission Chair and Presiding Officer

Subject: Applicant's request to withdraw application

I. Background

The pre-hearing conference in this matter was held on April 7, 2011. The Third Procedural Order, issued April 26, 2011, established June 15, 2011 as the deadline for pre-filing testimony, and established July 18-21, 2011 as the public hearing dates. Thus, no testimony has been pre-filed and the matter has not gone to hearing.

On May 2, 2011 the Applicant filed a letter, stating that - in order to address issues that had been raised in pre-hearing comments - it is withdrawing its application for the Highland Wind Project, with the intent to re-file at a later date.

Several intervening parties subsequently commented on the Applicant's letter, specifically the Friends of the Highland Mountains, Friends of the Maine Mountains, Forest Ecology Network, and Greg Perkins. These parties asserted that the proceeding to date has resulted in an expenditure of time and monetary expense by the intervening parties. Further, they assert

that, because the proposed project is flawed, the Applicant has now submitted and withdrawn its application twice, and should not be allowed to re-submit the application a third time.

If the Applicant does re-submit an application, the intervening parties further assert that the Commission should predicate acceptance of that application on a requirement of a substantial change in circumstances or available information. Additionally, the parties assert the status of the intervening parties and the granting of a public hearing should be preserved, and agency comments and all rulings issued should be retained in the record.

The Commission has authority, based upon considerations of due process and its Title 12 enabling legislation, to manage and control its adjudicatory proceedings.

II. Order

The Chair appreciates the comments filed by and the participation of the intervening parties. In view of the facts and procedural circumstances of this proceeding, however, the Chair accepts the Applicant's withdrawal. While there has been no final decision in this matter, and thus the provisions of Rule 4.07 do not apply, the Chair, on behalf of the Commission, reserves the right to manage any re-filed application in a manner that is appropriate and fair; and that may include incorporating the record of this proceeding to date into the new application record.

III. Authority and reservations

This order is issued by the Presiding Officer pursuant to LURC Chapter 5, *Rules for the Conduct of Public Hearings*. All objections to matters contained herein should be timely filed in writing with the Commission but are not to be further argued except by leave of the Presiding Officer. All rulings and objections will be noted in the record. The Presiding Officer may amend this order at any time.

Questions regarding this order of the Presiding Officer should be directed to Catherine Carroll, Director: 207-287-4930, Catherine.M.Carroll@maine.gov or Marcia Spencer-Famous, Senior Planner: 207-287-4933 Marcia.Spencer-Famous@maine.gov at the Commission's office in Augusta.

No *ex parte* communication may occur with the Presiding Officer or any other Commission member.

DATED AT AUGUSTA, MAINE THIS 11th DAY OF MAY 2011



By: _____
Gwen Hilton, Presiding Officer