



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

Memorandum and Third Procedural Order

**Pre-Hearing Conference
In the Matter of
Development Permit DP 4862
Highland Wind, LLC
Highland Wind Project
Conference date April 7, 2011
9:00 am to 12:30 pm**

On April 7, 2011, a pre-hearing conference was held pursuant to Chapter 5.07 of the Commission's Rules, at the Department of Conservation's Bolton Hill Facility in Augusta, Maine. An agenda for the pre-hearing conference was distributed prior to the conference. Two parties submitted additional agenda items to be discussed prior to the conference, and several additional discussion items were raised and addressed at the conference by agreement of the attendees. The following memorandum and order recounts the discussions of the attendees at the conference, and includes, among other things, the scheduling of a public hearing. The site visit date and the deadlines associated with this proceeding also follow. Questions about this memorandum and order should be directed to the LURC staff contact person, as provided below.

Attendees of the Prehearing Conference of April 7, 2011

LURC Commission

Gwen Hilton, Presiding Officer

LURC Staff

Catherine Carroll, LURC Director

Marcia Spencer-Famous, LURC Planner

Maine Attorney General's Office

Amy Mills, Assistant Attorney General

Highland Wind, LLC ("the Applicant")

Katherine Joyce, Esq., Bernstein, Shur, Shumway & Nelson

Ron Kreisman, Highland Wind

Jack Montgomery, Highland Wind

Jon Ryan, Stantec

Intervenors

Phil Worden, Esq. representing Friends of the Highland Mountains (FHM)
Karen Pease (FHM and FMM)
Alan Michka (FHM)
William Plouffe, Esq. representing Maine Appalachian Trail Club (MATC)
Tony Barrett, MATC
Tom Lewis, MATC
Steve Clark, Arnold Expedition Historical Society (AEHS)
Greg Perkins
David Publicover, Appalachian Mountain Club (AMC)
Hawk Metheny, Appalachian Trail Conservancy (ATC)
Jane West, Conservation Law Foundation (CLF)
Reeve Wood, CLF
Jeff Goldman, Maine Interfaith Power and Light (MeIPL)
Beth Valentine, MeIPL
David Corrigan
Jonathan Carter, Forest Ecology Network (FEN)
Chris O'Neil, Friends of the Maine Mountains (FMM)

Intervening Governmental Agencies

Rita Hennessey, National Park System (NPS)
W. Brent Allen, NPS

Government Agency

Jodie Dunphy, Highland Plantation Assessors (HPA)
Mike Verges, HPA
Jay Staton, HPA

Government Review Agencies

Bob Cordes, Maine Dept. of Inland Fisheries and Wildlife

Interested Public

Greg Drummond
Richard Levesque
Jocelia Pease

I. Interested Persons, Intervenors, and Government Agencies

At the prehearing conference there was discussion regarding the party status of Interested Persons and Intervenors in this proceeding. For purposes of this order “party” refers to Highland Wind, LLC (the Applicant), the Intervenors, and the National Park Service (a government agency granted Intervenor status).

A. *Intervenor and Interested Person status discussed for two parties.* Party-status was discussed at the prehearing conference with regard to David Corrigan and FEN, both of

whom had requested Interested Person status for this proceeding. FEN was granted Intervenor status in 2010, but in 2011 requested changing to participation as an Interested Person. Mr. Corrigan requested participation as an Interested Person in 2011. After a discussion of the level of their anticipated participation in this matter, the Applicant stated that it had no objection to FEN and Mr. Corrigan being treated as Intervenor. The Presiding Officer has determined that both FEN and Mr. Corrigan will be treated as Intervenor.

- B. Participation in this proceeding as an Intervenor comes with both privileges and responsibilities. Responsibilities generally include compliance with all duly noticed requirements and deadlines. In particular, those pre-filing testimony are required to arrange for the attendance of their witness(es) at the scheduled day sessions of the hearing for presentation of their testimonial summaries and for cross-examination by the parties.
- C. For clarity, those groups or persons who have been granted Intervenor status, and are choosing to participate in this proceeding, are listed below:
- Friends of the Highland Mountains (FHM)
 - Maine Appalachian Trail Club (MATC)
 - Appalachian Mountain Club (AMC)
 - Appalachian Trail Conservancy (ATC)
 - Forest Ecology Network (FEN)
 - Greg and Jennifer Perkins (Perkins)
 - David Corrigan (Corrigan)
 - Friends of the Maine Mountains (FMM)
 - Maine Interfaith Power and Light (MeIPL)
 - Conservation Law Foundation (CLF)
 - Arnold Expedition Historical Society (AEHS)
 - National Park Service (NPS)

At the conference, some Intervenor voluntarily agreed to consolidation; consolidation of Intervenor is discussed in more detail below in Section VI. Any party filing documents shall serve such filing on all parties and in accordance with the filing requirements set forth in this order (See the service list in Section VI, and the filing requirements in Section VII).

- D. *National Park Service (NPS)*. The NPS, which petitioned for and was granted Intervenor status, is also a government agency. In accordance with LURC Chapter 5 Rules § 5.15, NPS shall be treated as a governmental agency with all the privileges and responsibilities of an Intervenor.
- E. *Other government agencies*. Other than NPS, no local, state or federal government agency has indicated an interest in testifying at the public hearing at this time. Both MDIFW and HPA attended the pre-hearing conference, and HPA has requested being kept apprised of the proceeding as it moves forward, but neither have requested

participation in the proceedings as a government agency or petitioned to intervene. However, MDIFW, like several other state agencies, has submitted review comments. The Commission reserves the right to request that any of the reviewing agencies be present at the hearing.

Government agencies that reviewed the application may participate at the public hearing as provided by the Commission's Chapter 5 rules, Section 5.15. BPL, who was granted Intervenor status in 2010, has now declined to participate as an Intervenor.

II. Purpose and general framework of the public hearing

- A. **The Public Hearing will be held the week of July 18, 2011, at the Sugarloaf Ski Resort and Conference Center in Carrabassett Valley.** Evening sessions of the public hearing that are open for general public testimony will be held on Monday, Tuesday, and Wednesday, July 18 to 20, starting at 6:00 PM. On Tuesday, Wednesday, and Thursday, July 19 to 21, beginning each day at 8:30 AM and continuing until 4:30 PM, the Commission will convene its daytime technical sessions involving the parties to this proceeding. The public hearing will conclude on July 21st at the end of the third technical session.
- B. The purpose of the upcoming public hearing is to provide a forum for the Commission to receive evidence relevant to its review of the Development Permit application for the Highland Wind Project, submitted by Highland Wind, LLC. Public hearings convened by the Commission are subject to applicable State statutes and LURC Rules: Chapter 4, 'Rules of Practice' and Chapter 5, 'Rules for the Conduct of Public Hearings'.
- C. The three evening public sessions of the hearing will provide the general public with an opportunity to address the Commission with respect to the Highland Wind Project. Typically, the evening sessions begin with an opening statement by the Presiding Officer, a staff statement and administrative history, and a brief summary of the proposal by the applicant. Members of the public sign in at the public session, and indicate whether they would like to address the Commission at the hearing.
- D. The public hearing will resume on the designated mornings for the daytime technical sessions to provide the parties in this proceeding with an opportunity to address the Commission and for the Commissioners to ask questions. An opportunity will be provided for brief opening statements, summary presentations of pre-filed direct testimony, cross examination, and re-direct. The daytime technical sessions of the public hearing are open to the public for observation only.
- E. At the pre-hearing conference the parties expressed varying preferences regarding whether the day sessions ought to be organized by issue or by party. The Presiding Officer will make a determination on this issue in advance of the hearing, after the parties have made more substantive filings regarding issues, witnesses, and testimony (See Section IX, below).

III. Purpose and general framework of the site visit

- A. At the conference, MATC requested that the site visit include a visit to TransCanada's existing Kibby Wind Project, located in Kibby Twp., Franklin County, so that the Commissioners could view a wind project in person. The request included a daytime visit to view the project at varying distances, and a nighttime visit to view the Federal Aeronautics Administration (FAA) lighting on the turbines. FEN commented that it supports MATC's request because cumulative impact needs to be considered. The Applicant objected, arguing a visit to the Kibby Wind Project would be unfairly prejudicial, and that any alleged inadequacies of the Applicant's visual impact assessment may be appropriately addressed through the adjudicatory hearing process.
1. All parties to this proceeding should be aware that some, if not all, of the Commissioners have observed, in the context of other proceedings, existing wind energy projects. Thus, to a certain extent, the purpose of MATC's request has already been achieved. Further, as a practical matter, the logistics of arranging what would amount to three formal site visits for the volunteer Commissioners (two to the Kibby Wind Project and one to the proposed Highland Wind Project area) cannot be overlooked.
 2. Each wind energy project is driven by the facts as developed in each record and the applicable legal criteria, and it is upon those two bases that this decision must turn. For all of these reasons, the Presiding Officer has determined that the Commission's site visit will not include a Kibby Wind Project component.
- B. The final arrangements for the Commissioner's site visit to the Highland Wind Project area will be made at a date closer to the time of the hearing, and all parties will be kept informed.
1. It is anticipated that the Commission will leave from the parking lot at the Sugarloaf Resort Grand Summit Hotel at **10 am** on **July 18th**, and will arrive back at the same location by **4 pm**. The Commission will visit the proposed Highland Wind Project site in Highland Plantation, and other relevant stops to observe locations of project features, access, and area landscapes. The parties and any member of the public wishing to attend the site visit are welcome to do so.
 2. A proposed itinerary for the site visit will be filed by the Applicant no later than Friday, **July 1st**, followed by an opportunity for parties to comment on the itinerary no later than Monday, **July 11th**. The itinerary will be reviewed by the Presiding Officer, and a final itinerary established. LURC staff, in consultation with the Presiding Officer, will distribute to the parties on or about **July 14th**, a final itinerary memorandum, and copies of the itinerary will be available at the site visit. The Presiding Officer, however, may at any time alter the itinerary of the visit in order to make it efficient and effective.
 3. Transportation for the Commissioners and staff will be organized by the Applicant and LURC staff. To facilitate organizational needs, parties interested in attending the

site visit must contact Marcia Spencer-Famous by **Monday July 11th** to sign up for the visit. Members of the public must provide their own transportation. Note that some stops on the visit will be to remote areas with muddy gravel roads, and the site visit participants should plan accordingly. Once final, the site visit itinerary will be posted on the LURC website.

4. During the site visit, representatives of the Applicant and LURC staff may point out various features and locations of the proposed project, and site-specific questions for clarification may be asked by Commissioners and other attendees. The Commission, parties, and any attendee shall refrain from inferential considerations or *ex parte* communication.
5. During the site visit, no party or member of the public may discuss testimony or otherwise engage in any advocacy or conversations about the Highland Wind Project with Commission members. The public may attend for informational purposes only and cannot address the Commissioners with respect to this project. The public is afforded that opportunity during the scheduled evening sessions of the public hearing.

IV. Public hearing rules and procedures

As stated above, public hearings convened by the Commission are subject to applicable State statute and LURC Commission Rules Chapter 4 'Rules of Practice' and Chapter 5 'Rules for the Conduct of Public Hearings'.

- A. All parties submitting pre-filed testimony must make the witnesses available for cross-examination by the parties at the hearing, and may be subject to questions from the Commission or staff. Other government agencies submitting comments or testimony may be examined by the parties, but parties wishing to do so must indicate before the hearing, no later than **July 1, 2011**, that they desire to have a representative of that agency present for this purpose. No party will be allocated time to summarize testimony at the hearing unless it has pre-filed testimony.
- B. Each party is required to present the summary of pre-filed testimony and to cross-examine efficiently. Parties supporting the same position must coordinate their testimony to reduce redundancy. The Presiding Officer may limit any party's time in order to expedite the hearing and eliminate redundant or insignificant testimony. Cross-examination will occur immediately following each witness or group of witnesses, as the Presiding Officer determines.
- C. Testimony by the general public will be heard during the evening sessions on July 18, 19, and 20, 2011. The public may be asked questions by the Commission and staff. The parties may not cross-examine the public, but may ask for clarification through the Presiding Officer.
- D. Witnesses who pre-file testimony relating to any topic on behalf of a party in this matter will not be permitted to testify at the evening public sessions. Individuals who are

affiliated with a party in this matter may testify at the public sessions only in their personal capacities, and not on behalf of a party.

- E. A general hearing agenda is presented below. A subsequent order containing a more detailed hearing schedule with time allocations will be distributed to the parties and made available to the public after the list of witnesses to be cross-examined, and time requested for cross-examination of each witness, has been received and processed by the Presiding Officer.

PUBLIC HEARING
To be held at the Sugarloaf Ski Resort and Conference Center
Carrabassett Valley, Maine

JULY 18, 2011

Site Visit: 10:00 am meeting at the Sugarloaf Resort Grand Summit Hotel parking lot
Detailed itinerary to be announced in accordance with the terms of this order
4:00 pm approximate return to the Sugarloaf Resort

Evening (6:00 pm): Public Session

Opening statement by Presiding Officer, staff statement and administrative history
Brief presentation by the Applicant summarizing the proposal
Public testimony (Additional written testimony from the public may be submitted until the end of the post-hearing comment period, see Section XIII below.)
Recess and closing statement of the Presiding Officer

JULY 19, 2011

Morning (8:30 am to 12:00 pm)

Opening statement by Presiding Officer, staff statement and administrative history and record
Parties' opening statements, starting with the Applicant
Summary of testimony, cross-examination of witnesses, questions by Commission, and redirect - whether by party or by issue, the order will be Applicant, NPS, Intervenors

Lunch (12:00 pm to 1:00 pm)

Afternoon (1:00 pm to 4:30 pm)

Summary of testimony, cross-examination of witnesses, questions by Commission, and redirect - whether by party or by issue, the order will be Applicant, NPS, Intervenors

Evening (6:00 pm): Public Session

Opening statement by Presiding Officer, staff statement and administrative history

Public testimony (Additional written testimony from the public may be submitted until the end of the post-hearing comment period, see Section XIII below)
Additional summaries and/or cross-examination by the parties may occur as time permits during this evening session.
Recess and closing statement of the Presiding Officer

JULY 20, 2011

Morning (8:30 am to 12:00 pm)

Presiding Officer opening statement
Summary of testimony, cross-examination of witnesses, questions by Commission, and redirect - whether by party or by issue, the order will be Applicant, NPS, Intervenors

Lunch (12:00 pm to 1:00 pm)

Afternoon (1:00 pm to 4:30 pm)

Summary of testimony, cross-examination of witnesses, questions by Commission, and redirect - whether by party or by issue, the order will be Applicant, NPS, Intervenors

Evening (6:00 pm): Public Session

Opening statement by Presiding Officer, staff statement and administrative history
Public testimony (Additional written testimony from the public may be submitted until the end of the post-hearing comment period, see Section XIII below)
Additional summaries and/or cross-examination by the parties may occur as time permits during this evening session.
Recess and closing statement of the Presiding Officer

JULY 21, 2011

Morning (8:30 am to 12:00 pm)

Presiding Officer opening statement
Summary of testimony, cross-examination of witnesses, questions by Commission, and redirect - whether by party or by issue, the order will be Applicant, NPS, Intervenors

Lunch (12:00 pm to 1:00 pm)

Afternoon (1:00 pm to 4:30 pm)

Summary of testimony, cross-examination of witnesses, questions by Commission, and redirect - whether by party or by issue, the order will be Applicant, NPS, Intervenors
Closing statement of the Presiding Officer

V. *Ex Parte* communications

The parties are directed to 5 M.R.S.A. § 9055 and Chapter 5, Section 5.25 of the Commission's Rules, for a statement of legal restrictions on contact with Commission members during pending proceedings, including the site visit. The parties are cautioned to avoid any conduct that could give rise even to the appearance of improper contact with Commission members.

VI. Service list, designated primary spokespersons, and secondary contact persons

- A. *Service list.* LURC staff, and the designated primary spokespersons and secondary contact persons for the Applicant, each Intervenor or Consolidated Intervenor, and the Governmental Agencies constitute the service list. All filings in this proceeding must be copied to the service list.
- B. *Primary spokesperson responsibilities.* The primary spokespersons are responsible for: submittal of pre-filed testimony, coordination of other pre-hearing matters, presentation of an oral summary of the pre-filed direct testimony at the hearing, producing witnesses for cross-examination, cross-examining other parties' witnesses, and any post-hearing filings. Each primary spokesperson is responsible for assuring filings have been provided to the others in his/her group.
- C. *Change in primary spokesperson or secondary contact persons.* All parties must provide timely notice in writing of any change in the designated primary spokesperson or the secondary contact person to LURC staff and the other parties, and must provide the new contact information.
- D. *Consolidation of Parties by the Presiding Officer.* Consolidation of parties is pursuant to the authority granted in LURC Chapter 5 Rules for the Conduct of Public Hearings. As discussed at the conference, several of the Intervenors are voluntarily consolidated for the purpose of efficiency and to reduce redundancy at the hearing, although each party within a group may retain the ability to provide its own testimony. Group 2 tentatively consists of FHM and Greg Perkins, with a final determination to be made after the preliminary list of witnesses and issues is submitted. Several other Intervenors indicated an interest in participating independently at the hearing and have not been consolidated; however, the Presiding officer reserves the right to require further consolidation if needed. Regardless of consolidation or lack thereof, the Presiding Officer will allocate the time available at public hearing fairly and in such a manner that will produce an efficient and effective adjudicatory process.
 1. *Consolidated Intervenors.* The Consolidated Parties and primary spokespersons for each are as follows:
 - Group 1 – MATC, AMC, and ATC – William Plouffe, Esq.
 - Group 2 – FHM, and Greg Perkins – Philip Worden, Esq.
 - Group 3 – MeIPL and CLF – Jane West, Esq.

2. *Intervenors or Government Agency functioning as an Intervenor* that will participate independently, and their primary spokespersons, are as follows:
 - FEN – Jonathan Carter
 - David Corrigan
 - FMM – Chris O’Neil
 - AEHS – Steve Clark
 - NPS - Pam Underhill

E. Service List and Contact Information

1. Land Use Regulation Commission

Marcia Spencer-Famous, Senior Planner Marcia.Spencer-Famous@maine.gov
22 State House Station
Augusta, ME 04333
(207) 287-4933

Amy Mills, Esq., Assistant Attorney General Amy.Mills@maine.gov
Maine Attorney General’s Office

2. Applicant - Highland Wind, LLC

Primary spokesperson - Katherine Joyce, Esq. Kjoyce@bernsteinshur.com
Bernstein, Shur, Shumway & Nelson
100 Middle Street
P.O. Box 9729
Portland, ME 04104-5029

Secondary contact person - Jon Ryan jonathan.ryan@stantec.com
Stantec
30 Park Drive
Topsham, ME 04086

3. Intervenors

- Consolidated Intervenors, Group 1 – MATC, AMC, and ATC

Primary spokesperson - William L. Plouffe, Esq. WPlouffe@dwmlaw.com
Drummond Woodsum
84 Marginal Way, Suite 600
Portland, Maine 04101-2480

Secondary contact person – Dr. David Publicover dpublicover@outdoors.org
Appalachian Mountain Club
P.O. Box 298
Gorham, NH 03581

Secondary contact person - Hawk Metheny hmetheny@appalachiantrail.org

Appalachian Trail Conservancy
79 Washington Street
P.O. Box 807
Harpers Ferry, WV 25425-0807

- Consolidated Intervenors, Group 2 – FHM and Greg Perkins

Primary spokesperson - Philip Worden, Esq. pworden@igc.org
Worden Law Office
125 Main Street
P.O. Box 1009
Northeast Harbor, ME 04662

Secondary contact person - Greg Perkins gregperkins096@yahoo.com
51 Whitcomb Rd.
Holden, ME 04429

Secondary contact person - Alan Michka armichka@207me.com

- Consolidated Intervenors, Group 3 – MeIPL and CLF

Primary spokesperson - Jane West, Esq. JWest@clf.org
Secondary contact person - Sean Mahoney SMahoney@clf.org
Conservation Law Foundation
47 Portland Street, Suite 4
Portland, ME 04101

Secondary contact person - Jeff Goldman, Esq. jeff.goldman@bingham.com
for Maine Interfaith Power and Light
Bingham McCutchen LLP
85 Exchange St. #300
Portland, ME 04101

- Individual Intervenors

Friends of the Maine Mountains
Primary spokesperson - Chris O'Neil cponeil22@gmail.com
284 Main Street, Suite 200
Wilton, Maine 04294

Secondary contact person - Karen Pease roomtomove@tds.net

Forest Ecology Network (FEN)
Primary spokesperson - Jonathan Carter fen@207me.com
336 Back Road
Lexington Twp., ME 04961

Arnold Expedition Historical Society
Primary spokesperson – Steve Clark clarkbooks@hotmail.com
60 Burnham Road
Scarborough, Maine 04074

Primary spokesperson - David Corrigan maineguide@live.com
Fletcher Mountain Outfitters
82 Little Houston Brook Road
Concord Twp., Maine 04920

4. Intervening Governmental Agency

National Park Service
Primary spokesperson – Pamela Underhill Pamela_Underhill@nps.gov
Secondary contact person – W. Brent Allen William_B_Allen@nps.gov
Appalachian National Scenic Trail
National Park Service
P.O. Box 50
252 McDowell Street (deliveries)
Harpers Ferry, WV 25425

5. Government Agencies

Highland Plantation Assessors – Jo Dunphy snogoers@tdstelme.net
Pleasant Ridge Plantation Assessors – Robert Bowden rljgbow@gmail.com

VII. Service list filing requirements

- A. *Paper copy of the original and electronic copy for the record.* All materials, including exhibits, must be provided to LURC as 1) a signed paper copy original (notarized when appropriate) **and** 2) electronically. For submittals 2 MB in size or less, the electronic submittal may be by email to Marcia.Spencer-Famous@maine.gov. For larger submittals, one CD copy must be provided containing all materials, including cover letters and attachments associated with that submittal. All CDs must be clearly labeled. Electronic documents must be in either Word (.doc) or Adobe (.pdf) format. Photo files must be in JPEG (.jpg) unless another format is approved by LURC staff. If you have questions about which format to use, please consult LURC staff.
- B. *Copying the other Parties.* All substantive submittals, including emails, must be copied by the submitting party to the service list electronically upon submittal to LURC. As set forth above, the service list contains one or several contact persons, depending on the party. If any party requires a paper copy of a submittal, then that party must request in writing a paper copy from the submitting party, and the submitting party shall timely serve a paper copy on all requesting parties.
- C. *Electronic file naming convention.* The titles of all electronic files must be as short as possible, and must use the following naming convention:

- “Party acronym_Title_DP4862”
- For example: “LURC_FirstProceduralOrder_DP4862”
- Electronic file titles must not include characters such as “<, >, /, ?, &, !, + ”
- Underscores and dashes are acceptable

D. *Format of submittals and deadlines.* All materials submitted must be provided by the date and time due at least electronically. If an electronic submittal is being provided as a CD copy, the CD must be **received** at the LURC office by the deadline. The signed paper version must be timely mailed to LURC’s Augusta office, attn: Marcia Spencer-Famous, Senior Planner, 22 State House Station, Augusta ME 04333 for U.S. Postal Mail; or 18 Elkins Lane, Augusta ME 04330 for deliveries.

E. *Meeting deadlines for submittals.* The close of business at the LURC Augusta office is 5:00 p.m. All materials received after that time will be considered to be submitted the following day, unless LURC staff and the other parties are notified at least one-half day before the deadline, and permission is obtained from LURC ahead of time for a late submittal.

VIII. Relevant review criteria

The following are the legal criteria relevant to the Commission’s review of this proposal:

- 12 M.R.S., Sections 685-B,2-C, 4, and 4-B of the Commission’s statutes;
- 35-A M.R.S., Ch. 34-A, Sections 3451, 3452, 3454, and 3455, the Wind Energy Act (as amended), Other applicable provisions of the Commission’s statute, 12 M.R.S., Sections 681 through 689; and Chapter 10, the Land Use Districts and Standards.
- LURC Commission Rules: Chapter 4, ‘Rules of Practice’ and Chapter 5, ‘Rules for the Conduct of Public Hearings’
- Board of Environmental Protection’s noise control rules adopted pursuant to Title 38, chapter 3, subchapter 1, article 6; the Site Location Law; DEP Rule Chapter 375.10 Control of Noise.

IX. Pre-hearing filings

A. *Tentative list of witnesses and issues.* No later than **Thursday, April 28, 2011 at 5:00 pm.**, all parties must formally state a position on this project and provide a tentative list of witnesses and the issues on which they will testify. As discussed at the pre-hearing conference, as impacts to so-called locally significant scenic resources will be at issue in this proceeding, viewpoints of concern should be identified. The information in this filing is important to the Presiding Officer for the purpose of preparing a detailed schedule for the hearing, including the determination of whether the hearing will be arranged by issue or by party. To that end, while the date of this filing requires some flexibility with respect to its content, the parties are encouraged to provide as substantive filings as possible based upon the information that is available to date.

B. *Pre-filed direct testimony.* All direct testimony must be pre-filed. Pre-filed direct testimony must be sworn, notarized and filed with the Commission by all parties no later

than **Wednesday, June 15, 2011 at 5:00 pm**. A cover letter reciting legal interpretations or arguments the party wishes to assert may be included with the pre-filed testimony. The pre-filed testimony must clearly indicate any experts.

- C. *Exhibits introduced at the hearing.* Any exhibit that a party wishes to introduce into the administrative record must be attached and incorporated into pre-filed testimony or pre-filed rebuttal testimony. Exhibits used at the hearing must not introduce new evidence. It is the responsibility of each party to label their exhibits in a manner that allows them to be easily identified and referenced. Reduced versions of oversized exhibits may be pre-filed, with the full-size exhibit presented at hearing.
1. The Presiding Officer retains the discretion to allow the introduction of an exhibit at hearing that was not pre-filed based on a showing of good cause; however, such requests will be looked upon with extreme disfavor, and the requesting party will bear the heavy proof of demonstrating why it was not feasible to pre-file the exhibit, and that the need to introduce the exhibit outweighs any prejudice to other parties. Any proposed demonstrative exhibit must clearly reference the underlying, pre-filed substantive source and its location in the pre-filed materials.
 2. The use of exhibits that were not pre-filed and are not in the administrative record for the purpose of impeaching witnesses at hearing may be approved by the Presiding Officer on a case by case basis if the Officer is satisfied that the use of the exhibit as proposed will assist the Commission in its decision making.
 3. Any exhibit used by a party at the hearing that has not been previously submitted must be provided to LURC staff in both paper (one copy) and electronic form by e-mail if 2MB or less in size, or CD if larger than 2MB. Each party is responsible for providing each other party with one copy of its hearing exhibits.
- D. *Objections to pre-filed testimony.* **By Wednesday, June 22, 2011 at 5:00 pm**, parties shall file any objections to pre-filed testimony.
- E. *Rebuttal to pre-filed testimony.* All rebuttal testimony and exhibits must be pre-filed. Pre-filed rebuttal testimony must be sworn, notarized and filed with the Commission by all parties no later than **Friday, July 1, 2011 at 5:00 pm**.
- F. *Final witness lists and estimates of time.* **By Friday, July 1, 2011 at 5:00 pm**, each party shall identify in writing, and make available to the Commission and all other parties, a final list of the witnesses of the other parties it wishes to have available for cross-examination, and an estimate of the amount of time it expects to need for a presentation of summaries of direct testimony and for cross-examination. An order will be issued thereafter with the final hearing schedule, including times allocated to each party for presentation of testimonial summaries and for cross-examination.
- G. *Objections to pre-filed rebuttal testimony.* **By Friday, July 8, 2011 at 5:00 pm**, parties shall file any objections to pre-filed rebuttal testimony.

H. Agencies' comments and Applicant's responses.

1. Reviewing agencies' comments were anticipated by April 13, 2011, but were not complete, save one as addressed below, until April 20, 2011. In view of the later-than-anticipated review comments, the Applicant has requested a May 4th deadline for response, which would provide two weeks (as discussed at the pre-hearing conference) in which to respond. The Applicant's response to the reviewing agencies' comments, including the Applicant's submittal of any additional materials requested by the agencies, shall be by **Wednesday, May 4, 2011 at 5:00 pm.**
2. LURC staff anticipates receiving review comments from the last agency reviewer, the sound expert, soon. The Applicant's response to the sound expert's review comments shall be made no later than 2 weeks after receipt of the comments. LURC staff anticipates receiving the sound expert's final comments no more than two weeks after the Applicant's response, but in any event no later than May 25th.
3. The Applicant shall submit an addendum to the Visual Impact Assessment (VIA) addressing the associated facilities by **Wednesday, May 18, 2011 at 5:00 pm.**
4. Final agency comments are anticipated by **Wednesday, May 18, 2011 at 5:00 pm,** except as noted for the sound expert and VIA addendum review.
5. All materials being submitted by the Applicant in response to any agency comments received on or about May 18th, and the Applicant's filing providing a detailed description of the community benefits package, shall be filed by **Wednesday, May 25, 2011 at 5:00 pm**
6. The review comments by the scenic expert on the Applicant's VIA addendum are anticipated by **Wednesday, June 15, 2011 at 5:00 pm.**
7. The Applicant's response to the sound expert's final comments shall be submitted by **Wednesday, June 15, 2011 at 5:00 pm.**
8. The Applicant's response to scenic expert review comments on the VIA addendum shall be submitted by **Friday, July 1, 2011 at 5:00 pm.**

X. Issues not subject of the proceeding

Issues not subject to the proceedings as expressly outlined in Title 12, the Wind Energy Act and LURC's Land Use Districts and Standards will be not allowed into the record and proceedings of this development permit application.

At the pre-hearing conference, comments made by Senator Peter Mills at the December 1, 2010 Commission meeting regarding tangible benefits were discussed because Attorney Phil Worden had previously raised concern regarding the appropriateness of the comments. At

the conference, Attorney Worden took the position that the comments are not properly part of this proceeding, and no one objected. Therefore, the Senator Mills comments at issue will not be included in the record of this proceeding and will not be considered by the Commission in reaching its decision on this matter.

XI. Summary of pre-hearing administrative proceedings submittal deadlines (*all deadline dates close at 5:00 pm*)

- April 20: Initial agency review comments were received (With the exception of the addendum to the VIA and the sound expert's comments (see below))
- April 28: Tentative witness and issues list
- May 4: Applicant's response to agency comments (With the exception of the addendum to the VIA and the sound expert's comments)
- May 18: Final agency comments (With the exception of the addendum to the VIA and the sound expert's comments)
- May 18: Applicant's addendum to the VIA addressing associated facilities
- May 25: Applicant's response to final agency comments and detailed filing on the community benefits package
- June 15: Pre-filed testimony; agency review comments on addendum to the VIA; and Applicant's response to sound expert's final comments
- June 22: Objections to pre-filed testimony
- July 1: Pre-filed rebuttal testimony; and Applicant's response to agency review of the addendum to the VIA
- July 1: Final list of witnesses to be cross-examined, and projected time allotment requests for presentation of testimony summaries and cross examination
[Note: Parties must request presence of government reviewing agencies they intend to cross examine.]
- July 8: Objections to pre-filed rebuttal testimony
- Procedural Order with times allocated – to be distributed approximately 1 week before hearing
- Hearing and site visit
 - July 18 - site visit
 - July 18, evening – public session
 - July 19, morning and afternoon – technical session (parties)
 - July 19, evening - public session
 - July 20, morning and afternoon – technical session (parties)
 - July 20, evening - public session
 - July 21, morning and afternoon – technical session (parties)

XII. Issues discussed at the pre-hearing conference

A. Scenic review of the associated facilities.

1. The First Procedural Order in this matter was issued on March 15, 2011 in response to FHM requesting that the visual impact of the associated facilities of the Highland Wind Project be reviewed under LURC's traditional Title 12 criteria and Chapter

- 10.25, E standards, and not under the scenic standard provided by the Wind Energy Act. In the First Procedural Order, the Presiding Officer requested written argument from any interested person no later than March 22, 2011, and an opportunity was provided for the Applicant to respond to this issue no later than March 29th.
2. On April 6th, at its regular monthly business meeting, after consideration of the filings including one from the Applicant, and after consideration of the applicable provisions of the Wind Energy Act, the Commission determined what constitutes an “associated facility” and what constitutes a “generating facility,” as those terms are defined by the Wind Energy Act, and it voted to review the visual impact of the associated facilities under LURC’s traditional Title 12 criteria and its standards for development.
 3. At the prehearing conference, the attendees raised and discussed an issue arising from the Commission’s April 6th decision, specifically the attendees sought clarification as to how the Commission intended to define what it had referred to as a “turbine pad” (See Second Procedural Order).
 4. The Second Procedural Order in this matter was issued on April 8, 2011, clarifying the Commission’s decision, and soliciting legal argument on three other points raised by the Parties (See Section B, below).

C. Three legal issues raised by the parties at the conference.

1. The conference attendees raised and discussed the following three questions:
 - (a) Whether locations along the Appalachian Trail and within the Bigelow Preserve that have a view of the project’s generating facilities, but are more than 8 miles away from the generating facilities, are relevant with respect to the project’s effect on scenic character and existing uses related to scenic character;
 - (b) Whether privately-owned locations that have a view of the project’s associated facilities are relevant with respect to the project’s effect on scenic character and existing uses related to scenic character; and
 - (c) Whether consideration of the effect of turbine lighting on scenic character and existing uses related to scenic character is governed by the scenic standards of the Wind Energy Act, 35-A M.R.S. § 3452, or of LURC’s statute, 12 M.R.S. § 685-B(4)(C), and LURC’s standards, chapter 10.25(F)(2).
2. The Second Procedural Order was issued on April 8th, requesting filings from the opposing parties no later than April 18th with regard to these three issues; and providing an opportunity for the Applicant and parties in support of the project to respond to these issues no later than April 28th.
3. In advance of the April 18th deadline, the NPS requested, and is granted an extension to April 20th to make a filing in accordance with the Second Procedural Order. In view of this extension, the Applicant and CLF have requested and are granted an extension to May 2, 2011 to make their filings in accordance with the Second Procedural Order.

4. The Presiding Officer anticipates a subsequent procedural order to resolve these three issues in advance of the June 15, 2011 deadline set for the pre-filing of direct testimony.
- C. At the conference and in a subsequent filing, FEN has argued that the Highland Wind Project application is not complete because the Applicant has not obtained local approval for a utility road crossing, has not demonstrated financial capacity, has not identified the type of turbines it will install, has not submitted the addendum to the VIA with regard to associated facilities, and has not submitted a detailed description of the tangible benefits package it intends to execute. Many of these issues have previously been raised with LURC staff and brought to the Presiding Officer's attention. While FEN's objections are duly noted, the Presiding Chair does not agree that, under the facts of circumstances of this matter and as reflected in the record to date, these issues render the application incomplete. Rather, these issues may be raised during the adjudicatory process, which will allow for the protection of the due process rights of all parties to this proceeding.
 - D. In response to concerns raised by the attendees at the conference regarding the ability to meaningful review the project within the 270-day review period set by the Legislature for wind energy projects, *see* 12 M.R.S. § 685-B(2-C), the Applicant agreed, to the extent reasonably and practicably possible, to provide upon request relevant data and access to the project area upon advance notice.
 - E. With regard to access to the project area, several parties expressed a need for field time to complete their assessment of the project, noting that the site will not likely be accessible due to weather until mid-May. Several of the parties expressed concern that the schedule for submittals would not allow sufficient time for this field work to be completed and evaluated. It was agreed that the parties requesting site visits for field work would make arrangements with the Applicant after the meeting to gain access to the site as soon as possible. The Applicant requested that it be notified by a party desiring access to the site at least 2 to 3 days prior the site visit date so arrangements can be made.

XIII. Close of hearing, post hearing briefs, closing statements

- A. Pursuant to this order and Section 5.18(2) of the Commission's *Rules for the Conduct of a Public Hearing*, the hearing record will remain open at the close of the hearing until 5:00 pm on August 1, 2011 for the purpose of accepting public comment, and will remain open until 5:00 PM on August 8, 2011 for the purpose of receiving rebuttal comments. The hearing record will then close and no additional evidence or argument will be allowed into the record except by leave of the Presiding Officer.
- B. Following the hearing, any additional submissions by the parties that could have been filed at hearing will not be admitted except by leave the Presiding Officer and upon a showing that a submission will assist the Commission in its decision-making and will not prejudice the other parties. Further, at the Presiding Officer's discretion and within a time prescribed by the Presiding Officer, following the hearing the parties may respond in

writing to specific questions asked by the Commission or staff. Upon granting leave or soliciting responses, the Presiding Officer will establish a reasonable period within which other parties may submit written comments on the submissions.

- C. Each party may, but is not required, to submit a no more than 30-page post-hearing brief, including all attachments, summarizing the relevant evidence and the applicable criteria's application thereto. A deadline for these filings will be set at a later date.
- D. Each party will be given an opportunity to present a brief closing statement at the Commission's meeting, to be scheduled at a later date, when it deliberates on this matter.

XIV. 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 Memorandum and Order or rulings 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 26th DAY OF APRIL 2011



By: _____
Gwen Hilton, Presiding Officer