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LAND USE PLANNING COMMISSION
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CERTIFICATION

Department of Environmental
Protection and
Great Lakes Hydro America, LLC
C/O: Stephen J. Mockler
1024 Central Street
Millinocket, ME 04462

SITE LAW CERTIFICATION SLC-13

Findings of Fact and Determination

The Maine Land Use Planning Commission, through its staff, after reviewing the certification request and supporting documents submitted by Great Lakes Hydro America, LLC for Site Law Certification SLC-13 and other related materials on file, pursuant to the Commission's Land Use Standards, finds the following facts:

1. *Person Requesting Certification:* Great Lakes Hydro America, LLC
C/O: Stephen J. Mockler
1024 Central Street
Millinocket, ME 04462
2. *Department Contact:* Maine Department of Environmental Protection
Attn.: Jessica Damon, Environmental Specialist III
106 Hogan Road, Suite 6
Bangor, ME 04401
3. *Accepted as Complete for Processing:* January 2, 2020
4. *Location of Proposal:* TA R7 WELS, Penobscot County, Maine
Maine Revenue Service Map PE012, Part of Plan 01, Lot 6
5. *Current Zoning:* General Management Subdistrict (M-GN)
Wetland Protection Subdistrict (P-WL2,3)
6. *Project Area:* Construction of 0.65 acres of new impervious area and a total developed area of 2.13 acres

INTRODUCTION

7. Title 12, §685-B(1-A)(B-1) establishes that except for projects that are located in a planned subdistrict that was approved or accepted by the Commission for processing prior to September 1, 2012, a permit from the Commission is not required for a development of state or regional significance that may substantially affect the environment as defined in Title 38, §482. Development of state or regional significance that may substantially affect the environment is reviewed under Title 38, §489-A-1 and subject to the Site Location of Development Law (“Site Law”) administered by the Department of Environmental Protection (“DEP”). The Commission must certify that development that is part of a “Site Law” project is an allowed use within the subdistrict or subdistricts in which it is proposed and that the development meets any of the Commission’s land use standards that would not be considered by DEP before DEP would issue any permit.

The following Findings, Conclusions and Conditions constitute the Commission’s certification that Great Lakes Hydro America LLC’s (GLHA LLC) development, as proposed, is an allowed use within the subdistrict in which it would be located and meets the applicable Land Use Standards that would not be considered by DEP as part of any review under the Site Law.

ADMINISTRATIVE HISTORY

8. In 2002, DEP issued Site Law Permit L-20972-24-A-N/L-20972-TH-B-N to Bangor Hydro Electric Company and Great Lakes Hydro America LLC, authorizing the construction of a 24.6 mile long 115kV transmission line. The permit authorized upgrades to the existing Powersville Substation, in order to connect the new transmission line to the substation. LUPC was not involved in the review or issuance of the initial Site Law permit.
9. GLHA LLC acquired the subject 11.2 acre parcel from Katahdin Paper Company LLC and Katahdin Timberlands LLC on May 24, 2004.

PROPOSAL

10. *Proposed Activities:* GLHA LLC proposes to expand the fenced substation to the west, by approximately 25,000 square feet (160 feet by 160 feet). The entire project area will be graded and have a pea stone substrate. The project area will be used to site 3-5 prefabricated storage buildings, approximately 8 feet by 52 feet each. The storage buildings will house modular lithium-ion batteries, with a total combined storage capacity of 10MW. The battery storage containers will have back up power systems, climate control, and chemical fire suppression systems. Additional proposed structures include three transformers, and a 12 foot by 24 foot control building. Proposed access includes a 280 foot long extension of the existing private gravel access road.
11. On September 23, 2019, DEP staff stated in an email to LUPC staff that GLHA LLC was initiating the process to apply for expansion of the Powersville Substation. It was determined that the project would require an amendment to the Site Law permit from DEP, and a Site Law Certification from LUPC, subject to Title 12, §685-B(1-A)(B-1). DEP requested that LUPC staff attend a pre-application meeting for the project. As noted above, the LUPC’s certification review consists of evaluating whether the Project is located in a subdistrict in which the proposed use is allowed and

whether the Project complies with the Commission's land use standards that are not duplicative of the DEP's standards.

12. On October 1, 2019, DEP and LUPC staff held a pre-application meeting with agents from Brookfield Renewable Power Inc., and HDR Engineering Inc., to review application requirements for the Site Law permit amendment and Site Law Certification.
13. On December 27, 2019, HDR Engineering, Inc. submitted a site law permit application to DEP and LUPC on behalf of GLHA LLC. On January 2, 2020, DEP staff submitted a request to the LUPC for certification.
14. *Public Notice.* On November 15, 2019, a Notice of Intent to Develop and Request for Certification was sent to project abutters by certified U.S. Postal Service mail. Public notice of the request for certification was also published in the Bangor Daily News on November 15, 2019. On January 6, 2020, LUPC staff received a request from the Natural Resources Council of Maine (NRCM) for further details on the project, which were provided to NRCM the same day. The Penobscot County Commissioners were provided a copy of the application and do not have any formal comments on the project. No additional comments, nor any requests for a public hearing were received from the public regarding the certification.
15. The facility would otherwise be constructed and operated as proposed in the materials submitted to the Maine Department of Environmental Protection and the Commission.

CERTIFICATION OF ALLOWED USE

16. *Statutory Provision.* 12 M.R.S. §685-B(1-A)(B-1). "Except for projects that are located in a planned subdistrict that was approved or accepted by the Commission for processing prior to September 1, 2012, a permit from the Commission is not required for a development of state or regional significance that may substantially affect the environment as defined in Title 38, §482, subsection 2. A project meeting that definition is reviewed under Title 38, §489-A-1. A person submitting a development proposal to the Department of Environmental Protection under Title 38, §489-A-1 shall file a notice of the intent to develop and a map indicating the location of the proposed development with the Commission prior to or concurrently with submission of a development application to the Department of Environmental Protection. The Department of Environmental Protection must receive certification from the Commission that the proposed development is an allowed use within the subdistrict or subdistricts for which it is proposed and the proposed development meets any land use standard established by the Commission that is not considered in the Department's review under Title 38, §489-A-1, subsection 1 before issuing a permit. Nothing in this subsection may be construed as prohibiting the Commission from enforcing the land use standards certified to the Department of Environmental Protection under this paragraph."
17. In the subdistrict in which the Project is proposed to be located, the General Management (M-GN) Subdistrict, utility facilities are an allowed use (*See* Chapter 10 of the LUPC's Land Use Districts and Standards, §10.22,A,3,c(26)). Therefore, the LUPC certifies that the Project is an allowed use in the subdistrict in which it is proposed. Neither special exception approval nor rezoning is required for the Project.

CERTIFICATION OF COMPLIANCE WITH THE COMMISSION'S LAND USE STANDARDS

18. The Commission's Land Use Standards that are relevant to certifying compliance of the proposed Project are evaluated in Findings #19 through #24.

19. *Land Division History.*

- A. *Review Criteria.* 12 M.R.S. §682(2-A) and §685-B(1)(B); and §§10.24,F (quoting 12 M.R.S. § 685- B(4)(F)) and 10.25,Q,1 of the Commission's Land Use Standards.
- B. *Land division history.* Great Lakes Hydro America, LLC has owned the parcel since 2002. No division of the parcel has occurred in the last 20 years.

20. *Vehicular circulation, access and parking.*

- A. *Review criteria.* §10.24,B (quoting 12 M.R.S. §685-B(4)(B)) and §10.25,D of the Commission's Land Use Standards.
- B. *Vehicular circulation and access – §§10.25,D,1 and 2.* GLHA LLC has not proposed any new access points. The existing access point off of the Powersville Road, and the current vehicular circulation within the facility would continue to be used.
- C. *Parking – §10.25,D,3,a.* GLHA LLC has not proposed any new parking areas for the facility. The existing parking areas within the facility would continue to be used and would provide sufficient parking for the Project.
- D. *Roadway Design – §10.25,D,4.* GLHA LLC has not proposed any new roadways. The existing private driveway to the substation will be extended approximately 280 feet to the Project site.
- E. *Conclusions.* GLHA LLC has demonstrated that the applicable criteria for vehicle circulation, access, parking, and roadway design in §10.24,B and §§10.25,D,1, 2, 3, and 4 of the Commission's Land Use Standards will be met by the Project.

21. *Minimum dimensional requirements – §§10.26,A-F of the Commission's Land Use Standards.*

- A. *Minimum lot size.*
 - (1) *Review criteria.* §10.26,A. §10.26,A,2 specifies that the minimum lot size for commercial or industrial development involving one or more buildings is 40,000 square feet.
 - (2) *Project.* The parcel containing the Project is approximately 11.2 acres in size.
 - (3) *Conclusion.* As proposed, the Project will meet the standard for minimum lot size in §10.26,A,2 of the Commission's Land Use Standards.
- B. *Minimum shoreline frontage.*
 - (1) *Review criteria.* §10.26,B. §§10.26,B,1,b and 2,b specify that the minimum shoreline frontage for a commercial or industrial development is 200 feet for parcels bordering a minor flowing water or standing body of water less than 10 acres in size; and the frontage for a parcel located on a waterbody greater than 10 acres in size or a major flowing water is 300 feet.

- (2) *Project.* The parcel does not contain any shoreline frontage.
- (3) *Conclusion.* The requirements for minimum shoreline frontage in §10.26,B of the Commission's Land Use Standards do not apply to the subject parcel.

C. *Minimum road frontage.*

- (1) *Review criteria.* §10.26,C. §10.26,C,1,b specifies that the minimum road frontage for commercial or industrial development is 200 feet for any road used for public access.
- (2) *Project.* The parcel does not contain any road frontage. Access to the site is via a gated private access road.
- (3) *Conclusion.* The requirements for minimum shoreline frontage in §10.26,C of the Commission's Land Use Standards do not apply to the subject parcel.

D. *Minimum setbacks.*

- (1) *Review criteria.* §§10.26,D,2. §10.26,D,2 specifies that the minimum setback for commercial or industrial development is 150 feet from waterbodies greater than 10 acres in size; 100 feet from minor flowing waters, P-WL1 wetlands and waterbodies less than 10 acres in size; 75 feet from roads used by the public for access; and 25 feet from side and rear property boundary lines.
- (2) *Project.* All proposed development will be located in excess of the minimum setback requirements.
- (3) *Conclusion.* As proposed, the Project will meet the standards for setbacks in §10.26, D,2.

E. *Maximum lot coverage.*

- (1) *Review criteria.* §10.26,E,1. §10.26,E,1 specifies that the maximum lot coverage shall be 30% for all uses involving one or more buildings.
- (2) *Project.* After completing the proposed activities, lot coverage will be approximately 2.13 acres; approximately 19% of the total parcel.
- (3) *Conclusion.* As proposed, the Project complies with the maximum lot coverage requirements in §10.26,E,1 of the Commission's Land Use Standards.

F. *Maximum structure height.*

- (1) *Review criteria.* §10.26,F. §§10.26,F,1,b and 3 specify that the maximum height for a structure located further than 500 feet from a waterbody greater than 10 acres in size is 100 feet; except that the maximum structure height may be exceeded for structures with no floor area such as chimneys, towers, ventilators, spires, and free-standing towers and turbines with the Commission's approval.
- (2) *Project.* All proposed Project structures will be located more than 500 feet from a great pond. None of the proposed Project structures will exceed the maximum height of 100 feet.
- (3) *Conclusion.* As proposed, the Project complies with the maximum height requirements in §10.26,F,1 and 3 of the Commission's Land Use Standards.

22. *Vegetation clearing.*

- A. *Review criteria.* §10.27,B. §10.27,B of the Commission's Standards contains vegetation clearing standards.
- B. *Project.* GLHA LLC has proposed approximately 25,000 square feet of vegetation clearing, in a location that is not subject to specific buffering or clearing requirements contained in §10.27,B.

- C. *Conclusion.* As proposed, the Project will meet the provisions of §10.27,B of the Commission's Land Use Standards for vegetative clearing.

23. *Signs.*

- A. *Review criteria. §10.27.J.* §10.27.J specifies the standards for placement and sizing of signs used by the Project. §10.27.J,1,e applies to signs displayed for posted areas and property boundaries.
- B. *Project.* GHLA LLC has proposed signage on the perimeter fence to caution the public and identify private property.
- C. *Conclusion.* As proposed, proposed signage for the Project will meet the provisions of §10.27,J,1,e of the Commission's Land Use Standards for vegetative clearing.

24. *General Criteria for Approval – 12 M.R.S. §685-B(4) (incorporated in Section 10.24 of the Commission's Land Use Standards).* In evaluating the Project, the Commission considers and applies its land use standards, which are not already considered by the DEP.

- A. *Loading, parking and circulation – 12 M.R.S. §685-B(4)(B) and Land Use Standard §10.24,B* specify that adequate provision must be made for transportation, including loading, parking and circulation of traffic in, on and from the site.
 - (1) *Conclusion.* As proposed, and as discussed and concluded in Finding #20 above, the Project will meet the standard loading, parking and circulation in 12 M.R.S. §685-B(4)(B) and §10.24,B of the Commission's Land Use Standards.
- B. *Conformance with statute, regulations, standards and plans – 12 M.R.S. §685-B(4)(E) and Land Use Standard §10.24,E* specify that the Project must be in conformance with 12 M.R.S., Chapter 206-A and the regulations, standards and plans adopted thereto. Applicable statutory criteria for approval are discussed in this Finding #26. Additionally, the Commission has more generally reviewed Title 12, Chapter 206-A and no Project components or features are out of conformance with any applicable statutory standards; for example, no spaghetti-lots are proposed. *See, e.g.,* 12 M.R.S. §682-A (prohibiting the creation of spaghetti-lots). As explained more fully in findings and conclusions above, the Commission has reviewed the Project under applicable regulations and standards, specifically the Commission's Land Use Standards contained in Chapter 10 of its rules, and, as articulated in the findings and conclusions above, the Project conforms with these regulations and standards. Finally, in conducting its certification review and reviewing and applying the applicable statutory provisions in Chapter 206-A and the applicable regulations and standards, the Commission interpreted and applied the statutory provisions, regulations and standards in light of the CLUP. *See* 12 M.R.S. §685-C(1) ("The [C]ommission must use the [CLUP] as a guide in . . . generally fulfilling the purposes of this chapter.")
 - (1) *Conclusion.* As proposed, the Project satisfies the conformity requirement in 12 M.R.S. §685-B(4)(E) and §10.24,E of the Commission's Land Use Standards.
- C. *Placement of structures on lots in a subdivision – 12 M.R.S. §685-B(4)(F) and Land Use Standard §10.24,F* specify that placement of a structure on a lot in a subdivision only may be allowed after the subdivision has been approved by the Commission.
 - (1) *Conclusion.* As proposed, and as discussed and concluded in Finding #19 above, the Project will not involve development within a subdivision.

FINAL CONCLUSION

Based on the findings set forth above, and in addition to the conclusions set forth above, the Commission concludes that, with respect to the Project proposal, Great Lakes Hydro America, LLC. has met its burden of demonstrating that the Project conforms with the applicable regulatory and statutory requirements and plans adopted pursuant to 12 M.R.S., Chapter 206-A and meets the Commission's Land Use Standards applicable to the Project that are not considered in any DEP review.

CONDITIONS

Therefore, the Commission, through its staff, CERTIFIES that Site Law Certification SLC-13, submitted by Great Lakes Hydro America, LLC for the Project, as proposed, complies with the relevant provisions of the Commission's Land Use Standards, subject to the findings of fact and conclusions contained herein, and the following conditions:

1. *Setbacks.* All Project structures, both temporary and permanent, must be located in accordance with §10.26,D of the Commission's Land Use Standards.
2. *Height.* The maximum height of all Project structures shall not exceed 100 feet as provided in §10.26,F of the Commission's Land Use Standards.
3. *Vegetative Clearing.* All Project vegetation clearing activities must meet the standards of §10.27,B of the Commission's Land Use Standards.
4. *Signs.* All Project signage must meet the standards of provisions of §10.27,J of the Commission's Land Use Standards.

This approval of a request for certification is limited to the Project as proposed, based on the above stated conditions, and remains valid only if Great Lakes Hydro America, LLC complies with these conditions. Any modifications to the Project, beyond de minimus changes that do not alter the nature of the Project or modify any findings upon which this certification is based, or future development activity at the Powersville Substation will require a new or amended certification. Within 30 days of this certification determination, issued by the Commission through its staff, any person aggrieved by this certification, may appeal to the full Commission, requesting review of this certification determination.

DONE AND DATED AT EAST MILLINOCKET, MAINE THIS 11th DAY OF MARCH, 2020.

By: Billie J. MacLean
Billie J. MacLean, Regional Supervisor