

P. Andrew Hamilton  
 Direct Dial 207-992-4332  
 ahamilton@eatonpeabody.com



80 Exchange Street, P.O. Box 1210  
 Bangor, Maine 04402-1210  
 Phone 207-947-0111 Fax 207-942-3040  
 www.eatonpeabody.com

January 8, 2010

Maine Department of Environmental Protection  
 Bureau of Land & Water Quality  
 Division of Land Resource Regulation  
 Attn: Mark Margerum  
 17 State House Station  
 Augusta, ME 04333

**Re: Oakfield Wind Project; Comments on the Draft Permit for Evergreen Wind Power II, LLC**

Dear Mr. Margerum:

The Town of Oakfield is an interested party and the host community of Evergreen Wind Power II, LLC's ["Evergreen"] Oakfield Wind Project. Last summer, the Town of Oakfield Wind Energy Review Committee [the "Committee"] conducted its own due diligence review of Evergreen's proposed Oakfield Wind Project, which resulted in several recommendations that are found in its Final Report previously provided to the Department.<sup>1</sup> In response to this report, Evergreen amended its application to incorporate several of the Committee's recommendations.<sup>2</sup>

On January 4, 2010, the Department issued a draft Department Order regarding the Oakfield Wind Project and a memorandum stating any comments from interested parties should be sent by January 8, 2010, which was subsequently extended to January 11, 2010. On behalf of the Town of Oakfield, the following comments are provided for the Department's consideration:

**FINANCIAL CAPACITY (Page 5):** The Department cites the recent purchase of turbines that are currently located in Oakfield in support of its finding on financial capacity. However, the Town does not believe that this purchase is relevant when determining whether an applicant has demonstrated adequate financial capacity for a specific project. Accordingly, the Town of Oakfield requests that the Department disregard this purchase event in its final order.

**NOISE (Pages 5 to 14):** Under the subsection C entitled "Municipal Review Committee," the Department states "The April 6, 2009 Rollins protocol shall be followed except that the weather conditions in Section b of the protocol shall be relaxed if certain conditions described in

<sup>1</sup> A copy of the Committee's Final Report is available at <http://oakfieldme.org/vertical/Sites/%07BD2794B8C-60B4-4246-A7A2-B97C2A034DA9%7D/uploads/%07BA4C2873F-C6D4-4193-9916-5FDC78EA6ED9%7D.PDF>

<sup>2</sup> See Letter from Juliet Browne, Esq., to Mark Margerum, Maine Department of Environmental Protection (Sept. 15, 2009).

Maine Department of Environmental Protection  
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the proposal are met.” The Town of Oakfield requests that the Department expressly state the “conditions” that must be present in its final order for the protocol to be relaxed. A copy of these conditions can be found on pages 25 and 26 of the Committee’s Final Report, which are attached as Exhibit 1.

In addition, the draft order references the April 6, 2009 Rollins protocol as the protocol that will apply for the Oakfield Wind Project. The Town seeks clarification that the protocol contained in the draft order is the same as the April 6, 2009 Rollins protocol. To the extent that the Department’s Oakfield Wind Project protocol is significantly different than the April 6, 2009 Rollins protocol, the Town requests that the Department reference and attach any amendments to the protocol in its final order to ensure the Committee’s recommendation is applicable to the Oakfield Wind Project.

The Town of Oakfield seeks further clarification from the Department with respect to the cumulative impacts of any future project. The Town’s understanding is that the current language<sup>3</sup> states that the numeric sound limits of the existing and any potential future project must be 45 dBA at nighttime and 55 dBA during the daytime. This means the 3 dBA allowance, or any other type of allowance, for future development will not be permitted. This also means that any future project proximate to the Oakfield Wind Project (regardless of the applicant), must also comply with the 45 dBA nighttime and 55 dBA daytime sound limits. Accordingly, the Town requests that the specific numeric nighttime and daytime limits of 45 dBA and 55 dBA, or any more stringent future sound limits, be expressly stated in the Department’s final order for the existing project and any potential future project.<sup>4</sup>

Finally, the Town of Oakfield seeks clarification from the Department with respect to how the tonal sound penalty will apply to the Oakfield Wind Project. Specifically, whether the Department will apply the 5 dBA penalty to the overall sound or just to tonal sounds. The Town requests that the Department include their explanation of how the tonal sound penalty will apply in its final order.

DECOMMISSIONING PLAN (Pages 37 to 38) The Department states that it shall have “third-party authority to access and utilize the decommissioning funds for the specific purpose of accomplishing decommissioning and site restoration as described in the application.” To the extent that the decommissioning fund consists of cash or financial instruments, the Town of Oakfield requests that the ownership of the fund be transferred to a third-party trustee at the time it is created; this will avoid any adverse consequences associated with any unforeseeable future bankruptcy, insolvency, or any other material event that would affect the availability of such funds or instruments to meet the decommissioning plan requirements.

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<sup>3</sup> The draft order states that “The applicant has stated its commitment that any future First Wind power project sited proximate to the project that is the subject of the application will be sited and operated in a manner to ensure that the combined sound, i.e. the sound associated with the existing project and potential future project, complies with the quiet noise limits at applicable regulatory locations.”

<sup>4</sup> The Town of Oakfield understands that if more stringent sound standards are adopted, those more stringent standards will apply.

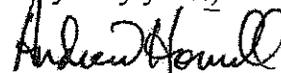
In addition, the current draft order only provides the Department with third-party rights to access the decommissioning fund, presumably in the event of a default by Evergreen of its decommissioning obligations. However, no similar rights are given to the Town of Oakfield, the host community of the Oakfield Wind Project. To provide greater certainty that decommissioning and restoration obligations will be fulfilled, the Town requests that the Department include language in its final order to provide the Town of Oakfield with access to the decommissioning funds, if necessary, in the event of a future Evergreen default.

TANGIBLE BENEFITS (Page 39): The Department's description of the Community Benefit Fund should be amended to reflect the specific content of the agreement. In its final version, the approved Community Benefit Fund agreement calls for 90% of the annual payment amount from Evergreen to be distributed to Oakfield residents for local property tax relief. In addition, the draft order inadvertently indicates that Evergreen's payment obligations under the Community Benefit Fund begin only upon first commercial operation of the project, but the Agreement provides that payments begin within 180 days after start of project construction. The Town requests that the Department's summary include these descriptions in its final order. The Town also requests that the Department expressly incorporate a copy of the final Community Benefit Fund as approved at the September 28, 2009, Oakfield Town Meeting in its final order to avoid any confusion, which is attached as Exhibit 2.

CONDITIONS (Pages 42 to 44): Although the Community Benefit Fund agreement is mentioned on page 39, there is no express permit condition that Evergreen must make annual payments to the Town of Oakfield as required by that agreement. Accordingly, the Town requests that the Department include a specific permit condition that Evergreen must make annual payments consistent with the Community Benefit Fund agreement.

The Town of Oakfield appreciates the Department's attention to this important matter and its consideration of the Town's comments. Please feel free to contact me with any questions or concerns that you may have.

Very truly yours,



P. Andrew Hamilton

PAH/bja

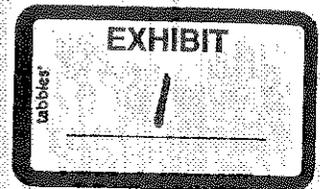
cc: Dale Morris, Town Manager

Juliet Browne, Esq.

Oakfield Board of Selectmen

Oakfield Wind Energy Review Committee

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- Be conducted under repeatable conditions; and
- Allow for appropriate response times in the case of complaints.

In the case of the Rollins wind energy facility monitoring protocol set forth as an example by First Wind, the Committee is concerned that those conditions would not be met in their entirety. In addition, the Rollins protocol does not address how complaints will be resolved or addressed. First Wind has committed, however, to implementation of the Oakfield Wind Project Sound Complaint Response and Resolution Protocol, which is designed to identify and develop responses to any noise issues (discussed below in Part II.A.iv.3). (See Appendix D for a copy of the Oakfield Wind Project Sound Complaint Response and Resolution Protocol.)

The Rollins monitoring protocol adequately defines meteorology favorable to propagation, but is confined to a very narrow set of conditions that may be difficult to forecast in advance, may occur infrequently if at all, and could prevent the timely collection of sound data. Implementation of the Maine DEP directed monitoring protocol (as modified below) coupled with the Oakfield Wind Project Sound Complaint Response and Resolution Protocol developed by First Wind should provide important means for ensuring that the proposed wind energy facility remains in compliance, and that complaints by the public are appropriately addressed.

**APPROPRIATE ACTION:**

First Wind should seek concurrence from the Maine DEP that any required post-construction monitoring protocol be consistent with the following (and if the Maine DEP does not require post-construction monitoring then First Wind should nonetheless implement a post-construction monitoring protocol consistent with the following): within 12 months from when the project commences operation, First Wind shall conduct sound monitoring at two (2) or more representative locations around the project. These locations shall be chosen in consultation with the Maine DEP and the Town of Oakfield based on how well they represent local meteorology and their relative noise impact from the wind turbines (highest potential to exceed the applicable noise standards). In addition, special consideration shall be given to landowners that have registered sound complaints. The April 6<sup>th</sup> Rollins protocol shall be followed except that the weather conditions in Section b of the protocol will be relaxed if:

**A. If the following conditions are met:**

- i. The difference between the LA90 and LA10 during any 10-minute period is less than 5 dB, and**
- ii. The surface wind speed (10 meter height) is 6 mph or less for 80% of the measurement period and did not exceed 10 mph at any time; or the turbines are shut down during the monitoring period and the difference in the observed LA50 after shut down is equal to or greater than 6 dB, and**
- iii. Observer logs or recorded sound files clearly indicate the dominance of turbine sounds, or**

**OR**

**B. If the following condition is met:**

- iv. The overall 10-minute LAeq is 40 dBA or less.**

**To provide further clarification, Section b of the protocol will be relaxed in two separate cases: (A) conditions i, ii, and iii are met; OR (B) condition iv is met.**

**Sound levels (dB) from wind turbines will be compared to ANSI S12.2-2008 indoor acoustically-induced moderately perceptible vibration and rattle standard for octave band frequencies up to 63 Hz. C-weighted sound levels will be reported for information purposes only.**

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### Community Benefit Agreement

This COMMUNITY BENEFIT AGREEMENT (the "Agreement") is made this \_\_\_ day of \_\_\_\_\_, 2009 by and between the Town of Oakfield, Maine, a body corporate and politic in the State Maine ("Town") with a mailing address of P.O. Box 10, Oakfield, Maine 04763, and Evergreen Windpower II, LLC, a Delaware limited liability company qualified to do business in Maine ("First Wind") with an address at c/o First Wind Energy, LLC, 85 Wells Avenue, Newton, Massachusetts 02459. Town and First Wind are referred to herein each as "Party" and collectively as the "Parties."

#### RECITALS

WHEREAS, First Wind is seeking the requisite local, state and federal permits, licenses and approvals (collectively, "Permits") to construct an approximately fifty one (51) megawatt ("MW"), 34 turbine wind energy project (the "Project"), to be located in the Town;

WHEREAS, approval of the Site Location of Development Act permit for the Project by the Maine Department of Environmental Protection ("DEP") requires, among other approval standards, that the Project provide "tangible benefits" to the Town of Oakfield;

WHEREAS, "tangible benefits" as defined by the DEP may include local property tax relief;

WHEREAS, First Wind has determined it to be appropriate, and has voluntarily agreed, to provide an Annual Contribution (as hereinafter defined) to the Town for a term of years described herein, in partial satisfaction of the "tangible benefits" requirement for Site Location of Development Act approval;

WHEREAS, the Town has agreed that it will use the Annual Contribution to provide local property tax relief as described below and further to provide services or facilities that will contribute to the general well-being of the Town;

WHEREAS, the Parties agree and acknowledge that the Annual Contribution shall not influence or have any bearing whatsoever on the Town's review of any application of First Wind for any Permit or any other decision the Town may have occasion to make relative to the Project.

NOW THEREFORE, in consideration of the mutual promises contained herein and other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, the Parties agree as follows:

1. Community Benefit Annual Contribution; Timing of Payments; Obligation

(a) First Payment: One hundred and eighty (180) days following the date on which construction of the wind energy facility commences, First Wind shall pay the Town the sum of Two Hundred Fifty Five Thousand Dollars (\$255,000.00) as an initial payment of the Annual Contribution.

(b) Payments 2-20: First Wind shall make subsequent Annual Contribution payments to the Town in an amount equal to Five Thousand Dollars (\$5,000.00) per MW of actual installed capacity of the Project covered by the Maine Department of Environmental Protection permit application filed on April 8, 2009. Payment 2 will be made on the date the Project reaches Commercial Operation, as defined below. Payments 3-20 will be made annually thereafter, on the anniversary of the Commercial Operation date.

The date of Commercial Operation shall mean the date certain set forth in a notice to the transmission owner and the system operator in accordance with and pursuant to the interconnection agreement. First Wind shall provide to the Town a copy of such written notice, when received by First Wind.

Upon notice to the Town of the date of Commercial Operation, the remaining contributions 2 through 20 are automatically obligated to the Town.

At the end of each year, the annual payment amount of the Annual Contribution shall be adjusted to reflect increases in the Consumer Price Index – Seasonally Adjusted U.S. City Average For All Items For All Urban Consumers, “CPI-U” of the Bureau of Labor Statistics of the United States Department of Labor, using 2009 as the base year.

2. Use of Annual Contribution; Reporting Requirements

(a) Local Property Tax Relief. As a condition of the Town’s receipt of the Annual Contribution under this Agreement, the Town agrees to use 90% of the Annual Contribution to provide local property tax relief to residents of the Town of Oakfield as follows: In each year that this Agreement remains in effect, the town shall distribute 90% of the Annual Contribution amount received for that year equally among all permanent residents of the Town of Oakfield who have qualified for a Maine Resident Homestead Property Tax Exemption under Title 36 MRSA sec. 681 et seq. for the tax year concerned, with respect to a principal residence located in Oakfield. Distribution shall be made by the Town within 90 days of the Town’s receipt of the Annual Contribution payment for that year. Provided, however, that in the event any resident of the Town of Oakfield who is otherwise eligible to receive a distribution from the Annual Contribution has undischarged property tax liens recorded against that resident’s homestead property, the Town may apply that resident’s distribution share against unpaid taxes and lien charges due on that resident’s homestead property, in the manner provided in 36 MRSA § 905.

(b) Other Town Services and Facilities. The Town may use the remaining 10% of each year’s Annual Contribution payment amount not required to be distributed under

paragraph 2(a) above, in the Town's sole discretion, to provide services or facilities that will contribute to the general well-being of the Town and its citizens. On December 31 of each year for the term of this Agreement, the Town shall provide a written report to First Wind summarizing the services and facilities for which Annual Contribution funds were used.

In the event that use of the Annual Contribution by the Town for Local Property Tax Relief as described in subsection (a) above is declared by a court of competent jurisdiction to constitute an improper or unauthorized expenditure of Town funds, the full amount of the Annual Contribution shall be used by the Town for Other Town Services and Facilities as described in subsection (b) above.

### 3. Term; Assignments and Transfers

This Agreement shall terminate on the earliest to occur of (i) the date the Town has received twenty (20) Contributions or (ii) the date that First Wind gives notice to the Town of First Wind's intent to decommission the Project (the "Decommissioning Notice"). Notwithstanding the foregoing, if First Wind has not completed the decommissioning of the Project within twelve (12) months of delivery of the Decommissioning Notice, then First Wind shall pay to the Town fifty percent (50%) of the last applicable Contribution on the January 31 immediately following the end of such 12 month period, and on each succeeding January 31 until the date that First Wind has given notice to the Town that it has complied with the requirements of the Natural Resource Protection Act and Site Location of Development permit issued by the Maine Department of Environmental Protection.

Prior to any sale or transfer of the Project or of a controlling interest in the Project, First Wind, shall take all necessary steps to assure that its obligations under this Agreement are assumed by, binding upon and enforceable against any successors, assigns, transferees or purchasers of First Wind or of the Project. Unless expressly released by the Town in writing, First Wind shall remain obligated to the Town for payment of all amounts to be paid to the Town under this Agreement, if not paid in full by such successors, assigns, transferees or purchasers when due.

### 4. First Wind Representations and Warranties.

First Wind makes the following representations and warranties as the basis for the undertakings on its part herein contained:

a. First Wind is a limited liability company organized under the laws of the State of Delaware and is qualified to do business in the State of Maine.

b. First Wind has full power and authority to enter into this Agreement and to fully perform all of its duties and obligations hereunder. First Wind is duly authorized to execute and deliver this Agreement and perform all of its duties and obligations contained herein, and, to the extent permitted by applicable law, this Agreement

constitutes a valid and legally binding obligation of First Wind, enforceable in accordance with its terms.

5. Town Representations and Warranties.

The Town makes the following representations and warranties as the basis for the undertakings on its part herein contained:

a. The Town validly exists as a political subdivision in good standing under the laws of the State of Maine

b. The Town has full power and authority to enter into this Agreement and to fully perform all of its duties and obligations hereunder. The Town has duly authorized the execution and delivery of this Agreement and the Town's performance of all of its duties and obligations contained herein, and, to the extent permitted by applicable law, this Agreement constitutes a valid and legally binding obligation of the Town, enforceable in accordance with its terms.

c. First Wind's payments under this Agreement shall not influence or have any bearing whatsoever upon the Town's determination with respect to any application for any Permit or other request for a decision from the Town made by First Wind.

6. Entire Agreement

The entire Agreement between the parties with respect to the subject matter hereunder is contained in the Agreement. There are no other understandings, representations or agreements not incorporated herein. This Agreement constitutes a legal, valid and binding obligation enforceable in accordance with its terms except as such enforceability may be affected by applicable bankruptcy, insolvency, moratorium or similar laws affecting creditors' rights generally and the application of general principles of equity.

7. Modification

No waiver, alteration or modification of any of the provisions of this Agreement shall be enforced unless in writing and signed by both parties to this Agreement.

8. Governing Law

This Agreement shall be governed by, and construed in accordance with, the laws of the State of Maine, without regard to the conflict of laws provisions in such state.

9. Notices

All notices, requests, demands and other communication hereunder shall be in writing and shall be deemed to have been duly given (i) when delivered by messenger or by reputable national overnight courier service, (ii) three (3) business days after mailing when mailed by certified or registered mail (return receipt requested), with postage

prepaid and addressed to the parties at their respective addresses shown below or at such other address as any party may specify by written notice to the other party, or (iii) when delivered by facsimile transmission to the parties at the facsimile numbers listed below:

If to First Wind:

Evergreen Windpower II, LLC  
 c/o First Wind Energy, LLC  
 85 Wells Avenue  
 Suite 305  
 Newton, MA 02459  
 Attention: Secretary  
 Facsimile: (617) 964-3342

If to the Town:

Town Manager  
 Oakfield Town Office  
 P.O. Box 10  
 Oakfield ME 04763

Facsimile: (207) 757-8511

Either party may change the name(s) and or address(es) to which notice is to be addressed by giving the other party notice in the manner herein set forth.

10. Miscellaneous

a. **Exercise of Rights and Waiver.** The failure of any Party to exercise any right under this Agreement shall not, unless otherwise provided or agreed to in writing, be deemed a waiver thereof; nor shall a waiver by any Party of any provisions hereof be deemed a waiver of any future compliance therewith, and such provisions shall remain in full force and effect.

b. **Severability.** In the event that any clause, provisions or remedy in this Agreement shall, for any reason, be deemed invalid or unenforceable, the remaining clauses and provisions shall not be affected, impaired or invalidated and shall remain in full force and effect.

c. **Headings and Construction.** The section headings in this Agreement are inserted for convenience of reference only and shall in no way effect, modify, define, or be used in construing the text of the Agreement. Where the context requires, all singular words in the Agreement shall be construed to include their plural and all words of neuter gender shall be construed to include the masculine and feminine forms of such words. Notwithstanding the fact that this Agreement has been prepared by one of the Parties, all of the Parties confirm that they and their respective counsel have reviewed, negotiated and adopted this Agreement as the joint agreement and understanding of the Parties. This

Agreement is to be construed as a whole and any presumption that ambiguities are to be resolved against the primary drafting party shall not apply.

d. Counterparts. This Agreement may be executed in counterparts, each of which shall be deemed an original, but all of which together shall constitute one and the same Agreement.

12. Indemnification. As a further condition of this Agreement, the Town agrees to indemnify First Wind for any legal expenses incurred by First Wind as a result of legal challenges by any person to the validity or administration of this Agreement.

IN WITNESS WHEREOF, each party to this Agreement has caused it to be executed effective on the date indicated above.

**TOWN OF OAKFIELD**

**Evergreen Windpower II, LLC**

By: \_\_\_\_\_  
Its:

By: \_\_\_\_\_  
Its:



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**Margerum, Mark T**

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**From:** Brian [braynes@fairpoint.net]  
**Sent:** Monday, January 11, 2010 4:18 PM  
**To:** Margerum, Mark T  
**Subject:** Re: Oakfield Wind Draft Permit comments

Attn: Mark Margerum,

I would appreciate the following comments be added to the record in response to the issuance of the Draft Permit for the Oakfield Wind Project, notification of said Draft Department Order being received on January 5, 2010.

As I have previously stated, both in a letter submitted to the Department, and in a review of the application, there are widespread problems with this proposed development. Given the very limited amount of time interested parties are allowed to thoroughly read and respond to this lengthy Draft Permit I am restricting the scope of my comments to three particular areas of this document.

Reference is made on page 9 of 53 to an agreement between First Wind and the Town of Oakfield regarding cumulative impacts of the planned subsequent phases of this wind energy development. The commitment is identified in the Draft Order as follows:

v. The applicant has stated its commitment that any future First Wind wind power project sited proximate to the project that is the subject of the application will be sited and operated in a manner to ensure that the combined sound, i.e. the sound associated with the existing project and potential future project, complies with the quiet noise limits at applicable regulatory locations.

The wording of this finding is incomplete. The actual agreement, as specified by Juliet Browne, attorney representing First Wind, is to be a limitation of the combined sound levels of all phases of development to no more than the total sum of 45 dBA at protected locations. The language of this agreement was very specific, being discussed extensively during a phone conference between Attorney Browne and the Town Review Committee. I, as a participating member of the public, was given the opportunity to engage in the discussion at the meeting when this took place. In a direct exchange between Attorney Browne and myself, she stated plainly and clearly that First Wind would honor a commitment to a cumulative maximum of 45 dBA at all applicable protected locations for all subsequent phases of development. Recognizing the importance of this clarification, it was an issue dissected with the *Site Rules* in hand by negotiating parties. Attorney Browne was asked to state whether the intention was to honor the referenced quiet location regulations or a specific dBA level for all expansions. She replied that First Wind would not cause sound levels at protected locations to elevate above the maximum 45 dBA as a matter of cumulative impact. This exchange was recorded at the Municipal offices at the Town of Oakfield and witnessed by the entire review committee, as well as the Town Manager and Attorney Andrew Hamilton, representing the Town of Oakfield. Although it appears to be specified by the inclusion of the referenced quiet location noise limits, it is not clear. The Department has allowances for an increase of 3 dBA over existing project noise levels for development expansions. This wording would seem to allow a sound exposure of up to 48 dBA, an unacceptable increase, when discussing the mathematics of sound measurement and exposure perception.

The discussion of the *existing* plans for subsequent phases of this project was of great concern to abutters and impacted parties. Specifically, the increased level of noise exposure to be expected with the addition of more turbines. Having a degree of familiarity with the planned locations of subsequent turbine siting, I can say that the issue of clarity on burdens to project abutters is of utmost significance. The language of this inclusion must be clarified to ensure accuracy in future Department analysis of project expansions. This would appear to represent a practical example of what the Department rules refer to when addressing the concerns of cumulative impacts when considering the permitting of phased projects.

At this time, I would reference previous submissions that I have filed with the Department in regard to this development proposal. Correspondence consisting of a letter dated May 15, 2009, and submissions sent on July 19, 2009. In both of these documents I raised strong objections to the fact that the *parallel* development of

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multiple phases of this project was going unchallenged by the Department. The Department was further informed of this fact at a public information meeting held in the Town of Oakfield on July 16, 2009. Despite the fact that the plan has been to phase this project from the outset, and this fact is common knowledge in this, and surrounding communities, the Department has chosen not to inquire of the applicant any details with regard to this plan. As a point of fact, the Department findings state:

"...The Department recognizes that the applicant may be considering its future expansion options, but has seen no plans for an expansion..."

Given that the Department has been notified on more than one occasion, by more than one individual, about the status of what the Department terms "future expansion options", it would seem reasonable to expect the Department, as regulating authority, would see the importance of inquiry in this matter. Furthermore, the phasing of industrial wind projects is becoming increasingly common, both as a way to ease public objections (see referenced previous submissions), and currently as a way to further expedite construction to exploit generous government subsidy schemes that are imperative to an unsustainable business model (ARRA funding set to expire for projects not under construction by the end of the year 2010). For the Department, as primary regulating authority in the State of Maine, to use the reasoning exercised in this Draft Permit, which essentially states - there is no project, because the developer has not told us about it, risks what credibility exists in the Department overall. The role of the Department should not be seen as "partner" in these matters, nor should the Department assume the position of guiding flawed applications through the process of approval. Once a regulator ceases the act of tough questioning and comprehensive, *independent* research and inquiry, their role is that of ever diminishing importance.

Another issue that warrants comment is the Department's finding in regard to deed restrictions in the so called "Patten Subdivision". This was a matter of concern for those who abut lots whose owners have chosen to sign commercial easements with the applicant. These easements allow for the release of restriction of Department rules governing the exposure to sound and noise from the project. As sound waves do not recognize property boundaries, only sheer distance, the allowance of an increase in sound reception on one parcel increases the level of sound exposure experienced at a neighboring parcel. The purpose of the covenants restricting these lots to single family, residential use was to ensure a guaranteed maximum level of "disturbance" for abutters. By allowing their inclusion in the project, even as recipients of sound, otherwise protected abutters are burdened as well. The Department chose to address this issue as follows:

"...Interested parties argued that the easements and the reception of noise from the wind turbines would constitute a 'commercial or business activity' being conducted on the lot and that such easements would violate the deed restrictions..."

As a matter of record, the receipt of good and valuable compensation in an annual, ongoing fashion was the basis for argument that the activity being conducted on the parcels constitutes business activity. If an item of value is sold once, it is a casual sale. If an item of value is sold repeatedly, it is business activity. The same holds true for the leasing of property or any other exchange for repeated and negotiated compensation. This activity clearly constitutes a repeated and guaranteed payment. Income derived from this easement will be subject to taxation, most likely as "additional income", the same classification as the commercial rental of property. The average return for a sound easement is \$3,000 per annum. The applicant was offering between \$3,000 and \$5,000 at signing. Within the last ten years, Patten Corp. lots of forty +/- acres have been sold for as little as \$9,000. With an easement duration of twenty years, and the potential for a twenty year renewal, the return on that initial \$9,000 could be between \$63,000 and \$125,000. That hardly represents casual income. For the Department to defer this issue to the courts is a dereliction of mandated oversight. The Department has the obligation of ensuring title, right, or interest in all parcels considered party to the development. Lots with easements that allow for the increased burden of noise are clearly party to the development. By this failure of enforcement of Department rules in the area of clear interpretation of parcel limitations burden is placed on the impacted abutters, both in terms of tangible suffering as well as shouldering the financial cost of remedy. The case is compelling enough for Department action. If this is to be heard in the courts once the project is operational, and the courts are to rule in favor of the neighboring harmed parties, the costs of remedy are then unnecessarily high. There should be a clear limitation placed on infringement of this vein.

To summarize my positions:

I would ask the Department to clarify descriptive wording On page 9 of 53, sub par. v., pertaining to agreements

entered into between First Wind and the Town of Oakfield with regard to cumulative impacts, specifically noise, and specify in the Final Permit the maximum cumulative level of noise to be received at protected locations as 45 dBA. The current wording does not accurately address the agreement entered into between First Wind and the Town of Oakfield.

I would ask that the Department reconsider its findings on the matter of whether the Oakfield Project constitutes a phased development. In light of widespread, common knowledge of the current plans for expansions of this proposed development, as well as the fact that work has been conducted in a simultaneous fashion with phase I of this proposed development, the standard appears to have been met to permit this as a phased development, not a complete project, as has been the finding.

I would ask that the Department rule that sound easements of record in the "Patten Corp. Subdivision", so called, be disallowed. The basis for Department findings as to the commercial aspects of the leases in question failed to address the substance and merits of interested parties objections entirely, choosing to focus solely on the reception of sound and not the aspect of compensation. Without openly addressing the stated concerns of interested parties, a fair chance for rebuttal to Department findings can not be offered in the event of their inclusion, as the rationale for such inclusion is not being articulated in an open, public manner. Any right of objection is, therefore, left as the sole responsibility of abutters, who must pursue remedy in the courts, both a time consuming and costly process.

While the findings of the Department address the issues raised by interested parties to this application, the manner and substance in which they are addressed lacks balance and equity. Public perception has been, and is increasingly becoming galvanized in the belief that Expedited Wind Energy Projects, in particular, are being approved regardless of what issues remain unanswered. This perception is causing immeasurable damage to the Department's reputation on the whole. For the Department to allow its role as regulator to be drawn into the political arena in such a transparent manner is a complete relinquishment of available authority.

Sincerely,

Brian Raynes

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----- Original Message -----

**From:** Margerum, Mark T

**To:** Brian

**Sent:** Tuesday, January 05, 2010 12:32 PM

With apologies for missing you on the original distribution yesterday.

Mark Margerum

Maine DEP

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No virus found in this incoming message.

Checked by AVG - [www.avg.com](http://www.avg.com)

Version: 9.0.725 / Virus Database: 270.14.124/2597 - Release Date: 01/02/10 03:22:00

**Applicant comments on draft DEP Oakfield Order  
January 11, 2010**

1. p. 1, section 1A, second sentence

“The project site is located on the east side of Thompson Settlement Road and south of South Oakfield Road in the Town of Oakfield.”

2. p. 2, Access Roads and Crane Path.

The next to last sentence states that the crane roads will be reduced to 16 feet where practical. After construction, the crane roads will be left at 32 feet, or have the travel surface reduced to 16 or 12 feet, depending on the phosphorus requirements of the watershed. This reference should also be corrected on page 24.

3. p. 2, Electrical Collector Substation

“The existing MPS line..., but will be upgraded by MPS to 69 kV....”

4. p. 3, at the top of the page.

delete the last sentence of item 7; no existing met towers will be maintained after construction.

5. p. 3, last line of third paragraph from the bottom.

“Any future expansion would require a new submission of an application to the Department and ~~the combined projects would be required to satisfy a demonstration that the expansion satisfies~~ all review criteria then in effect.”

6. pp 5-14, Noise

p. 6 first sentence of second full paragraph, “The hourly sound equivalent level resulting ....”

p. 7, last sentence of first paragraph, “An additional 3dBA...to allow for ~~any inaccuracy of uncertainty in~~ the sound level ....”

p. 7 line 6: “An additional 3 dBA was added to ~~calculated~~ the apparent sound power levels....”

p. 7, para. 3, line 3 “The results presented in Table 3 indicate that the hourly equivalent sound levels... will be from 42 to 45 dBA, which is at or....”

p. 7 Table 3: sound levels need to have the units ( $L_{Aeq-1Hr}$ ) added to the “Estimated Sound Level” and “Nighttime Sound Limit” columns.

p. 7 Section B. Tonal Sound, line 6: The tonal threshold varies as a function of center frequencies and ranges from 5 to 15 dB and is not limited to 8 dB as stated. Recommend all of the Chapter 375.10.G(24) thresholds be included here, or rephrase to “RSE indicates that applicable tonal thresholds ~~of 8 dB~~ from Chapter 375....”.

p. 8, Municipal Review Committee. After the first sentence, inserting the following language will provide a fuller explication of the local process and conclusions: *The Town’s sound consultant conducted a sensitivity analysis of the RSE model using other assumptions from published reports on wind energy facility modeling and determined that under “all circumstances . . . the [Town’s] modeling scenarios showed*

*predicted sound levels of 45 dBA or lower from the wind turbines at each non-participating residence.” Following its review and with input from its sound consultant, the Municipal Review Committee Final Report concludes that “the applicant’s sound predictions and modeling are appropriate and may be conservative.” Municipal Review Committee Final Report at 23.*

*p. 8, last line of paragraph iii, “The Department reserves...it finds appropriate to ensure compliance with the applicable provisions of Chapter 375(10).”*

*p.9, Interested party comments, add to the end of the first paragraph:*

*The applicant submitted information responsive to the material submitted by ECS and the Powers Trust, and the Department and/or its outside sound consultant or the Maine Center for Disease Control, reviewed all of the material submitted by ECS and the Powers Trust as well as the applicant on sound and health issues.*

*p. 9, Human Health Effects. “First, interested parties ...particularly infrasound and low frequency sound...”*

*p. 9, Human Health Effects. Add an expanded discussion of the evidence considered to the end of the first paragraph:*

*The applicant submitted a low frequency analysis based on sound level measurements at the Stetson Wind Project, which utilizes GE 1.5 sle wind turbines. That analysis demonstrated that the highest sound levels in the low frequency range occurred when the nearest wind turbine was shutdown and the prominent sounds were from ambient sources such as wind acting on trees. RSE November 3, 2009 Response to Powers Trust at p. 6 and Appendix 5. The applicant also compared the low frequency sound levels associated with operation of the Stetson Wind Project to infrasound criteria established by the Denmark Environmental Protection Agency and guidelines for low frequency sound published by the American National Standards Institute. *Id.* at p. 6 and Appendix 6, Figures shown as Exhibit 1 and 4. The measured sound levels at the Stetson Wind Project were below these guidelines and standards.*

*The sound consultant for the Town of Oakfield also evaluated concerns with low frequency sound and the Municipal Review Committee report concludes that “low frequency sound/vibrations issues are uncommon with wind energy facilities, and should not be an issue in a well-designed, properly sited, operated, and maintained wind energy facility.” Municipal Review Committee Final Report at 20. That same report stated that “analysis of measured sound levels at the Stetson wind energy facility . . . indicates that sound levels from the Oakfield project are not projected to rise to the levels that generate sound-induced vibration inside the home.” *Id.* The Department’s outside sound consultant also evaluated the information submitted by the interested parties and the applicant regarding concerns with infrasound and concluded that infrasound has been widely accepted to be of no concern below the common human perception threshold of 85-90 dBG for non-pure tone sounds, and that while numerous national infrasound standards limit industrial facilities, impact equipment and jet engines, wind turbine infrasound levels “fall far below” these standards. December 31, 2009 Response to Powers Trust.*

*With respect to health concerns generally, the Municipal Review Committee report concludes that “the Committee did not find any peer-reviewed medical or public health*

*reports or journal articles that concluded sound and noise from modern wind turbines in a well-designed, properly sited, operated, and maintained wind energy facility can cause adverse health effects.” Id. at 14.*

p. 10, Accuracy of Modeling. Add to the end of that paragraph: *The Town of Oakfield’s noise consultant also concluded that the applicant’s sound predictions and modeling were appropriate and may be conservative.*

p. 10 Section RE: SDR, line 4. The application of 5 dB penalty is misstated and should be identical to Chapter 375.10.C.1(d). The penalty applies to measured SDRS exceeding the 6 dB threshold not to the whole of the hourly predicted or measured SDRS, and only when that 6 dB threshold is exceeded.

p. 10, last line, “In response to this ... previously developed by ~~the applicant~~ an affiliate of the applicant ~~who~~ which is no w ....”

p. 12, para. 3, RE: Monitoring Positions. These are those positions with the highest potential for exceeding applicable limits. However, it is a virtual impossibility for them all to be downwind of the nearest 5 turbines under stable atmospheric conditions as defined in the protocol that follows. It is more likely that one will be downwind (R7), three cross wind (R1, R4, R6) and two upwind (R5, R9). Is that understanding implicit in the protocol?

p. 12, para. 4, new lead sentence: *Enrad stated that the post-construction protocol is designed to assess worst-case conditions and specifically requires quantitative documentation of amplitude modulation, and thus the potential for SDR sounds.*

p. 14, last sentence of first paragraph, “The Department reserves...it finds appropriate to ensure compliance with the applicable provisions of Chapter 375(10).”

7. p. 17, Scenic discussion, third paragraph. To provide a fuller description of the evidence considered, add new paragraphs after the sentence “The eastern portion of the lake is located in T4R3 WELS and is held in single ownership.”

*The applicant provided a visual simulation and line of sight analysis of views of the project from Pleasant Lake and in their response to the information submitted by the Powers Trust provided a description of views of the project from multiple locations on the lake and surrounding shores. From the boat launch on the western edge of the lake, there may be views of four turbines above the treeline, with the closest turbine being approximately 3.1 miles from the boat launch. The views of two of the turbines will consist primarily of a portion of the turbines from the nacelles and above, and the views of two other turbines will include a portion of the towers below the nacelles. The applicant provided a visual simulation of this view. It is possible that the very tip of a rotor of a fifth turbine may also be visible, but will be hard to discern given the distance and foreground vegetation. The applicant also provided a visual simulation of the project from the southern shore of the eastern portion of the lake, which is the area of highest visibility and would potentially include views of 7-13 turbines. None of the associated project facilities are visible from any portion of the lake.*

*The applicant’s visual consultant noted that the surrounding terrain is not unusual, distinct or compelling compared to other lakes in this region and given the lack of mountainous backdrops and distinctive landforms or characteristics, Pleasant Lake and*

*its visual qualities can be considered common and typical. While the Powers Trust challenged that conclusion, the applicant's visual consultant responded that the horizontal or undifferentiated ridgelines of the Oakfield hills do not stand out from Pleasant Lake and that, coupled with viewer expectations in an area that hosts motorized recreation, supports the conclusion that the project views are not unreasonable or undue. The applicant's consultant notes that views down the lake are more compelling and the viewer's attention is typically drawn to and engaged in the long distance views rather than nearby views. Given that Pleasant Lake is most dramatic along its east west orientation and this orientation draws the viewer's interest, the proposed project will be less prominent and will not serve as a focal point or dominant element when viewed from many, if not most areas of the lake.*

*The applicant also provided a visual simulation and analysis of views of the project from Mattawamkeag Lake. The closest turbine is just over three miles from the north shore of Mattawamkeag Lake. The project will be visible from many portions of the lake, but limited in those areas where intervening landscape, vegetation or islands are present. The applicant provided a representative simulation of views of the project from the lake. Three turbines would be readily visible and the hubs of an additional 6-7 turbines would also be potentially visible. The slender forms of rotors of an additional 5-6 turbines might also be discernible. Given the distance these elements would be viewed, between 3, 5 and 6 miles, the applicant's consultant concluded the structures would appear to be very small elements above the treeline, and that although the project would interrupt the view to the north, it would not be dominant or overwhelm the view from most, if not all vantage points on the pond. The applicant's consultant stated that Mattawamkeag Lake has many of the same features of other lakes and ponds scattered throughout the region and that the scale and extent of visibility would not significantly alter the boater's experience. None of the camps located on the northerly shore of the lake will have views of the project, nor will the remote boat launch at Sand Cove have views of the project. Views will be possible from the southern shoreline, but the shoreline is heavily wooded and there are no public boat launches and very few camps there.*

8. p. 19, RTE species.

The bald eagle is not listed as a Threatened species in Maine. The discussion of bald eagles should go into the "Migratory Birds, Bats and Raptors" section.

9. p. 21, last line

"Review of the perennial stream by the ~~Atlantic Salmon Commission~~ Maine Department of Marine Resources....". Norm Dube who did the site visit is with DMR.

10. p. 23, last line of the first paragraph.

"The applicant has agreed to perform this documentation, and is negotiating the scope of the effort with MHPC."

11. p. 23, fourth paragraph

The Department finds that ...provided the applicant prepares documentation of two potentially eligible historic resources as agreed to with MHPC, and submits that documentation to the MHPC and the Department prior to commencement of operation.”

12. p. 23, last paragraph, Access Road, crane path and turbine buffers. “The applicant proposes to maintain limited disturbance forested buffers for access roads and turbines. These buffers are...in Finding 11, and their locations are depicted on the design drawings.”

13. p. 24, top of the page, language regarding road width, as noted above.

14. p. 24, Generator lead buffers. Changes are to make clear it is just a collector line for this project; there is no generator lead line.

“~~Generator lead~~ Collector line buffers “The area within the ~~generator lead collector line~~ collector line corridor .... The applicant ~~proposes to employ~~ has proposed a Vegetation Management Plan based on the ISO-New England safety standards that will be employed to control in the vegetative management of the collector line the growth of vegetation once the collector line is constructed.”

15. p. 27, first paragraph, last line, “The proposed access roads and turbines sites meet the definition ....”

16. p. 27, second paragraph, next to last line, The applicant proposes to ...discussed above and incorporating limited disturbance buffers in the locations depicted in the design drawings ~~a Phosphorus Restriction Zone totaling approximately 155 acres discussed in Finding 9.~~

17. p. 27, para. 3, last line.

“The Deed Restriction ...prior to the start of construction operation, and the applicant....” This makes it consistent with the buffers discussion on page 24 and Condition 9 on page 43.

18. p. 32, Flooding

“No ~~The~~ project structures are ~~is not~~ located in a flood zone.” The wires for the collector system do cross a flood zone near the substation, but no poles are in the flood zone.

19. p. 37, first full paragraph

Delete the last line “The applicant will be...of project operation.” The applicant has committed to working with the Town to relocate the snowmobile trail. Snowmobile trails on private property that is part of the leased project area are not subject to DEP’s instructions on Public Safety, which provide that a project “...will not present an unreasonable safety hazard to adjacent properties or adjacent property uses.” (Site Location instructions, page 42).

20. p. 38, last line of para. 4, Financial assurance.

“The trigger for the ... shall be ~~the dissolution of the project’s owner~~ or if the project ceases ....”. Dissolution of the project owner may occur even if the project is running successfully (e.g., the owning corporation is purchased or subsumed into another corporation).

21. p. 41, conclusion F

“The applicant ... for review and approval ~~prior to~~ within six months of the start of operation”. This tracks the findings in the text of the order on page 30. The six months comes from the EPA regulations for SPCC plans, and is a recognition that an operational SPCC plan is best developed based on actual operations.

22. p. 42, last sentence of Condition 6

“The Department reserves the right to require additional mitigation measures found necessary by the Department to ensure compliance with the applicable provisions of Chapter 375(10).”

23. p. 44, condition 17

“~~Prior to~~ Within six months of the start of operation, the applicant....”. Based on experience with the Stetson project, it will take this long to prepare the final surveys for as-built plans.

24. p. 44, condition 18

“~~Prior to~~ Within six months of the start of operation, the applicant....”. To be consistent with the rest of the text.

25. p. 44, a new condition 19

19. On or prior to December 31 of the first year of construction activities and continuing through year 7, the applicant shall reserve the amount of \$50,000 each year in the form of a performance bond, surety bond, letter of credit, parental guarantee, or other form of acceptable financial assurance to the Decommissioning Fund.

BROWN & BURKE

ATTORNEYS AT LAW  
85 EXCHANGE STREET - P. O. BOX 7530  
PORTLAND, MAINE 04112  
www.brownburkelaw.com

TELEPHONE (207) 775-0265  
FACSIMILE (207) 775-0266

RUFUS E. BROWN  
M. THOMASINE BURKE

January 11, 2010

VIA E-mail (Mark.T.Margerum@Maine.gov)  
And U.S. Mail

Mark Margerum  
Project Manager, Oakfield Wind Project  
Department of Environmental Protection  
17 State House Station  
Augusta, ME 04333-0017

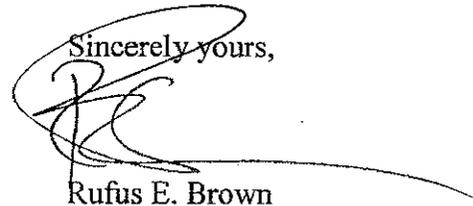
Re: *Objections of the Trustees of Martha A. Powers Trust to  
Oakfield Wind Project*

Dear Mark:

I am transmitting with this letter the Comments of the Martha A. Powers Trust on the Draft Order Approving the Oakfield Wind Project.

You will note that Exhibit 28 is missing. This exhibit will be a report of Rick James on the EnRad letter of December 31, 2009 concerning the noise comments of the Powers Trust. I expect that this exhibit will be available and will be sent to you shortly. It will not be available today for reasons beyond the control of the Powers Trust or Rick James. I understand from our telephone conversation last Thursday that, if the report is submitted before Friday, it will be considered by you before a decision is made on the Draft Order.

Sincerely yours,



Rufus E. Brown

REB/

cc. Philip Powers

STATE OF MAINE  
BOARD OF ENVIRONMENTAL PROTECTION

In Re:

EVERGREEN WIND POWER II, LLC )	
Oakfield Aroostook County )	<b>COMMENTS OF THE MARTHA A. POWERS</b>
OAKFIELD WIND PROJECT )	<b>TRUST ON THE DRAFT ORDER APPROVING</b>
L-24572-24-A-N (approval) )	<b>THE OAKFIELD WIND PROJECT</b>
L-24572-TF-B-N (approval) )	

The Martha A. Powers Trust (the "Trust") has the following comments on the Draft Order of the Department of Environmental Protection ("DEP") issued January 4, 2010, approving the Oakfield Wind Project.

I. Objection on the Limited Time to Make Comments.

The Trust, which has been an active interested party in these proceedings and, as an abutter to the Oakfield Wind project, will be materially adversely affected by it, received the 54 page Draft Order on Monday morning, January 4, 2010, and was initially given only five (5) days to make comments. Upon complaint about the time to respond by the Trust, the DEP granted an extension until Monday, January 12, 2010. This is still an unreasonably short time to prepare and send out comments, given the technical nature of the Draft Order and its significance to the Trust. The unfairness of the short time for comments has been exacerbated by the failure of the DEP to forward technical reports relied in the Draft Order until Wednesday, January 6, 2010, including, (1) the 58 page technical report sponsored by the wind industry prepared by Exponet, Inc. for the Wisconsin Public Service Commission, entitled "Evaluation of the Scientific Literature on the Health Effects Associated with Wind Turbines and Low Frequency Sound, dated October 20, 2009, and (2) the 10 page letter from the DEP's expert consultant, Warren

Brown, commenting on prior filings of the Trust with the DEP on the project. Based on these circumstances, on January 6, 2009, the Trust asked for a 2 week extension to file comments of the Draft Order, which request was denied. The Trust objects to the denial of the request.

II. Comments on the Noise Section of the Draft Order (Section 5)

The Trust previously submitted extensive comments on the *Sound Level Assessment* prepared by Resource Systems Engineering (“RSE”) in a letter dated September 28, 2009, along with 20 exhibits, and the Trust also submitted a report by Richard James of E-Coustic Solutions, dated October 15, 2009, all of which are incorporated herein by reference. The Draft Order rejects all these comments and, for all intents and purposes, adopts the RSE *Sound Level Assessment* in its entirety, except for some modest post-construction compliance protocols requested by the Town of Oakfield.

A. Health Effects:

The Draft Order dismisses the concerns of the Trust about the health effects of noise. This is a serious issue given only cursory treatment in the Draft Order, which gives no credence to the concerns raised. The principal rationales stated in the Draft Order to disregard the health effects of the Oakfield Project are that the Maine Center for Disease Control (“MCDC”) could find no evidence in peer reviewed medical or public literature of adverse health effects from wind power turbines and that none of the materials submitted by the Trust changed the opinion of MCDC. Draft Order at 9.

The views of MCDC are in error (there is peer reviewed medical and public literature of adverse health effects from wind power turbines) and is simply not credible. MCDC’s views are the product of a political agenda that has never acknowledged or objectively examined the noise

issue from wind turbines. This is evidenced in part by the results of a Freedom of Access request to the DEP producing a series of e-mails between Dr. Dora Mills, Director of the MCDC, and various employees of DEP concerning the health effects of noise. These e-mails (referred to herein as the "FOAA Response") are attached hereto as *Exhibit 21*.

The e-mail trail begins February 10, 2009, after MCDC Director Dora Mills, M.D. received a telephone call and an e-mail from a Dr. Albert Aniel of Rumford, Maine forwarding an open letter from the medical staff of the Rumford Hospital, together with links to articles, asking Dr. Mills for support for a moratorium on new permits for wind turbine projects until further research could be done on possible health effects of wind turbines. FOAA Response #1 and #12.

Dr. Mills had three immediate responses to this communication. One was to admit that she was not familiar with the issue ("this is a new topic to me", FOAA Response # 5 and #8), second she took an advocacy position against the health concerns (from the outset she was looking for help "to refute the claims made by the Rumford medical staff", FOAA Response # 5 and #8) and three, she looked to DEP Commissioner David Littell and others at DEP involved in reviewing wind turbine projects (Andrew Fisk, Mike Mullen, James Cassida) for assistance in refuting the health concerns of Dr. Aniel. FOAA Response # 11, # 15 ("[a]ttached is a vetted and edited version of your talking points on wind noise"), #s 16-30, #31, and #35-6. At the same time Dr. Mills sought to advocate *against* consideration of the public health concerns from wind turbine noise, she was concerned about the adequacy of DEP's noise regulations to address the specific issue of wind turbine noise. FOAA Response #s 5-6 and # 38. In addition, Dr. Mills' initial research revealed "two very recent articles from Canada proposing some ways to address

unique features of wind turbine in measuring or setting standards for noise levels.” FOAA Response #s 7-8. One of the Canadian articles she forwarded to Commissioner Littell identified low frequency noise (“LFN”) concerns (the same concerns that the Trust has raised), including the statement that “[r]esidents who are impacted by LFN may suffer from sleep disturbances, headaches, and in some cases chronic fatigue.” FOAA Response # 7. Dr. Mills did not send these articles to Dr. Aniel (instead she sent him older articles questioning health issues from wind turbines FOAA Response #s 1-4), nor did she reference the very recent Canadian articles in a Q & A she began constructing for dealing with the press. FOAA Response #s 16-30.

As Dr. Mills frantically (“I started working on this very early (2 am) today, and have also been busy doing other things” FOAA Response # 11, #s 31-2) continued her research, she concluded that “[t]here are no firm statements I could find from non-industry sources stating there are no adverse health effects from wind turbines....” FOAA Response #s 11, 31. [Emphasis added]. She tells Commissioner Littell that she will not disclose this finding to the public, but warns the Commissioner that:

[T]here may be room for improving the noise regulations to take into account wind farms. The last time these rules were updated appear to be 1989. Massachusetts has rules that take into account the change over ambient noise levels rather than a level cap [as used in the existing DEP Rules]. And, there are some proposals from Canada that take into account low frequency noise emissions.

FOAA Response # 11, 31. This warning was also not disclosed in the Q & A that Dr. Mills was developing. Instead she had her Q & A “vetted” and “edited” (FOAA Response # 15) by Commissioner Littell and others at DEP involved in reviewing wind projects as an advocacy statement against consideration of health effects, giving links to dated articles on the subject

supporting her advocacy position, including an outdated reference to the 1999 WHO “Guidelines for Community Noise” (suggesting nighttime noise limits of 45 dBA), apparently unaware that in 2007 WHO replaced these with “Night Noise Guidelines” of 30 dBA sleep time limits for children and 32 dBA sleep time limits for adults, below what is currently set by the dated DEP noise regulations. See *Exhibit 16* previously filed by the Trust.

And there is more in these emails. They recount that Dr. Aniel took his public health concerns about the need for a moratorium on new wind projects to the Maine Medical Association for support. FOAA Response # 40-1. In the context of this development, Dr. Mills asked Commissioner Littell for help on February 25, 2009, in refuting this effort because she was having

a hard time addressing the DEP regulations on noise levels, essentially being 45 dbl (sic.) at the property line in rural areas, and the fact that these regulations did not protect residents in Mars Hill who are perceived by some to be living too close from an annoyance perspective from the wind farm there.

FOAA Response # 40. In the very next e-mail, Dr. Mills anxiously asks Andrew Fisk for updates on “how the DEP is addressing noise issues” because “[t]his issue seems to be gaining traction.” FOAA Response #40.

The e-mail trail further reveals that Dr. Mills talked at length with Dr. Peter Rabinowitz, Associate Professor of Medicine at the Yale School of Medicine and Director of Clinical Services in Occupational and Environmental Medicine at Yale, who told Dr. Mills that “*the increasing expressed concerns about noise and health effects related to wind turbines, especially as they relate to low frequency noise, needs to be addressed with some non-biased research.*”

FOAA Response #48. [Emphasis added.] Near the end of the e-mail trail there is a joint letter from Dr. Nissenbaum and Dr. Aniel to Dr. Mills (doctor to doctor) with an impassioned plea for the MCDC to take the health issues of wind power noise seriously, especially in light of the suffering of residents of Mars Hill, which Dr. Mills passes on to Commissioner Littell with a note that she will respond but give the Commissioner input in the response. FOAA Response #s 53-54. No response was actually sent by MCDC. This is the background to the "Wind Turbine Neuro-Acoustical Issues" dated June 2009 by Dr. Mills that the Draft Order relies upon.

Dr. Mills report does not take into account, except for a fleeting reference to a dated document (which even then reflected concerns about sleep disturbance at dBA levels above 30), the important work that the World Health Organization ("WHO") has done in the field related to the health issues from nighttime noise. Recently, in 2009, WHO published updated guidelines on nighttime noise. *WHO Night Guideline for Europe* (2009). The Executive Summary and the section on Sleep Disturbance (Section 2) of the 2009 WHO report is attached hereto as *Exhibit 22* and the full report can be found at [www.euro.who.int/Document/E92845.pdf](http://www.euro.who.int/Document/E92845.pdf). The WHO report explains that it was prepared by "[o]utstanding scientists" and that the report was "peer reviewed and discussed to reach a consensus among experts and stakeholders." *Exhibit 22* at VII. The 2009 WHO report states that "[t]here is plenty of evidence that sleep is a biological necessity, and disturbed sleep is associated with a number of health problems." *Exhibit 22* at XI, XII. Also, it concludes that "[w]hile noise induced sleep disturbance is viewed as a health problem in itself (environmental insomnia), it also leads to further consequences for health and well-being." *Exhibit 22* at XII. In Section 2 of the 2009 WHO report, the consequences of sleep deprivation are summarized. *Exhibit 22* at 23 (Table 2.4). Some of the short term consequences

are sleepiness, mood changes, irritability and nervousness, impairment of function, increased metabolic rate and thyroid activity, immune function impairment, and some of the long term consequences are depression/mania, violence, difficulty learning new skills, increased sensitivity to pain and susceptibility to viral illnesses. Based on the extensive research done, the 2009 WHO report concludes that sleep disturbance from noise occurs between 30 to 40 dB. *Exhibit 22* at XV-XXVII. Based on these findings, the 2009 WHO report recommends that noise levels at night should not exceed 40dB during the night “[f]or the primary prevention of subclinical adverse health effects.” *Exhibit 22* at XVIII.

There is wide consensus in the scientific community that night time noise from wind turbines can cause sleep disturbance. *See, e.g.* Dr. Christopher Hanning, “Sleep Disturbance and Wind Power Noise,” *Exhibit 18* previously submitted, which reviews literature and concludes at pg. 4 that “[t]here can be no doubt that groups of industrial wind turbines (“wind farms”) generate sufficient noise to disturb the sleep and impair the health of those living nearby.”); L. Gillis, C. Krogh, & N. Kouwen, “Wind Vigilance for Ontario Communities” (September 2009), *Exhibit 23* (“The number of people in Ontario reporting adverse health effects due to industrial wind turbines continues to rise. \*\*\* Researchers and victims have reported altered living conditions and ill health. Sleep disturbance is the most common complaint.”). Even those who advocate for the wind industry by downplaying the health effects of noise, admit that sleep disturbance occurs. Nina Pierpont, M.D., PhD, *Wind Turbine Syndrome* (2009), *Exhibit 24* at 112-121.

Based on the foregoing, the Draft Order’s reliance on the sweeping denials of MCDC for the total absence of any health issues from the noise to be generated from the Oakfield Wind

Project is unwarranted and cannot be viewed as substantial evidence in support of the proposed issuance of the permit requested without consideration of health effects.

Nor do the other two reports cited in the Draft Order – Exponent, Inc., “Evaluation of the Scientific Literature on the Health Effects Associated with Wind Turbine and Low Frequency Sound,” and the AWEA and CWEA’s, “Wind Turbine Sound and Health Effects,” -- provide such evidence. Both reports are industry advocacy pieces, with participants handpicked by the industry based on their known biases. Neither report is peer reviewed or reviewed at all externally, and there is no original research contained in either report. Most significantly, neither report specifically denies (or even addresses) the WHO *Night Noise Guidelines* or other evidence of recent consensus of the dangers of sleep disorders, choosing instead to focus on annoyance and visceral vibratory vestibular disturbance and other related issues. Moreover, both reports acknowledge sleep disturbance. *See pg. 39-40 of the Exponent Report and pgs. 3-12 (section 3.3), 3-16 (section 3.4.2) and pg. 4-3 (section 4.1.2) of the AWEA and CWEA report.*

In a report issued today, January 11, 2010, by the Society for Wind Vigilance, titled, “An Analysis of the American/Canadian Wind Energy Association sponsored Wind Turbine Sound and Health Effects, An Expert Panel Review, December 2009,” attached hereto as *Exhibit 25*, the authors point out that the AWEA and CWEA report relied upon in the Draft order is neither authoritative nor convincing, that it is riddled with industry bias, contains unsupported statements and conclusions, ignores authoritative research, including the 2009 WHO report, and is otherwise flawed. *Id.*, Executive Summary at 2, 5. The Society for Wind Vigilance concludes that:

There is no medical doubt that audible noise such as emitted by modern upwind industrial wind turbines sited close to human residences cause significant

health effects. These effects are mediated through sleep disturbance, physiological stress and psychological distress. This is settled medical science.

Id., Executive Summary at 2.

The probabilities that the Oakfield Project will generate adverse health effects are specifically addressed by Dr. Michael Nissenbaum, who has been studying the issue in connection with the well know health problems caused by the Mars Hill wind project. Drawing on his expertise in studying Mars Hill, he predicts that the residents in the nine (9) dwellings identified in the RSE *Sound Assessments* as R-1 through R-9 will experience the same or similar adverse health effects, including and especially sleep disturbance, in the same proportions as the affected residents living within 3500 feet of the turbine installation at Mars Hill. Affidavit of Michael Nissenbaum, M.D., *Exhibit 26*, ¶6.

Based on the information contained in these Comments, as well as the Trust's prior submissions, it is clear that the existing noise regulations in Chapter 375, Section 10 allowing nighttime noise at protected locations of up to 45 dBA, at least as modeled in the RSE *Sound Level Assessment*, will not be sufficient to protect the residents of Oakfield from the adverse health effects of the proposed project. At a minimum, DEP needs to hold a hearing to further examine the health risks associated with this Project to get a prospective other than biased wind industry advocates.

B. Noise Easements:

There are two points addressed in the Draft Order concerning the noise easements that are necessary for compliance with DEP Chapter 375, Section 10. Draft Order at 11.

First, the Draft Order claims to lack "legal jurisdiction" to determine whether the noise

easements violate deed restrictions. This is error because the DEP has the power to deny a project application whenever the applicant does not demonstrate sufficient right, title or interest in property necessary for the operation of the project.

Second, the Draft Order states it is beyond the scope of its review to determine whether adequate disclosure was made by the applicant for the 10 landowners who granted noise easements necessary for the project to operate within the requirements of the DEP Noise Regulations, Section 375, Section 10. This is wrong. This project will violate the DEP Noise Regulations according to the applicant's own sound modeling because it will exceed 45 dBA at night at 10 protected locations (D-1 to D-10) identified in RSE's *Sound Level Assessment*. If those easements are not valid, the project should not be allowed to be constructed or operated. The easements are valid only if proper disclosures were made to the landowners warning them of potential health effects from the project that they are facilitating by granting easements. Therefore, DEP has the duty to require the applicant to provide assurances as part of the application that there were proper disclosures made when acquiring the easements that are necessary for the lawful operation of the project. Not to do so is an abdication of the DEP's essential responsibilities. Not to do so is like the Securities and Exchange Commission saying that it does not have any duty to require that adequate disclosures to be made when stock is sold. DEP is supposed to protect the public from harm, including harm from noise, in projects subject to its approval. Given the fact that the applicant for the Oakfield Wind Project flatly denies that there are any health risks associated with the project, it can be assumed on this record that no disclosures at all were made of the health risks identified in these comments. Certainly no disclosures of adverse health risks are identified in the easements included in Section 5 of the

application. What makes matter even worse is that the easements contain *in terrorem* clauses which state that if a landowner granting an easement ever files suit against Oakfield Wind LLC relating to the easement, that landowner may end up being obligated to pay the attorneys fees of Oakfield Wind. So, if, as we predict, this project causes serious health effects to those exposed to noise in excess of the DEP Noise Regulations, which happened in Mars Hill and appears to be the case in Vinalhaven and is predicted in this case by Dr. Nissenbaum, the landowners will be intimidated not to challenge the legality of the easements they signed, regardless of the non-disclosures. It is unconscionable for the DEP to turn its back on the responsibilities in this situation.

### C. The Accuracy of Modeling.

Even under the existing DEP Noise Regulations, the record for the Oakfield Wind Project application fails to establish that the proposed project will meet the 45 dBA limit for nighttime noise because of RSE's flawed modeling, namely, (1) the limitations of using Cadna/A operating in ISO 9613-2 in the prediction model, (2) the effect of atmospheric stability, (3) the failure to use line source calculations, and (4) the failure to apply the SDR 5% penalty, all as set forth in the Trust's letter to Mark Margerum on September 28, 2009 and the exhibits attached thereto and the Report of Richard James, dated October 15, 2009 submitted to the DEP.

#### 1. SDR

The Trust pointed out in its September 28, 2009 letter and extensively in the Report of E-Coustic Solutions that the noise modeling for the Oakfield Wind Project should have applied the 5% penalty for SDR. The sole comment made in the Draft Order dismissing this issue is that the DEP consultant, EnRad, concluded that SDR would not exceed 4 dBA based on the compliance

monitoring for the Stetson Wind Project. Draft Order at 10-11. This is an insufficient response.

As explained in the letter from E-Coustic Solutions dated January 7, 2010, attached hereto as

*Exhibit 27*, the compliance report for Stetson Wind was flawed and provides no support for the

claim that it validates the noise modeling of RSE, the entity that prepared the *Sound Level*

*Assessment* for the Oakfield Wind Project. Among the reasons that it is flawed are the following:

- (i) It is not a report by an independent expert; the modeler's are checking their own model;
- (ii) There was no testing protocol established in advance of the field work to guide the field work or to measure the legitimacy of the findings of the field work;
- (iii) The field testing took place at different sites that do not correspond to the pre-construction modeling sites;
- (iv) Only one field testing site was downwind of the turbines, even though downwind represents the condition most likely to result in the highest sound levels;
- (v) In contrast to the Mars Hill four quarter post- construction noise study, the testing for Stetson took place over a period of less than 24 hours;
- (vi) The Stetson Report did not field test under the same conditions assumed in the pre-construction modeling;
- (vii) There are numerous anomalies in the field testing, casting serious doubt about the Report, including results showing an increase in sound levels at a time when wind turbines were declining in power output and results showing variations in sound levels where constant sound power was presumed;
- (viii) The modeling purported to be validated did not use line source sound propagation although the turbines are arranged in a line along the ridge top; and
- (ix) There was no test data reported or filed addressing concerns about low frequency sound.

## 2. Other Noise Modeling Issues

The Draft Order dismisses all the other noise modeling issues raised by the Martha A.

Powers Trust, accepting the RSE *Sound Level Assessment* and the comments by its consultant,

EnRad. To the extent that the Draft Order relied on the EnRad letter to the DEP dated December

31, 2009, titled "Response to Powers Trust Objection", it is flawed for the reasons to be

explained in a report by E-Cooustic Solutions to be submitted in the next day or so as *Exhibit 28*. The Draft Order also states that it has confidence in the accuracy of sound modeling in Oakfield because of the monitoring data from the Stetson Wind Project. Draft Order at 13. However, as explained above, that compliance testing is seriously flawed.

Finally, the Draft Report states that it will accept the RSE modeling because its accuracy can be confirmed by the requirement for “routine operational noise compliance measurements.” Draft Order at 12-13. This is not a proper basis to allow a project to go forward. If there are serious problems with sound modeling, as there were at Mars Hill by the same sound expert (RSE) that has modeled the Oakfield Project, the sound study should not be accepted. The DEP responded to the problem in Mars Hill by granting variances for noise experienced in excess of that modeled, at the expense of the health of residents in Mars Hill. The DEP has vowed not to do that again, but is on a course with this Draft Order of doing exactly the same thing.

## II. Comments on the Scenic Character Section of the Draft Order (Section 6)

The Draft Order acknowledges that Pleasant Lake borders the Oakfield Wind Project, that Pleasant Lake is listed in the Maine Wildlands Lake Assessment as having significant scenic resources, and that there were extensive concerns by local property owners about the adverse effect of the Oakfield Wind Project on the scenic value of the lake. Yet it dismisses these concerns – not even exploring ways that the adverse impact of the wind project could be mitigated by relocation of turbines - based on a boat ride and an unexplained “review” of all the issues. Draft Order at 14-18.

The Trust asks what can be the purpose of statutory protection of scenic views of statewide significance if those views can be so casually degraded. Further specific comments on

the rationale of the Draft Order on this issue are contained in the January 6, 2010 Memorandum of Philip Powers attached hereto as *Exhibit 29*.

### III. Comments on the Decommissioning Section of the Draft Order (Section 24)

The Draft Order misreads the legal requirements for decommissioning when it states that financial assurances can be deferred until 5 years of the end of the useful life of the project, as explained in the September 28, 2009 submission of the Trust. Those assurances will be worthless if the project fails economically prior to that time. This is not a remote possibility. See *Exhibit 30*, "First Wind Holdings, Inc. – Strategic Review", especially at page 6-7 reporting that "First Wind has generated substantial net losses and negative cash flows from operating activities since its inception" and that it "anticipates continuing losses with the development and construction of new wind energy projects..." and that, according to its accountants, there are "*substantial doubts about the ability of the company to continue as a going concern.*" [Emphasis added.] It is arbitrary and capricious for the Draft Order to allow a developer in this financial condition to defer giving financial assurances of its ability to fund a multi- million dollar decommissioning project. As explained in the prior submission of the Trust, to comply with the requirements of the Wind Power Act, the applicant should back up the decommissioning costs with a letter of credit from a financially credible bank or similar financial assurance.

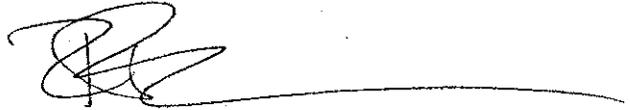
Also, as explained in the prior comments of the Trust, there is inadequate explanation of the decommissioning costs and no substantiation whatsoever of the multi- million dollar estimates for scrap value, held forth by the applicant as paying for 95% of the cost of decommissioning. The Trust requests that the unsubstantiated and exaggerated salvage value of the project be supported by an independent, professional appraisal.

## CONCLUSION

For all the foregoing reasons, the Martha A. Powers Trust requests the DEP to reconsider the Draft Order.

Dated: January 12, 2010

Respectfully submitted.



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Rufus E. Brown, Esq.  
Bar No. 1898  
BROWN & BURKE  
85 Exchange Street - P.O. Box 7530  
Portland, ME 04112-7530  
(207) 775-0265  
[rbrown@brownburkelaw.com](mailto:rbrown@brownburkelaw.com)

*Attorney for the Martha A. Powers Trust*

BROWN & BURKE

ATTORNEYS AT LAW  
85 EXCHANGE STREET - P. O. BOX 7530  
PORTLAND, MAINE 04112  
www.brownburkelaw.com

TELEPHONE (207) 775-0265  
FACSIMILE (207) 775-0266

RUFUS E. BROWN  
M. THOMASINE BURKE

January 12, 2010

**VIA E-mail (Mark.T.Margerum@Maine.gov)  
and U.S. Mail**

Mark Margerum  
Project Manager, Oakfield Wind Project  
Department of Environmental Protection  
17 State House Station  
Augusta, ME 04333-0017

*Re: Objections of the Trustees of Martha A. Powers Trust to  
Oakfield Wind Project*

Dear Mark:

As promised, please find the Martha A. Powers Objection *Exhibit 28*, the report of E-Coustic Solutions responding to the December 31, 2009 comments of EnRad. I also enclose further information on the desperate financial condition of First Wind, again emphasizing the point that the applicant, at least this applicant, needs to tender up-front cash or its equivalent to give adequate financial assurance for this project.

There are a few additional of points I want to highlight on noise.

In several places the EnRad Comments refer to "compliance data from nine measurement locations at two separate wind turbine developments similar to the proposed Oakfield project." The Powers Trust has never seen these compliance reports, except Stetson, which we have previous evaluated as being fundamentally flawed. We object to any Order based on undisclosed compliance data.

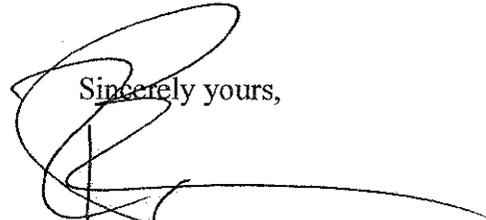
Second, The Powers Trust objects to substituting post- construction compliance testing for reasonably accurate pre-construction sound modeling, particularly when there is no way after a project is built to bring the project into compliance except by granting variances.

Third, the preamble to Chapter 375, Section 10 states an intention of DEP to protect the public from "excessive environmental noise from developments" subject to DEP review. This

Mark Margerum  
January 12, 2009  
Pg. 2

mandate transcends particular noise limits in the Rule. Therefore, if the specific noise limits in the Rule do not adequately protect the public, additional protection must be afforded. The 2007 and 2009 WHO guidelines are peer reviewed and they call for nighttime noise limits lower than those contained in Chapter 375. Given the complaints and problems from projects that purportedly complied with Rule 375 noise limits, the DEP should follow the WHO guidelines for this and future projects. The 500 feet difference between the measurement points of the WHO guidelines and the protected locations in Rule 375 are miniscule from a decibel standpoint, EnRad's comments notwithstanding.

Sincerely yours,

A handwritten signature in black ink, appearing to be 'Rufus E. Brown', written over the typed name. The signature is stylized with a large loop at the top and a long horizontal stroke at the bottom.

Rufus E. Brown

REB/encl.

cc. Philip Powers  
Rick James

**Margerum, Mark T**

---

**From:** Brian [braynes@fairpoint.net]  
**Sent:** Tuesday, January 12, 2010 4:27 PM  
**To:** Margerum, Mark T  
**Cc:** rbrown@brownburkelaw.com  
**Subject:** Oakfield Wind Project

Attn. Mark Margerum,

In previous submissions to the Department, I have identified myself as an interested party in the matter of the application for a permit filed in the name of Evergreen Wind Power II, LLC to construct and operate the Oakfield Wind Project. I am the receptor location identified in this application as "R4". This identified protected location is stated to be a distance of 1990 feet from the location of the closest turbine.

I hereby adopt the concerns and objections thoroughly stated by representatives of the Martha A. Powers Trust in regard to the permitting of this project, most particularly noise. I consider these concerns and objections to be my own as well.

Sincerely,

Brian Raynes  
51 Nelson Road  
Oakfield, ME 04763



**Margerum, Mark T**

---

**From:** Mills, Dora A.  
**Sent:** Tuesday, January 19, 2010 2:09 PM  
**To:** Margerum, Mark T  
**Subject:** FW: WHO 2009

FYI

-----Original Message-----

**From:** Mills, Dora A.  
**Sent:** Tuesday, January 19, 2010 1:54 PM  
**To:** Fisk, Andrew C  
**Subject:** RE: WHO 2009

Here are some preliminary thoughts on the WHO document:

The WHO document provides a nice overview of the possible health effects from noise, and sets a target of a limit of 40 dBA for outside nighttime noise, with an interim target of 55 dBA.

There seem to be some big differences between the WHO document and wind turbine noise issues.

First, the WHO document focuses on nighttime noise from traffic, neighbors, airports, and construction - mostly from road traffic and airport noise. In reading the 184 pages, I did not see any reference to wind turbine noise, which of course is important, since there are considerable differences between noise from wind-generated wind turbines and an airport, such as that in the former situation some of the wind-generated noise is ambient.

Second, I don't see in the WHO report consideration of ambient noise sources such as wind that one finds near a wind turbine farm (see section 1.3.6).

Third, the WHO document uses a measurement called L night-outside, which is based on measurements taken from outside a residence, and is not the same as the measurements required by Maine law, which are from the developer's property line.

The WHO guidance is for a target of a limit of 40 dBA for L night-outside, with an interim target of 55 dBA. Although it is hard to compare these with the requirements in Maine law, given the differences in the measurements, presumably Maine's nighttime limit of 45 dBA at the developer's property line when ambient sounds are 35 dBA or less would presumably be in this range, and likely close to if not less than the 40 dBA WHO target limit that is presumably measured closer to residences.

Dora

-----Original Message-----

**From:** Fisk, Andrew C  
**Sent:** Wednesday, January 13, 2010 4:46 PM  
**To:** Mills, Dora A.  
**Subject:** WHO 2009

[www.euro.who.int/Document/E92845.pdf](http://www.euro.who.int/Document/E92845.pdf)

840

Andrew Fisk  
Maine DEP, Land & Water Quality

- sent via Blackberry, apologies for brivty or typos

# Verrill Dana<sub>LLP</sub>

Attorneys at Law

JULIET T. BROWNE  
jbrowne@verrilldana.com  
Direct: 207-253-4608

ONE PORTLAND SQUARE  
PORTLAND, MAINE 04112-0586  
207-774-4000 • FAX 207-774-7499  
www.verrilldana.com

January 20, 2010

By E-Mail and U.S. Mail

Mr. Mark Margerum  
Project Manager  
Maine DEP  
17 State House Station  
Augusta, Maine 04333

Re: Oakfield Wind Project/Aroostook County, Maine  
DEP # L-24572-24-A-N/L-24572-TF-B-N

Dear Mark:

A number of comments have been made by interested parties on the draft Order and substantial additional material was submitted for the first time by the Martha A. Powers Trust (the "Trust") in connection with their comments on the draft Order. Evergreen Wind Power II, LLC ("Evergreen") believes that the Department, with input from its outside acoustical expert Warren Brown and Dr. Dora Mills from the Maine Center for Disease Control, has thoroughly reviewed and previously responded to the issues being raised by interested parties. Therefore, Evergreen does not intend to file a comprehensive response to the issues raised by interested parties on the draft Order but, instead, will address those few issues that either have not been raised previously or otherwise warrant clarification in the record. The failure to comment on a particular issue should in no way be viewed as agreement with or acquiescence to the Department's position on that issue.

1. Sufficiency of the Time Allowed for Public Comment

The Trust has objected to the time allowed for public comment on the draft Order. In fact, there has been substantial opportunity for public comment throughout the processing of the application and the review period was extended twice *specifically to accommodate the Trust*. For example, on September 10, 2009, the Trust submitted information on scenic impacts, decommissioning, sound, and economic benefits. On September 28, 2009, toward the end of the statutory six-month review period, the Trust submitted an additional 550 pages of comments and exhibits on the topics of visual impact, sound and health, decommissioning and property values. On October 16, 2009, the Trust followed up with a technical report by their consultant, Rick James of E-Coustic Solutions, commenting on the sound level report for the Project. As a result of the voluminous material submitted at the end of the statutory review period and to ensure thorough consideration of the issues raised by the Trust, the Department extended the review

January 20, 2010

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period an additional 32 days, from November 2 until December 4. On or around December 1, 2009, the Trust filed additional information with the Department. With Evergreen's consent, the Department extended the review period until December 31, 2009.

In short, there has been ample time for the public to comment on the application and for the Department to review the information submitted by the public. Indeed, while the Trust objects to the fact it only recently received a copy of Warren Brown's supplemental comments, those comments were prepared in response to the various submissions made by the Trust and responsive information filed by the applicant and thus, by necessity, were not available earlier in the review period. The Trust appears to be simply seeking additional time to re-comment on the same issues that it has already commented on during the review period and which have been addressed by the applicant and reviewed by the Department.

2. The Allegations Regarding Purported Political Bias by Dr. Dora Mills of the Maine Center for Disease Control ("MCDC")

The Trust claims that the review conducted by Dr. Dora Mills of the Maine Center for Disease Control ("MCDC") "is the product of a political agenda" and "is simply not credible." Trust Comments at 2. The purported evidence of this political agenda is e-mail correspondence between Dr. Mills and various members of the Department that counsel for the Trust obtained through a freedom of access request made on September 30, 2009. The Trust claims that this correspondence demonstrates that the MCDC and the Department have been engaged in a campaign to suppress evidence of adverse health effects associated with wind energy facilities. To the contrary, the correspondence only demonstrates that the Department and the MCDC were doing their job through inter-agency consultation in their respective areas of expertise.

Specifically, the Department, which has substantial expertise and familiarity with its noise regulations, provided Dr. Mills with information on and feedback concerning those regulations. Dr. Mills, who is a medical doctor, the State's Chief health officer, and the director of the MCDC, has expertise in public health issues and provided the Department with important feedback on claims being made by opponents to wind power on the purported health effects of wind turbines.

A few examples of the Trust's mischaracterization of the correspondence are instructive. The Trust quotes Dr. Mills as concluding that "there are no firm statements I could find from non-industry sources stating there are no adverse health effects from wind turbines. . . ." Trust Comments at 4. The Trust omits the end of the sentence where Dr. Mills states, "but that would be true of most products." Trust Exhibit 21A at 11. The Trust then states that Dr. Mills "tells Commissioner Littell that she will not disclose this finding to the public." Trust Comments at 8. In fact, Dr. Mills made no such statement and the Trust's assertion that she did is wholly unsupported by the correspondence. See Trust Exhibit 21A at 11. The Trust also omits Dr. Mill's statement in the very same e-mail that "I am not a noise expert and Maine is fortunate to have statute and rules on noise levels in place, given that many states do not." *Id.*

The Trust also ignores evidence in the correspondence showing that the Department and Dr. Mills were engaged in a critical assessment of potential wind energy impacts. For example, Dr. Mills asked the Department to confirm an estimate made by the Natural Resources Council

of Maine regarding the reduction in greenhouse gas emissions that could be expected from wind energy development. The Department’s engineers determined that NRCM had overstated the potential benefits of wind energy development and Commissioner Littell accordingly informed Dr. Mills of the actual emissions reductions that could be expected. Trust Exhibit 21B at 34.

In short, there is no basis for the Trust’s claim that the correspondence is evidence that the Department and the MCDC ignored all perspectives other than those “of biased wind industry advocates.” Trust Comments at 9. Instead, the correspondence demonstrates that the directors of the two agencies worked together to ensure that the public had the best information available to it on claims being made concerning purported health effects of wind turbines.

3. The Relevance of the World Health Organization (“WHO”) Standards

The Trust cites to the Night Noise Guidelines for Europe issued by the World Health Organization (“WHO”) as evidence that the Project does not comply with applicable standards.<sup>1</sup> As a threshold matter, the limits set forth in Chapter 375.10 of Department Rules govern the Department’s review of the Project. To the extent that the Trust wants to amend the existing law, it can seek to do so, but for now the Department must apply the limits set forth in Chapter 375.10. See 1 M.R.S.A. § 302 (permit applications reviewed under law in effect at time of filing).

Furthermore, the Department and its independent sound expert reviewed the WHO Night Noise Guidelines for Europe as well as substantial stakeholder comment on the issue and determined that the WHO guidelines did not call into question the sufficiency of the noise limits imposed by Department regulations. The Trust, through a report submitted by E-Coustic Solutions, raised the issue of the WHO guidelines to the Department months prior to the issuance of the draft permit. See E-Coustic Solutions Comments on Oakfield Wind Project, October 16, 2009, at 14-15. The Department reviewed the information submitted by E-Coustic Solutions, as well as information submitted by RSE on behalf of Evergreen, which addressed the reasons why the WHO Night Noise Guidelines for Europe are inapposite to Department sound limits. See RSE Response to Powers Trust, November 3, 2009, at 12. For example, the WHO recommended nighttime sound limit of 40 dBA is calculated as a yearly average while the DEP limit of 45 dBA is calculated as an hourly average that applies each and every hour of the night. The RSE submission also points out that the expert report produced by the Town of Oakfield’s independent public process related to wind turbine sound and health impacts found that Department noise limits were protective of healthy nighttime sleeping conditions. Id. at 11 (citing Oakfield Committee Report at 13) and 12 (discussing WHO guidelines); see also WHO Night Noise Guidelines for Europe at 7-9.

Further, as explained in a report submitted to the Department, the WHO guidelines are policy statements that are not intended to express regulatory limits. Furthermore, the exceedence of the WHO guideline recommendations does not imply significant health impacts. See Wind Turbine Sound and Health Effects, American Wind Energy Association and Canadian Wind Energy Association, December 2009 § 4.6.3.

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<sup>1</sup> The Trust submitted the Executive Summary and Chapter 2 of the Night Noise Guidelines for Europe. For context, attached to this letter is Chapter 1, titled “Introduction: Methods and Criteria.”

January 20, 2010

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Finally, Warren Brown, the Department's independent sound expert, reviewed the WHO guidelines and determined that the WHO guidelines' recommended nighttime limit of 40 dBA is calculated in such a different manner than the DEP's 45 dBA standard that there is no way to meaningfully compare the two. In the words of Warren Brown, "These metrics (WHO & MDEP) are vastly different allowing no direct comparison." See EnRad Consulting Response to Powers Trust Objection, Dec. 31, 2009, at 6.

In sum, the record demonstrates that although they have no regulatory effect here, the Department considered the WHO Night Noise Guidelines for Europe and determined that the WHO guidelines do not undermine the Department's conclusions concerning the sound and health effects of the Project.

#### 4. The Validity and Relevance of the Stetson Data

The Trust's January 11, 2010 submission reiterates previously-made complaints regarding the accuracy of the Project's predictive sound model. The Department's determination that the Project's sound model is accurate, and in fact conservative, is based in part on data from compliance monitoring for the Stetson Wind Project, which was submitted to the Department on November 3, 2009. See Appendix 4 to RSE Response to Powers Trust Objection filed on November 3, 2009. The Trust claims that the Stetson Compliance Report is "seriously flawed" and "provides no support for the claim that it validates the noise modeling of RSE." Trust Comments at 12-13. This claim by the Trust rests on a letter from E-Coustic Solutions that is attached as Trust Exhibit 27. However, as demonstrated by the e-mail included with the exhibit, the letter from E-Coustic Solutions does not appear to reflect Mr. James' independent evaluation of the Stetson data but, instead, simply places the comments of the Trust's attorney, Rufus Brown, on E-Coustic Solutions letterhead. See Trust Exhibit 27 at 2 ("Rick: Can you send me by e-mail a letter with the following text:").

#### 5. Potential Future Projects

One commenter has suggested that the Department must consider the "cumulative impacts" of any potential future expansion of the Project. See Jan. 9, 2010 letter from Timothy F. Cady. Although an applicant cannot break up a project into "phases" in order to avoid triggering the Department's jurisdiction under the Site Law, there is no suggestion that has occurred here. To the extent that Mr. Cady is concerned about cumulative impacts, he misunderstands how the Department evaluates "cumulative impacts."

As noted by the Maine Supreme Court, the Department's consideration of "cumulative impacts" is limited to the impact of a proposed project given existing development. See Hannum v. Board of Env'tl Protection, 2003 ME 123, ¶ 14, 832 A.2d 765, 769. Mr. Cady does not suggest that the impact of the Project, when added to existing development, will be significant. Instead, he suggests that the Department must consider the impacts of some future, yet unidentified, development prior to issuing a permit for the Project. As noted in Hannum, however, the Department cannot consider speculative or potential future development when evaluating "cumulative impacts." Id. If and when an application for additional development near the proposed Project is submitted to the Department, the Department "will have control over

January 20, 2010

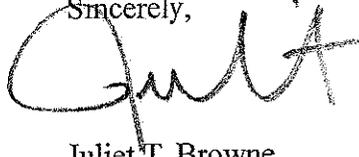
Page 5

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future permit applications and could deny those applications” if any expansion or subsequent “phase” led to unreasonable cumulative impacts. Id.

Thank you for consideration of these comments.

Sincerely,

A handwritten signature in black ink, appearing to read "Juliet", written in a cursive style.

Juliet T. Browne

cc: Alec Jarvis  
Brooke Barnes

JTB/prf

1851405\_1.DOC

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