



STATE OF MAINE  
DEPARTMENT OF ENVIRONMENTAL PROTECTION

JOHN ELIAS BALDACCI  
GOVERNOR

DAVID P. LITTELL  
COMMISSIONER

MEMORANDUM

TO: The Board of Environmental Protection  
FROM: Colin Clark, Bureau of Land and Water Quality  
RE: Consent Agreement for Fox Island Wind, LLC.  
DATE: August 19, 2010

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**Statute and Rule Reference:** *The Storm Water Management Law*, 38 M.R.S. § 420-D, states, in pertinent part, that a person may not construct, or cause to be constructed, a project that includes greater than one acre or more of impervious area without prior approval from the Department.

The *Natural Resources Protection Act*, 38 M.R.S.A. Section 480-C, prohibits, in pertinent part, removing vegetation in significant wildlife habitat without first obtaining a permit from the Department.

**Location:** Vinalhaven

**Description:** On June 5, 2009, the Department granted approval to Fox Islands Wind, LLC pursuant to the *Stormwater Management* law and *Natural Resources Protection Act* in Department Orders #L-24564-NI-B-N/#L-24564-VP-C-N to construct a small-scale wind energy development which included the creation of more than one acre of disturbed area and 77,126 square feet of clearing within the significant vernal pool habitat.

On September 28, 2009, Fox Islands Wind, LLC submitted permit modification applications for soil disturbance and vegetation removal within the stormwater buffers approved in Department Order #L-24564-NI B-N and to alter an additional 3,604 square feet of area of significant vernal pool habitat in addition to the alteration approved in Department order #L- 24564-VP-C-N. The applications were assigned #L-24564-NI-E-A and #L-24564-VP-F-N.

On November 12, 2009, an inspection of the property by Department staff revealed that site work had been conducted, which involved the digging of trenches and removal of vegetation for the placement of grounding wires in two stormwater buffers and in the significant vernal pool habitat. At the time of the inspection Fox Island Wind, LLC's modification applications had not been approved by the Department. At the time of inspection, adequate erosion controls had been installed at the site.

On December 21, 2009, the Department granted approval to Fox Islands Wind, LLC in Department Orders #L-24564-NI-E-A and #L-24564-VP-F-N for disturbing the previously permitted existing stormwater buffers and the additional significant vernal pool habitat alteration.

**Environmental Issues:** Water quality in an aquatic system can be affected by large disturbed, non-vegetated areas without properly engineered stormwater controls in place. These sites may discharge soil material into a protected natural resource having a potentially detrimental effect on the water quality and aquatic life of that system.

Vernal pools are essential habitat for terrestrial amphibians. During a short time period during the spring, amphibians must utilize the available water in the pool depression for breeding. Surrounding upland and wetland habitat is also critical to amphibian's success as they spend the remainder of the year living here. Vernal pools may also be used by state-listed, rare, endangered, or threatened species that commonly require a vernal pool to complete a portion of their life cycle as well.

**Department Recommendation:** The Department recommends acceptance of this Consent Agreement stipulating that Fox Island Wind, LLC pay a monetary penalty of \$3,864.00, which has been paid. The penalty is based on the Department's penalty policy reflecting the size of the violation, knowledge of the violator, and that the violation could have been avoided.



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IN THE MATTER OF:

FOX ISLANDS WIND, LLC ) ADMINISTRATIVE CONSENT
VINALHAVEN, KNOX, MAINE ) AGREEMENT
NRPA, STORMWATER ) (38 M.R.S.A. § 347-A)
2009-150-L )

This Agreement by and among Fox Islands Wind, LLC, the Maine Department of Environmental Protection ("Department"), and the Maine Office of the Attorney General is entered into pursuant to the laws concerning the Department's Organization and Powers, 38 M.R.S.A. § 347-A(1).

The parties agree as follows:

- 1. Fox Islands Wind, LLC leases a parcel of land on North Haven Road in Vinalhaven, Maine as described and recorded in Book 750 on Page 1 of the Knox County Registry of Deeds.
2. Fox Islands Wind, LLC, a Maine limited liability company with a mailing address of 66 Main Street, Vinalhaven, ME 04863, is authorized to conduct business in Maine and which developed the property described in Paragraph 1 of this Agreement. George Baker is the CEO of Fox Islands Wind, LLC.
3. The property described in Paragraph 1 of this Agreement contains a portion of a "significant vernal pool habitat." A "significant vernal pool habitat" is defined as a significant vernal pool and that portion of the critical terrestrial habitat within 250 feet of the spring or fall high water mark of the vernal pool depression. 06-096 CMR 335(9)(A)(7). A significant vernal pool habitat is a "significant wildlife habitat" as defined by the Natural Resources Protection Act, 38 M.R.S.A. § 480-B(10)(B)(1). A significant vernal pool habitat is a "protected natural resource" as defined in 38 M.R.S.A. § 480-B(8).
4. On June 5, 2009, the Department granted approval to Fox Islands Wind, LLC pursuant to the Stormwater Management law in Department Order #L-24564-NI B-N and pursuant to the and Natural Resources Protection Act in Department Order #L- 24564-VP-C-N to construct a small-scale wind energy development which included the creation of disturbed area and 77,126 square feet of clearing within the significant vernal pool habitat on the property described in Paragraph 1 of this Agreement subject to a series of standard and special conditions as follows:
A. Standard Condition 1 of the Standard Conditions of Approval for Department Order #L-24564-NI-B-N states in pertinent part: "The granting of this approval is dependent upon and limited to the proposals and plans contained in the application and supporting documents submitted and affirmed to by the applicant. Any variation from these plans,

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IN THE MATTER OF:

FOX ISLANDS WIND, LLC	)	ADMINISTRATIVE CONSENT
VINALHAVEN, KNOX, MAINE	)	AGREEMENT
NRPA, STORMWATER	)	(38 M.R.S.A. § 347-A)
2009-150-L	)	

proposals, and supporting documents must be reviewed and approved by the department prior to implementation.”

5. On September 28, 2009, Fox Islands Wind, LLC submitted permit modification applications for soil disturbance and vegetation removal within the stormwater buffers approved in Department Order #L-24564-NI B-N and to alter an additional 3,604 square feet of area of significant vernal pool habitat in addition to the alteration approved in Department order #L-24564-VP-C-N. The applications were assigned #L-24564-NI-E-A and #L-24564-VP-F-N.
6. On November 12, 2009, an inspection of the property described in Paragraph 1 of this Agreement by Department staff revealed that site work had been conducted, which involved the digging of trenches and removal of vegetation for the placement of grounding wires in two stormwater buffers and in the significant vernal pool habitat. At the time of the inspection Fox Island Wind, LLC’s modification applications had not been approved by the Department. At the time of inspection, adequate erosion controls had been installed at the site.
7. The activities described in Paragraph 6 of this Agreement constitute the following violations:
  - A. By disturbing the previously permitted existing stormwater buffers without first obtaining a permit from the Department, Fox Islands Wind, LLC violated Standard Condition 1 of Department Order #L-24564-NI B-N and the *Stormwater Management Law*, 38 M.R.S.A. § 420-D.
  - B. By displacing soil and removing vegetation in a protected natural resource, namely a significant vernal pool habitat, without first obtaining a permit from the Department, Fox Islands Wind, LLC violated the *Natural Resources Protection Act*, 38 M.R.S.A. § 480-C.
8. On November 18, 2009, the Department issued a Notice of Violation to Fox Islands Wind, LLC regarding the violations described in Paragraphs 6 and 7 of this Agreement in accordance with 38 M.R.S.A. § 347-A(1)(B).
9. On December 21, 2009, the Department granted approval to Fox Islands Wind, LLC in Department Orders #L-24564-NI-E-A and #L-24564-VP-F-N for disturbing the previously permitted existing stormwater buffers and the additional significant vernal pool habitat alteration described in Paragraph 6 of this Agreement.
10. The parties agree this Agreement constitutes a Notice of Violation pursuant to 38 M.R.S.A. § 347-A(1)(B) for any violations specifically cited in this Agreement but not previously noticed.
11. The Department has regulatory authority over the activities described herein.

IN THE MATTER OF:

FOX ISLANDS WIND, LLC  
VINALHAVEN, KNOX, MAINE  
NRPA, STORMWATER  
2009-150-L

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ADMINISTRATIVE CONSENT  
AGREEMENT  
(38 M.R.S.A. § 347-A)

- 12. Pursuant to 38 M.R.S.A. §§ 341-D(6)(C) and 347-A(1)(A)(1), administrative consent agreements must be approved by the Board of Environmental Protection (the "Board") which is part of the Department.
- 13. This Agreement shall become effective only if it is approved by the Board and the Office of the Attorney General.
- 14. To resolve the violations referred to in Paragraphs 6 and 7 of this Agreement, Fox Islands Wind, LLC agrees to pay the Treasurer, State of Maine, upon signing this Agreement, the sum of three thousand eight hundred sixty four dollars (\$3,864.00) as a civil monetary penalty.
- 15. The Department and the Office of the Attorney General grant a release of their causes of action against Fox Islands Wind, LLC for the specific violations listed in Paragraphs 6 and 7 of this Agreement on the express condition that all actions listed in Paragraph 14 of this Agreement are completed in accordance with the express terms and conditions of this Agreement. The release shall not become effective until this condition is satisfied.

IN WITNESS WHEREOF the parties hereto have executed this Agreement consisting of three (3) pages.

FOX ISLANDS WIND, LLC.

BY:  DATE: 5/17/10  
GEORGE BAKER, CEO

BOARD OF ENVIRONMENTAL PROTECTION

BY: \_\_\_\_\_ DATE: \_\_\_\_\_  
SUSAN M. LESSARD, CHAIR

MAINE OFFICE OF THE ATTORNEY GENERAL

BY: \_\_\_\_\_ DATE: \_\_\_\_\_  
MARGARET A. BENSINGER, ASSISTANT ATTORNEY GENERAL