

*Lynne Williams, Esq.*

13 Albert Meadow, Bar Harbor, Maine 04609

(207) 266-6327 LWilliamsLaw@earthlink.net

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Susan Lessard, Chair  
Board of Environmental Protection  
17 State House Station  
Augusta, ME 04333

RE: Evergreen Wind Power II/Maine Genlead: L24572-24-C-N/L-24572-TF-C-N/  
L-24572-IW-E-N/L-24572-24-F-N/L24572-TF-G-N

Dear Chair Lessard:

My clients and I thank you for the opportunity to respond to the town of Oakfield's challenge to their standing to appeal the grant of the above-cited permit to the Board of Environmental Protection.

As landowners on Mattawamkeag and/or Pleasant Lake, some for over a century, the members of *Protect Our Lakes* take great exception to Mr. Hamilton's attack on their status as aggrieved parties.

Before presenting descriptions of a few members of *Protect Our Lakes*, it is important to discuss the state cases that the town of Oakfield cites and apply those cases to the facts in this situation. *Friends of Lincoln Lakes*, 3 A.3d 284, 2010 ME 78, deals with standing to appeal a decision of a *municipal planning board* to a *municipal board of appeals*. In fact, this Board itself recognized that the *Friends of Lincoln Lakes* had standing to bring an appeal before the Board of Environmental Protection and such appeal was heard by this Board.

In *Conservation Law Found. v. Town of Lincolnville*, 2001 WL 1736584 (Me. Super.), the Superior Court held that the Conservation Law Foundation had standing to bring suit against the town of Lincolnville based on the individual standing of a sole member. They further found that such standing did not depend on that sole member having been a member during any of the municipal

proceedings. *Id.* at 8.

The courts have long been expansive in granting standing in environmental challenges. See *National Wildlife Federation v. Agricultural Stabilization and Conservation Service*, 955 F.2d 1199, 12-05 (8<sup>th</sup> Cir. 1992) (plaintiffs lived four miles from the site at issue and were found to have standing to challenge a permit that allowed farmers to drain wetlands, given that the plaintiffs hunted on the wetlands and enjoyed the “aesthetic beauty” of the site); *Port of Astoria v. Hodel*, 595 F.2d 467, 476 (9<sup>th</sup> Cir. 1979). Maine courts have taken a similar view. In *Conservation Law Foundation*, the appellee argued that appellant had not demonstrated a “particularized injury” sufficient to give him standing to pursue the appeal. The court, however, noted that “[a]s abstract and general as injury to the environment may seem, it is well settled that such injury is sufficient to support standing as to any plaintiff who used the affected environment. *Conservation Law Found.* at 4, citing decisions in *Sierra Club v. Morton*, 405 U.S. 727, 31 L.Ed.2d 636 (1972) and *United States v. Students Challenging Regulatory Agency Procedures*, 412 U.S. 669, 37 L.Ed.2d 254 (1973). The court goes on to note that “a few cases can be found that deny standing for failure to show any injury whatever, or for failure to show that any injury was caused by the challenged act.... Nonetheless, standing to protect the environment is thoroughly entrenched....” *Conservation Law Found.* at 4.

**I. THE TOWN OF OAKFIELD MISCONSTRUES THE MEANING OF “MEMBERS” UNDER 13-B M.R.S.A. SEC 402(1).**

The use of the term “member” on the Articles of Incorporation form promulgated by the Secretary of State's office refers to the type of governance that a non-profit chooses to create. It is the same with Limited Liability Companies and other legal entities. In a narrow sense, there are two choices for the governance of a non-profit. The first is to denominate the members of the corporation as the governing body of the corporation, with the concomitant requirement that bylaws be created and members attend meetings, vote on corporate issues, vote for a board of directors, and other similar

functions. Alternatively, the incorporators may choose a legal structure that vests decision making power in a manager and/or a self-chosen board.

There are many non-profits that have the second type of structure, and either have no members or call the organization's donors "members." In either case, the organization is run by a board and/or a manager and the members have no authority to vote on corporate decisions. Many environmental organizations, both in the state and nationally, grant "membership" for an annual membership fee, but such members have little, if any, input into the governance of the organization.

The incorporators of *Protect Our Lakes* chose the second structure; hence the statement on the Articles of Incorporation stating that the corporation has no members. Like associations that call their donors "members," *Protect Our Lakes* has a group of affiliated individuals who are functionally members through their support of the goals of the corporation, many of whom have contributed to the organization financially, but who themselves have no decision making power. Such organizational strength and breadth was demonstrated by the fact that a petition against the expansion of the project, signed by almost 700 individuals, was created and submitted within little more than a month's time. Likewise, "[t]he Department received hundreds of emails and letters from interested persons regarding the proposed project, most expressing concerns but some in support of the proposed project." D.E.P. Land Use Permit at 3. Many of these letters and emails came from members of *Protect Our Lakes*.

As counsel for the town of Oakfield correctly states, an organization has representational standing if it has at least one member who would have standing in his or her own right and "the interests at stake are germane to the organization's purpose." *Friends of the Earth v. Laidlaw*, 528 U.S. 167, 180-81 (2000) The second part of this requirement is clearly met, given that the organization was formed for the express purpose of organizing opposition to the expansion of the Oakfield Wind Project and to commence legal action if the permit was granted. Articles of Incorporation at 1.

*Protect Our Lakes* likewise has members who have chosen to support the purpose of the

organization. Dr. Peter Connelly, Cheryl Connelly and Gail Sewall Kennett, members and descendants of the Sewall family, own property on Mattawamkeag Lake, facing east. Their property is on Hook Point and includes several hundred feet of shoreline, facing towards Bug Island and the eastern shore of Mattawamkeag. The family has 4 distinct lots and this land has been in the family for more than a century. The turbines will dominate the view from all of these homes, as it will dominate the eastern view of Mattawamkeag Lake and will have a significant visual impact on their enjoyment of these properties.

Candace Newman Rupley grew up on Pleasant Lake and her family camp is located at 107 Roosevelt Road, waterfront property on the northeast side of the lake. The Newman family has owned waterfront property on Pleasant Lake for 50+ years and Ms. Rupley also owns a home at 94 Roosevelt Road, in the same vicinity. The turbines will be clearly visible from the Rupley waterfront camp and from their docks, and will have a significant visual impact on their enjoyment of the property.

## II. DONNA DAVIDGE HAS INDIVIDUAL STANDING AS AN AGGRIEVED PARTY

Donna Davidge likewise has standing as an aggrieved party. Ms. Davidge owns and operates Sewall House Yoga Retreat in Island Falls ([www.sewallhouse.com/home.html](http://www.sewallhouse.com/home.html)). This building is on the National Register and is within the 8 mile radius of the project area.<sup>1</sup> While opposing counsel argues that Ms. Davidge is not aggrieved because the turbines will not be visible from Sewall House, his argument fails to take into account the fact that Ms. Davidge conducts her business, whenever the weather permits, on the shores of Mattawamkeag Lake. A review of the pictures on the Sewall House web site show pictures of the different activities that Ms. Davidge and her guests participate in on both of the lakes in the area. Ms. Davidge also notes on the site that "[w]e have an isolated camp on the nearby lake, rented by special application." She is therefore also a waterfront property owner on Mattawamkeag Lake, a property that her family has owned for more than 60 years.

<sup>1</sup> Ms. Davidge is the great granddaughter of William Sewall, Teddy Roosevelt's Maine guide and long-time friend. Hence the National Register designation of Sewall House.

Ms. Davidge is an aggrieved party in that she is an individual who will suffer a particularized injury in that there will be prejudicial and direct effects on her “property, pecuniary or personal rights.” See *Storer v. Dept. of Env't'l Prot.*, 656 A.2d 1191, 1992 (Me. 1995). When Ms. Davidge herself is recreating on the lakes, and more importantly, when she is conducting her business on the lakes, she and her visitors will be able – no, will be *forced* – to view a majority of the turbines and she has already received comments from some customers that they will not return to Sewall House if the project is built as currently configured. Under such conditions, Ms. Davidge will suffer significant pecuniary losses and has demonstrated her status as an aggrieved party.<sup>2</sup>

### III. CONCLUSION

Appellant *Protect Our Lakes* has demonstrated that it has members who would have standing in their own right to bring this appeal to the Board and, as such, *Protect Our Lakes* has associational standing to bring this appeal. Donna Davidge has demonstrated that she will suffer a particularized injury and that there will be a direct effect on her “property, pecuniary or personal rights.” Ms. Davidge has therefore demonstrated that she has standing to bring this appeal.

We respectfully request that the Chair acknowledge the standing of both of these Appellants.

Respectfully submitted,

/s/Lynne Williams  
Attorney for *Protect Our Lakes* and Donna Davidge

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<sup>2</sup> Ms. Davidge is also a member of *Protect Our Lakes* but has filed as an individual appellant due to the unique nature of the injuries that she will suffer if this project is constructed as currently configured.

