SECTION 32.
BEST PRACTICAL MITIGATION

In 2014, legislation modified the Maine Wind Energy Act (WEA) such that 35-A MRSA § 3459 requires applicants to submit information on best practical mitigation (BPM) for all aspects of construction and operation of generating facilities. Best practical mitigation means "methods or technologies used during construction or operation that control or reduce to the lowest feasible level impacts to scenic or wildlife resources" (MRSA 35-A §3451 (1-A)). This section demonstrates, in specific text below and with cross-references to the appropriate sections of the application (Section 7 and Section 30), that Number Nine Wind Farm LLC (Applicant) meets the requirements of 35-A MRSA § 3459 for the Number Nine Wind Farm (Project).

32.1.1 Potential Impacts to Wildlife Resources

As described in Section 7, the Applicant has identified a variety of methods and technologies to be implemented during construction and operation of generating facilities to address wildlife impacts under MRSA 35-A §3451 (1-A) and §3459. This section summarizes those construction and operational measures that mitigate for any potential impacts to wildlife resources, and demonstrates that the Project meets the requirements of MRSA 35-A §3451 (1-A) and §3459.

32.1.2 Construction

During construction of the Project, several measures will be implemented to reduce potential impacts to wildlife from installation of culverts (fisheries) and from risk of collision with vehicles (Canada lynx).

Stream culverts will be installed and/or replaced in 7 locations and temporary culvert extensions are proposed in 15 additional locations. In addition to the buffer requirements described in Section 10 and erosion and sediment control requirements described in Sections 12 and 14, the Applicant will conduct water quality monitoring before, during, and after construction (Exhibit 7-F3). The Applicant has also proposed replacing 7 additional culverts in locations where improvements are not needed for the Project. These culvert replacements will provide a positive habitat value.

During construction, Canada lynx may be at risk of collision with vehicles. There is already a risk of Canada lynx collision with vehicles in the vicinity of the Project due to an extensive road network with active forestry activity. In order to minimize impact specifically from Project construction activity, the Project will have a posted speed limit of 5 miles per hour for the laydown areas, 15 miles per hour for access roads, and 30 miles per hour for all other roads. In

addition, all Project personnel and contractors will participate in training related to the appropriate speed limits.

32.1.3 Operation

During operation the Project, several measures will be implemented to reduce potential impacts to wildlife from collision with turbines (birds and bats) and from risk of collision with vehicles (Canada lynx).

A Curtailment Plan has been proposed for the Project, as described in Section 7.8.1, which includes a commitment from the Applicant to minimize the impact the Project may have on bats by implementing turbine operational adjustments to insure that bat mortality at the Project is reduced by 50% when compared to normally operating turbines.

A Bird and Bat Conservation Strategy will be developed for the Project in coordination with United States Fish and Wildlife Service (USFWS), which will include measures the Project will implement to avoid and minimize impacts to birds and bats in general, 2 years of bird and bat post-construction fatality monitoring as described in Section 7.8.2, and an adaptive management plan with triggers and responses to minimize impacts to birds and bats.

An Eagle Conservation Plan (ECP) will be developed for the Project in coordination with USFWS. Consistent with the Eagle Conservation Plan Guidance (ECPG), the ECP will document how the Applicant is complying with the regulatory requirements for programmatic eagle take permits by avoiding and minimizing the risk of taking eagles.

During operation, Canada lynx may be at risk of collision with vehicles. There is already a risk of Canada lynx collision with vehicles in the vicinity of the Project due to an extensive road network with active forestry activity. In order to minimize impact specifically from activity during Project operations, the Project will have a posted speed limit of 5 miles per hour for the laydown areas, 15 miles per hour for access roads, and 30 miles per hour for all other roads. In addition, all Project personnel and contractors will participate in required training related to the appropriate speed limits.

Potential impacts to wildlife resources have been avoided, or when otherwise impracticable, minimized through careful siting of all Project elements. Additionally, as described above, a number of measures will be implemented during construction and operation to further reduce potential wildlife impacts. These specific measures have been developed with input from a team of experts with substantial experience in designing and building wind projects in Maine, as described in Section 4.0.

32.2 Potential Impacts to Scenic Resources

As described in Section 30, no turbines are visible from any scenic resources of state or national significance within 8 miles, and, therefore, no best practical mitigation has been proposed.

32.3 Turbine Selection

Maine Department of Environmental Protection (MDEP) and Maine Department of Inland Fisheries and Wildlife have previously asked that the Applicant address turbine selection under BPM. This discussion will address that request by examining the scope and nature of the relatively new BPM requirement added to the Maine Wind Energy Act (WEA) now found at 35-A MRSA §3459. For the reasons detailed below, an evaluation of turbine selection for a project is outside the scope of BPM in §3459.

The requirements for "best practical mitigation" (or "BPM") in 35-A MRSA §3459 include the requirement that an application for a grid-scale wind energy development contain best practical mitigation for "all aspects of construction and operation of generating facilities" to "control or reduce impacts to scenic or wildlife resources." Hence, BPM in the WEA relates to methods used during construction or operation of a wind energy development to mitigate scenic or wildlife impacts, rather than an Applicant's choice of turbine in the design of a project prior to its construction or operation. Specifically, 35-A MRSA §3459 relates only to best practical mitigation methods during construction and operation, and not to Project design or turbine selection prior to siting. The WEA law specifically does not contemplate MDEP's review of energy and market data to determine what turbine brand, model type, or rated turbine capacity an Applicant must utilize. To do so would insert the MDEP into the Applicant's site suitability, economic, and business analyses.[1]

Looking specifically to the legal definition of "best practical mitigation", the WEA defines best practical mitigation as:

> [m]ethods or technologies used during construction or operation of a wind energy development that control or reduce to the lowest feasible level impacts to scenic or wildlife resources in accordance with rules adopted by the department. "Best practical mitigation" may include, but is not limited to, turbine and blade coloration to reduce visual impacts, aircraft detection technologies to reduce the need for aircraft hazard warning lighting, technologies to detect at-risk animal populations and modification or curtailment of operations during specified times or conditions to reduce bird and bat mortality. (emphasis supplied).

[1] Both the plain language of the statute and the intent expressed in the legislative record relating to § 3459 demonstrate a focus on BPM as methods or technologies applied at the time of construction or operation of a previously designed wind energy facility. See Public Hearing of Joint Standing Committee on Energy, Utilities and Technology on L.D. 385 (Mar. 28, 2013). Section 3459 states "…the primary siting authority shall require, best practical mitigation for all aspects of construction and operation of generating facilities…"

The plain language of this law does not address itself to the design or selection of wind generating turbine size.

Rather, as limited by statutory definition, the "best practical mitigation" requirement of §3459 is focused on the inclusion of methods or technologies "used during construction or operation" to control or reduce impacts to scenic or wildlife resources.[2] These BPM methods have been specifically addressed throughout Section 7 (methods to avoid and minimize wildlife impacts during construction and operation), and as specifically described in this Section 32.

[2] The DEP testimony before the Legislature in "qualified support" of L.D. 385 includes the statement: "[t]he Department supports this concept, and in many cases the Department is already requiring what we find to be best practical mitigation. For example, the Department is already requiring curtailment during specified times and under certain conditions to reduce bat (and bird) mortality…."