



STATE OF MAINE
DEPARTMENT OF AGRICULTURE, CONSERVATION & FORESTRY

22 STATE HOUSE STATION
AUGUSTA, MAINE 04333-0022

PAUL R. LEPAGE
GOVERNOR

WALTER E. WHITCOMB
COMMISSIONER

NICHOLAS LIVESAY
EXECUTIVE DIRECTOR

Certification

COMMISSION DETERMINATION
IN THE MATTER OF

Department of Environmental Protection
regarding:
Hancock Wind, LLC
Site Law Certification SLC-2

Findings of Fact and Determination

The Maine Land Use Planning Commission, at a meeting of the Commission held on April 5, 2013, at Greenville Junction, Maine, after reviewing the certification request and supporting documents submitted by Hancock Wind, LLC for Site Law Certification SLC-2 and other related materials on file, pursuant to the Commission's Land Use Standards, finds the following facts:

1. *Person Requesting Certification:* Hancock Wind, LLC
129 Middle Street
Portland, ME 04101
2. *Accepted as Complete for Processing:* January 24, 2013
3. *Location of Proposal:* T16 MD BPP, T22 MD BPP, and the Town of Osborn, Hancock County
 - A. T16 MD BPP – Plan 1, Lot 1– Lease agreement with landowner Lakeville Shores, Inc.; and easement agreement with Lakeville Shores, Inc. and Blue Sky East, LLC (Bull Hill Wind Project owner and lease holder)
 - B. T22 MD BPP – Plan 1, Lot 1 (Easement agreement, landowner Ursa Major, LLC)
 - C. Town of Osborn – Plan 1, Lot 3 (Easement agreement, landowner Ursa Major, LLC)
 - D. UTM Northing 4955906m
UTM Easting 567051m

4. *Current Zoning:* (M-GN) General Management Subdistrict
(P-WL) Wetland Protection Subdistrict
(P-SL2) Shoreland Protection Subdistrict
Additionally, the Project will be located entirely within the expedited permitting area for wind energy development.
5. *Permanent project area.* Clearing of 54 acres for turbines and other permanent structures, excluding the above-ground 34.5 kV collector line corridor

INTRODUCTION

6. Public Law 2011, Chapter 682 (enacting LD 1798) shifted the primary permitting authority for grid-scale wind energy development located in the unorganized areas of Maine from the Land Use Planning Commission (the Commission or the LUPC) to the Maine Department of Environmental Protection (DEP), effective September 1, 2012. When a grid-scale wind energy development in an unorganized area is proposed, the DEP reviews the project under the Site Location of Development Law (Site Law) for a Site Location of Development permit, and the Commission must review a request for certification that the project is an allowed use in the subdistricts affected and that the project meets the Commission's Land Use Standards applicable to the project that are not considered in the DEP review.

The following Findings, Conclusions and Conditions constitute the Commission's certification that the Hancock Wind Project, as proposed, meets the applicable Land Use Standards that are not considered in the DEP review. By letter dated January 24, 2013, the Commission, through its staff, certified to the DEP that the Project is an allowed use in the subdistricts in which it is proposed.

PROPOSAL

7. On January 14, 2013, Hancock Wind, LLC submitted to the Commission a copy of a DEP Site Law/ Natural Resources Protection Act (NRPA) application for the Hancock Wind Project (the Project), which includes Section 31 addressing the Commission's criteria for certification.
 - A. The proposed Project is a grid-scale wind energy development to be located in the expedited permitting area for wind energy development on Schoppe Ridge in T22 MD BPP and an unnamed ridge in T16 MD BPP, in Hancock County. One of the Project roads, which will provide access to Turbines 5 through 8, is located in the Town of Osborn¹.
 - B. The proposed Project will be located within the following subdistricts: General Management Subdistrict (M-GN) and Shoreland Protection Subdistrict (P-SL2). There are Wetland Protection Subdistricts (P-WL) located within the Project area, but none of the P-WL Subdistricts mapped by the LUPC will be affected. All wetlands affected by the Project were identified and delineated in the field by Hancock Wind's consultant, Stantec. None of the proposed development will be located in a floodplain or flood prone area, as described in Section 10.23,C,2 of the Commission's Land Use Standards.
 - C. The proposed Project will connect to the New England electrical grid by the existing 115 kV Bangor Hydro Electric Company's Line 66 transmission line, at the same location as the existing Bull Hill Wind Project.

¹ The Town of Osborn is organized, with the Land Use Planning Commission providing land use planning, zoning, permitting and enforcement functions.

D. The proposed Project's Operations & Maintenance (O&M) facility will be located in the organized town of Aurora, and is not the subject of this certification.

8. *Project description.* The proposed Project will be located on portions of three parcels in three townships held by Hancock Wind by easement and/or lease agreement (*see* Finding #3). The Project will consist of the following:

A. *Turbines.* Eighteen (18) 3.0 megawatt turbines are proposed, having a maximum height of either 492 feet or 512 feet, depending on the type of turbine used, each located within a turbine pad measuring up to approximately 375 feet in diameter, at elevations ranging from 275 feet to 500 feet above mean sea level. The turbines will be grouped in four separate strings, connected by the Project access roads and the 34.5 kV collector line. One turbine string will be in T16 MD BPP (Turbines 1 to 4), and three strings will be in T22 MD BPP (Turbines 5 to 18).

B. *Roads.*

- (1) *Access.* There is a network of existing land management roads in the vicinity of the Project, some of which will be upgraded for the Project. The primary point of access from a public road to the Project is at the junction of State Route 9 and the privately owned 73-00-0 land management road in the organized Town of Aurora. From the 73-00-0 road², the Project areas will be accessed at five points (*see* Section (4), below).
- (2) *Road maintenance.* All new roads constructed for the Project will be maintained by Hancock Wind. Existing roads outside the Project area will continue to be maintained by the landowners.
- (3) *Public right of access.* Although the 73-00-0 road is a through road and sometimes used by the public, there is no legal right of access for the public to this road (or to the other land management roads connecting to it) with the exception of the easements granted to three camp owners to access their camps located at the southern end of Rocky Lake in T22 MD BPP. The 73-00-0 road connects to the 73-50-0 road³ to provide access to these camps.
- (4) *Crane paths and access roads.* A total of 3.37 miles of new 39.5-foot wide crane path; and a total of 0.97 mile of new 24-foot wide access road will be constructed to provide access to the four groups of turbines. A crane path is the portion of the road within each turbine string, and the access road is the portion leading to the crane path. The proposed access roads will partly follow existing roads that are being upgraded, and will be partly new. The crane paths are all new road segments. The following are the five points of Project access from the existing 73-00-0 road:
 - (a) Spectacle Pond Ridge Access Road and Crane Path for Turbines T5 to T8 – The access road will generally follow the existing 73-30-0 road (aka Birch Road), and the crane path will be new road construction.
 - (b) Schoppe Ridge North Access Road and Crane Path for Turbines T9 to T14 – The access road will follow the existing 73-42-0 road, and the crane path will be new.
 - (c) Schoppe Ridge South T15 Crane Path – This is a new road.
 - (d) Schoppe Ridge South Crane Path for Turbines T16 to T18 – The access road is located at the junction of the existing 73-50-0 road with the 73-00-0 road, but in a very short distance transitions to the new crane path.
 - (e) Bull Hill Access Road and Crane Path for Turbines T1 to T4 – This road is a mix of new road and upgraded existing unnamed land management roads for the access road portion, and new road construction for the crane path.

² Within Osborne and T22 MD BPP, the existing 73-00-0 road is also referred to as the Spec Pond Road or the Spectacle Pond Road for the western portion of the road, changing to the Schoppe Ridge Road for the eastern portion of the road within T22 MD BPP.

³ The 73-50-0 road is also referred to as the Rocky Pond Road.

- (5) *Existing roads to be upgraded.* A total of 1.6 miles of existing road segments will be upgraded to be 24 feet wide, including sections of the 73-00-0 road and the 73-30-0 road in the Town of Osborn; sections of the 73-00-0 road, 73-50-0 road, and the 73-42-0 road in T22 MD BPP; and several unnamed roads in T16 MD BPP.
 - (6) *Stream crossing.* One temporary stream crossing will be required during construction of the above-ground portion of the 34.5 kV collector line; however the crossing will not require disturbance of the stream. With the exception of the 34.5 kV collector line passing over several streams (*see* Section D, below), no other new or upgraded road or stream crossings are proposed.
- C. *Met towers.* A maximum of two permanent meteorological (met) towers and up to three temporary met towers having a maximum height of 344 feet are proposed. The locations for the permanent met towers will be cleared. The temporary met towers will be placed within the turbine pads and removed prior to operation.
- D. *34.5 kV collector line.* A total of approximately 10.2 miles of 34.5 kV collector line will be run underground along the Project roads. A total of approximately 1.5 miles of 34.5 kV collector line will be located above-ground. The collector line will connect the Project turbines to the existing Bull Hill Wind Project substation (*reference* Development Permit DP 4886). The underground portions of the collector line will be placed in a trench in the road, and will include roadside junction boxes and pull boxes as needed. There will be two above-ground portions of the collector line: one in T22 MD BPP between Turbine 8 and Turbine 9; and the other in T16 MD BPP connecting Turbine 1 to the underground line that will connect to the existing substation. The above-ground section of the line in T16 MD BPP will cross over several small streams. In this section of the line, two utility poles will be located less than 100 feet from P-WL1 wetlands at distances of 92 feet and 95 feet to provide adequate support for the wires (*see* Finding #16,E(4), below).
- E. *Substation.* The existing Bull Hill Wind Project substation is located within the same area as the Bull Hill O&M building. The proposed Hancock Wind Project will connect to the existing 115 kV transmission Line 66 at the Bull Hill Wind Project substation. Additional infrastructure owned by Hancock Wind will be added within the existing fenced-in area of the substation, and an additional driveway to provide access to the north end of the substation will be added to the Bull Hill Project O&M facility area (*reference* Finding #22, Development Permit DP 4886).
- F. *Temporary lay-down areas and trailers.* Thirteen (13) temporary lay-down areas are proposed, of which two (2) will be within existing cleared areas, and eleven (11) will be located in areas that are not yet cleared. The lay-down areas will be used for equipment storage, up to ten (10) temporary trailers, and parking during construction. Some of the temporary trailers may be placed at the existing Bull Hill O&M facility/substation site. The parking area at the Bull Hill O&M facility will not be expanded to be larger than 1 acre.
9. *Certification of allowed use.* On January 16, 2013, the DEP requested that the Commission review Hancock Wind's Site Law application materials applicable to the request for certification, and provide a certification determination to the DEP for inclusion in the DEP's Site Location of Development permitting decision. Specifically, the DEP requested that the Commission determine whether the Project is an allowed use in the subdistricts affected and whether the Project complies with the Commission's Land Use Standards not also considered by the DEP. On January 24, 2013, the LUPC staff provided a letter to the DEP concluding that the Project is an allowed use with a permit in the subdistricts affected (attached as Appendix A).

10. *Public notice.* On January 5, 2013, a combined DEP/LUPC public notice of intent to file was published in the Bangor Daily News. The notice was sent on January 2, 2013 by Hancock Wind to abutters to the proposed Project and to other parties by U.S. Postal Service mail. The public notice stated that anyone wishing to request a public hearing on the certification and to petition the Commission for leave to intervene must do so within 20 days of the certification materials being accepted by the LUPC as complete for processing. LUPC staff deemed the certification request complete for processing on January 24th. No public comments, requests for a public hearing or petitions to intervene were received by LUPC staff.

Title, Right or Interest

11. On January 16, 2013, the DEP requested that the Commission provide to the DEP a certification determination with regard to the Project. On January 17, 2013, the DEP accepted Hancock Wind's application as complete and ready for processing. Based on these actions by the DEP and Condition #6, below, the Commission concludes that Hancock Wind has administrative standing to request certification of the Project.

Certification of compliance with the Commission's Land Use Standards

12. The Commission's Land Use Standards that are relevant to certifying compliance of the proposed Project are evaluated in Findings #13 through #19.

13. *Land Division History.*

A. *Review Criteria.* 12 M.R.S.A. § 682(2-A) and § 685-B(1)(B); and §§10.24, F (quoting 12 M.R.S.A. § 685-B(4)(F)) and 10.25,Q,1 of the Commission's Land Use Standards.

B. *Land division histories.* Hancock Wind provided land division histories for the three Project parcels in T16 MD BPP, T22 MD BPP and the Town of Osborn, evaluating the land transfers for each parcel during the preceding twenty years, noting where a land division had formed a lot and whether that lot counted as a subdivision lot or was exempt. Hancock Wind determined that no land divisions requiring a subdivision permit from the Commission had occurred for any of the Project parcels during the preceding 20 years.

(1) Referring to 12 M.R.S.A. § 682(2-A), Hancock Wind asserts that if an easement is granted, it should not be listed as a transfer in the land division history because the easement does not form a lot.

(2) Existing camp lease lots transferred during the previous 20 years were assessed to determine if any of the leases had lapsed for more than two years before being renewed, or before the lot was sold. (*reference §10.25,Q,1,e of the Commission's Standards*)

(3) *T16 MD BPP (Plan 1, Lot 1).*

(a) *Lease and easement agreements.* The Project parcel in T16 MD BPP is owned by Lakeville Shores, Inc., with a lease and an easement granted to Hancock Wind in April of 2012 allowing development and construction of a wind energy facility.

(i) On November 25, 2003, an out-parcel was sold by then landowner S.P. Forests L.L.C. to Tree Top Manufacturing, Inc. (TTM). This lot was the first division of the parent parcel in a five-year period, and is not counted for subdivision purposes after November 25, 2008.

(ii) In 2009, Lakeville Shores granted to Blue Sky East, LLC (BSE) a lease for the right to develop a wind energy facility, the Bull Hill Wind Project, on its entire parcel in T16 MD BPP (approximately 18,600 acres). Lakeville Shores retained the right to conduct forest management activities on its parcel.

- (iii) On April 2, 2012, Lakeville Shores granted a lease to Hancock Wind for the right to develop a wind energy facility on its parcel. At the same time, BSE's leased area was reduced to 2,300 acres of Lakeville Shores' parcel, with Hancock Wind's leased area being the remaining 16,300 acres.
 - (iv) Also on April 2, 2012, Lakeville Shores granted, and BSE agreed to, an easement to Hancock Wind, that among other things provides rights to construct and operate collection lines on Lakeville Shores' lands, including the 2,300 acres leased to BSE.
 - (v) The April 2, 2012 lease and easement agreements granted to Hancock Wind also require that within 6 months of the completion of construction of the Project, the Hancock Wind Project leased and easement areas will be reduced to include just the Project area, provided that the reduction in size of the leased premises does not constitute a subdivision.
- (b) *Existing camp lease lots.* There are no existing camp lease lots on the 2,300 acre parcel leased to BSE. Two existing camp lease lots that had been within that area were discontinued and the camps removed in 2012, as required by Condition #10 of Development Permit DP 4886. There are nine existing camp lease lots on the remaining 16,300 acres leased to Hancock Wind. Hancock Wind stated that all of the existing camp lease lots were created prior to 2004 when the parent parcel was obtained from SP Forests, were never part of a Commission approved subdivision, and have been continuously leased for the preceding 20 years with no lapses in the leases of two years or more.
- (c) *Sale of 1,115 acre parcel (reference Advisory Ruling AR 13-4).* Lakeville Shores is also currently anticipating the sale of 1,115 acres of the parent parcel to be used for blueberry crop cultivation by the new owner.
- (4) *T22 MD BPP (Plan 01, Lot 1) and Osborn (Plan 01, Lot 3).* The parent parcel was acquired by Ursa Major, LLC from Kennebec West Forest, LLC on January 28, 2011, which acquired the parcel on December 30, 2004 from SP Forests, LLC.
- (a) *Easement agreement, T22 MD BPP and Osborn.* An easement agreement was granted to Hancock Wind by landowner Ursa Major, LLC on October 22, 2012 for wind energy development on Ursa Major's entire parcels in T22 MD BPP and Osborn.
 - (i) The easement agreement provides that the land subject to the easement will be reduced once the Project is constructed to include only the Project area.
 - (ii) The easement agreement also includes provisions for the landowner to grant sound and shadow easements, transmission line easements, blueberry land licenses, and the relocation of three existing camp lease lots. However, Hancock Wind stated that while the easement agreement provides for the relocation of three lease lots, this will not be necessary and is not proposed.
 - (b) *Transfers of out-parcels and existing camp lease lots in T22 MD BPP.*
 - (i) There are a total of 16 existing camp lease lots on the Project parcel, of which two were a part of a subdivision approved by the Commission in 1984 (*reference Zoning Petition ZP 288 and Subdivision Permit SP 285 for the camp lease lots on Upper Lead Mountain Pond*), and the remainder were created prior to the inception of the Commission in 1971.
 - (ii) In 2001, an out-parcel was transferred, resulting in the first division within a five year period.
 - (iii) In 2005, another out-parcel was transferred to an abutter, which was exempt from being counted toward subdivision.
 - (iii) In December 2005, two existing camp lease lots on Rocky Lake were sold, both of which had been continuously leased from before 1992 until they were sold, and as such were exempt from being counted toward subdivision.
 - (iv) Also in December 2005, all remaining camp lease lots were transferred to Black Bear Forests, Inc. The applicant stated that all of the camp lease lots in T22 MD BPP on the Project parcel had been continuously leased with no lapses in the leases of more than 2 years.

- (v) On November 3, 2011, an existing camp lease lot was transferred to an individual. This lot had been continuously leased from before 1992 until the date of transfer.
 - (vi) On January 18, 2011, a 1,246-acre out-parcel was transferred to blueberry grower Jasper Wyman & Sons. This lot had been continuously leased for more than 20 years at the time of sale.
- (c) *Existing camp lease lots in Osborn.*
- (i) *Background.* There are currently 9 existing camp lease lots on the Project parcel, of which 6 lots are located along the shore of Spectacle Pond. All of the camp lease lots on the Project parcel in Osborn were created before 1971, prior to the inception of the Land Use Regulation Commission (now the LUPC). None of the camp lease lots were a part of a Commission-approved subdivision, but in 1972, an Environmental Improvement Commission permit⁴ was issued for the lots (*reference* Advisory Ruling AR 98-129). In 1998, any camp lease lot that was not leased at that time was discontinued by then landowner Champion International Corporation (*reference* Advisory Ruling AR-98-129). Although in 2000 and 2005 there were proposals to reconfigure some of the lease lots, both applications were withdrawn (*reference* AR 05-009, SP 3266 and unspecified SP records). In 2005, plans showing the camp lease lots in existence at that time were recorded in the Hancock County Registry of Deeds.
 - (ii) *Transfer of camp lease Lot 104 and Lot 150.* Ursa Major's land manager stated that all of the non-Commission approved lease lots in T22 MD BPP and Osborn which had been leased prior to sale were continuously leased with no gaps of two or more years except for Lot 104 and Lot 150 in Osborn, which were sold on November 10, 2010 and April 23, 2012, respectively. In 2005, Lot 104 was identified to be reconfigured (*see* Advisory Ruling AR 05-009) and eventually was joined in part with Lot 105 (*see* Building Permit BP 7995-B). Lot 150 was also identified to be reconfigured in 2005 (*see* Advisory Ruling AR 05-009). The leases for both lots expired on April 30, 2008, and neither lease was renewed after that time. Both of these lots originally abutted other camp lots, but the other lots were sold to individuals between 2005 and 2007. By the time these two lots were sold, as a result of the transfers of the other lease lots and the transfer of the surrounding land, both were singular, stand-alone lots abutting other private ownership, and not contiguous with the parent parcel.
- (d) *Out-parcels, Osborn.* The two out-parcels transferred to Tree Top Manufacturing (TTM) from the parent parcel on November 25, 2003 (276 acres) and July 21, 2005 (1,540 acres) counted as lots, but the lot retained by then landowner Kennebec West Forest was exempt due to being used solely for forestry. These parcels are not counted as lots formed after November 25, 2008 and July 21, 2010, respectively (*reference* Advisory Ruling AR 08-33).

C. *Conclusions.* Based on the materials supplied by Hancock Wind; Advisory Rulings AR 98-129, AR 05-009, and AR 08-33; and other Commission records, no land divisions requiring subdivision approval from the Commission occurred during the preceding 20 years (since 1992) for any of the Project parcels.

(1) *Camp lease lots.* There are many existing camp lease lots on all three Project parcels that were either (a) created prior the Commission's inception in 1971, (b) approved by the Environmental Improvement Commission in 1972, or (c) previously approved by the Commission. The evidence in the record indicates that all of the existing camp lease lots were either leased continuously, or if transferred were exempt from being counted as a lot, including Lot 104 and Lot 150 in Osborn, as discussed in Section B(4)(c)(ii), above.

(2) *Exemption for lots used solely for forest management activities.* When a parcel of land is exempt by virtue of being used solely for forest management purposes (*see* Section 10.25,Q,1,g(1) and (2) of

⁴ The permit issued for the camp lots around Spectacle Pond was Environmental Improvement Commission Permit EIC #81-0326-05230, issued to St. Regis Paper Company in August of 1972. The EIC was the precursor of the present-day Maine Department of Environmental Protection.

the Commission's standards), if that parcel later is subject to an agreement for multiple use of that parcel, in this case for both forestry and wind energy development, the parcel can no longer be claimed as exempt due to being solely used for forestry. This determination was applied by staff in the evaluation of all three Project parcels, which are used by the underlying landowners for forest management activities. While the change to multiple uses of the parcels when a wind easement or lease was granted did not result in an unauthorized land division occurring during the previous 20 years, it is relevant to future divisions of these parcels.

- (3) *T16 MD BPP*. For the Project parcel in T16 MD BPP, no land division requiring Commission approval occurred over the preceding 20 years. All of the existing camp lease lots were continuously leased for the preceding 20 years, and none were transferred such that a non-exempt lot was created.
 - (a) The following actions resulted in the creation of two non-exempt lots formed within a five year period; specifically the 2,300 acres leased to BSE and the 16,300 acres leased to Hancock Wind:
 - (i) The 2009 lease agreement with BSE, which allowed wind energy development on Lakeville Shores' entire 18,600 acre parcel, resulted in the parcel no longer qualifying as exempt due to being used solely for forest management activities;
 - (ii) The 2012 reduction of BSE's leased area to 2,300 acres of the 18,600 acre parcel; and
 - (iii) The 2012 lease agreement with Hancock Wind allowing wind energy development on the remaining 16,300 acres of Lakeville Shores' parcel not leased to BSE.
 - (b) Landowner Lakeville Shores is currently in the process of transferring 1,115 acres of the parent parcel for the purpose of developing it as blueberry crop land, which will be relevant to future divisions of the parent parcel (*see* Advisory Ruling AR 13-04).
- (4) *T22 MD BPP*. For the Project parcel in T22 MD BPP, no land divisions requiring Commission approval had occurred over the preceding 20 years; specifically, no more than 2 non-exempt lots were created in a five year period. All of the lots that were transferred were exempt from being counted toward subdivision. However, as a result of the October 22, 2012 easement granted to Hancock Wind allowing wind energy development on the entire parcel as well as forest management activities by the landowner, the parcel cannot be claimed as exempt due to being solely used for forestry as long as the multiple use continues (*see* §§10.25,Q,1,g(1) and (2) of the Commission's Standards).
- (5) *Osborn*. No divisions of the Project parcel in Osborn requiring Commission approval occurred over the preceding 20 years. The most recent transfers forming lots considered to be non-exempt divisions of the parent parcel occurred in 2005 (*see* subsection (a), below). However, like the Project parcel in T22 MD BPP, the Project parcel in Osborn now cannot be claimed as exempt for forestry for future land divisions because it is now not used solely for forest management activities as a result of the easement agreement granted to Hancock Wind in October 2012.
 - (a) The transfers of the two out-parcels to TTM in 2003 (276 acres) and 2005 (1,540 acres) did not result in three non-exempt lots being created, and did not form a subdivision requiring Commission approval because the retained lot was used solely for forest management activities. The transfer of the 276 acres did not count as a lot after November 25, 2008, and the transfer of the 1,540 acres did not count as a lot after July 21, 2010. Further divisions by TTM of the 1,540 acre parcel do not affect the proposed use of the Project parcel because no portion of the Project would be located on that parcel.
 - (b) All of the existing camp lease lots on the Osborn Project parcel were created prior to the inception of the Commission in 1971 and were not a part of a subdivision approved by the Commission. Except for Lot 104 (transferred in 2010) and Lot 150 (transferred in 2012), all other camps lease lots were continuously leased until the date of transfer. Both Lot 104 and Lot 150 were pre-Commission lots, and after the leases expired in 2008, neither was re-leased until the lots were sold. When they were sold, due to the previous transfers of other abutting lots, neither of these lots were contiguous with the remaining parent parcel owned by Black Bear Cub

(for the transfer of Lot 104 in 2010) or by Ursa Major (for the transfer of Lot 150 in 2012). Both were stand-alone lots created prior to the inception of the Commission in 1971, and were not merged with the parent parcel when they were sold. As such, neither of these camp lots is counted as a non-exempt division of the parent parcel.

14. *Vehicular circulation, access and parking.* (See Finding #8,B for the description of the Project roads)

- A. *Review criteria.* §§ 10.24,B (quoting 12 M.R.S.A. § 685-B(4)(B)) and 10.25,D of the Commission's Land Use Standards.
- B. *Vehicular circulation and access – §§10.25,D,1; and 2,a, b and d.*
- (1) *Access points.* Hancock Wind proposes five permanent Project access points connecting the Project to the private gravel land management road 73-00-0, and one access point where the 73-00-00 road connects to State Route 9 in the organized town of Aurora (the same access point used by the Bull Hill Wind Project). No new Project roads will require exit by backing onto a roadway.
 - (2) *Traffic estimate.* Because the Project will not generate a significant amount of traffic, no traffic analysis was conducted. Hancock Wind estimated that during peak construction, approximately 150 worker vehicles per day will be traveling to the Project site, which Hancock Wind asserted constitutes a minor traffic demand on the 73-00-00 road. Once fully operational, the number of worker vehicles traveling to the Project site will be approximately two to eight per day. For an eight week period during construction, on some days up to 40 large vehicles per day are anticipated for turbine delivery and installation.
 - (3) *Co-use of existing roads.* The new and existing roads within the Project area will be co-used for forest management purposes, so the proposed road upgrades have been sized to accommodate wood haulers and other large vehicles without the need for turn-outs. New Project roads will not be co-used for forestry during construction.
 - (4) *Intersection design.* Hancock Wind's access road design provides for the new roads to connect at the existing roadway at an angle greater than 60 degrees, except for the driveway entrance to Turbine 15 which will be less than 60 degrees to accommodate the erection of the crane and the existing grade. At this intersection, a "Y" will be created to accommodate any other vehicles entering or leaving this driveway. The curb radius will be greater than 15 feet in order to accommodate large vehicles.
 - (5) *Sight distances.* Hancock Wind's consulting engineer evaluated the sight distances at all intersections to be used during project construction, and determined that the sight distances are adequate. The consultant based its evaluation on assuming a speed of 25 miles per hour which requires a sight distance of 200 feet, increased to 300 feet when 30% of the traffic is large vehicles. Although sight distance is based on traffic speed, there are no formal speed limits on the private gravel land management roads in the Project area.
- C. *Parking - §§ 10.25,D,3,a and e.* No new permanent parking areas or on-street parking is proposed for the portions of the Project in the unorganized townships. During construction, designated temporary parking areas will be located in the lay-down areas, and will be set back from the traveled surface of the roads (see Findings #8,F and #16,E(7)).
- D. *Roadway Design – §§ 10.25,D,4,a, b, e and f.* Hancock Wind has designed the Project roadway system to meet the specific needs of the Project. The proposed Project roadway system will not be directly connected to public roadways. The Project roadway system will be integrated with existing private land management roads that have no legal public right of access other than the easements granted to three camp owners for their properties on Rocky Lake in T22 MD BPP (see Finding #8,B(3)). The Project will involve upgrading several portions of the existing private land management roads to be 24

feet wide, as well as construction of several new 39.5-foot wide crane paths and new 24-foot wide access roads. Turnouts are not included in the road design plans because the roads have been designed to be wide enough to accommodate multiple uses involving large vehicles. One section of three of the new crane paths will have a slope exceeding 10%.

E. *Conclusions.* Hancock Wind has demonstrated that the applicable criteria for vehicle circulation, access, parking, and roadway design in §10.24,B and §§10.25,D,1, 2, 3, and 4 of the Commission's Land Use Standards will be met by the Project. Specifically:

- (1) *Vehicle circulation and access* - §§ 10.25,D,1 and 2. §§ 10.25,D,1 and D,2,a, b and d are applicable to the proposed Project. The proposed Project roadway system layout and design will meet the provisions of §§ 2,a, b and d; in particular, the roads have been sized such that turn-outs will not be required, and all Project access points will have adequate sight distances for traffic entering and leaving the Project areas. In addition, informational signs alerting motorists to the construction activities must be posted on existing roads during construction (*see* Finding #18).
- (2) *Parking* - § 10.25,D,3. §§ 10.25,D,3,a and e are applicable to the proposed Project. Hancock Wind's proposal for temporary parking areas during construction will meet the applicable parts of these standards: specifically, designated temporary parking areas will be off-road in the lay-down areas. All temporary parking areas will be less than one acre in size and located and arranged such that parked vehicles or vehicles entering and leaving the lay-down areas do not create traffic congestion or hazards on the Project roads, including maintaining adequate sight distances. Permanent Project parking areas will be located either at the Hancock Wind O&M facility in the organized town of Aurora, or at the existing Bull Hill O&M/substation facility in T16 MD BPP approved under LUPC Development Permit DP 4886, neither of which are the subject of this certification.
- (3) *Roadway design* - §10.25,D,4. §§10.25,D,4,a, b, e and f are applicable to the proposed Project. The assignment of class to a roadway system is applicable to Level B and Level C road projects. For the proposed Project, the upgrading of the existing land management roads, if done separately from the rest of the Project, would constitute a Level A or B road project. The new Project roads constitute a Level C road project. However, for the purpose of this assessment, the sections of the existing land management roads that will be upgraded and integrated into the permanent Project roadway system are considered to be a part of the Level C road project (*see* Finding #8,B(4) and (5)).

In accordance with §§10.25,D,4, a and b, the Project roads will create a Class 1 roadway system serving a high-intensity commercial or industrial project, but will be located in a low-density area with sparse development, typically associated with a Class 3 roadway system. The roadway design and specifications proposed are appropriate for this Project with regard to: (a) the nature and level of use, particularly with regard to the large construction equipment that will be traveling on certain road segments; (b) the nature of the roads accessing the site; location relative to the sparse surrounding development; (c) the type and intensity of the proposed use; and (d) services and utilities likely to need access to the Project area in the future. The Project's roadway system will meet the needs of the Project and will not cause safety problems, if constructed and managed as proposed.

- (4) Stormwater and erosion/sedimentation control are considered by the DEP in its Site Law review.

15. *Lighting.*

A. *Review criteria.* §10.25,F,2 of the Commission's Land Use Standards.

B. *Permanent lighting.* Other than the aviation safety lighting required by the Federal Aviation Administration for the turbines and met towers, which is exempt from the requirements of §10.25,F,2,

permanent lighting proposed for the Project will be at the existing substation, which has pole-mounted floodlights that are only on during nighttime work at the substation; and potentially motion-sensitive entry lights at the stairs at the base of each turbine. Hancock Wind stated in Section 31.6.4 of the application, that exterior lights at the base of each turbine will meet the requirements of §10.25, F, 2.

- C. *Temporary lighting during construction.* Temporary lighting to be used during turbine installation will only be necessary to take advantage of low wind conditions. Portable trailer-mounted flood lights will be used, with approximately three of these systems needed at any one turbine location. Limited nighttime security lighting may also be used during construction at the Project's five access points (*see* Finding #8,B(1) and (4), above).
- D. *Conclusion.* The Project as proposed will meet the provisions of §10.25,F,2 of the Commission's Land Use Standards for permanent lighting. Motion sensor activated lighting is exempt from the requirements of §10.25,F,2.

16. *Minimum dimensional requirements.*

- A. *Review criteria.* §§10.26, A through G of the Commission's Land Use Standards.
- B. *Minimum lot size - §10.26, A.* §10.26,A,2 specifies that the minimum lot size for commercial or industrial development involving one or more buildings is 40,000 square feet. All parcels containing areas to be developed for the Project are in excess of 10,000 acres in size.
- (1) *Conclusion.* As proposed, the Project will meet the standard for minimum lot size in §10.26,A,2 of the Commission's Land Use Standards.
- C. *Minimum shoreline frontage - §10.26, B.* §§10.26,B,1,b and 2,b specify that the minimum shoreline frontage for a commercial or industrial development is 200 feet for parcels bordering a minor flowing water or standing body of water less than 10 acres in size; and the frontage for a parcel located on a waterbody greater than 10 acres in size or a major flowing water is 300 feet. The applicant stated that the portions of the parcels containing the Project do not border on waterbodies.
- (1) The underlying parcel in T22 MD BPP where the Project is located has more than 300 feet of frontage on Rocky Pond; and more than 200 feet on the East Branch of the Union River, Duck Pond, Dark Brook, Pork Brook and Roaring Brook.
- (2) The underlying parcel in T16 MD BPP where the Project is located has more than 300 feet of frontage on the West Branch of the Narraguagus River and more than 200 feet on Mahannon Brook.
- (3) The underlying parcel in the Town of Osborn where the Project is located has more than 300 feet of frontage on Spectacle Pond, Little Spectacle Pond and Bog River, and more than 200 feet of frontage on Hopper Brook.
- (4) *Conclusion.* As proposed, the Project will meet the requirements for minimum shoreline frontage in §§10.26,B,1,b and 2,b of the Commission's Land Use Standards.
- D. *Minimum road frontage - §10.26, C.* §10.26,C,1,b specifies that the minimum road frontage for commercial or industrial development is 200 feet for any road used for public access.
- (1) The frontage on the 73-00-00 road within the Project parcels in T22 MD BPP and Osborn exceeds 200 feet. The frontage on the Bull Hill Road within the Project parcel in T16 MD BPP exceeds 200 feet.
- (2) *Conclusion.* As proposed, the Project will meet the standard for road frontage in §10.26,C,1,b of the Commission's Land Use Standards.

E. *Minimum setbacks.*

- (1) *Review criteria* – §§10.26,D,2 and 3; and §10.26,G,5. §10.26,D,2 specifies that the minimum setback for commercial or industrial development is 150 feet from waterbodies greater than 10 acres in size; 100 feet from minor flowing waters, P-WL1 wetlands and waterbodies less than 10 acres in size; 75 feet from roads used by the public for access; and 25 feet from side and rear property boundary lines. §10.26,G,5 provides that an exception may be made for the road setback “where the Commission finds that such structures must be located near to the shoreline, road, or property line due to the nature of their use.”
- (2) *Turbines.* All turbines are proposed to be located in excess of the minimum setback requirements. The closest a turbine will be to a waterbody greater than 10 acres in size is Turbine 5 at 2253 feet from Spectacle Pond. The closest a turbine will be to a property boundary line is Turbine 5 at 2497 feet. The closest a turbine will be to a road used by the public is Turbine 15 at 496 feet from the 73-00-00 road. The turbines will also be set back well in excess of the minimum requirements for major and minor flowing waters, P-WL1 wetlands, and waterbodies less than 10 acres in size.
- (3) *Met towers.* The temporary and permanent met towers will be located in excess of the minimum setback requirements. Met tower 10_11 will be the closest met tower to a waterbody smaller than 10 acres, at 6662 feet from Duck Pond; and the closest met tower to a minor flowing water at 3642 feet from the East Branch of the Union River.
- (4) *Collector line and poles.* The 34.5 kV collector line is proposed to be located in excess of the minimum setback requirements, except for two poles that will be set back less than 100 feet from P-WL1 wetlands. These two poles will need to be set back at 92 feet and at 95 feet to provide adequate support for the collector line pole-to-pole spans. The locations of these collector line poles at less than the setback distances in §10.26,D will be consistent with §10.26,G,5, which provides that an exception may be made to a setback requirement if the structure must be located closer due to the nature of its use.
- (5) *Temporary trailers.* All temporary trailers will be located within the proposed lay-down areas or in the existing Bull Hill O&M facility/substation area.
- (6) *Substation.* The addition to the existing Bull Hill substation for the Project will not cause the substation footprint to be located closer to the road than the existing substation or to be set back less than the minimum requirements.
- (7) *Temporary laydown areas.* Although located along various roads in the project area, equipment storage, parking and trailers within the proposed temporary laydown areas will meet or exceed the required road setback distances. However, overburden and soil storage may be within 75 feet of the road.
- (8) *Conclusion.* As proposed, the Project will meet the standards for setbacks in §10.26, D,2; except that the utility poles where the 34.5 kV collector line crosses a stream as described in Findings #8,D and #16,E,4, if needed to provide adequate support for the line, may be located closer than 100 feet but not less than 75 feet from a P-WL1 wetland, in accordance with §10.26,G,5 of the Commission’s Land Use Standards.

F. *Maximum lot coverage* - §§10.26, E,1 and 2. §10.26,E,1 specifies that the maximum lot coverage is 30% for all uses involving one or more buildings, including driveways, sidewalks, parking lots, and other impervious surfaces. The maximum lot coverage for any of the Project parcels will be less than 1%.

- (1) *Conclusion.* As proposed, the Project complies with the maximum lot coverage requirements in §10.26, E,1 of the Commission’s Land Use Standards.

G. Maximum structure height - §10.26,F of the Commission's Land Use Standards.

- (1) *Review criteria.* §§10.26,F,1,b and 3 specify that the maximum height for a structure located further than 500 feet from a waterbody greater than 10 acres in size is 100 feet; except that the maximum structure height may be exceeded for structures with no floor area such as chimneys, towers, ventilators, spires, and free-standing towers and turbines with the Commission's approval.
- (2) All proposed Project structures will be located more than 500 feet from a great pond. The turbines will have a maximum height of 512 feet at the upward tip of the blade, and the met towers will have a maximum height of 334 feet. Both the turbines and the met towers are free-standing structures, and may exceed the maximum height of 100 feet with Commission approval.
- (3) *Conclusion.* In reviewing wind energy developments, the factors that the Commission evaluates to determine whether to approve a tower or turbine height in excess of 100 feet usually include visual impact and safety considerations. These factors are specifically considered in the DEP's review. For that reason, the Commission, conditioned upon DEP's review and approval of visual impact and safety considerations, concludes that the Project complies with the Commission's structure height standard.

17. Vegetation clearing – §10.27,B of the Commission's Land Use Standards.

- A. *Review criteria.* Based on the materials supplied by Hancock Wind, §§10.27,B,1 and 2 of the Commission's Standards are applicable to this Project.
- B. In total, 54 acres will remain permanently cleared for the proposed Project, specifically for the turbines, the crane path access roads and new and upgraded access roads, and permanent met towers. Temporary clearing during construction, primarily for the lay-down areas, and areas around turbines and met towers that will be re-vegetated will total 74 acres.
- C. Except for along the 80-foot-wide cleared corridor where the above-ground portions of the 34.5 kV collector line cross a stream, all clearing for the permanent Project features will be greater than 100 feet from any public roadway, waterbody, or flowing water. Within the collector line corridor, the tree canopy will be permanently removed, with shrub vegetation retained; and clearing will be required within 75 feet of one stream. The cleared corridor will be maintained as required by the DEP.
- D. *Conclusion.* The configuration of the Project features will allow the stream buffers required by §10.27,B,1 of the Commission's Standards to be maintained, except as noted for the collector line corridor which will be maintained as required by DEP. No Project features will be located within 250 ft. of a lake, pond, or river (*see* Finding #16,E, Setbacks). The Project features will meet the applicable provisions of §10.27,B, or if in excess of these standards as noted in Section C, are not expected to cause an undue adverse impact to the affected stream.

18. Signs – §10.27, J of the Commission's Land Use Standards. §10.27.J of the Commission's Standards provides the standards for placement and sizing of signs used by the Project. Hancock Wind stated that all signs used on-site during construction will be informational signs associated with site activities, as provided for in §10.27,J,1,d and e; and that any permanent signs will be in compliance with §10.27, J.

- (1) *Conclusion.* All signs used for the Project during construction and operation will meet the provisions of §10.27,J of the Commission's Standards.

19. General Criteria for Approval – 12 M.R.S.A § 685-B(4) (incorporated in § 10.24 of the Commission's Land Use Standards). In evaluating the Project, the Commission considers and applies its land use standards not considered by the DEP in its review under 38 M.R.S.A. § 489-A-1(1).

- A. *Loading, parking and circulation – 12 M.R.S.A. § 685-B(4)(B) and Land Use Standard §10.24, B* specify that adequate provision must be made for transportation, including loading, parking and circulation of traffic in, on and from the site.
- (1) *Conclusion.* As proposed, and as discussed and concluded in Finding #14 above, the Project will meet the standard loading, parking and circulation in 12 M.R.S.A. § 685-B(4)(B) and § 10.24, B of the Commission’s Land Use Standards.
- B. *Conformance with statute, regulations, standards and plans – 12 M.R.S.A. § 685-B(4)(E) and Land Use Standard §10.24, E* specify that the Project must be in conformance with 12 M.R.S.A., Chapter 206-A and the regulations, standards and plans adopted thereto. Applicable statutory criteria for approval are discussed in this Finding #19. Additionally, the Commission has more generally reviewed Title 12, Chapter 206-A and no Project components or features are out of conformance with any applicable statutory standards; for example, no spaghetti-lots are proposed. *See, e.g.,* 12 M.R.S.A. § 682-A (prohibiting the creation of spaghetti-lots). As explained more fully in Findings #1 through #18 above, the Commission has reviewed the Project under applicable regulations and standards, specifically the Commission’s Land Use Standards contained in Chapter 10 of its rules, and, as articulated in the findings above, the Project conforms with these regulations and standards. Finally, in conducting its certification review and reviewing and applying the applicable statutory provisions in Chapter 206-A and the applicable regulations and standards, the Commission interpreted and applied the statutory provisions, regulations and standards in light of the CLUP. *See* 12 M.R.S.A. § 685-C(1) (“The [C]ommission must use the [CLUP] as a guide in . . . generally fulfilling the purposes of this chapter.”)
- (1) *Conclusion.* As proposed, the Project satisfies the conformity requirement in 12 M.R.S.A. § 685-B(4)(E) and § 10.24, E of the Commission’s Land Use Standards.
- C. *Placement of structures on lots in a subdivision – 12 M.R.S.A. § 685-B(4)(F) and Land Use Standard §10.24, F* specify that placement of a structure on a lot in a subdivision only may be allowed after the subdivision has been approved by the Commission.
- (1) *Conclusion.* As proposed, and as discussed and concluded in Finding #13 above, the Project will not involve development within a subdivision.

FINAL CONCLUSION

Based on the findings set forth above, and in addition to the conclusions set forth above, the Commission concludes that, with respect to the 18-turbine Hancock Wind Project proposal, Hancock Wind has met its burden of demonstrating that the Project conforms with the applicable regulatory and statutory requirements and plans adopted pursuant to 12 M.R.S.A., Chapter 206-A and meets the Commission’s Land Use Standards applicable to the Project that are not considered in the DEP review.

CONDITIONS

Therefore, the Commission CERTIFIES to the DEP that Site Law Certification SLC-2, submitted by Hancock Wind, LLC for the 18-turbine Hancock Wind Project, as proposed, complies with the relevant provisions of the Commission’s Land Use Standards, subject to the findings of fact and conclusions contained herein, and the following conditions:

1. *Vehicle circulation, access, and parking.* All Project traffic, roads and parking areas must meet the applicable provisions of §10.25,D of the Commission’s Land Use Standards. In particular:

A. *Vehicle circulation and access.*

- (1) During construction, informational signs to assure traffic safety must be placed at Project entrances and along any Project roads that are also used by the public or used for forest operations.
- (2) During construction and operation, adequate sight distances must be provided where a Project road enters onto a road used by the public.
- (3) During construction and operation, Project traffic must be coordinated with any forest operations vehicles also using the Project access roads.
- (4) New or upgraded Project roads must be at least 24 feet wide, and must be configured to allow for safe passage by wood haulers or other large vehicles and the public.

B. *Parking areas.* All designated temporary parking areas used during construction must be set back at least 75 feet from the traveled portion of roads used by the public and roads used for forest management activities.

2. *Lighting.*

A. With the exception of the avian safety lighting on the turbines and met towers required by the Federal Aviation Administration, which is exempt from the provisions of §10.25,F,2, all Project permanent exterior lighting must meet the standards of §§10.25,F,2,a, b and c of the Commission's Land Use Standards. Outside lighting at the turbine bases must be motion-sensitive or manually-operated, and turned off when not in use. Outside permanent lighting at the substation must be turned off when not in use.

B. Temporary lighting at the five Project entrances specified in Finding #8,B must be limited to only that which is needed to provide for security during construction. The use of trailer-mounted floodlights is limited to during construction, as needed to install the turbines.

3. *Signs.* All Project signs must meet the provisions of §10.27,J of the Commission's Land Use Standards.

4. *Setbacks.* All temporary and permanent structures must be located as described in Findings #8 and #16,E, and as depicted on Exhibit 1 of the Site Location of Development permit application with respect to setbacks, in accordance with §10.26,D,2 of the Commission's Land Use Standards, with the following exception:

A. The two identified utility poles of the 34.5 kV collector line may be located closer than 100 feet to P-WL1 wetlands if needed to provide adequate support for the line, in accordance with §10.26,G,5, but the poles must be at least 75 feet from the P-WL1 wetland.

5. *Clearing.* Vegetated buffers along streams must be maintained in accordance with §10.27,B of the Commission's Land Use Standards, except that where the 34.5 kV collector line corridor crosses a stream the vegetation may be managed as required by DEP.

6. *Title, Right or Interest.* The DEP finds in its Site Location of Development permitting decision that Hancock Wind possesses sufficient title, right or interest to develop the Project.

This approval of a request for certification, issued to the Department of Environmental Protection, is not final agency action. Pursuant to 5 M.R.S.A. §§ 11001 *et seq.*, a person aggrieved by a DEP Site Location of Development permit decision containing this certification determination may appeal the DEP's final agency action to Superior Court. As part of such an appeal, a person aggrieved may seek judicial review of the

components of the DEP's final agency action, including the Commission's certification determination that is incorporated into the DEP's permitting decision.

DONE AND DATED AT GREENVILLE JUNCTION, MAINE THIS 5th DAY OF APRIL, 2013.

By: _____
Nicholas D. Livesay, Executive Director

APPENDIX A



PAUL R. LEPAGE
GOVERNOR

STATE OF MAINE
DEPARTMENT OF AGRICULTURE, CONSERVATION & FORESTRY
LAND USE PLANNING COMMISSION
22 STATE HOUSE STATION
AUGUSTA, MAINE 04333-0022

WALTER E. WHITCOMB
COMMISSIONER

NICHOLAS D. LIVESAY
EXECUTIVE DIRECTOR

Maria Lentine-Eggett
Maine Department of Environmental Protection
106 Hogan Road
Bangor, ME 04401

For

Hancock Wind Project (SLC-2)
Hancock Wind, LLC
T22 MD BPP, T16 MD BPP and the Town of Osborn, Hancock County

Certification of Allowed Use

January 24, 2013

Dear Maria:

On January 14, 2013, Hancock Wind, LLC, a subsidiary of First Wind represented by its agent Stantec Consulting, submitted to the Department of Environmental Protection (the DEP) a combined Site Location of Development Law (Site Law)/Natural Resources Protection Act (NRPA) application for the Hancock Wind Project. The proposed Hancock Wind Project is located within the unorganized townships of T22 MD BPP, T16 MD BPP, and the Town of Osborn¹ in Hancock County. Hancock Wind, LLC concurrently provided copies of portions of this combined application to the Land Use Planning Commission (the LUPC). On January 16, 2013, the DEP requested that the LUPC review these materials to determine whether to certify to the DEP that the Project (a) is an allowed use within the subdistricts in which it is proposed and (b) meets the land use standards established by the LUPC that are not considered in the DEP's permit review. 12 M.R.S. § 685-B(1-A)(B-1). Hancock Wind included its public notice of the intent to develop and a map indicating the location of the proposed development with its DEP application; the notice and map were also included in the portions of the combined application provided to the LUPC.

¹ The Town of Osborn is partially organized, with the Land Use Planning Commission serving as its planning board. Osborn is subject to the provisions of the Commission's Comprehensive Land Use Plan (page 41), which states, "Town government in these communities is no different from other Maine towns, except that jurisdiction over land use remains with the Commission until such time as these towns, individually, opt to assume local control."

Proposal and subdistricts proposed for development

Hancock Wind, LLC proposes to construct the Hancock Wind Project, consisting of 18 turbines, new and upgraded existing access roads, a 34.5 kV electrical collector line, and an addition to the existing Bull Hill Wind substation where the collector line connects the project to the existing 115 kV Bangor Hydro Electric Company Line 66 (collectively, the Project). With the exception of an Operations & Maintenance (O&M) building, which will be located in the organized Town of Aurora², the Project is located entirely within unorganized or deorganized areas of the State. The subdistricts affected by the Project are the General Management (M-GN), Shoreland Protection (P-SL), and Wetland Protection (P-WL) subdistricts. The Project will be located entirely within the expedited permitting area for wind energy development.

Review criteria

The following statutory provisions are relevant to the determination of whether the Project is an allowed use in the subdistricts in which it is proposed to be located:

1. *12 M.R.S. § 685-B(1-A)(B-1)*. “Except for projects that are located in a planned subdistrict that was approved or accepted by the commission for processing prior to September 1, 2012, a permit from the commission is not required for a development of state or regional significance that may substantially affect the environment as defined in Title 38, section 482, subsection 2. A project meeting that definition is reviewed under Title 38, section 489-A-1. A person submitting a development proposal to the Department of Environmental Protection under Title 38, section 489-A-1 shall file a notice of the intent to develop and a map indicating the location of the proposed development with the commission prior to or concurrently with submission of a development application to the Department of Environmental Protection. The Department of Environmental Protection must receive certification from the commission that the proposed development is an allowed use within the subdistrict or subdistricts for which it is proposed and the proposed development meets any land use standard established by the commission that is not considered in the department’s review under Title 38, section 489-A-1, subsection 1 before issuing a permit. Nothing in this subsection may be construed as prohibiting the commission from enforcing the land use standards certified to the Department of Environmental Protection under this paragraph.”
2. *12 M.R.S. § 685-B(2-C)*. “*Wind energy development; community-based offshore wind energy projects; determination deadline.* For purposes of this subsection, ‘expedited permitting area,’ ‘grid-scale wind energy development’ and ‘wind energy development’ have the same meanings as in Title 35-A, section 3451. The following provisions govern wind energy development.
 - A. The commission shall consider any wind energy development in the expedited permitting area under Title 35-A, chapter 34-A with a generating capacity of 100 kilowatts or greater or a community-based offshore wind energy project a use requiring a permit, but not a special exception, within the affected districts or subdistricts.

² The Town of Aurora is not within the jurisdiction of the Commission.

- B. All grid-scale wind energy development proposed for the unorganized or deorganized areas of the State is reviewed and permits are issued by the Department of Environmental Protection under Title 35-A, chapter 34-A and Title 38, section 489-A-1.”

Assessment of the Project as an Allowed Use in the Subdistricts in Which Development is Proposed

Based on the materials submitted by Hancock Wind, LLC, the LUPC, through its staff, determines that:

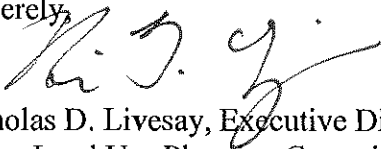
1. All parts of the Project, as proposed, are a wind energy development;
2. All parts of the Project, as proposed, with the exception of the O&M building, will be located in the unorganized townships of T16 MD BPP, T22 MD BPP and Town of Osborn, Hancock County;
3. The portions of T16 MD BPP, T22 MD BPP, and the Town of Osborn in which the Project is proposed to be located are within the expedited permitting area for wind energy development; and
4. In the subdistricts in which the Project is proposed to be located, the (M-GN) General Management, (P-SL2) Shoreland Protection, and (P-WL) Wetland Protection Subdistricts, wind energy development is an allowed use. (*See* Chapter 10 of the LUPC’s Land Use Districts and Standards, Sections 10.22,A,3,c(27); 10.23,L,3,c(24); and 10.23,N,3,c(18).)

Therefore, the LUPC certifies to the DEP that the Project is an allowed use in the subdistricts in which it is proposed. Neither special exception approval nor rezoning is required for the Project.

Please note that this certification is not final agency action and pertains only to the staff’s determination of the use proposed by Hancock Wind. The LUPC will conduct a further review of the request for certification, including all application and administrative record materials to determine whether to certify to the DEP that the Project meets the land use standards established by the LUPC that are not considered in the DEP’s permit review.

If you have any questions or would like to further discuss this matter, please contact Marcia Spencer-Famous at the Augusta office by email [Marcia.spencer-famous@maine.gov] or at (207) 287-4933.

Sincerely,



Nicholas D. Livesay, Executive Director
Maine Land Use Planning Commission

cc: Joy Prescott, Stantec
Juliet Browne, Esq. Verrill Dana
Neil Kiely, First Wind
Dave Fowler, First Wind
Samantha Horn-Olsen, LUPC Planning Manager
Marcia Spencer-Famous, LUPC Senior Planner



PAUL R. LEPAGE
GOVERNOR

STATE OF MAINE
DEPARTMENT OF AGRICULTURE, CONSERVATION & FORESTRY
LAND USE PLANNING COMMISSION
22 STATE HOUSE STATION
AUGUSTA, MAINE 04333-0022

WALTER E. WHITCOMB
COMMISSIONER

NICHOLAS D. LIVESAY
EXECUTIVE DIRECTOR

Memorandum

To: Commission Members

From: Marcia Spencer-Famous, Senior Planner
Samantha Horn Olsen, Planning Manager

cc: Amy Mills, Esq., Office of the Maine Attorney General
Kelly Boden, Esq., Verrill Dana
Dave Fowler, First Wind
Josh Bagnato, First Wind
Joy Prescott, Stantec
Maria Lentine-Eggett, DEP/Bangor

Date: March 29, 2013

Re: Site Law Certification for the Hancock Wind Project (SLC-2)

The staff has prepared a draft Site Law Certification document for your review in the Hancock Wind, LLC/Hancock Wind Project matter (SLC-2). This is the second such certification that the Commission has processed, and reflects the revised scope of the Commission's review in cases where the proposed development triggers Site Law. As we have discussed at previous meetings, the Commission is responsible for reviewing the project to determine if the proposed use is allowed in the subdistricts in which it is located and whether it meets the Commission's Land Use Standards which are not also considered in the DEP's review. In the case of wind energy development in the expedited permitting area, the Commission's review consists primarily of evaluation of standards such as setbacks and dimensional requirements, as well as flood hazard review when applicable. Visual impacts and noise considerations, as well as erosion, storm water, and a number of other considerations are handled within the DEP process.

At the April meeting, staff will present the Site Law Certification (SLC-2) document for the Hancock Wind Project to you, and answer any questions you may have. The staff recommendation is that you approve the certification document.