



STATE OF MAINE
Department of Environmental Protection

PAUL R. LEPAGE
GOVERNOR

PATRICIA W. AHO
ACTING COMMISSIONER

June, 2011

Fox Islands Wind LLC
c/o George Baker
66 Main Street
Vinalhaven ME 04863

RE: Siting Certification, Small-Scale Wind Energy Development #L-24654-ES-L-C

Dear Mr. Baker:

Please find enclosed a signed copy of your Department of Environmental Protection land use permit. You will note that the permit includes a description of your project, findings of fact that relate to the approval criteria the Department used in evaluating your project, and conditions that are based on those findings and the particulars of your project. Please take several moments to read your permit carefully, paying particular attention to the conditions of the approval. The Department reviews every application thoroughly and strives to formulate reasonable conditions of approval within the context of the Department's environmental laws. You will also find attached some materials that describe the Department's appeal procedures for your information.

If you have any questions about the permit or thoughts on how the Department processed this application please get in touch with me directly. I can be reached at (207) 446-1806 or at Daniel.Courtemanch@Maine.Gov

Yours sincerely,

A handwritten signature in black ink, appearing to read "Daniel Courtemanch".

Daniel Courtemanch, Project Manager
Division of Land Resource Regulation
Bureau of Land & Water Quality

pc: File

AUGUSTA
17 STATE HOUSE STATION
AUGUSTA, MAINE 04333-0017
(207) 287-7688 FAX: (207) 287-7826
RAY BLDG., HOSPITAL ST

BANGOR
106 HOGAN ROAD
BANGOR ME 04401
(207) 941-4570 FAX 207-941-4584

PORTLAND
312 CANCO ROAD
PORTLAND, MAINE 04103
(207) 822-6300 FAX: (207) 822-6303

PRESQUE ISLE
1235 CENTRAL DRIVE, SKYWAY PARK
PRESQUE ISLE, MAINE 04769-2094
(207) 764-0477 FAX: (207) 764-3143



STATE OF MAINE
DEPARTMENT OF ENVIRONMENTAL PROTECTION
17 STATE HOUSE STATION
AUGUSTA, ME 04333

DEPARTMENT ORDER

IN THE MATTER OF

FOX ISLANDS WIND LLC) CERTIFICATION SMALL-SCALE WIND
Vinalhaven, Knox County)
REVISED OPERATING PROTOCOL)
L-24564-ES-L-C (approval)) CONDITION COMPLIANCE

Pursuant to the provisions of Title 35-A M.R.S.A Section 3456, the Department of Environmental Protection (Department) has considered the application of FOX ISLANDS WIND LLC (licensee) with the supportive data, agency expert review comments, and other related materials on file and finds the following facts:

1. In Department Certification #L-24564-ES-A-N and Department Order #L-24564-NI-B-N/L-24564-VP-C-N dated June 5, 2009, the Department approved the construction of a small-scale wind energy development consisting of three 1.5 megawatt (MW) wind turbines and associated gravel pads; 2,050 linear feet of access roads; construction staging areas; and stormwater management system. The Department also approved 77,126 square feet of clearing within the 250-foot critical terrestrial habitat associated with a vernal pool for the construction of Turbine 1. The project is located on a 75.4-acre parcel off North Haven Road in the Town of Vinalhaven.
2. In issuing the certification, the Department concluded that certain conditions at the project site could result in sound levels in excess of those predicted by modeling. Therefore, the certification requires the facility to comply with the Department's noise standards under all conditions and at all times, and the Department approved the certification subject to special conditions. Specifically, special condition #8 of Department Certification # L-24564-ES-A-N reads as follows: "If the compliance data indicates that, under most favorable conditions for sound propagation and maximum amplitude modulation, the proposed project is not in compliance with Department standards as described in Finding 3, within 60 days of a determination of non-compliance by the Department, the applicant shall submit, for review and approval, a "Revised Operation Protocol" that demonstrates that the project will be in compliance at all the protected locations surrounding the development."
3. In July 2010, the Department received a complaint alleging that the licensee was not operating the facility in compliance with the Department's nighttime noise standard of 45 dBA. The Department reviewed noise data from a nighttime period on July 17 & 18, 2010, (July 2010 complaint period), and on November 23, 2010 the Department made a determination that the licensee's operation resulted in a sound output of 47 dBA during the nighttime period. Specifically, the Department's November 23rd letter states: "analysis of the operational, sound, and meteorological data collected during the [July 2010] complaint period, as well as other data collected during the period of May 1, 2010 to August 31, 2010, indicate that, at current operation levels, the facility is likely to exceed the required sound compliance level of 45 dBA when there is significant vertical and directional wind shear." The licensee, therefore, was required to submit a "Revised Operating Protocol," which would modify the way in which the

facility is authorized to operate under the certification. The licensee is required to affirmatively demonstrate that operation of the facility can be further modified to comply under all conditions and at all times with the Department's Noise Regulations, 06-096 CMR 375 § 10.

4. In accordance with Special Condition #8, the licensee submitted a proposed "Revised Operating Protocol" for the Fox Islands Wind facility on April 11, 2011 for incorporation into the certification. The "Revised Operating Protocol" submitted by the licensee modifies the way the facility will be operated by putting in place an additional noise reduction operations (NRO) setting that will be engaged during nighttime operating conditions (7 P.M. to 7 A.M.) when the wind is blowing in the south southwesterly direction (200-250⁰), which is the direction the wind was blowing during the July 2010 complaint period, and under wind shear conditions when the surface level (10-meter) wind speed measures a 10-minute wind speed of 6 mph or lower.

Wind direction shall be measured from the wind vane operating on the nacelle of Turbine #1. The wind vane records wind direction every second and conveys the data to a hysteresis control module located within the site specific Supervisory Control and Data Acquisition (SCADA) system. When the recorded wind direction reaches 200⁰ or 250⁰ the SCADA system automatically places the turbines into NRO mode. The NRO mode will be maintained until the recorded wind direction reaches 190⁰ or 260⁰.

The present capabilities of the facility's GE turbine control system include the ability to place turbines into NRO settings based on the time of day, hub-height wind speed, and hub-height wind direction. They do not include the ability to automatically place turbines into NRO based on an external signal, such as from a surface-level anemometer, which would be necessary in order to accurately calculate wind shear at the FIW facility location. Thus, at present, the only way that curtailment during wind shear conditions can be achieved is through manual adjustments done by GE at their Networks Operations Center, and the licensee stated that this service is cost prohibitive. GE has stated that the ability to automatically alter NRO settings based on an external signal will be available by the end of the 2011 calendar year. As a result, the licensee proposes that, until the remote capability to incorporate a wind shear calculation into the curtailment protocol is available, the licensee will achieve the required 2 dBA sound reduction by placing the turbines into the new NRO settings during the nighttime (7 P.M. to 7 A.M.) whenever meteorological conditions satisfy the wind direction criteria regardless of the wind shear condition.

The new conditions under which NRO will be implemented will be programmed by the licensee into the SCADA system that controls the turbines. Confirmation that the correct settings are in place will be achieved by the licensee monitoring the operational logs produced automatically by the SCADA system. Once the capability to adjust NRO settings from an external source is made available, the licensee will further incorporate a wind shear determination into the communications with the SCADA system by incorporating integral serial communications input from an R.M. Young 3101-L Wind Sentry Anemometer and a Campbell Scientific CR200X data logger or equivalent into the SCADA system of the turbines.

The licensee is proposing to install an R.M. Young 3101-L Wind Sentry Anemometer to measure the wind speed. This device has an accuracy of ± 1.1 miles per hour (mph) and is

capable of measuring wind speed up to 112 mph. The licensee is proposing to locate the anemometer as shown on the plan submitted with the condition compliance application entitled "Attachment 2: Site Plan", prepared by Sebago Technics on March 11, 2009 and amended by George Baker on April 26, 2011. The anemometer location will be located just off of the access road in an existing cleared area at the following GPS coordinates Latitude 44d 05' 41.96" Longitude 68d 51' 54.21". In reviewing the proposed anemometer location the Department identified concern regarding the presence of turbine wake turbulence at that location. Prior to utilizing the proposed anemometer location in the revised operation protocol, the licensee must demonstrate that the selected location is adequate for the measurement of surface level wind speeds. The licensee must submit 10 m wind speed data collected at the proposed anemometer location during the period July 1-August 31, 2011 correlated with 10 m wind speed data collected at ML-C Webster to the Department for site suitability concurrence prior to formal incorporation of the wind shear calculation data into the SCADA system. In the event that the Department determines that the new anemometer location is not acceptable, the applicant shall submit a new location to the Department for review and approval. Until the new anemometer is in place, the anemometer at ML-C Webster is sufficient for measuring surface level wind speed.

In addition to the revised operating protocol, the licensee submitted (1) a proposed operational sound measurement compliance protocol to revise the method by which the Department will determine if the licensee is in compliance with the standards for the control of noise; and (2) a complaint response protocol to revise the method by which FIW will collect and respond to citizen complaints associated with the ongoing operation of the FIW facility. These two proposals would replace previous protocols already incorporated into the certification. The Department has reviewed the proposed protocols and has found that, for the purpose of this approval, which is limited to the conditions present during the July 2010 complaint period, they adequately address the requirements of Department's Noise Regulations, 06-096 CMR 375 § 10.

5. The Department has reviewed the information submitted by the licensee and the wind shear and wind direction conditions present during the July 2010 complaint period. The Department has also reviewed, to the extent the Department has obtained it, other data collected by the licensee during the period of May 1, 2010 to August 31, 2010. Based upon that review, the Department finds that this revised operating protocol satisfactorily addresses the requirement of Special Condition #8 with respect to the July 2010 complaint period. Specifically, the revised operating protocol satisfactorily modifies operation of the facility when there are wind shear conditions and the wind is blowing in the south southwesterly direction (200-250⁰).

6. Severability. The invalidity or unenforceability of any provision, or part thereof, of this License shall not affect the remainder of the provision or any other provisions. This License shall be construed and enforced in all respects as if such invalid or unenforceable provision or part thereof had been omitted.

Based on the facts set forth above, the Department concludes that FOX ISLANDS WIND, LLC has complied with Special Condition #8 of Department Certification #L-24564-ES-A-N with respect to the conditions present during the July 2010 complaint period.

DEPARTMENT OF ENVIRONMENTAL PROTECTION

A handwritten signature in black ink that reads "Teco Brown". The signature is written in a cursive style with a large, sweeping initial "T" and "B".

This permit is digitally signed by Teco Brown on behalf of Acting Commissioner Patricia Aho. It is digitally signed pursuant to 10 M.R.S.A. § 9418. It has been filed with the Board of Environmental Protection as of the signature date.
2011.06.30 09:05:01 -04'00'

PLEASE NOTE ATTACHED SHEET FOR GUIDANCE ON APPEAL PROCEDURES...

dc/124564lc/ats#73311



DEP INFORMATION SHEET
Appealing a Commissioner's Licensing Decision

Dated: May 2004

Contact: (207) 287-2811

SUMMARY

There are two methods available to an aggrieved person seeking to appeal a licensing decision made by the Department of Environmental Protection's (DEP) Commissioner: (1) in an administrative process before the Board of Environmental Protection (Board); or (2) in a judicial process before Maine's Superior Court. This INFORMATION SHEET, in conjunction with consulting statutory and regulatory provisions referred to herein, can help aggrieved persons with understanding their rights and obligations in filing an administrative or judicial appeal.

I. ADMINISTRATIVE APPEALS TO THE BOARD

LEGAL REFERENCES

DEP's General Laws, 38 M.R.S.A. § 341-D(4), and its Rules Concerning the Processing of Applications and Other Administrative Matters (Chapter 2), 06-096 CMR 2.24 (April 1, 2003).

HOW LONG YOU HAVE TO SUBMIT AN APPEAL TO THE BOARD

The Board must receive a written notice of appeal within 30 calendar days of the date on which the Commissioner's decision was filed with the Board. Appeals filed after 30 calendar days will be rejected.

HOW TO SUBMIT AN APPEAL TO THE BOARD

Signed original appeal documents must be sent to: Chair, Board of Environmental Protection, c/o Department of Environmental Protection, 17 State House Station, Augusta, ME 04333-0017; faxes are acceptable for purposes of meeting the deadline when followed by receipt of mailed original documents within five (5) working days. Receipt on a particular day must be by 5:00 PM at DEP's offices in Augusta; materials received after 5:00 PM are not considered received until the following day. The person appealing a licensing decision must also send the DEP's Commissioner and the applicant a copy of the documents. All the information listed in the next section must be submitted at the time the appeal is filed. Only the extraordinary circumstances described at the end of that section will justify evidence not in the DEP's record at the time of decision being added to the record for consideration by the Board as part of an appeal.

WHAT YOUR APPEAL PAPERWORK MUST CONTAIN

The materials constituting an appeal must contain the following information at the time submitted:

1. *Aggrieved Status.* Standing to maintain an appeal requires the appellant to show they are particularly injured by the Commissioner's decision.
2. *The findings, conclusions or conditions objected to or believed to be in error.* Specific references and facts regarding the appellant's issues with the decision must be provided in the notice of appeal.
3. *The basis of the objections or challenge.* If possible, specific regulations, statutes or other facts should be referenced. This may include citing omissions of relevant requirements, and errors believed to have been made in interpretations, conclusions, and relevant requirements.
4. *The remedy sought.* This can range from reversal of the Commissioner's decision on the license or permit to changes in specific permit conditions.

5. *All the matters to be contested.* The Board will limit its consideration to those arguments specifically raised in the written notice of appeal.

6. *Request for hearing.* The Board will hear presentations on appeals at its regularly scheduled meetings, unless a public hearing is requested and granted. A request for public hearing on an appeal must be filed as part of the notice of appeal.

7. *New or additional evidence to be offered.* The Board may allow new or additional evidence as part of an appeal only when the person seeking to add information to the record can show due diligence in bringing the evidence to the DEP's attention at the earliest possible time in the licensing process or show that the evidence itself is newly discovered and could not have been presented earlier in the process. Specific requirements for additional evidence are found in Chapter 2, Section 24(B)(5)

OTHER CONSIDERATIONS IN APPEALING A DECISION TO THE BOARD

1. *Be familiar with all relevant material in the DEP record.* A license file is public information made easily accessible by DEP. Upon request, the DEP will make the material available during normal working hours, provide space to review the file, and provide opportunity for photocopying materials. There is a charge for copies or copying services.

2. *Be familiar with the regulations and laws under which the application was processed, and the procedural rules governing your appeal.* DEP staff will provide this information on request and answer questions regarding applicable requirements.

3. *The filing of an appeal does not operate as a stay to any decision.* An applicant proceeding with a project pending the outcome of an appeal runs the risk of the decision being reversed or modified as a result of the appeal.

WHAT TO EXPECT ONCE YOU FILE A TIMELY APPEAL WITH THE BOARD

The Board will formally acknowledge initiation of the appeals procedure, including the name of the DEP project manager assigned to the specific appeal, within 15 days of receiving a timely filing. The notice of appeal, all materials accepted by the Board Chair as additional evidence, and any materials submitted in response to the appeal will be sent to Board members along with a briefing and recommendation from DEP staff. Parties filing appeals and interested persons are notified in advance of the final date set for Board consideration of an appeal or request for public hearing. With or without holding a public hearing, the Board may affirm, amend, or reverse a Commissioner decision. The Board will notify parties to an appeal and interested persons of its decision.

II APPEALS TO MAINE SUPERIOR COURT

Maine law allows aggrieved persons to appeal final Commissioner licensing decisions to Maine's Superior Court, see 38 M.R.S.A. § 346(1); 06-096 CMR 2.26; 5 M.R.S.A. § 11001; & MRCivP 80C. Parties to the licensing decision must file a petition for review within 30 days after receipt of notice of the Commissioner's written decision. A petition for review by any other person aggrieved must be filed within 40-days from the date the written decision is rendered. The laws cited in this paragraph and other legal procedures govern the contents and processing of a Superior Court appeal.

ADDITIONAL INFORMATION: If you have questions or need additional information on the appeal process, contact the DEP's Director of Procedures and Enforcement at (207) 287-2811.

Note: The DEP provides this INFORMATION SHEET for general guidance only; it is not intended for use as a legal reference. Maine law governs an appellant's rights.
