



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
Date: December 21, 2012
Re: Site Law Certification for the Bowers Wind Project (SLC-1)

The staff has prepared a draft Site Law Certification document for your review in the Champlain Wind LLC / Bowers Wind Project matter (SLC-1). This is the first 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 area, the Commission's review consists primarily of evaluation of standards such as setbacks and dimensional requirements, as well as flood hazard review. 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 January meeting, staff will present the document to you and answer any questions you may have. The staff recommendation is that you approve the certification document.



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Certification

COMMISSION DETERMINATION
IN THE MATTER OF

Department of Environmental Protection
regarding:
Champlain Wind, LLC
Site Law Certification SLC-1

Findings of Fact and Determination

The Maine Land Use Planning Commission, at a meeting of the Commission held on January 4, 2012, at Machias, Maine, after reviewing the certification request and supporting documents submitted by Champlain Wind for Site Law Certification SLC-1, public comments, and other related materials on file, pursuant to the Commission's Land Use Standards, finds the following facts:

1. *Person Requesting Certification:* Champlain Wind, LLC
129 Middle Street
Portland, ME 04101
2. *Accepted as Complete for Processing:* October 19, 2012
3. *Location of Proposal:* Carroll Plantation, Penobscot County; and Kossuth Township, Washington County

Carroll Plantation – Map 1, Lots 1, 3.1, and 3.2; Map 5, Lots 17 and 18.4; Map 8, Lots 2, 5 and 13; Map 11, Lots 9.1 and 9.2
Kossuth Township – Map 1, Lots 4, 7, 9.1, 9.2 and 23
UTM Northing 575820.1830
UTM Easting 5025796.8616

4. *Current Zoning:* (M-GN) General Management Subdistrict
(P-WL) Wetland Protection Subdistrict

(P-SL2) Shoreland Protection Subdistrict

5. *Permanent project area.* 34 acres for turbines and other structures, excluding the 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 LUPC or the Commission) 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 which are not considered in the DEP review.

The following Findings, Conclusions and Conditions constitute the Commission's certification that the Bowers Wind Project, as proposed, is a use allowed with a permit in the subdistricts affected, and meets the applicable Land Use Standards which are not considered in the DEP review.

PROPOSAL

7. On October 3, 2012, Champlain Wind, LLC submitted to the Commission a copy of a DEP Site Law/ Natural Resources Protection Act (NRPA) application for the Bowers Wind Project (hereinafter the Project) to the Commission, which includes Section 31, addressing the Commission's criteria for certification.
 - A. The proposed Project is a 48 megawatt (MW) grid-scale wind energy development to be located in the expedited permitting area for wind energy development on Dill Hill in Kossuth Township, Washington County; and Bowers Mountain in Carroll Plantation, Penobscot County.
 - B. The portion of the Project in Kossuth Township would be on land added to the expedited permitting area in 2010 after review by the former Land Use Regulation Commission.
 - C. The Project will be located within the following subdistricts: General Management Subdistrict (M-GN), Shoreland Protection Subdistrict (P-SL), and Wetland Protection Subdistrict (P-WL). The Project will affect four areas identified on Federal Flood Insurance Rate maps as areas of special flood hazard, none of which has been mapped by the Commission as Flood Prone Area Subdistrict (P-FP), but which are regulated by the Commission in the same manner as mapped P-FP subdistricts.

- D. The Project will connect to the New England grid at the existing 115 kV Line 56 transmission line owned by Evergreen Gen Lead, LLC, which is located directly adjacent to the proposed substation.
 - E. An Operations & Maintenance (O&M) facility and a substation will be located on the north side of Route 6 on two different parcels, and separately from the turbines.
8. *Project description.* The proposed Project would be located on portions of fifteen (15) parcels held by easement, lease, deed or purchase and sales agreement. In addition, a right of way for use and upgrading of an existing road on a sixteenth parcel is also included in the project. The Project consists of:
- A. *Turbines.* Up to sixteen (16) 3.0-MW turbines with a maximum height of 459 feet, each located within a turbine pad measuring up to approximately 371 feet in diameter, at elevations ranging from 700 feet to 1200 feet above mean sea level.
 - B. *Roads and stream crossings.*
 - (1) *Crane path.* Four (4) miles of new 35-foot wide crane path access road along the turbine string running from Bowers Mountain to Dill Hill;
 - (2) *New access roads.* Three (3) miles of new 24-foot wide access roads;
 - (a) Baskahegan Access Road – This new road segment will create the primary access road for the Project, and will connect to the upgraded portions of the existing Dill Hill Access Road and the new Bowers Mountain Access, providing access to the turbine strings (see Section (3), below).
 - (b) Bowers Mountain Access – This new road segment will provide access to the Bowers Mountain crane path. It will not be at the same location as the existing Bowers Mountain Road, which will not be used for the proposed Project.
 - (c) AR-50 Access Road – While there is an existing, overgrown partial roadbed at this location, generally the AR-50 Road will be new and provide access to the proposed O&M facility. One stream will be crossed by the AR-50 Access Road, with the O&M facility driveway also crossing over this stream at a second point. The AR-50 Road will run between Route 6 and Danforth Road. The portion of the road from Route 6 to the O&M facility driveway will be 24 feet wide, and the remainder of the road will be 18 feet wide.
 - (3) *Existing roads to be upgraded and/or provide access during construction and operation.* Portions of three existing roads, totaling 1272 feet, will be upgraded to provide access to the Project.
 - (a) Dill Hill Road – A private road with no public right of access, a portion of which will be upgraded to 24 feet wide.
 - (b) Moose Road - A private road with no public right of access, which will provide access during construction. Only the first section of Moose Road starting at Brown Road will be upgraded. The existing road is 18 feet wide, and the upgrading will provide a better road surface, but not widen the road.
 - (c) Dipper Pond Road - A private road used by the public, which will provide access to a lay-down area and to the Project area. The portion of the road providing access to the lay-down area includes one stream crossing, but this section will not

be upgraded. The portion of the road providing access to the Project area will be upgraded to 24 feet wide.

- C. *Met towers.* One 90 meter (295 feet) tall permanent meteorological (met) tower and two temporary met towers.
 - D. *O&M facility.* A 70 foot by 100 foot O&M building within an existing 44 acre open area, up to eight (8) temporary trailers to be used during construction, and an approximately 1600 foot long by 24 foot wide driveway to be located along the AR-50 Access Road. The O&M facility will also include two lay-down areas (see Section G, below). Three other temporary trailers will be placed on-site during construction: two in other lay-down areas, and one at the substation site.
 - E. *Collector line.* A 34.5 kV collector line running approximately 4.2 miles along the turbine string, and 5.2 miles from the turbines to the substation.
 - F. *Substation.* A 200 foot by 300 foot fenced-in area abutting the existing 115 kV transmission line corridor, with a 1700 foot long by 16 foot wide driveway that will provide access to the substation from North Road. One temporary trailer will be placed at this site during construction.
 - G. Ten (10) temporary lay-down areas, of which four (4) will be within existing cleared, mostly cleared, or partially cleared areas; and six (6) will be located in areas that are not yet cleared. The lay-down areas will be used for equipment storage and parking during construction. Two temporary trailers will be placed in two of the laydown areas other than those at the O&M facility (Section D, above) during construction.
9. *Certification of allowed use.* On October 19, 2012, the DEP requested that the Commission review the Site Law application materials, including Champlain Wind's 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 October 19th, the Commission provided a letter to DEP stating that the Project is an allowed use with a permit in the subdistricts affected (attached as appendix A).
10. *Public notice and public comments.* On October 30th and November 1st, a public notice of the request for certification was published in the Bangor Daily News and the Lincoln News, respectively. The notice was sent to the abutters to the Project by U.S. Postal Service mail, and electronically to the list of interested persons for the previous Bowers Wind Project permit when it was under review by the former Land Use Regulation Commission in 2011/12, the Commission's standard and public hearing mailing lists, and to several persons requesting to be kept informed of the certification review. 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 by the close of business on November 30, 2012; and that the Commission would take up such requests at its regular monthly business

meeting on December 14th. No requests for a public hearing or petitions to intervene were received.

During the certification review process, comments were received from several interested persons opposed to the Project. In summary, the interested persons expressed concern that the Project will adversely affect the recreation-based economy of Washington County, will not benefit the local economy, and will put additional burden on Maine's electrical rate payers. Also questioned were the amount and dependability of electrical power generated by wind projects, the viability of the wind industry because of the need for government subsidies, the difficulties of integrating wind generated power into the electrical grid, and adverse impacts to wildlife and scenic character due to wind turbines.

Title, Right or Interest

11. On October 19, 2012, the DEP requested that the Commission provide the DEP a certification determination with regard to the Project. On October 25, 2012, the DEP accepted Champlain Wind's application as complete and ready for processing. Based on these actions by the DEP and Condition #7 below, the Commission concludes Champlain 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 of Fact #13 through #19.

13. *Land Division History.*

- A. *Review Criteria.* 12 M.R.S.A. Sections 682(2-A) and 682(1)(B); and Sections 10.24, F and 10.25, Q, 1 of the Commission's Land Use Standards.
- B. *Champlain Wind's evaluation.* Champlain Wind provided a land division history for the fifteen (15) Project parcels listed in Finding of Fact #3, above. Champlain Wind evaluated all land transfers for each parent parcel during the preceding twenty years, noting where a division had occurred that formed a lot, and whether the lot counted as a subdivision lot or was exempt. Champlain Wind stated that if an easement is held for a parcel, it was not listed as a transfer when the easement did not form a lot. Champlain Wind determined that no land divisions requiring a subdivision permit had occurred for any of the Project's parcels during the preceding 20 years.
- C. *Conclusion.* Based on the materials supplied by Champlain Wind, no divisions requiring a permit have occurred during the preceding 20 years for any of the Project parcels that were evaluated.
 - (1) Lot 18.4 on map 5 in Carroll Plantation is an existing lot approved by the former Land Use Regulation Commission (LURC) on June 10, 1994, as a part of LDP 0011. The narrow configuration of this parcel suggests a "spaghetti" lot, but it is currently the same as it was when approved under LDP 0011.

- (2) Champlain Wind holds a right-of-way to use and improve an existing road for the purpose of constructing the Project on lot 22 on map 3 in Carroll Plantation, but this lot was not evaluated by Champlain Wind in the land division history. Because a right of way does not create a division of land, a land division history was not required.

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

A. *Review criteria - Sections 10.24,B and 10.25,D of the Commission's Land Use Standards.*

B. *Vehicular circulation and access – Sections 10.25,D,1; and 2,a, b, and d.* Champlain Wind proposes three permanent Project access points: the Baskahegan Access Road, with an entrance onto the south side of State Route 6; the AR-50 Access Road, with an entrance onto the north side of Route 6 to access the O&M facility; and the substation driveway, with an entrance onto North Road, which is a town road. No new Project roads will require exit by backing onto a roadway. All entrances will have adequate sight distances for traffic entering and leaving the Project area.

- (1) Segments of the existing Dipper Pond Road and Dill Hill Road will become a part of the primary Project roadway system. The existing Moose Road entering the Project area from Brown Road will only be used during construction.
- (2) Dipper Pond Road is privately owned, but used by the public. Dill Hill Road and Moose Road are private roads, with no public right of access. Any existing road to be used for the Project that is also used by the public and/or for forest management activities will continue to be co-used.
- (3) Because the Project will not generate a significant amount of traffic, no traffic analysis was conducted. Champlain Wind estimated that during peak construction, approximately 150 worker vehicles per day will be traveling to the Project site, which constitutes a minor traffic demand on Route 6. Once fully operational, the number of worker vehicles traveling to the Project site will be approximately ten to sixteen per day. During construction for an eight week period up to 40 large vehicles per day on some days are anticipated for turbine delivery and installation.
- (4) Champlain Wind stated it will obtain Maine Department of Transportation (DOT) road opening permits for the access points at the Baskahegan Access Road and the AR-50 Access Road prior to the start of construction. Champlain Wind will continue to coordinate with the DOT and BMV during construction, and will seek any permits needed, including approvals from DOT for any temporary modifications to existing roadways. Necessary permits will be obtained from the Over Limit Permits department of the Maine Bureau of Motor Vehicles (BMV) if needed.
- (5) Champlain Wind's road construction design provides for the new roads to connect at the existing roadway at an angle greater than 60 degrees, with a curb radius of more than 15 feet in order to accommodate large vehicles.

C. *Parking - Section 10.25,D,3,a, d, e, and f.* A parking area that will not exceed one acre is proposed to be located next to the O&M building. All parking will be off-street, and will

not be visible from Route 6 or residences. Champlain Wind stated that the parking area will be constructed in compliance with the provisions of Section 10.25,D,3,a and d-f. While the majority of Project parking will occur at the O&M facility, parking of construction equipment will occur within the lay-down areas, but not along existing roads.

- D. *Roadway Design* – See Finding of Fact #8B for a description of the project roads.
- E. *Conclusions*. Champlain Wind has demonstrated that the applicable criteria for vehicle circulation, access, parking, and roadway design in Section 10.24,B and Sections 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 - Sections 10.25,D,1 and 2*. Sections D,1 and D,2,a, b and d are applicable to the proposed Project. Champlain Wind has made adequate provisions for Project traffic entering and leaving public roadways during construction and operation, and for traffic on the Project roadway system. The proposed roadway layout and design will meet the provisions of Sections 2,a, b, and d; in particular, turn-outs will be provided along the access roads during construction and informational signs will be posted on existing roads associated with the Project construction and operation. Champlain Wind does not plan to retain the turn-outs after construction but will coordinate with the landowner(s) if either the landowner(s) or Champlain Wind wishes to make any turn-out permanent for future forest management activities.
 - (2) *Parking - Section 10.25,D,3*. Sections 3,a, d, e and f are applicable to the proposed Project. Champlain Wind’s proposal for parking during construction and operation will meet these standards. Permanent parking areas must be constructed in compliance with Sections 10.25,D,3,d, e and f.
 - (3) *Roadway design - Section 10.25,D,4*. Sections 4, a, b, d, 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 existing roads constitutes a Level A road project, and the new roads are a Level C road project, including the crane path road, the Baskehegan Access Road, and the AR-50 Access Road. Sections of the existing Dill Hill Road and Bowers Mountain Road that will be upgraded and integrated into the permanent Project roadway system will be considered as a part of the Level C road project.

In accordance with Section 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 system. The roadway design and specifications proposed are appropriate for this Project with regard to: the nature and level of use, particularly with regard to the large construction equipment that will be traveling on certain road segments; nature of the roads accessing the site; location relative to the sparse surrounding development; the type and intensity of the proposed use; and services and utilities likely to need access in the future. The proposed roadway system will meet the needs of the Project and will not cause safety problems, if constructed and managed as proposed. Erosion is considered by the DEP in its Site Law review.

15. *Lighting.*

A. *Review criteria - Section 10.25,F,2.*

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 Section 10.25,F,2, permanent lighting proposed for the Project will be at the O&M building, the substation, and potentially at the turbine bases to light the steps and entryway. Exterior lighting at the O&M building will be motion sensitive or manually controlled. Pole-mounted floodlights at the substation will only be turned on during work at the substation. All other permanent lighting, such as for the entry stairs at the base of each turbine, will be motion sensitive or manually controlled. Champlain Wind stated in section 31.6.4 of the application, that exterior lights at the O&M building and at the base of each turbine would meet the requirements of Section 10.25, F, 2.

C. *Temporary lighting during construction.* Temporary lighting to be used during turbine installation would only be necessary to take advantage of low wind conditions. Portable flood lights would be mounted on a trailer, and approximately three of these systems would be used at any one turbine location. Limited security lighting would also be used during construction at the entrances to the Baskahegan Access Road, the AR-50 Access Road, and the substation driveway.

D. *Conclusion.* The Project as proposed will meet the provisions of Section 10.25,F,2 of the Commission's Land Use Standards for permanent lighting. Motion sensor activated lighting is exempt from the requirements of Section 10.25,F,2.

16. *Flood prone areas – Areas of special flood hazard.*

A. *Review criteria - Section 10.25, T.* Sections 10.25,T,2,a(1) to (3), e, and k(2) and (3) of the Commission's Land Use Standards are applicable to the 34.5 kV collector line poles and the section of roadway proposed to be located in Federal Emergency Management Agency (FEMA) Zone A areas of special flood hazard or regulatory floodway.

B. Champlain Wind identified portions of the 34.5 kV collector line that will be located in FEMA Zone A areas of special flood hazard using available Q3 Flood Data, Flood Insurance Rate Maps (FIRM) and U.S.G.S. topographic data, and these project elements are addressed below. P-FP subdistricts have been mapped by the LUPC in Carroll Plantation, but none of the Project features would be located in the mapped subdistricts. Mapping of P-FP subdistricts in Kossuth Township by the LUPC has not yet been completed because FIRM maps are not available.

C. *Collector line poles.* Three segments of the Project's 34.5 kV collector line would cross areas of special flood hazard in Carroll Plantation. No such areas will be affected by the collector line poles in Kossuth Township.

- (1) Two segments of the 34.5 kV collector line will cross over tributaries to Baskahegan Stream - Lindsey Brook and Tolman Brook - and their associated areas of special flood hazard. One additional segment of the line passes over an area of special flood hazard that is not associated with a stream. At these locations, a total of nine (9) poles would be located within areas of special flood hazard. Champlain Wind stated that the poles qualify as “development” for the purpose of complying with Section 10.25,T,2, but do not meet the definition of a “structure” for the purpose of evaluating areas of special flood hazard.
 - (2) Champlain Wind has proposed construction practices for the poles in the areas of special flood hazard to meet the standards of Section 10.25,T,2,a, including anchoring and the use of flood resistant materials to minimize any flood damage potential. In addition, while forest cover would be cleared along the collector line corridor, shrub vegetation will be allowed to remain where the corridor crosses a stream to help maximize flood flow attenuation. No increase in the incidence of flooding, loss of flood water storage, or flood carrying capacity of the watercourse due to this project is anticipated.
 - (3) *Tolman Brook crossing.* Four (4) poles are proposed in an area of special flood hazard where the collector line crosses Tolman Brook: poles 66, 67, 68, and 69. The width of the area to be crossed would be 1079 feet, and the stream width at this location is 2 feet 6 inches. One pole, Pole 62, would be located within a 380-foot wide area of special flood hazard that is not associated with a brook, south of the Tolman Brook crossing. These five poles would together require filling of 200 square feet, of which 80 square feet would be in wetland.
 - (4) *Lindsey Brook crossing.* Four (4) poles are proposed in an area of special flood hazard where the collector line crosses Lindsey Brook: poles 11, 12, 13 and 14. The width of the area to be crossed is 1555 feet, and the stream width at this location is 4 feet 10 inches. These poles would require filling a total of 160 square feet, none of which is in wetland.
 - (5) *Regulatory floodway.* Pole 67, associated with the crossing of Tolman Brook, will be within the regulatory floodway. The floodway at this location was estimated to extend 153 feet from the brook and the pole will be located 142 feet from the brook. As such, Champlain Wind submitted the required completed S-4 form and a Floodway Development Certification, prepared by a registered professional engineer, for this pole, who certified that the 40 square feet of fill for pole 67 will not increase the water surface elevation of the base flood more than one foot at any point within Carroll Plantation, and the proposal is consistent with the applicable technical criteria. Champlain Wind also evaluated Pole 66, but found that it would not be located within the regulatory floodway.
- D. *Roadway.* A short section of the Baskahegan Access Road at the eastern boundary of Carroll Plantation where the road enters Kossuth Township would be located at the outermost edge of an area of special flood hazard where the elevation is at the highest possible point, within locational constraints due to landowner considerations. The road would be gravel, and would include ditches and culverts. Sections 2,a(2) and (3) are applicable to this section of the Project primary access road, which is considered to be

“development”, but is not treated as a “structure” when evaluating the standards applicable to activities in areas of special flood hazard.

E. *Conclusion.* The proposed collector line poles and the gravel roadway meet the definition of development, but do not meet the definition of a structure. For purposes of regulating development in areas of special flood hazard, a structure is defined as a walled and roofed building. Champlain Wind has supplied the required documentation for development within areas of special flood hazard and regulatory floodways, and, based on the professional certification and proposed construction practices has demonstrated that the applicable provisions of Section 10.25, T, 2, a, e, and k of the Commission’s Land Use Standards will be met by the Project for the specified nine utility poles and section of the access road.

17. *Minimum dimensional requirements – Sections 10.26, A through G of the Commission’s Land Use Standards.*

A. *Minimum lot size - Section 10.26, A.* Section 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. The smallest lot in the proposed Project area is lot 18.4 on map 5 in Carroll Plantation, at 1,682,383 square feet or approximately 38.6 acres in size. This lot is contiguous with six (6) other Project parcels on the south side of Route 6. The O&M building, which will include a subsurface wastewater disposal system, and the substation will be located on two of eight (8) contiguous Project parcels on the north side of Route 6, all of which are individually in excess of 40,000 square feet.

(1) *Conclusion:* As proposed, the Project will meet the standard for minimum lot size in Section 10.26, A, 2 of the Commission’s Land Use Standards.

B. *Minimum shoreline frontage - Section 10.26, B.* Sections 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 is 300 feet. The Project parcel bordering Dipper Pond has more than 300 feet of frontage. No Project parcel borders a pond greater than 10 acres in size, and all parcels containing a stream have more than 200 feet of stream frontage.

(1) *Conclusion:* As proposed, the Project will meet the requirements for minimum shoreline frontage in Sections 10.26, B, 1, b and 2, b of the Commission’s Land Use Standards.

C. *Minimum road frontage – Section 10.26, C.* Section 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 Project parcels on the south side of Route 6 include six contiguous parcels with more than 200 feet each of frontage on Route 6 and one parcel with 573 feet of frontage on Brown Road.

- (2) The Project parcels on the north side of Route 6 are contiguous and contain more than 200 feet each of road frontage.
- (3) *Conclusion.* As proposed, the Project will meet the standard for road frontage in Section 10.26,C,1,b of the Commission's Land Use Standards.

D. Minimum setbacks.

- (1) *Review criteria – Sections 10.26,D,2,and 3; and Section 10.26,G,5.* Section 10.26,D,2 specifies that the minimum setback for commercial or industrial development is 100 feet from minor flowing waters, P-WL1 wetlands and waterbodies less than 10 acres; 150 feet from waterbodies greater 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. Section 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.” Section 10.26,G,5 allows an exception for structures that must be located less than the setbacks specified in Section 10.26,D,2 due to the nature of their use.
- (2) *Turbines.* All turbines are proposed to be located well in excess of the minimum setback requirements. The closest a turbine would be to a waterbody less than 10 acres in size is Turbine 12 at 1138 feet from Dipper Pond; and from a waterbody greater than 10 acres, Turbine 13 would be located 2.31 miles from Pleasant Lake. The turbines will be setback further than the minimum setback requirements for streams, P-WL1 wetlands, roads, and property boundaries.
- (3) *Collector line and poles.* The 34.5 kV collector line is proposed to be located in excess of the minimum setback requirements, except where the line would cross Route 6 where one pole would be located 30 feet from the north side of Route 6; and up to ten poles that would be set back less than 100 feet, but at least 75 feet from PSL-2 streams. The pole locations are necessary to provide adequate support for the collector line pole to pole spans. The locations of the collector line poles proposed to be located less than the setback distances in Section 10.26,D would be consistent with Section 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. Otherwise, the closest the proposed collector line would be to a side or rear property boundary line is 75 feet on lot 18.4 on map 5, Carroll Plantation.
- (4) *O&M building and temporary trailers.* The O&M building is proposed to be set back 631 feet from the western side property line, 513 feet from the eastern side property line and 1601 feet from the rear property line of lot 17 on map 5 in Carroll Plantation; and 961 feet from the northern traveled edge of Route 6. The O&M building and the temporary trailer locations would exceed all minimum setback requirements.
- (5) *Substation.* The closest the proposed substation would be to a side or rear property boundary line is 173 feet where the Project parcel abuts parcel lot 17.2 on map 3 in Prentiss Township. The substation would exceed all minimum setback requirements.
- (6) *Temporary laydown areas.* All proposed temporary laydown areas will meet or exceed the required setback distances.
- (7) *Conclusion.* As proposed, the Project will meet the standards for setbacks in Section 10.26, D,2; except that the utility poles where the 34.5 kV line crosses a road as described in finding #17,D,4, if needed to provide adequate support for the line, may

be located closer than 75 feet from the traveled surface of the road; and where the line crosses a P-SL2 stream may be closer than 100 feet, but not less than 75 feet from the stream, in accordance with Section 10.26,G,5 of the Commission's Land Use Standards.

E. *Maximum lot coverage - Sections 10.26, E,1 and 2.* Section 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 highest percentage coverage by buildings or other structures on any of the Project parcels is 5.49%, on lot 9.1 on map 11, Carroll Plantation.

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

F. *Maximum structure height - Section 10.26,F.*

(1) *Review criteria.* Section 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 (*i.e.*, great pond) 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 would be located more than 500 feet from a great pond. Other than the turbines and met towers, the O&M building would be the tallest structure proposed at 28 feet. The turbines would be 459 feet in height at the upward tip of the blade, and the met towers would be 295 feet in height. The turbines and met towers do not contain floor area, and as such may exceed the maximum height.

(3) *Conclusion.* In reviewing wind energy developments, the factors that the Commission would evaluate to determine whether to approve a tower or turbine height in excess of 100 feet 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.

18. *Vegetation clearing – Section 10.27,B.*

A. *Review criteria.* Based on the materials supplied by Champlain Wind, Sections 10.27,B,1, 2, and 4 of the Commission's Land Use Standards are applicable to this Project.

B. In total, 34 acres will remain permanently cleared for the proposed Project, specifically for the turbines, the crane path access road and new access roads, met towers, and substation. For the 34.5 kV collector line corridor, the tree canopy will be permanently removed, with shrub vegetation retained. Temporary clearing during construction will total 185 acres primarily for the lay-down areas, and areas around turbines and met towers that will be re-vegetated. The O&M building, 8 temporary trailers, and two of the lay-down areas will be located in an existing cleared area, and two other lay-down areas will be located in partially cleared areas.

C. *Conclusion.* The Project design includes setbacks that will allow the stream, road and property line buffers required by Section 10.27,B,1 of the Commission's Land Use Standards to be met, with the exception of the collector line corridor which will be maintained as required by DEP. No Project features will be located near a lake, pond, or river (*see* Finding of Fact #17,D, Setbacks).

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

Conclusion: All signs proposed to be used for the Project during construction and operation will meet the provisions of Section 10.27,J.

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 16-turbine Bowers Wind Project proposal, Champlain 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 which are not considered in the DEP review.

CONDITIONS

Therefore, the Commission CERTIFIES to the DEP that Site Law Certification SLC-1, submitted by Champlain Wind, LLC for the 16-turbine Bowers 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 Section 10.25,D. In particular:
 - A. *Vehicle circulation and access.*
 - (1) Informational signs must be placed at Project entrances and along Project roads to be co-used by the public or for forest operations during construction to assure traffic safety.
 - (2) Adequate sight distances must be provided where a Project road enters onto a road used by the public during construction and operation.
 - (3) Project traffic must be coordinated with any forest operations vehicles also using the Project access roads during construction and operation.
 - (4) New or upgraded project roads must be no less than 18 feet wide and must include turn-outs during construction where needed for safe passage by wood haulers or other large vehicles and the public.

- B. *Parking areas.*
 - (1) Each permanent parking area must be no larger than 1 acre in size, must be located off-street, and must be accessed by a driveway.
 - (2) Except for as provided for sight triangles in Section 10.25,D,3,e, a vegetated buffer must be maintained in accordance with Section 10.27,B, Clearing, between permanent parking areas and public roadways.
 - (3) All temporary parking areas must be set back at least 75 feet from the traveled portion of roadways used by the public or for forest management activities.
- 2. *Areas of special flood hazard.* Project development to be located within areas of special flood hazard is limited to the segment of the Baskehegan Access Road, and the nine poles as described in Finding of Fact #16. The utility poles include poles 11 to 14, 62, and 66 to 69. Of these, only Pole 67 is approved to be located in a regulatory floodway. The roadway and all poles to be located in an area of special flood hazard must be installed using the proposed construction practices, as summarized in Finding of Fact #16. Project development located within an area of special flood hazard must meet the applicable provisions of Sections 10.25,T,2,a, e, and k.
- 3. *Lighting.*
 - A. All Project permanent exterior lighting must meet the standards of Sections 10.25,F,2,a, b and c. Lighting at the O&M building and the turbine bases must be motion-sensitive or manually-operated, and turned off when not in use. Permanent lighting at the substation must be turned off when not in use.
 - B. Temporary lighting at Project entrances 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.
- 4. *Signs.* All Project signs must meet the provisions of Section 10.27,J.
- 5. *Setbacks.* All temporary and permanent structures must be located as described in Finding of Fact #17,D, and depicted on Exhibit 1-A of the Site Location Development permit application with respect to setbacks, in accordance with Sections 10.26,D,2 of the Commission's Land Use Standards, except that utility poles may be located closer to a roadway or stream at crossings if needed to provide adequate support for the collector line, in accordance with Section 10.26,G,5. The poles must not be located within a road right-of-way; and must be set back at least 75 feet from all streams.
- 6. *Clearing.* Existing vegetated buffers between Project components and property lines, public roadways and streams must be maintained in accordance with Section 10.27,B of the Commission's Land Use Standards, except that where the 34.5 kV collector line corridor crosses roads or streams the vegetation may be managed as required by DEP.
- 7. *Title, Right or Interest.* The DEP finds in its Site Location of Development permitting decision that Champlain 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 MACHIAS, MAINE THIS 4th DAY OF JANUARY, 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

Jessica Damon
Maine Department of Environmental Protection
106 Hogan Road
Bangor, ME 04401

For

Bowers Wind Project, Champlain Wind, LLC
Carroll Plantation and Kossuth Township, Maine

Certification of Allowed Use

October 19, 2012

Dear Jessica:

On October 3, 2012, Champlain 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 Bowers Wind Project. This project is located entirely within the unorganized townships of Carroll Plantation (Penobscot County) and Kossuth Township (Washington County). Champlain Wind LLC concurrently provided copies of portions of this combined application to the Land Use Planning Commission (the LUPC) for the LUPC's review in determining 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). Champlain Wind included a 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 included in the portions of the combined application provided to the LUPC. On October 19, 2012, the DEP formally requested that the LUPC make a certification determination with regard to Chamberlin Wind's proposal.

Proposal and subdistricts proposed for development

Champlain Wind proposes to construct the 48 megawatt Bowers Wind Project, consisting of 16 turbines, new and existing access roads, a 34.5 kV electrical collector line, an Operations and Maintenance building, and a substation where the collector line connects the project to an

existing generator lead line (collectively, the Project). 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), Flood Prone Area (P-FP), Shoreland Protection (P-SL), and Wetland Protection (P-WL) subdistricts.

In addition, the Project is located entirely within the expedited permitting area for wind energy development. Previously, the expedited permitting area for wind energy development did not include the portion of the Project proposed to be located in Kossuth Twp., but on December 1, 2010 the predecessor to the LUPC, the Land Use Regulation Commission, approved Champlain Wind's rule-making petition to add 695 acres of that township to the expedited permitting area.

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.
 - 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 the Champlain Wind, 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, will be located in Carroll Plantation (Penobscot County) or Kossuth Township (Washington County);
3. The portions of Carroll Plantation and Kossuth Township 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, (P-FP) Flood Prone Area Protection (crossings by the 34.5 kV line), and (P-WL) Wetland Protection (crossing by the 34.5 kV line) subdistricts, wind energy development is an allowed use. (*See* Chapter 10 of the Commission’s Land Use Districts and Standards, Sections 10.22,A,3,c(27); 10.23,C,3,c(22); 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 Champlain Wind. The LUPC will conduct a further review of 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 at 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
Samantha Horn-Olsen, LUPC Planning Manager
Marcia Spencer-Famous, LUPC Senior Planner