

STAFF RECOMMENDATION

STAFF RECOMMENDATION  
Accepted \_\_\_\_\_ Accepted As Amended \_\_\_\_\_  
Reversed and Rewritten \_\_\_\_\_  
Tabled \_\_\_\_\_ Public Hearing \_\_\_\_\_



STATE OF MAINE  
DEPARTMENT OF CONSERVATION  
22 STATE HOUSE STATION  
AUGUSTA, MAINE  
04333-0022

JOHN ELIAS BALDACCI  
GOVERNOR

ELIZA TOWNSEND  
ACTING COMMISSIONER

**TO:** Commission Members  
**FROM:** Marcia Spencer Famous, Senior Planner *MSF*  
**DATE:** February 3, 2010  
**SUBJECT:** Requests for public hearing and Intervenor status; TransCanada Maine Wind Development, Inc.; Development Permit DP 4860; Chain of Ponds Twp. and Kibby Twp., Franklin County

**A. Summary of Proposal**

On December 23, 2009 staff accepted for processing an application for Development Permit DP 4860, submitted by TransCanada Maine Wind Development, Inc. for a wind energy facility (the so-called "Kibby Expansion Project") consisting of fifteen 3.0 megawatt Vestas turbines to be located on the ridgeline north of Sisk Mountain in Chain of Ponds Twp. and Kibby Twp., Franklin County, with the northern-most turbines located adjacent to the Canadian border. The proposed 45 megawatt wind energy facility would be connected to the existing Kibby Wind Power Project, which is located in Kibby Twp. and Skinner Twp. (reference Development Permit DP 4794). The fifteen proposed turbines would be located above 2,700 feet in elevation in a Mountain Area Protection Subdistrict (P-MA), within the area described in Appendix F of the Chapter 10 Land Use Districts and Standards, *the Expedited Wind Energy Development Area Designation*.

The distance of the nearest proposed turbine to the Chain of Ponds and State Route 27 is approximately 2.5 miles. Residences, primarily seasonal camps, are located along the shoreline of the Chain of Ponds. The distance of the proposed turbines to the existing Kibby Wind Power Project is approximately two miles. The proposed development would include access roads, a collector line, and substation; would connect to the existing Kibby 115 kV generator lead line; and would use the existing Operations & Maintenance facility located at the intersection of Route 27 and Gold Brook Road.

Scenic resources of state or national significance located within three miles of the proposed development area include the Chain of Ponds, the historic Arnold Trail, Kibby Stream, and Natanis Pond Overlook. Extending out to eight miles, several additional scenic resources are present: Arnold Pond, Crosby Pond, and the North Branch of the Dead River, Spencer Stream, and the Sarampus Falls Rest Area.

## **B. Notice of Filing.**

Prior to the application for Development Permit DP 4860 being accepted as complete for processing, the applicant published a Notice of Intent to File in five locally circulated newspapers on or about November 25, 2009. The notice was sent to the Towns of Carrabassett Valley and Eustis/Stratton, the Franklin County Commissioners, and 34 landowners of parcels in the general vicinity of the proposed development area. The applicant also distributed a second notice, the Notice of Complete Application, in the same manner on or about December 23, 2009. The second Notice stated that requests for public hearing and Intervenor status must be submitted to LURC by the close of business on January 13, 2010, and provided the LURC webpage and public locations where the application could be viewed. After being accepted for processing, the application for Development Permit DP 4860 was sent to agencies and stakeholders for review.

## **C. Requests for Public Hearing and Intervenor status**

Staff received numerous requests for a public hearing and four (4) requests for Intervenor status in the matter of Development Permit DP 4860.

1. Public hearing requests. To summarize, the requests for public hearing were largely based on concerns about (a) impacts to the scenic and historic character of the Chain of Ponds area, (b) impacts to sensitive and pristine natural resources in high mountain areas, and state or federally listed plant and animal species and habitats; and (c) on the potential for noise and erosion. That the project proposed is substantial, and as such a public forum is needed, was common theme in the requests. Many expressed the opinion that the extent of the public interest in the resources having the potential to be impacted by the proposed project, a public hearing is warranted. Various individuals stated that because the project is proposed for a sensitive area, input from those living in the area is important. Other concerns expressed included the affect of the project on tourism, including the second home building industry in the western mountains region of Maine. Copies of the requests for a public hearing are attached to this memo.
2. Requests for Intervention  
Four of the stakeholders who requested a public hearing also requested Intervenor status: Friends of the Boundary Mountains (FBM), Appalachian Mountain Club (AMC), Maine Audubon Society (MAS), and Natural Resource Council of Maine (NRCM). FBM expressed opposition to this project, as well as to all such wind energy development in high mountain areas. AMC, MAS, and NRCM expressed concern for scenic and certain sensitive natural resources, but acknowledged that some of the proposed project is appropriately sited. Neither AMC, MAS, nor NRCM expressed opposition to, or support for, the proposal. All four stakeholders requesting Intervenor status discussed the affect of the proposed project on their memberships, and stated their organizations' missions to protect natural resources and high mountain areas. Finally, all four stakeholders cited their previous involvement in, and knowledge of, a variety of wind energy development issues and projects. Copies of the Requests for Intervention are attached to this memo.

3. Letters of support. Two letters of support have been submitted. One is from a couple owning a camp on the northwest shore of Long Pond, in which they stated that they are confident noise from the turbines and shadow flicker will not be an issue at their camp; they believe wind power is a part of our energy future, and that they look forward to seeing the facility from various locations on the Chain of Ponds, including their camp; and they appreciate the jobs and investment in Franklin County that result from wind energy development. The second letter was submitted by the President of the Arnold Trail Snowmobile Club.
4. Applicant response. TransCanada responded to the requests for a public hearing stating that while it does not “believe a public hearing is necessary in light of the comprehensive public hearing held on the D-PD application for the Kibby Project, which is proximate to the proposed expansion”, and addressed similar development in a similar habitat, it recognizes the desire for and benefits of a formal public process. As such, TransCanada does not object to a public hearing being held on Development Permit DP 4860. TransCanada requests, however, that the scope of the hearing be limited to the review criteria applicable to wind energy development in the expedited permitting area, and that the hearing be scheduled in a timely manner, consistent with Title 12, § 685-B(2-C).

#### **D. Review Criteria**

1. Chapter 4 of the Commission’s rules, § 4.04(5)(a) and (b): When to Hold a Public Hearing
  - (a) “As provided by these rules, interested persons may prepare and submit evidence and argument to the agency and request a hearing on an application.
  - (b) The Commission shall consider all requests for a hearing submitted in a timely manner. Hearings on an application are at the discretion of the Commission unless otherwise required by the Constitution of Maine or statute. In determining whether a hearing is advisable, the Commission shall consider the degree of public interest and the likelihood that information presented at the hearing will be of assistance to the Commission in reaching its decision.”
2. Chapter 5 of the Commission’s rules, § 5.13(1) and (2): Intervention
  - (1) “Petition for Intervention: Prior to the commencement of any public hearing of the type described in Section 5.16(1) of these regulations, the Commission may require or allow any person who desires to participate as a party, offer testimony and evidence, and participate in oral cross-examination to file a petition under oath or affirmation for leave to intervene. Notice of the requirement of filing a petition for intervention shall be given in a manner consistent with Section 4.04(7) of these regulations or in such other manner as the Presiding Officer deems appropriate. A petition to intervene shall be granted if it demonstrates that the petitioner is or may be substantially and directly affected by the proceeding.

The Commission may further allow any other interested person to intervene as a party or to participate in more limited manner as the Commission or its Presiding Officer may designate.

A petition for leave to intervene must be filed by the date specified by the Commission or the Presiding Officer or, if an earlier date is not specified, by the date of the public hearing. A petition to intervene which is not timely filed will be denied unless the petitioner shows good cause for failure to file on time. A person permitted to intervene shall become a party to the proceeding and shall be permitted to participate in all phases of the hearing, subject, however, to such limitations as the Commission or Presiding Officer may direct. Petitioners may be required to consolidate or join their appearances in part or in whole if their interests or contentions are found to be substantially similar and such consolidation would expedite or simplify the hearing without prejudice to the rights of any party or petitioner. A consolidation under this section may be for all purposes of the proceeding, all of the issues of the proceeding or with respect to any one or more issues or purposes thereof.

- (2) Duration of Intervenor Status: Unless otherwise specified by the Commission, Intervenor status shall be deemed to have been granted for the duration of the proceeding. Any applicant or petitioner whose proposal is approved shall be required to provide notice to any Intervenor of the filing of any documents presented to the Commission indicating actions taken to comply with the conditions attached to the approval or of proposals to vary or amend approved activities, provided, however, that the applicant's responsibility under this subsection shall be deemed fulfilled when such notice has been mailed to the person designated to represent an Intervenor in the petition for intervention."

## **E. Staff analysis**

1. Requests for a public hearing. § 4.04(5)(b) of the Commission's rules states that when considering whether to hold a public hearing, the Commission shall consider "the degree of public interest" for holding a public hearing. Regarding the application for Development Permit DP 4860, a number of interested persons and stakeholders (including a signed petition) have expressed an interest in a public hearing being held.

§ 4.04(5)(b) also states that when considering whether to hold a public hearing, the Commission shall consider "the likelihood that information presented at the hearing will be of assistance to the Commission in reaching its decision".

The general areas of concern raised by those requesting a public hearing include impacts to (a) scenic character, (b) recreational and historic resources, (c) noise, (d) erosion, and (e) natural habitat as a result of the proposed project. The State laws and rules applicable to the review of wind energy development in the expedited permitting area require that each of these areas of concern be evaluated during the review of the permit application, and particularly in the case of scenic character [*see Title 35-A, § 3452*] and noise [*see Title 12, § 685-B(4-B)(A)*], the law prescribes criteria by which the impacts must be evaluated. In addition, State standards exist in rule for the evaluation of the other areas of concern. As such, the record will contain a substantial amount of information on these subjects for the Commission to consider when reaching its decision.

However, the other argument common to many of the requests to hold a public hearing was the degree of public interest in the sensitive resources likely to be affected due to the

substantial nature of the proposal, and the need for the public, especially those living near the development area, to be provided a public forum.

2. Requests for Intervenor status. The four parties requesting Intervenor status, FBM, AMC, MAS, and NRCM, have explained their interest in the proposed project, including their past participation as Intervenor during the review of previous wind energy development proposals in the western mountains area of Maine, as well as their organizations' interest in, and activities associated with, protection of mountain resources and the development of wind power in Maine. However, although it is unclear what the exact extent of the adverse affect on each would be, it is nevertheless in the best interest of the public process and the issues surrounding wind energy development in Maine for each group to participate as an Intervenor in this matter because of the interests they represent.

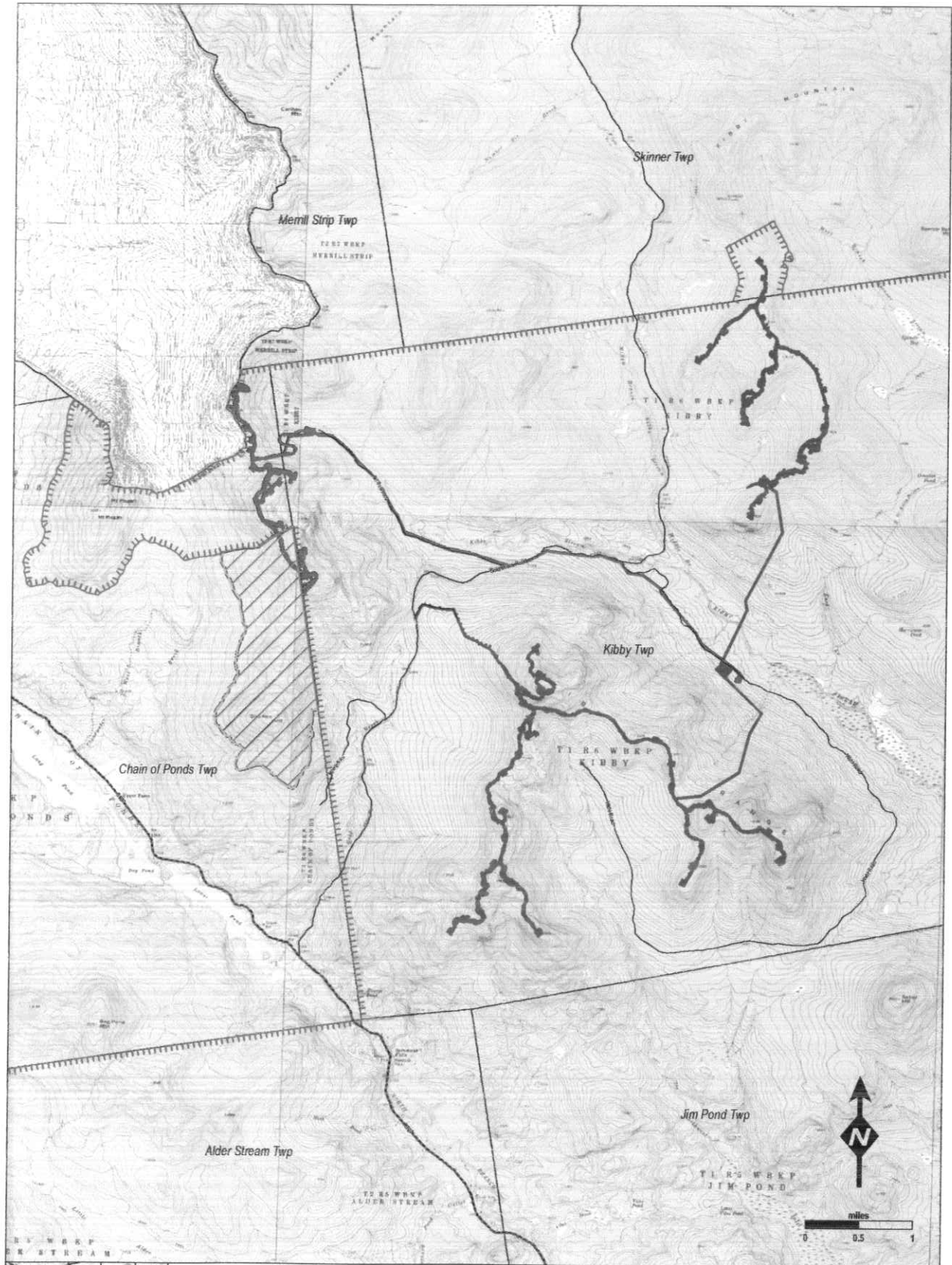
#### **F. Staff recommendations**

1. Public hearing. Staff recommends that a public hearing be held on the application for TransCanada Maine Wind Development's proposed Kibby Expansion Project Development Permit DP 4860, based on the degree of public interest in having a public hearing to assure that all concerns raised by interested persons and stakeholders have been heard.
2. Intervenor status. Because the Commission may decide to allow any interested person to intervene as a party, staff recommends that the Commission grant the four Petitions to Intervene submitted by Bob Weingarten representing FBM, the AMC, the MAS, and the NRCM for the duration of this proceeding, in accordance with Chapter 5, § 5.13(2). Staff further recommends, in accordance with § 5.13(1), that the Commission consider consolidation of AMC, MAS, and NRCM for the purposes of submitting testimony and conducting the hearing.
3. Schedule. Because wind energy development in the expedited permitting area has been given 270 days from the time the application is accepted for processing for the Commission to make a decision on the proposal [*see* Title 12, § 685-B(2-C)], immediately following the decisions on the public hearing and Intervenor status requests, staff requests that the Commission hold a discussion about dates for a public hearing (if granted) and whether a pre-hearing conference should be scheduled.

Enc: Project location map  
TransCanada's response to requests for a public hearing  
Petitions requesting Intervenor status  
Requests for a public hearing  
Letters of support

xc: DP 4860 file  
ZP 709 and DP 4794 file

cc: Service List



- Proposed Kibby Expansion Wind Power Project Footprint
- Expedited Wind Energy Project Permitting Area
- Kibby Wind Power Project Footprint
- Proposed Additional Expedited Wind Energy Project Permitting Area

Expedited Wind Energy Project Permitting Area and Proposed Additional Expedited Wind Energy Project Permitting Area