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For

Bingham Wind Project (Site Law Certification SLC-3)  
Blue Sky West, LLC and Blue Sky West II, LLC  
Mayfield Township, Somerset County; and Kingsbury Plantation, Piscataquis County

### **Certification of Allowed Use**

May 10, 2013

Dear Dan:

On April 19, 2013, Blue Sky West, LLC and Blue Sky West II, LLC (collectively "the Applicants") subsidiaries of First Wind represented by their agent Stantec Consulting, submitted to the Department of Environmental Protection (DEP) a combined Site Location of Development Law (Site Law)/Natural Resources Protection Act (NRPA) application for the proposed Bingham Wind Project ("the Project"). In addition to the organized towns of Moscow, Bingham, Parkman and Abbott, the proposed Project will be located within Mayfield Township in Somerset County, and Kingsbury Plantation in Piscataquis County, both of which are in the portion of the State subject to the Land Use Planning Commission's (the LUPC) jurisdiction. The proposed Project is a grid-scale wind energy development to be located entirely within the expedited permitting areas for wind energy development.

Also on April 19<sup>th</sup>, the Applicants provided copies of portions (Section 1 and Section 31) of the combined DEP Site Law/NRPA application to the LUPC. On May 2, 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. *See* 12 M.R.S. § 685-B(1-A)(B-1) and (2-C)A and B. The Applicants included their public notice of intent to file and maps indicating the location of the proposed development with its DEP

application; the notice and maps were also included in the portions of the application provided to the LUPC.

### **Proposal and subdistricts affected**

1. *Project description.* The Applicants propose to construct the approximately 191 megawatt (MW) Bingham Wind Project, consisting of up to 63 turbines (each approx. 3.0 MW); new roads and crane paths, and upgraded existing access roads; above-ground and underground 34.5 kV electrical collector lines; an Operations & Maintenance (O&M) building; a collector substation and a DRD<sup>1</sup>; up to 5 temporary met towers and up to 5 permanent met towers; and a 115 kV generator lead (transmission) line which will connect the Project to the New England electric power grid at the Guilford substation in Parkman (collectively, “the Project”).
  - A. Within Mayfield Township, the Project features will include: Twenty-nine (29) turbines, and associated access roads and crane paths; underground and above-ground 34.5 kV collector lines; a portion of the 115 kV generator lead line; up to three (3) permanent met towers and up to three (3) temporary met towers; the O&M building; and the collector substation and DRD.
  - B. Within Kingsbury Plantation<sup>2</sup>, the Project will be located both within Area A of the *Whetstone, Foss and Hilton Ponds Lake Concept Plan*, P-RP 013 (“the Concept Plan”), and outside of the P-RP Subdistrict boundaries. *See Zoning Petition ZP 693.*
    - (1) The Project features in Kingsbury Plantation within the P-RP Subdistrict will include nineteen (19) turbines and associated access roads and crane paths; underground 34.5 kV collector lines; a portion of the 115 kV above-ground generator lead line; temporary lay-down areas; and up to one permanent met tower and up to one temporary met tower.
    - (2) Outside of the P-RP Subdistrict, the Project features will include three (3) turbines and associated access road and crane paths, underground 34.5 kV collector line, a portion of the 115 kV generator lead line; and temporary laydown areas.
2. *Subdistricts affected.* The LUPC zones to be affected by the Project are the General Management Subdistrict (M-GN), Shoreland Protection Subdistrict (P-SL2), Resource Protection Subdistrict (P-RP 013), Fish and Wildlife Protection Subdistrict (P-FW), and Wetland Protection Subdistrict (P-WL).
  - A. *Wetland Protection Subdistrict (P-WL).* Within the Project area, P-WL2 and P-WL3 Subdistricts both shown and not shown (but delineated on the ground) on the LUPC zoning maps will be affected by the Project. Stream channels, which are P-WL1 Subdistricts by definition, both shown and not shown on the LUPC zoning map, will be

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<sup>1</sup> A “DRD” is a dynamic reactive device such as a synchronous condenser, used to help meet ISO-NE and CMP interconnection requirements.

<sup>2</sup> Kingsbury Plantation is partially organized, with the Land Use Planning Commission serving as its planning board.

crossed by the collector line and the generator lead line. All of the wetland areas, including streams, affected by the Project are subject to the LUPC's rules and standards for P-WL Subdistricts.

- B. *Fish and Wildlife Protection Subdistrict (P-FW)*. The Project will be located along the edge of Maine Department of Inland Fisheries and Wildlife (IFW) Deer Wintering Area (DWA) #080604, which is shown on the Kingsbury Plantation zoning map as a P-FW Subdistrict. Three other IFW DWAs not shown on the LUPC zoning maps will also be affected.
- C. *Resource Protection Subdistrict (P-RP 013)*. Where the Project will be located in Kingsbury Plantation, it will be within the Concept Plan's "Area A", but not within the portions of the parcel identified in the Concept Plan for the conservation easement, for camp development, or as common area.
3. *Public notice of intent to file*. On March 4, 6, and 8, 2013, the Applicant sent notice of the intent to file to abutters (on 3/4/2013), and had the public notice published in local newspapers (on 3/6 and 3/8). A revised public notice was sent to the abutters (on 4/10) and published in the newspapers (on 4/11 and 4/12).
- A. The Applicant communicated directly with Kingsbury Plantation, most recently on December 15, 2012 when the community benefits agreement was voted on. Prior to that, the Applicant held two public information meetings, and notified the taxpayers in Kingsbury Plantation of those meetings. The Applicant noted that no one attending the various meetings had raised questions related to the Concept Plan.
- B. The Applicant forwarded the notification to the Small Woodlot Owners Association of Maine (SWOAM) and to the Maine Bureau of Parks and Public Lands (BPPL) at staff's request. SWOAM is the holder of the conservation easement component of the Concept Plan, and BPPL is the third party for that easement.

### **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), A and B. “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.”
3. *35-A M.R.S., Ch. 34-A, § 3451, sub-§§ 3, 6, and 11.* “As used in this chapter, unless the context otherwise indicates, the following terms have the following meanings.
  - A. “3. *Expedited permitting area.* ‘Expedited permitting area’ means:
    - A. The organized areas of the State in their entirety, but not including waters subject to tidal influence, so that the edge of the area that is subject to tidal action during the highest tide level for the year in which an activity is proposed as identified in tide tables published by the United States Department of Commerce, National Oceanic and Atmospheric Administration, National Ocean Service defines the boundary of the expedited permitting area on lands abutting waters subject to tidal influence; and
    - B. Specific places within the State's unorganized and deorganized areas, as defined by Title 12, section 682, subsection 1, that are identified by rule by the Maine Land Use Planning Commission in accordance with this chapter.”
  - B. “6. *Grid-scale wind energy development.* ‘Grid-scale wind energy development’ means a wind energy development that is of a size that would qualify as a development of state or regional significance that may substantially affect the environment as defined under Title 38, section 482, subsection 2, paragraph A or paragraph C.”
  - C. “11. *Wind energy development.* ‘Wind energy development’ means a development that uses a windmill or wind turbine to convert wind energy to electrical energy for sale or use by a person other than the generator. A wind energy development includes generating facilities and associated facilities.”

4. *Wind Energy Act, expedited permitting area for wind energy development.* On April 18, 2008, the Wind Energy Act (2007 Public Law, Chapter 661) was signed into law, establishing the expedited permitting area for wind energy development in the state of Maine. The Act required that the Commission adopt the designated expedited permitting area into its rules (reference 35-A M.R.S., Chapter 34-A, Section C-6), including Kingsbury Plantation, and add wind energy development (as defined in 35-A M.R.S., Chapter 34-A, Section 3451(11)) as an allowed use by permit in all subdistricts within the expedited area (reference 12 M.R.S., Section 685-B(2-C)).
  - A. “*Sec. C-6. Expedited permitting area designation; permitted use.* No later than September 1, 2008, the Maine Land Use Regulation Commission shall adopt a rule listing the following specific places within the State's unorganized and deorganized areas, which comprise the expedited permitting area for purposes of this Act, except that the commission may subsequently add additional areas to this list by rule in the manner provided by this Act:”
  - B. Subsequently, the Commission adopted the expedited permitting area for wind energy development as Appendix F to Chapter 10 of its rules.
  - C. On March 3, 2010, the Commission voted to adopt a rule change to make rule certain corrections to the written description of the expedited permitting area that were identified in LD 1475 (PL 2009, Ch. 415). The effective date of this rule change was April 7, 2010. However, none of the corrections affected Kingsbury Plantation.
5. *Zoning Petition ZP 693, Whetstone, Foss & Hilton Ponds Concept Plan.*
  - A. *Finding of Fact #34,C of Zoning Petition ZP 693.* “Conservation measures apply in perpetuity for 1,055 acres of the Plan Area under the protection of a conservation easement to be held by the Small Woodlot Owners Association, with the Bureau of Parks and Lands as the back-up holder and third party enforcer of the easement Conservation measures fully provide for long-term protection of 9 acres of the Plan Area by means of deed restrictions and home owners association bylaws. In addition, conservation measures apply for the 15-year term of the Plan for 10,765 acres of the Plan Area [the so-called Area A] under the regulatory protection of the Concept Plan.”
  - B. *Appendix 1, Section F, Additional Restrictions for Area A.*
    - (1) *Page 1-6: Structures.* “Structural development, commercial and residential, industrial, energy generation, quarrying, mining, landfill, and waste disposal activities are prohibited within “Area A” during the life of the Concept Plan unless expressly stated to the contrary herein.”
    - (2) *Page 1-7: Reserved rights.* “Landowner(s) reserves to itself, and to its personal representatives, successors, and assigns, all rights accruing from ownership of “Area A”, including the right to engage in, or permit or invite others to engage in, all uses of “Area A” that are not expressly prohibited herein.”

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

Based on the materials submitted by Blue Sky West, LLC and Blue Sky West II, LLC, the LUPC, through its staff, determines that:

1. All parts of the Project, as proposed, are a wind energy development.
2. Portions of the Project, as proposed, will be located in the unorganized townships of Mayfield Township, Somerset County, and Kingsbury Plantation, Piscataquis County.
3. The portions of Mayfield Township and Kingsbury Plantation in which the Project is proposed to be located are within the expedited permitting area for wind energy development.
4. In the zones in which the Project is proposed to be located, specifically General Management Subdistrict (M-GN), Fish and Wildlife Protection Subdistrict (P-FW), Shoreland Protection Subdistrict (P-SL2), Wetland Protection Subdistrict (P-WL), and Resource Protection Subdistrict (P-RP 013), wind energy development is an allowed use requiring a permit as a result of being located within the expedited permitting area for wind energy development. *See* Chapter 10 of the LUPC's Land Use Districts and Standards, Sections 10.22,A,3,c(27) [M-GN]; 10.23,D,3,c(14) [P-FW] 10.23,L,3,c(24) [P-SL2]; and 10.23,N,3,c(18) [P-WL].

For P-RP 013, see Conclusions #5 to #7, below, regarding wind energy development as an allowed use in the *Foss Pond, Hilton Ponds and Portions of Whetstone Pond Concept Plan* ("the Concept Plan") Area A.

5. 2007 Public Law, Chapter 661 (the Wind Energy Act) designated a portion of the LUPC (then LURC) jurisdiction, including all of Kingsbury Plantation (except as noted below), to be included in the expedited permitting area for wind energy development. With the passage of that law, all LUPC subdistricts, including P-RPs, falling within the designated expedited permitting area included wind energy development as a use allowed by permit (*See* Appendix F to Chapter 10 of the Commission's Land Use Standards).

Therefore, wind energy development is now a use allowed by permit within Area A of the Concept Plan Area. The Permanent Conservation Area within the Concept Plan Area is subject to a conservation easement held in perpetuity by the Small Woodlot Owners Association of Maine (SWOAM), with third party rights held by the Maine Bureau of Parks and Public Lands (BPPL). The lots on Whetstone and Foss Ponds are subject to deed restrictions that are privately enforceable and, like the permanent conservation easement area, are not impacted by the Wind Energy Act (both the designated "development areas" and the "common areas").

6. Zoning Petition ZP 693 provided that Area A was to be protected under the regulatory provisions of the Concept Plan (*i.e.*, Resource Protection Subdistrict P-RP 013). The proposed wind energy development will be located within the 10,765 acre Area A parcel.

The terms of concept plans, however, do not constrain future legislative activity, and thus while the terms of concept plans are binding on the Commission and the landowner, the Legislature's authority to enact statutory changes applicable to an area regulated under a concept plan is undiminished. Therefore the terms of the Wind Energy Act are applicable within the Concept Plan's Area A.

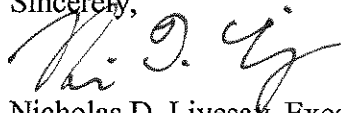
7. With due consideration of the above, the proposed wind energy development is a use allowed by permit within Area A of the Concept Plan Area P-RP 013. Wind energy development, including certain structures associated with such development, has been designated by the Legislature as a use allowed by permit in all subdistricts falling within the designated expedited permitting area, including existing P-RP Subdistricts such as this Concept Plan in Kingsbury Plantation. Thus, the Wind Energy Act intended for wind energy development to be a structural use allowed by permit within all existing P-RP Subdistricts located within the expedited permitting area.

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 Blue Sky West, LLC and Blue Sky West II, LLC. 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](mailto:Marcia.spencer-famous@maine.gov) ] or at (207) 287-4933.

Sincerely,



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

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