

Title 35-A: PUBLIC UTILITIES
Chapter 34-A: EXPEDITED PERMITTING OF
GRID-SCALE WIND ENERGY DEVELOPMENT

Table of Contents

Part 3. ELECTRIC POWER

- Section 3451. DEFINITIONS..... 3
- Section 3452. DETERMINATION OF EFFECT ON SCENIC CHARACTER AND RELATED EXISTING USES..... 8
- Section 3452-A. IMPACT ON BICKNELL'S THRUSH HABITAT; ADVERSE EFFECT..... 10
- Section 3453. ADDITIONS TO THE EXPEDITED PERMITTING AREA..... 10
- Section 3453-A. REMOVAL FROM THE EXPEDITED PERMITTING AREA..... 11
- Section 3454. DETERMINATION OF TANGIBLE BENEFITS; REQUIREMENTS..... 13
- Section 3455. DETERMINATION OF PUBLIC SAFETY-RELATED SETBACKS..... 14
- Section 3456. SITING CONSIDERATIONS FOR SMALLER-SCALE WIND ENERGY DEVELOPMENT IN ORGANIZED AREAS..... 15
- Section 3457. RULEMAKING; SCENIC VIEWPOINT; SCENIC INVENTORY..... 16
- Section 3458. JUDICIAL APPEAL; MUNICIPAL PERMITTING DECISION..... 16
- Section 3459. BEST PRACTICAL MITIGATION..... 16

Maine Revised Statutes
Title 35-A: PUBLIC UTILITIES
Chapter 34-A: EXPEDITED PERMITTING OF
GRID-SCALE WIND ENERGY DEVELOPMENT

§3451. DEFINITIONS

As used in this chapter, unless the context otherwise indicates, the following terms have the following meanings. [2007, c. 661, Pt. A, §7 (NEW).]

1. Associated facilities. "Associated facilities" means elements of a wind energy development other than its generating facilities that are necessary to the proper operation and maintenance of the wind energy development, including but not limited to buildings, access roads, generator lead lines and substations.

[2007, c. 661, Pt. A, §7 (NEW) .]

1-A. Best practical mitigation. "Best practical mitigation" means methods or technologies used during construction or operation of a wind energy development that control or reduce to the lowest feasible level impacts to scenic or wildlife resources in accordance with rules adopted by the department. "Best practical mitigation" may include, but is not limited to, turbine and blade coloration to reduce visual impacts, aircraft detection technologies to reduce the need for aircraft hazard warning lighting, technologies to detect at-risk animal populations and modification or curtailment of operations during specified times or conditions to reduce bird and bat mortality.

[2013, c. 325, §1 (NEW) .]

1-B. Community benefit agreement. "Community benefit agreement" means an agreement between the developer of an expedited wind energy development and a host community that involves payments by the developer to the host community to be utilized for public purposes, including, but not limited to, for property tax reductions, economic development projects, land and natural resource conservation, tourism promotion or reduction of energy costs, and that specifies in writing:

A. The value of any lump sum payments made by the developer to the host community; and [2009, c. 642, Pt. A, §2 (NEW).]

B. Any payment schedule and associated terms and conditions for payments to be made over time by the developer to the host community. [2009, c. 642, Pt. A, §2 (NEW).]

[2009, c. 642, Pt. A, §2 (NEW) .]

1-C. Community benefits package. "Community benefits package" means the aggregate collection of tangible benefits resulting from any of the following:

A. Payments, not including property tax payments, to the host community or communities, including, but not limited to, payments under community benefit agreements; [2009, c. 642, Pt. A, §3 (NEW).]

B. Payments that reduce energy costs in the host community or communities; and [2009, c. 642, Pt. A, §3 (NEW).]

C. Any donations for land or natural resource conservation. [2009, c. 642, Pt. A, §3 (NEW).]

[2009, c. 642, Pt. A, §3 (NEW) .]

1-D. Combined observation. "Combined observation" means a view from a scenic resource of state or national significance of more than one group of generating facilities located within the viewshed of the scenic resource of state or national significance within the field of view of a stationary viewer.

[2015, c. 190, §1 (NEW) .]

1-E. Cumulative scenic impact or effect. "Cumulative scenic impact or effect" means the potential adverse effect on the scenic character and existing uses related to the scenic character of scenic resources of state or national significance resulting from the incremental impact of a proposed wind energy development when added to the effects of other existing, permitted or pending wind energy developments within the viewshed of a scenic resource of state or national significance. For the purposes of this subsection, a pending wind energy development is a wind energy development for which an application has been submitted to and determined complete for processing by the department. A determination of cumulative scenic impact or effect may be based upon the combined observation, successive observation or sequential observation of wind energy developments located within the viewshed of a scenic resource of state or national significance as viewed from a scenic resource of state or national significance.

[2015, c. 190, §1 (NEW) .]

2. Department. "Department" means the Department of Environmental Protection.

[2007, c. 661, Pt. A, §7 (NEW) .]

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 [2007, c. 661, Pt. A, §7 (NEW).]

B. Specified places within the unorganized and deorganized areas that are identified by rule by the Maine Land Use Planning Commission in accordance with this chapter. [2015, c. 265, §3 (AMD); 2015, c. 265, §10 (AFF).]

[2015, c. 265, §3 (AMD); 2015, c. 265, §10 (AFF) .]

4. Expedited wind energy development. "Expedited wind energy development" means a grid-scale wind energy development that is proposed for location within an expedited permitting area.

[2007, c. 661, Pt. A, §7 (NEW) .]

5. Generating facilities. "Generating facilities" means wind turbines and towers and transmission lines, not including generator lead lines, that are immediately associated with the wind turbines.

[2007, c. 661, Pt. A, §7 (NEW) .]

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.

[2007, c. 661, Pt. A, §7 (NEW) .]

7. Host community. "Host community" means:

A. The following entities:

- (1) A municipality or plantation in which the generating facilities of an expedited wind energy development are located;
- (2) If the generating facilities of an expedited wind energy development are located in a township, the county in which those facilities are located;
- (3) If the generating facilities of an expedited wind energy development are located on Passamaquoddy Indian territory, as defined in Title 30, section 6203, subsection 6, the Passamaquoddy Tribe, if the Passamaquoddy Tribe notifies the primary siting authority that it chooses to be considered a host community for purposes of this chapter with respect to the expedited wind energy development;
- (4) If the generating facilities of an expedited wind energy development are located on Penobscot Indian territory, as defined in Title 30, section 6203, subsection 9, the Penobscot Nation if the Penobscot Nation notifies the primary siting authority that it chooses to be considered a host community for purposes of this chapter with respect to the expedited wind energy development; or
- (5) If the generating facilities of an expedited wind energy development are located on Qualifying Band Trust Land, the Aroostook Band of Micmacs, if the Aroostook Band of Micmacs notifies the primary siting authority that it chooses to be considered a host community for purposes of this chapter with respect to the expedited wind energy development; and [2009, c. 642, Pt. A, §4 (NEW).]

B. When the generating facilities of an expedited wind energy development are located within the State's unorganized or deorganized areas and the developer selects a municipality; plantation; township; Passamaquoddy Indian territory, as defined in Title 30, section 6203, subsection 6; Penobscot Indian territory, as defined in Title 30, section 6203, subsection 9; or Qualifying Band Trust Land proximate to the location of the generating facilities for the purpose of providing specific tangible benefits:

- (1) In the case of a municipality or plantation that is selected, the municipality or plantation;
- (2) In the case of a township that is selected, the county in which that township is located;
- (3) In the case of Passamaquoddy Indian territory that is selected, the Passamaquoddy Tribe if the Passamaquoddy Tribe notifies the primary siting authority that it chooses to be considered a host community for purposes of this chapter with respect to the expedited wind energy development;
- (4) In the case of Penobscot Indian territory that is selected, the Penobscot Nation if the Penobscot Nation notifies the primary siting authority that it chooses to be considered a host community for purposes of this chapter with respect to the expedited wind energy development; and
- (5) In the case of Qualifying Band Trust Land that is selected, the Aroostook Band of Micmacs, if the Aroostook Band of Micmacs notifies the primary siting authority that it chooses to be considered a host community for purposes of this chapter with respect to the expedited wind energy development. [2009, c. 642, Pt. A, §4 (NEW).]

An expedited wind energy development may have multiple host communities.

[2009, c. 642, Pt. A, §4 (AMD).]

8. Primary siting authority. "Primary siting authority" means:

A. The department, in the case of an expedited wind energy development subject to the department's jurisdiction pursuant to Title 38, chapter 3, subchapter 1, article 6, including, but not limited to, a development subject to the department's jurisdiction pursuant to Title 38, section 488, subsection 9-A; or [2011, c. 682, §26 (AMD).]

B. The Maine Land Use Planning Commission, in the case of a community-based offshore wind energy project as defined in Title 12, section 682, subsection 19 and a wind energy development in the unorganized and deorganized areas that is not grid-scale wind energy development. [2015, c. 265, §4 (AMD); 2015, c. 265, §10 (AFF).]

[2015, c. 265, §4 (AMD); 2015, c. 265, §10 (AFF) .]

8-A. Qualifying Band Trust Land. "Qualifying Band Trust Land" means Band Trust Land, as defined in the federal Aroostook Band of Micmacs Settlement Act, Public Law 102-171, 105 Stat. 1143 (1991), over which the Aroostook Band of Micmacs possesses municipal authority with respect to expedited wind energy development. For purposes of this subsection, "municipal authority" means the rights, privileges, powers and immunities of a municipality that are specified in legislation specifically authorizing the exercise of those government powers and that are equivalent to the rights, privileges, powers and immunities possessed by the Penobscot Nation and the Passamaquoddy Tribe with respect to expedited wind energy development within their respective Indian territories pursuant to Title 30, section 6206.

[2009, c. 642, Pt. A, §5 (NEW) .]

9. Scenic resource of state or national significance. "Scenic resource of state or national significance" means an area or place owned by the public or to which the public has a legal right of access that is:

A. A national natural landmark, federally designated wilderness area or other comparable outstanding natural and cultural feature, such as the Orono Bog or Meddybemps Heath; [2007, c. 661, Pt. A, §7 (NEW).]

B. A property listed on the National Register of Historic Places pursuant to the National Historic Preservation Act of 1966, as amended, including, but not limited to, the Rockland Breakwater Light and Fort Knox; [2007, c. 661, Pt. A, §7 (NEW).]

C. A national or state park; [2007, c. 661, Pt. A, §7 (NEW).]

D. A great pond that is:

(1) One of the 66 great ponds located in the State's organized area identified as having outstanding or significant scenic quality in the "Maine's Finest Lakes" study published by the Executive Department, State Planning Office in October 1989; or

(2) One of the 280 great ponds in the State's unorganized or deorganized areas designated as outstanding or significant from a scenic perspective in the "Maine Wildlands Lakes Assessment" published by the Maine Land Use Regulation Commission in June 1987; [2007, c. 661, Pt. A, §7 (NEW).]

E. A segment of a scenic river or stream identified as having unique or outstanding scenic attributes listed in Appendix G of the "Maine Rivers Study" published by the former Department of Conservation in 1982; [2013, c. 405, Pt. D, §13 (AMD).]

F. A scenic viewpoint located on state public reserved land or on a trail that is used exclusively for pedestrian use, such as the Appalachian Trail, that the Department of Agriculture, Conservation and Forestry designates by rule adopted in accordance with section 3457; [2007, c. 661, Pt. A, §7 (NEW); 2011, c. 657, Pt. W, §5 (REV).]

G. A scenic turnout constructed by the Department of Transportation pursuant to Title 23, section 954 on a public road that has been designated by the Commissioner of Transportation pursuant to Title 23, section 4206, subsection 1, paragraph G as a scenic highway; or [2007, c. 661, Pt. A, §7 (NEW).]

H. Scenic viewpoints located in the coastal area, as defined by Title 38, section 1802, subsection 1, that are ranked as having state or national significance in terms of scenic quality in:

(1) One of the scenic inventories prepared for and published by the Executive Department, State Planning Office: "Method for Coastal Scenic Landscape Assessment with Field Results for Kittery to Scarborough and Cape Elizabeth to South Thomaston," Dominie, et al., October 1987; "Scenic Inventory Mainland Sites of Penobscot Bay," Dewan and Associates, et al., August 1990; or "Scenic Inventory: Islesboro, Vinalhaven, North Haven and Associated Offshore Islands," Dewan and Associates, June 1992; or

(2) A scenic inventory developed by or prepared for the Executive Department, former State Planning Office or the Department of Agriculture, Conservation and Forestry in accordance with section 3457. [2011, c. 655, Pt. KK, §22 (AMD); 2011, c. 655, Pt. KK, §34 (AFF); 2011, c. 657, Pt. W, §5 (REV).]

[2013, c. 405, Pt. D, §13 (AMD) .]

9-A. Sequential observation. "Sequential observation" means a view of more than one group of generating facilities located within the viewshed of a scenic resource of state or national significance as the viewer travels along the portion of a linear route that is located within the viewshed of a scenic resource of state or national significance. For the purposes of this subsection, a linear route is a scenic resource of state or national significance that is a trail that is used exclusively for pedestrian use and has been designated as a national scenic trail.

(Subsection 9-A as enacted by PL 2015, c. 265, §5 is REALLOCATED TO TITLE 35-A, SECTION 3451, SUBSECTION 9-C)

[2015, c. 190, §2 (NEW) .]

9-B. Successive observation. "Successive observation" means views from a scenic resource of state or national significance of more than one group of generating facilities located within the viewshed of a scenic resource of state or national significance from a single viewpoint as a result of a viewer turning the viewer's head or body.

[2015, c. 190, §2 (NEW) .]

9-C. (REALLOCATED FROM T. 35-A, §3451, sub-§9-A) Specified place. "Specified place" means the entirety or a portion of a township, plantation or municipality in the unorganized and deorganized areas, or a combination thereof.

[2015, c. 1, §38 (RAL) .]

10. Tangible benefits. "Tangible benefits" means environmental or economic improvements or benefits to residents of this State attributable to the construction, operation and maintenance of an expedited wind energy development, including but not limited to: property tax payments resulting from the development; other payments to a host community, including, but not limited to, payments under a community benefit agreement; construction-related employment; local purchase of materials; employment in operations and maintenance; reduced property taxes; reduced electrical rates; land or natural resource conservation; performance of construction, operations and maintenance activities by trained, qualified and licensed workers in accordance with Title 32, chapter 17 and other applicable laws; or other comparable benefits, with particular attention to assurance of such benefits to the host community or communities to the extent practicable and affected neighboring communities.

[2009, c. 642, Pt. A, §6 (AMD) .]

10-A. Unorganized and deorganized areas. "Unorganized and deorganized areas" has the same meaning as in Title 12, section 682, subsection 1.

(Subsection 10-A as enacted by PL 2015, c. 190, §3 is REALLOCATED TO TITLE 35-A, SECTION 3451, SUBSECTION 10-B)

[2015, c. 265, §6 (NEW); 2015, c. 265, §10 (AFF) .]

10-B. (REALLOCATED FROM T. 35-A, §3451, sub-§10-A) Viewshed of a scenic resource of state or national significance. "Viewshed of a scenic resource of state or national significance" means the geographic area as viewed from a scenic resource of state or national significance that includes the proposed wind energy development. The viewshed of a scenic resource of state or national significance may include the proposed wind energy development visible from a single viewer position or the proposed wind energy development visible from multiple viewer positions. The viewshed of a scenic resource of state or national significance is limited to the geographic area within 8 miles, measured horizontally, from the proposed wind energy development's generating facilities.

[2015, c. 1, §39 (RAL) .]

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.

[2007, c. 661, Pt. A, §7 (NEW) .]

SECTION HISTORY

2007, c. 661, Pt. A, §7 (NEW). 2009, c. 642, Pt. A, §§2-6 (AMD). 2011, c. 655, Pt. KK, §22 (AMD). 2011, c. 655, Pt. KK, §34 (AFF). 2011, c. 657, Pt. W, §5 (REV). 2011, c. 682, §26 (AMD). 2011, c. 682, §38 (REV). 2013, c. 325, §1 (AMD). 2013, c. 405, Pt. D, §13 (AMD). RR 2015, c. 1, §§38, 39 (COR). 2015, c. 190, §§1-3 (AMD). 2015, c. 265, §§3-6 (AMD). 2015, c. 265, §10 (AFF).

§3452. DETERMINATION OF EFFECT ON SCENIC CHARACTER AND RELATED EXISTING USES

1. Application of standard. In making findings regarding the effect of an expedited wind energy development on scenic character and existing uses related to scenic character pursuant to Title 12, section 685-B, subsection 4 or Title 38, section 484, subsection 3 or section 480-D, the primary siting authority shall determine, in the manner provided in subsection 3, whether the development significantly compromises views from a scenic resource of state or national significance such that the development has an unreasonable adverse effect on the scenic character or existing uses related to scenic character of the scenic resource of state or national significance. Except as otherwise provided in subsection 2, determination that a wind energy development fits harmoniously into the existing natural environment in terms of potential effects on scenic character and existing uses related to scenic character is not required for approval under either Title 12, section 685-B, subsection 4, paragraph C or Title 38, section 484, subsection 3.

[2007, c. 661, Pt. A, §7 (NEW) .]

2. Exception; certain associated facilities. The primary siting authority shall evaluate the effect of associated facilities of a wind energy development in terms of potential effects on scenic character and existing uses related to scenic character in accordance with Title 12, section 685-B, subsection 4, paragraph C or Title 38, section 484, subsection 3, in the manner provided for development other than wind energy development, if the primary siting authority determines that application of the standard in subsection 1 to the development may result in unreasonable adverse effects due to the scope, scale, location or other characteristics of the associated facilities. An interested party may submit information regarding this

determination to the primary siting authority for its consideration. The primary siting authority shall make a determination pursuant to this subsection within 30 days of its acceptance of the application as complete for processing.

[2007, c. 661, Pt. A, §7 (NEW) .]

3. Evaluation criteria. In making its determination pursuant to subsection 1, and in determining whether an applicant for an expedited wind energy development must provide a visual impact assessment in accordance with subsection 4, the primary siting authority shall consider:

- A. The significance of the potentially affected scenic resource of state or national significance; [2007, c. 661, Pt. A, §7 (NEW) .]
- B. The existing character of the surrounding area; [2007, c. 661, Pt. A, §7 (NEW) .]
- C. The expectations of the typical viewer; [2007, c. 661, Pt. A, §7 (NEW) .]
- D. The expedited wind energy development's purpose and the context of the proposed activity; [2007, c. 661, Pt. A, §7 (NEW) .]
- E. The extent, nature and duration of potentially affected public uses of the scenic resource of state or national significance and the potential effect of the generating facilities' presence on the public's continued use and enjoyment of the scenic resource of state or national significance; and [2007, c. 661, Pt. A, §7 (NEW) .]
- F. The scope and scale of the potential effect of views of the generating facilities on the scenic resource of state or national significance, including but not limited to issues related to the number and extent of turbines visible from the scenic resource of state or national significance, the distance from the scenic resource of state or national significance and the effect of prominent features of the development on the landscape. [2007, c. 661, Pt. A, §7 (NEW) .]

In applying these criteria, the primary siting authority shall consider the primary impact and the cumulative scenic impact or effect of the development during both day and night on scenic resources of state or national significance. In evaluating cumulative scenic impact or effect associated with sequential observation, the department shall consider, in addition to the criteria in this subsection, the distance between viewpoints on the linear route and other forms of development along the linear route that effect the expectation of the user of the scenic resource of state or national significance. A finding by the primary siting authority that the development's generating facilities are a highly visible feature in the landscape is not a solely sufficient basis for determination that an expedited wind energy project has an unreasonable adverse effect on the scenic character and existing uses related to scenic character of a scenic resource of state or national significance. In making its determination under subsection 1, the primary siting authority shall consider insignificant the effects of portions of the development's generating facilities located more than 8 miles, measured horizontally, from a scenic resource of state or national significance.

[2015, c. 190, §4 (AMD) .]

4. Visual impact assessment; rebuttable presumption. An applicant for an expedited wind energy development shall provide the primary siting authority with a visual impact assessment of the development that addresses the evaluation criteria in subsection 3 if the primary siting authority determines such an assessment is necessary in accordance with subsection 3. There is a rebuttable presumption that a visual impact assessment is not required for those portions of the development's generating facilities that are located more than 3 miles, measured horizontally, from a scenic resource of state or national significance. The primary siting authority may require a visual impact assessment for portions of the development's generating facilities located more than 3 miles and up to 8 miles from a scenic resource of state or national significance if it finds there is substantial evidence that a visual impact assessment is needed to determine if there is the potential for significant adverse effects on the scenic resource of state or national significance. Information

intended to rebut the presumption must be submitted to the primary siting authority by any interested person within 30 days of acceptance of the application as complete for processing. The primary siting authority shall determine if the presumption is rebutted based on a preponderance of evidence in the record.

[2007, c. 661, Pt. A, §7 (NEW) .]

SECTION HISTORY

2007, c. 661, Pt. A, §7 (NEW). 2015, c. 190, §4 (AMD).

§3452-A. IMPACT ON BICKNELL'S THRUSH HABITAT; ADVERSE EFFECT

If any portion of the generating facilities or associated facilities of a wind energy development is proposed to be located within a conterminous area of coniferous forest that lies above 2,700 feet in elevation, is at least 25 acres in size and provides suitable habitat for Bicknell's Thrush, *Catharus bicknelli*, and in which sightings of Bicknell's Thrush have been documented to occur during the bird's breeding season within the previous 15 years, there is a rebuttable presumption that the development would constitute a significant adverse effect on natural resources for the purposes of Title 38, section 484, subsection 3. The presumption extends to the entire conterminous area of suitable habitat and is not limited to the parts of the area immediately proximate to where Bicknell's Thrush sightings have been documented. [2013, c. 1, §50 (COR).]

SECTION HISTORY

RR 2013, c. 1, §50 (COR). 2013, c. 325, §2 (NEW).

§3453. ADDITIONS TO THE EXPEDITED PERMITTING AREA

The Maine Land Use Planning Commission may, by rule adopted in accordance with Title 5, chapter 375, establish standards for the addition of and add a specified place in the unorganized and deorganized areas to the expedited permitting area. In order to add a specified place to the expedited permitting area, the Maine Land Use Planning Commission must determine that the proposed addition to the expedited permitting area: [2015, c. 265, §7 (AMD); 2015, c. 265, §10 (AFF).]

1. Geographic extension. Involves a logical geographic extension of the currently designated expedited permitting area, except that the addition of a specified place that was previously removed from the expedited permitting area in accordance with section 3453-A, subsection 1 need not satisfy this requirement;

[2015, c. 265, §7 (AMD); 2015, c. 265, §10 (AFF) .]

2. Meets state goals. Is important to meeting the state goals for wind energy development established in section 3404; and

[2007, c. 661, Pt. A, §7 (NEW) .]

3. Consistent with comprehensive land use plan. Is consistent with the principal values and the goals in the comprehensive land use plan adopted by the Maine Land Use Planning Commission pursuant to Title 12, section 685-C.

[2015, c. 265, §7 (AMD); 2015, c. 265, §10 (AFF) .]

Rules adopted by the Maine Land Use Planning Commission pursuant to this section are routine technical rules as defined in Title 5, chapter 375, subchapter 2-A. [2007, c. 661, Pt. A, §7 (NEW); 2011, c. 682, §38 (REV).]

SECTION HISTORY

2007, c. 661, Pt. A, §7 (NEW). 2011, c. 682, §38 (REV). 2015, c. 265, §7 (AMD). 2015, c. 265, §10 (AFF).

§3453-A. REMOVAL FROM THE EXPEDITED PERMITTING AREA

The Maine Land Use Planning Commission may, by rule adopted in accordance with Title 5, chapter 375, remove a specified place in the unorganized and deorganized areas from the expedited permitting area as described in this section. [2015, c. 265, §8 (NEW); 2015, c. 265, §10 (AFF).]

1. Removal by petition. The Maine Land Use Planning Commission shall, by rule, remove a specified place in the unorganized and deorganized areas from the expedited permitting area if:

A. The specified place is a township, plantation, municipality or portion thereof that has been identified pursuant to section 3451, subsection 3, paragraph B; [2015, c. 265, §8 (NEW); 2015, c. 265, §10 (AFF).]

B. The Maine Land Use Planning Commission receives a petition on or before June 30, 2016 requesting the removal of the specified place from the expedited permitting area that:

- (1) Clearly states that the persons signing the petition are requesting the removal of the specified place from the expedited permitting area;
- (2) Is signed by at least 10% of the number of registered voters residing in the township, plantation, municipality or portion thereof that voted in the most recent gubernatorial election; and
- (3) Is on a form consistent with Title 5, section 8055, a form provided by the Maine Land Use Planning Commission or a form otherwise determined to be sufficient for the purposes of this subsection by the Maine Land Use Planning Commission; and [2015, c. 265, §8 (NEW); 2015, c. 265, §10 (AFF).]

C. A person does not request substantive review of the petition for removal pursuant to subsection 3 within 45 days of the Maine Land Use Planning Commission posting notice of receipt of the petition on its publicly accessible website. [2015, c. 265, §8 (NEW); 2015, c. 265, §10 (AFF).]

The removal of a specified place from the expedited permitting area under this subsection may not prejudice any subsequent petition presented to the Maine Land Use Planning Commission to add the specified place back into the expedited permitting area under section 3453.

[2015, c. 265, §8 (NEW); 2015, c. 265, §10 (AFF) .]

2. Notice of receipt of petition. Within 5 business days of receipt of a petition for removal under subsection 1, the Maine Land Use Planning Commission shall post notice of receipt of the petition, along with a copy of the petition, on its publicly accessible website. The notice must specify that a person may request substantive review of the petition pursuant to subsection 3. A petition for removal of a specified place from the expedited permitting area is considered pending upon notice of receipt of a petition being posted on the commission's publicly accessible website. The Maine Land Use Planning Commission shall maintain a distribution list of persons who have requested to receive notice of commission receipt of petitions for removal and promptly notify persons on the list when a petition is received. Notwithstanding any other law to the contrary, additional notice of receipt of a petition for removal and additional notice associated with rulemaking to remove a specified place pursuant to subsection 1 is not required.

[2015, c. 265, §8 (NEW); 2015, c. 265, §10 (AFF) .]

3. Removal by petition with review. A person may, in writing, request substantive review of a petition for removal under subsection 1 by the Maine Land Use Planning Commission. Upon receipt of a timely filed request for substantive review, if the commission finds the requirements of subsection 1, paragraphs A and B are satisfied, the commission shall, by rule, remove a specified place in the unorganized and deorganized areas from the expedited permitting area if it finds the proposed removal:

A. Will not have an unreasonable adverse effect on the State's ability to meet the state goals for wind energy development in section 3404, subsection 2, paragraph C; and [2015, c. 265, §8 (NEW); 2015, c. 265, §10 (AFF).]

B. Is consistent with the principal values and the goals in the comprehensive land use plan adopted by the Maine Land Use Planning Commission pursuant to Title 12, section 685-C. [2015, c. 265, §8 (NEW); 2015, c. 265, §10 (AFF).]

[2015, c. 265, §8 (NEW); 2015, c. 265, §10 (AFF) .]

4. Notice of petition review and opportunity for public hearing. Upon receipt of a request for substantive review of a petition for removal pursuant to subsection 3, the Maine Land Use Planning Commission shall, based on available tax records, notify property owners in the specified place of the petition and the request for review, provide an opportunity for public comment on the petition and conduct a public hearing if 5 or more persons request a hearing.

[2015, c. 265, §8 (NEW); 2015, c. 265, §10 (AFF) .]

5. Exceptions. The following specified places may not be removed from the expedited permitting area under this section:

A. Any specified place within the project boundary of an existing or proposed, legally permitted expedited wind energy development, unless the development permit is revoked or withdrawn; [2015, c. 265, §8 (NEW); 2015, c. 265, §10 (AFF).]

B. Any specified place within the project boundary of a proposed expedited wind energy development, as described in the development permit application, that has been accepted for processing by the Department of Environmental Protection, unless the development permit application is denied; and [2015, c. 265, §8 (NEW); 2015, c. 265, §10 (AFF).]

C. Any specified place added by rule to the expedited permitting area in accordance with section 3453 prior to January 1, 2016. [2015, c. 265, §8 (NEW); 2015, c. 265, §10 (AFF).]

As used in this subsection, "project boundary" means the geographic limits of an existing or proposed expedited wind energy development, as defined by the deeded geographic boundaries of the parcel or parcels of land on which the development or portions thereof are located or proposed to be located.

[2015, c. 265, §8 (NEW); 2015, c. 265, §10 (AFF) .]

6. Fee. If a person requests substantive review of a petition for removal under subsection 3, notwithstanding Title 12, section 685-F, subsection 1 or any other provision of law to the contrary, the director of the Maine Land Use Planning Commission may assess a processing fee associated with the rulemaking, consistent with the fee that may be collected under Title 12, section 685-F, subsection 2, to cover actual costs, including costs associated with any notice or public hearing and the processing of the rule-making petition for removal. The director also may assess a similar fee to cover actual costs associated with petitions to add a specified place to the expedited permitting area under section 3453.

[2015, c. 265, §8 (NEW); 2015, c. 265, §10 (AFF) .]

7. Rulemaking. The Maine Land Use Planning Commission may adopt rules implementing this section. Rules adopted pursuant to this section are routine technical rules as defined in Title 5, chapter 375, subchapter 2-A. Rules adopted pursuant to subsection 3 need not meet the requirements of Title 5, section 8053-A or 8060 but must meet all other applicable requirements in Title 5, chapter 375.

[2015, c. 265, §8 (NEW); 2015, c. 265, §10 (AFF) .]

SECTION HISTORY

2015, c. 265, §8 (NEW). 2015, c. 265, §10 (AFF).

§3454. DETERMINATION OF TANGIBLE BENEFITS; REQUIREMENTS

In making findings pursuant to Title 38, section 484, subsection 3, the primary siting authority shall presume that an expedited wind energy development provides energy and emissions-related benefits described in section 3402 and shall make additional findings regarding other tangible benefits provided by the development. The Department of Labor, the Governor's Office of Policy and Management, the Governor's Energy Office and the Public Utilities Commission shall provide review comments if requested by the primary siting authority. [2013, c. 424, Pt. A, §21 (RPR).]

1. Documentation. As part of any permit application for an expedited wind energy development, the applicant shall include the following information regarding tangible benefits, except that the applicant may submit the information required under paragraph D as an addendum to the permit application during the period in which the application is pending:

A. Estimated jobs to be created statewide and in the host community or communities, as a result of construction, maintenance and operations of the project; [2009, c. 642, Pt. A, §7 (NEW) .]

B. Estimated annual generation of wind energy; [2009, c. 642, Pt. A, §7 (NEW) .]

C. Projected property tax payments; [2009, c. 642, Pt. A, §7 (NEW) .]

D. A description of the community benefits package, including but not limited to community benefit agreement payments, to be provided in accordance with the requirements of subsection 2; and [2009, c. 642, Pt. A, §7 (NEW) .]

E. Any other tangible benefits to be provided by the project. [2009, c. 642, Pt. A, §7 (NEW) .]

[2009, c. 642, Pt. A, §7 (NEW) .]

2. Community benefits package requirement. Except as provided in subsection 3, to demonstrate that an expedited wind energy development provides significant tangible benefits as required in Title 38, section 484, subsection 10, the applicant for an expedited wind energy development is required to establish a community benefits package valued at no less than \$4,000 per year per wind turbine included in the expedited wind energy development, averaged over a 20-year period. This subsection does not affect the property tax obligations of an expedited wind energy development.

[2011, c. 682, §28 (AMD) .]

3. Community benefits package requirement; exceptions. The community benefits package requirement under subsection 2:

A. Is waived for any expedited wind energy development that:

(1) Has an installed capacity of less than 20 megawatts; or

(2) Is owned by a nonprofit entity, a public entity or a quasi-public entity; and [2009, c. 642, Pt. A, §7 (NEW) .]

B. Does not apply to those turbines included in the development that are located:

- (1) In a host community in which the legislative body has voted to waive or reduce the community benefits package requirement;
 - (2) On Passamaquoddy Indian territory, as defined in Title 30, section 6203, subsection 6, unless the Passamaquoddy Tribe notifies the primary siting authority that it chooses to be considered a host community for the purposes of this chapter with respect to the expedited wind energy development;
 - (3) On Penobscot Indian territory, as defined in Title 30, section 6203, subsection 9, unless the Penobscot Nation notifies the primary siting authority that it chooses to be considered a host community for the purposes of this chapter with respect to the expedited wind energy development;
- or
- (4) On Qualifying Band Trust Land unless the Aroostook Band of Micmacs notifies the primary siting authority that it chooses to be considered a host community for the purposes of this chapter with respect to the expedited wind energy development.

The community benefits package requirement applies to any turbines of the development that are not exempted under subparagraph (1), (2), (3) or (4). [2009, c. 642, Pt. A, §7 (NEW).]

Nothing in this subsection limits a host community's authority to require an expedited wind energy development to enter into a community benefit agreement and to fulfill its property tax obligations.

[2009, c. 642, Pt. A, §7 (NEW) .]

4. Community benefit agreement payments to counties. When generating facilities of an expedited wind energy development are located within an unorganized or deorganized area other than within a plantation, community benefit agreement payments provided to the county as the host community in accordance with this section may be used for projects and programs of public benefit located anywhere within that county.

[2009, c. 642, Pt. A, §7 (NEW) .]

5. Promoting economic development and resource conservation; assistance to host communities.

To the extent practicable within existing resources, the Department of Economic and Community Development, the Governor's Energy Office and the Governor's Office of Policy and Management shall provide, upon the request of a host community, assistance for the purpose of helping the host community maximize the economic development and resource conservation benefits from tax payments and payments made pursuant to a community benefit agreement or a community benefits package in connection with expedited wind energy developments. As part of this assistance, the department and the Department of Economic and Community Development shall support host communities in identifying additional funding and developing regional economic and natural resource conservation strategies.

[2011, c. 655, Pt. DD, §15 (AMD); 2011, c. 655, Pt. DD, §24 (AFF) .]

SECTION HISTORY

2007, c. 661, Pt. A, §7 (NEW). 2009, c. 642, Pt. A, §7 (AMD). 2011, c. 655, Pt. DD, §§14, 15 (AMD). 2011, c. 655, Pt. DD, §24 (AFF). 2011, c. 682, §§27, 28 (AMD). 2013, c. 424, Pt. A, §21 (AMD).

§3455. DETERMINATION OF PUBLIC SAFETY-RELATED SETBACKS

In making findings pursuant to Title 12, section 685-B, subsection 4 or Title 38, section 484, subsection 3 on whether a wind energy development must be constructed with setbacks adequate to protect public safety, the primary siting authority must consider the recommendation of a professional, licensed civil engineer as

well as any applicable setback recommended by a manufacturer of the generating facilities. The primary siting authority may require submission of this information as part of the application. [2007, c. 661, Pt. A, §7 (NEW).]

SECTION HISTORY

2007, c. 661, Pt. A, §7 (NEW).

§3456. SITING CONSIDERATIONS FOR SMALLER-SCALE WIND ENERGY DEVELOPMENT IN ORGANIZED AREAS

1. Construction and operation requirements. A person may not construct or operate a wind energy development, other than a grid-scale wind energy development, without first obtaining a certification from the department that the generating facilities:

- A. Will meet the requirements of the noise control rules adopted by the Board of Environmental Protection pursuant to Title 38, chapter 3, subchapter 1, article 6; [2007, c. 661, Pt. A, §7 (NEW).]
- B. Will be designed and sited to avoid unreasonable adverse shadow flicker effects; and [2007, c. 661, Pt. A, §7 (NEW).]
- C. Will be constructed with setbacks adequate to protect public safety. In making a finding pursuant to this paragraph, the department shall consider the recommendation of a professional, licensed civil engineer as well as any applicable setback recommended by a manufacturer of the generating facilities. [2007, c. 661, Pt. A, §7 (NEW).]

A person proposing a wind energy development subject to certification under this section shall apply to the department for certification using an application provided by the department and may not begin construction until the certification is received.

[2011, c. 682, §29 (AMD) .]

2. Fees; outside review; approval process. The department may charge a developer an appropriate fee for its review and certification pursuant to this section. Certification may be conditioned on specific requirements, including but not limited to setbacks from residential structures to address noise or safety concerns. The department may use an outside reviewer as provided in Title 38, section 344-A. If no other approval by the department is required for the development, the department shall issue its certification within 185 days of its acceptance of a request for certification as complete pursuant to Title 38, section 344. At the request of an applicant, the department may put the certification review period on hold. If another approval by the department is required for the development, the department shall consolidate its process for certification under this section with that regarding other approvals by the department as provided in the department's rules and may extend the review period as provided in those rules. Notwithstanding any other provision of law, the department's certification pursuant to this section regarding a development that does not otherwise require the department's approval pursuant to this Title is not itself subject to judicial review as final agency action or otherwise, except as an aspect of an appeal of a pertinent municipal land use decision.

[2007, c. 661, Pt. A, §7 (NEW) .]

3. Enforcement of standards. Following certification under this section and during construction and operation, the standards in subsection 1 for a wind energy development subject to certification under this section may be enforced by the municipality in which the generating facilities are located at the municipality's discretion pursuant to Title 30-A, section 4452. The department is not responsible for enforcement of this section.

[2007, c. 661, Pt. A, §7 (NEW) .]

4. Exemption. Certification under this section is not required for a wind energy development with a generating capacity of less than 100 kilowatts.

[2007, c. 661, Pt. A, §7 (NEW) .]

SECTION HISTORY

2007, c. 661, Pt. A, §7 (NEW). 2011, c. 682, §29 (AMD).

§3457. RULEMAKING; SCENIC VIEWPOINT; SCENIC INVENTORY

1. Scenic viewpoint. The Department of Agriculture, Conservation and Forestry shall adopt rules to designate scenic viewpoints located on state public reserved land or on a trail that is used exclusively for pedestrian use, such as the Appalachian Trail, that have state or national significance from a scenic perspective based on criteria modeled after those used in the "Maine Rivers Study" published by the former Department of Conservation in 1982 and "Maine Wildlands Lakes Assessment" published by the former Maine Land Use Regulation Commission in June 1987 and consideration of the criteria in section 3452, subsection 3.

[2013, c. 405, Pt. C, §18 (AMD) .]

2. Scenic inventory. The Department of Agriculture, Conservation and Forestry, Division of Geology, Natural Areas and Coastal Resources shall adopt rules regarding the methodology for conducting a scenic inventory of scenic resources of state or national significance that are located in the coastal area, as defined by Title 38, section 1802, subsection 1, in a manner comparable to that used for an inventory listed in section 3451, subsection 9, paragraph H, subparagraph (1). The Department of Agriculture, Conservation and Forestry, Division of Geology, Natural Areas and Coastal Resources may contract with an outside entity for the preparation of a scenic inventory conducted pursuant to the methodology developed pursuant to this subsection.

[2013, c. 405, Pt. C, §18 (AMD) .]

Rules adopted pursuant to this section are routine technical rules as defined in Title 5, chapter 375, subchapter 2-A. [2007, c. 661, Pt. A, §7 (NEW).]

SECTION HISTORY

2007, c. 661, Pt. A, §7 (NEW). 2011, c. 655, Pt. KK, §23 (AMD). 2011, c. 655, Pt. KK, §34 (AFF). 2013, c. 405, Pt. C, §18 (AMD).

§3458. JUDICIAL APPEAL; MUNICIPAL PERMITTING DECISION

Any judicial appeal of a municipal decision regarding permitting of an expedited wind energy development that is taken in the manner provided in the Maine Rules of Civil Procedure, Rule 80B must be heard and determined by the Superior Court as expeditiously as possible. [2009, c. 642, Pt. B, §2 (NEW) .]

SECTION HISTORY

2009, c. 642, Pt. B, §2 (NEW).

§3459. BEST PRACTICAL MITIGATION

1. Process. An application for a grid-scale wind energy development must contain, and the primary siting authority shall require, best practical mitigation for all aspects of construction and operation of generating facilities. In determining best practical mitigation options, the primary siting authority shall consider:

- A. The existing state of technology; [2013, c. 325, §3 (NEW).]
- B. The effectiveness of available technologies or methods for reducing impacts; and [2013, c. 325, §3 (NEW).]
- C. The economic feasibility of the type of mitigation under consideration. [2013, c. 325, §3 (NEW).]

[2013, c. 325, §3 (NEW) .]

2. Rules. The department shall adopt rules governing best practical mitigation under this section. Rules adopted under this subsection are major substantive rules as described in Title 5, chapter 375, subchapter 2-A. Any amendments to the rules after final adoption of the major substantive rules are routine technical rules pursuant to Title 5, chapter 375, subchapter 2-A.

[2013, c. 325, §3 (NEW) .]

SECTION HISTORY

2013, c. 325, §3 (NEW) .

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