

§3451. Definitions

As used in this chapter, unless the context otherwise indicates, the following terms have the following meanings. [PL 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.

[PL 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.

[PL 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 [PL 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. [PL 2009, c. 642, Pt. A, §2 (NEW).]

[PL 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; [PL 2009, c. 642, Pt. A, §3 (NEW).]

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

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

[PL 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.

[PL 2015, c. 190, §1 (NEW).]

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

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

[PL 2015, c. 265, §3 (AMD); PL 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.

[PL 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.

[PL 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.

[PL 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 [PL 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. [PL 2009, c. 642, Pt. A, §4 (NEW).]

An expedited wind energy development may have multiple host communities.
[PL 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 [PL 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. [PL 2015, c. 265, §4 (AMD); PL 2015, c. 265, §10 (AFF).]
[PL 2015, c. 265, §4 (AMD); PL 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.

[PL 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; [PL 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; [PL 2007, c. 661, Pt. A, §7 (NEW).]

C. A national or state park; [PL 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; [PL 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; [PL 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; [PL 2007, c. 661, Pt. A, §7 (NEW); PL 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 [PL 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. [PL 2011, c. 655, Pt. KK, §22 (AMD); PL 2011, c. 655, Pt. KK, §34 (AFF); PL 2011, c. 657, Pt. W, §5 (REV).]

[PL 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.

[PL 2015, c. 190, §2 (NEW).]

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

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.

[PL 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.

[RR 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.

[PL 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.

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

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

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.

[RR 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.

[PL 2007, c. 661, Pt. A, §7 (NEW).]

SECTION HISTORY

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

The State of Maine claims a copyright in its codified statutes. If you intend to republish this material, we require that you include the following disclaimer in your publication:

All copyrights and other rights to statutory text are reserved by the State of Maine. The text included in this publication reflects changes made through the Second Regular Session of the 129th Maine Legislature and is current through October 1, 2020. The text is subject to change without notice. It is a version that has not been officially certified by the Secretary of State. Refer to the Maine Revised Statutes Annotated and supplements for certified text.

The Office of the Revisor of Statutes also requests that you send us one copy of any statutory publication you may produce. Our goal is not to restrict publishing activity, but to keep track of who is publishing what, to identify any needless duplication and to preserve the State's copyright rights.

PLEASE NOTE: The Revisor's Office cannot perform research for or provide legal advice or interpretation of Maine law to the public. If you need legal assistance, please contact a qualified attorney.