

**Title 35-A: PUBLIC UTILITIES HEADING:  
PL 1987, c. 141, Pt. A, §6 (new)**

**Chapter 34-A: EXPEDITED PERMITTING OF  
GRID-SCALE WIND ENERGY DEVELOPMENT**

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**Maine Revised Statutes**  
**Title 35-A: PUBLIC UTILITIES HEADING:**  
**PL 1987, c. 141, Pt. A, §6 (new)**  
**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) .]

**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. 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. [2007, c. 661, Pt. A, §7 (NEW); 2011, c. 682, §38 (REV).]

[ 2007, c. 661, Pt. A, §7 (NEW); 2011, c. 682, §38 (REV) .]

**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 as defined in Title 12, section 682, subsection 1 that is not grid-scale wind energy development. [ 2011, c. 682, §26 (AMD) . ]

[ 2011, c. 682, §26 (AMD) . ]

**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) . ]

**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) .]

**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).

## §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). ]

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.

[ 2007, c. 661, Pt. A, §7 (NEW) . ]

**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).

### §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, add a specified place in the State's unorganized or 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: [2007, c. 661, Pt. A, §7 (NEW); 2011, c. 682, §38 (REV).]

**1. Geographic extension.** Involves a logical geographic extension of the currently designated expedited permitting area;

[2007, c. 661, Pt. A, §7 (NEW) .]

**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. Principal values and goals.** Would not compromise the principal values and the goals identified in the comprehensive land use plan adopted by the Maine Land Use Planning Commission pursuant to Title 12, section 685-C.

[2007, c. 661, Pt. A, §7 (NEW); 2011, c. 682, §38 (REV) .]

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).

### §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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