



Mark Margerum  
Maine Department of Environmental Protection  
17 State House Station  
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July 31, 2016

Dear Mark:

Please accept this correspondence as comment by Friends of Maine's Mountains (FMM) on the Department's pre-rulemaking draft of Wind Energy Act Standards.

FMM wrote to the Department on June 4 ([click here](#)) urging you to check on the status of ongoing community benefits arrangements, in light of SunEdison's dire financial troubles. We also asserted that for several reasons, the need is urgent to shore up Maine's decommissioning requirements. We are pleased with the timing of this proposed Rule.

FMM generally supports the proposed rulemaking for scenic character, public safety, shadow flicker, and tangible benefits – with a few suggestions. FMM also supports the decommissioning proposal, with further safeguards.

## **SCENIC IMPACT**

FMM has invested considerable resources educating policy makers and the Department about the subject. The 2012 Office of Energy report to the Legislature, authored by Steve Ward, helped set the stage for today's long overdue rulemaking, and it should be consulted for technical terms such as "cumulative, combined, sequential, and successive." Contrary to presumptions, scenic impact is not merely subjective or fanciful; it is science. And Maine's fabled Quality of Place (its greatest resource, according to a landmark 2006 [Brookings Institution report](#)) is gravely threatened by wind development's scenic impact, an industrial use whose scope and scale is unprecedented in 300 years of Maine land use. Legislation failed because, despite bipartisan concern about visual impact, the highly technical subject matter is better suited for rulemaking.

- FMM would like to see provisions that mitigate what we have slowly discovered to be a deplorable visual impact: night sky. We have deemed the Department review of

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night light impact to be lacking, hence, standards should be stricter. At the very least, Maine should require that radar-activated lighting systems be a mandatory condition of license.

- In "D. Viewer Expectation" FMM notes that applicants utilize hiker intercept surveys to aid the Department in assessing those "expectations." This data is too easy for the applicant to manipulate. Just as the Department performed its own visual impact assessment (a boat ride) at Passdumkeag, the Department should perform its own intercept surveys also, reimbursed by the applicant.

- In "E. Purpose and context of proposed activity" we realize that statute dictates this standard, but the Rule could include language about relative significance as measured by reasonably expected contribution to the grid in replacing or displacing existing or polluting generation.

- In "G. Scope & Scale" FMM respectfully asks that the Department consider that every telescope has two ends. The standard has traditionally been same or similar to "visible from various viewpoints for users of the SRSNS..." This perspective counts, a lot. However, it is not the only perspective. If turbines were erected six miles from Baxter Peak on Katahdin, Mainers would bleed from their mouths. On any given day one or two hundred Katahdin hikers would have to endure that visual impact at a sacred place. But what about the one or two thousand hikers, pedestrians, motorists, backyard loungers, boaters, etc. who look at magnificent vistas of Katahdin from someplace else, someplace eight to 50 miles away? The three mile and eight mile distances in (2) (a) and (b) are an attempt at an enforceable standard, but when one considers the multiple perspectives on/from/at/to/near the SRSNS, these distances have the ability to be crude and worthless. FMM suggests a more nuanced approach that includes consideration of perspective and proximity.

In "H. Cumulative scenic impact" FMM suggests that the Department perform its own VIAs, reimbursed by the applicant.

In "I. Cumulative impact" FMM wants assurance that "further evaluation by the Department of other evidence in the record" constitutes an ability by the Department to fully vet, test, and refute said evidence.

## **PUBLIC SAFETY**

In "5.A. Public Safety" this is a good opportunity for the Department to take guidance from the federation of municipalities that have studied the subject at length. We assert that an examination of setbacks in the several ordinances will instruct the Department to increase the 1.5 X setback to somewhere closer to 8X.

In 5.C. it would be a prudent environmental protection measure to add a clause

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requiring DEP to consult with – or at least provide a pamphlet for – the property owner so that the property owner considering an easement is aware of turbine impacts, including but not limited to: noise, health, wildlife, flicker, property value.

- In 5.F. (new) add a provision for mandatory 48 hour reporting of fire incidents, consistent with 7.D.

## **DECOMMISSIONING**

In “7. Decommissioning” FMM has been generally pleased with the Departments efforts at strengthening this important requirement. Your records on individual projects (see Bingham) contain FMM’s analysis of Maine’s inadequacy in decommissioning. In a nutshell, the applicant must now fully fund decommissioning, but that applicant is allowed to “name the price” as it were. Their projections of cost are ridiculously underestimated, and their projections of scrap/salvage value are similarly overstated. This is a huge problem for myriad reasons. The Department routinely seeks outside expertise when evaluating applications for wildlife impact, noise, etc. Financial capacity is no less important, and should get the same level of expert scrutiny. The apparent assurance intended by transferring responsibility to subsequent owners is a hollow assurance; there isn’t always a subsequent owner. The LLCs that are used in every wind project will drain the value from the projects, then abandon them. The remaining asset is a single-purpose entity whose best chance at ROI is scrap, the attainment of which is not worth the expense.

So FMM proposes two safeguards:

The first is to require landowners to backstop all decommissioning.

The second safeguard is to require in the decommissioning plan and as a license condition – whether secured by the landowner or by the applicant – a performance bond guaranteeing that the decommissioning will be fully performed. A letter of credit is worthless, and an escrow account is only adequate to the extent its funds can cover all the costs of decommissioning. The applicant-estimated values in current decommissioning plans will not pay for the decommissioning of one turbine, let alone 100 of them. A performance bond purchased from a third part guarantor is the only assurance that absolves the Department and the people of Maine from this catastrophic liability.

Yours truly,

Christopher P. O’Neil  
Public Affairs Director