

04 DEPARTMENT OF CONSERVATION

056 CONSERVATION - GENERAL

Chapter 3: DESIGNATED SCENIC VIEWPOINTS OF STATE OR NATIONAL SIGNIFICANCE, LOCATED ON PUBLIC RESERVED LAND OR ON A PUBLICLY ACCESSIBLE TRAIL USED EXCLUSIVELY FOR PEDESTRIAN USE, FOR CONSIDERATION IN THE PERMITTING OF EXPEDITED WIND ENERGY DEVELOPMENT

SECTION 1. APPLICABILITY

As provided by PL 2007, c. 661, codified at 35-A M.R.S. § 3451(9) & § 3457(1), certain viewpoints are designated in this rule for consideration solely in the context of permitting wind energy development sited within the expedited permitting area. This rule designates scenic viewpoints as set forth in 35-A M.R.S. § 3451(9)(F). Public Reserved Land is limited to Public Reserved Land owned in majority interest in fee by the State of Maine, Department of Conservation, Bureau of Parks and Lands.

SECTION 2. THE FOLLOWING VIEWPOINTS LOCATED ON PUBLIC RESERVED LANDS ARE DESIGNATED AS SCENIC VIEWPOINTS OF STATE OR NATIONAL SIGNIFICANCE:

1. All viewpoints within 1000 feet of the Atlantic Ocean at high tide within the Cutler Unit (also known as the Cutler Coast or the Bold Coast Unit) which is located in the Town of Cutler in Washington County;
2. All viewpoints in the Donnell Pond and Tunk Lake Units which are located in T10 SD, T7 SD, T9 SD, Town of Franklin, and Town of Sullivan in Hancock County;
3. All viewpoints in the Mahoosuc Unit which is located in Andover West Surplus Twp., Grafton Twp., Riley, Twp., and the Town of Newry, all in Oxford County;
4. All viewpoints in the T6 North of Weld Unit (also known as the Tumbledown Mountain Unit) which is located in T6 North of Weld and the Town of Phillips in Franklin County;
5. All viewpoints in the Mount Abram Unit which is located in Mount Abram Twp. and Salem Twp. in Franklin County;
6. All viewpoints in the Bald Mountain Rangeley Unit which is located in the Town of Rangeley in Franklin County;
7. All viewpoints in the Bigelow Preserve which is located in Wyman Twp., Bigelow Twp., the Town of Carrabassett Valley, and Dead River Twp. in Somerset and Franklin Counties;

8. All viewpoints in the Upper Enchanted Township Unit (also known as the Coburn Mountain parcel) which is located in Upper Enchanted Township in Somerset County;
9. All viewpoints in the Little Moose Unit which is located in Big Moose Twp. and Moosehead Junction Twp. in Piscataquis County;
10. All viewpoints in the Deboullie Unit which is located in T15 R9 in Aroostook County;
11. All viewpoints in the Kennebec Highlands Unit which is located in the Towns of Vienna, Mount Vernon, Belgrade, Rome, and New Sharon in Kennebec and Franklin Counties;
12. All viewpoints in the Perkins Lot which is located in Perkins Township in Franklin County.

SECTION 3. THE FOLLOWING VIEWPOINTS LOCATED ON PEDESTRIAN-USE ONLY TRAILS, TO THE EXTENT THE TRAILS ARE OWNED BY THE PUBLIC OR TO THE EXTENT THE PUBLIC HAS A LEGAL RIGHT OF ACCESS, ARE DESIGNATED AS SCENIC VIEWPOINTS OF STATE OR NATIONAL SIGNIFICANCE:

1. All viewpoints on the Appalachian Trail;
2. All viewpoints in the State of Maine which are located in the White Mountain National Forest all in Oxford County;
3. All viewpoints on land owned by the Appalachian Mountain Club and subsidiaries or successors or assigns in Bowdoin College Grant West (T8 R10 NWP), Bowdoin College Grant East (T7 R10 NWP), T7 R9 NWP, and Shawtown Township (TA R12 WELS), all in Piscataquis County;
4. All viewpoints on the Grafton Loop Trail, so-called, in the Town of Newry or the Town of Andover in Oxford County, in addition to those viewpoints along the trail designated herein at Section 2 (3).

**Maine Department of Conservation
Basis Statement and Comments and Responses**

For Proposed 04-056 Chapter 3, "Designated scenic viewpoints of state or national significance, located on Public Reserved Land or on a publicly accessible trail used exclusively for pedestrian use, for consideration in the permitting of expedited wind energy development.

STATUTORY AUTHORITY: Title 35-A M.R.S.A. section 3457(1) (PL 2007, Chapter 661)

FACTUAL AND POLICY BASIS FOR RULE: The Department of Conservation (DOC) was directed by "An Act to Implement Recommendations of the Governor's Task Force on Wind Power Development", PL 2007, Chapter 661, Effective April 18, 2008 (the "Act") to adopt this rule. The Act recognizes a potential impact of wind energy development on scenic character from certain views. The Act requires the DOC to designate scenic viewpoints of state or national significance on public reserved lands and publicly accessible pedestrian trails, to be considered in the context of wind energy development in the expedited permitting area.

TESTIMONY RECEIVED:

The DOC held a public hearing on 01/12/2010 at 10am in the Harlow Building in Augusta, Maine. Seven individuals attended and three gave testimony relating to this proposed rule.

The written comment deadline was 01/25/2010 and eleven individuals submitted written comments.

Robert Proudman of the Appalachian Trail Conservancy and Lester Kenway of the Maine Appalachian Trail Club filed joint written comments by e-mail on 01/25/2010.

COMMENT: The Conservancy and Club support the draft rule as written and support the designations listed.

RESPONSE: DOC thanks the Conservancy and Club for their comments and support of the draft rule.

Rufus E. Brown, Esq. of Brown & Burke made comments on behalf of the Friends of Webb Lake and Rand Stowell at the hearing on 01/12/2010 and by e-mail on 01/25/2010.

COMMENT: The DOC public reserved land in Range 6, Lot 4 on the summit of Bald Mountain (the "Bald Mountain Parcel") should be added to the Rule. This Lot is in a spectacular part of Maine in the Mt. Blue/Tumbledown recreational corridor and is close to the population center of Farmington. Bald Mountain is promoted as a hiking destination in several hiking publications, newspaper articles and internet postings. There is ongoing conservation of alpine vistas in the region by groups including the Maine Department of Conservation and the State of Maine has interest in acquiring ownership of the private portions of Bald Mountain. Bald Mountain is also significant geologically. Listing of Bald Mountain will assure a scenic assessment will be performed as part of a proposal for wind power on Saddleback Mountain. Exhibits were

provided with this comment including: maps, photographs of the view from Bald Mountain, and publications and websites promoting the hike on Bald Mountain.

RESPONSE: DOC thanks the commenter for his review of the significance of the viewpoint from Bald Mountain on the Perkins Township Lot. DOC was tasked with designating scenic viewpoints of state or national significance on public reserved lands, among other things. The commenter has presented a convincing argument that the viewpoint from Bald Mountain is of state significance based on the qualities of the viewpoint itself, the popularity of the hike, the recreational significance of the region it is located in, and its proximity to the population center of Farmington. DOC concurs this viewpoint should be included and the Perkins Lot has been added to the Final Rule.

Kevin Gurall of the Bowers Mountain opposition group commented by e-mail on 01/15/2010.

COMMENT: The commenter is a founding member of a group opposing wind development by First Wind on Bowers Mountain. Though the DOC rule does not directly impact the potential Bowers Mountain project, the commenter appreciates DOC for, after the formal public hearing was over, opening the floor for participants to comment and ask questions on the expedited permitting law and wind power issues in general.

RESPONSE: DOC thanks Mr. Gurall for participating in the public hearing.

Terry Bright commented by e-mail on 01/05/2010.

COMMENT: The commenter understands the rule under consideration only requires a scenic assessment to be performed in areas near the Appalachian Trail and White Mountain Forest and finds that short-sighted. The commenter is a resident of Colorado who visits Junior Lake and the Downeast Lakes Watershed to fish and will go elsewhere if development continues. Maine is a national treasure.

RESPONSE: DOC was tasked with designating scenic viewpoints of state or national significance on public reserved lands and publicly accessible pedestrian trails, to be considered in the context of wind energy development in the expedited permitting area. DOC also considered public reserved lands and trails located within an 8-mile buffer of the expedited area, recognizing views from lands outside the expedited area may be impacted. The geographic focus of the rule is the expedited permitting area, not the Appalachian Trail and White Mountain National Forest.

Much of the Downeast Lakes area is not located within the expedited permitting area, therefore not in the purview of this rule. Some of the 8-mile buffer around the expedited area in the Downeast Lakes area contains public reserved lands (or portions of public reserved lands). These were determined either not to have viewpoints of state or national significance, or the viewpoints are located on rivers or streams or great ponds (such viewpoints are governed by 35-A M.R.S. §§ 3451(9)(D) and (9)(E)).

Tracy Allen commented by e-mail on 01/22/2010.

COMMENT: This rule is another step the state of Maine is taking to ease the way for destruction of miles of ridgeline for the sake of the wind power industry. The legislature is asking DOC to decide which viewpoints are NOT significant which will make it easier on the developers in these areas. Additionally, eight miles is not enough of a distance to consider when talking about visual impact, especially from hiking trails along rivers and ponds, where you are travelling slowly. They are also quite prominent at night. The distances should be increased to: require a visual impact study for development within 15 miles, and suggest a study from 15-25 miles.

RESPONSE: DOC has a defined task in this rule-making—to designate scenic viewpoints of state or national significance on Public Reserved Lands and on publicly accessible pedestrian trails. Viewpoints are to be designated within the wind power expedited permitting area, and within an 8 mile buffer of this area. The purpose of this rule is to determine whether an applicant for an expedited wind energy development must provide a visual impact assessment. If a wind energy development were proposed up to 3 miles from a viewpoint listed in this rule, the applicant would be required to provide a visual impact assessment, and may be required to provide one if the development were up to 8 miles.

Comments on the statutory parameters guiding the rule are appropriately addressed to the legislative branch, and are not appropriate for response through the executive branch rule-making process.

Randall Male of Citizens Energy Corporation commented by mail on 01/04/2010.

COMMENT: This rule runs counter to the desires of the legislature, Governor, and people of Maine in promoting responsible development of Maine's wind energy resource. Current DEP and LURC regulations allow these agencies the discretion of requiring a visual impact assessment, so no further regulation is needed. Since the majority of Maine's economically viable wind resource is within an eight mile buffer of designated viewpoints, in many cases turbines will have to be within sight of these viewpoints. Wind power development is already costly in Maine, and this rule will have a chilling effect on Maine's ability to meet its' renewable energy goals.

RESPONSE: DOC was directed to adopt this rule by "An Act to Implement Recommendations of the Governor's Task Force on Wind Power Development", PL 2007, Chapter 661, Effective April 18, 2008. The statute was duly created by the Legislature and the Governor.

This rule will give DEP and LURC guidelines on which public reserved lands and publicly accessible trails should be considered of scenic significance (rather than taking a broad-brush approach and designating all public reserved lands and pedestrian trails as significant). The operation of this rule will require a visual impact assessment of potential wind power projects, thus bringing scenic considerations to the table so the siting authorities can consider them.

David Publicover of the Appalachian Mountain Club commented by e-mail on 01/22/2010.

COMMENT: AMC supports the proposed rule as written. The list of viewpoints is complete.

RESPONSE: DOC thanks AMC for their comments.

Carolyn R. Dodge commented in person and in writing at the 01/12/2010 Public Hearing in the Harlow Building in Augusta, ME.

COMMENT: The public has not been included in the deliberations on wind power projects for the past 15 years. Title 35-A M.R.S.A. section 3457(1) (PL 2007, Chap 661) is a direct lack of consideration and respect to Maine people and they were not included in the process. Therefore it should be reconsidered in a public vote. Current wind power developments have been installed without proper impact studies.

RESPONSE: Comments on the validity of statutes are appropriately addressed to the legislative or judicial branch, and are not appropriate for response through the executive branch rule-making process.

Penny Gray commented by e-mail on 01/04/2010.

COMMENT: Patriot Renewables is seeking a permit to put 19 wind turbines on Saddleback Ridge in Carthage. The mountain has unique natural resources and is within a half mile of Bald Mountain and within four miles of Mount Blue State Park. The visual impact of the turbines would hurt tourism and the beauty of the area. The power generated would not be worth sacrificing our mountains.

RESPONSE: This rule will list the public reserved land lot in Perkins Township which covers part of Bald Mountain. A visual impact assessment will be required by the wind power applicant as a result. The commenter should comment to the Primary Siting Authority about her opposition to the project, which goes beyond the purview of this rule.

David Darrow of Darrow Camp commented by e-mail on 01/10/2010.

COMMENT: The commenter is opposed to the potential wind project on Bowers Mountain. He is the owner of a wilderness base camp leading wilderness trips for children. Bowers Mountain is visible from the base camp and many of the trips he leads.

RESPONSE: Opposition to a specific wind power proposal should be addressed to the primary siting authority.

Gary Stevens commented in person at the public hearing on 01/12/2010.

COMMENT: It is important to keep the area around Grand Lake Stream free from wind turbines as the guides depend on scenic beauty for their businesses. Lakes such as Junior Lake, West Grand, Scraggly and others are all listed as 1A or 1B for their scenic beauty by LURC. Many guides are against wind power, and are often not informed about wind projects being proposed.

RESPONSE: Much of the Downeast Lakes area is not located within the expedited permitting area, therefore not in the purview of this rule. Some of the 8-mile buffer around the expedited area in the Downeast Lakes area contains public reserved lands (or portions of public reserved lands). These were determined either not to have viewpoints of state or national significance, or the viewpoints are located on rivers or streams or great ponds (such viewpoints are governed by 35-A M.R.S. §§ 3451(9)(D) and (9)(E)). If the lakes mentioned by the commenter are rated as scenic by the LURC Wildlands Lakes Assessment, a visual impact assessment may be required depending on the proximity of the proposed wind power project to the lake.

Representative Wayne Mitchell, Representative of the Penobscot Nation in the 124th Maine State Legislature, commented by e-mail on 12/18/2009.

COMMENT: The value of tribal trust land is not purely economic. Rather it is vital to our existence in terms of tribal political and cultural sovereignty. Tribal trust lands are protected against alienation. Self-Determination policy is intended to allow tribes to assume primary control about use of tribal lands for economic development. Restrictions on tribal trust lands means any disposition requires tribal and federal approval. Maine law cannot be applied post settlement to any Tribal lands without the full and complete consent of the affected Tribe.

RESPONSE: DOC was directed to adopt this rule by "An Act to Implement Recommendations of the Governor's Task Force on Wind Power Development", PL 2007, Chapter 661, Effective April 18, 2008. The comments seem directed at the statute and are equally worthy of consideration by the appropriate body irrespective of adoption of this rule implementing one narrow aspect of the statute. Comments on the validity of statutes are appropriately addressed to the legislative or judicial branches of state or federal government, and are not appropriate for response through state executive branch rule-making process.

Rule-Making Fact Sheet

(5 M.R.S.A. §8057-A)

AGENCY: Department of Conservation

NAME, ADDRESS, PHONE NUMBER OF AGENCY CONTACT PERSON:

Alan Stearns
18 Elkins Lane
22 State House Station
Augusta, ME 04333
287-4911

CHAPTER NUMBER AND RULE TITLE: Proposed 04-056 Chapter 3, "Designated scenic viewpoints of state or national significance, located on Public Reserved Land or on a publicly accessible trail used exclusively for pedestrian use, for consideration in the permitting of expedited wind energy development."

STATUTORY AUTHORITY: Title 35-A M.R.S.A. section 3457(1) (PL 2007, Chapter 661)

DATE AND PLACE OF PUBLIC HEARING: January 12, 2010, 10am, Maine Department of Conservation, Harlow Building Room 109, Augusta

COMMENT DEADLINE: January 25, 2010

PRINCIPAL REASON OR PURPOSE FOR PROPOSING THIS RULE: The Department of Conservation (DOC) was directed by "An Act to Implement Recommendations of the Governor's Task Force on Wind Power Development", PL 2007, Chapter 661, Effective April 18, 2008 (the "Act") to adopt this rule. The Act recognizes a potential impact of wind energy development on scenic character from certain views. The Act requires the DOC to designate scenic viewpoints of state or national significance on public reserved lands and publicly accessible pedestrian trails, to be considered in the context of wind energy development in the expedited permitting area. Once the rule is adopted, if an expedited wind energy development is proposed up to 3 miles from a designated viewpoint, the applicant would be required to provide a visual impact assessment to the primary siting authority. If the development is proposed between 3 and 8 miles of the scenic viewpoint, a visual impact assessment may be required if the primary siting authority finds substantial evidence that it is needed to determine significant adverse impact to the scenic resource.

ANALYSIS AND EXPECTED OPERATION OF THE RULE: The DOC included in this rule scenic viewpoints of state or national significance on public reserved lands and publicly accessible pedestrian trails within or near the expedited permitting area. As directed by the Act, codified at 35-A M.R.S. § 3451(9), however, the DOC did not include viewpoints of state or national significance that are otherwise designated by law. Thus, DOC did not include viewpoints on publicly accessible pedestrian trails located in the coastal area as such viewpoints are governed by 35-A M.R.S. § 3451(9)(H) and 35-A M.R.S. § 3457, which direct the State Planning Office (SPO) to inventory the scenic resources of state or national significance that are located in the coastal area. Further, DOC did not include viewpoints on public reserved lands or publicly accessible trails located on rivers or streams or great ponds, as such viewpoints are governed by 35-A M.R.S. §§ 3451(9)(D) and (9)(E), and similarly, DOC did not include viewpoints on publicly accessible trails located on state parks lands, as such viewpoints are governed by 35-A M.R.S. § 3451(9)(C) and 12 M.R.S. § 1801(7) & § 1804(2). Thus this rule does not designate viewpoints on state park lands, including but not limited to the Mount Kineo parcel in Kineo Township in Piscataquis

County; the Concord Pond parcel in the Town of Woodstock in Oxford County; and Speckled Mountain in the Towns of Sumner and Peru in Oxford County.

FISCAL IMPACT OF THE RULE: This rule imposes no direct cost or other economic burden on municipalities.

Administrative Procedure Act

CHECKLIST

Agency: Department of Conservation

Chapter Number and Title of Rule: Proposed 04-056 Chapter 3, "Designated scenic viewpoints of state or national significance, located on Public Reserved Land or on a publicly accessible trail used exclusively for pedestrian use, for consideration in the permitting of expedited wind energy development."

PROPOSED RULE:

1. Was this rule listed on the last regulatory agenda? Yes
2. Date of notification of: Anyone on mailing list 12/15/2009
Any trade, industry or professional group 12/15/2009
Any trade publications _____
3. Date Notice of Rulemaking Proposal (MAPA-3) sent to Secretary of State: 12/15/2009
4. Date Fact Sheet sent to Executive Director of Legislative Council: 12/15/2009
5. Date of publication in Secretary of State's rule-making ad.: 12/23/2009
6. Date of hearing(s): 01/12/2010 7. Comment deadline: 01/25/2010

ADOPTED RULE:

8. Was comment deadline extended or comment period reopened? No
If yes, date of second notice publication in Secretary of State's rule-making ad: _____
9. Is adopted rule consistent with what was proposed? One public lot was added
(If not, please address the changes in the comments and responses section of your filing.)
10. Is the person signing the Certification Statement (MAPA-1, #9) authorized to do so as stated in your statutes or in 5 MRSA, c.71? yes
11. Was the rule adopted within 120 days of the comment deadline? Yes
12. Was the rule approved and signed by the Office of the Attorney General within 150 days of the comment deadline? Yes
13. Is a Basis Statement included? yes Is a copy of the Fact Sheet included? yes
Are comments, with names and organizations, and your responses included? yes

Notice of Agency Rule-making Adoption

AGENCY: Department of Conservation

CHAPTER NUMBER AND TITLE: 04-056 Chapter 3. Designated scenic viewpoints of state or national significance, located on Public Reserved Land or on a publicly accessible trail used exclusively for pedestrian use, for consideration in the permitting of expedited wind energy development.

ADOPTED RULE NUMBER: ~~2010-111~~ 2010-111
(LEAVE BLANK - ASSIGNED BY SECRETARY OF STATE)

CONCISE SUMMARY

This rule designates scenic viewpoints of state or national significance on Public Reserved Lands and on publicly accessible pedestrian trails. Viewpoints are designated within the wind power expedited permitting area, and within an 8 mile buffer of this area. The purpose of this rule is to determine whether an applicant for an expedited wind energy development must provide a visual impact assessment. If a wind energy development were proposed up to 3 miles from a viewpoint listed in this rule, the applicant would be required to provide a visual impact assessment, and may be required to provide one if the development were up to 8 miles.

EFFECTIVE DATE: APR 4 2010
(TO BE FILLED IN BY SECRETARY OF STATE)

AGENCY CONTACT PERSON: Alan Stearns
AGENCY NAME: Department of Conservation
ADDRESS: 18 Elkins Lane
22 State House Station
Augusta, ME 04333

TELEPHONE: 287-4911

Please approve bottom portion of this form and assign appropriate AdvantageME number.

APPROVED FOR PAYMENT _____

Authorized signature

DATE: _____

3/29/10

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