

Documents Submitted with TransCanada's April 28th submission to the Rulemaking Record

Documents included in this scan

- Cover letter
- Response to comments
- Revised Chapter 10, appendix F

Documents available for viewing at the LURC Augusta office (not scanned due to size)

- Flagstaff Region Management Plan, June 12, 2007
- John Titus pre-filed testimony in the matter of DP 4860
- Hoen, Ben: "Impacts of Windmill visibility on Property values in Madison County, New York. Project Report Submitted to the Faculty of the Bard Center for Environmental Policy." April 30, 2006, Annandale on Hudson, NY.
- Sterzinger, George, *et.al.* "The Effect of Wind Development on Local Property Values". Renewable Energy Policy Project. May 2003, Washington D.C.
- Hoen, Ben, *et. al.* "The Impact of Wind Power Projects on Residential Property Values in the United States: A Multi-Hedonic Analysis". Ernest Orlando Lawrence Berkeley National Laboratory, December 2009, Berkeley, CA.
- National Academies of Sciences. "Environmental Impacts of Wind-energy Projects". 2007, Washington, D.C.
- Pre-filed Direct Testimony of Jean Vissering in the matter of DP 4860
- Pre-filed direct testimony of Peter Vickery, Ph.D. in the matter of DP 4860
- Pre-filed direct testimony of Donald W. Hudson, Jr., Ph.D. in the matter of DP 4860

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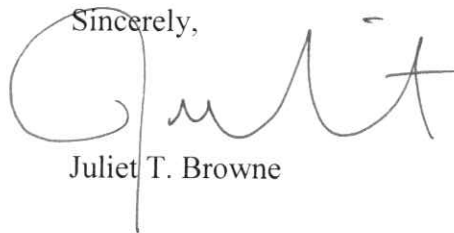
Marcia Spencer Famous
Maine Land Use Regulation Commission
18 Elkins Lane, Harlow Bldg.
Augusta, ME 04333

Re: TransCanada Maine Wind Development, Inc., Rulemaking to Add to the
Expedited Permitting Area

Dear Marcia:

Enclosed please find (i) information responsive to some of the issues raised during the public hearing held on March 17, 2010, and (ii) proposed language modifying Appendix F consistent with the proposal to add approximately 156 acres to the expedited permitting area as opposed to the 630 acres that was originally proposed. We appreciate the opportunity to provide this information and, as always, if you have any questions, please do not hesitate to contact me.

Sincerely,



Juliet T. Browne

JTB/prf

Enclosures

cc: Nick Di domenico
Christine Cinnamon
Dana Valleau

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**TRANSCANADA MAINE WIND DEVELOPMENT INC.'S RESPONSE TO
COMMENTS IN RULEMAKING TO ADD TO THE EXPEDITED PERMITTING AREA**

On behalf of TransCanada Maine Wind Development, Inc., this information is provided in response to comments on the rulemaking to add to the expedited permitting area.

Effect of Adopting the Proposed Rule. As expressly stated in the March 3, 2010 Guidelines for the Review of Petitions for the Addition of Lands to the Expedited Permitting Area for Wind Energy Development (“LURC Guidance”), expansion of the expedited permitting area does not constitute approval of a particular project. Thus, the effect of granting the proposed Petition is to modify but not eliminate review criteria. Specifically, any subsequent development proposal must undergo review and approval pursuant to LURC development standards and the additional review standards imposed pursuant to 2007 Public Law, Chapter 661 (the “Wind Power Act”). Thus, many of the site specific concerns voiced by members of the public are more appropriate for consideration in the context of a specific development proposal, and the statement by Nancy O’Toole that “once a parcel is viewed as expedited, it is almost without protection from industrial wind development,” is simply false. Once a parcel is included in the expedited permitting area, a developer must submit a complete application that demonstrates there are no undue adverse impacts on habitat and other resources, that the visual impacts comply with the revised visual impact standard established under the Wind Power Act, and that the proposal is consistent with the Comprehensive Land Use Plan (“CLUP”). Indeed, the rigorous review that is occurring in connection with the Kibby Expansion project (DP 4860) and Ms. O’Toole’s participation in the public hearing on that project are evidence that any wind power development, including one proposed for the expedited permitting area, is subject to a comprehensive review process and set of rigorous review criteria.

Constitutional Challenge to the Rulemaking Process. Rufus Brown claims that the process for expansion of the expedited wind power permitting area pursuant to 35-A M.R.S.A. § 3453 is an unconstitutionally vague delegation of legislative authority to LURC. That is not the case. “In delegating decision-making authority to an executive agency, a statute need not provide determinate criteria as long as it offers an intelligible principle to which the person or body authorized to act is directed to conform.” Uliano v. Board of Environmental Protection, 2009 ME 89, ¶ 30, 977 A.2d 400, 413 (quoting Whitman v. Am. Trucking Ass'ns, 531 U.S. 457, 472 (2001)). The three statutory criteria for the expansion of the expedited permitting area, namely that a proposed expedited area: 1) involve a logical geographic extension of the existing expedited area, 2) be important to meeting the state goals for wind energy development (as defined by statute), and 3) not compromise the principal values of CLUP, go well beyond the minimum constitutional threshold of providing an “intelligible principle” for LURC to follow and actually provide objective, quantifiable standards. See 35-A M.R.S.A. § 3453.

Mr. Brown cites Uliano in support of his argument, but the Uliano Court upheld a statutory standard that, if anything, is less objective and quantifiable than the Wind Power Act’s three criteria for expansion of the expedited permitting area. The standard at issue in Uliano was the NRPA requirement that an “activity will not unreasonably interfere with existing scenic [and] aesthetic . . . uses.” 38 M.R.S.A. § 480-D. By contrast, the three expansion criteria in the Wind Power Act pertain to geographic continuity, numerical wind power development goals and

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consistency with the CLUP. There is no precedent suggesting that a court would find that the three expansion standards do not contain sufficiently objective criteria to guide the agency in decision-making. See Uliano, 2009 ME 89, ¶ 24 (collecting cases in which municipal permitting standards were invalidated due to vagueness). To the contrary, “[o]bjective quantification, mathematical certainty, and absolute precision are not required by either the United States Constitution or Maine Constitution.” Town of Baldwin v. Carter, 2002 ME 52, ¶ 7, 794 A.2d 62, 66 (collecting cases in which constitutional void for vagueness challenges were rejected).

Bog Lemming Habitat. Jody Jones from Maine Audubon Society (“MAS”) testified that wind power should not be an allowed use in the Petition area because any development would necessarily impact the bog lemming habitat present there. In fact, as stated on p. 5 of TransCanada’s March, 2010 Supplement to Add to the Windpower Expedited Permitting Area, sufficient upland area exists to avoid all impacts to the bog lemming habitat present in the Petition area.

Flagstaff Region Management Plan. Bob Weingarten stated that the Commission should consider (and erroneously stated that TransCanada had not considered) the Flagstaff Region Management Plan (the “Plan”). TransCanada agrees that the Commission should consider the Plan and has attached a copy for reference. The Plan is referenced numerous times in TransCanada’s June, 2009 Petition and is discussed by John Titus, who was instrumental in the development of that plan. Mr. Titus’ discussion of the Plan and its relevance (and support) for allowing wind power in this region is attached.

Impact of Wind Power on Residential Property Values. Wendy Glenn testified that it has been demonstrated “over and over” that there is a detrimental impact on property values “in any area where windmills are.” She also testified that properties in proximity to the Kibby Project used to “be extremely hard to come by; they were never on the market . . . but as soon as this Kibby Project was coming and being approved, properties went on the market and they ended up selling for about 60% of what they might have sold for before.” Ms. Glenn did not provide any studies or data to support her assertion. Moreover, the most extensive and rigorous study to date on the relationship between wind energy and property values concluded that “neither the view of the wind facilities nor the distance of the home to those facilities is found to have any consistent, measurable, and statistically significant effect on home sales prices.” Ernest Orlando Lawrence Berkeley National Laboratory, *The Impact of Wind Power Projects on Residential Property Values in the United States: A Multi-Site Hedonic Analysis* (December 2009). The Berkeley National Labs study analyzed nearly 7,500 home sales within 10 miles of 24 wind projects. A 2007 study by the National Research Council for the National Academies, entitled “the Environmental Impacts of Wind-Energy Projects” found that “it is difficult to generalize about the effects of wind-energy projects on property values.” *Environmental Impacts of Wind-Energy Projects*, National Research Council of the National Academies (2007) at 164. The report reached this conclusion through an examination of a number of studies on the property value impacts of wind energy facilities. None of the studies analyzing property values in the United States found that wind energy projects had a demonstrably negative effect on transaction prices. See *id.* at 164. Similarly, a 2006 study that used rigorous statistical analysis to examine the effect of a 20-turbine wind power facility in rural New York State on the value of properties within five miles over the course of 10 years found that the visibility of wind turbines had no

measurable effect on home prices. See Ben Hoen, *Impacts of Windmill Visibility on Property Values in Madison County, New York* (April 30, 2006) at 34. Finally, a 2003 study that analyzed property values within five miles of 10 different wind energy projects, similarly concluded that “there is no support for the claim that wind development will harm property values.” Sterzinger et al., *the Effect of Wind Development on Local Property Values* (May 2003) at 9. The four studies are attached.

Visual Impacts. There has been considerable confusion on the visual impact standards that govern development within the expedited permitting area, and a suggestion by at least one member of the public that if the Petition were granted the Commission would not have the ability to evaluate visual impacts. That is simply not the case. The Wind Power Act modified but did not eliminate the visual impact standard. In reviewing projects located within the Expedited Permitting Area, the Commission must determine “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.” 35-A M.R.S.A. § 3452. The concerns voiced during the public hearing relate to visual impacts on Chain of Ponds. Chain of Ponds is a scenic resource of state or national significance as defined under the Wind Power Act and therefore the Commission will necessarily evaluate visual impacts of any wind power development on Chain of Ponds. Indeed, as reflected in the parallel Kibby Expansion proceeding (DP 4860), visual impacts are an important consideration and TransCanada’s application includes substantial information on visual impacts. Jean Vissering, a landscape architect, has prepared pre-filed testimony in DP 4860 summarizing the visual impacts of that project on Chain of Ponds. Her testimony is attached for reference and inclusion in this rulemaking. Any proposal to locate turbines in the Petition area would include an evaluation of the visual impact of any such turbines on Chain of Ponds and other resources of state or national significance, including the Arnold Trail and Kibby Stream.

Bicknell’s Thrush Habitat. Jody Jones from MAS testified that the surveys done for Bicknell’s thrush were inadequate because protocols call for two seasons and TransCanada only conducted surveys during one breeding season. The surveys done for Bicknell’s thrush are consistent with those done in connection with the prior Kibby Project, which are based on the Vermont Center for Ecostudies and Bird Studies Canada’s High Elevation Land Bird Program protocols. The survey protocols were developed in consultation with Maine Department of Inland Fisheries and Wildlife and U.S. Fish & Wildlife Service. Moreover, although Dave Publicover from AMC suggested that the Petition area provides critical future potential habitat for Bicknell’s thrush, as described in the pre-filed testimony of Peter Vickery in DP 4860, there is extensive potential Bicknell’s thrush habitat in the vicinity of the Petition area, both in subalpine forests in the area as well as regenerating clear cuts at lower elevations. Mr. Vickery also notes that impacts associated with wind power projects are not likely to have an undue adverse impact on the Bicknell’s thrush population, as the primary threats to this species are loss of wintering habitat in the Caribbean, predation by exotic rats in these wintering areas, and global warming. Mr. Vickery’s testimony is attached for reference and inclusion in this rulemaking.

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Subalpine Community. Jody Jones from MAS and David Publicover from AMC testified that the Petition should be denied due to the presence of subalpine habitat in the Petition area. As noted above, granting the Petition would not result in any impact to the subalpine community; rather it would make wind power an allowed use and therefore permit a developer to submit an application to locate turbines there. Moreover, as discussed in the pre-filed testimony submitted by Don Hudson in DP 4860, subalpine habitat in the vicinity of Sisk Mountain, including the Petition area, represents a small fraction of the total mapped forest community in Maine, and an even smaller percentage of this community in the northeastern United States and Canada. In addition, the subalpine communities in this area are not among the more unique or higher value examples of this community in Maine. Further, the vast majority of the higher quality subalpine forests, located in Baxter State Park, the Mahoosucs, and the Bigelow Range, are permanently protected. Mr. Hudson's testimony is attached for reference and inclusion in this rulemaking.

Boundary of the Existing Expedited Permitting Area. Rufus Brown asserts that there was a deliberate decision to exclude the southern part of Sisk Mountain from the expedited permitting area and therefore the Commission should not set aside that deliberate decision by the Legislature. In fact, the existing line was drawn to accommodate a developer who sought to preserve the potential to develop Mount Pisgah. It is not the case that the southern portion of Sisk was deliberately excluded; instead, it was excluded simply because no one sought to include it.

Commissioning Phase of the Kibby Project. During the public hearing there were questions about the commissioning of the Kibby Project and periods of time when the farm was not operating. Construction of the first phase of the Kibby Project (the A-Series turbines) was completed and commercial operations commenced October 30, 2009. While there have been some issues with the collector system design that have required diagnostic and remedial measures, these types of issues are not uncommon in the initial start up of a major power generation project. Importantly, they have not resulted in power outages on the CMP system, as some people suggested, and will have no impact on the long-term availability of the equipment for power production once fully commissioned.

During the permitting for the Kibby Project, TransCanada estimated that the full project (132 MW installed capacity) would generate 357 million kWh per year. See Kibby Wind Power Project Final Development Plan Table 2-1. That number assumes an average annual capacity factor of 30.9%. Since November 2009, the average capacity factor for the A-Series turbines has been 31.2% (excluding days when TransCanada suspended or partially suspended power production to implement appropriate diagnostic and remedial measures related to the collector system issues), which is broadly in line with the projected annual average. However, we strongly caution against using such a short period to draw any conclusions regarding the project's long-term performance. In accordance with Condition 5 of DP 4794, TransCanada will submit annually for the first two years of operation a report detailing the project's contribution to the State's environmental and energy policy objectives, including the total megawatt hours generated and an estimate of pollution reduced or displaced by project operation.

APPENDIX F. EXPEDITED PERMITTING AREA FOR WIND ENERGY DEVELOPMENT

The following areas, not including areas below the high water mark of tidal waters, comprise the expedited permitting area for wind energy development to accomplish the purpose of "An Act to Implement Recommendations of the Governor's Task Force on Wind Power Development", PL 2008, Chapter 661. The Commission may add areas within its jurisdiction to the expedited permitting area for wind energy development in accordance with Title 35-A, section 3453.

1. Entire townships and plantations. The following entire townships and plantations: Albany Twp., 17802; Alder Stream Twp., 07801; Argyle Twp., 19801; Bald Mountain Twp., T2 R3, 25805; Baring Plt., 29040; Barnard Twp., 21030; Batchelders Grant Twp., 17805; Benedicta Twp., 03050; Big Moose Twp., 21801; Blake Gore, 25811; Blanchard Twp., 21040; Brookton Twp., 29801; Carroll Plt., 19080; Carrying Place Twp., 25860; Cary Plt., 03090; Centerville Twp., 29080; Chase Stream Twp., 25816; Chester, 19100; Codyville Plt., 29110; Concord Twp., 25818; Connor Twp., 03802; Cove Point Twp., 21805; Cox Patent, 03803; Cross Lake Twp., 03899; Cyr Plt., 03140; Dennistown Plt., 25090; Drew Plt., 19160; Dudley Twp., 03804; Dyer Twp., 29803; E Twp., 03160; East Moxie Twp., 25821; Edmunds Twp., 29804; Fletchers Landing Twp., 09804; Forest City Twp., 29806; Forest Twp., 29805; Forkstown Twp., 03805; Fowler Twp., 29807; Freeman Twp., 07808; Garfield Plt., 03220; Glenwood Plt., 03230; Grand Falls Twp., 19250; Grindstone Twp., 19802; Hamlin, 03250; Hammond, 03260; Harfords Point Twp., 21811; Herseytown Twp., 19803; Hibberts Gore, 15801; Highland Plt., 25150; Hopkins Academy Grant Twp., 19804; Indian Stream Twp., 25828; Jim Pond Twp., 07811; Johnson Mountain Twp., 25829; Kibby Twp., 07812; Kingman Twp., 19808; Kingsbury Plt., 21110; Lake View Plt., 21120; Lambert Lake Twp., 29809; Lexington Twp., 25831; Macwahoc Plt., 03360; Marion Twp., 29810; Mason Twp., 17811; Mattamiscontis Twp., 19810; Mayfield Twp., 25835; Milton Twp., 17812; Misery Gore Twp., 25837; Misery Twp., 25836; Molunkus Twp., 03806; Moosehead Junction Twp., 21816; Moro Plt., 03430; Mount Chase, 19450; Moxie Gore, 25838; Nashville Plt., 03440; No. 14 Twp., 29330; North Yarmouth Academy Grant Twp., 03807; Orneville Twp., 21821; Osborn, 09230; Oxbow Plt., 03500; Parkertown Twp., 17814; Parlin Pond Twp., 25839; Perkins Twp., 07818; Perkins Twp. Swan Island, 23801; Pleasant Ridge Plt., 25250; Prentiss Twp., T4 R4 NBKP, 25843; Prentiss Twp., T7 R3 NBPP, 19540; Rangeley Plt., 07160; Reed Plt., 03540; Saint Croix Twp., 03808; Saint John Plt., 03570; Sandbar Tract Twp., 25848; Sandy Bay Twp., 25850; Sandy River Plt., 07170; Sapling Twp., 25851; Seboeis Plt., 19550; Silver Ridge Twp., 03809; Squapan Twp., 03810; Squaretown Twp., 25854; Summit Twp., 19812; T1 R5 WELS, 03816; T1 R6 WELS, 19815; T10 R3 WELS, 03829; T10 R6 WELS, 03830; T10 SD, 09806; T11 R3 NBPP, 29817; T11 R4 WELS, 03833; T13 R5 WELS, 03856; T14 R5 WELS, 03867; T14 R6 WELS, 03868; T15 R5 WELS, 03879; T15 R6 WELS, 03880; T16 MD, 09807; T16 R4 WELS, 03889; T16 R5 WELS, 03890; T16 R6 WELS, 03891; T17 R3 WELS, 03897; T17 R4 WELS, 03898; T18 ED BPP, 29818; T18 MD BPP, 29819; T19 ED BPP, 29820; T19 MD BPP, 29821; T2 R4 WELS, 03817; T2 R8 NWP, 19817; T2 R9 NWP, 19819; T22 MD, 09808; T3 Indian Purchase Twp., 19806; T3 R3 WELS, 03818; T3 R4 WELS, 03819; T3 R9 NWP, 19823; T4 R3 WELS, 03820; T6 R6 WELS, 19829; T7 R5 WELS, 03821; T7 R6 WELS, 19832; T7 SD, 09803; T8 R3 NBPP, 29815; T8 R3 WELS, 03822; T8 R4 NBPP, 29816; T8 R5 WELS, 03823; T8 R6 WELS, 19835; T9 R3 WELS, 03824; T9 R4 WELS, 03825; T9 R5 WELS, 03826; T9 SD, 09805; TA R2 WELS, 03813; TA R7 WELS, 19814; Taunton & Raynham Academy Grant, 25803; TC R2 WELS, 03814; TD R2 WELS, 03815; The Forks Plt., 25320; Trescott Twp., 29811; Unity Twp., 11801; Upper Molunkus Twp.,

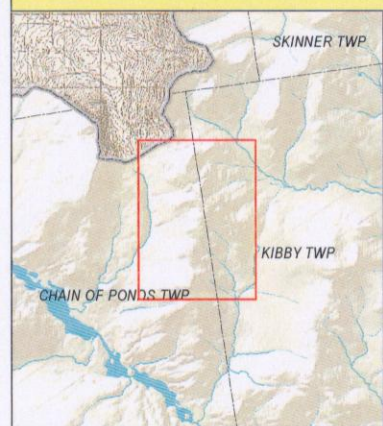
03811; Washington Twp., 07827; Webbertown Twp., 03812; Webster Plt., 19600; West Forks Plt., 25330; Williamsburg Twp., 21827; and Winterville Plt., 03680;

2. Portions of townships and plantations. The following portions of townships and plantations: that portion of Adamstown Twp., 17801, north of Route 16; Bald Mountain Twp., T4 R3, 25806, excluding areas of Boundary Bald Mountain above 2,700 feet in elevation; an approximately 156.3 acre parcel, bounded by the eastern Chain of Ponds Twp. town line starting at latitude 45° 22.050' N, longitude 70° 37.449' W, proceeding westerly to latitude 45° 22.025' N, longitude 70° 37.662' W then proceeding southerly to latitude 45° 21.110' N, longitude 70° 37.774' W proceeding easterly to latitude 45° 21.139' N, longitude 70° 37.541' W where it intersects the 2,800 foot contour, proceeding along the 2,800 foot contour northerly and then easterly to the intersection of the 2,800 foot contour and the town line, at latitude 45° 21.498' N, longitude 70° 37.318' W then following the eastern Chain of Ponds Twp. town line north back to the starting point at latitude 45° 22.050' N, longitude 70° 37.449' W; a 146.6-acre parcel in the northeast corner of the Chain of Ponds, 07803, along the border with Canada; and the portion of Coplin Plt., 07040, north of Route 16; the portion of Dallas Plt., 07050, north of Route 16; the portion of Ebeemee Twp., 21853, east of Route 11; the portion of Kossuth Twp., 29808, north of Route 6; the portion of Lang Twp., 07813, north of Route 16; the portion of Lincoln Plt., 17160, north of Route 16; the portion of Long A Twp., 19809, east of Route 11; the portion of Long Pond Twp., 25833, south of Long Pond and Moose River; the 487.5-acre area above the 2,040-foot elevation around Green Top in Lynchtown Twp., 17810; the portion of Rockwood Strip T1 R1 NBKP, 25844, south of Moose River, Little Brassua Lake and Brassua Lake; the portion of Rockwood Strip T2 R1 NBKP, 25845, south of Little Brassua Lake and Brassua Lake; the portion of Salem Twp., 07820, south of Route 142; the portion of Sandwich Academy Grant Twp., 25849, south of Moose River, Little Brassua Lake and Brassua Lake; that portion of Skinner Twp., 07822, composed of the 193.3-acre area that follows the ridge to Kibby Mountain, bounded on the east and west by the 2,820-foot contour, on the south by the town line and on the north by the line from the 2,820-foot contour through the 3,220-foot contour from Kibby Mountain; the portion of Soldiertown Twp., T2 R7 WELS, 19811, east of the East Branch Penobscot River; the portion of T1 R8 WELS, 19816, south of Millinocket Lake; the portion of T1 R9 WELS, 21833, southeast of Ambajejus Lake; T24 MD BPP, 29822, excluding a one-mile buffer around Mopang Stream; the 51.9-acre area in T25 MD BPP, 29823, encompassing Black Brook and Black Brook Pond, and the area northeast of Holmes Falls Road; the portion of T3 R7 WELS, 19821, east of the Seboeis River and East Branch Penobscot River; the portions of T4 Indian Purchase Twp., 19807, area northeast of North Twin Lake and south of Route 11; the portion of T4 R7 WELS, 19824, east of the Seboeis River; the portion of T4 R9 NWP, 21845, east of Route 11; the portion of T5 R7 WELS, 19827, east of the Seboeis River; and the portion of T6 R7 WELS, 19830, east of the Seboeis River; and

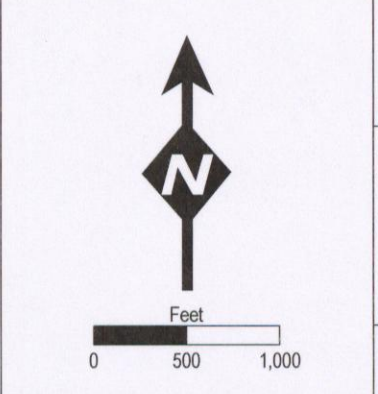
3. Coastal islands in unorganized and deorganized area. All islands located in waters subject to tidal influence that are within the unorganized and deorganized areas of the State.

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- Alternate_Number_One_Point_041610
- Alternate Layout Number One
- Expedited Wind Energy Project Permitting Area
- Fir - Heart-leaved Birch Subalpine Forest (total: 358 acres)**
- Natural Community Remainder (total: 256 acres)
- Habitat Area Adjacent to Project Footprint (total: 25 acres)
- Habitat Area Coincidental with Project Footprint (total: 39 acres)
- Habitat Area Fragmented by Project Footprint (total: 38 acres)



**Kibby Expansion
Wind Power Project**

*Alternate Layout Number One
Fir - Heart-leaved Birch
Subalpine Forest
Natural Community Remainder*

TRC 14 Gabriel Drive
Augusta, ME 04330