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PART THREE OF A THREE-PART SERIES

Wind power law hasn't prevented development conflicts



AP

In this Sunday, July 19, 2009 photo, the blades of windmill blur as they catch the wind on Stetson Mountain in Range 8, Township 3, Maine. (AP Photo/Robert F. Bukaty)

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AUGUSTA, Maine — After proposing major changes to state law that would speed up the review of wind power projects, Gov. John Baldacci's wind power task force members went one step further: They made a map.

Without the map, the law would be just a set of rules. The map was essential because it showed where wind turbines could go to get fast-track consideration.

A look at Maine's wind act

This is part two on a three-part series looking at wind energy in Maine and the laws surrounding it.

- Part 1: [How a task force put wind power on the fast track, and how some](#)

The map designated all the organized towns and about a third of the Unorganized Territory as the state's "expedited wind zone" where that speedy consideration of projects would take place. The task force also proposed to allow the Land Use Regulation

[are now questioning the goals they themselves helped set.](#)

- Part 2: [Examining the changes in rules recommended by the task force and the resulting law.](#)
- Part 3: The new law hasn't prevented development conflicts

Commission to expand the areas if applicants met certain standards.

How that map got drawn is not clear from the official record of the task force's meetings. That's because summaries for the last two

meetings don't exist, said task force chairman Alec Giffen's secretary, Rondi Doiron.

"Everyone was working straight out on getting the report done, and no one had time to get the summaries done," Doiron wrote in an e-mail to the Maine Center for Public Interest Reporting.

Today's poll

Should visual impact be a factor when permitting wind power projects?

Yes

No

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But Giffen and others freely describe the map's genesis: First, Giffen consulted with the developers'

representatives one-by-one, as they were loathe to share proprietary information with competitors. Then he went to the environmental groups and asked what areas they wanted to protect.

Then he came up with a proposed map designating

expedited wind development areas.

"I integrated, based on what I knew about what areas were important for what kinds of uses, presented it to the task force and got concurrence that the way in which it was outlined made sense," Giffen said.

Others describe the map-drawing process as a last-minute rush to get the task force's report done in time for legislators to consider as they neared the end of a short session.

"There was a lot of 'Here, here, here and here' and 'No, no, no and no,' during the map debate, said task force member Rep. Stacey Fitts, R-Pittsfield. "It changed several times." Maine Audubon's Jody Jones described the process as "I want this in, I want this out."

Whatever the process looked and sounded like is lost to the public record because no minutes were taken or recorded.

And that, says Sun Journal managing editor Judy Meyer, who's also vice president of the Maine Freedom of Information Coalition, is "shocking."

Maine law doesn't require groups like the governor's wind task force to memorialize deliberations, says Meyer.

“There’s no requirement that they record their meetings or produce minutes,” she said. “What smells particularly about this is that there are some summaries and not others. That’s a real eyebrow raiser. You’d think a governor’s task force would have the ability to keep minutes of its proceedings.”

Giffen said the map — which was approved by the full Legislature — is only the first step in deciding whether a project should be built in a specific place. “It’s a coarse filter to try to get wind power development guided to parts of the landscape where it’s already partially developed and you already have infrastructure,” he said. “Then you have the finer filters of the regulatory process.”

Task force member Pete Didisheim of the Natural Resources Council of Maine, who was one of the group’s strongest proponents of wind power development, said the map provided an essential tool by taking a lot of uncertainty out of the process of siting wind farms. That’s because he said that the designation of expedited zones announced, by implication, where developers shouldn’t go.

“I don’t think that any other state has drawn a map that says to developers, ‘Don’t go here,’” said Didisheim.

Attorney Chip Ahrens, who attended task force meetings on behalf of two clients, a large wind power developer and an installer of small wind turbines in commercial and residential sites, said that approach turned state regulation on its head — appropriately:

“There had always been on the table the state saying where wind power should go,” said Ahrens, who stressed he was not speaking on behalf of his clients. “I said, ‘let’s say where it should not go.’”

And just because a site is in the expedited permit zone doesn’t mean it’s an automatic approval once a wind power project applies for a permit to build.

“The law specifically says that the permitting agency shall not compromise its regulatory review criteria,” said LURC director Catherine Carroll. “It’s not a slam dunk.”

Law tested, angering some

That point was made acutely clear this year in one of the first tests of the new law, an application by TransCanada to build turbines in the expedited wind zone near its western Maine Kibby Mountain project.

At a July 7 meeting in Bangor, LURC commissioners — all of whom were nominated or renominated by Gov. John Baldacci — indicated by straw vote they’d deny TransCanada’s request to construct the turbines.

Several environmental organizations, including the three groups that were on the governor’s wind power task force, testified against portions of the project. Objections ranged from damage to wildlife to degradation of the scenically valuable high mountain site. Many of the commissioners likewise expressed concerns about the potential harm the project would do to the

site.

Commissioners struggled to weigh the new law's goals for wind power development against the environmental problems posed by the project.

"I'm terribly conflicted here," said Commissioner Steve Schaefer.

He and other commissioners said they were unclear whether the law's goals for wind power were binding on them and would force them to approve a project they didn't feel protected the landscape they were legally obligated to protect.

"The Wind Power Act looms large here," said Commissioner Ed Laverty.

"We're all going to reduce global warming and our carbon footprint," continued Laverty, "but most of the immediate benefits of projects like these do not accrue to the people of Maine, they're exported through the grid elsewhere.

"What stays with us in the state of Maine are the environmental impacts."

A few days after the LURC meeting, TransCanada's project manager Nick DiDomenico was outraged at the meeting's outcome. The environmental groups that had participated in the task force and then opposed TransCanada's proposal drew his special wrath:

"The [environmental groups] were at the table when the map was drawn up," he said. "That to me means these areas are acceptable for visual impacts. Maybe we were a little naive in drawing that conclusion.

"We thought the Wind Power Act meant something."

Within eight days, construction company Cianbro's chairman Peter Vigue had published a column in the Bangor Daily News criticizing LURC. Cianbro has done construction work on TransCanada's wind power projects as well as others in the state.

"This unpredictable regulatory environment will discourage investment in Maine," wrote Vigue.

On Aug. 1, retired law professor Orlando Delogu published a similarly sharp-toned column in the Maine Sunday Telegram.

"Reading a transcript of the recent LURC hearing on TransCanada's proposed Kibby No. 2 wind energy project, a 45-megawatt expansion of an existing facility in Chain of Ponds Township, makes you want to cry for Maine's economy and energy future," wrote Delogu.

"And then it makes you mad."

But state Sen. Peter Mills isn't mad at LURC. Instead, he calls the LURC commissioners "victims" of a new state policy that isn't clear enough about if, and how, competing values can be resolved.

“No one wanted to be bothered with the details,” said Mills. “We’ll just leave it up to LURC to figure out what we mean. We passed this thing, but we never gave them the tools to deal with this.”

LURC Commissioner Sally Farrand mirrored Mills’ frustration, when she remarked during the July 7 hearing, “Boy, I sure hope we can tighten up some of this stuff because I see it as a skating rink with some very dull skates.”

Other problems

There are other problems created by the legislation. One unintended consequence is that Maine mountain ridgelines, once available at relatively cheap prices to those who wanted to preserve them, have become coveted — and expensive — pieces of land.

“Were it not for the wind-power market, alpine land has fairly limited value,” said Alan Stearns, deputy director of the Bureau of Parks and Lands. “Right now the mathematics is land with wind power potential is not for sale for conservation.

“As long as the market for wind power is dynamic,” said Stearns, “most landowners with wind-power potential are working with wind power developers, not conservation groups, for that land.”

And turbine noise that irritates neighbors has proved to be especially problematic, with residents who live near towers complaining of sleep disturbance and other health problems.

But a comparison of the task force’s report with the governor’s legislation that became the Wind Power Act reveals a significant omission: The recommendation that the environmental protection commissioner be given the power to modify the noise aspects of a project’s permit never made it into the legislation.

Gov. Baldacci supplied the following answer in writing when asked why that provision had been left out of his wind power legislation:

“I relied on the Task Force members’ review of the draft legislation as a complete and accurate reflection of all the recommendations in their Report. If one or more of their recommendations was not included, I was not aware of that nor was any omission or deletion done at my request or direction.”

Task Force Chairman Giffen likewise had no idea how the omission occurred and told the Center he knew of no plans to correct it.

Finally, the building of enormous, high-voltage transmission lines that the regional electricity system operator said are required to move substantial amounts of wind power to markets south of Maine was never even discussed by the task force — an omission that Mills said will come to haunt the state.

“If you try to put 2,500 or 3,000 megawatts in northern or eastern Maine — oh, my god, try to build the transmission!” said Mills. “It’s not just the towers, it’s the lines — that’s when I begin to think that the goal is a little

far-fetched.”

Uncertain future

What's significant for the state's wind power policy is that Mills, who wasn't on the task force, isn't the only one who now doubts whether the state can — or should — meet the goals promoted by the governor and enshrined in his Wind Energy Act.

Members of Baldacci's hand-picked task force are dubious as well about whether there really are enough suitable — and politically acceptable — sites to build turbines to meet the goal of 2,000 megawatts by 2015 and 3,000 megawatts by 2020.

“We have to look at whether we have the land base to meet them,” said Jones.

Reaching 3,000 megawatts “is dependent on whether the political consensus holds up,” said task force member and DEP Commissioner David Littell.

“I think it's a stretch to reach 2,000 by 2015,” said the NRCM's Pete Didisheim.

But Giffen said he still believes that promoting wind power is an essential response to global warming. “So big picture here, the way that I look at this, is to say, the idea that there's not going to be any change in the state of Maine as regards our natural resources or how we generate energy, that's not a possibility,” said Giffen.

“If we don't do anything, we're going to see massive changes just in our natural resources. The changing climate conditions are going to mean that in 100 years the area around Portland is going to be suitable for loblolly pine [a southern tree species]. What does that mean for our existing soils, our existing ecosystems?”

“Is no change something that is even possible?” Giffen asked. “No, it's not. Do we have significant problems with our energy supply and dependence on fossil fuels in terms of climate change? Yes.”

“So is Maine well-served by having looked at its regulatory system to see how it can deal in a rational way with this kind of development? Is it perfect? I doubt it. Will we learn as we go along? Yes.”

LURC Commissioner Lavery takes another perspective:

“I think we need to take into consideration there aren't a lot of these 2,700-plus foot mountains in the state of Maine. I think that we have to pay special attention to the impact on significant resources in these areas, because,” he said, “once you invade these resources, the chances of re-establishing them over time, at least in our lifetimes, probably are fairly slim.”

In the end, the law that was supposed to put conflict to rest has not, and for a host of reasons, both procedural and substantive. Harvard University professor Henry Lee, who teaches energy and international development at

the Kennedy School of Government, said the conflict in values that wasn't resolved by Maine's Wind Energy Act — where those who want to act against the threats of global warming fight land conservationists — is one that's playing out across the nation and globe.

“I think that this pits to some extent environmental organizations against each other,” said Lee. “Some are focused on pollution issues and see wind and solar and other renewables as a significant improvement in terms of reduced pollution — and it is.

“On the other hand, if you're worried about land use, in a world where you have a finite quantity of land, there will continue to be significant disputes,” said Lee. “Wind sites tend to be slightly better along the coast and at higher altitudes, exactly where you have sign conflicts with esthetics.

“These disputes are going to get more intense, not less,” Lee said.

To view the full report of the task force, including a map of expedited sites, visit <http://www.maine.gov/doc/mfs/windpower/report.shtml>.

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