

STATE OF MAINE

CUMBERLAND, SS.

SUPERIOR COURT

CONSERVATION LAW FOUNDATION,  
*Plaintiff,*

v.

PAUL R. LePAGE, in his capacity as Governor  
of the State of Maine,  
*Defendant.*

Civil Action No. \_\_\_\_\_

**COMPLAINT**

**Introduction and Nature of the Action**

1. Plaintiff Conservation Law Foundation now brings this Complaint for Declaratory Relief pursuant to 14 M.R.S.A. § 5953 and the Constitution of the State of Maine against Defendant Paul R. LePage, in his capacity as the Governor of the State of Maine, and alleges as follows:

2. This action seeks a declaration from the Court that Defendant’s Executive Order No. 2018-002, issued on January 24, 2018 and instituting a moratorium on the issuance of permits related to wind turbines, is void as unconstitutional. The Executive Order violates the separation of powers between the executive, legislative and judicial branches of government as set forth in Articles III, IV and V of the Constitution of the State of Maine.

**Jurisdiction and Venue**

3. This Court has jurisdiction over the Defendant pursuant to 4 M.R.S.A. § 105, and jurisdiction over this action pursuant to 14 M.R.S.A. § 5953.

4. Venue is proper in this Court pursuant to 14 M.R.S.A. § 501 as Plaintiff is located within the County of Cumberland, the State of Maine.

## Parties

5. Plaintiff Conservation Law Foundation, Inc. (“CLF”) is a non-profit, member-supported organization incorporated under the laws of Massachusetts with offices at 53 Exchange Street, Suite 200, Portland, Maine in Cumberland County. CLF is a regional organization founded in 1966 with over 3,000 members, more than 400 of whom live in Maine, and is dedicated to the conservation and wise management and development of Maine and New England’s natural resources.

6. CLF is a leading advocate in the energy field, with attorneys and policy-makers engaged in advocacy concerning, among other topics, the design and operation of New England’s electric grid, energy efficiency, reducing greenhouse gas emissions, and the sustainable development of renewable energy sources. In Maine, CLF’s advocates have been engaged at the Legislature, participated in numerous agency proceedings and appeared before the Superior Court and the Maine Supreme Judicial Court in connection with the permitting of wind turbine projects, both onshore and offshore. For example, CLF participated in the first task force established to consider the impacts of wind energy development in Maine (the Task Force on Wind Power Development), was a member of the subsequent task force established to evaluate the potential for developing renewable energy in the Gulf of Maine (the Ocean Energy Task Force) (both task forces making recommendations that were ultimately adopted and enacted into statute by the Legislature) and has filed two amicus briefs with the Maine Law Court in connection with appeals of permits for wind turbine projects (*Champlain Wind, LLC v. Bd. of Env’tl. Prot.*, 2015 ME 156, 129 A.3d 279; *Friends of Lincoln Lakes v. Bd. of Env’tl. Prot.*, 2010 ME 18, 989 A.2d 1128).

7. The moratorium imposed by Defendant's Executive Order will harm a variety of interests held by CLF members, including their economic, public health, aesthetic and professional interests. Defendant's Executive Order also harms CLF members' constitutional interests in preserving the separation of powers between "3 distinct departments" of government.

8. Defendant Paul R. LePage is the serving Governor of the State of Maine, conducting official business in offices located in Augusta, Kennebec County, Maine.

### **The Constitution of Maine**

9. Under the Constitution of the State of Maine, the "powers of this government are divided into 3 distinct departments, the legislative, executive and judicial." Me. Const. art. III, § 1. "No person or persons, belonging to one of these departments, shall exercise any of the powers properly belonging to either of the others, except in the cases herein expressly directed or permitted." Me. Const. art. III, § 2.

10. Article III, Section 2 of the Constitution of the State of Maine forbids one branch of government from exercising any power that has been explicitly granted to another branch of government.

11. Under the Constitution of the State of Maine, the Legislature "shall have full power to make and establish all reasonable law and regulations for the defense and benefit of the people of this State, not repugnant to this Constitution, nor to that of the United States." Me. Const. art. IV, pt. 3, § 1.

12. The powers of the Legislature in matters of legislation are absolute, except as restricted and limited by the Constitution of the State of Maine.

13. The Legislature has the power to make determinations of public policy.

14. The Legislature's determination of public policy is binding on the courts so long as it is within constitutional limits.

15. Under the Constitution of the State of Maine, the "supreme executive power of this State shall be vested in a Governor." Me. Const. art. V, pt. 1, § 1.

16. The Governor "shall take care that the laws be faithfully executed." Me. Const. art. IV, pt. 1, § 12.

17. The Governor "shall from time to time give the Legislature information of the condition of the State, and recommend to their consideration such measures, as the Governor may judge expedient." Me. Const. art. IV, pt. 1, § 9.

18. Under the Constitution of the State of Maine, the Governor also has the authority to veto bills that have been passed by the Legislature. Me. Const. art. IV, pt. 3, § 2.

19. If the Governor vetoes a bill that has been passed by the Legislature, the legislative house in which the bill originates shall reconsider the bill and, if after such reconsideration, 2/3 of that house shall agree to pass it, it shall be sent to the other house, by which it shall be reconsidered, and, if approved by 2/3 of that house, "it shall have the same effect as if it had been signed by the Governor." Me. Const. art. IV, pt. 3, § 2.

20. The authority of the executive department is a grant: the executive department can exercise only the powers enumerated in and conferred upon it by the Constitution of the State of Maine, and such as are necessarily implied therefrom.

21. The Constitution of the State of Maine provides no power to the Governor or the executive branch to legislate.

### **The Legal Framework Governing Wind Turbines**

22. In Maine, wind turbine (or wind energy) projects, like other development projects

that may impact the environment, are governed by a suite of legislation, including the Natural Resources Protection Act, 38 M.R.S.A. §§ 480-A – 480-JJ, the Site Location of Development Law, 38 M.R.S.A. §§ 481 – 490, the Erosion and Sedimentation Control Law, 38 M.R.S.A. § 420-C, and the Stormwater Management Law, 38 M.R.S.A. § 420-D.

23. In 2004, in response to a large number of wind energy projects being proposed in Maine, the Legislature enacted the Maine Wind Energy Act, 35-A M.R.S.A. §§ 3401 – 3404, which is comprised of numerous provisions specifically governing the permitting of wind energy projects, in addition to the suite of traditional statutes above.

24. The Maine Wind Energy Act has a stated purpose to encourage the development, where appropriate, of wind energy production in the State.

25. Section 3402 (“Legislative findings”) of the Maine Wind Energy Act includes a number of legislative findings underlying Maine’s public policy with respect to wind energy production.

26. Specifically, the Legislature found that “it is in the public interest to explore opportunities for and encourage the development, where appropriate, of wind energy production in the State in a manner that is consistent with all state and federal environmental standards and that achieves reliable, cost-effective, sustainable energy production on those sites in the State that will attract investment and permit the development of viable wind energy projects.” 35-A M.R.S.A. § 3402, para. 1.

27. The Legislature also found that “it is in the public interest to encourage the construction and operation of community wind power generation facilities in the State.” 35-A M.R.S.A. § 3402, para. 1.

28. The Legislature also found and declared that “the wind energy resources of the State constitute a valuable indigenous and renewable energy resource and that wind energy development, which is unique in its benefits to and impacts on the natural environment, makes a significant contribution to the general welfare of the citizens of the State.” 35-A M.R.S.A. § 3402(1).

29. Section 3404 (“Determination of public policy; state wind energy generation goals”) of the Maine Wind Energy Act sets forth Maine’s public policy with respect to wind energy development. 35-A M.R.S.A. § 3404.

30. The Legislature determined that “[i]t is the policy of the State in furtherance of the goals established in subsection 2, to encourage the attraction of appropriately sited development related to wind energy, including any additional transmission and other energy infrastructure needed to transport additional offshore wind energy to market, consistent with all state environmental standards; the permitting and financing of wind energy projects; and the siting, permitting, financing and construction of wind energy research and manufacturing facilities.” 35-A M.R.S.A. § 3404(1).

31. Subsection 2 sets forth goals for wind energy development in the State, namely that there be: at least 2,000 megawatts of installed capacity by 2015; at least 3,000 megawatts of installed capacity by 2020, including 300 megawatts or more from generation facilities located in coastal waters or in proximate federal waters; and at least 8,000 megawatts of installed capacity by 2030, including 5,000 megawatts from generation facilities located in coastal waters or in proximate federal waters. 35-A M.R.S.A. § 3404(2).

32. Several years later, in response to new issues associated with specific wind energy projects, former-Governor Baldacci issued Executive Order No. 31 FY 06/07, “An Order

Establishing the Governor’s Task Force on Wind Power Development in Maine,” May 8, 2007 (“2007 Executive Order”). A copy of the 2007 Executive Order is attached hereto as Exhibit A.

33. The 2007 Executive Order established the Governor’s Task Force on Wind Power Development (“Task Force on Wind Power”) and charged it with, among other things, examining the regulatory process and review criteria by which wind power projects are evaluated in Maine, identifying barriers to wind power development, identifying and recommending any changes deemed beneficial for assuring that Maine has a balanced, efficient and appropriate regulatory framework for evaluating wind power projects and proposing policy changes that would help facilitate the development of wind power in Maine.

34. The 2007 Executive Order, consistent with the Maine Wind Energy Act stated that “Maine energy policy seeks to promote the development and use of renewable energy sources to help reduce Maine’s dependence on imported fossil fuels, provide economic development, and promote security.” The 2007 Executive Order also stated that “[t]he establishment of this Task Force is not intended to delay or interfere with wind power projects that are already in the permitting process.” Further, the 2007 Executive Order established a deadline for the report from the Task Force, stating that the Task Force “shall submit its recommendations to the Governor no later than January 15, 2008.”

35. On February 14, 2008, the Task Force on Wind Power issued the “Report of the Governor’s Task Force on Wind Power Development: Finding Common Ground For a Common Purpose” (“Task Force on Wind Power Report”). Available at: [https://www.nrcm.org/documents/WindPowerTaskForce\\_FullReport\\_2008.pdf](https://www.nrcm.org/documents/WindPowerTaskForce_FullReport_2008.pdf).

36. The Task Force on Wind Power Report recommended that, among other things, the Legislature establish Expedited Review Areas in Maine where wind power projects would

qualify for expedited permitting. Task Force on Wind Power Report at 6, 18-20. The Task Force on Wind Power Report also indicated that certain areas would not be subject to expedited permitting: “[S]ite-specific issues regarding projects proposed, including but not limited to potential impacts on significant wildlife habitat, or other protected natural resources or existing uses, would continue to be addressed through the applicable DEP or LURC permitting process. Likewise, the Task Force recognizes that wind energy development would not be appropriate in certain areas, including but not limited to conservation lands owned by the U.S. Department of Interior, certain other public conservation lands or portions thereof, and certain lands owned by private entities where such development is not consistent with the management objectives or terms of acquisition of such lands.” Task Force on Wind Power Report at 20.

37. The Task Force on Wind Power Report also recommended that in the proposed expedited permitting area, the consideration of a grid-scale wind power project’s effect on scenic character be limited to consideration of the wind turbines’ scenic impacts on public resources of statewide or national significance. Task Force on Wind Power Report at 20.

38. The Task Force on Wind Power Report also recommended that the Maine Department of Environmental Protection (“DEP”) expedite permit processing for wind power projects in certain restricted areas of the State, that DEP and the Land Use Regulation Commission (now the Land Use Planning Commission, “LUPC”) adopt and adhere to timelines for permit review for wind energy projects, and that the regulatory processes employed by the DEP and LUPC be harmonized. Task Force on Wind Power Report at 21-25.

39. In 2008, based in large part on the recommendations of the Task Force on Wind Power’s Report, the Legislature enacted statutes governing “Expedited Permitting of Grid-Scale Wind Energy Development,” 35-A M.R.S.A. §§ 3451 – 3459.



40. The purpose of the statutes governing “Expedited Permitting of Grid-Scale Wind Energy Development” is to support and expedite permitting of wind energy projects by establishing an “expedited permitting area” to “reduce the potential for controversy regarding siting of grid-scale wind energy development by expediting development in places where it is most compatible with existing patterns of development and resource values when considered broadly at the landscape level.” 35-A M.R.S.A. § 3402; 35-A M.R.S.A. § 3451(3).

41. On November 7, 2008, former-Governor Baldacci issued Executive Order No. 20 FY 09/08, “An Executive Order Establishing the Ocean Energy Task Force” (“2008 Executive Order”). A copy of the 2008 Executive Order is attached hereto as Exhibit B.

42. The 2008 Executive Order established the Ocean Energy Task Force and stated, among other things, that “Maine has a strong interest in developing Maine’s vast indigenous and renewable ocean energy potential and recognizes its enormous promise to address state and regional energy-related needs.” The 2008 Executive Order also established a deadline for the report from the Task Force, stating that the Task Force “shall prepare a written report to the Governor outlining its interim findings no later than April 1, 2009.”

43. In December 2009, the Ocean Energy Task Force issued the “Final Report of the Ocean Energy Task Force to Governor Baldacci” (“Ocean Energy Task Force Report”) Available at: [https://umaine.edu/offshorewindtestsite/wpcontent/uploads/sites/303/2017/02/OETF\\_FinalReportAppendices.pdf](https://umaine.edu/offshorewindtestsite/wpcontent/uploads/sites/303/2017/02/OETF_FinalReportAppendices.pdf).

44. The Ocean Energy Task Force Report recommended that, among other things, Maine establish renewable ocean energy goals and improve the siting, governance and permitting framework for renewable ocean energy development. Ocean Energy Task Force

Report at vii-xi, 50-70. These recommendations of the Ocean Energy Task Force were incorporated into law by the Legislature. *See* P.L. 2009, Ch. 615.

45. Since it was enacted in 2004, the Maine Wind Energy Act has been amended by the Legislature several times, based on proposed amendments by various executive agencies and prior Legislatures. *See, e.g.*, 2005, c. 646, § 3, eff. May 30, 2006; 2007, c. 661, § A-6, eff. April 18, 2008; 2007, c. 693, § 4, eff. April 24, 2008; 2009, c. 615, §§ A-3, A-4, eff. April 7, 2010.

46. Similarly, since they were enacted in 2008, the Legislature has amended the statutes governing “Expedited Permitting of Grid-Scale Wind Energy Development” a number of times, including amendments proposed and/or approved by Defendant during his tenure as Governor. *See, e.g.*, 2009, c. 642, §§ A-2 to A-6, eff. April 12, 2010; 2011, c. 655, § KK-22, eff. July 1, 2012; 2011, c. 682, § 26, eff. May 21, 2012; 2013, c. 325, § 1, eff. Oct. 9, 2013; 2013, c. 405, § D-13, eff. Oct. 9, 2013; 2015, c. 190, §§ 1-3, eff. Oct. 15, 2015; 2015, c. 265, §§ 3 to 6, eff. Jan. 1, 2016.

47. The Maine Wind Energy Act and the statutes governing “Expedited Permitting of Grid-Scale Wind Energy Development” are enforced by multiple executive agencies, including the DEP and the LUPC, both of which have promulgated a series of regulations concerning wind energy permitting pursuant to the Maine Wind Energy Act and the statutes governing “Expedited Permitting of Grid-Scale Wind Energy Development,” which regulations are subject to approval by the Legislature. *See, e.g.*, 06-096 C.M.R. Ch. 310; 06-096 C.M.R. Ch. 315; 06-096 C.M.R. Ch. 335; 06-096 C.M.R. Ch. 375; 06-096 C.M.R. Ch. 500.

#### **Defendant’s Executive Order**

48. On January 24, 2018, Defendant issued Executive Order No. 2018-002, “An Order Establishing the Maine Wind Energy Advisory Commission” (“2018 Executive Order”). A

copy of the 2018 Executive Order is attached hereto as Exhibit C.

49. The 2018 Executive Order establishes the Maine Wind Energy Advisory Commission “for the purposes of 1) Studying the economic impact of potential Wind turbines in the Areas, (2) Assessing the economic impact of expedited wind rules and procedures, (3) Assessing and developing recommendations in a written report.”

50. In the 2018 Executive Order, Defendant also orders “that no permits related to wind turbines are issued in the Areas until the report is issued in writing.”

51. The 2018 Executive Order defines “Areas” broadly as “the scenic vistas and pristine waters of Western Maine, our coast and coastal islands, and our significant avian migratory pathways (the Areas) attract significant tourism to the State.”

52. Unlike prior Executive Orders establishing commissions to address issues associated with wind turbine projects, in addition to imposing a moratorium on wind turbine projects, Defendant’s Executive Order sets no date certain for the Commission it calls for to conclude its “studies.”

53. On January 24, 2018, Defendant simultaneously issued a press release announcing the Executive Order, stating in part: “I am placing a moratorium on issuing any new permits related to wind turbines until this Commission studies the economic impact that such development would have on tourism in Maine.” *See* “Governor LePage Issues Executive Order Establishing the Maine Wind Energy Advisory Commission,” (“2018 Press Release”). A copy of the 2018 Press Release is attached hereto as Exhibit D.

54. The 2018 Press Release also stated: “Governor LePage announced his intention to introduce legislation to amend the laws governing expedited permitting for wind energy development. ‘Current law is too ambitious and overly permissive in areas of the state where we

must protect our scenic vistas. While I believe that some expedited permitting for wind is appropriate, my bill will implement constraints on where expedited development can occur to protect our tourism-based economy,' he said.”

55. Under the separation of powers in the Constitution of the State of Maine, the proper avenue for Defendant to amend the legislative framework for the permitting of wind energy projects in Maine is to introduce a bill, as Defendant has done in the past, and as Defendant has indicated is his intention to do in the future.

### **Count I**

#### **Request for Declaratory Judgment**

56. Plaintiff hereby repeats and realleges all previous paragraphs as if fully set forth herein.

57. There exists an actual controversy between Plaintiff and Defendant involving the constitutionality of Executive Order No. 2018-002.

58. The Legislature has the full power to make and establish all reasonable law and regulations for the defense and benefit of the people of this State, and the powers of the Legislature in matters of legislation are absolute.

59. The Legislature has exercised its absolute legislative powers with respect to the permitting of wind energy projects in Maine.

60. The Legislature has fully occupied the field of legislation with respect to the permitting of wind energy projects in Maine.

61. Defendant’s Executive Order conflicts with the public policy and laws established by the Legislature to govern the development and permitting of wind energy projects in Maine.

62. Defendant's Executive Order makes it impossible for the legislation concerning the permitting of wind energy projects in Maine to be faithfully executed.

63. Defendant's Executive Order unlawfully usurps the powers of the Legislature as set forth in the Constitution of the State of Maine.

64. Plaintiff seeks a declaration from the Court that Defendant's Executive Order No. 2018-002 is void as unconstitutional because it violates the separation of powers set forth in Article III of the Constitution of the State of Maine.

**Prayer for Relief**

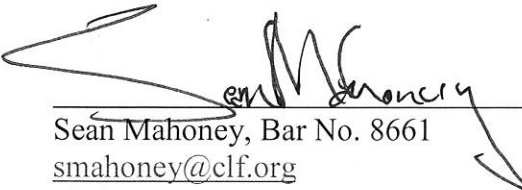
WHEREFORE, Plaintiff Conservation Law Foundation respectfully requests that this Court:

1. Enter a Judgment and Decree in accordance with the request for declaratory relief in Count 1; and
2. Grant such other and further relief as it deems just and equitable, including Plaintiff's costs and fees.

Respectfully submitted,

CONSERVATION LAW FOUNDATION,

By its attorneys,



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CONSERVATION LAW FOUNDATION

53 Exchange Street, Suite 200

Portland, ME 04101

(207) 210-6439

Dated: January 30, 2018

# Exhibit A

**Attachment A. Executive Order from Governor John E. Baldacci**



OFFICE OF  
THE GOVERNOR

NO. 31 FY 06/07  
DATE May 8, 2007

**AN ORDER ESTABLISHING THE GOVERNOR'S TASK FORCE ON  
WIND POWER DEVELOPMENT IN MAINE**

WHEREAS, Maine energy policy seeks to promote the development and use of renewable energy sources to help reduce Maine's dependence on imported fossil fuels, provide economic development, and promote security; and

WHEREAS, scientists have concluded that increases in greenhouse gas levels, including but not limited to carbon dioxide, are resulting in worldwide climate change; and

WHEREAS, wind power does not generate greenhouse gases and is broadly viewed as having fewer environmental impacts than other forms of electrical power generation; and

WHEREAS, wind power is the fastest growing utility-scale source of renewable energy in the world; and

WHEREAS, Maine has the highest wind potential of any New England state and ranks 19<sup>th</sup> in terms of wind potential in the United States as a whole; and

WHEREAS, wind power development can provide short term and long term economic and employment benefits for Maine citizens; and

WHEREAS, the State's wind resources occur in various areas of the State that may have important ecological, natural resource, remote resource, and other values that are important to Maine people that can lead to conflict regarding the siting of wind power facilities; and

WHEREAS, Maine could become a leader in New England in the development of wind power if a comprehensive approach is pursued that involves guidelines that direct wind power toward appropriate locations; well-designed and efficient regulations; the protection of areas where wind power is not appropriate; and collaboration among state agencies, wind power developers, interested parties, and the public.

NOW, THEREFORE, I, John E. Baldacci, Governor of the State of Maine, do hereby establish the Governor's Task Force on Wind Power Development in Maine.

## ***Report of the Governor's Task Force on Wind Power Development***

### **Purpose and Duties**

The purpose and duties of the Task Force shall be to:

1. Examine the regulatory process and review criteria by which wind power projects currently are evaluated in Maine, identify barriers to wind power development and compare Maine's policies with approaches used in other jurisdictions;
2. Identify and recommend any changes deemed beneficial for assuring that Maine has a balanced, efficient and appropriate regulatory framework for evaluating wind power projects. Changes might include, but are not limited to, updating statutory and regulatory review criteria, technology-specific wind power siting guidelines, opportunities for streamlined permitting for certain categories of wind power projects and the use of negotiated settlement tools for resolving conflicts;
3. Propose policy changes that would help facilitate the development of wind power in Maine and establish a lead agency for tracking wind power generated in Maine, monitoring technological advances in wind power generation and providing educational materials regarding wind power;
4. Examine and make appropriate recommendations regarding Federal, State and local programs and financing options available to assist in the development of wind power projects;
5. Identify a range of options, benefits and incentives that might be available to communities that are affected by wind power projects;
6. Create guidelines and related information that would assist wind power developers in identifying areas in the State of Maine that are more appropriate for wind power development, and avoiding areas that are not appropriate for wind power development, due to legal, natural resource or public value constraints; and
7. Propose goals for installed wind power in Maine for 2010 and 2020, provide an estimate of the economic and emission-reduction benefits of achieving such goals and suggest strategies to attain those goals.

To fulfill these duties, the Task Force shall collaborate and coordinate with the Land Use Regulation Commission, the Department of Marine Resources, the Department of Economic and Community Development, the Department of Agriculture, the Public Utilities Commission, the Office of the Governor, members of the Maine Legislature and other interested members of the public.

The establishment of this Task Force is not intended to delay or interfere with wind power projects that are already in the permitting process.

### **Membership**

The Governor shall appoint 16 members to the Task Force. One member shall be the Commissioner of the Department of Conservation, or his designee; one member shall be the



## ***Report of the Governor's Task Force on Wind Power Development***

Commissioner of the Department of Environmental Protection, or his designee; one member shall be the Director for the Office of Energy Independence and Security; one member shall be the Commissioner of the Department of Inland Fisheries and Wildlife, or his designee; and one member shall be the Director of the State Planning Office or her designee.

The remaining appointments shall include diverse members with relevant knowledge and experience in wind power development, land use and conservation policies and regulation, renewable energy policies, electricity and transmission policies and infrastructure, natural resource and remote recreation values, and environmental impacts from electrical power generation.

The President of the Senate may appoint two members of the Senate, and the Speaker of the House may appoint two members of the House of Representatives. Members shall serve at the pleasure of their appointing authority.

The Governor shall appoint the chair of the task force from among the members. The chair will schedule, set the agenda for, and preside at Task Force meetings.

### **Staff**

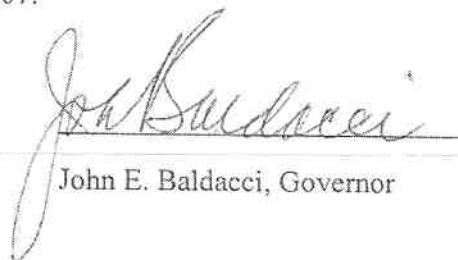
Staff support to the Task Force will be provided by the Land Use Regulation Commission, the State Planning Office, Department of Environmental Protection, and other state agencies as needed. The members of the Task Force shall serve without compensation.

### **Report**

The Task Force shall submit its recommendations to the Governor no later than January 15, 2008, after which the Task Force will dissolve.

### **Effective Date**

The effective date of this Executive Order is May 8, 2007.



John E. Baldacci, Governor

# Exhibit B

**Appendix 1: Executive Order**



OFFICE OF  
THE GOVERNOR

NO. 20 FY 08/09  
DATE November 7, 2008

**AN EXECUTIVE ORDER ESTABLISHING THE OCEAN ENERGY TASK FORCE**

**WHEREAS**, Maine has a strong interest in developing Maine's vast indigenous and renewable ocean energy potential and recognizes its enormous promise to address state and regional energy-related needs, including: increasing the State's energy independence and security; limiting Maine's vulnerability to the unpredictable costs and possibly supplies of fossil fuels; attaining the state's overall goal to reduce greenhouse gas emissions to sustainable levels by mid-century and of the Regional Greenhouse Gas Initiative's ("RGGI") CO<sub>2</sub> reduction targets; and stimulating and growing diverse and vibrant ocean energy-related economic opportunities; and

**WHEREAS**, information prepared by the Department of Energy's National Renewable Energy Research Laboratory ("NREL") and Minerals Management Service ("MMS") shows that the Gulf of Maine is a world-class wind power resource, which the Ocean Energy Institute estimates could equal around 100,000 MW (100 Gigawatts) of theoretical electric capacity, an amount that is 3 times larger than the total current installed capacity in New England; and

**WHEREAS**, the Governor's 2007 Task Force on Wind Power Development found that Maine can become a leader in wind power development while protecting Maine's quality of place and natural resources, and that Maine should seek to host at least 2,000 megawatts (MW) of installed wind power capacity by 2015, and at least 3,000 by 2020, of which at least 300 MW can be achieved with projects built offshore; and

**WHEREAS**, the fuel price from offshore wind power, tidal power and wave power is low and steady, enabling long term contracts with these clean sources of electricity at stable prices, as distinguished from generation of electricity from fossil fuels, whose prices fluctuate widely; and

**WHEREAS**, wind power is the fastest growing utility-scale source of energy in the United States and internationally, and offshore wind is the fastest growing component of the wind energy segment; and

**WHEREAS**, improvements in turbines and related wind technologies, with support from federal renewable energy tax credits, are now making wind energy competitive in many markets with conventional power source; and

**WHEREAS**, ongoing technological developments hold promise that wind power, and to a lesser extent tidal and wave power, can also come to play a vital role in addressing transportation and home heating needs as well as traditional electric power demands; and

**WHEREAS**, Maine's universities and independent research institutions provide the specialized research and development capabilities, and established marine construction firms provide the required industrial infrastructure, vital to support a robust offshore wind energy industry; and

**WHEREAS**, the State of Maine has the highly-skilled and productive workforce, developed waterfront industry, and hospitable business climate to serve as a national center for offshore wind energy development; and

**WHEREAS**, the Governor's 2007 Task Force on Wind Power Development recognized the potential for ocean-based wind energy development to contribute to achievement of state wind energy and related economic development goals, called attention to significant technological, financial and knowledge-based challenges and, to that end, recommended follow-up actions requiring heightened collaborative efforts among several partners including federal regulatory agencies; and

**WHEREAS**, subsequent to completion of the work of the Governor's 2007 Task Force on Wind Power Development, Congress did not extend the long-standing moratorium on oil and gas development on the nation's Outer Continental Shelf (OCS) and the Mineral Management Service is moving forward with its program for leasing OCS areas for alternative energy development and initiation of a new five-year plan for OCS oil and gas development; and

**WHEREAS**, information prepared by the MMS indicates that the Gulf of Maine does not appear to have significant commercially recoverable oil and natural gas reserves, while it does hold a significant potential for large-scale development of wind power, the development of which would help the state achieve its interrelated energy, environmental and economic goals; and

**WHEREAS**, Congress is likely to take up legislation this session pertaining to offshore oil and gas leasing, exploration, and development for federal waters, making it essential that Maine fully explore and understand the resource as well as the risks and benefits of harnessing that resource;

**NOW, THEREFORE**, I, John E. Baldacci, Governor of the State of Maine, do hereby establish the Ocean Energy Task Force (hereinafter "Task Force").

### **Purpose and Duties**

The Task Force is established to develop a strategy aimed at meeting or exceeding the goal established in the Maine Energy Act, Title 35-A, section 3404(2)(B), for ocean-based wind energy capacity as expeditiously as practicable, including a specific plan of action for implementation of that strategy. This strategy shall identify and recommend solutions to overcome potential economic, technical, regulatory, and other obstacles to vigorous and expeditious development of grid-scale wind energy generation facilities in Maine's coastal waters

and adjacent federal waters. In developing the strategy, the Task Force shall consider and make recommendations regarding the following:

- A. Technological Development: research and testing to facilitate siting of offshore wind generation facilities.
  - 1. The merits of and options for establishing an ocean-based testing area in the Gulf of Maine to foster and expedite research and development of offshore wind energy facilities in a manner that addresses potential siting issues; and,
  - 2. Specific research and development initiatives critical to facilitating siting of ocean-based wind energy generation facilities at appropriate locations in the Gulf of Maine, with due consideration of natural resources and existing uses.
- B. Wind Power-related Economic Development: fostering in-state growth of diverse wind energy-related businesses.
  - 1. Options, including public-private partnerships, for facilitating financing and/or siting and operation of offshore, grid-scale wind energy generation facilities located at appropriate locations on the Outer Continental Shelf proximate to Maine and built at a scale commensurate with the State's wind power and related renewable energy objectives, pertinent electric power demand, demand for wind assisted heating and transportation, and the available wind resource; and
  - 2. Specific opportunities and means to facilitate creation of economic development clusters related to construction and operation of ocean-based wind development, manufacturing of wind generation-related components, provision of engineering and other professional services and basic and applied scientific research, and other enterprises to support growth of a diverse wind energy industry in Maine.
- C. Tidal and Wave Power: encouraging ocean-based tidal and wave energy development where appropriate.
  - 1. Compile existing information on potential locations in Maine's coastal waters for tidal and wave power generation and the primary technical, economic and natural resources-related constraints on their development; and
  - 2. Identify ways in which the State can support continued research and development of tidal and wave power at ocean sites compatibly with Maine's overall energy, economic, and environmental goals and existing uses, including commercial fishing.
- D. Potential Oil and Gas Exploration on the Outer Continental Shelf: updating information regarding offshore oil and gas resources and evaluating federal initiatives regarding exploration for oil and gas in the Outer Continental Shelf.

1. Compile objective, credible and scientific information on the offshore oil and gas resource, including: the latest technologies available for oil and gas exploration and extraction; the adverse environmental risks associated with development of this resource; the economic benefits Maine people would likely realize from developing this resource; the compatibility of offshore oil and gas exploration with development of the offshore wind power resource and existing uses, including commercial fishing; and the compatibility of developing this resource with Maine's overall energy, economic and environmental goals; and,
2. Identify ways in which state agencies can ensure well-informed and effective state participation in federal decision-making regarding energy development of both renewable and fossil fuel resources on OCS areas proximate to Maine.

### **Membership**

The Governor shall appoint seventeen (17) members to serve on the Task Force, who shall serve at the pleasure of the Governor. Membership is as follows:

- Commissioner of the Department of Environmental Protection, or Commissioner's designee;
- Commissioner of the Department of Conservation, or Commissioner's designee;
- Commissioner of the Department of Marine Resources, or Commissioner's designee;
- Commissioner of the Department of Economic and Community Development or Commissioner's Designee;
- Director, Office of Energy Independence and Security or Director's designee;
- Director, State Planning Office or Director's designee;
- Eleven (11) members shall include diverse members with relevant knowledge and experience in technological, engineering, financing and regulatory issues regarding ocean wind energy generation; marine resources management and conservation; and potential natural resources and environmental effects of wind energy generation.

The President of the Senate may appoint a member of the Senate, and the Speaker of the House may appoint two members of the House of Representatives. Members appointed by the President of the Senate and the Speaker of the House shall serve at the pleasure of their appointing authority.

The Governor shall appoint two co-chairs of the Task Force from among the members. The chairs will schedule and set the agenda for, and preside at Task Force meetings. The members of the Task Force shall serve without compensation.

### **Staff**

The State Planning Office, the Governor's Office of Energy Independence and Security, the Department of Conservation through the Maine Geological Survey and the Bureau of Public Lands and the Department of Economic and Community Development shall provide staff

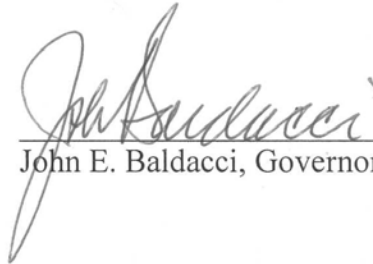
assistance to the Task Force. At the Task Force's request, other state agencies shall provide information and analysis to assist the Task Force in its deliberations.

**Reporting**

The Task Force shall prepare a written report to the Governor outlining its interim findings no later than April 1, 2009. The Task Force shall prepare a written report of its final recommendations to the Governor, including any recommended legislation, by October 31, 2009.

**Effective Date**

The effective date of this Executive Order is November 7, 2008.

  
\_\_\_\_\_  
John E. Baldacci, Governor

# Exhibit C





OFFICE OF  
THE GOVERNOR

NO. 2018-002  
DATE January 24, 2018

## AN ORDER ESTABLISHING THE MAINE WIND ENERGY ADVISORY COMMISSION

**WHEREAS**, Tourism is a major industry in the State of Maine, attracting over 35 million visitors in 2016 who spent nearly \$6 billion; and

**WHEREAS**, the scenic vistas and pristine waters of Western Maine, our coast and coastal islands, and our significant avian migratory pathways (the Areas) attract significant tourism to the State; and

**WHEREAS**, the visitors to the Areas in Maine are known to come to enjoy outdoor and nature oriented activities; and

**WHEREAS**, noise and vibration caused by wind turbines are well known effects of the turbines; and

**WHEREAS**, the sight of wind turbines can affect property values; and

**WHEREAS**, wildlife will be affected by the wind turbines; and

**WHEREAS**, the future estimated decommissioning costs of wind turbines are uncertain; and

**WHEREAS**, any decision regarding siting wind turbines in the Areas will have long term consequences to the tourism industry; and,

**WHEREAS**, the benefit from wind turbines are therefore uncertain.

**NOW, THEREFORE, I, Paul R. LePage, Governor of the State of Maine**, do hereby establish the **Maine Wind Energy Advisory Commission** (“the Commission”) for the purposes of (1) Studying the economic impact of potential Wind turbines in the Areas, (2) Assessing the economic impact of expedited wind rules and procedures, (3) Assessing and developing recommendations in a written report. I order that no permits related to wind turbines are issued in the Areas until the report is issued in writing. I also order that Pursuant to Title 1, section 402, subsection 2, paragraph F, the meetings of this Review Panel are not “public proceedings” subject to Maine’s Freedom of Access Act.

## **The Commission**

The Commission shall be comprised of no less than 11 and no more than 15 representatives from state agencies and other entities that have substantial responsibilities and/or interests in the siting of wind turbines in Western Maine, including:

- The Director of the Governor's Energy Office or Designee(s) from the Governor's Energy Office, which shall serve as the lead agency for the proceedings and activities of the Commission.
- The Commissioner of the Maine Department of Economic and Community Development or Designee(s) from the Maine Department of Economic and Community Development.
- The Commissioner of the Maine Department of Environmental Protection or Designee(s) from the Maine Department of Environmental Protection.
- A representative from the Public Utilities Commission.
- Other public and private sector entities and individuals, including members of the Maine Legislature, municipal officers, advocacy organizations and businesses, per appointment by the Commissioner of the Maine Department of Economic and Community Development.

## **Duties of the Commission**

The Commission Shall:

- Act as the State's official review and advisory body for the assessment of economic impact likely to occur by siting wind turbines in the Areas.
- Assess the economic impact of wind power to Maine's electricity rate structure.
- Conduct its work in a manner that will maximize interagency coordination.
- Monitor compliance with federal and state environmental laws.
- Consider the economic impact of previously sited wind turbines in Maine.
- Develop and propose policies regulating the future deployment and operation of wind turbines in the Areas.
- Act as the State's distributor of official public information, and for development of educational resources, related to wind turbines in the Areas.
- Provide comment on federal policies and reports about wind turbine deployment and operation, as needed.
- Establish goals and time frames for the Commission's work.

Recommendations of the Commission will be formalized upon the approval of an Executive Committee comprised of the Commissioner of the Maine Department of Economic and Community Development, the Commissioner of the Maine Department of Environmental Protection, and the Director of the Governor's Energy Office, in consultation with other officials as appropriate to the proposed project.

The Commission shall deliver a report summarizing its recommendations to the Governor when finished.

I direct that the agencies involved undertake this work within their existing resources and budgets.

The Effective date of the Executive Order is January 24, 2018.

  
Paul R. LePage, Governor

# Exhibit D

## Office of Maine Governor Paul LePage

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# Governor LePage Issues Executive Order Establishing the Maine Wind Energy Advisory Commission

*January 24, 2018*

For Immediate Release: Wednesday, January 24, 2018

Contact: Julie Rabinowitz, Press Secretary, 207-287-2531

AUGUSTA – Governor Paul R. LePage has issued Executive Order 2018-002, “An Order Establishing the Maine Wind Energy Advisory Commission.”

“I am placing a moratorium on issuing any new permits related to wind turbines until this Commission studies the economic impact that such development would have on tourism in Maine,” said Governor LePage. “Tourism, especially returning visitors, is a major driver for the Maine economy. We cannot afford to damage our natural assets in ways that would deter visitors from returning to Maine.”

In 2016, Maine attracted more than 35 million visitors who spent nearly \$6 billion, numbers that were surpassed in 2017.

The Governor stated, “While out-of-state interests are eager to exploit our western mountains in order to serve their political agendas, we must act judiciously to protect our natural beauty. I urge the commission to take the time they need to develop the right policies that balance tourism, the needs of the communities, the environment and development.”

Membership of the commission will include representatives from state agencies and other entities that have substantial responsibilities and/or interests in the siting of wind turbines in Western Maine, including members of the Legislature, municipal officers, advocacy organizations and businesses.

As part of its charge, the commission will monitor compliance with federal and state environmental law, consider the economic impact of previously sited wind turbines in Maine, and develop and propose policies regulating the future deployment and operation of wind turbines in Western Maine.

In addition to today’s executive order, Governor LePage announced his intention to introduce legislation to amend the laws governing expedited permitting for wind energy development.

“Current law is too ambitious and overly permissive in areas of the state where we must protect our scenic vistas. While I believe that some expedited permitting for wind is appropriate, my bill

will implement constraints on where expedited development can occur to protect our tourism-based economy,” he said.

A copy of the Executive Order may be viewed at the link below with a text version available at <http://www.maine.gov/tools/whatsnew/index.php?topic=GovExecutiveOrders&id=776746&v=article2011> .

## **Related Documents**

[An Order Establishing the Maine Wind Energy Advisory Commission](#)

## **Credits**

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