

Maine's Unique Leadership Approach to
Ensuring Host Communities Benefit:
Maine's Community Benefits
Requirements for Wind Power

**Presented by
Jeffrey A. Thaler, Esq.**

BERNSTEIN SHUR

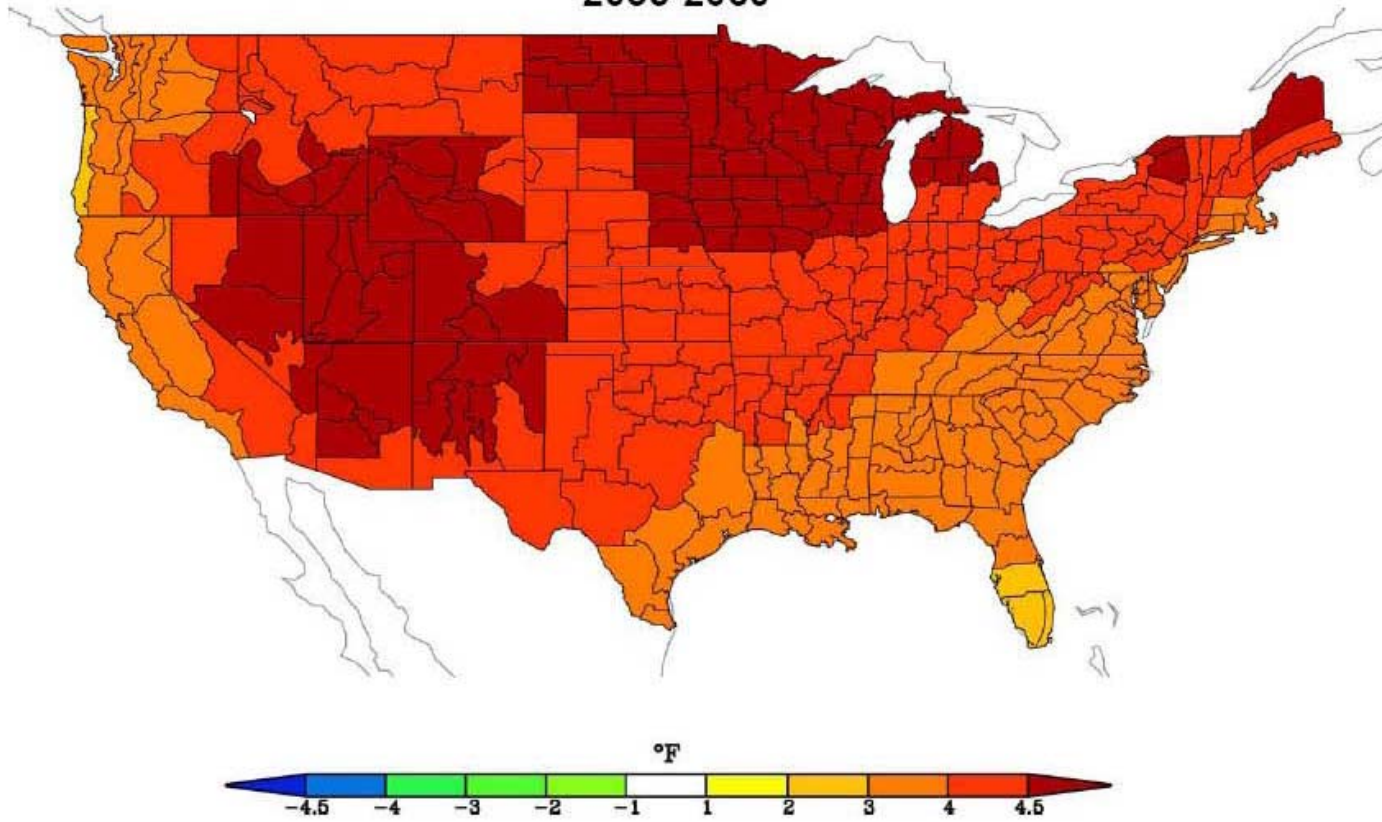
COUNSELORS AT LAW

January 24, 2011

First Things First: Why wind?

- Climate Change:
 - NE goal of reducing GHG emissions to 1990 levels by 2010, to 10% below 1990 levels by 2020, and by as much as 75-80% over the long term.
- Energy Independence and Security:
 - Volatile fossil fuel energy prices
 - Finite versus renewable resources

Change in Annual Temperature 2035-2060



Source: NOAA

Sea Level Rise

- If just Greenland's ice sheet melted, the sea level rise would be ~ 7meters.
- Many major cities worldwide, including Portland, MidCoast and Downeast Maine, would be significantly affected even by a 1 meter sea level rise;
- You can map online projected impacts on cities and countries...for example:


The SF airport with just 1m sea level rise

San Francisco Bay Scenarios for Sea Level Rise
SFO



0 0.2 0.4 0.8 1.2 Miles

San Francisco Bay
1 m sea level rise



Map is based on USGS 2m DSM and National Agriculture Imagery Program data. Map is illustrative and depicts a potential inundation scenario in 2100. Limitations in the geospatial data available may affect accuracy. Map should not be used for planning purposes.

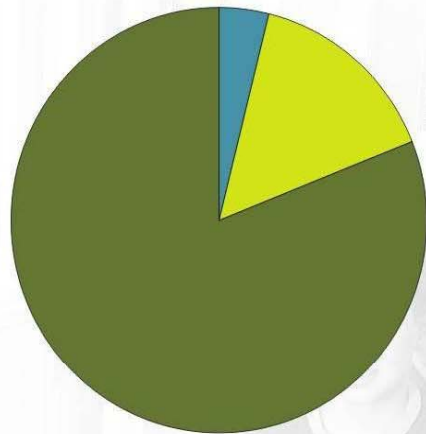
Twice the State Budget Leaves Maine

**\$5 Billion/year
Leave Maine**



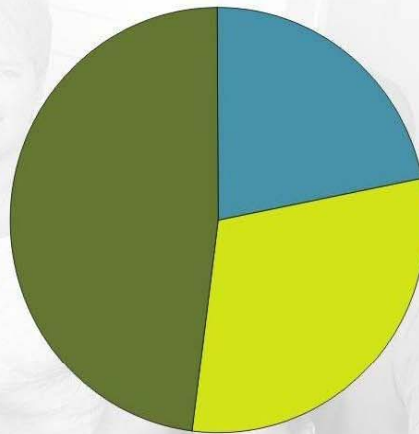
50% Transp; 40% Heating; 10% Elec. Power– Maine Family Energy Budget

Energy ~5%



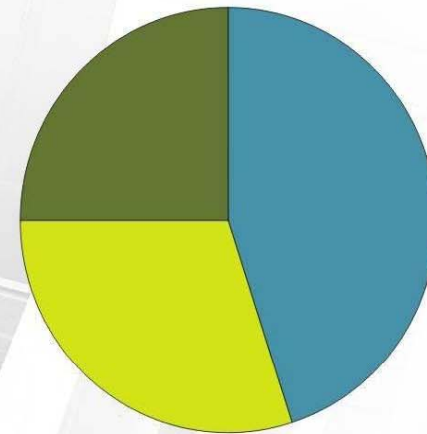
1998

Energy ~20%



2008

Energy ~40%



2018

Renewables Direct Economic Impact

- Renewables like wind, hydro, solar and tidal need to run when the resource is present
 - These are “price taking” resources in electricity market
 - Price takers displace more expensive generators in each hour available.
 - This often lowers prices in hours renewables are available
- An example of this appears in the recent summary of the GE NEWIS study performed for ISO-NE
 - GE estimates that at 20% wind generation in ISO-NE market there’s an average \$5-11/MWh annual price decrease
 - \$650 million to \$1.4 billion average annual energy price decrease in New England region*

*Based on \$5-11/MWh for 130,370 GWh, see ISO-NE, Net Energy & Peak Load Report (Nov 2010) (Sep '09- Oct '10 NEL); see also GE New England Wind Integration Study Summary (Nov. 16, 2010).

Subsidy Imbalance Masks Portion of Economic Benefit of Renewables

- **EIA Study* Indicates Fossil Fuels received 48% of 2007 subsidies per unit of electricity production**
- **Nuclear Received 19%**
- **Renewables Only Received 15%**
 - **At comparable levels of subsidy the hourly price impact of resources like wind would be even greater than the estimated \$650-\$1,400 million decrease.**

*Energy Information Administration Office of Coal, Nuclear, Electric, and Alternate Fuels “Federal Financial Interventions and Subsidies in Energy Markets 2007,” Table 34 Pg. 105 (April 2008)

Basic Nomenclature

- Wind Machine
 - Kinetic device to capture the wind and put it to work
- Wind System
 - Wind machine, tower, and all ancillary equipment
- Windmill
 - Wind machine that generates mechanical motion (ie. water pumping, grain grinding, etc.)
- Wind Turbine
 - A device that produces **electricity** from the kinetic energy of wind



TIF Program Overview

TIF permits a municipality to participate in local project financing by using some or all of the new property taxes from a capital investment within a designated geographic district, by using the “incremental” taxes to retire bonds it has issued for the project, compensate a developer or business for development project costs, or fund eligible municipal economic development activities. TIF districts may be designated for up to 30 years and bonds issued for up to 20 years.

Legislative Findings

**Title 30-A MUNICIPALITIES AND COUNTIES
Chapter 206: DEVELOPMENT DISTRICTS
Subchapter 1: MUNICIPAL DEVELOPMENT
DISTRICTS**

§5221. Findings and declaration of necessity

1. Legislative finding. The Legislature finds that there is a need for new development in areas_of municipalities to: A. Provide new employment opportunities; B. Improve and broaden the tax base; and C. Improve the general economy of the State.

Legislative Purpose

3. Declaration of public purpose. It is declared that the actions required to assist the implementation of development programs are a public purpose and that the execution and financing of these programs are a public purpose.

Authorized Project Costs:

30-A M.R.S.A. Sec. 5225

- Project costs “inside” the TIF district
- Project costs outside the TIF district, but “directly related to or made necessary by” the TIF district
- Costs of economic development, environmental improvements or employment training within the municipality

Unorganized Territory Economic Development

In accordance with 30-A MRSA §5261, for purposes of municipal tax increment financing, a county may act as a municipality and submit a TIF application for an unorganized territory within its jurisdiction.

Unorganized Territory Process

30-A MRSA §5235. Unorganized territory

A county may act as a municipality for the unorganized territory within the county and may designate development districts within the unorganized territory. When a county acts under this section, the county commissioners act as the municipality and as the municipal legislative body, the State Tax Assessor acts as the municipal assessor and the unorganized territory fund receives the funds designated for the municipal general fund.

Authorized Project Costs:

30-A M.R.S.A. Sec. 5225

- Project costs “inside” the TIF district
- Project costs outside the TIF district, but “directly related to or made necessary by” the TIF district
- Costs of economic development, environmental improvements or employment training within the municipality

Maine Wind Farms

Mars Hill - \$80 Million investment, 42 Megawatts;
OPERATIONAL; Municipal TIF (mill rate -25%)

Stetson Ridge Mountain (Washington County) -
\$100 Million investment, 57 Megawatts
OPERATIONAL County UT TIF

Kibby Ridge (Franklin County) - \$270 Million,
132 Megawatts; OPERATIONAL County UT TIF

Total: \$450 Million Investment 231 Megawatts

Wind Project Annual Payments

- **Mars Hill– Credit Enhancement Agreement guarantees \$500,000 annually to Town general fund for 20 year term of the TIF**
- **Stetson Mountain-- \$450,000+ average annual taxes**
- **Kibby-- \$730,000+ average annual taxes**

State Goals

- **At least 2,000 Megawatts (MW) of installed capacity by 2015;**
- **At least 3,000 MW of installed capacity by 2020, of which there is a potential to produce 300 MW of offshore wind power**
- **At least 8,000 MW installed capacity by 2030 (including 5,000 MW in coastal waters or proximate federal waters)**

Legislative Findings on Wind Energy

35-A M.R.S.A. § 3402. Legislative findings

The Legislature finds 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.

“Community Wind” Projects

(3402) The Legislature finds it is in the public interest to encourage the construction and operation of community wind power generation facilities in the State. For the purposes of this chapter, "community wind power generation facility" means an electricity-generating facility at any one site with instantaneous generating nameplate capacity of not more than 10 megawatts that is powered entirely by wind energy.

Measures to support ctty wind

- **35-A MRSA 3403 says the PUC may certify a person as a community wind power generator if, in part, it finds that the project would not likely be built absent availability of benefits in Title 36 (reimbursement or exemption of tax payment on sales, storage or use for sale of tangible personal property)**

Community-Based Renewable Energy Act

- **35-A MRSA 3601-09, to be repealed 12/31/15**
- **Creates a 50MW pilot program, reserving 10MW for under 100kw projects or consumer-owned local projects**
- **PUC can direct long-term (< 20yr) contracts; Utilities to recover costs in rates**
- **>1MW projects require competitive bids; <1MW PUC sets pricing**
- **RECs for cttly power = 150% of electr. amount**

Older Public Benefit Requirement

- From the Maine Waterway Development and Conservation Act for hydropower projects:

38 MRSA 636(3) requires that the project result in “significant economic benefits to the public, including but not limited to, creation of employment opportunities for workers of the State.”

Tangible Benefits

In 2008 Legislature enacted major on-shore wind laws.

For grid-scale development (of state or regional significance that may substantially affect environment), DEP and LURC require, in part, “significant tangible benefits”;

35-A MRSA 3451(10) defines tangible benefits to mean:

Tangible Benefits Defined

- ...environmental or economic improvements attributable to the construction, operation and maintenance of an expedited wind energy development, including but not limited to: construction-related employment; local purchase of materials; employment in operations and maintenance; reduced property taxes; reduced electrical rates; natural resource conservation; performance of construction, operations and maintenance activities by trained, qualified and licensed workers...or other comparable benefits, with particular attention to assurance of such benefits to the host community to the extent practicable and affected neighboring communities.

What do Agencies Mean by “significant”

- Per DEP and LURC Policy, they consider the following principles:
- Tangible benefits that create reduced electrical rates can be structured as either a long-term contract to sell capacity and/or energy to a utility that serves the project area and state or to a particular industry or facility in the project area or state at rates significantly below projected market rates or rates that are indexed at fixed amount or a percentage below market prices.
- Tangible benefits that offset increases in utility rates that occur as a result of transmission line improvements through long-term contracts at rates significantly below projected market rates or rates that are indexed at fixed amount or a percentage below market prices could be considered.

Significance Continued

- **Tangible benefits should be permanent, or of significant duration**
- **Tangible benefits do not mitigate for project impacts, nor should mitigation requirements for impacts to wetlands or habitat, for example, count as tangible benefits**
- **Tangible benefits that are presented as developed projects are preferred, however it is recognized that payments to the State or third-parties to undertake projects that will provide tangible benefits, such as land conservation, habitat improvement, or recreational access, are acceptable so long as additional to required regulatory compensation.**

More on “Significance”!

- Tangible benefits to natural resource conservation can be either designed to provide recreational amenities or ecological services. As such a project that provides improved recreational access but is located on ordinary or non-significant habitat is still a viable benefit project.
- Tangible economic benefits can include projects that create educational opportunities, including scholarships or educational programs, at institutions that support the facility, the wind power industry, the project area, and economic development of the project area and region.
- Tangible benefits are not to be presented as conditional on a tax increment financing proposal being approved by a local or county jurisdiction.

Tangible– Community Benefits

Section 3454(2): But for exceptions of subsection (3), “significant tangible benefits” now requires a community benefits package valued at no less than \$4,000 per year per wind turbine included in the expedited wind energy development, averaged over a 20-year period. (3) Waives for projects less than 20 MW installed capacity, or owned by a nonprofit, public or quasi-public entity; or where host cty voted to waive/reduce CBP, or Tribal lands unless Tribe chooses to be host cty.

CBPs to Counties (Section 3454(4))

When generating facilities of an expedited wind energy development are located within an unorganized or deorganized area other than within a plantation, community benefit agreement payments provided to the county as the host community in accordance with this section may be used for projects and programs of public benefit located anywhere within that county.

Some CBP Questions

- **Is \$4000/turbine/year for 20 years deemed inherently “significant” so that the TB requirement is deemed satisfied?**
- **When does the payment obligation begin?**

Highland Wind Project and Benefits

- First major project to have to comply with new CBP requirements
- In addition to the \$4,000 per wind turbine over 20 years, applicant has proposed more elements to the CBPackage...
- Project application undergoing initial review by LURC staff

Offshore community-based wind project

12 MRSA 682(19):

"Community-based offshore wind energy project" means a wind energy development, as defined by Title 35-A, section 3451, subsection 11, with an aggregate generating capacity of less than 3 megawatts that meets the following criteria: the generating facilities are wholly or partially located on or above the coastal submerged lands of the State; the generating facilities are located within one nautical mile of one or more islands that are within the unorganized and deorganized areas of the State and the project will offset part or all of the electricity requirements of those island communities; and is locally owned.

Other requirements for offshore ctty wind project

- Will meet the BEP noise control rules
- Will avoid undue adverse shadow flicker effects
- Will have adequate setbacks for public safety
- Will provide “significant tangible benefits”

Bird Kills from Wind Projects?

- Wind Turbines kill very few birds compared to other human activities
- Estimates are ~1-6 or bird deaths per MW per year
- Global warming is the single biggest threat to wildlife today
- A recent study in *Nature* found that more than 1/3 of species worldwide will be extinct by 2050 if global warming trends continue
- Estimated 1 bird death from wind projects per 10,000 human-related bird deaths:
 - 1 billion from house cats
 - 100 million to 1 billion from buildings
 - 60-80 million from automobiles
 - 75+ million from pesticide poisoning

Cat and Bird



Photo: Ed Friedman

If you don't know where you're going
when you get there you'll be lost

If Global warming is the single biggest threat to wildlife and possibly forests and other resources today.....

THEN---

What are we going to do about that? What are YOU going to do about that?

Jeffrey A. Thaler, Esq.
Bernstein Shur
100 Middle Street
Portland, Maine 04101
207-228-7312
Jthaler@bernsteinshur.com