

STATE OF MAINE
BOARD OF ENVIRONMENTAL PROTECTION



PAUL R. LEPAGE
GOVERNOR

James W. Parker, Chair

Cynthia S. Bertocci
Executive Analyst

Ruth Ann Burke
Board Clerk

**BOARD OF ENVIRONMENTAL PROTECTION
Meeting Minutes**

December 10, 2015

A meeting of the Board of Environmental Protection was held on Thursday, December 10, 2015 at the Augusta Civic Center, 76 Community Drive, Augusta, Maine. James Parker, Chair, called the meeting to order at 9:00 a.m. with the following individuals present:

Board: Alvin Ahlers, Thomas Dobbins, Mark Draper, Thomas Eastler, Jonathan Mapes, and James Parker. There is one vacancy.

Staff: Mark Bergeron, Director, Bureau of Land Quality
Jeffrey Crawford, Office of the Commissioner

Others: Heather Parent, Deputy Commissioner
Peggy Bensinger, Assistant Attorney General
Cynthia Bertocci, BEP Executive Analyst
Ruth Ann Burke, BEP Clerk and Administrative Assistant

Draft Pending Board Approval

I. Departmental

- A. Deputy Commissioner's Comments:** Deputy Commissioner Heather Parent reported that the Department has selected Bill Longfellow to fill the position of Director of the Office of Innovation and Assistance. Mr. Longfellow was the engineer and operations manager for Longfellow Greenhouse for 25 years. Most recently, he served as section chief in the emissions inventory unit of the Air Bureau. Mr. Longfellow will be providing the regulated community and the general public with a centralized place to interact with the Department. He will also be engaged in outreach activities to the regulated community and public.
- B. Comments from the BEP Chair:** Chair Parker welcomed new member Jonathan Mapes. Mr. Parker then recognized Assistant Attorney General Peggy Bensinger who summarized the recent Law Court decision in the matter of Champlain Wind, LLC v. Board of Environmental Protection regarding the Bowers Wind Project.
- C. Executive Analyst Comments:** Ms. Bertocci noted that the next Board meeting is scheduled for January 21, 2016. At that meeting it is anticipated that the Board will act on petitions to intervene in the Juniper Ridge Landfill Expansion application proceeding.
- D. Board Calendar:** Reviewed.
- E. Departmental Orders / Applications Accepted for Processing:** Reviewed
- F. Executive Session:** None

II. Consent Agenda Items:

1. BEP Meeting Minutes: November 19, 2015 (approval)

The Board voted (5-0-1-0) on a motion by Thomas Eastler seconded by Thomas Dobbins to approve the minutes of November 19, 2015 as presented. The vote was taken pursuant to 38 M.R.S. § 341-D.

Board members Alvin Ahlers, Thomas Dobbins, Mark Draper, Thomas Eastler, and James Parker voted to support the motion. Board member Jonathan Mapes abstained. There is one vacancy.

III. Regular Agenda Items:

1. Proposed Amendments to the Site Location of Development Act Rules (provisional adoption):
 - Chapter 373 Financial Capacity Standard of the Site Location Law,
 - Chapter 375 No Adverse Environmental Effect Standard of the Site Location Law, and
 - Chapter 380 Long-Term Construction Projects.

Staff: Mark Bergeron, Director, Bureau of Land Quality
Jeffrey Crawford, Office of the Commissioner

Following staff presentation, Board member Dobbins questioned a number of references to the Board, rather than the Department, throughout Chapter 375. It was noted that many of these references are dated and the responsibilities have been delegated to the Commissioner. It was suggested that a global replacement of "Board" with "Department" would be appropriate since the Department consists of the Board and the Commissioner and staff. With respect to Chapter 373, Board member Ahlers commented on an applicant's need to protect sensitive information. Mr. Bergeron explained that an applicant may request that certain information be classified confidential, but there are statutory limitations on the ability of an applicant to request that information be kept confidential.

Pursuant to 38 M.R.S. § 341-H(3)(C), the Board provided an opportunity for public comment on the rule prior to a vote of the Board. There were no comments from members of the public.

The Board voted (5-0-1-0) on a motion by Thomas Dobbins seconded by Mark Draper to provisionally adopt the staff's proposed changes to Chapters 373, 375, and 380 including substitution of the term "Department" for "Board" throughout Chapter 375 where appropriate. The vote was taken pursuant to 38 M.R.S. § 341-H, §484, and §485-A(1-C).

Board members Alvin Ahlers, Thomas Dobbins, Mark Draper, Thomas Eastler, and James Parker voted to support the motion. Board member Jonathan Mapes abstained. There is one vacancy.

2. Report to the Legislature / Summary of Board Activities in 2015 (discussion)

Staff: Cynthia Bertocci, Board Executive Analyst

Ms. Bertocci reported that statute only requires the Board to report to the First Regular Session of the Legislature and a report is, therefore, not required this January. She noted, however, that Board members have found it useful to submit annual reports to keep the Joint Standing Committee on Environment and Natural Resources apprised of the Board's work. Mr. Eastler made a motion, seconded by Mr. Draper, to authorize Ms. Bertocci to finalize the report on behalf of the Board and submit it to the Legislature.

During deliberations, Board member Draper questioned whether the Board wanted to make any recommendations to the Legislature in light of the Law Court's decision in the case of the Bowers Wind Project. There was consensus that the report state that it would be helpful if the language regarding the assessment of scenic impacts was clarified to reflect that it may

include the overall impact on multiple scenic resources of state or national significance.

Board member Ahlers commented that the reports listing lakes as significant for scenic quality that are cited in the Wind Energy Act are dated and that it would be good to have updated reports. Members discussed the likely cost of updating the reports and the fact that the Legislature has previously considered the issue. There was consensus that the report should include a note regarding the age of the reports.

Following discussion, Board member Eastler amended his motion to authorize Ms. Bertocci to work with the Chair to finalize the report and to include a discussion of the Bowers' decision, a recommendation on clarifying the scenic standard, and a note on the age of the lake inventory reports. Mr. Draper seconded the motion. The Board voted (6-0-0) to support the motion. The vote was taken pursuant to 38 M.R.S. § 341-D(7).

Board members Alvin Ahlers, Thomas Dobbins, Mark Draper, Thomas Eastler, Jonathan Mapes, and James Parker voted to support the motion. There is one vacancy.

3. Review of Board Procedures (discussion)

Staff: Cynthia Bertocci, Board Executive Analyst

Ms. Bertocci reviewed three existing internal guidance documents with the Board members:

- Guidelines for the Conduct of Board Meetings,
- Guidelines for Board Consideration of Staff Recommendation, and
- Guidelines Concerning Requests for Board Jurisdiction.

The existing guidelines are dated and, in some instances, no longer reflect the Board's statutory authority.

With respect to the *Guidelines for the Conduct of Board Meetings*, members sought clarification on ex-parte communications, the ability of members to communicate with staff, and the process for addressing requests from the press for comment on matters before the Board. Ms. Bertocci will revise the guidelines based upon the discussion and bring them back to the Board for final review at the January 21, 2016 meeting.

(The meeting adjourned at approximately 11:20 a.m.)