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## MEMORANDUM

To: Board of Environmental Protection  
From: Kevin Martin, Compliance and Procedures Specialist  
Date: February 18, 2021 Board Meeting  
Re: Appeal of Fallbrook Commons Development, LLC, Department Order #L-11219-TE-H-Z / by Michael Denbow and Ian Houseal

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Statutory and Regulatory References. The applicable statutes and rules governing the appeal of the Department Order issued to Fallbrook Commons Development, LLC (Fallbrook Commons or Licensee) are: the Natural Resources Protection Act (NRPA), 38 M.R.S. §§ 480-A through 480-JJ; Section 401 of the Clean Water Act, 33 U.S.C. § 1341; and Department Rules Chapter 310, *Wetlands and Waterbodies Protection*; Chapter 315, *Assessing and Mitigating Impacts to Existing Scenic and Aesthetic Uses*; and Chapter 335, *Significant Wildlife Habitat*. Procedural rules governing appeals of Commissioner licensing decisions are set forth in the Department's Chapter 2, *Rule Concerning the Processing of Applications and Other Administrative Matters*, Chapter 2 § 24

Location. Portland, Cumberland County

Project Description and Procedural History. On February 20, 2020, Fallbrook Commons submitted an application for a NRPA permit to construct a 90-bed nursing care facility in Portland, adjacent to Fall Brook Woods assisted living facility. The proposed project site is located on approximately 8.24 acres of undeveloped land within the 12.64 acres conveyed to Fall Brook Woods from an original 20-acre parcel approved for development known as Fallbrook. Fallbrook Commons' application was accepted for processing on March 12, 2020. The Department approved the application in Department Order #L-11219-TE-H-N, dated June 4, 2020, after consideration of the application, public comments, comments from other State agencies, and additional filings by the applicant.

On June 29 and June 30, 2020, Ian Houseal and Michael Denbow (Appellants), respectively, filed timely appeals of Department Order #L-11219-TE-H-N with the Board requesting that the Board reverse the decision of the Commissioner. Given the similarity of arguments on appeal, the Board is processing the appeals together for administrative economy. The Board Chair ruled on supplemental evidence offered by both the Appellants and the Licensee. The Licensee submitted its response to the merits of the appeal on September 25, 2020.

Issues Raised by the Appellants and Remedy Requested. The Appellants raise procedural and substantive objections to the Department Order. They argue that public process was inadequate, specifically that a public hearing should have been held and that they were denied an opportunity for public comment on the application. Substantively, the Appellants question the Department's analysis of NRPA standards. They argue the Department's analysis of the scenic

impact associated with the project and its failure to consider certain areas significant wildlife habitat was flawed. They also contend that the Department's review of the application's alternatives analysis was in error. The Appellants request that the Board grant the appeal, reverse the Department's decision, and issue a denial to Fallbrook Commons.

Staff Recommendation. Department staff recommend that the Board deny the appeals and affirm the Commissioner's decision.

Estimated Time for Agenda Item. 1 Hour 30 Minutes