



Mark C. Draper, Chair

William F. Hinkel  
Executive Analyst

Ruth Ann Burke  
Board Clerk

JANET T. MILLS  
GOVERNOR

**BOARD OF ENVIRONMENTAL PROTECTION  
Meeting Minutes**

February 18, 2021

A meeting of the Board of Environmental Protection was held on Thursday, February 18, 2021, by Zoom video conference. Board Chair Mark Draper called the meeting to order at 9:00 a.m. with the following individuals attending:

**Board:** Mark Draper, Mark Dubois, Robert Duchesne, Robert Sanford, Susan Lessard, James Parker, and Steven Pelletier

**Staff:** Kevin Martin, Office of the Commissioner  
Robert Green, Bureau of Land Resources  
Jami MacNeil, Bureau of Land Resources  
Dawn Hallowell, Bureau of Land Resources

**Others:** Melanie Loyzim, Acting Commissioner  
David Madore, Acting Deputy Commissioner  
Peggy Bensinger, Assistant Attorney General  
William Hinkel, Board Executive Analyst  
Ruth Ann Burke, Board Clerk and Administrative Assistant 320307

**I. Departmental**

**A. Commissioner's Comments:** Acting Commissioner Loyzim noted that the Maine Legislature is now recording Committee proceedings and makes those recordings available on their YouTube channel. Ms. Loyzim mentioned that the Board may find informative a presentation by Department staff to the Joint Standing Committee on Environment and Natural Resources on the subject of PFAS and an upcoming briefing on matters related to solid waste.

**B. Chair's Comments:** None

**C. Executive Analyst's Comments:**

Mr. Hinkel mentioned two items, both having to do with requests that the Board assume original jurisdiction of an application that is pending before the Commissioner. The first is a request from two individuals that the Board take original jurisdiction of a Site Law permit transfer application for Sea-Vu South Campground in Wells. The applicant is LGC SVS, LLC and the requestors are Anthony Pennisi and Richard Whitney.

*Draft Pending Board Approval*

The second is a request from two organizations that the Board take original jurisdiction of a minor revision application for the NECEC Order which is currently under appeal to the Board. The co-applicants for the minor revision are Central Maine Power Company and NECEC Transmission LLC and the organizations requesting that the Board assume original jurisdiction are the Natural Resources Council of Maine and Sierra Club Maine.

Mr. Hinkel commented that if the Board wishes to have a substantive discussion of the Acting Commissioner's determination in both cases that the application did not warrant original Board jurisdiction and the possibility of the Board assuming original jurisdiction, that would need to be placed on the Board's agenda and scheduled for an upcoming Board meeting. With regard to the CMP/NECEC, LLC minor revision application some Board members had questions about the minor revision application. Ms. Bensinger assisted in answering those questions regarding the applicable rules and process. Chair Draper indicated that as a result of interest expressed by Board members in receiving additional information to further the discussion, the Board should schedule time at a later meeting for this matter.

**D. Board Calendar:** No comments

**E. Departmental Orders / Applications Accepted for Processing:** No comments

**II. Regular Agenda Items (Note: All votes taken by roll call. Votes are recorded in the following order: number voting in favor of a motion – number voting against a motion – number abstaining – number absent)**

1. BEP Meeting Minutes. January 7, 2021

The Board voted (7-0-0-0) on a motion by Steve Pelletier and seconded by Robert Duchesne to approve the minutes of January 7, 2021, as presented.

The vote was taken pursuant to 38 M.R.S. § 341-D.

All Board members voted to support the motion.

2. Fallbrook Commons Development, LLC, NRPA, Freshwater Wetlands Alteration, Water Quality Certification (#L-11219-TE-H-Z), appeals by Michael Denbow and Ian Houseal (decision)

Staff: Kevin Martin, Office of the Commissioner;  
Robert Green, Bureau of Land Resources

Mr. Hinkel introduced the appeal by summarizing appellants Michael Denbow's and Ian Houseal's objections to the Commissioner's decision and the procedure for deciding an appeal.

Mr. Hinkel noted that certain proposed supplemental evidence offered by the Licensee but not admitted to the record was inadvertently included in the Board packet. The Board was instructed to disregard pages 316 through 334 of the Board packet.

Mr. Hinkel also instructed the Board to disregard “paragraph d) Water Quality” on pages 42 and 43 of the Board packet. This section of Mr. Denbow’s appeal is proposed supplemental evidence that, while not redacted from his appeal, was not admitted to the record.

Appellants Michael Denbow and Ian Houseal each offered oral argument discussing their objections and challenges to the Commissioner’s decision on the application.

Attorney Rachel Becker McEntee (Bernstein Shur) and engineering consultant Dan Riley (Sebago Technics, Inc.) offered oral argument for the Licensee to address the issues raised on appeal.

Department staff Kevin Martin and Robert Green summarized the proposed Board Order and responded to Board member questions.

Following staff presentation, the public was given an opportunity to comment. No persons offered comment on the appeals.

Following deliberations, Mark Dubois made a motion to adopt the proposed Board Order, deny the appeals, and affirm the Commissioner’s decision. Robert Sanford seconded the motion. Following additional deliberation, James Parker made a motion to amend Mr. Dubois’ motion by adopting the proposed Board Order with an additional condition requiring the Licensee to conduct a vernal pool survey prior to commencing construction. Mr. Dubois seconded the amended motion. The Board voted (6-1-0-0) in favor of the amended motion.

The vote was taken pursuant to 38 M.R.S. § 341-D.

Susan Lessard voted against the motion.

3. Jeffrey Spinney, NRPA, Coastal Wetlands Alteration (#L-28397-4E-C-Z), appeals by Carol Ervin, Bailey Bolen, Allen J. Philbrick, and William Weary (decision)

Staff: Jami MacNeil, Bureau of Land Resources;  
Dawn Hallowell, Bureau of Land Resources

Mr. Hinkel introduced the appeal by summarizing appellants Carol Ervin’s, Bailey Bolen’s, Allen J. Philbrick’s, and William Weary’s objections to the Commissioner’s decision and the procedure for deciding an appeal.

Attorney Gordon Smith (Verrill) and William Weary offered oral argument discussing the Appellants’ objections and challenges to the Commissioner’s decision on the application.

Attorney Kristin Collins (Preti Flaherty) offered oral argument for the Licensee to address the issues raised on appeal.

Department staff Jami MacNeil summarized the proposed Board Order and responded to Board member questions.

Following staff presentation, the public was given an opportunity to comment. Respondent Nicholas Barth and citizen Jeffery Philbrick offered comments in support of the appeals.

The Board voted (7-0-0-0) in favor of a motion by James Parker and seconded by Mark Dubois to deny the request for a hearing on the appeals. Following deliberations, the Board voted (7-0-0-0) on a motion James Parker and seconded by Steve Pelletier to adopt the proposed Board Order, deny the appeals, and affirm the Commissioner's decision.

The vote was taken pursuant to 38 M.R.S. § 341-D.

All Board members voted to support the amended motion.

***(The meeting adjourned at approximately 4:15 p.m.)***