

Maine Board of Environmental Protection
Board Assumption of Jurisdiction over an Application
Report of Requests Received and Commissioner Determinations
January 20, 2022

When the Board assumes original jurisdiction over an application, that means that the Board decides the application in the first instance instead of the Commissioner.

When the Commissioner recommends that the Board consider assuming jurisdiction over an application, that matter will be placed on the Board's agenda for discussion at a public meeting, and the materials will be provided to the Board as part of that agenda item. That kind of situation and related materials are not addressed by this report.

This report provides the Board with a copy of requests that the Board assume original jurisdiction over an application when the Commissioner's corresponding determination has been that the criteria for Board jurisdiction are *not* met.

The Department's *Rule Concerning the Processing of Applications and Other Administrative Matters*, Chapter 2, § 17, provides that any person may request that the Board assume original jurisdiction over an application by submitting the request to the Department in writing no later than 20 days after the application is accepted as complete for processing. The rule sets forth the criteria that must be met in order for the Board to assume original jurisdiction. When such a request is made, the Commissioner makes a preliminary determination as to whether the Board should assume jurisdiction over the application. When the Commissioner determines that the criteria for Board jurisdiction are not met, the Commissioner provides the Board with a copy of the request and the Commissioner's determination.

When the Commissioner determines that the criteria are not met, the Board may assume jurisdiction over and decide a license application that in its judgment represents a project of statewide significance. A project of statewide significance is a project that meets at least three of the following four criteria.

- 1) Will have an environmental or economic impact in more than one municipality, territory or county;
- 2) Involves an activity not previously permitted or licensed in the State;
- 3) Is likely to come under significant public scrutiny; and
- 4) Is located in more than one municipality, territory or county.

If a Board member wishes to have a substantive discussion of the Commissioner's determination and the possibility of the Board assuming original jurisdiction, that matter needs to be affirmatively raised and it then be placed on the Board's agenda for an upcoming Board meeting. Otherwise, no decision of the Board is required for the items listed below. If the Board takes no action, the Department staff will continue to process the application for eventual consideration and potential decision by the Commissioner rather than the Board.

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REQUESTS AND COMMISSIONER DETERMINATIONS

1. **Requestors (3):** Lori Knowlton, November 26, 2021; Roger Inhorn and Victoria Masakowski, November 29, 2021; and Kavita Mohan and Shantanu Lal, November 19, 2021 (a copy of each request is attached hereto)

Application: Application of Randall Ward and Kristyn Morrisey-Ward for a Natural Resources Protection Act permit to construct a pier system for residential use in Lincolnville (Bureau of Land Resources Application L-29402-4P-A-N)

Date of Commissioner determination that the application does not meet at least 3 of 4 criteria for Board jurisdiction: December 21, 2021 (copy attached)

ATTACHMENT



012
STATE OF MAINE
DEPARTMENT OF ENVIRONMENTAL PROTECTION



JANET T. MILLS
GOVERNOR

MELANIE LOYZIM
COMMISSIONER

December 21, 2021

Sent Via Email Only

Kavita Mohan and Shantanu Lal
38 Shag Rock Point
Lincolnville, ME 04849
Kavita.mohan@gmail.com
shantanulal@hotmail.com

Roger Inhorn and Victoria Masakowski
57 McKay Road
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Lori Knowlton
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Maura DiPrete
143 Martin Corner Road
Lincolnville, ME 04849
nauplii@hotmail.com

RE: DEP Project #L-29402-4P-A-N, Lincolnville

Dear Recipients:

AUGUSTA
17 STATE HOUSE STATION
AUGUSTA, MAINE 04333-0017
(207) 287-7688 FAX: (207) 287-7826

BANGOR
106 HOGAN ROAD, SUITE 6
BANGOR, MAINE 04401
(207) 941-4570 FAX: (207) 941-4584

PORTLAND
312 CANCO ROAD
PORTLAND, MAINE 04103
(207) 822-6300 FAX: (207) 822-6303

PRESQUE ISLE
1235 CENTRAL DRIVE, SKYWAY PARK
PRESQUE ISLE, MAINE 04769
(207) 764-0477 FAX: (207) 760-3143

The Department has received and considered your request for a public hearing or that the Board of Environmental Protection (Board) assume jurisdiction over the application regarding Randall Ward and Kristyn Morrisey-Ward's above-referenced Natural Resources Protection Act (NRPA) permit application. The Ward's submitted the application in support of their proposal to construct a residential pier system on their property.

I. Request for a Hearing

The Department's Chapter 2, *Rule Concerning the Processing of Applications and Other Administrative Matters*, 06-096 CMR 2, guides the Department in responding to your requests.

Chapter 2, § 7 of the Department's rule governs requests for public hearings and establishes: "The request must indicate the interest of the person filing the request and specify the reasons why a hearing is warranted." Public hearings are discretionary unless otherwise provided by law, and your letters requesting a hearing do not cite any law requiring a hearing on the pending application. Chapter 2 also allows the Commissioner to elect to conduct a hearing on any application. There are two factors identified in Chapter 2, § 7(B) that, if the Department determines are met, will prompt the Department to exercise its discretion and hold a hearing. Specifically: "The Department will hold a hearing in those instances where the Department determines there is credible conflicting technical information regarding a licensing criterion, and it is likely that a hearing will assist the Department in understanding the evidence."

Although your letters refer to general concerns related to protected natural resources and impacts to the scenic character of the coastline, they do not contain conflicting technical information regarding a licensing criterion. The information in your letters relate to issues that will be reviewed during the processing of the application; therefore, the Department has determined that a hearing would not likely assist the Department in understanding the issues surrounding the proposed project. For these reasons, the Department will not hold a public hearing for this project.

II. Request for Board Assumption of Jurisdiction Over an Application

The Department received three requests for Board assumption of jurisdiction, which are enclosed.

Pursuant to state law and Chapter 2, the Board may assume jurisdiction over applications for projects of statewide significance. The criteria used by the Commissioner when deciding whether to recommend to the Board that it assume jurisdiction, and by the Board when deciding whether to exercise its discretion to assume jurisdiction, are set forth in 38 M.R.S. § 341-D(2) and in Chapter 2, § 17(C). The statute and rule provide:

A project of statewide significance is a project that meets at least 3 of the following 4 criteria:

- (1) Will have an environmental or economic impact in more than one municipality, territory or county;

- (2) Involves an activity not previously permitted or licensed in the State;
- (3) Is likely to come under significant public scrutiny; and
- (4) Is located in more than one municipality, territory, or county.

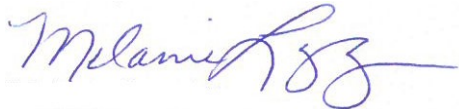
Regarding the first criterion, the proposed project is located in Lincolnville and it is not evident that potential impacts would extend beyond town boundaries. Regarding the second criterion, the Department has reviewed many development proposals similar in scale and is experienced applying the applicable standards under controlling laws, including the NRPA along with the accompanying rules. Regarding the fourth criterion, the project is proposed in a single municipality, the Town of Lincolnville. With at least three of the four criteria not satisfied, my determination is that the pending NRPA application does not represent a project of statewide significance. Therefore, the Board should not assume jurisdiction over the application. By copy of this letter, with your requests for Board jurisdiction attached, I am notifying the Board of my determination.

III. Department Review

The Department will continue to review the pending NRPA application and, as part of this review process, will continue to accept and consider public comments on the application. Please submit any additional information/comments regarding the application before the Department as soon as possible to allow adequate time to take those comments into consideration. The Department anticipates issuing a licensing decision on this matter by March 10, 2022.

If you have further questions, please contact the project manager, Robert Green, at (207) 615-2214 or via email at robert.l.green@maine.gov.

Sincerely,



Melanie Loyzim
Commissioner

Enclosures

cc: Marc Draper, BEP Chair
Bill Hinkel, BEP Executive Analyst
Robert Green, DEP Project Manager
Tim Forester, Atlantic Environmental, LLC (agent)

ATTACHMENT

November 26, 2021

Via CERTIFIED MAIL AND EMAIL

Maine Department of Environmental Protection
Central Maine Regional Office
17 State House Station
Augusta, Maine 04333

Attention: Mr. Robert Green, robert.l.green@maine.gov

To the Maine Department of Environmental Protection and Mr. Green:

It has come to my attention that a Natural Resources Protection Act permit application has been filed with the Maine Department of Environmental Protection (“MDEP”) by Randall Ward and Kristyn Morrissey-Ward on or about October 19, 2021, seeking approval to build a dock consisting of a pier, ramp, and float located at 37 Shag Rock Point, Lincolnville, ME 04849 (Lot #69 of Tax Map #15). I own the property at the end of McKay Road in the southeast corner of M1 on Tax Map #15. It is separated from the project by only a narrow portion of Lot 63 and Lot 67.

I’m writing to request that the MDEP restart the notification process with a comprehensive list of abutting property owners as defined and hold a public hearing or that the Board of Environmental Protection consider assuming jurisdiction over this matter to ensure that the interests of neighbors, the local lobster and fishing industry, the community, and all other stakeholders are taken into consideration.

Why am I requesting a restart to the notification process? Because in the application, it indicates that notifications need to be served to BOTH abutting property owners AND to those within one mile of the delineated project boundary. This notice was not served to me or other nearby property owners who are within the one-mile radius. I found out about the permit proposal through the grapevine not through any official source. I request that this notice process be properly implemented per the town tax maps to ensure that all opinions are heard.

Further, it seems that the scope of the project is larger than indicated when all components are included. The pier may be 300 feet, but when the ramp and float are included, the combined structure seems to approach 385 feet in length. This does not include watercraft or mooring lines.

At a minimum, I ask that the MDEP conduct an independent impact study to evaluate the concerns detailed below.

We note the following concerns as you consider this application:

There are currently no other private docks, particularly of this size and scale, along the Lincolnville shore. The shallow waters along the coastline in Lincolnville, particularly so close to the Lincolnville Public Beach and adjoining properties, are used frequently by residents and visitors for kayaking, paddle boarding as well as other low environmental impact, recreational water activities. The building of the structure creates safety concerns for these use cases. For example, novice sailors who often sail by in small watercraft such as Opti or 420s would have to venture out closer to the shipping channel in order to avoid the structure and related private property.

For those walking the beach, there would also be an obstruction much like the working ferry terminal that would prevent beach walking and require people to find an alternative without the benefit of sidewalks that exist near the ferry.

The review of impact on marine life appears to be overly narrow in the application. The coastline and wetlands near my property (which is yards from the proposed plan) include variety of sea life including lobsters, seals, loons, sturgeon and bald eagles. Whether or not they are protected, it seems that the structure would impact their ecosystem. The materials provided to support this potential impact does not seem sufficient to reflect the myriad of wildlife here.

The proposed location of the dock would appear to obstruct the navigable channels currently used by lobster boats, potentially impacting the local lobstering community, who may not become aware of the proposed construction until it is already underway, should this application be granted. Given the limited scope of notification (two parties), more diligence is merited here even if it's in excess of the threshold requirement.

Granting this application would establish a precedent for private waterfront development that risks negatively affecting our natural coastline, environment and nature of the waterfront properties. I do not see any evidence of preventative environmental care associated with the application (e.g., armoring of the shoreline). Remediation is much more difficult than erosion prevention.

Lincolnville Beach, which is *very* close by, has moorings and ramps for residents of the town to moor their boats, access the ocean and take advantage of recreational opportunities. I see no reason that this public facility cannot serve the purpose of recreation for the proposing parties. If this facility needs to be improved, it would be a greater benefit if the Town Council could take input and create a community benefit at the existing Lincolnville Beach rather than create private solutions with public impact.

Given the proposed size and length of the structure, the privacy of my nearby home and other abutting properties would be negatively impacted.

As a seventh generation Mainer and resident of Waldo County, I am all about good fences making for good neighbors. And, I have no interest in telling my neighbors what to do with

their property; however, our property lines stop at the high-water mark. Once permitting starts for anything past the high-water mark, it becomes a community issue not a private property issue.

I hope that the MDEP will take the above issues into consideration and consider all stakeholders' perspectives.

I would appreciate if you could keep me updated on the status of the application and the approval process, as well as any other opportunities we may have to provide public comments, or if any modifications are made to the site plans through the application process.

Please feel free to contact me for any further details or information.

Sincerely,

Lori Knowlton

loriknowlton@icloud.com

1011 Albion Rd., Unity, Maine 04988 (mailing address)

69 McKay Road, Lincolnville, ME 04849 (local address)

617 834 1891

ATTACHMENT

Green, Robert L

From: Roger Inhorn <rinhorn17@gmail.com>
Sent: Monday, November 29, 2021 6:50 AM
To: Green, Robert L
Subject: Dock proposal

EXTERNAL: This email originated from outside of the State of Maine Mail System. Do not click links or open attachments unless you recognize the sender and know the content is safe.

November 29, 2021

Via CERTIFIED MAIL AND EMAIL

Maine Department of Environmental Protection
Central Maine Regional Office
17 State House Station
Augusta, Maine 04333

Attention: Mr. Robert Green, robert.l.green@maine.gov

To the Maine Department of Environmental Protection and Mr. Green:

It has come to our attention that a Natural Resources Protection Act permit application has been filed with the Maine Department of Environmental Protection ("MDEP") by Randall Ward and Kristyn Morrissey-Ward on or about October 19, 2021, seeking approval to build a dock consisting of a pier, ramp, and float located at 37 Shag Rock Point, Lincolnville, ME 04849 (Lot #69 of Tax Map #15). We own the second-to-last property at the end of McKay Road in the southeast corner of M1 on Tax Map #15 (lot 103A in the McKay subdivision). It is separated from the project by only a narrow portion of Lot 63, Lot 67 and lot 103 in the McKay subdivision.

We are writing to request that the MDEP restart the notification process with a comprehensive list of abutting property owners as defined and hold a public hearing or that the Board of Environmental Protection consider assuming jurisdiction over this matter to ensure that the interests of neighbors, the local lobster and fishing industry, the community, and all other stakeholders are taken into consideration. This request is based on the fact that the application indicates that notifications need to be served to BOTH abutting property owners AND to those within one mile of the delineated project boundary. Our property falls within the one-mile radius. This notice was not served to us or other nearby property owners who are within the one-mile radius. We found out about the permit proposal on November 27, 2021 from a neighbor, not through any official source. We request that this notice process be properly implemented per the town tax maps to ensure that all opinions are heard.

Further, it seems that the scope of the project is larger than indicated when all components are included. The pier may be 300 feet, but when the ramp and float are included, the combined structure seems to approach 385 feet in length. This does not include watercraft or mooring lines.

At a minimum, we ask that the MDEP conduct an independent impact study to evaluate the concerns detailed below. Since we only learned of this proposal on November 27, 2021, we have not had the

opportunity to independently seek legal counsel regarding this proposal. Nonetheless, we would like to reiterate the following concerns that were identified by other property owners that are affected by this application:

- There are currently no other private docks, particularly of this size and scale, along the Lincolnville shore. The shallow waters along the coastline in Lincolnville, particularly so close to the Lincolnville Public Beach and adjoining properties, are used frequently by residents and visitors for kayaking, paddle boarding as well as other low environmental impact, recreational water activities. The building of the structure creates safety concerns for these use cases. For example, novice sailors who often sail by in small watercraft such as Opti or 420s would have to venture out closer to the shipping channel in order to avoid the structure and related private property.
- For those walking the beach, there would also be an obstruction much like the working ferry terminal that would prevent beach walking and require people to find an alternative without the benefit of sidewalks that exist near the ferry.
- The review of impact on marine life appears to be overly narrow in the application. The coastline and wetlands near our property include a variety of sea life including lobsters, seals, loons, sturgeon and bald eagles. Whether or not they are protected, it seems that the structure would impact their ecosystem. The materials provided to support this potential impact do not seem sufficient to reflect the myriad of wildlife here.
- The proposed location of the dock would appear to obstruct the navigable channels currently used by lobster boats, potentially impacting the local lobstering community, who may not become aware of the proposed construction until it is already underway, should this application be granted. Given the limited scope of notification (two parties), more diligence is merited here even if it is in excess of the threshold requirement.
- Granting this application would establish a precedent for private waterfront development that risks negatively affecting our natural coastline, environment and nature of the waterfront properties. We do not see any evidence of preventative environmental care associated with the application (e.g., armoring of the shoreline). Remediation is much more difficult than erosion prevention.
- Lincolnville Beach, which is very close by, has moorings and ramps for residents of the town to moor their boats, access the ocean and take advantage of recreational opportunities. We see no reason that this public facility cannot serve the purpose of recreation for the proposing parties. If this facility needs to be improved, it would be a greater benefit if the Town Council could take input and create a community benefit at the existing Lincolnville Beach rather than create private solutions with public impact.
- Given the proposed size and length of the structure, the privacy of our nearby home and other abutting properties would be negatively impacted.

We hope that the MDEP will take the above issues into consideration and consider all stakeholders' perspectives.

We would appreciate if you could keep us updated on the status of the application and the approval process, as well as any other opportunities we may have to provide public comments, or if any modifications are made to the site plans through the application process.

Please feel free to contact us for any further details or information.

Sincerely,

Roger Inhorn
Victoria Masakowski

rinhorn17@gmail.com

57 McKay Road, Lincolnville, ME 04849 (physical address)

PO Box 89, Lincolnville, ME 04849 (mailing address)

207-233-7771

ATTACHMENT

November 19, 2021

Kavita Mohan & Shantanu Lal
7811 Aberdeen Road
Bethesda, MD 20814

Maine Department of Environmental Protection
Central Maine Regional Office
17 State House Station
Augusta, Maine 04333
Attention: Mr. Robert Green, robert.l.green@maine.gov

To the Maine Department of Environmental Protection and Mr. Green:

It has come to our attention that a Natural Resources Protection Act permit application has been filed with the Maine Department of Environmental Protection (“MDEP”) by Randall Ward and Kristyn Morrissey-Ward on or about October 19, 2021, seeking approval to build a dock consisting of a pier, ramp, and float located at 37 Shag Rock Point, Lincolnville, ME 04849 (Lot #69 of Tax Map #15). We own the abutting property at 38 Shag Rock Point (Lot #67 of Tax Map #15).¹

We write to request that the MDEP hold a public hearing or that the Board of Environmental Protection consider assuming jurisdiction over this matter to ensure that the interests of neighbors, the local lobster and fishing industry, the community, and all other stakeholders are taken into consideration. At a minimum, we ask that the MDEP conduct an independent impact study to evaluate the concerns detailed below.

We note the following concerns as you consider this application:

- To our knowledge, there are currently no other private docks, particularly of this size and scale, along the Lincolnville shore. The proposed dock would be a physical and visual anomaly along the natural coastline.
- The shallow waters along the coast line in Lincolnville, particularly so close to the Lincolnville Public Beach and adjoining properties, are used frequently by residents and visitors for kayaking, paddle boarding, as well as other low environmental impact, recreational water activities. The proposed size and location of the dock creates an obstruction for these individuals. The length and placement of the dock will require such individuals to go around the dock, into much deeper waters, creating potential safety concerns.

¹ In reviewing the application and supporting materials, the MDEP should also ensure that the project is set fully within the applicants’ property line and fully compliant with the setback requirements set forth by the Lincolnville Town Land Use Ordinance as well as the Lincolnville Shores Protective Covenants, as attached to the application. We note a discrepancy in the application, which states that the applicant owns an “approximate 3.25-acre parcel.” However, Tax Map #15 notes that Lot 69 has an acreage of 3.1-acres.

- The proposed location of the dock would appear to obstruct the navigable channels currently used by lobster boats, potentially impacting the local lobstering community, who may not become aware of the proposed construction until it is already underway, should this application be granted.
- Granting this application would establish precedence for granting more such applications in the future, opening the door for many such private docks to be built along the Lincolnville shoreline. This would affect the natural beauty of the coastline, negatively impact near-shore, low-impact recreational water activities, and allow a greater volume of higher impact water activities (e.g., motor boats and other larger recreational boats), potentially creating even greater environmental disturbances.
- The size of the dock proposed is likely only necessary for larger boats, which may also cause environmental disturbances.
- Unlike the Ferry terminal or public facilities at Lincolnville beach, the proposed structure would be built to serve only a private purpose.
- Due to the proposed size and length of the structure, the privacy of our neighboring lot and other abutting properties would be negatively impacted.

Many of us come to Maine, and specifically to Lincolnville, to enjoy the natural and relatively untouched beauty of the shoreline and surrounding areas. While we have no wish to impede another resident's full use and enjoyment of their private property, the coastline belongs to all. We hope the MDEP will take the above issues into consideration, and consider all stakeholders' perspectives when private interests have broader public and environmental impact on neighbors and the community.

We would appreciate if you could keep us updated on the status of the application and the approval process, as well as any other opportunities we may have to provide public comments, or if any modifications are made to the site plans through the application process. Please feel free to contact us for any further details or information.

Sincerely,



Kavita Mohan & Shantanu Lal

7811 Aberdeen Road, Bethesda, MD 20814 (mailing address)

38 Shag Rock Point, Lincolnville, ME 04849 (local address)

cc: Stephen Hanscom, Hanscom & Collins, PA

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