

**State of Vermont
Water Resources Board**

**In re: Appeal of Larivee
Docket No. CUD-92-09**

**Authority:
10 V.S.A. § 1269**

MEMORANDUM OF DECISION ON PRELIMINARY ISSUES

This decision pertains to two preliminary issues raised by the parties in the above-captioned appeal. As is explained below, the Water Resources Board ("Board") has decided that Ms. Larivee's appeal is properly before the Board and that the Board should proceed to a hearing on the merits.

I. BACKGROUND

On May 25, 1992, the Wetlands Office of the Department of Environmental Conservation of the Agency of Natural Resources granted Conditional Use Determination ("CUD") #92-142 to Oon Teong Ko of Montreal, Canada, authorizing construction of five driveways within a Class II wetland and buffer zone for an eight (8) lot subdivision on land owned by his wife, Wye Meng Cheong Ko, on Maquam Shore Road in Swanton, Vermont. On or about June 3, 1992, Louise Larivee, a member of the Abenaki Nation, filed a written notice of appeal with the DEC. This notice was referred to the Water Resources Board ("Board") and subsequently perfected. Parties to this appeal are Ms. Larivee, the appellant and representative of the Abenaki Nation; the appellee by power of attorney, Mr. Ko; and the Agency of Natural Resources (ANR).

On April 20, 1993, in Swanton, Vermont, the Water Resources Board convened a hearing in this matter. Chairman Rocheleau presided, and Board members present included Potvin and Reynes. The appellant was represented by Arthur J. Ruben, Esq. The appellee, Mr. Ko, was represented by attorneys Carl Lisman and Douglas K. Riley of the firm Lisman and Lisman. Also present and participating was Anne Whiteley, Acting General Counsel of ANR.

In opening statements to the Board, the parties raised two preliminary issues which the Board took under advisement. Because these issues called into question the jurisdiction of the Board to hear this appeal on the merits, the Board recessed the hearing to provide the parties an opportunity to brief the issues. The Board deliberated on May 10, 1993. The Chairman subsequently recused himself. On June 1, 1993, the Board elected member Reynes to serve as Acting Chair. Board members who reviewed the record and participated in the deliberations with respect to the preliminary issues were: Reynes, DesMeules, Einstein and Potvin.

