

April 6, 2020

Chair, Board of Environmental Protection  
Commissioner, Department of Environmental Protection  
17 State House Station  
Augusta, ME 04333-0017

Dear Chair and Commissioner:

The below-signed individuals are writing to file an administrative appeal of the DEP Permit issued March 13, 2020 to Jeffry Spinney for a dock installation in Alna (NRPA permit, # L-28397-4E-A-N located in Alna - Jeffry Spinney).

### **Aggrieved Status**

We are the three abutters of Mr. Spinney.

1. Carol Ervin and Bailey Bolen own a half mile of shorefront on the Sheepscot River and 83 acres abutting Mr. Spinney's property. They purchased the property in 2009 with the goal of spending part of each year in Maine. They have spent time at the property each summer since 2009, including time walking and canoeing or kayaking along the river. Their southern property line directly abuts Mr. Spinney's property and the proposed boat ramp is within 10 feet of their property line. The proposed project will have an adverse impact on their use and enjoyment of their property and the Sheepscot River.
2. Allen J. Philbrick is the Trustee of the James Erskine Philbrick Tree Farm Trust that owns 140 acres of conserved land with Midcoast Conservancy. This property has been in the Philbrick family for 85 years and spans four generations. Now a summer residence, the c. 1760 Gambrel Cape with Federal addition is eligible for the National and State Registers of Historic Places. The Philbrick property includes the access road upon which Mr. Spinney and his organization would travel to the shoreland dock and pier system. This project will have an adverse impact on the Philbricks' use and quiet enjoyment of their land and enjoyment of the Sheepscot River.
3. William A. Weary owns one-and-one-third miles of shorefront on the Sheepscot River and 250 acres, all in a conservation easement with Maine Woodland Owners

and in his family since 1950. He lives here full-time and, with the exception of 1967, has been on the property part or all of every year for the last 70 years. The proposed installation in Alna is directly across the Sheepscot River opposite his property in Newcastle. The proposed project will have an adverse impact on Weary's use and enjoyment of his property and on the Sheepscot River.

These three abutters will be referred to herein as the "appellants."

## **Findings and Conclusions in Error and Basis of the Objections**

Appellants object to the incorrect information, analysis, and findings in the permit with respect to NRPA requirements that a proposal be consistent with existing scenic and aesthetic characteristics of the site and current uses. Appellants also object to the incorrect information, analysis, and findings regarding the existence of alternative sites and the identity and nature of the applicant. The applicant's original proposal and later submissions were misleading and, unfortunately, relied on in the permit.

The record suggests that the DEP was working with Mr. Spinney to help him get his permit; opposing comments and evidence provided in the public record have been ignored. A deep-water dock installation that is designed to serve a business of 25 and more individuals and their motorboats, on an undeveloped and largely protected stretch of river is ludicrous, especially considering that the river is only 100 feet wide and two or three feet deep at low tide, that there are no docks or other structures along it, that the banks are wooded and steep, that motorboat speed there is limited to headway, and that the applicant himself, from time to time, puts in and takes out his johnboat down the riverbank, without benefit of dock or ramp. Moreover, in Midcoast Maine, many beautiful places that are not threatened by overuse, noise, and pollution are well suited to fishing and boating.

### **1. The site**

From the DEP Permit:

*The surrounding area (within 1.5 miles of the project site) contains occasional residential structures, lawns, and docks that are partially or wholly visible from the resource during at least one season of the year. A transmission line corridor crosses the river approximately 2,000 feet south of the project site... (DEP Permit, p. 4)*

*In response to public comments on scenic concerns, the applicant conducted a photo-survey and submitted an electronic map with embedded photographs showing existing structures visible from the resource within approximately two miles of the project site... (DEP Permit, p. 4)*

*The visibility of the proposed pier system will be relatively limited, extending approximately 900 feet to the north and approximately 1,150 feet to the south of the project, with the visibility of proposed boat ramp extending approximately 370 feet to the north and approximately 270 feet to the south of the project site... (DEP Permit, p. 4)*

*The applicant stated that he designed the pier system and boat ramp to the minimum dimensions practicable and designed it with materials that will blend with the natural shoreline. (DEP Permit, p. 4)*

*The location and scale of the proposed activity is compatible with the existing visual quality and landscape characteristics found within the viewshed of the scenic resource in the project area. (DEP Permit, p. 5)*

By considering a full two-mile interval below the proposed project site, the applicant's survey that is wrongly accepted in the findings above fails to focus on the most critical segment of the river, the truly wild and undisturbed segment north of the transmission line corridor. Instead, it includes observations from a stretch much closer to the wider, more densely populated segment of river around the village of Sheepscot. The finding ignores the fact – readily seen on Google Earth photographs submitted into the record and noted many times in opposing public comments -- that on the segment between roughly the powerline above the village of Sheepscot and Alna's Puddle Dock (at the bridge), there are no docks, no structures, and only three visible homes, set back from the shoreline. The suburban character suggested in the DEP finding does not correspond to the reality of this upper stretch of the river. Moreover, the so-called survey is wholly misleading, since the "existing structures" it cites include, among many others flagged on the map to give the impression of density, not only the few houses (not always visible and from all points of view), but also non-structures, including an occasional field or two that punctuate the otherwise forested upland, a brook, a big rock in the river, an abandoned access point not used for decades, and a small, inconspicuous duck blind. The fact is that any dock, much less one suited to deep water and of the proposed scale, will stick out as incompatible.

The applicant's referenced efforts to reduce the visual impact of his proposed installation through use of materials that would "blend in with the natural

shoreline” make no sense: A 40-foot aluminum arc over a narrow, shallow, winding river cannot “blend in.” And, on a stretch of a river without any docks, and from a canoe or kayak proceeding up or down the river (which is how it will be seen), a 50-foot-long dock/float and a 36-foot-by-12-foot permanent boat ramp would be overwhelmingly dominant. As evidence of visual impact, applicant performed a “simulation” involving a ball and rope placed on the river out from the proposed site. The DEP relied on a standardized impact gauge that registers dominance on the basis of visibility from a trail, in this case inapplicable, since visibility is from the river.

In short, this project cannot possibly be seen as consistent with the site and would strike any passing paddler as ludicrous for any agency to approve. The project patently violates 38 M.R.S. § 480-D(1)’s requirement that the project not unreasonably interfere with existing scenic, aesthetic, recreational, and navigational uses and Chapter 315’s requirement that “the proposed design does not unreasonably interfere with existing scenic and aesthetic uses, and thereby diminish the public enjoyment and appreciation of the qualities of a scenic resource.”

## 2. Actual and proposed usage

From the DEP Permit:

*The applicant stated that motorized boats currently use the Sheepscot River near the project site, which is located upstream of the reversing falls in Sheepscot Village and downstream of Head Tide Dam. The applicant submitted several letters of support from local residents to support this statement, as well as photographs on the shoreline within two miles of the project site showing existing dock systems in the river, and satellite imagery from 2018 showing a motorized boat docked on this segment of the river, approximately 1.8 miles from the project site. (DEP Permit, p. 5)*

As discussed above, basing the approval on an applicant-provided survey that extends two miles below the proposed project site, and that includes the much wider and deeper river segment near the much more densely populated village of Sheepscot, is wholly inappropriate, and fails to acknowledge the dramatic change in the character of the river to the north of the transmission-line corridor.

Furthermore, while appellants acknowledge comments in the record about decades-old uses that have now nearly disappeared even near the village of Sheepscot, this finding fails even to recognize the overwhelming and consistent

public comments regarding existing public use by individuals who live on and along the river today, and who report little to no motorboat usage, but, instead, extensive canoe and kayak use.<sup>1</sup> Seven owners of land on the river today – and writing in opposition to the project – are even in or beyond their second generations here. Giving any weight – much less, exclusive weight -- to the half dozen letters of individuals who cite as evidence experiences on or near the river 50-to-60 years ago, who lived in the settled village of Sheepscot further down the river (a river segment that is not relevant to the proposed project), and who now live elsewhere defies common sense, basic fairness, and objectivity. The DEP may not rely on the testimony of those half dozen supporters and a satellite photo of a different section of the river, at the expense of considerable, uniform experience to the contrary. If the DEP is in doubt, it should require a visual impact assessment prepared by a design professional as authorized by Chapter 315 § 7 on the relevant river segment. Moreover, nothing in the permit references the noise that the proposed site will generate.

The project is inconsistent with existing uses of the river, and violates 38 M.R.S. § 480-D(1)'s requirement that the project not unreasonably interfere with existing scenic, aesthetic, recreational, and navigational uses and Chapter 315's requirement that "the proposed design does not unreasonably interfere with existing scenic and aesthetic uses, and thereby diminish the public enjoyment and appreciation of the qualities of a scenic resource."

### **3. Identity and nature of the applicant**

From the DEP Permit:

*The applicant proposes to construct a shared-use pier system and permanent boat ramp. (DEP Permit, p. 1)*

*The applicant has registered the club, known as the Golden Ridge Sportsman's Club, with the Maine Department of the Secretary of State as a nonprofit corporation. During the review, the applicant submitted a draft copy of bylaws for the club, as well as a draft Land Use License Agreement which will grant club members access to the proposed pier system and boat ramp. (DEP Permit, p. 5)*

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<sup>1</sup> A collection of passages from submitted public comments follows this letter.

*Further, upon the Department's request at any point during the life of the project, the applicant must submit information to the Department demonstrating that the Golden Ridge Sportsman's club is active and in good standing with the Maine Department of the Secretary of State. (DEP Permit, p. 10)*

*If the Land Use License Agreement is terminated by the Licensor or Licensee and is not replaced by another instrument of legal access for the Golden Ridge Sportsman's Club within six months of the agreement termination, or if the club is dissolved, the applicant shall remove the boat ramp, restore the coastal wetland to its natural condition, and reduce the size of the main seasonal float to eight feet wide by 12 feet long. (DEP Permit, pp. 14-15)*

The DEP permit is for a shared-use pier system and permanent boat ramp, premised on the existence of a sportsman's club. However, the applicant has submitted no credible evidence that the club is a legitimate entity, or anything other than an online, inexpensive means to obtain this permit that the DEP has made clear it would not have issued to him as an individual.<sup>2</sup> The draft "Land Use License Agreement" illustrates the fiction of this club as Jeffrey Spinney is listed as both the Licensor and the Licensee.

Following registration as a corporation, Maine law, 13-B M. R. S. § 101 et. seq., requires a variety of actions, including an organizational meeting shortly after registration, election of officers, and approval of bylaws. Yet the public record for this permit includes no documentation of any such meeting, the identities of the incorporators, officers, or how the still-draft-bylaws (submitted to the DEP four months ago) were adopted. There is no evidence that the required organizational meeting has ever taken place, or that any person other than Jeffrey Spinney is involved in this purported "club."

The DEP permit requires the applicant to guarantee a license agreement to the club for access to his property but says nothing about a corporate club resolution with respect to it. For that matter, the permit does not even require approval of bylaws. The project is intended for the benefit of the club, but the club submitted no application and there is no evidence that it even has endorsed the project. Finally, the requirement that the club -- on pain of requiring a new, smaller, and re-permitted installation -- present a certificate of good standing on request as

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<sup>2</sup>The language of the permit is confirmed in a comment from DEP representative David Madore: "Of whether a club or entity is necessary to receive a Natural Resources Protection Act permit, Madore, the DEP spokesman, said: 'Typically, the department is unable to approve boat ramps that serve a single individual.'" ("Sheepscot River project draws concern in Alna, Newcastle," *Lincoln County News*, Vol. 145, Number 11)

evidence of continued existence is meaningless, since said certificates are readily issued on request without question.

The only valid moment to require evidence of the club's legitimate existence is now.

Given that the DEP reviewed this permit based on the assumption of "shared use," that the applicant was required to provide credible evidence that a viable club exists and that the record includes no such credible evidence, the applicant has not met his burden of proof. Absent such evidence, the granting of the permit was arbitrary and capricious and should be overturned.

#### **4. Alterations of the shoreland**

From the DEP Permit:

*The applicant does not propose to remove any trees from the shoreline to construct the project. (DEP Permit, p. 4)*

*Any shrubs or trees removed incidentally will be replanted in accordance with the local Shoreland Zoning Ordinance. (DEP Permit p.7)*

Which is it? The DEP permit is internally inconsistent about whether the applicant will be permitted to remove trees from the shoreline area. Only a few trees are on the riverbank now, with a large clearing behind them, and it is not clear how both a 12-foot-wide ramp and a dock could fit in the openings among those few existing trees. No diagram of the installation places it within a diagram of shoreline vegetation. The inconsistency of the permit on this issue renders it vague and unenforceable, and, therefore, invalid.

#### **5. Alternative sites**

From the DEP Permit:

*In their collective comments, the interested persons identified a total of seven existing access points as possible alternatives to the proposed boat ramp. The applicant addressed the feasibility of each alternative and determined that these sites were either too far (at least seven miles) from the applicant's property, did not contain a road or suitable launch site for trailered boats at the shoreline, were private property, were isolated from the applicant's property by a physical barrier*

*such as Head Tide Dam or the reversing falls, or a combination of these factors. The applicant concluded that there is no practicable access point for motorized boats to reach the river within the vicinity of the applicant's property except at the proposed project site. (DEP Permit, p. 11)*

There were eight alternative sites proposed by interested parties, not seven. The eighth for some reason was omitted in the permit. That eighth was the public boat launch in the town of Wiscasset, just over seven miles from the applicant's property. Without providing any evidence, the applicant asserted, and the DEP accepted, that an alternative further than seven miles away would be burdensome for boat owners to access. The Wiscasset public boat launch already is in place, allows easy access to wide-open, deep, easily navigable water (and without restrictions to headway speed), and has plentiful parking. If that site were 6.9 miles away would it be acceptable? Many Alna residents live closer to the Wiscasset boat-launch than to the applicant's property. Mr. Spinney, in a comment to the DEP about the possibility that this project would set an adverse precedent leading to other docks along the river, even identified all the conservation-protected properties on just that stretch of the river north of the transmission-line corridor. He did not ask why those owners had decided to protect their properties, which, obviously, was to save them from the kind of inappropriate and otherwise non-existing development proposed in this project. Indeed, nowhere in the permit is attention paid to the celebration of this section of the river by federal, state, and local agencies, land trusts, foundations, environmental groups, and individuals.

It is not necessary for every stretch of river or water in Maine to have a dock and motorboats, or even a club. Some places just are not appropriate, and, given the presence of others that are, the spirit of the NRPA requires preserving the special places, not degrading them.

Chapter 310, § 5(A) states that a project will result in "an unreasonable impact if ... there is a practicable alternative to the activity that would be less damaging to the environment." Given the availability of the public access point in Wiscasset, the proposed project constitutes an unreasonable impact and the failure of the permit to address the practicable alternative is a fatal flaw requiring that it be vacated.

The impression given by the findings of fact and supporting rationale that are included with the NRPA permit unfortunately is that the DEP relied upon the representations of the applicant above independent research and the considerable evidence to the contrary in the overwhelming number of opposing public comments.



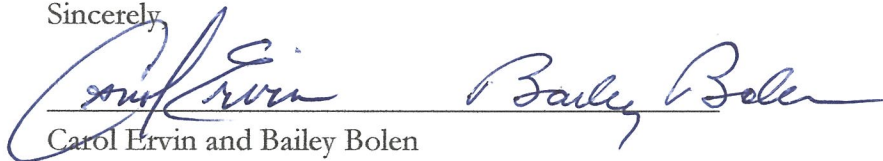
## Remedy Sought

We respectfully request that the permit be reversed, given the violations of the above cited laws and regulations and the extensive opposing public comments – 26 submitted and a total of over 50 in regular communication on the subject, overwhelmingly from people living on and along the river, in Alna and Newcastle -- about the adverse impacts this project would have on this stretch of the river's character, existing uses, scenic and aesthetic beauty, and navigation.

## Stay Requested

Given the irreversible harm to the shoreline and wetlands that would occur were construction of the boat ramp to take place pending this appeal, we respectfully request a stay of the permit decision.

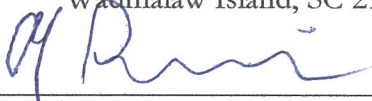
Sincerely,



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Allen V. Philbrick, Trustee of the James Erskine Philbrick Tree Farm Trust

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William A. Weary

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## **Public Comments in the Record regarding Motorboat Use on the Sheepscot River**

From our 50 odd years in Sheepscot Village we have noted few power boats above the Reversing Falls, often not even at the rate of one per day at the height of summer. The Sheepscot River from Head Tide to Sheepscot Village is plied 99.9% of the time by canoeist and kayaks.

In 61 years, I have never seen a power boat on this section of the river, above the bridge. I am heart-broken to think that this unspoiled, wild area may soon be lost forever.

In the past five-plus years I have only seen (and heard as it was quite loud) two motorized boats traveling up and down the river. Above the bridge, the river is quiet, pristine, and a treasure to those of us who live near it. The proposed development on the river would have a detrimental effect on the beauty and aesthetics of the area, in addition to a negative environmental impact on the entire watershed below Head Tide.

Having lived on the river for seven years, I have never witnessed a motorized boat in that section of the river.

This stretch of the Sheepscot is a gem of quiet and solitude in the otherwise busy and developed Midcoast area. I often marvel that the area feels like we are in the wilds of northern Maine.

During the summer months I may see as many as 25 kayakers at any one time during the two tides of the day.

In the past 20 years I have very rarely heard the sounds of motorboats traveling up the river from our property.

As a teenager (ca. 1958), my canoe was the only regular boat on this part of the river ... and at all ice-free months.

During our time here, we have not been aware of motorboat traffic.

In the 70 years I've known this stretch of the river, only a handful of small motorboats ever have used it.