

February 13, 2021

Via email

Mark Draper, Chair  
c/o Bill Hinkel, Executive Analyst  
Maine Board of Environmental Protection  
17 State House Station  
Augusta, ME 04333-0017

**RE: Appellants' Request to Reconsider Order re: Supplemental Evidence  
Spinney NRPA Permit #L-28397-4E-A-N**

Dear Chair Draper,

I am writing to respond to Attorney Gordon Smith's letter on behalf of the Appellants dated February 12, in which he asks you to reconsider your decision not to accept supplemental evidence into the record on the above appeal.

The Appellants' request should be rejected as it is extremely untimely. Pursuant to Chapter 2, Section 24(B), requests for supplemental evidence must be submitted with the appeal, and the respondent has 20 days to respond with other supplemental evidence. The Appellants submitted their request just a few weeks prior to the hearing, and now their attorney is requesting this reconsideration just a week before the hearing. As such, it must be summarily rejected.

1. Email dated November 28, 2020

Attorney Smith argues that the November 28 email is relevant to this appeal because it relates to whether the subject boat ramp is actually intended for shared use. The email in question is dated some seven months after the appeal was filed and was presented in the context of the local approval process. The Chapter 2 rules suggest that supplemental evidence must at least have been in existence at the time the Department rendered its decision, though it might not have been discoverable to the party later seeking to introduce it. Moreover, the email does not suggest that club use is not intended. In stating that "the application in the planning board's current consideration has nothing to do with my club," Mr. Spinney is asserting only that he, and not the Club, is the applicant before the Planning Board and therefore a Planning Board member's prior membership on the Club's board did not create a conflict of interest. In fact, the email affirms that the Club was in valid existence as of November 28, 2020, and therefore counters the appellants' issues on appeal rather than supporting them.

2. Settlement Agreement between Mr. Spinney and Town of Alna

The Settlement Agreement proffered by the Appellants must also be rejected as untimely, not relevant to the Department's decision, and in the nature of an enforcement complaint rather than an appeal. The settlement agreement is not at issue in this appeal, nor could it have been

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because it was not entered into until nine months after the appeal was filed. If the Appellants feel it violates the NRPA permit in some way, they may certainly raise this as an enforcement issue with Department staff. However, the relevant condition in the NRPA permit does not require that the Club use the ramp for motorized boats. Whether or not motorized boats are used by Club members, the ramp is still used by Mr. Spinney for motorized boats, and the shared use element is satisfied by allowing the Club's use for nonmotorized boats. Further, the agreement itself provides that should the Town's limitation on motorized boat use by the Club be found in violation of the NRPA permit, it will be replaced with other reasonable restrictions to prevent overburdening of the facilities and undue adverse impacts on the River. Again, even if the settlement agreement were relevant to whether the Department made an appropriate decision in issuing the NRPA permit, it is not probative of any issue presented by the Appellants and if anything runs contrary to their arguments that club use and motorized boats will overburden the river.

In accordance with the above, respondent Mr. Spinney respectfully requests that you reject this request for reconsideration.

Sincerely

A handwritten signature in black ink, appearing to read "K M Collins", written in a cursive style.

Kristin M. Collins

KMC: