

BEP Hearing, Thursday, February 18, 2021 on Appeal Jeffry Spinney, NRPA, Coastal Wetlands Alteration.

My name is Nicholas Barth, Newcastle resident and owner of a woodlot in Newcastle within 1 ½ miles upstream of the Jeffry Spinney DEP NRPA permitted pier system and permanent boat ramp in the Upper Estuary of the Sheepscot River.

I have followed the Spinney permitting process from its beginning, including a review of much of the project file before the DEP approved the proposed project with conditions.

It is my contention that the DEP administrative process did not meet legislative intent for the NRPA Act to protect tidal wetlands, and other related ecosystem protections for rare, unique and significant plant and wildlife habitats in the Upper Estuary of the Sheepscot River.

The administrative process followed for the Spinney application involved DEP staff and staff from the Departments of Agriculture, Conservation and Forestry, Inland Fisheries and Wildlife, and Marine Resources. All agencies provided independent comments without any integrated and collaborative agreement for evaluating project scope, scale, and significance. This resulted in a classic “stove piping” or “silo” administrative system where participants reviewing the Spinney application were all on their own and without clear and overall coordination.

The above administrative process is “piecemeal” environmental protection placing the DEP in a leadership role where an ecological and integrated natural resources perspective for evaluating relevant information is not of primary importance as it should be. This process made it easy for the project applicant to negotiate with all participating agencies. Mr. Spinney embraced this opportunity when he felt it necessary to help get his NRPA permit.

An obvious example of the cited administrative process problem is the DEP interpretation of what is relevant information. An example can be found on page 391 of the Proposed Board Order where DEP staff found the Maine Natural Areas Program (MNAP) designation of the Upper Estuary of the Sheepscot River as an Ecological Focus Area not relevant because such Focus Areas “are identified by MNAP to be used as a non-regulatory planning tool for municipalities and organizations with conservation objects.” It is further indicated that “The Board finds that based on the size and nature of the boat ramp and pier system, the project will not unreasonably interfere with continued conservation efforts targeted within the Focus Area and the habitat benefits they may provide in connection to the resource.” I would respectfully

suggest that an integrated and correctly coordinated natural resources agency administrative process would not necessarily result in such a finding.

For another example, I call the attention of the Board to Chapter 2, section 17(C), Rule Concerning The Processing of Applications And Other Administrative Matters. "The Board may assume jurisdiction over any application on its own initiative if it finds that at least 3 of the 4 criteria in section 17(C) are met. I would respectfully suggest that the Spinney application meets at least 3 criteria:

"(1) Will have an environmental or economic impact in more than one municipality, territory or county; (3) Is likely to come under significant public scrutiny; and (4) Is located in more than one municipality, territory or county." I believe it is reasonable to assume that a unified DEP/natural resources agencies' administrative process would conclude that the Spinney application involves a significant portion of the Sheepscot River Upper Estuary and related shorelands in both the Towns of Alna and Newcastle.

In conclusion, I urge the Board to exercise "independent decision-making authority" to consider and evaluate DEP administration of the Spinney NRPA permit process. To do this, I respectfully suggest the Board order an independent evaluation of the administrative process followed by the DEP in granting Mr. Spinney an NRPA coastal wetlands alteration license. This evaluation should focus on the "stovepiped" and improperly coordinated administrative process followed by the DEP and make substantive recommendations for an integrated DEP/natural resources intra-agency administrative agreement for NRPA project reviews. These recommendations should provide clear guidelines for determining the scope, scale and significance of all NRPA project applications and reviews.

Thank you for the opportunity to address the Board in this appeal proceeding.