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Jami MacNeil
Maine Department of Environmental Protection
17 State House Station
Augusta, Maine 04333-0017

Re: Spinney NRPA Application #L-28397-4E-A-N for Pier and Boat Ramp

Dear Jami,

I am writing on behalf of Carol Ervin regarding your review the above-referenced application for a Natural Resources Protection Act permit to construct a pier and boat ramp on the Sheepscot River. Ms. Ervin, owner of property at 99 Angier Road in Alna, is Mr. Spinney's direct abutter to the north and submits the following comments.

1. The Stated Project Purpose Cannot Be Legally Carried Out and therefore the Alternatives Analysis based on that Purpose is Invalid

Under Maine boating laws, the arm of the Sheepscot River that the Spinney ramp would access is not wide enough to allow motorized watercraft to operate at greater than "headway speed." This de facto prohibition on normal motorboat use means that stated project purpose – to provide an access point to launch motorized watercraft for operation in this particular area of the Sheepscot River – cannot be legally carried out. As such, the alternatives analysis based on that project purpose is flawed and does not support a conclusion that no less environmentally damaging practicable alternative exists.

Specifically, "A person may not operate a watercraft at a speed greater than headway speed while within the water safety zone . . ." 12 M.R.S.A. §13068-A(13)(A). The term "headway speed" means "the minimum speed necessary to maintain steerage and control of the watercraft while the watercraft is moving." *Id.* §13068-A(13)(B). "Water safety zone" means "The area of water within 200 feet of any shoreline, whether the shoreline of the mainland or an island." The Boater's Guide to Maine Boating Laws and Responsibilities, published by Maine Department of Inland Fisheries and Wildlife and Maine Department of Marine Resources (2018) at 52 [hereafter "Guide to Maine Boating Laws"].

In addition, “Whoever operates any watercraft, vessel, water skis, surfboard, similar device or motorboat, however propelled, upon the tidewaters of any municipality or upon any of the offshore waters within the jurisdiction of this State at a speed greater than is reasonable and proper, having due regard for traffic, proximity to wharves, docks, moorings or shores, and for any other conditions then existing, shall be guilty of a Class E crime.” 38 M.R.S.A. § 281. Improper speed means greater than headway speed within 200 feet of any shoreline. Guide to Maine Boating Laws at 41.

Thus, within 200 feet of the shoreline of the Sheepscot River, it is illegal to operate watercraft beyond the minimum speed necessary to maintain steerage and control of the watercraft. In other words, the river must be a minimum of 400 feet wide to permit normal motorboat use beyond headway speed.

At the location of the proposed ramp and pier, the Sheepscot is approximately 160 feet wide. Going upstream, the Sheepscot becomes narrower. Going downstream, the Sheepscot remains less than 200 feet wide for approximately 7,000 feet below the proposed ramp and pier. The Sheepscot does not exceed 400 feet in width until the Sheepscot Road crossing in Sheepscot Village, which is immediately upstream of the mill dam reversing falls.

Accordingly, in the area of the Sheepscot that would be accessed by the proposed Spinney boat ramp and pier, except for a few hundred feet of flats upstream of the reversing falls, normal motorboat use beyond headway speed is illegal.

The stated purpose of the proposed ramp and pier is to “provide for access in a unique area where it would otherwise not be possible due to the old mill dam falls in Sheepscot village.” Spinney Application Attachment 1. The application’s alternatives analysis states, “There are no reasonable alternatives to this access on this particular river segment as it is bounded to the south by the reversing falls at the old mill dam site and no northern launch facility exists or is planned effectively making a captive segment of the river inaccessible without the continued use of this launch point.” Spinney Application Attachment 2.

Thus, the applicant’s alternatives analysis is fatally flawed because it is based on a project purpose – motorboat access above the reversing falls – that is illegal above headway speed.

Furthermore, the applicant has not “demonstrated the need, whether public or private, for the proposed alteration,” 06-096 CMR 310(9)(A)(4), because the need the alteration is purporting to meet is impermissible. Under an alternatives analysis based on a project purpose that could be lawfully carried out – for example, provision of access for non-motorized vessels on this segment of the Sheepscot – there is no need for a boat ramp engineered to accommodate heavy trailered motorboats. Under that valid project purpose, a practicable alternative would exist by “reducing the size, scope, configuration or density of the project as proposed.” 06-096 CMR 310(9)(A)(2). Finally, access already exists to the Sheepscot below the reversing falls where the river is wide enough to allow for legal motorboat operation at normal speeds.

“Although the NRPA does not empower the Board to regulate boating directly, the purpose of the NRPA is to prevent the degradation of protected resources (including coastal

wetlands) caused by human use. The use of the structure cannot be divorced from the structure itself.” *Hannum v. Bd. of Env'tl. Prot.*, 2006 ME 51, ¶ 14, 898 A.2d 392, 397 (internal citations omitted).

Accordingly, Mr. Spinney has not met his burden to demonstrate that, under a valid project purpose, there is no less environmentally damaging practicable alternative to his proposed ramp/pier and his application must be denied. 06-096 CMR 310(9)(A).

2. The Applicant Has Not Provided Evidence that Supports Department Consideration of any Public Benefit Provided by the Proposed Ramp and Pier

The revocable land access agreement between Jeff Spinney and the Golden Ridge Sportsman’s Club (“Club”) and the Club bylaws do not provide a basis for the Department to give any consideration to public benefit in determining whether the proposed alteration would result in an unreasonable impact.

“When considering whether a single activity is reasonable in relation to the direct and cumulative impacts on the resource, the department considers factors such as . . . the type and degree of benefit from the activity (public, commercial or personal).” 06-096 CMR 310(9)(D). This provision of NRPA regulations is the basis for the Department’s preference for permitting shared use piers over individual use piers.

However, the documentation provided by Mr. Spinney that purports to demonstrate that his proposed ramp and pier would be a shared use facility do not allow for such consideration of benefit.

The “Land Use License Agreement” that is intended to provide the Club with access across Mr. Spinney’s property to reach the boat launch can be revoked by Mr. Spinney at any time without justification. Agreement § 4.3 (Revocation by Licensor). Furthermore, the signatories to the agreement are both Mr. Spinney. In other words, the agreement is a legal fiction that does not actually establish rights for anyone other than Mr. Spinney to access his pier and ramp. Similarly, the Club bylaws provided by Mr. Spinney do not identify any person or entity other than Mr. Spinney with authority over the Club. No Club members have been identified and membership is only available upon sponsorship by an existing member. Bylaws Article III.

Accordingly, there is no evidence that anyone other than Mr. Spinney will have rights to use the pier and ramp he is proposing to build. As such, his application must be viewed as providing only an individual benefit to Mr. Spinney and not any benefit to the public.

Thank you for your attention to these comments.

Sincerely,



Gordon R. Smith