

GORDON R. SMITH
COUNSEL
gsmith@verrill-law.com
207-253-4926

One Portland Square
Portland, Maine 04101-4054
Main 207-774-4000

February 18, 2020

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,

On behalf of Carol Ervin, I write regarding the Department's draft approval of the above-referenced application for a Natural Resources Protection Act permit. Ms. Ervin is a direct abutter to the proposed work. As outlined in my letter to you dated January 10, 2020, the applicant's proposed pier and ramp do not meet NRPA permitting requirements. Please accept the following comments on the draft license.

1. Undue Adverse Impact on Existing Uses

Many commenters submitted information regarding the existing scenic, aesthetic, recreational, and navigational use of this part of the Sheepscot River. Among conflicting information, the Department's draft license credits Mr. Spinney and other project supporters as establishing that the motorboat traffic associated with the pier/ramp will be consistent with existing patterns of use. However, Mr. Spinney's own statements directly contradict this. In his February 12 email to you, Mr. Spinney states:

"Where/how do we got [sic] the '25 people a day' may see this in the visual impact section. At the most, I think in all the years I have been here, I have seen 4-5 people in one day go by and that's only on a 'scheduled' nature trip (the rare exception not the rule) that the Sheepscot valley people used to do once or twice a summer where the [sic] paddle from head tide down to (wherever they go).

In other words, Mr. Spinney states that the most intensive use of the river occurred once or twice a year when 4-5 people paddled non-motorized boats past his property. According to Mr. Spinney, even that use no longer occurs. This statement cannot be reconciled with Mr. Spinney's assertion, and the Department's finding, that current use of the river is consistent with daily usage by multiple motorboats that will result from installation of the proposed pier/ramp. It

would be error for the Department to find that the proposed project will not have an undue adverse impact on existing uses where the applicant's own statements do not support such a finding.

2. Signage

Special Condition #4 of the draft license states, "Prior to construction of the boat ramp, the applicant shall post a permanent sign in a visible location at the boat launch identifying the river as a "no wake" zone or a "headway speed only" zone. Section 2 of the draft license states that this signage requirement is "to promote awareness and adherence to [state boating] law."

We agree with the height, location and wording of the sign proposed by Mr. Spinney in his February 12 email to you. However, to adequately promote awareness and adherence to state boating law, we request that the Department further specify that: 1) the text "NO WAKE ZONE" appear in 4-inch minimum lettering, and 2) the sign utilize contrasting high-visibility colors for lettering and background. These recommendations are based on the U.S. Department of Transportation Manual on Uniform Traffic Control Devices.

In addition, we recommend a second sign that contains the following text in reasonably sized lettering: "This section of the river is essentially a "no wake" zone. Pursuant to 38 M.R.S. § 281-285, the operation of any watercraft at a speed greater than is "reasonable and proper" is a Class E crime. Pursuant to the Guide to Maine Boating Laws, improper speed means greater than headway speed within 200 feet of any shoreline." Without this explanatory text, boaters utilizing the facility will not know where the no wake zone applies and, in all likelihood, could interpret the no wake zone to apply only in the immediate vicinity of the ramp, pier, and sign. As Maine IF&W Game Warden Lieutenant Adam Gormely stated in comments to the Department, "Unless the river is 400 feet wide the boats are required to be operated so they do not create a wake."

Section #2 of the draft license states that the Department has determined that "this restriction to headway speed is important in reducing shoreline erosion and water turbidity due to boat traffic, especially in narrow and shallow waterbodies such as the Sheepscot River." This determination, and the Department's authority to regulate boat use associated with the proposed pier and ramp, are explicitly supported by the Law Court. *Hannum v. Bd. of Env'tl. Prot.*, 2006 ME 51, ¶ 14 ("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.") (internal citations omitted).

Accordingly, the Department should require signage of sufficient size and clarity, as recommended above, to prevent degradation of the protected resource.

3. Reporting of Public Access and Use

Special Condition #8 of the draft license states:

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.

According to Section #6(A) of the draft license, the purpose of this condition is to assure that NRPA approval not be issued for a ramp and pier that “would essentially be serving one private landowner.”

To promote compliance with the above-quoted condition, we request that the Department require the applicant to certify periodically that the Golden Ridge Sportsman’s Club continues to use and have legal access to the boat ramp/pier, with such certification signed by both the applicant and an officer (other than the applicant) of the Golden Ridge Sportsman’s Club. In addition, we request the Department require periodic submission by the applicant of a Maine Secretary of State certificate of good standing for the Golden Ridge Sportsman’s Club. A reasonable reporting period would be once every three years for the life of the project.

4. Formal Limits on Club Usage

As noted above, the draft license recognizes the importance of “reducing shoreline erosion and water turbidity due to boat traffic . . . especially in narrow and shallow waterbodies such as the Sheepscot River.” To further that goal, we recommend formalizing the applicant’s statements regarding number of club members, amount of boat traffic, and size of boats as express limits. Specifically, Section #2 of the draft license states:

The applicant elaborated that the recreation club consists of approximately 25 members and is not expected to grow substantially. Club members collectively own approximately 10 motorized vessels ranging in length from 12 to 17 feet. Based on limited parking at the project site, the applicant anticipates that no more than three motorized vessels will use the proposed boat ramp and pier system at any one time.

Accordingly, we request that the Department make explicit that: 1) club membership cannot exceed 25 individuals; 2) motorized boats launched from the ramp cannot exceed 17 feet in length; 3) parking at the pier and ramp will be limited to three boat trailers at one time; and 4) no more than three motorized boats can be launched from the ramp and be present on the river at any one time.

Thank you for your attention to these comments.

Sincerely,



Gordon R. Smith