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Dear Jami:

You have asked that any comments relating to NRPA requirements on the revised application submitted by Mr. Spinney be sent to you as soon as possible. Thank you again for your work on this continuing set of challenges. This letter supplements comments submitted to your office October 7 and November 27. I send it to Jay Clement as well, since a number of these issues are relevant to his review.

To refresh memory, I am one of three abutters to Mr. Spinney's property. I have a 250-acre tree farm with one and a third miles of frontage on the Sheepscot River, all in a conservation easement with Maine Woodland Owners, on whose board I serve. I have known the river for the 70 years since my parents acquired the property in 1950. I serve on the Lands Working Group of Midcoast Conservancy.

My objections to the revised version of Mr. Spinney's application remain largely the same as to the original, with some questions about the revised application and additional evidence confirming earlier concerns:

1. The boat launch, even as reconfigured in the revisions, is permanent, as would be the dock. Permanent structures are prohibited by the Alna SZO.
2. As to Mr. Spinney's claim, shared with the Planning Board, that his revised plan for the boat ramp should be considered repair and maintenance for an existing and grandfathered structure, there is no evidence of a prior permit for that ramp. This must be considered new work, a new and permanent structure, prohibited.
3. At this point, the DEP's separate consideration of Mr. Spinney's and the club's interests may make sense. Yet there is no application from the club, no resolution

to support such an application that was passed by members and officers, no inclusion of town permits for doing business there (including parking, campground, rifle range, etc.), no provisions for parking and storage of boats and trailers, no guarantee through easement of access to the river, no request to expand usage beyond the personal, no recognition of the potential impact of District 1 Resource Protection. Mr. Spinney's application, moreover, depends on projected use by the club. An application for personal use would read quite differently and result in a proposal more closely matching what he built earlier this century (permanent though it was). For Mr. Spinney's use, a seasonal dock clearly is possible: Below the powerlines, on the Newcastle side of the river, such a dock (permitted by DEP and town) has been in place since the mid-1990s. It would be difficult, in other words, in seeking a permit for the prohibited permanent structure to claim that a seasonal one was not feasible.

4. Finally, as has been noted in prior letters, the application (and the revisions) do not address required questions to the applicant about prior permits and conformity to NRPA rules. Further research into each of these areas, the answers to which are relevant to your review, fills out our understanding of the site and its recent history. The picture that emerges does not square with the impression the application gives of a well-established, smoothly running, long-time dock and ramp installation based on the permit of 2003, actively used by his club, and ready for expanded motorboat access. I have found and concluded:
 - a. That there only have been six or so years of a dock on the river, not the roughly 20 claimed. Indeed, the property was acquired in 2002.
 - b. That the installations built must be considered improperly permitted.
 - c. That concerns over the application's fit with NRPA only have grown since its submission and require a decision in line with stated guidelines.
 - d. That grandfathering a \$10,000 permanent, multi-purpose, deep-water dock-installation that includes permanent cement/rip-rap boat launch through salt marsh on the basis of an improper permit for a small, seasonal, wood, \$100 dock – and on a narrow, shallow, silting-up, protected and widely recognized and celebrated stretch of wild and undeveloped river cannot be justified. Two friends knowledgeable in local environmental issues told me early on in this process to relax, saying that the proposal was so ludicrous it could go nowhere.

Elaborations on the research leading to the above conclusions follow in two sections, on chronology and permitting of installations and on NRPA rules.

For both of these sections, research has been into the actual 2003 application to the Planning Board, which Mr. Spinney could not find and that an abutter produced, the Alna SZO, the NRPA, Google Earth photos, and my own photographs. The photography has been decisive in filling in and understanding the issues. The link to the photographs – including Google Earth – is:

<https://photos.app.goo.gl/zzDqeYYLQ4oJWU2z8>

You may well wish to examine those photographs (and the annotations to them) before reading the following text.

A. Research results on the application’s missing answer to prior use and permitting

Site chronology (best understood in the context of the photographs)

The application claims that “The existing pier, ramp, and float (located approximately 10 feet south of the existing ramp) has been at this location for approximately 20 years and used seasonally.” Although permitted in May of 2003, no dock appeared in the river until the summer of 2007, and I could find evidence of construction only in the spring of that year. That 2007 dock – and there was no ramp – is visible in the Google Earth photo that year and again in 2010 (there were no Google Earth photos in 2008 or 2009). But no dock appears in 2011, and it could not have: The 2007 installation was wrecked by the ice by 2011. In July of 2012 Mr. Spinney built a new dock, larger and more substantial than the first and with six pilings into the riverbank. This time a ramp/boat launch was cut into the salt marsh and the salt marsh under the dock removed. (The extent of the river’s salt marsh is evident in the Google Earth photo of 1997, taken at low tide.) Google Earth shows the new dock out in the river in 2012 and 2013. By late 2014, that installation too, had been too severely damaged by ice to permit attachment of a dock. Neither Google Earth nor my own photography shows any dock in the river thereafter, and photos also show nothing in the way of supporting structures along the banks, either.

In short, there may have been a dock in place 2007-2010 and 2012-2013, i.e., six of the 16 or 17 years since issuance of the original permit. This in no way constitutes 20 years of a single installation. Today, there is nothing on site but the gravel left after removal of the salt marsh and an enlarged shoreland clearing.

Permitting

Moreover, the installations Mr. Spinney has built show no evidence of proper permitting. No permits were submitted with his application (and no changes made in the revisions), and the DEP accepted his claim that they could not be found. The 2003 permit quickly was located by one of his abutters; no one ever has found any others from the following years.

The 2003 application was for a “dock, ramp, and float (seasonal),” with no SZO required site plan or drawings, and signed by the Planning Board May 5. As noted above in the chronology, four years had passed before the dock appeared; permits automatically expire in a year without substantial progress toward completion. The 2007 dock did not, then, have a valid permit. Moreover, the 2007 installation was not, as the application for the 2003 permit claimed, seasonal: Pilings were sunk into the riverbank below high-water mark and a gangway extended out over the salt marsh to the planks descending to the float. If it really had been no more than seasonal, the dock would have required a DEP permit (none exists in its records); since it was permanent, it should not have been built. No ramp was built then, and because of the invalidity of the long-expired 2003 permit, Alna’s prohibition of permanent structures, and strictures on removal of salt marsh, any new ramp off in the future would require new permitting. No grandfathering of any ramp is valid.

Mr. Spinney tells us that his installation “is used by a recreational club for swimming fishing, hunting, and members pool their resources through annual club membership dues to maintain the common infrastructure such as the gun range located upland on the property, the camping area, the dock, and the boat ramp.” If such a club had used his facilities since 2003, they would have fallen under the category of shared use, perhaps commercial use, and would not have conformed to the personal permit granted by the Planning Board for the dock. The only papers that exist for a club were filed in May of 2019, and no such permits are known to have been applied for or issued since May 2019. And, as noted in the preceding section, there was no dock before 2007 and none since 2013; a boat launch only was cut in 2012, and if it has been used since in the absence of a dock, we have no data on frequency of use by club members and with what kind of craft.

The new dock of 2012 (shown under construction by Mr. Spinney) received no permit either, for Mr. Spinney or for any club. It is possible that the Planning Board considered this new installation a simple replacement and, so, not needing a new permit. But a year had passed since the first dock had been in place, which normally would necessitate a new permit. Moreover, this dock, still permanent, was far more substantial in its pilings in the riverbank, and a permanent and new excavation of the salt-marsh riverbank was made, not only for a boat launch, but also for clearance under the new dock structure. Application was made for neither of these new projects, and no permits were issued, in violation of Alna's SZO.

As noted, before, no claim can be made that the revised application's proposal for a boat launch rests upon its grandfathering. If the claim is to rest on its inclusion in the 2003 permit, that claim would be invalid:

- That ramp would have been permanent.
- Such a ramp would have required an excavation of salt marsh and another permit.
- No ramp existed before 2012, eight years after expiration of the 2003 permit.

If the DEP now is being appealed to for a permit, it should have been approached in 2012 and was not. The same would apply to permitting by the Army Corps of Engineers for excavations.

What explains the Planning Board's behavior in this history? Apart from what has been laid out above, the town's carefully developed 2005 comprehensive plan was adamant in its insistence on the river's value:

The Sheepscot River is an important asset to Alna, the State of Maine, and the nation, not only because of its geological, ecological, and natural values, but also because of its fisheries habitat and recreational value.

And the importance of enforcing Alna's SZO, appeared four times in the final section of "goals, policies, and strategies." Moreover, in a well-publicized issue (January 2015) over construction of a 400-pound treehouse and removal of dead trees around it in the shoreland zone, the Planning Board required the new owner to plant replacement trees, remove the tree house, and pay a \$1,000 fine. Members lectured a shocked and surprised owner in no uncertain terms, as quoted in the Wiscasset Newspaper:

- “There really isn’t any reason that you shouldn’t have known that the rivers in Maine are sacrosanct.”
- “This has attracted some attention in town, and we have to be diligent in our responses.”
- “It’s a man-made intrusion into a sensitive area.”
- “Any time trees are harvested in the shoreland zone or in a resource protection district, approval and permission is needed from the town to remove even hazard trees.”
- “Not enforcing the rules could lead other property owners to question why they can’t build next to the river.”

Members of the Planning Board also noted that the State allows daily fines of \$100 to \$2,500 for violation of SZO.

In the interests of consistency, the Planning Board might now be considering remediation of the shoreland clearing, replacement of the removed salt marsh, and, perhaps, imposition of fines.

B. Research and additional data on the section of the application (and revised application) on conformity with the NRPA

At the outset

As has been noted many times, NRPA requires an applicant “to demonstrate that a proposed activity will not unreasonably interfere with existing scenic and aesthetic uses.” Also as noted, that does not appear in the application or revisions to it.

The purpose of that response is to allow the DEP, implementing the NRPA, to consider, in conducting its review, “the significance of the scenic resource, the existing character of the surrounding area, the expectations of the typical viewer, the extent and intransience of the activity, the project purpose, and the context of the proposed activity.”

The definition of scenic resource (NRPA, chapter 315, paragraph 10) reads:

The Department considers a scenic resource as the typical point from which an activity in, on, over, or adjacent to a protected natural resource is viewed. This list of scenic resources includes, but is not limited to, locations of national, State, or local scenic significance. A scenic resource visited by large numbers who come from across the country or state is generally considered to have national or statewide significance. A scenic resource visited primarily by people of local origin is generally of local significance.

In this instance, that means the stretch of the Sheepscot River on which the proposed installation would occur, and visual impact must be assessed from that perspective, the only publicly accessible perspective.

Already at the time of submission of the original application, the evidence was clear, even if omitted from the application. Federal, state, and local groups, land trusts and environmental agencies, all have celebrated this stretch of the river and, through their written and financial support, made possible the protection of much if not most of the shoreline above the powerlines (upriver from the village of Sheepscot) and up to Head Tide. Citations no longer are necessary.

What is of interest in this regard has been the relative lack of evidence of DEP interest in these questions, a question raised at the first Planning Board meeting on the application. Perhaps that has been because the process really was just beginning, and no formal consideration yet had taken place. Perhaps that discussion has been ongoing out of public view. Now, particularly in view of additional information assembled since then, is the appropriate time to give the NRPA the priority it deserves and requires. I trust that now is taking place.

Since submission of the application

Since submission of the application, in public comments and in a growing email list of 50 and more of individuals strongly opposed to the application for just the reasons of inconsistency with “existing scenic and esthetic uses.” These individuals, both new to the area and in some cases long-timers going back as far as 70 years, know and love the river, and support enforcement of the Alna SZO by the town’s Planning Board and application by the DEP of the NRPA. The attendance and outspoken opposition of about 20 of these individuals at two Planning Board meetings underlines the concern. Consistent among the arguments are the following:

- Current and existing usage on this stretch of the river is of canoes and kayaks. The river's quiet beauty not only increasingly is known to paddlers, but also attracts them.
- Motorboats and the additional boat launch sure to follow this one, if permitted, would forever alter the scenic and esthetic character of this stretch of the Sheepscot River.
- Motorboats are not appropriate to the depth of the river (from the bottom of whose 100-foot-width at low tide grass can be seen growing) and must operate without wake within 200 feet of shore, hence making use of 17-foot motorboats impractical (<https://www.maine.gov/ifw/docs/maine-boating-laws.pdf>). The public launch in Wiscasset is entirely appropriate for the boats and the trailers on which they arrive.
- That the scale of the project is out of character with the site and proposed use. A 40-foot aluminum arc extending above and out over the salt marsh at a bend in a narrow river only 100 feet wide at low tide and on a stretch of river totally lacking in any structures provides a visual impact illustrative of the worst of what the NRPA assesses in "landscape compatibility," "scale contrast," and "spatial dominance."

Also since submission of the application, public comments in support of the application not only have been few, but also have offered as evidence life in and around the village of Sheepscot, on a different stretch of the river, 40 and 50 years back, and in no way constitute "existing use."

The 2005 Alna comprehensive plan, recently reviewed for this response, declared (as noted) the river one of the town's greatest resources and asked for ongoing collaboration in its conservation with the Sheepscot Valley Conservation Association (whose land-trust successor, Midcoast Conservancy, has written in opposition to the application). Not yet referenced has been the existence of the Bass River Preserve on this stretch of the river.

Finally, the period of time passed since submission of the application has allowed assembly of the linked collection of photographs of this part of the Sheepscot River, with a quick overview of the river's unique beauty on Google Earth. These photographs underline and summarize much of the opposition. Again, the link is:

<https://photos.app.goo.gl/zzDqeYYLQ4oJWU2z8>

Since submission of the application, in short, opposition has become more focused, intense, and widespread -- and reinforces all earlier evidence on the lack of conformity between application and NRPA goals. The DEP now has all it needs to make the appropriate decision.

This has been a long and extraordinary project, one I wish might have begun long before submission of any application, and, so, have saved Mt. Spinney, you, and many others considerable time and effort. On the other hand, perhaps this process itself is what was intended as a means to bring all complexities to light and make the right decision. Thank you again for your time and effort on it.

Sincerely,

William A. Weary

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