

## Petition 15004

### Maine Forest Service Findings of Fact and Recommendations to the Director

#### Margret Moody Petition for Variance from Performance Standards for Chapter 21 - Statewide Standards for Timber Harvesting and Related Activities in Shoreland Areas

- I. Petitioner and responsible parties:  
Margaret Moody, P.O. Box 271, Springvale, Maine 04083  
Designated Agent: Erik F. Grove, 754 Elm Street, Parsonsfield, Maine 04047
- II. The parcel is located on the west side of Spicer Brook in the town of Shapleigh, York County, Maine. It comprises approximately 33 +/- acres.
- III. Erik F. Grove has submitted to the Maine Forest Service (MFS) a Chapter 21 variance petition # 15004 to depart from standards of MFS Chapter 21 Rule, Statewide Standards for Timber Harvesting and Related Activities in Shoreland Areas, Section 7 (B)(1)(a)-(c), shade and tree retention standards. The variance request is for a harvest of over-mature and dying white pine within the 75 foot shoreland zone of Spicer Brook.
- IV. Documents in the record include:
  - A. The Petition for variance # 15004 submitted by Erik F. Grove on April 09, 2015 that requests a variance to exceed the 40% volume removal limitation standards for cleared openings (size and spacing) within the 75 foot shoreland area. The petitioner states that the white pine in the zone are exhibiting signs of weak and thinning crowns indicating that they are in a state of decline due to over-maturity or as a result of fire damage from the 1947 fire. The younger northern hardwood in the area appear healthy and stable. Generally the area is well regenerated with white pine, balsam fir, red maple and yellow birch as a result of a harvest conducted approximately ten years ago. The total harvest area in the shoreland zone is approximately three acres.  

The petitioner stated that the owner of the property is a person of modest means that inherited this large parcel of land. The owner wishes to manage the property as forestland to provide periodic income. The specific site along the stream requires an investment in excavating a skid trail to permit access. This investment requires a modest increase in harvest intensity for that investment to occur. If this variance petition is not approved, there will be little to no opportunity for management of these three acres for long term income and to improve the condition and composition of the forest stands in the shoreland zone to permit long term resource management.
  - B. A map showing the location of the areas along Spicer Brook where the proposed timber harvest will be conducted was provided by the petitioner.

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- C. The petitioner submitted a map indicating the location of a single excavator constructed skid trail which is located outside the 75 foot shoreland buffer zone to access one of the three areas to be harvested.
  - D. The Maine Forest Service examined the parcel on April 16, 2015 to evaluate pre-harvest site conditions within the shoreland area.
- V. Comments: The Maine Forest Service received two comments from residents of the Town of Shapleigh requesting that the petition for a variance be denied due to the existence of a threatened species of moth, the Twilight Moth (*Lycia rachelae*), in the area and objections that the activities proposed will result in erosion of soil, resulting in sedimentation that will degrade brook trout habitat of Spicer Brook and the waters downstream from the harvest area.
- A. The regional biologist for the Department of Inland Fisheries and Wildlife (DIFW) did not respond to the Maine Forest Service's request for comments regarding any adverse impacts the proposed harvest would have on any threatened or endangered wildlife species.
  - B. A fisheries biologist from the DIFW commented that Spicer Brook is a tributary of Jones Brook which is a primary inlet to Spicer Pond which is which is one of only a few ponds in southern Maine that support a wild brook trout population. DIFW indicated it would not be supportive of the proposal to harvest in excess of the tree and shade retention standards. In addition, given the steep slopes and proximity to the resource, DIFW would also be concerned with the potential for erosion and sedimentation issues.
- VI. MFS findings and recommendations:
- A. There has been no timber harvesting activity in the area in the last ten years. The previous harvest activity showed no signs of soil movement or sedimentation of the stream in question.
  - B. The record shows that the applicant has demonstrated that in certain areas greater than 40% of the timber volume consists of mature and dying white pine that occupies a portion of the stand in the shoreland area. Timber harvesting that would remove all of these at-risk trees would exceed the standards allowed for volume removal and for cleared opening size and spacing. The applicant has further demonstrated that lower levels of harvest of these at-risk trees would result in a residual stand after harvesting of dead and dying trees. In this situation "strict compliance with the regulations and standards would, because of unique conditions of topography, access, location, shape, size, or other physical features of the site or forest condition, cause unusual hardship or extraordinary difficulties." MFS Rule Chapter 20 §6(B)(1).
  - C. The applicant has not, however, demonstrated a financial hardship if the decadent white pine are not harvested. The condition and quality of the pine will yield low grade forest products at best. It is the opinion of the Maine Forest Service that the

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income derived from the removal of the white pine, if foregone, will not create a financial hardship.

- D. Based upon its examination of the parcel, the MFS concurs that the complete removal of the white pine is silviculturally justified and will have minimal impact on the protected resource. The unusual hardship and extraordinary difficulties claimed as a ground for variance have not been created by the owner or a predecessor in title. Chapter 20 §6(B)(2).
- E. Based on the information available, the MFS does not believe that timber harvesting on three acres will affect any potential occurrences of Twilight Moth. According to an information sheet published by the DIFW, the Twilight Moth (state listed as Threatened) has only been found “in pine barrens on sandy soils in glacial outwash plains in Fryeburg, Waterboro, and Shapleigh. The full range of habitats it uses is poorly understood.” Provided the land remains in active forest management, which appears to be the landowner’s intent, timber harvesting is less of a threat to any potential occurrences of Twilight Moth than other land uses.
- F. Conditions required as a term of this variance address the potential for soil erosion and sedimentation and the maintenance of shade to protect the quality of the fisheries in the stream.
- G. The proposed use is in keeping with the purpose and intent of 12 M.R.S. c. 805, Chapter 20 §6(B)(3), and,
- H. The public interest is otherwise served. Chapter 20 §6(B)(4).

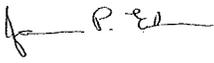
VII. Variance # 15004 is granted for two full calendar years, subject to the following conditions:

- A. To avoid sedimentation of the protected resources, the petitioner must consult and follow the MFS publication, Best Management Practices for Forestry: Protecting Maine’s Water Quality.” These practices include but are not limited to the following:
  - 1. Harvesting machinery is not allowed to operate within the 75-foot protection zone of the brook to minimize soil exposure and to minimize the potential for movement of soil in the buffer zone.
  - 2. All harvesting will take place at a time when there are dry conditions in the harvest area.
  - 3. There will no removal of trees either directly on the bank or the edge of the flood plain of Spicer Brook.
  - 4. Skid trails will be stabilized with logging debris consisting of tops and limbs, water bars or other erosion control measures to prevent water flowing down skid trails adjacent to the buffer zone with enough volume and velocity to permit the water to flow through the buffers and into the protected resource.

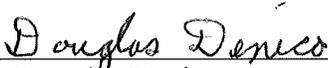
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5. All erosion control measures installed must be monitored and maintained to insure that they are functioning and performing as expected until the site has become stabilized.
- B. In areas where Chapter 21, Section 7 (B)(1)(a)-(c) standards will be exceeded, only white pine can be harvested. Residual stems of other species must be protected and retained. The harvest must be conducted to protect and retain any existing stems of regeneration.
- C. The petitioners and all responsible parties must comply with all other standards in Chapter 21.

The MFS recommends that the Director of Maine Forest Service approve the variance petition.

Prepared by:   
James P. Ecker, LF #612  
Regional Enforcement Coordinator  
Maine Forest Service

Date: 05/08/2015

Approved by:   
Douglas Denico  
Director  
Maine Forest Service

Date: 5-12-15

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