



DEPARTMENT ORDER

IN THE MATTER OF

JEFFRY SPINNEY ) NATURAL RESOURCES PROTECTION ACT  
Alna, Lincoln County ) COASTAL WETLAND ALTERATION  
PIER SYSTEM AND BOAT RAMP ) WATER QUALITY CERTIFICATION  
L-28397-4E-A-N (approval) ) FINDINGS OF FACT AND ORDER

Pursuant to the provisions of the Natural Resources Protection Act (38 M.R.S. §§ 480-A–480-JJ), Section 401 of the Federal Water Pollution Control Act (33 U.S.C. § 1341), and Chapters 310 and 315 of Department rules, the Department of Environmental Protection has considered the application of JEFFRY SPINNEY with the supportive data, agency review comments, public comments, and other related materials on file and FINDS THE FOLLOWING FACTS:

1. PROJECT DESCRIPTION:

A. Summary: The applicant proposes to construct a shared-use pier system and permanent boat ramp. The proposed pier system will consist of a permanent access platform and pilings in the upland, a four-foot-wide by 40-foot-long seasonal ramp, and a T-shaped seasonal float system, which will consist of a five-foot-wide by seven-foot-long landing float oriented perpendicular to the shoreline and an eight-foot-wide by 24-foot-long main float oriented parallel to the shoreline. The floats will be anchored by chains and two mooring blocks. The access platform will be anchored by four pilings connected by cross-bracing and located in the upland, approximately four feet from the highest annual tide line. The two pilings closest to the shoreline will form a gantry-style lift. The proposed boat ramp will be located several feet north of the pier system and will be constructed with a subbase layer of six- to eight-inch diameter stones laid over geotextile fabric, surfaced with a top layer of three- to eight-inch stones. The ramp will be approximately 12 feet wide by 36 feet long, extending to the line of mean low water (MLW). The applicant proposes to dredge up to eight cubic yards of material from the coastal wetland to install the ramp. The project will result in 440 square feet of direct impact to the coastal wetland due to the proposed boat ramp and mooring blocks, and 370 square feet of indirect impact to the coastal wetland due to shading from the proposed pier system. The project is being constructed for use by a recreation club known as the Golden Ridge Sportsman’s Club. The project is shown on six plan sheets entitled, “Site access – General overview,” “Top view with 2’ contours,” “Side View – float/ramp/upland support,” “Side View – Ramp side view with elevation,” “Section view lower ramp,” and “Section view upper ramp,” all dated December 9, 2019. The project site is located off Golden Ridge Road in the Town of Alna.

B. Current Use of the Site: The project site is an approximately 100-acre parcel of land that contains a residential structure in an upland location, approximately 0.3 miles from the coastal wetland, and an unimproved access road to the shoreline. The parcel is largely forested.

The project site is used seasonally as an informal launch for boats on trailers. The parcel is identified as Lot 21-A on Map R-4 of the Town of Alna's tax maps.

C. Title, Right, or Interest: An application must demonstrate that the applicant has title, right, or interest in the property proposed to be developed or used for the project sufficient for the nature and duration of the proposed development or use. The applicant submitted a quit claim deed, dated July 19, 2006, that conveyed Lots 21-A & 22 on Map R-4 of the Town of Alna's tax maps from Jeffrey Spinney and Emma Spinney to Jeffrey Spinney (the applicant). During the review, the Department received public comments that included the contention that the driveway to the subject property is restricted to residential use, citing a deed dated April 18, 1986, and recorded in book 1299, page 302 in the Lincoln County Registry of Deeds. In response to this comment, the applicant stated that the right-of-way described in the deed cited by the commenters is not the applicant's driveway, and that the applicant's driveway is known as Reed Road and was specifically conveyed to Jeffrey A. Spinney and Emma M. Page in a warranty deed dated August 26, 2002. The applicant submitted a map and a portion of the Town of Alna's annual report for 2008-2009 documenting the discontinuance of Reed Road as a town way, retaining no public easement except as is necessary for access by the applicant, his heirs and assigns. The applicant also submitted a draft copy of a Land Use License Agreement which will grant members of the Golden Ridge Sportsman's Club access to the proposed boat ramp and pier system. Some of the interested persons contended that the Golden Ridge Sportsman's Club does not constitute an "assign" based on the proposed Land Use License Agreement and would therefore not have legal access to the project site. The Department reviewed the submitted comments and documents, together with the supportive data and related information on file and determined that the submitted deed and additional documents demonstrate to the Department's satisfaction that the applicant has sufficient title, right or interest in all of the property that is proposed for development or use.

D. Public Comments: While the application was being reviewed, the Department received comments from approximately 21 interested persons or entities opposed to the project, some of whom own property abutting the project site. The Department also received several letters of support for the project. The Department reviewed all comments from the interested persons. The Department did not receive any requests for a public hearing during the 20-day period specified in the Department's Chapter 2 Rules governing the processing of applications.

The interested persons expressed a range of concerns, including the impact of increased motorized boat traffic and potential jet ski use on existing recreational uses such as kayaking, canoeing, and quiet enjoyment of the resource; adverse impacts to scenic and aesthetic qualities of the area, water quality, shoreline stability, wildlife and fish habitat, and sensitive plant communities; the potential introduction of non-native species through increased boat access; typographical errors and inconsistencies in the application; and a lack of information about the recreational club that will use the proposed pier system and boat ramp.

Commenters also argued that the project will result in a violation of Maine boating laws, and that the proposed boat ramp is unnecessary because there are alternative boating access points on the river.

Some commenters pointed out that the applicant did not submit a Site Conditions Report (Attachment 9 in the Natural Resources Protection Act (NRPA) application packet) prepared by a professional wetland scientist, however the Department determined that the applicant's Appendix B of the NRPA application packet, the MDEP Coastal Wetland Characterization Field Survey Checklist, adequately addresses the requirements listed under Attachment 9, and that activities directly impacting less than 500 square feet of coastal wetland do not require the assessment to be completed by a professional wetland scientist.

Multiple commenters raised concerns that the project is not allowed under the Town's Shoreland Zoning Ordinance, does not meet local setback requirements, or otherwise does not meet local ordinances. These arguments are based largely on the definition of various terms such as "existing structure," "permanent structure," "commercial activities," and "maintenance and repair" pursuant to local ordinances. The outcome of these arguments may also depend in part on previous Town decisions regarding the project site, and on the documentation, or lack thereof, of those decisions. The Department considered the interested persons' comments and the applicant's rebuttals to these comments, but ultimately concluded that, although these arguments merit thorough and serious consideration, it is the Town of Alna and not the Department that must determine how to apply local ordinances to the proposed project.

Some commenters contended that the applicant previously installed a pier at the project site without first obtaining a permit from the Department. The applicant responded that this structure was removed from the coastal wetland seasonally and therefore did not require a permit under the NRPA. Since the structure was subsequently removed from the coastal wetland, the Department determined that this complaint is resolved. Commenters also raised concerns about the removal of marsh vegetation from within the coastal wetland as a result of the applicant's past boat launching activities. Marsh vegetation is discussed further in Finding 6C.

The Department compiled a list of concerns raised by commenters that are relevant to the NRPA licensing criteria and asked the applicant to respond to them. The applicant's responses are discussed in the Findings below. The applicant addressed minor typographical errors and inconsistencies in the application to the Department's satisfaction. Boating laws are discussed in Finding 2. Wildlife, plant, and habitat considerations are discussed further in Finding 4. After a review of all public comments submitted to the Department, the Department determined that the applicant has addressed the interested persons' concerns to the extent that they relate to the scope of the Department's review.

## 2. EXISTING SCENIC, AESTHETIC, RECREATIONAL OR NAVIGATIONAL USES:

The NRPA, in 38 M.R.S. § 480-D(1), requires the applicant to demonstrate that the proposed project will not unreasonably interfere with existing scenic, aesthetic, recreational and navigational uses.

In accordance with Chapter 315, *Assessing and Mitigating Impacts to Scenic and Aesthetic Uses*, the applicant submitted a copy of the Department's Visual Evaluation Field Survey Checklist as Appendix A to the application along with a description of the property and the proposed project. The applicant also submitted several photographs of the proposed project site and the surrounding area. Department staff visited the project site on September 6, 2019.

The proposed project is located in the Sheepscot River, which is a scenic resource visited by the general public, in part, for the use, observation, enjoyment and appreciation of its natural and cultural visual qualities. The project site is located approximately midway along a 6.7-mile stretch of river between Head Tide Dam to the north and the reversing falls in Sheepscot Village to the south. The surrounding area contains occasional residential structures, lawns, and docks that are visible from the resource. A transmission line corridor crosses the river approximately 2,000 feet south of the project site.

To reduce the visibility of the proposed project from the resource, the applicant designed the pier system with materials similar to those of other ramp and float systems in the area. The permanent component of the proposed pier does not extend over the resource. In response to public comments on scenic concerns, the applicant conducted a photo-survey and submitted an electronic map with embedded photographs showing existing structures visible from the resource within approximately two miles of the project site. The applicant also submitted photo-simulations of the proposed pier system on the river. Based on the photo-survey and bends in the river, the applicant stated that the visibility of the proposed pier system will be relatively limited, extending approximately 900 feet to the north and approximately 1,150 feet to the south of the project site, with the visibility of the proposed boat ramp extending approximately 370 feet to the north and approximately 270 feet to the south of the project site. During the review, the applicant took measures to reduce the visual impact of the project including reducing the size of the proposed float system by 109 square feet, moving the permanent component of the pier system outside of the coastal wetland, and eliminating the riprap associated with the proposed pier pilings. The applicant does not propose to remove any trees from the shoreline to construct the project. The applicant stated that he designed the pier system and boat ramp to the minimum dimensions practicable and designed it with materials that will blend with the natural shoreline.

The Department staff utilized the Department's Visual Impact Assessment Matrix in its evaluation of the proposed project. The Matrix is used to assess the visual impact severity of a proposed project based on the distance and visibility of the project from a natural landmark or other outstanding natural or cultural feature, State, National, or locally-designated park or trail, and on the approximate number of people likely to view

the project from the resource or a public way per day. The severity rating is also based on the visual elements of landscape compatibility, scale contrast, and spatial dominance as defined in Chapter 315, § 9. The Department determined that the proposed project is directly visible from several vantage points on the water, may be viewed by more than 25 people per day, and is not visible from any natural landmark or other natural or outstanding cultural feature or from any State, National, or locally-designated park or trail. The Matrix showed an acceptable potential visual impact rating for the proposed project. Based on the information submitted in the application and during the review, the visual impact rating and the site inspection by Department staff, the Department finds that the location and scale of the proposed activity is compatible with the existing visual quality and landscape characteristics found within the viewshed of the scenic resource in the project area.

In response to public comments about impacts to existing uses, the applicant stated that the motorized boats which will be using the proposed project are not incompatible with kayaks and canoes in this location. The applicant stated that motorized boats currently use the Sheepscot River near the project site, which is located upstream of the reversing falls in Sheepscot Village and downstream of Head Tide Dam. The applicant submitted several letters of support from local residents to support this statement, as well as recent satellite imagery and photographs showing at least one motorized boat docked on this segment of river. The applicant submitted aerial photographs and measurements to demonstrate that the proposed pier will not block navigation of the river channel. 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. The applicant has registered the club, known as the Golden Ridge Sportsman's Club, with the Maine Department of the Secretary of State as a nonprofit corporation. During the review, the applicant submitted a draft copy of bylaws for the club, as well as a draft Land Use License Agreement which will grant club members access to the proposed pier system and boat ramp. After reviewing the applicant's responses, the Department determined that the applicant has supplied adequate information about the anticipated uses of the proposed structures.

Several interested persons raised concerns that users of the proposed boat launch will violate Maine boating laws, specifically 12 M.R.S. § 13068-A(13)(A), which states that a person may not operate a watercraft at a speed greater than headway speed (i.e., the minimum speed necessary to maintain steerage and control) while within 200 feet of any shoreline. The commenters contended that, given the narrow width of the river at the project site, this law effectively prohibits the use of motorized vessels on the river, which would make the purpose of the proposed boat ramp (i.e., recreational access to the river for motorized boats) illegal. In response to these comments, the applicant pointed out examples of other waterbodies which are less than 400 feet wide and which experience routine traffic by motorized vessels, including the Sasanoa River between Bath and Boothbay Harbor, the entrance to Oven's Mouth on the Back River in Boothbay, and The

Gut in South Bristol. In consultation with both the Maine Department of Inland Fisheries and Wildlife (MDIFW) and the Maine Department of Marine Resources (DMR), the Department determined that the restriction to headway speed pursuant to 12 M.R.S. § 13068-A(13)(A) does apply to the project site, extending at least as far north as Head Tide Dam and extending at least 1.5 miles south from the project site, depending on the tide cycle. This section of the river is essentially a “no wake” zone. The Department further 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. However, the Department also determined that the law only restricts the speed and does not fully prohibit the operation of motorized vessels within 200 feet of the shoreline. Further, the law includes an exception for a person who is operating a watercraft while actively fishing. The applicant has stated that access for fishing is a primary purpose of the proposed project. In light of these considerations, the Department determined that the restriction to headway speed does not undermine the purpose of the proposed boat launch provided that the applicant and his club members observe the restriction to headway speed at all times, except while actively fishing, or if they navigate to an area at least 200 feet from any shoreline. The restriction on watercraft speed is enforceable by both MDIFW and DMR. More broadly, 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 and this law is enforceable by every law enforcement officer in the State of Maine. To promote awareness and adherence to this law, the applicant must post a sign in a visible location at the proposed boat launch identifying the river as a “no wake” zone or a “headway speed only” zone.

DMR reviewed the project and commented that the project is located in an area with no significant shellfish or marine worm resources, and therefore no harvesting activities of these organisms. DMR stated that the proposed project should not cause any significant adverse impact to marine resources, traditional commercial harvest activities, or access based on the nature of the project and its location.

The Department finds that the proposed activity will not unreasonably interfere with existing scenic, aesthetic, recreational or navigational uses of the coastal wetland provided that prior to construction of the proposed boat launch, a speed restriction sign is posted at the boat launch as described above.

3. SOIL EROSION:

The NRPA, in 38 M.R.S. § 480-D(2), requires the applicant to demonstrate that the proposed project will not cause unreasonable erosion of soil or sediment nor unreasonably inhibit the natural transfer of soil from the terrestrial to the marine or freshwater environment.

The proposed boat ramp will be constructed from the upland and from within the coastal wetland. Equipment will access the site over the existing access road across the property. Prior to construction, the applicant will install a turbidity curtain around the work area. The work will take place during periods of low water; no equipment will remain in the

intertidal area between work sessions. Equipment will operate from the upland or from within the footprint of the proposed boat ramp. The boat ramp site will be graded to a 15% slope and prepared with a subbase of six- to eight-inch-diameter stones laid over geotextile fabric. The ramp will be surfaced with a layer of three- to four-inch-diameter stones. The applicant selected the ramp materials based on a technical guide (Report No. SRH-2015-25) on bank stabilization, issued by the U.S. Department of the Interior's Bureau of Reclamation, which predicts shear and velocity resistance values for various stabilizing materials. Prior to placement, all of the stone material will be washed of loose sediment in an upland area located greater than 75 feet from the resource. The ramp will be installed approximately flush with the existing grade. To ensure that the ramp does not result in unreasonable erosion due to ice or other processes, the applicant agreed to submit photographs of the ramp in a pre-winter and post-winter condition each November and April for three years to the Department for review. If the Department determines that the ramp materials are eroding, the applicant will install pre-cast concrete planks on the ramp surface. Prior to installing the concrete planks, the applicant would be required to submit new plans and any other pertinent information on the proposed activities to the Department for review and approval. In lieu of installing concrete planks, the applicant could remove the ramp and restore the coastal wetland to its natural condition.

The proposed pier system will be constructed from the upland. Pilings will be driven to refusal and cross-braced, with decking installed between them. The seasonal ramp and floats will be constructed on land and launched at the project site for installation. Material stockpiles will be stored greater than 25 feet from the resource and surrounded by temporary sediment barriers as needed. Upon project completion, any remaining disturbed areas will be loamed, seeded, and mulched. Any shrubs or trees removed incidentally will be replanted in accordance with the local Shoreland Zoning Ordinance.

The Department finds that the activity will not cause unreasonable erosion of soil or sediment nor unreasonably inhibit the natural transfer of soil from the terrestrial to the marine or freshwater environment provided that the applicant submits to the Department photographs of the permanent boat ramp in a pre- and post-winter condition for three winters following construction and, if necessary, installs pre-cast concrete planks as described above.

#### 4. HABITAT AND FISHERIES CONSIDERATIONS:

The NRPA, in 38 M.R.S. § 480-D(3), requires the applicant to demonstrate that the proposed project will not unreasonably harm significant wildlife habitat, freshwater wetland plant habitat, threatened or endangered plant habitat, aquatic or adjacent upland habitat, travel corridor, freshwater, estuarine or marine fisheries or other aquatic life.

The project site is located on the western shore of the Sheepscot River, which is tidal in this location and therefore considered a coastal wetland. The site of the proposed boat ramp is a gradual slope to the intertidal zone. The intertidal substrate is mud. The site of the proposed pier system is a three-foot-tall embankment that drops steeply to the coastal wetland.

The coastal wetland to either side of the project site contains salt marsh vegetation. The adjacent upland contains an existing primitive camping area with an access road and room for limited, informal vehicle parking, and is otherwise forested.

According to the Department's Geographic Information System (GIS) database there are no mapped Essential or Significant Wildlife Habitats located at the site. MDIFW reviewed the proposed project and stated that the project will result in minimal impacts to wildlife.

In its review, DMR stated that the project as proposed would not cause any significant adverse impact to marine resources. DMR commented that portions of the Sheepscot River just upstream from the project site are listed as sea run fish spawning and rearing habitat and recommended that the boat ramp be constructed during a work window of November 8 to April 8 to minimize impacts to this habitat and to fish passing the site during construction activities.

The Maine Natural Areas Program (MNAP) of the Department of Agriculture, Conservation and Forestry reviewed the proposed project and commented that the project site is located in the vicinity of a rare plant (*Zanichellia palustris*) and a rare wetland plant community (mixed graminoid-forb saltmarsh). MNAP commented that the project as proposed will not directly impact either of these features but recommended that appropriate measures to prevent downstream siltation during construction of the proposed project should be employed. As discussed in Finding 3, the applicant proposes to use erosion and sedimentation control measures during construction to minimize siltation. MNAP commented that these measures, if installed and maintained appropriately, should adequately prevent siltation and avoid adverse impacts to the saltmarsh vegetation and associated species.

In response to public comments about the potential introduction of non-native organisms to the river system, the applicant obtained a standard sign from the Bureau of Water Quality's Invasive Aquatic Species Program to place at the proposed boat ramp to warn boaters to remove all plants and drain all water from boats and to instruct boaters not to release live bait. The applicant stated that the sign will be placed in clear view at the launch site. The Department determined that the placement of the sign is an adequate measure to prevent, to the extent practicable, the introduction of non-native organisms to the river.

The Department finds that the activity will not unreasonably harm any significant wildlife habitat, freshwater wetland plant habitat, threatened or endangered plant habitat, aquatic or adjacent upland habitat, travel corridor, freshwater, estuarine or marine fisheries or other aquatic life, provided that construction of the boat ramp takes place during a work window of November 8 to April 8.



5. WATER QUALITY CONSIDERATIONS:

The applicant proposes to use treated lumber to construct the pier system. To protect water quality, all treated lumber must be cured on dry land in a manner that exposes all surfaces to the air for 21 days prior to the start of construction.

In response to public comments about water quality, the applicant stated that no fueling will take place at the proposed project site, but as a precaution he will keep an emergency spill kit on site. The applicant further submitted Appendix C of the NRPA application, Supplemental Information for Dredging Activities, to address dredging concerns related to regrading within the intertidal area to construct the proposed boat ramp. The applicant proposes to remove approximately eight cubic yards of mixed mud, clay, and gravel from within the coastal wetland to regrade the intertidal area for the proposed boat ramp. The applicant proposes to use the dredge spoils for soil enhancement in upland gardens on site. The project was reviewed by the Bureau of Remediation and Waste Management's Division of Materials Management (DMM). DMM commented that based on the volume of dredge material and the proposed manner of disposal, the project meets the definition of "beneficial use" and therefore complies with Maine's Solid Waste Management Rules.

Provided that treated lumber is cured as described above, the Department finds that the proposed project will not violate any state water quality law, including those governing the classification of the State's waters.

6. WETLANDS AND WATERBODIES PROTECTION RULES:

The applicant proposes to directly alter 440 square feet of coastal wetland to construct the proposed boat ramp and install two mooring blocks. The applicant proposes to indirectly alter 370 square feet of coastal wetland due to shading from the proposed pier system. Coastal wetlands are wetlands of special significance.

The *Wetlands and Waterbodies Protection Rules*, 06-096 C.M.R. ch. 310 (last amended November 11, 2018), interpret and elaborate on the NRPA criteria for obtaining a permit. The rules guide the Department in its determination of whether a project's impacts would be unreasonable. A proposed project may be found to be unreasonable if it would cause a loss in wetland area, functions and values and there is a practicable alternative to the project that would be less damaging to the environment. Each application for an NRPA permit that involves a coastal wetland alteration must provide an analysis of alternatives in order to demonstrate that a practicable alternative does not exist.

A. Avoidance. An applicant must submit an analysis of whether there is a practicable alternative to the project that would be less damaging to the environment and this analysis is considered by the Department in its assessment of the reasonableness of any impacts. Additionally, for activities proposed in, on, or over wetlands of special significance the activity must be among the types listed in Chapter 310, § 5(A) or a practicable alternative less damaging to the environment is considered to exist and the impact is considered to be unreasonable. Piers and boat ramps are both water dependent

uses as defined by Chapter 310, and the consideration of their proposed construction is allowed as set forth in Chapter 310, § 5(A)(1)(c). The applicant submitted an alternatives analysis for the proposed project dated August 23, 2019. The purpose of the proposed pier system is to improve access to the resource for a recreational club that uses the site for swimming, hunting, fishing, and boating. The purpose of the proposed boat ramp is to provide safer and more reliable access for the club members' motorized boats being launched from trailers. As discussed in Finding 1(C), the applicant submitted a draft Land Use License Agreement with the Golden Ridge Sportsman's Club which will provide club members legal access to the project site over the applicant's land. Some of the interested persons expressed concern that by its terms the proposed Land Use License Agreement could be revoked at will by the applicant, resulting in a private boat ramp. The applicant responded that the agreement will only be revoked if the club violates the terms of the agreement. The Department reviewed the proposed agreement and public comments and determined that if the Land Use License Agreement is terminated and is not replaced by another instrument of legal access for the club, the boat ramp must be removed and the float system reduced in size, as it would essentially be serving one private landowner. The applicant agreed and submitted a plan for a reduced float layout in which the boat ramp would be removed, and the main float reduced from 24 to 12 feet in length if the club were to lose access to the site. The plan is entitled, "Top view with 2' contours (contingency plan)" and is dated February 6, 2020.

In their collective comments, the interested persons identified a total of seven existing access points as possible alternatives to the proposed boat ramp. The applicant addressed the feasibility of each alternative and determined that these sites were either too far (at least seven miles) from the applicant's property, did not contain a road or suitable launch site for trailered boats at the shoreline, were private property, were isolated from the applicant's property by a physical barrier such as Head Tide Dam or the reversing falls, or a combination of these factors. The applicant concluded that there is no practicable access point for motorized boats to reach the river within the vicinity of the applicant's property except at the proposed project site. The Department concurs with the applicant's statement that other possible locations are either too far away to be practicable or are otherwise unsafe or inaccessible for the purpose of launching motorized vessels for use above the reversing falls in Sheepscot Village.

The applicant considered taking no action and continuing to launch boats from the project site over natural substrate. Although repeated launching by a single individual at this site may not result in unreasonable erosion, the applicant determined that repeated launching of vessels by multiple club members over time would result in erosion and degradation of the shoreline, and that a permanent stabilized ramp would prevent this erosion, improve safety for users, and prevent vehicles from being mired in the mud, necessitating further disturbance to remove them. The applicant considered alternate materials for the construction of the boat ramp including logging mats, removable concrete, and a roll-out aluminum mat that can be removed seasonally. Through discussions with the Department and the U.S. Army Corps of Engineers, the applicant determined that the repeated installation and removal of a temporary ramp would result in greater erosion and siltation in the resource over time than a permanent ramp.

The applicant also considered two other sites on the shoreline of his property for the construction of a boat ramp but determined that these sites would require tree removal, result in impacts to salt marsh vegetation, and/or require the construction of a new access road. In light of these considerations, the applicant stated that there is no practicable alternative to the proposed project that can meet the applicant's needs and avoids impacts to the resource.

B. Minimal Alteration. In support of an application and to address the analysis of the reasonableness of any impacts of a proposed project, an applicant must demonstrate that the amount of coastal wetland to be altered will be kept to the minimum amount necessary for meeting the overall purpose of the project. The applicant stated that he designed the proposed pier system to the minimum dimensions necessary to provide adequate access for the recreation club's purposes. All parts of the pier system will be removed seasonally except for the minimal access platform and pilings located adjacent to the coastal wetland. During the review, the applicant reduced the size of the proposed float system by 109 square feet, moved the proposed pilings out of the coastal wetland, and eliminated six linear feet of riprap associated with the proposed pier pilings. The changes reduced the proposed direct impact to the coastal wetland by 43 square feet. The applicant stated that he designed the proposed boat ramp to the minimum dimensions needed to provide a safe and stable travel way for boat trailers. The applicant stated that the proposed project minimizes impacts to the coastal wetland to the greatest extent practicable.

C. Compensation. In accordance with Chapter 310, § 5(C)(6)(b), compensation may be required to achieve the goal of no net loss of coastal wetland functions and values. Compensation is generally required for projects that either cover, remove, or destroy marsh vegetation or result in over 500 square feet of fill in the resource. Although this project will not result in over 500 square feet of fill in the resource, the Department finds that the proposed permanent boat ramp will prevent the regeneration of marsh vegetation that would otherwise occur in the area that has been altered through past, unpermitted vehicle traffic. The Department finds that although a portion of the existing impact to marsh vegetation may have been caused by foot traffic or may have begun prior to the effective date of the NRPA, the impact area was expanded and perpetuated through the applicant's use of vehicles in the intertidal area, and this impact area is therefore subject to the current review, and that compensation is required. Based on the agency review comments, the site inspection, and other materials on file, the Department determined that the primary functions of the wetland at the project site include sediment/shoreline stabilization and recreation.

To compensate for lost functions and values of the coastal wetland, the applicant has agreed to make a contribution to the In-Lieu Fee (ILF) program of the Maine Natural Resource Compensation Program (MNRCP) in the amount of \$3,440.80, payable to, "Treasurer, State of Maine," and directly to the attention of the ILF Program Administration at 17 State House Station, Augusta, Maine 04333. The ILF payment must be received by the Department prior to the start of construction.

The Department finds that the proposed compensatory plan meets the requirements for the restoration, enhancement and preservation of freshwater wetland impacts outlined in Chapter 310. The Department further finds that by minimizing the size of the pier system, floats, and the boat ramp the applicant has avoided and minimized coastal wetland impacts to the greatest extent practicable. The Department finds that the proposed project represents the least environmentally damaging alternative that meets the overall purpose of the project provided that prior to project construction, the applicant submits the ILF payment as described above, the applicant executes the Land Use License Agreement with the Golden Ridge Sportsman's Club as described above and submits a copy of the executed document to the Department, the applicant submits any changes to the Land Use License Agreement to the Department for review and approval prior to its execution, and, in the event that the Land Use License Agreement is terminated and is not replaced by another instrument of legal access for the club, or if the club is dissolved, the applicant removes the boat ramp, restores the coastal wetland to natural conditions, and reduces the size of the float system as described above.

7. OTHER CONSIDERATIONS:

The Department finds, based on the design, proposed construction methods, and location, the proposed project will not inhibit the natural transfer of soil from the terrestrial to the marine environment, will not interfere with the natural flow of any surface or subsurface waters, and will not cause or increase flooding. The proposed project is not located in a coastal sand dune system, is not a crossing of an outstanding river segment, and does not involve dredge spoils disposal beyond the boundaries of the subject parcel or the transport of dredge spoils by water.

BASED on the above findings of fact, and subject to the conditions listed below, the Department makes the following conclusions pursuant to 38 M.R.S. §§ 480-A–480-JJ and Section 401 of the Federal Water Pollution Control Act (33 U.S.C. § 1341):

- A. The proposed activity will not unreasonably interfere with existing scenic, aesthetic, recreational, or navigational uses provided that prior to construction of the proposed boat launch, a speed restriction sign is posted at the boat launch as described in Finding 2.
- B. The proposed activity will not cause unreasonable erosion of soil or sediment.
- C. The proposed activity will not unreasonably inhibit the natural transfer of soil from the terrestrial to the marine or freshwater environment provided that the applicant submits to the Department photographs of the permanent boat ramp in a pre- and post-winter condition for three winters following construction and, if necessary, installs pre-cast concrete planks as described in Finding 3.
- D. The proposed activity will not unreasonably harm any significant wildlife habitat, freshwater wetland plant habitat, threatened or endangered plant habitat, aquatic or adjacent upland habitat, travel corridor, freshwater, estuarine, or marine fisheries or other aquatic life, provided that:

- the boat ramp is constructed during a work window of November 8 to April 8;
  - the applicant submits a payment to the ILF program as described in Finding 6;
  - prior to construction, the applicant executes the Land Use License Agreement with the Golden Ridge Sportsman's Club;
  - prior to execution of the Land Use License Agreement, the applicant submits any changes to agreement to the Department for review and approval;
  - the applicant submits a copy of the executed document to the Department, and,
  - in the event that the Land Use License Agreement is terminated, or if the club is dissolved, the applicant removes the boat ramp, restores the coastal wetland to natural conditions and reduces the float system as described in Finding 6.
- E. The proposed activity will not unreasonably interfere with the natural flow of any surface or subsurface waters.
- F. The proposed activity will not violate any state water quality law including those governing the classifications of the State's waters provided that treated lumber is cured as described in Finding 5.
- G. The proposed activity will not unreasonably cause or increase the flooding of the alteration area or adjacent properties.
- H. The proposed activity is not on or adjacent to a sand dune.
- I. The proposed activity is not on an outstanding river segment as noted in 38 M.R.S. § 480-P.

THEREFORE, the Department APPROVES the above noted application of JEFFRY SPINNEY to construct a pier system and permanent boat ramp as described in Finding 1, SUBJECT TO THE ATTACHED CONDITIONS, and all applicable standards and regulations:

1. Standard Conditions of Approval, a copy attached.
2. The applicant shall take all necessary measures to ensure that his activities or those of his agents do not result in measurable erosion of soil on the site during the construction of the project covered by this approval.
3. Severability. The invalidity or unenforceability of any provision, or part thereof, of this License shall not affect the remainder of the provision or any other provisions. This License shall be construed and enforced in all respects as if such invalid or unenforceable provision or part thereof had been omitted.
4. 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 "headway speed only" zone.

5. Construction of the boat ramp shall take place during a work window of November 8 to April 8.
6. All treated lumber shall be cured on dry land in a manner that exposes all surfaces to the air for 21 days prior to the start of construction.
7. Prior to the start of construction of the boat ramp, the applicant shall execute the Land Use License Agreement granting the Golden Ridge Sportsman's Club the right to access and use the proposed pier system and boat ramp and shall submit a copy of the executed document to the Department. If the Land Use License Agreement is revised prior to its execution, the applicant shall submit a revised draft copy to the Department for review and approval.
8. 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.
9. For three years following construction of the permanent boat ramp the applicant shall submit photographs of the ramp in a pre-winter condition on or around November 1 and in a post-winter condition on or around April 30 to the Department for review. If the Department determines that the ramp materials are eroding, the applicant shall either remove the ramp and restore the coastal wetland to a natural condition or install pre-cast concrete planks on the ramp surface. Prior to installing the concrete planks, the applicant shall submit a minor revision application, plans, and any other pertinent information on the proposed activities to the Department for review and approval.
10. Prior to the start of construction, the applicant shall submit a payment in the amount of \$3,440.80, payable to "Treasurer, State of Maine," to the attention of the ILF Program Administrator at 17 State House Station, Augusta, Maine 04333.
11. Prior to the start of construction, the applicant must obtain approval pursuant to the Town of Alna's Shoreland Zoning Ordinance and submit a copy of the local permit to the Department for review.
12. Prior to the start of construction, the applicant must obtain all other applicable local permits and approvals.

THIS APPROVAL DOES NOT CONSTITUTE OR SUBSTITUTE FOR ANY OTHER REQUIRED STATE, FEDERAL OR LOCAL APPROVALS NOR DOES IT VERIFY COMPLIANCE WITH ANY APPLICABLE SHORELAND ZONING ORDINANCES.

DONE AND DATED IN AUGUSTA, MAINE, THIS \_\_\_\_ DAY OF \_\_\_\_\_, 2020.

DEPARTMENT OF ENVIRONMENTAL PROTECTION

BY: \_\_\_\_\_  
For: Gerald D. Reid, Commissioner

PLEASE NOTE THE ATTACHED SHEET FOR GUIDANCE ON APPEAL PROCEDURES.

JM/L28397AN/ATS#84971

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## Natural Resources Protection Act (NRPA) Standard Conditions

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THE FOLLOWING STANDARD CONDITIONS SHALL APPLY TO ALL PERMITS GRANTED UNDER THE NATURAL RESOURCES PROTECTION ACT, 38 M.R.S. §§ 480-A ET SEQ., UNLESS OTHERWISE SPECIFICALLY STATED IN THE PERMIT.

- A. Approval of Variations From Plans. The granting of this permit is dependent upon and limited to the proposals and plans contained in the application and supporting documents submitted and affirmed to by the applicant. Any variation from these plans, proposals, and supporting documents is subject to review and approval prior to implementation.
- B. Compliance With All Applicable Laws. The applicant shall secure and comply with all applicable federal, state, and local licenses, permits, authorizations, conditions, agreements, and orders prior to or during construction and operation, as appropriate.
- C. Erosion Control. The applicant shall take all necessary measures to ensure that his activities or those of his agents do not result in measurable erosion of soils on the site during the construction and operation of the project covered by this Approval.
- D. Compliance With Conditions. Should the project be found, at any time, not to be in compliance with any of the Conditions of this Approval, or should the applicant construct or operate this development in any way other the specified in the Application or Supporting Documents, as modified by the Conditions of this Approval, then the terms of this Approval shall be considered to have been violated.
- E. Time frame for approvals. If construction or operation of the activity is not begun within four years, this permit shall lapse and the applicant shall reapply to the Board for a new permit. The applicant may not begin construction or operation of the activity until a new permit is granted. Reapplications for permits may include information submitted in the initial application by reference. This approval, if construction is begun within the four-year time frame, is valid for seven years. If construction is not completed within the seven-year time frame, the applicant must reapply for, and receive, approval prior to continuing construction.
- F. No Construction Equipment Below High Water. No construction equipment used in the undertaking of an approved activity is allowed below the mean high water line unless otherwise specified by this permit.
- G. Permit Included In Contract Bids. A copy of this permit must be included in or attached to all contract bid specifications for the approved activity.
- H. Permit Shown To Contractor. Work done by a contractor pursuant to this permit shall not begin before the contractor has been shown by the applicant a copy of this permit.





# DEP INFORMATION SHEET

## Appealing a Department Licensing Decision

**Dated: November 2018**

**Contact: (207) 287-2452**

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### **SUMMARY**

There are two methods available to an aggrieved person seeking to appeal a licensing decision made by the Department of Environmental Protection's (DEP) Commissioner: (1) an administrative process before the Board of Environmental Protection (Board); or (2) a judicial process before Maine's Superior Court. An aggrieved person seeking review of a licensing decision over which the Board had original jurisdiction may seek judicial review in Maine's Superior Court.

A judicial appeal of final action by the Commissioner or the Board regarding an application for an expedited wind energy development (35-A M.R.S. § 3451(4)) or a general permit for an offshore wind energy demonstration project (38 M.R.S. § 480-HH(1)) or a general permit for a tidal energy demonstration project (38 M.R.S. § 636-A) must be taken to the Supreme Judicial Court sitting as the Law Court.

This information sheet, in conjunction with a review of the statutory and regulatory provisions referred to herein, can help a person to understand his or her rights and obligations in filing an administrative or judicial appeal.

### **I. ADMINISTRATIVE APPEALS TO THE BOARD**

#### **LEGAL REFERENCES**

The laws concerning the DEP's *Organization and Powers*, 38 M.R.S. §§ 341-D(4) & 346; the *Maine Administrative Procedure Act*, 5 M.R.S. § 11001; and the DEP's *Rules Concerning the Processing of Applications and Other Administrative Matters* ("Chapter 2"), 06-096 C.M.R. ch. 2.

#### **DEADLINE TO SUBMIT AN APPEAL TO THE BOARD**

The Board must receive a written appeal within 30 days of the date on which the Commissioner's decision was filed with the Board. Appeals filed more than 30 calendar days after the date on which the Commissioner's decision was filed with the Board will be dismissed unless notice of the Commissioner's license decision was required to be given to the person filing an appeal (appellant) and the notice was not given as required.

#### **HOW TO SUBMIT AN APPEAL TO THE BOARD**

Signed original appeal documents must be sent to: Chair, Board of Environmental Protection, 17 State House Station, Augusta, ME 04333-0017. An appeal may be submitted by fax or e-mail if it contains a scanned original signature. It is recommended that a faxed or e-mailed appeal be followed by the submittal of mailed original paper documents. The complete appeal, including any attachments, must be received at DEP's offices in Augusta on or before 5:00 PM on the due date; materials received after 5:00 pm are not considered received until the following day. The risk of material not being received in a timely manner is on the sender, regardless of the method used. The appellant must also send a copy of the appeal documents to the Commissioner of the DEP; the applicant (if the appellant is not the applicant in the license proceeding at issue); and if a hearing was held on the application, any intervenor in that hearing process. All of the information listed in the next section of this information sheet must be submitted at the time the appeal is filed.

### INFORMATION APPEAL PAPERWORK MUST CONTAIN

Appeal materials must contain the following information at the time the appeal is submitted:

1. *Aggrieved Status.* The appeal must explain how the appellant has standing to maintain an appeal. This requires an explanation of how the appellant may suffer a particularized injury as a result of the Commissioner's decision.
2. *The findings, conclusions, or conditions objected to or believed to be in error.* The appeal must identify the specific findings of fact, conclusions regarding compliance with the law, license conditions, or other aspects of the written license decision or of the license review process that the appellant objects to or believes to be in error.
3. *The basis of the objections or challenge.* For the objections identified in Item #2, the appeal must state why the appellant believes that the license decision is incorrect and should be modified or reversed. If possible, the appeal should cite specific evidence in the record or specific licensing requirements that the appellant believes were not properly considered or fully addressed.
4. *The remedy sought.* This can range from reversal of the Commissioner's decision on the license or permit to changes in specific permit conditions.
5. *All the matters to be contested.* The Board will limit its consideration to those matters specifically raised in the written notice of appeal.
6. *Request for hearing.* If the appellant wishes the Board to hold a public hearing on the appeal, a request for public hearing must be filed as part of the notice of appeal, and must include an offer of proof in accordance with Chapter 2. The Board will hear the arguments in favor of and in opposition to a hearing on the appeal and the presentations on the merits of an appeal at a regularly scheduled meeting. If the Board decides to hold a public hearing on an appeal, that hearing will then be scheduled for a later date.
7. *New or additional evidence to be offered.* If an appellant wants to provide evidence not previously provided to DEP staff during the DEP's review of the application, the request and the proposed evidence must be submitted with the appeal. The Board may allow new or additional evidence, referred to as supplemental evidence, to be considered in an appeal only under very limited circumstances. The proposed evidence must be relevant and material, and (a) the person seeking to add information to the record must show due diligence in bringing the evidence to the DEP's attention at the earliest possible time in the licensing process; or (b) the evidence itself must be newly discovered and therefore unable to have been presented earlier in the process. Specific requirements for supplemental evidence are found in Chapter 2 § 24.

### OTHER CONSIDERATIONS IN APPEALING A DECISION TO THE BOARD

1. *Be familiar with all relevant material in the DEP record.* A license application file is public information, subject to any applicable statutory exceptions, and is made easily accessible by the DEP. Upon request, the DEP will make application materials available during normal working hours, provide space to review the file, and provide an opportunity for photocopying materials. There is a charge for copies or copying services.
2. *Be familiar with the regulations and laws under which the application was processed, and the procedural rules governing your appeal.* DEP staff will provide this information on request and answer general questions regarding the appeal process.
3. *The filing of an appeal does not operate as a stay to any decision.* If a license has been granted and it has been appealed, the license normally remains in effect pending the processing of the appeal. Unless a stay of the decision is requested and granted, a license holder may proceed with a project pending the outcome of an appeal, but the license holder runs the risk of the decision being reversed or modified as a result of the appeal.

## WHAT TO EXPECT ONCE YOU FILE A TIMELY APPEAL WITH THE BOARD

The Board will formally acknowledge receipt of an appeal, and will provide the name of the DEP project manager assigned to the specific appeal. The notice of appeal, any materials accepted by the Board Chair as supplementary evidence, any materials submitted in response to the appeal, and relevant excerpts from the DEP's application review file will be sent to Board members with a recommended decision from DEP staff. The appellant, the license holder if different from the appellant, and any interested persons are notified in advance of the date set for Board consideration of an appeal or request for public hearing. The appellant and the license holder will have an opportunity to address the Board at the Board meeting. With or without holding a public hearing, the Board may affirm, amend, or reverse a Commissioner decision or remand the matter to the Commissioner for further proceedings. The Board will notify the appellant, the license holder, and interested persons of its decision.

## II. JUDICIAL APPEALS

Maine law generally allows aggrieved persons to appeal final Commissioner or Board licensing decisions to Maine's Superior Court (see 38 M.R.S. § 346(1); 06-096 C.M.R. ch. 2; 5 M.R.S. § 11001; and M.R. Civ. P. 80C). A party's appeal must be filed with the Superior Court within 30 days of receipt of notice of the Board's or the Commissioner's decision. For any other person, an appeal must be filed within 40 days of the date the decision was rendered. An appeal to court of a license decision regarding an expedited wind energy development, a general permit for an offshore wind energy demonstration project, or a general permit for a tidal energy demonstration project may only be taken directly to the Maine Supreme Judicial Court. See 38 M.R.S. § 346(4).

Maine's Administrative Procedure Act, DEP statutes governing a particular matter, and the Maine Rules of Civil Procedure must be consulted for the substantive and procedural details applicable to judicial appeals.

## ADDITIONAL INFORMATION

If you have questions or need additional information on the appeal process, for administrative appeals contact the Board's Executive Analyst at (207) 287-2452, or for judicial appeals contact the court clerk's office in which your appeal will be filed.

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**Note: The DEP provides this INFORMATION SHEET for general guidance only; it is not intended for use as a legal reference. Maine law governs an appellant's rights.**

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