



STATE OF MAINE
DEPARTMENT OF ENVIRONMENTAL PROTECTION

JOHN ELIAS BALDACCI

DAVID P. LITTELL

GOVERNOR

COMMISSIONER

September 15, 2009

John A. Gilman
P.O. Box 488
Hope Valley, RI 02832

RE: DEP NRPA Application #L-24660-2B-B-N, Belgrade

Dear Mr. Gilman,

Your application for the above referenced permit was received by the Department of Environmental Protection on August 20, 2009. The application was found to be acceptable for processing on September 14, 2009, and has been given the above referenced number. Please refer to this number in any future correspondence.

The project is now being examined to determine whether a license can be issued. The statutory deadline for the Department to reach a final decision is January 12, 2009; however, the Department will process this application and reach a final decision as quickly as possible. No construction activities at this project site may be started prior to receiving a final decision from the Department.

Please be advised that the Department is unlikely to grant a permit for a permanent structure in a great pond. Permanent structures are considered to result in unreasonable impacts to the resource because they can be avoided in virtually every case by using an alternative: the utilization of a temporary or seasonal structure. The Department does not consider safety or public health issues as factors when determining whether a proposed project represents a reasonable impact on a resource. Your proposal is likely to be denied based upon freshwater habitat considerations and the availability of an alternative to the proposed project that is less environmentally damaging. Further, after discussing the project with the Department's Shoreland Zoning Coordinator, it has been determined that the proposed project is not acceptable according to Chapter 1000, State of Maine Shoreland Zoning Guidelines, because the project is considered an expansion of an existing structure in the shoreland zone. For these reasons, I strongly encourage you to withdraw your application and use your boat lift strictly on a temporary or seasonal basis.

In accordance with the Department's Wetland and Waterbodies Rules in Chapter 310, the Department requires that you submit a functional assessment on the resource area where impact has occurred no later than October 15, 2009. This assessment must be completed by a qualified professional wetland scientist. The functional assessment must include an analysis of the functions and values of the resource and how the resource how/will be affected by the proposed alteration.

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RAY BLDG., HOSPITAL ST.

BANGOR

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COMMISSIONER

Please feel free to contact me at (207) 287-7898 or via email at Beth.Callahan@maine.gov if you have any questions regarding this project.

Sincerely,

A handwritten signature in cursive script that reads "Beth Callahan".

Beth Callahan, Project Manager
Division of Land Resource Regulation
Bureau of Land & Water Quality

cc: File

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Maine Department of Inland Fisheries and
Wildlife
Fisheries Division, Region B
270 Lyons Road
Sidney, Maine 04330
September 30, 2009

Beth Callahan
Bureau of Land and Water Quality
Maine Department of Environmental Protection
State House Station 17
Augusta, Maine 04333

RE: IFW Fisheries comments: After-the-fact Permanent Boat Lift, Great Pond
MDEP Application Number: L-24660-2B-B-N
Applicant: John Gilman

Dear Beth:

The Fisheries Division of the Maine Department of Inland Fisheries and Wildlife has reviewed the above referenced permit application and offer the following comments:

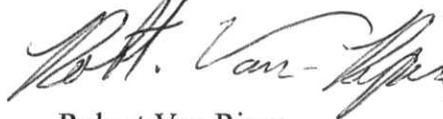
Mr. Gilman is making this application to permanently maintain an aluminum boat lift in Great Pond. The lift is hard-wired electrically to facilitate boarding. The boat lift has contact with the pond's substrate at 4 post locations for a total of 4 sq. ft. of impacts. Mr. Gilman asserts that continued removal and replacement of the structure would cause more and longer term impacts than leaving the structure in place due to site constraints. Leaving the structure in place over the winter may result in some shifting of the structure due to winds and/or shifting ice. However, given the water depths noted in the permit application and the fact that Great Pond's water level is drawn-down to a degree in winter, these movements are likely to be minor. Consequently, impacts to the pond's substrate in the area of the lift will also be minor. There will be no impacts to the pond's fisheries.

While the above comments indicate that there will be only minor environmental impacts, this Department is not supportive of allowing the placement of permanent structures in the state's Great Ponds. In fact, Maine's Great Ponds Act requires that structures be limited in terms of placement in a great pond for a duration of no longer than seven months in a calendar year. In reviewing the photographs included with the application, it does not appear that, with some planning, removal of the structure would be a difficult undertaking. Removal of the structure, again if planned for, would not cause

extensive environmental impacts as asserted in the application. The applicant's contention of the need to rewire the structure could be addressed by installing a waterproof electrical coupling device.

Thank you for the opportunity to review and comment on this project. Please do not hesitate to contact this office if you require additional information on the natural resources associated with the project.

Sincerely,

A handwritten signature in black ink, appearing to read "R. Van-Riper". The signature is written in a cursive style with a large initial "R" and a long horizontal stroke extending to the right.

Robert Van-Riper
Regional Fisheries Biologist
Belgrade Lakes Region



STATE OF MAINE
DEPARTMENT OF ENVIRONMENTAL PROTECTION

JOHN ELIAS BALDACCI
GOVERNOR

DAVID P. LITTELL
COMMISSIONER

October 2, 2009

John Gilman
P.O. Box 488
Hope Valley, RI 02832

**RE: DEP FILE #L-24660-2B-B-N
ATF PERMANENT BOAT LIFT ON A GREAT POND, BELGRADE**

Dear Mr. Gilman:

The Department has reviewed the application materials you provided in support of the above referenced project. During the review of the application, the Department has determined that additional information or clarification is necessary to verify that the proposed project meets all of the applicable standards. Relevant review comments are attached.

1. The application states that the boat lift has an attached canopy and is shown as Attachment #1. A structure of this nature will create a shading effect on the freshwater aquatic habitat and is therefore considered an indirect impact to the resource. Please submit the dimensions of this canopy and the amount of indirect impact (in square footage) that will be created as a result of the canopy over the great pond.
2. The application states that the purpose of the project is to access your boat and the pond and that there is no practicable alternative to the project. The application also states that you currently use your boat at the boat lift between Memorial Day and Columbus Day. Photo documentation taken by Department staff on February 25, 2009, indicates that no boat was accessed, stored, or maintained at the boat lift at this time. Please state how/where you store your boat during the winter months. Also, in consideration that your boat is not in use during the winter months, please consider and address the use of a temporary structure as a less environmentally damaging alternative to the project.
3. Please find attached review comments from the Maine Department of Inland Fisheries & Wildlife (MDIFW). MDIFW stated that although only minor environmental impacts are anticipated, the agency is not in support of the project.

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COMMISSIONER

Please submit the requested information no later than November 2, 2009. If you require additional time to provide the information or if you have any questions in regards to the requested information, please feel free to contact me to discuss a date for submission of the information or to answer your questions. I may be reached at (207) 287-7898 or via email at beth.callahan@maine.gov.

Sincerely,

A handwritten signature in cursive script that reads "Beth Callahan".

Beth Callahan, Project Manager
Division of Land Resource Regulation
Bureau of Land & Water Quality

Enclosures: Department staff pictures of project site, dated February 25, 2009
MDIFW comments dated September 30, 2009

Cc: File

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October 15, 2009

Beth Callahan, Project Manager
State of Maine
Department of Environmental Protection
17 State House Station
Augusta, Maine 04333-0017

RE: **DEP File # L-24660-2B-B-N**
ATF Permanent Boat Lift on Great Pond, Belgrade.

Dear Ms. Callahan:

This office represents the interests of Mr. John Gilman with respect to his Application for a Natural Resources Protection Act (NRPA) Permit. We want to thank you in advance for your attention to this matter. In addition, it is our understanding that you will be going on maternity leave shortly. Would you please forward the name and contact information of the individual who will be handling the resolution of this matter.

This letter is in response to your October 2, 2009 correspondence. First, we will respond to the questions you raise in the October 2nd letter. Second, we will provide you with an overall assessment of this case and our arguments for why the permit should be granted. We are troubled by the defeatist tone taken in many of the Department's letters to Mr. Gilman despite its willingness to accept his application and take his money; the Department seemed to be taking a position of denying the permit without listening to Mr. Gilman's arguments. We would hope that the Department will reserve its decision until after all of the information has been made available. In addition, despite the Department's contention that it does not factor in safety or public health issues in making its determination, we would strongly encourage the Department to do so. Access to Maine's lakes and rivers has always been an important public concern for the State of Maine. This maxim should also be applied to those with disabilities.

Our responses to the questions raised in your October 2nd letter are as follows:

1. The dimensions of the canopy were previously submitted with Mr. Gilman's application. The dimensions are 120' wide and 25' long. The approximate square footage is 250. Please note, however, that the canopy is only used to protect the boat while on the lift. **The canopy is removed** in late fall and is not put back on the lift until late spring/early summer.
2. Mr. Gilman's boat is stored in the winter months in Hope Valley, Rhode Island. Mr. Gilman's son typically removes the boat for Mr. Gilman. Mr. Gilman's boat is easily taken in and out of Great Pond, Belgrade by the public boat launch. Unfortunately, Mr. Gilman's

boat lift does not float and cannot be removed and/or replaced by the same mechanism as his boat. While we are certainly aware that many lake front owners are able to remove their boat lifts and store them on their front or back lawns, this is not a viable option for Mr. Gilman given the makeup of his shore frontage. See attached copy of Shoreline Functional Analysis prepared by Kleinschmidt. The disruption to the shoreline and the necessity to remove vegetation in order to take the boat lift in and out of the water would create a greater environmental impact than what is being proposed. For many individuals with difficult shorelines, the temporary solution of using a mooring is certainly an option, however, as previously indicated by Mr. Gilman, this is not a practical alternative for him given his disability.

A balancing analysis inheres in any reasonableness inquiry. While we appreciate the Department's position with respect to permanent structures in great ponds, both the NRPA and Shoreland Zoning Guidelines would allow for the permitting of Mr. Gilman's boat lift. The Shoreland Zoning Guidelines allow for both an expansion of a nonconforming structure as well as permanent structures provided that it is clearly demonstrated that a temporary solution is not feasible. As noted above, temporary solutions are not a practical alternative. The issuance of a permit is permitted if the activity will have no significant impact upon the environment. The September 30, 2009 report from the Maine Department of Inland Fisheries and Wildlife stated that "[t]here will be no impacts to the pond's fisheries." In addition it stated that "there will be only minor environmental impacts." However, it did not indicate what these minor impacts may be.

The NRPA provides that the Department shall grant a permit when the proposed activity meets certain standards. These standards are addressed in both the comments from the Maine Department of Inland Fisheries and Wildlife and the Shoreline Functional Analysis prepared by Kleinschmidt and restated as follows:

- a. The activity will not unreasonably interfere with existing scenic, aesthetic, recreational or navigational uses. An additional five months out of the year will not create a greater burden on the existing scenic, aesthetic, recreational or navigational use. In addition, the canopy is removed during the winter months and because the docks are already permitted to be in place year round, the addition of the boat lift will not create an additional burden with respect to any potential recreational activities.
- b. 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. The existing shoreline is naturally armored by boulders and cobbles. Additionally the shoreline is vegetated with shrubs and the presence of large hemlock and pine. This natural armoring serves an important function in preventing shoreline erosion and slumping of banks. Shoreline stabilization functions are not impacted by the presences of the lift. Rather, a requirement to remove the lift would likely result in an altering of the shoreline in order to allow for its placement and removal each year. This would include, but not limited to, the removal of existing riprap and vegetation.

October 15, 2009

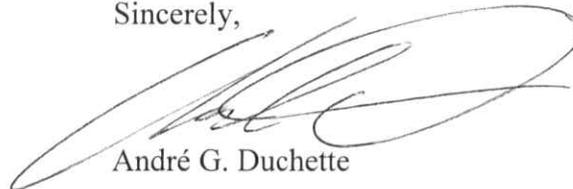
Page 3

- c. 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. Removal of the canopy will eliminate any concern with respect to any shading effect which may impact freshwater aquatic habitat. The lift has no impact on the pond's fisheries and the lift may even provide aquatic cover and habitat structure in place of naturally occurring object cover since the existing shoreline lacks substantial amounts of large woody debris or other cover sources.
- d. The activity will not unreasonably interfere with the natural flow of any surface or subsurface waters.
- e. The activity will not violate any state water quality law.
- f. The activity will not unreasonably cause or increase the flooding of the alteration area or adjacent properties.
- g. The activity is not on or adjacent to a sand dune.
- h. The activity is not a crossing or any outstanding river segment.
- i. The activity does not involve any dredging, dredge spoils disposal or transportation dredge spoils by water.
- j. The activity does not include a significant groundwater well.

When you balance the Department's position with respect to permanent structures in great ponds against the little if no environmental impact of the boat lift and a lack of a practicable alternative due to Mr. Gilman's disability as well as the disruption of the shoreline which would create a greater environmental impact, Mr. Gilman's application should be granted.

This letter is in support of the application and multiple correspondences already submitted by Mr. Gilman. If you have any questions, please do not hesitate to contact me. We kindly await your decision.

Sincerely,

A handwritten signature in black ink, appearing to read 'André G. Duchette', written in a cursive style with a large loop at the end.

André G. Duchette

Enclosure

cc: John Gilman

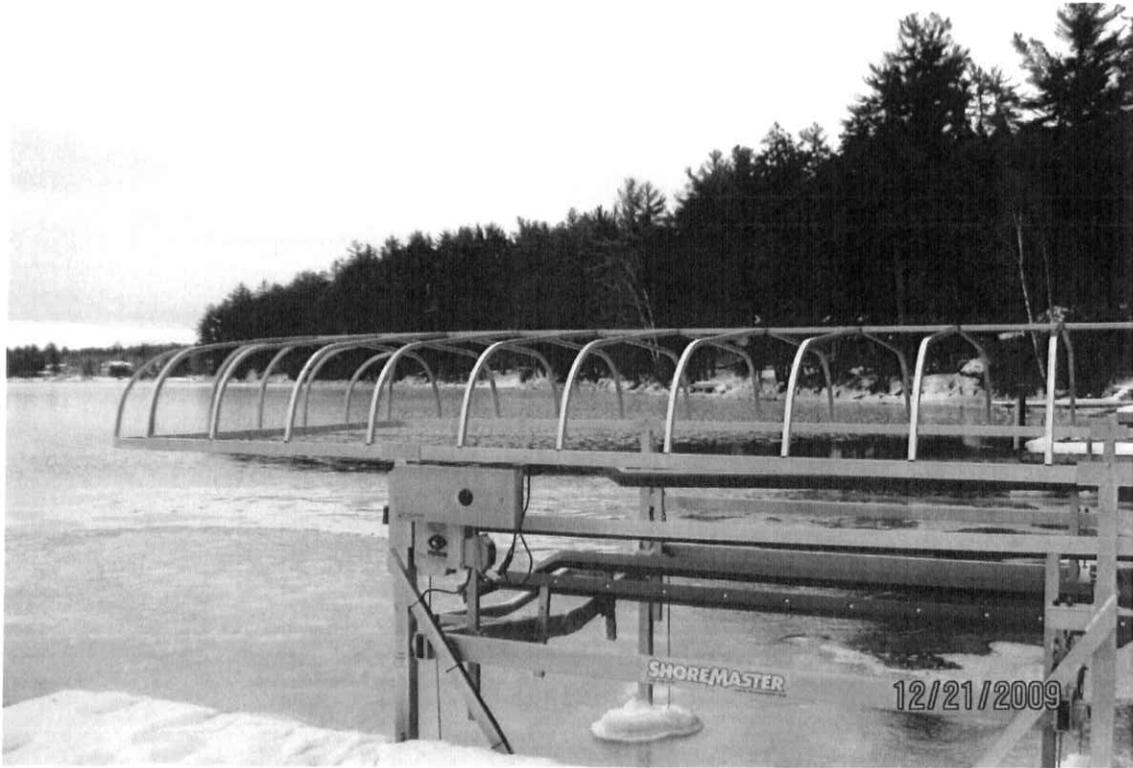
Gilman, L24660BN



View of waterfront access



View of Great Pond



View of boat lift



View of boat lift



View of shoreline + waterfront access



Project site

Alternative site: Great Pond Marina
1.2 mi From project site

Gilman 4



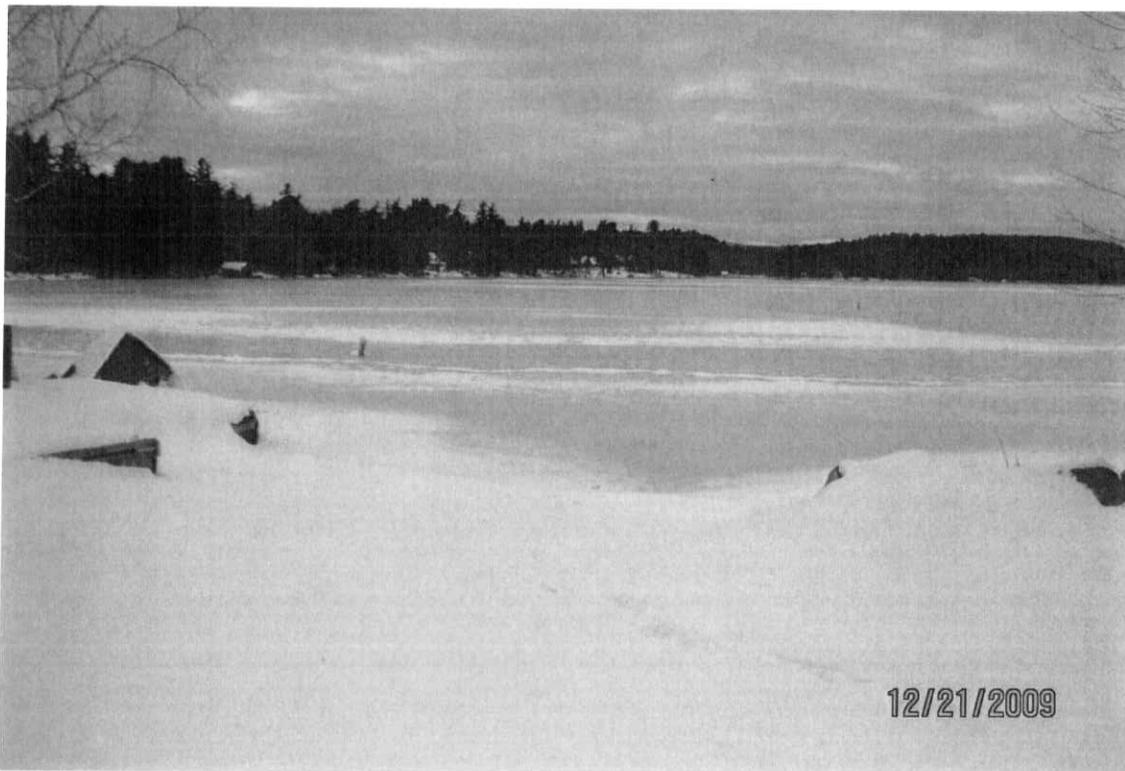
Upland storage of boat lift



Boat storage area

Alternative site: Public Boat Launching Facility
0.7 mi From project site

Gilman 5

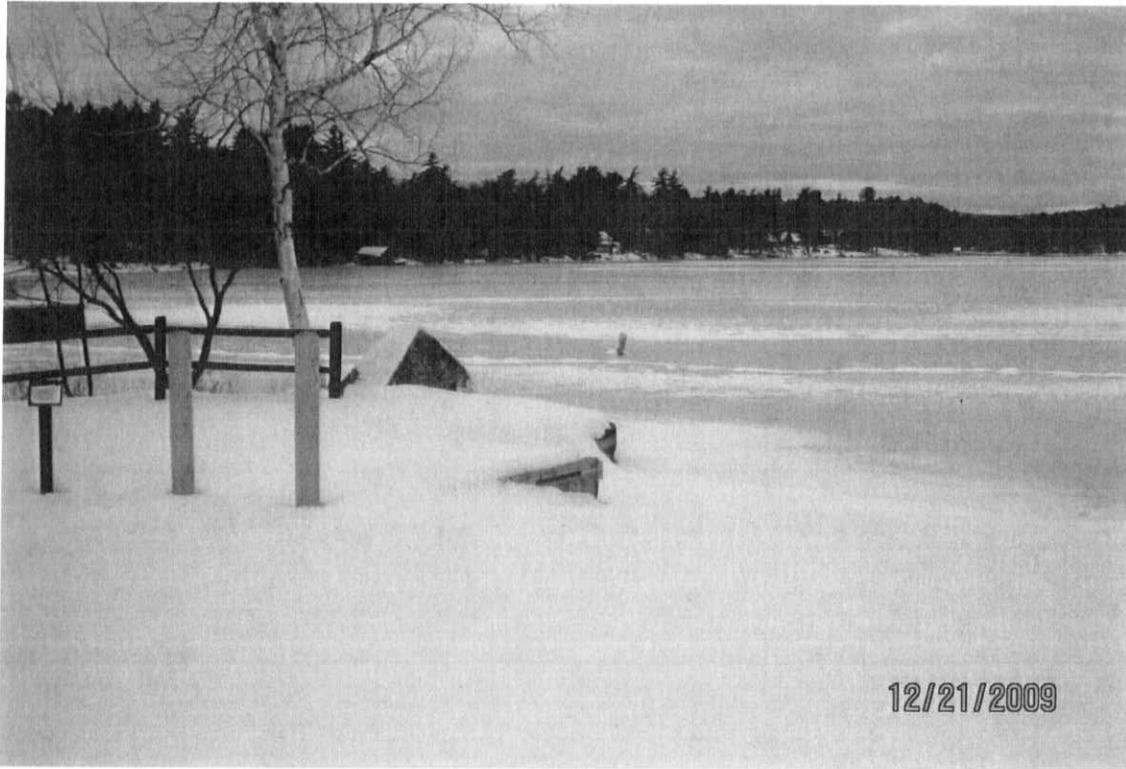


Launch area



Parking area

Gilman Co



Public Boat Launching Facility



Lake Assessment Program

Date: December 31, 2009

To: DEP-NRPA Staff

From: Roy Bouchard / DEP-DEA Lake Assessment

Re: NRPA App. #L-24660-2B-B-N

I have reviewed the file on the above cited NRPA application for Mr. Gilman, including the Kleinschmidt submittal of 10/09. There is relatively little purely biological issue raised by this isolated instance, but I do have concerns over proof of need for a permanent structure.

From a biological perspective, there are obvious negative effects in almost any instance that permanent structures are placed in lake littoral or riparian zones. These effects, coupled with the detrimental effects on biological and human values of accumulating artificial structures along shorelines and the cumulative effects over time on-site of even seemingly minor initial alterations, makes the usual prohibition of permanent structures an important safeguard for lake quality.

Given the size and design of this structure and the kind of substrate involved in this case, it is understandable that the Kleinschmidt submittal concludes that there would be little impact overall from leaving the boat lift structure in place year round. While I agree that the bare bones of the lift structure alone do not generate a lot of impact, there are always some on-site negatives even if they are minor and there should be offsetting considerations as a matter of course before this is allowed.

Note that no case was made for leaving the rest of the dock structure in place as it seems has been the practice given the DEP staff photos of 12/21/09. From the information presented, there is no reasonable assertion that these docks cannot be removed as is required under NRPA. This should have happened in any case, since the application is only for a boat lift and not permanent docks.

I do not agree with the rationale that the lift cannot be removed on an annual basis. It appears to me that the owner has adequate access to remove the structure, as so many shoreline owners around this and other lakes with similar equipment do every year. I also saw no evidence that the shore needs to be unduly disturbed to achieve removal. Indeed, the owner has a permanent structure (apparently new, or recently re-built per photos) which can facilitate the removal of dock sections and this lift if he so chooses.

I noted a comment that the Town CEO has no concerns about this installation. If the Town has jurisdiction over installation of this lift under Shoreland Zoning, then I suspect a permit would have to be issued by the Planning Board if the Town is applying the minimum state standards. These standards allow for variances in cases of hardship, usually based on physical or financial concerns coupled with a clear need.

2010

Follow-up™ Format

FROM Andre Duchette DATE 1/5/10 TIME 3:31p

COMPANY _____ TEL./FAX 828-2005

(VM) NOTES J. Gilman does not want to withdraw app., proceed w/ Dept. decision

FOLLOW-UP _____ DATE _____

COMPLETED

→ TO Debbie Gardner DATE 1/12/10 TIME 11:14a

FROM _____ COMPANY Great Pond Marina TEL./FAX 495-2213

NOTES I asked if they store boat lifts or have services to remove & transport. She said they can store, but do not remove or transport. She suggests people call G+L Contracting for removal, will send email with all info.

FOLLOW-UP _____ DATE _____

email received 2/6/10 COMPLETED

FROM Paula Mitchell DATE 2/3/10 TIME _____

COMPANY Waterville Humane Society TEL./FAX 873-9222

NOTES requested on-site pre-app for dog park

FOLLOW-UP will require SW mod., will call back when Dave W. is back from leave DATE _____

COMPLETED

TO Bill Lane DATE 2/5/10 TIME 3:10p

FROM _____ COMPANY Gartley & Dorsey TEL./FAX 236-4365

NOTES set up pre-app for Belfast Area Cohousing (left VM) 2/10 @ 1pm? w/ Art M.

(Email) FOLLOW-UP confirmed 2/10 @ 1pm DATE 2/8

COMPLETED

FROM Kemper, IFW DATE 2/10 TIME 10:17a

COMPANY RE: Bigelow TEL./FAX 547-4147

NOTES IFW requested remaining DWA to be preserved + suggested purchasing the Peaslee property. No ILF for DWA.

FOLLOW-UP contact Danielle for update DATE _____

COMPLETED