



LAKE RESCUE ASSOCIATION

EST. 1933 | LUDLOW, VERMONT

Lake Rescue State Fishing Access Proposed Dock Report

Presented by the Lake Rescue Association

to the Vermont Department of Fish and Wildlife

December 2019

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Summary

The Lake Rescue Association and lake property owners warmly welcome everyone to Lake Rescue and support efforts to accommodate all those who want to enjoy the lakes. However, that support is not unconditional and is bounded by concerns about adverse safety and environmental impacts. The decision here unfortunately triggers these concerns because it is clear that the negative impacts far outweigh any public purpose or public benefit a 48' dock would provide. The evidence establishes that the plan proposed by the Vermont Department of Fish and Wildlife is ill-conceived. To this point, the granting agency VT Department of Conservation's response statement during the public comment period that *"Based on the Department's review of the proposed dock, the project will not adversely affect the public good, including navigation and recreational activities, and is consistent with the public trust doctrine, therefore the application must be approved"* is incorrect. Specific points follow.

1. The Appellants submit that the permitting process between two sister departments under the Vermont Agency of Natural Resources reflects a conflict of interest that has biased this permit decision. The Department of Environmental Conservation's permit approval for the Department of Fish and Wildlife application appears to be rote and pre-determined. It appears instead that there is an overarching mission to install as many docks as possible in Vermont lakes, with little regard for the uniquely challenging circumstances that characterize this particular location in Lake Rescue. Significantly, the Department has not addressed the fact that the dock is part of a blanket contract with Dock Doctors established prior to permit approval.
 - a. These observations are based on the minimal responses and lack of due diligence reflected in the Fish and Wildlife's grant application effort. As one example, less intrusive alternatives to a 48' dock have NOT been adequately considered (**see Appendix A**).
 - b. These observations are also based on the perfunctory dismissal of many thoughtful and substantive comments by over 58 property owners. Contrary to the State's position, the Appellants argue that the public trust doctrine and the public good are NOT supported by this decision (**see Appendix B**).
2. Unlike other instances of dock installations across Vermont (**see Appendix C**), navigation and safety WILL be significantly compromised in Lake Rescue due to the already compressed navigation area a dock will exacerbate, and interference will occur with the water usage by the public in an already congested and busy shoreline (**see Appendix D**).
3. Water quality WILL be adversely impacted, as the increased activity will exacerbate the spread of Eurasian milfoil (**see Appendix E.1**) from a very (and increasingly due to sedimentation buildup) shallow launch area and path to the main lake (**see Appendix E.2**).
4. Jurisdictional arguments by the VT DEC that significant related issues, such as parking, boating safety, and alternative sites, are "outside the scope of review for a Lake Encroachment permit" reflect not only indifference to the legitimate concerns of property owners, but are hypocritical to the pillars of encroachment permitting, that the adverse impacts will not outweigh the public good and the public trust. At the least, this narrowly focused permitting process is irresponsible, reflecting a short-sighted, non-integrated silo approach that will have negative consequential long-term impacts on Lake Rescue (**see Appendix F**).

Appendix A

Lake Encroachment Permit Application Analysis

The permit application by the Fish and Wildlife Department (F&W) contains responses considered by the Appellants to be sparse, perfunctory, and poorly supported. This suggests a pre-determined outcome might be assumed by the Applicant, which would negate the need to vigorously defend a decision that will have significant impact on the lake community. Following are most of the permit questions, the Applicant's answers, and the Appellants' assessment of those answers. Further elaboration on most of these points can be found in Appendices B-F.

E. PROJECT DESCRIPTION

2. Describe the purpose of the proposed project:

APPLICANT ANSWER: *The purpose of this project is to update the existing boat launch with an ADA accessible floating dock system to help improve public recreational access.*

APPELLANT RESPONSE: There is no demonstrated need that public recreational access needs to be improved. The dock proposed will actually decrease public access by restricting the available shoreline boat beaching area.

3. Describe what less intrusive feasible alternatives have been considered:

APPLICANT ANSWER: *The permanent pile platform versus a solid concrete abutment. Steel truss commercial quality docks do not require any in water anchoring, unlike typical wood floating docks.*

APPELLANT RESPONSE: The Applicant's response does not give adequate consideration for a less intrusive alternative to a 48' dock. The characteristics listed hardly qualify as "less intrusive." The Applicant does not consider any non-dock, smaller dock, or an L-shaped dock, or any other alternative to their proposal.

4. Describe the public benefits of the proposed project:

APPLICANT ANSWER: *The public benefit of the project is to provide ADA accessibility to the Lake Rescue boating community.*

APPELLANT RESPONSE: There is no demonstrated need that ADA accessibility will be enhanced at this launch location, and any enhancement to the public good has not been weighed against adverse impacts. According to the VT DEC, "the burden is on the applicant to demonstrate that the encroachment serves a public purpose and provides a public benefit," provided that the public purpose and benefits outweigh adverse effects on the public good. We do not see an effort by the Applicant to demonstrate need or how the need outweighs the adverse impacts of the project. According to VT Statute Title 29, Chapter 11, paragraph 405:

(b) In determining whether the encroachment will adversely affect the public good, the department shall consider the effect of the proposed encroachment as well as the potential cumulative effect of existing encroachments on water quality, fish and wildlife

habitat, aquatic and shoreline vegetation, navigation and other recreational and public uses, including fishing and swimming, consistency with the natural surroundings and consistency with municipal shoreland zoning ordinances or any applicable state plans.

Public Comment response #5 asserts that the F&W Department considered these effects. The Appellants disagree. As will be argued in following appendices, because of the location of the public access in Lake Rescue, the proposed project will impact water quality, aquatic vegetation, navigation, public safety, and is too intrusive for and out of keeping with the natural surroundings.

F. ENCROACHMENT EFFECTS

1. What measures are proposed to minimize the project's effects on water quality (e.g., use of a turbidity curtain)?

APPLICANT ANSWER: *The dock installation does not require any disturbance of the lake bed or shoreline; there will be no in water anchoring. Therefore, the dock installation project will not create any added turbidity or water quality issues.*

APPELLANT RESPONSE: One primary concern with increased boat traffic in an already challenged area is the increasing spread of Eurasian milfoil, a problem exacerbated by our uniquely challenging geography at the fishing access. Eurasian milfoil is most highly concentrated in the fishing access area. Increased activity will undoubtedly increase the spread of milfoil, a condition both the Department of Fish and Wildlife and the Department of Environmental Conservation are working diligently to address. This activity will also increase erosion and turbidity aggravating an already existing problem in the Narrows channel.

2. How will the project minimize effects to fish and wildlife habitat (e.g., project is not to commence until after fish spawning July 1 of any calendar year)?

APPLICANT ANSWER: *The dock will not have any in water anchoring, therefore there will be no impact on the fish or wildlife's habitat.*

APPELLANT RESPONSE: We believe that this is too narrow an approach in assessing impacts on fish and wildlife given the increased usage, both legal and illegal, due to a dock installation.

3. Does the project propose removal of aquatic or shoreline vegetation? If so, what measures are proposed to reduce the effects of vegetation removal?

APPLICANT ANSWER: *The project does not require any trees to be removed. No aquatic vegetation will be required to be disturbed.*

APPELLANT RESPONSE: Parking issues are necessarily tied to this project, as has been mentioned in the Public Comment Response Summary as a follow-on phase 2 plan. There seems to be an absence of a master plan, and a cart-before-the-horse approach, as accommodating increased parking, paving a handicap parking space, etc., will require expanding a small, overcrowded parking area, by possibly excavating the forested hillside.

4. Describe the surrounding shoreline. Is the project consistent with these surroundings? What measures are proposed to ensure the project is in keeping with the surroundings?

APPLICANT ANSWER: *The project is an existing, functioning public boat launch facility. The dock installation will continue to provide the public with the opportunity to launch boats. The new dock system will also provide an ADA accessible launch dock for the Lake Rescue boating community.*

APPELLANT RESPONSE: This answer by the Applicant does not address the question of being in keeping with the surroundings, and reflects an isolated response rather than reflecting how it is or isn't consistent with land uses, development patterns, natural systems, etc. The natural surroundings are wooded and sloped. The built surroundings include crowded conditions, with houses close together on either side, all with short docks and/or floats. The boat launch usable shoreline is only 50-55' wide, including the launch area. The public now has little trouble launching boats, except when it is crowded and there is a wait time. A dock will overcrowd this small area, increasing waits and congestion, and in general place added stress on the surroundings, both natural and built.

5. Will the project affect navigation, recreation, and other public uses? If so, how will these effects be minimized?

APPLICANT ANSWER: *The project is proposed to enhance public access and recreational use; navigation will not be affected.*

APPELLANT RESPONSE: The Applicant makes a statement with no supporting evidence, such as input from the Army Corps of Engineers or other professional resources. It is incorrect; navigation will be adversely affected. A dock will diminish the already small navigable area at the boat launch significantly. Boaters will likely not utilize the west side of the dock because there will be little if any remaining accessible shoreline on that side. Additionally, pontoon boats have access doors on the port and rear sides of the boat, which would render them unusable with a dock on the starboard (left/west) side of the boat ramp. Finally, fixed prop boats, which are common on Lake Rescue, have limited maneuverability and can only reverse to the starboard (right), or directly into a dock on its starboard side.

Appendix B

Public Hearing and Public Comment Summary Analysis

Ludlow Public Hearing

The Ludlow Public Hearing held in March 2018 was attended by approximately 15-18 concerned people, mostly Round Pond property owners, who voiced concerns about the congested and narrow boat access, the creation of an “attractive nuisance” which would attract swimming and other prohibited recreational activities, and safety concerns because of the uniquely crowded and active shoreline. However, the Vermont Fish and Wildlife state representative dismissed all concerns raised. It was clear from input from several attendees that this individual considered it his job to install as many docks as possible to increase public access in Vermont, regardless of any mitigating circumstances. Importantly, he made clear his impression that those who objected were simply selfish and represented wealthy people with a NIMBY attitude. His tone was intense and highly insulting to the attendees, his assumptions were profoundly off-base, and his gross generalization about the demographics around Lake Rescue was incorrect. A letter, shown below, written by Bruce Zanca, co-President of the LRA and Round Pond property owner, reflects this impression. The Appellants argue that in addition to the conflict of interest that exists on this issue within the Agency of Natural Resources, this bias represents a discriminatory attitude that fuels the F&W decision to push this plan forward.

From: Bruce J. Zanca <bruce@zanca.com>
Sent: Thursday, March 29, 2018 11:15 AM
To: Wichrowski, Mike <Mike.Wichrowski@vermont.gov>
Subject: feedback on public meeting regarding Lake Rescue fishing access

Dear Mr. Wichrowski:

I was surprised and disappointed in the manner in which you interacted with the people who attended the meeting in Ludlow last night. I listened to your presentation over a Skype bridge as I was out of state and unable to attend the meeting in person. Perhaps you don't realize how insulting your presentation and deportment was to the people who attended the meeting? You treated the property owners (taxpayers) as if they were/are the state's enemy. It was very clear to the people who attended the meeting that you don't care about or appreciate their point of view. You were impolite. You arrived late at the meeting which was disrespectful to the citizens who made an effort to be there on time. It was quite clear that you are not interested in hearing anyone else's perspective. It appeared to many the people at the meeting that you have a chip on your shoulder in regard to property owners. As the Lands & Facilities Administrator for the Department of Fish and Wildlife I know you have an informed perspective about the lakes. But you outright dismiss the informed perspective of people who have lived their lives for years firsthand observing the day-in-day-out coming and going of the Fishing Access boat ramp on Lake Rescue. Perhaps you might be able to learn something from the people who live in the area and know what happens day-in-and-day-out.

We are all well aware that the lakes and waterways belong to "all of the people". But that said, property owners and taxpayers should not be ignored, belittled or held in personal contempt by a state official. You made a point of saying that you were there to advocate for all of the citizens. That's fine, but you should acknowledge that the citizens who are property owners and taxpayers are due your respect as a public official.

I thought it was important for me to give you this feedback and perspective because you may not be aware of how insulted many people were by the manner in which you conducted yourself. I thought about writing a note to your supervisor, the Commissioner, our state legislator, or the Governor. But, thought I would be direct with you first.

Sincerely,

Bruce J Zanca

161 Fishing Access Rd., Ludlow, VT 05149

Mr. Wichrowski offered a quick and thoughtful response, and apologized if he sounded dismissive or disrespectful, noting that neighbors *“are typically the most knowledgeable people for any of our properties so we always appreciate the feedback. Without our neighbors, we would be at a loss when it comes to knowing the day to day activities at the Lake Rescue access or any other.”* Ironically, however, the overarching tone and bent of the Public Comment Response Summary below glaringly contradicts this sentiment.

Public Comment Response Summary Analysis

It is the State’s position that an encroachment permit be approved *“if the department determines, after reviewing the applications, the written comments filed within the notice period and the results of the investigation, that the proposed encroachment will not adversely affect the public good.”*

The public comment period garnered 58 published and paraphrased comments, though it is unclear whether this represents all the comments submitted, and duplicative comments were combined. The total actual response number is not known, but is admittedly higher. Comments reflected serious and substantive concerns by property owners. The preponderance of comments were unified in scope and reflected intimate knowledge of the area. They dealt primarily with safety and navigation concerns due to the small size of the cove, parking area, and launch area. There were no comments in favor of a dock installation.

The vast majority of responses from the State were repetitive, dismissive, and were not evidence-based, seemingly reflecting a shared goal by both the Applicant and the granting agency to push the project through. Contrary to Mr. Wichrowski’s assertion, the responses did not reflect the slightest inclination to take neighbors’ input seriously. The Appellants found the entire exercise to be disingenuous and patronizing.

Responses can be categorized as follows.

1. **SAFETY.** All comments referring to valid safety concerns were generally met with two responses: swimming and picnicking are prohibited, and in any event are both beyond the scope of the permit, and 200’ no-wake regulations are in effect. These responses are simply inadequate and do not reflect a realistic or reasonable assessment of real issues. They did not take into account the level of activity and crowded conditions present in the summer. People do swim off their properties and at the boat launch; a 5-mph restriction will not alleviate the additional congestion from the decreased shoreline access and more boats waiting and idling that a dock would produce, further endangering swimmers, particularly children, and non-motorized watercraft.
2. **NAVIGATION.** Responses again referred to the 200’ no wake rule, simply stating without evidence that *“the proposed dock installation has not been determined to adversely impact navigation or the public good.”* However, although boats will at all times be within the 200’ limit in the small cove, they will also encroach upon private property water rights because of the narrowness of the cove. *“The Department assessed the length of the dock, the size of the access area, average boat sizes, and the use of public water rules”* but, again, did not assess how busy or congested this particular area is, something the neighbors know all too well. Nor did they refer to any professional resource or the maneuverability and visibility issues that accompany the placement of the dock on the west side of the ramp.

3. **PUBLIC GOOD AND PUBLIC TRUST.** The vast majority of responses to comments relied on the following rationale: “The project will not adversely affect the public good and is consistent with the public trust doctrine and therefore must be approved.” Some version of this statement was present in fully 33, **or 57%** of responses, in some cases three or four times within the same response. The public trust doctrine was referred to in 15 responses. Many comments were simply met with this explanation in rote fashion and no other. Clearly this is the standard by which the permit application was approved. However, according to the encroachment permitting process, *“if the applicant demonstrates that the project would serve a public purpose and/or provide public benefits, **the applicant must then demonstrate that the public purpose and benefits outweigh any adverse impact the project may have.** The Department will determine a project to be consistent with the Public Trust Doctrine if the public purpose and benefits outweigh adverse effects on the public good.”* Several comments from property owners questioned the public benefit or usefulness of a dock in the cove in the first place, and articulated in detail the many adverse impacts that would occur. There was no effort in any State response to demonstrate how the balance might tilt toward serving the public good beyond any adverse impacts, *simply that there would be no adverse impacts.* This is not the case.
4. **SEDIMENT AND MILFOIL.** A few comments concerned sediment accumulation and Eurasian milfoil exacerbation due to increased boat activity. These concerns were met with a jurisdictional response, that these issues were beyond the scope of the encroachment permit process and there were other resources to assist. This non-integrated approach to complicated, intersecting challenges is irresponsible.
5. **CHOICE OF LAKE RESCUE.** In describing why Lake Rescue was chosen, the State responded that considering alternate locations was beyond the scope of the permitting process. They did, however, state that “the Department of Fish and Wildlife tries to determine where usage is highest, so it can provide the largest benefit to the most boaters. . . Lake Rescue is an extremely popular access and is the largest lake in the Plymouth Lakes region, so it was identified as a top priority for outfitting with a dock.” The popularity of Lake Rescue is exactly why a dock is inappropriate in the already highly congested space that defines the limited boat launch area. An analysis of why Lake Rescue was chosen plays a role in determining the weight of the public good, which is an essential component of the Public Trust Doctrine.
6. **PARKING, RECREATIONAL USES.** Several comments referenced parking congestion at the boat launch and prohibited recreational uses the dock would encourage. The responses mostly deflected these issues as beyond the scope of review, noting on several occasions that “Encroachment permitting extends to public waters and the lands lying thereunder, which lie beyond the shoreline or shorelines delineated by the mean water level of any lake or pond which is a public water of the State. Recreational usage of the access area and issues concerning parking congestion above mean water level is beyond the scope of review under this permit.” Seven comments expressing concern about prohibited activities at the launch site were simply met with an intention to place additional signage reviewing the rules. Like in so many other examples, these dismissive responses suggest a lack of knowledge or concern about the specific conditions at Lake Rescue and a lack of interagency coordination in developing a sustainable plan that is thorough in scope and actually benefits the public good rather than compromising it.

Appendix C

Other Vermont Dock Installations

In an effort to put the proposed installation of a 48' dock in the Round Pond area of Lake Rescue by the Vermont Fish and Wildlife Department in context, the Appellants have investigated other Fishing Access Areas in the state to compare some key features. Failure to do so is inconsistent with a Public Trust Doctrine analysis. ***There is no other state lake access chosen for a dock installation that is as compromised as Lake Rescue.***

According to the Public Comment Response #26, 31 of the 141 access areas with boat ramps have a dock, most of which are in the northern and western parts of the state. Of these, based on data from the Vermont Open Geodata Portal, the Vermont F&W Fishing Access search webpage, and the 2017 installations reviewed below, there are approximately nine lake docks with universal access. There are currently no ADA compliant docks in Windsor (where there are 13 public fishing access areas) and Windham (where there are 8 public fishing access areas) counties. According to Public Comment Response #22, Lake Rescue was chosen because it is “an extremely popular access and is the largest lake in the Plymouth Lakes region, so it was identified as a top priority for outfitting with a dock.” (Note: The acreage was reported incorrectly at 229 acres. Lake Rescue is 184+/- acres, which includes the 42-acre shallow Round Pond where the boat launch is located. The main lake is approximately only 140 acres.)

This statement appears to be the sole rationale for Lake Rescue as a “top priority” - a popular lake and the largest lake in a region with few docks. The fact that the size of Lake Rescue, at 184 acres, is far smaller than any other lake with *any* kind of dock (Vermont Open Geodata Portal: <http://geodata.vermont.gov/datasets/VTANR::fishing-access-areas?geometry=-82.965%2C42.482%2C-62.058%2C45.253>), and that the Fishing Access Area is in a particularly narrow and environmentally challenged part of the lake, in sharp contrast to docks placed in every other lake, is not considered. Its boat launch location is already overcrowded, creating safety and environmental concerns even without a dock. Nearby lakes in the Plymouth Lakes region (Echo Lake at 96 acres, Amherst at 76 acres, Woodward Reservoir at 106 acres, and Chittenden Reservoir, only 33 miles from Lake Rescue, at 750 acres), have less congested open areas at which a dock could be installed. Although parking may be an issue in some of these cases, apparently that is “outside the scope of the permitting process.”

To demonstrate this point, we offer the following comparisons with the eight ADA-compliant docks installed in 2017. In 2017, it was reported by Mike Wichrowski, Vermont Fish and Wildlife Lands and Facilities Administrator that “. . . *eight new ADA (Americans with Disabilities Act) compliant docks have been installed at fishing access areas to enhance accessibility for anglers and boaters with disabilities. New docks can be found at Lake St. Catherine in Wells, Whipple Point and South Bay on Lake Memphremagog in Newport, Crystal Lake in Barton, Island Pond in Brighton, Larrabee’s Point on Lake Champlain in Shoreham, and Benson Landing on Lake Champlain in Benson. Additional access area upgrades are planned for next summer at Marshfield Reservoir in Cabot, Big Salem Lake in Derby, Chimney Point on Lake Champlain in Addison, and Lake Dunmore.*” (New England Boating, Sept.7, 2017; <https://newenglandboating.com/vt-improves-boating-fishing-access-sites/>)

Figures C.1 - C.25 are photos of the 2017 eight new dock sites and locations, most of which were borrowed from the VT Fish and Wildlife Fishing Access Areas Search page or are Google satellite images. These images clearly indicate that all docks are in areas open and unencumbered by any significant congestion; all are in larger lakes; most or all have large parking areas.

Benson Landing, Lake Champlain

172,000 acres



Figure C.1. Benson Landing, satellite im-



Map data ©2019 Google 100 ft

Figure C.2. Benson Landing, dock and ramp



Larrabee's Point, Lake Champlain

172,000 acres



Figure C.3. Larrabee's Point, satellite imag-



Figure C.4. Larabee's Point, dock and ramp

Larrabee's Point, Lake Champlain, cont'd

Figure C.5. Larrabee's Point, dock, ramp, parking



Figure C.6. Larrabee's Point, parking

Crystal Lake, Barton, VT, 778 acres

Google Maps



Figure C.7. Crystal Lake, satellite image 1

Map data ©2019 Google 1000 ft

Google Maps



Figure C.8. Crystal Lake, satellite image 2

Map data ©2019 Google 100 ft

Figure C.9. Crystal Lake, dock



Figure C.10. Crystal Lake, dock, ramp



Figure C.11. Crystal Lake, pier



Lake St. Catherine, Wells, VT, 883 acres

Google Maps

Figure C.12. Lake St. Catherine, satellite image



Figure C.13. Lake St. Catherine, dock, ramp



Island Pond, Brighton, VT, 608 acres

Google Maps

Figure C.14. Island Pond, satellite image



Map data ©2019 Google 200 ft

Figure C.15. Island Pond, dock, ramp



Seymour Lake, Morgan, VT, 1,777 acres

Google Maps Figure C.16. Seymour Lake, satellite image



Map data ©2019 Google 500 ft



Figure C.17. Seymour Lake, dock, ramp

Whipple Point, Lake Memphremagog

Newport, VT, 6,317 acres

Google Maps State fishing access, Whipple point lake Memphremagog, VT



Figure C.18 Whipple Point, satellite image

Vermont Fish and Wildlife Department

Imagery ©2019 CNES / Airbus, Maxar Technologies, USDA Farm Service Agency, Map data ©2019 200 ft



Figure C.19. Whipple Point, parking



Figure C.20. Whipple Point, dock, ramp



Figure C.21. Whipple Point, accessible parking

South Bay, Lake Memphremagog

Newport , VT, 6,317 acres

Google Maps VT fish and wildlife dept, south bay, lake Memphremagog, VT



Figure C.22. Lake Memphremagog, satellite image

Imagery ©2019 Maxar Technologies, USDA Farm Service Agency, Map data ©2019 200 ft

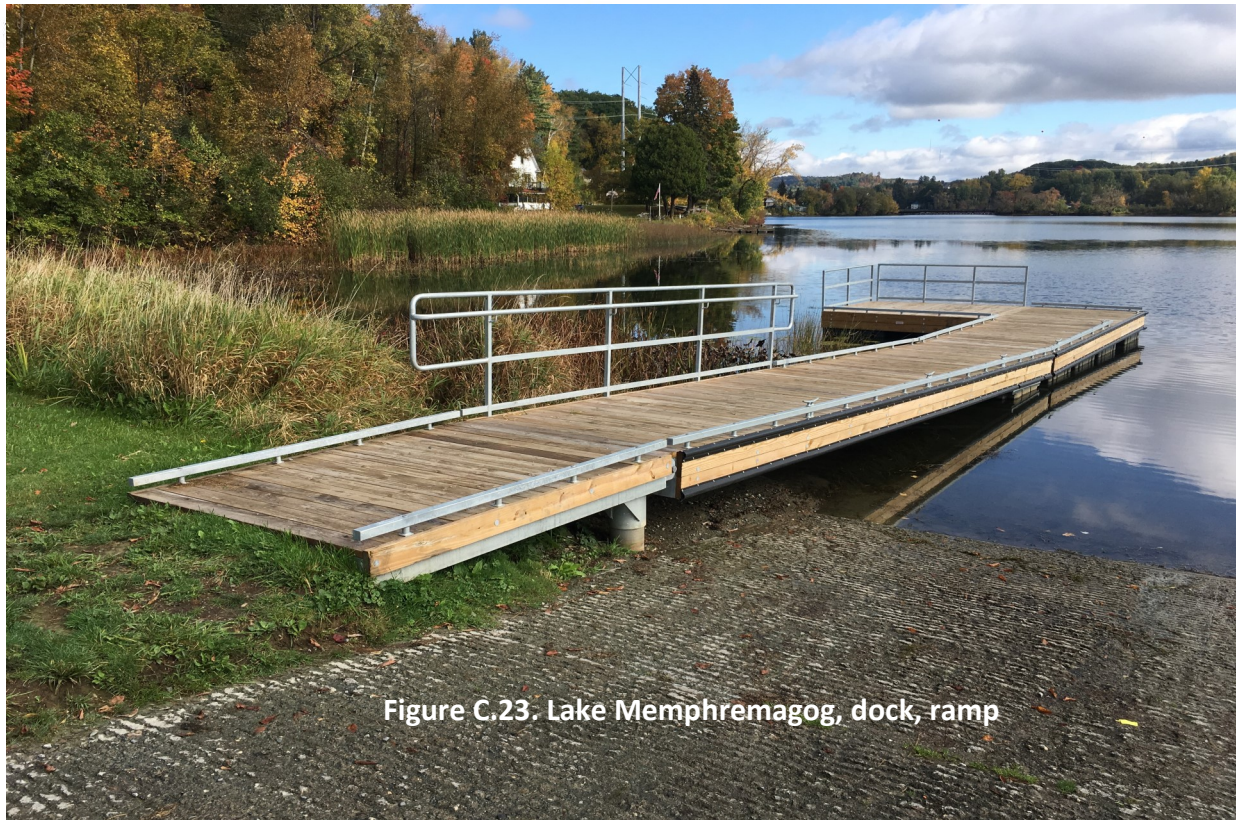


Figure C.23. Lake Memphremagog, dock, ramp

South Bay, Lake Memphremagog, cont'd



Figure C.24. Lake Memphremagog, dock, ramp, parking



Figure C.25. Lake Memphremagog, parking

Appendix D

Lake Rescue Fishing Access Layout and Proposed Dock Location

The Lake Rescue State Fishing Access lies in stark contrast to the eight dock locations chosen for installation in 2017. Lake Rescue, at 184 acres, is a very busy, popular lake and is challenged by a small, awkward, congested state fishing access location with a small parking area. It is located in a shallow 42.4-acre part of the lake (Round Pond) that is connected via a narrow, shallow channel (The Narrows) to the main lake. As Public Response #40 notes, the accessible boat launch shoreline is only 50 feet, not the 175 feet the State owns. The remaining 125 feet abut a steep, wooded hillside that is inaccessible, unless major work is done to partially remove the hillside and shoreline vegetation, a problematic concern in itself. With the existing ramp and a dock installed, the remaining accessible shoreline would amount to about 25 feet. With the amount of motorized boat traffic, drop-offs and pick-ups, non-motorized launchings and take-outs, pedestrian activity, etc., this is inadequate space.

D.1 General Topography and Geography

Lake Rescue is fed primarily by the Black River, which flows from Echo Lake into Round Pond, with its entry point opposite the boat launch. Boaters must navigate through increasingly shallow, milfoil-infested waters through a channel into the main lake. Figures D.1-D-4 illustrate the topography of the area as well as the geography of the land and the crowded conditions of houses, boat traffic, exposure to milfoil areas, etc.

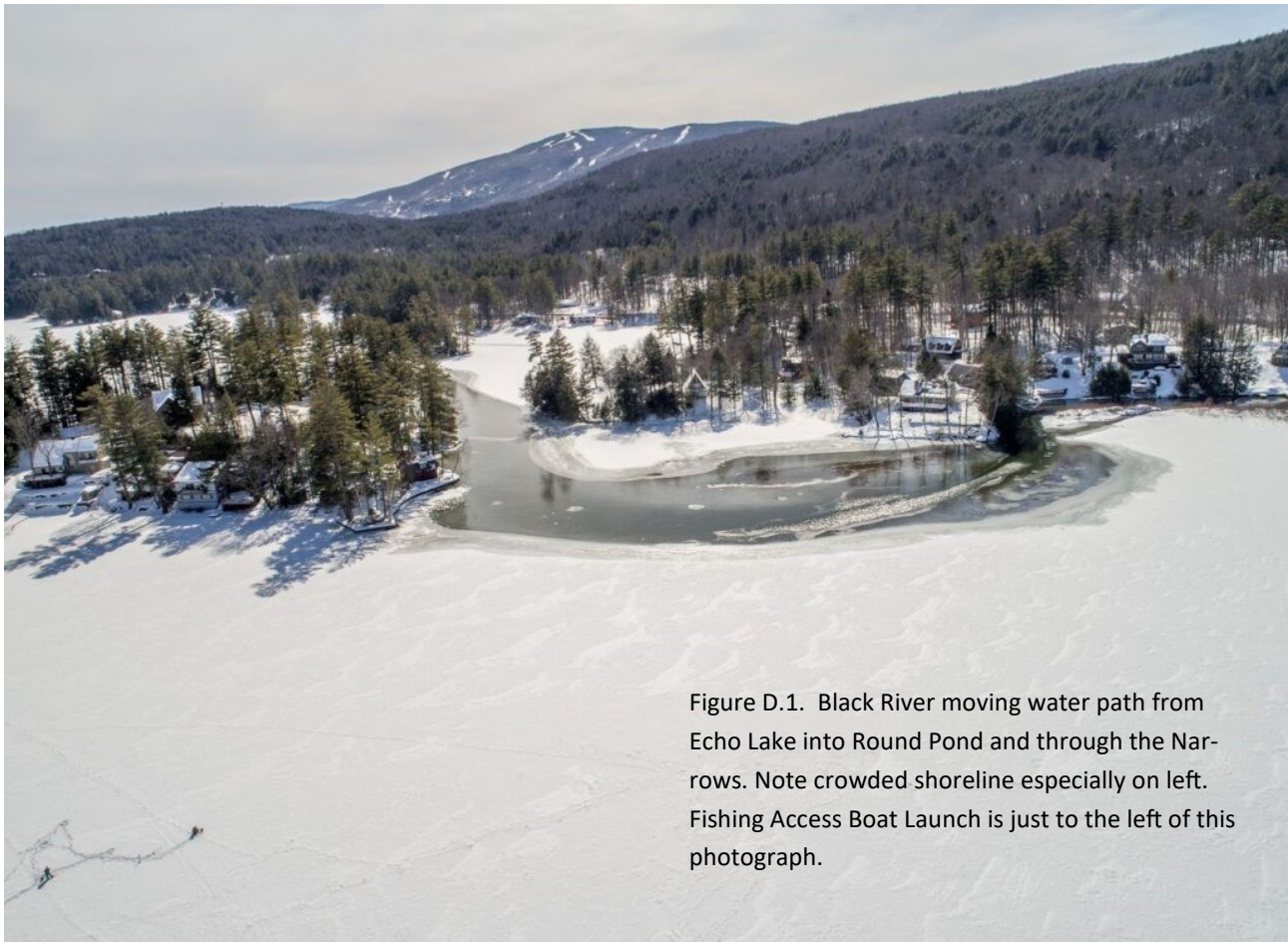


Figure D.1. Black River moving water path from Echo Lake into Round Pond and through the Narrows. Note crowded shoreline especially on left. Fishing Access Boat Launch is just to the left of this photograph.

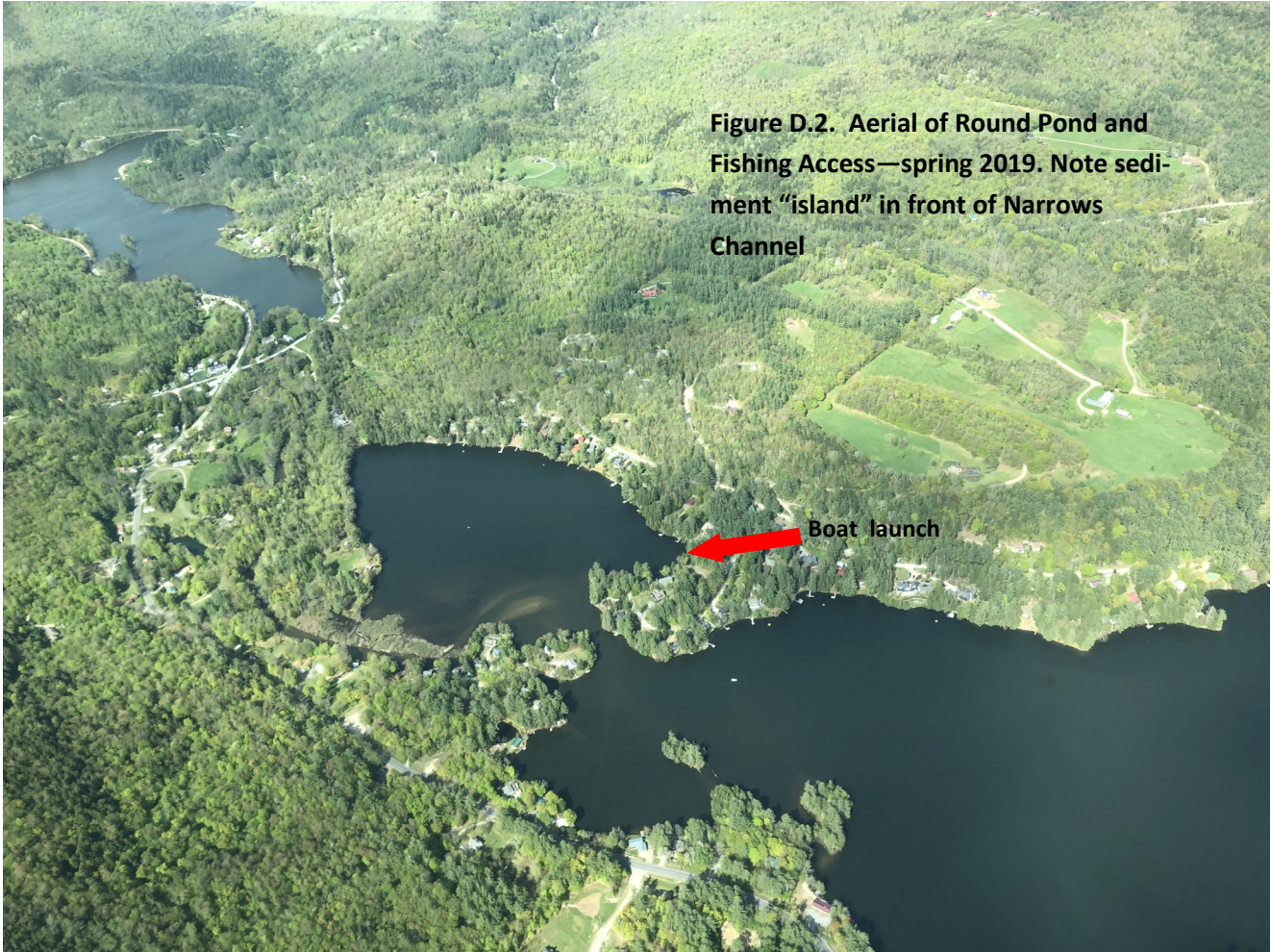


Figure D.2. Aerial of Round Pond and Fishing Access—spring 2019. Note sediment “island” in front of Narrows Channel

Boat launch

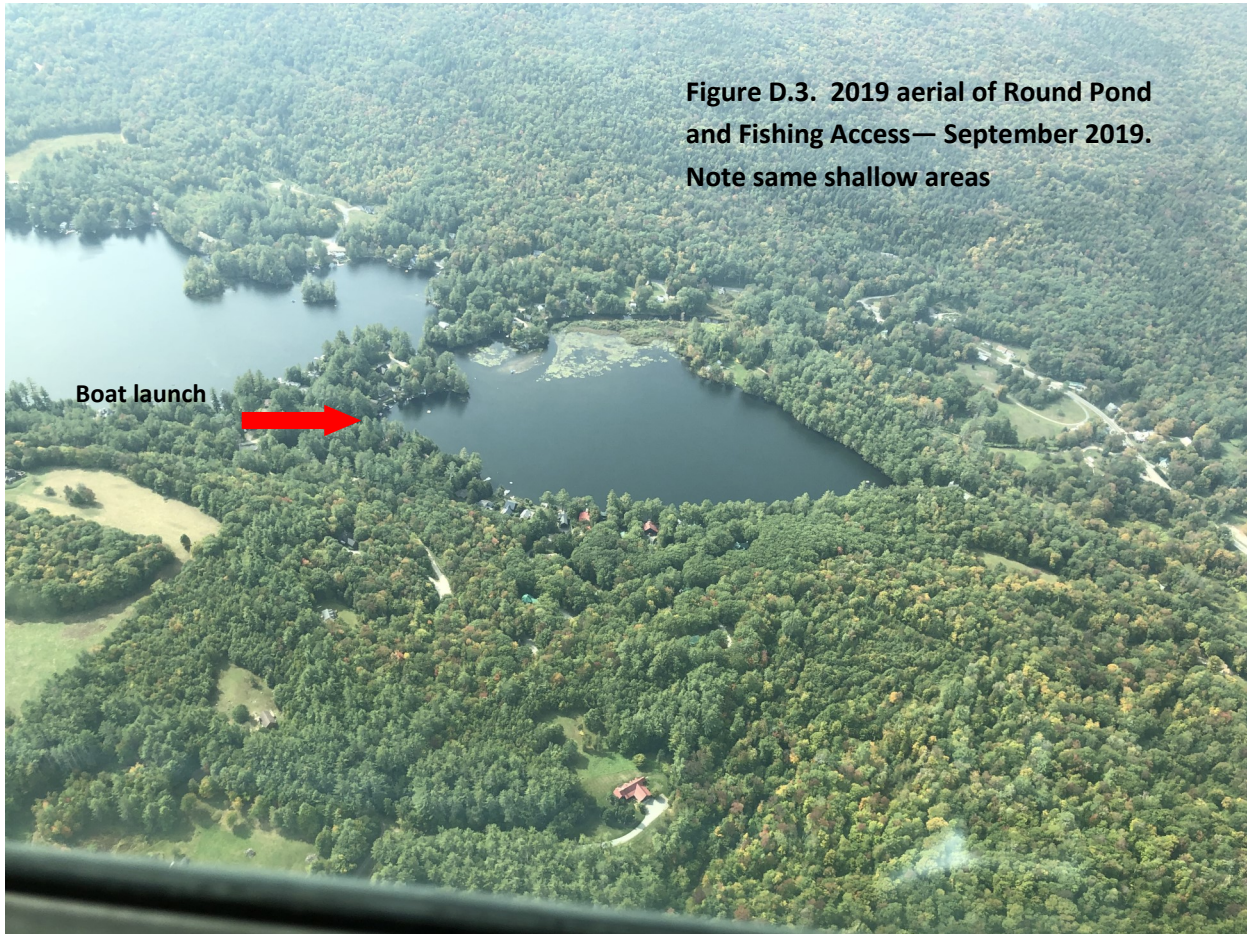


Figure D.3. 2019 aerial of Round Pond and Fishing Access— September 2019. Note same shallow areas

Boat launch



Figure D.4. Fishing Access Boat Launch, Round Pond, Narrows Channel, and Black River inlet featuring increasing sedimentation and milfoil presence, August 2019

D.2 Small Launch Area

The proposed dock will be placed within a small existing launch area with a 50' foot usable shoreline. Additional state-owned shoreline to the left of the ramp is at the bottom of a steep, forested hillside, and at present is basically unusable. The access is located in a small cove surrounded by homes, private docks and floats, and frequented by swimmers, all of which produce encroachment issues. Due to the level of summer activity at and around the launch site, safety concerns have been reported to the LRA by neighbors and boaters, as well as expressed in the Ludlow Public Hearing and in the Public Comment Response Summary. There is approximately 10' of usable shoreline to the left of the ramp, which would be mostly occupied by the dock, and only about 25' of shoreline to the right. See Figures D.5 - D.9b below.



Figure D.5.
Fishing Access Shoreline, VT F&W website



Figure D.6.
Video surveillance camera still image, early morning



Figure D.7. View from parking area to abutting property owners' docks/floats



Figure D.8. View from proposed dock site to abutting property owners' docks/floats

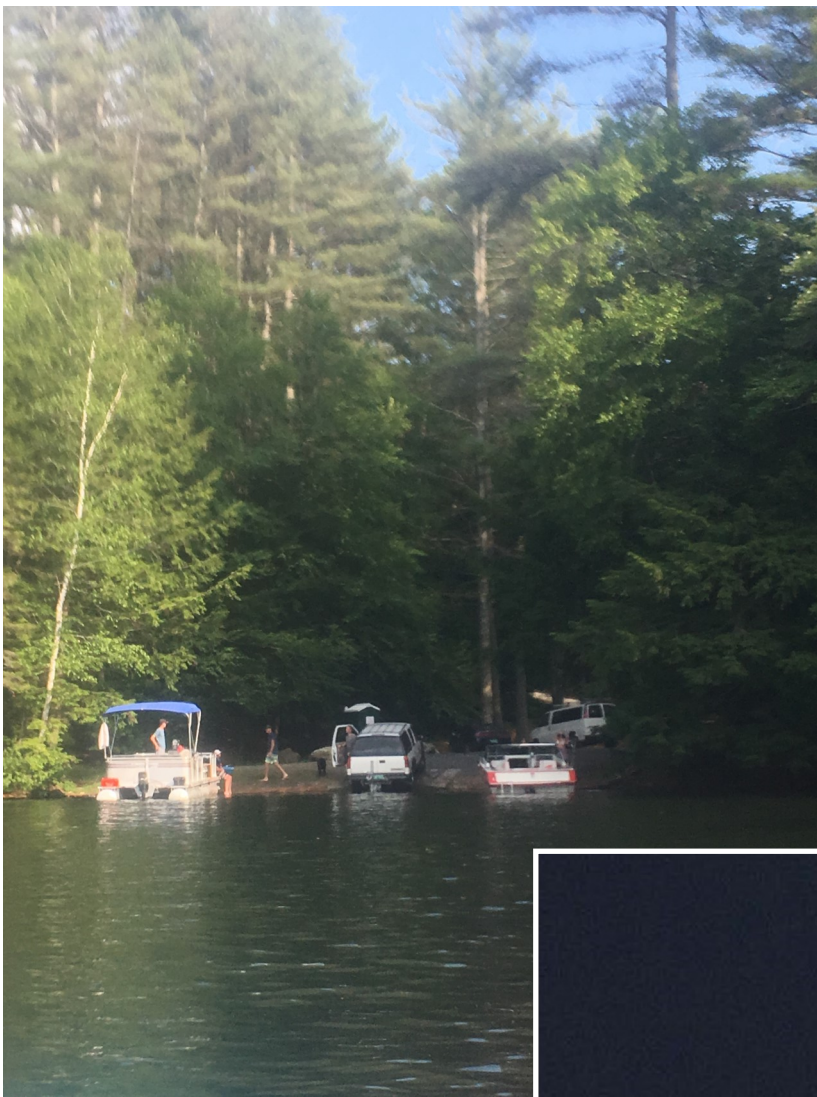


Figure D.9a. Typical summer launch activity. Note area to right of launch (where dock would be) is wooded and unusable to boaters.

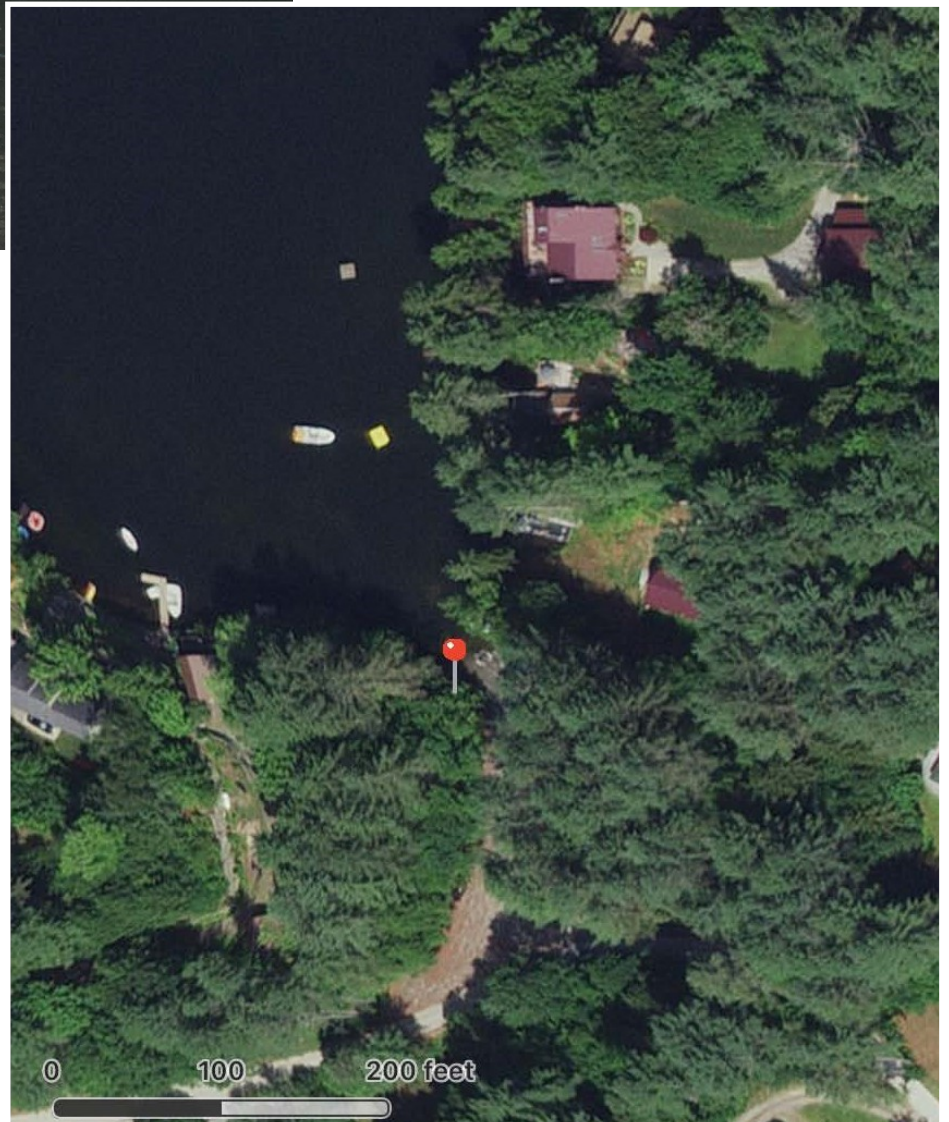


Figure D.9b. Aerial view of launch site

D.3 Navigation and Encroachment Issues

The site congestion at the small launch area is compounded by navigation issues leaving, entering, and waiting in and around the site. A dock structure would not ameliorate but rather aggravate these navigation issues.

Navigable space. Figure D.10 depicts an approximation of the 50-foot distance from shoreline allowed for floating docks/rafts, highlighted in yellow. As mentioned on many occasions, this is a crowded, small cove. Navigation into the launch area already requires that it be undertaken with great care. The blue lines depict an approximation of the VT fishing access shoreline, with the hatched section to the left representing inaccessible shoreline. Figure D.11 depicts the reduction in boating access with a dock installed. Boaters will not readily utilize the west side of the dock as there would be very little to no shoreline left to access.

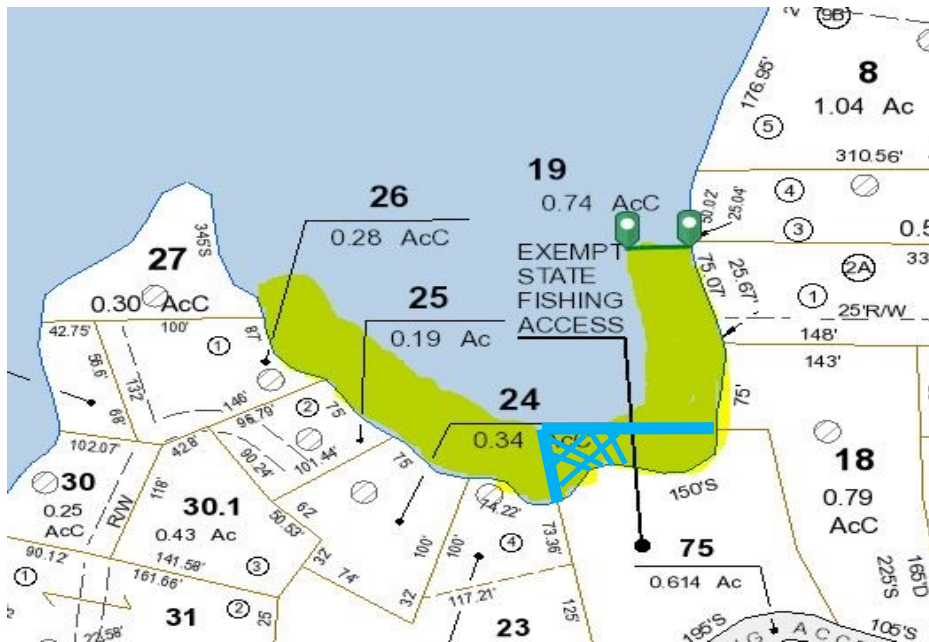


Figure D.10. Fifty-foot encroachment area in cove showing usable boat launch lake frontage without a dock

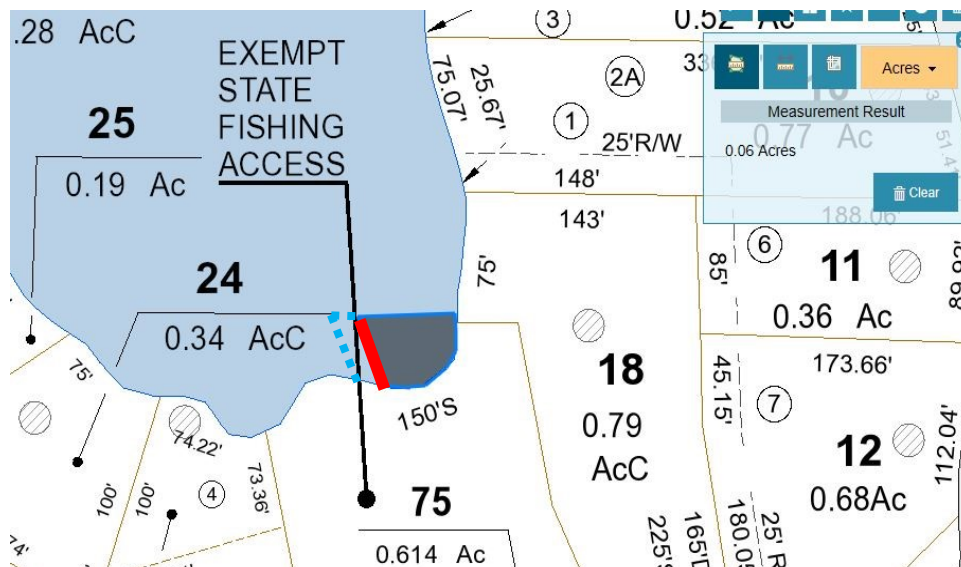


Figure D.11. Usable lake frontage with dock installed, dotted lines indicating lost space.

Dock Placement. Navigation concerns include those that are related to the specific placement of the dock at the boat ramp. It is agreed a dock would not be feasible placed on the east side of the boat ramp. However, the dock as proposed (48 feet long and located on the west side of boat ramp) creates safety issues due to how certain boats operate and reduction in visibility. Fixed prop boats (like many of the ski boats on Lake Rescue) have limited maneuverability when in reverse. A fixed prop boat will only back to the starboard (right) side of the boat due to “prop walk,” therefore causing a boat backing off a trailer to drift towards the dock and anyone on or about the dock. Second, as proposed, the dock and any activity on or about the dock will be out of sight of a driver backing a boat and trailer down the ramp. Alternatively, a shorter dock located on the west side of the boat ramp would enable a fixed prop boat to clear the end of the dock when backing off the trailer; this, however does not resolve the visibility issue.

Also, as mentioned, boaters will likely not utilize the west side of the dock because there will be little, if any, remaining accessible shoreline on that side. Additionally, as mentioned in Appendix A, pontoon boats have access doors on the port and rear sides of the boat, which would render them unusable with a dock on the starboard (left/west) side of the boat ramp.

Waterfront Civil Engineer Analysis. Following is a letter and plan (Figure D.12) submitted by Warren Hall, a Rhode Island Civil Engineer specializing in waterfront projects, to abutting property owners and Appellants Ken and Kate Haslam. Among his concerns are 1) the private water rights encroachment that will occur with a dock installation, and 2) the lack of attention in addressing navigation safety concerns. During a site visit, Mr. Hall produced a plan illustrating the launch access layout and encroachment issues with the abutting Haslam property.

Warren Hall, Civil Engineer
PE # 5114, PLS # 1917
63 Elmwood Ave.
Middletown, RI 02842

November 1, 2019

Mr. Kenneth & Kate Haslam
22 Fishing Access Road
Ludlow, Vermont

Letter of Findings: Floating Dock Installation, Permit Number 2536-LEP

Dear Mr. & Mrs. Haslam,

Please note the following:

A) I am not a registered professional engineer or land surveyor in the State of Vermont.

I am both a registered professional engineer and registered professional land surveyor in the State of Rhode Island. I have over 36 years of experience in design, permitting and construction of waterfront projects. These include residential piers, commercial marinas, commercial shipyards, dredging operations, shoreline stabilization, mitigation of sea level rise, culvert crossings, and storm water quality projects.

I have reviewed the information package you have forwarded to me. Which included the draft Lake Encroachment Individual Permit Number 2536-LEP.

I have the following comments:

- 1) Part b. Standard Conditions 7 and Part c. Findings 12 Compliance with other regulations and effects on Fish & Wildlife Habitat: requires the Army Corps of Engineers GP conditions be met, however there is no reference to the Black River Essential Fish Habitat (EFH) included in the *draft* permit I have reviewed.
- 2) Impacts to private properties, your 50' lake encroachment right has a portion of the existing concrete boat ramp within the lot line extension and will be further impacted by the proposed floating system. See attached plan highlight A
- 3) There are no mitigating safety measures to direct boaters toward the center of the pond, such as buoys or channel designation markers. Fairways widths are designated as 1.5 times the vessel length.

November 1, 2019
Letter of Findings: Floating Dock Installation, Permit Number 2536-LEP
Page 2 of 2

4) I have attached a plan I produced from an on-ground survey.

If you have any questions please call me at 401-849-5905.

Respectfully Submitted,



Warren Hall, PE, PLS, State of Rhode Island

Attachments:

Plan dated 10-9-19, Reference Boat Ramp to Fence Lines

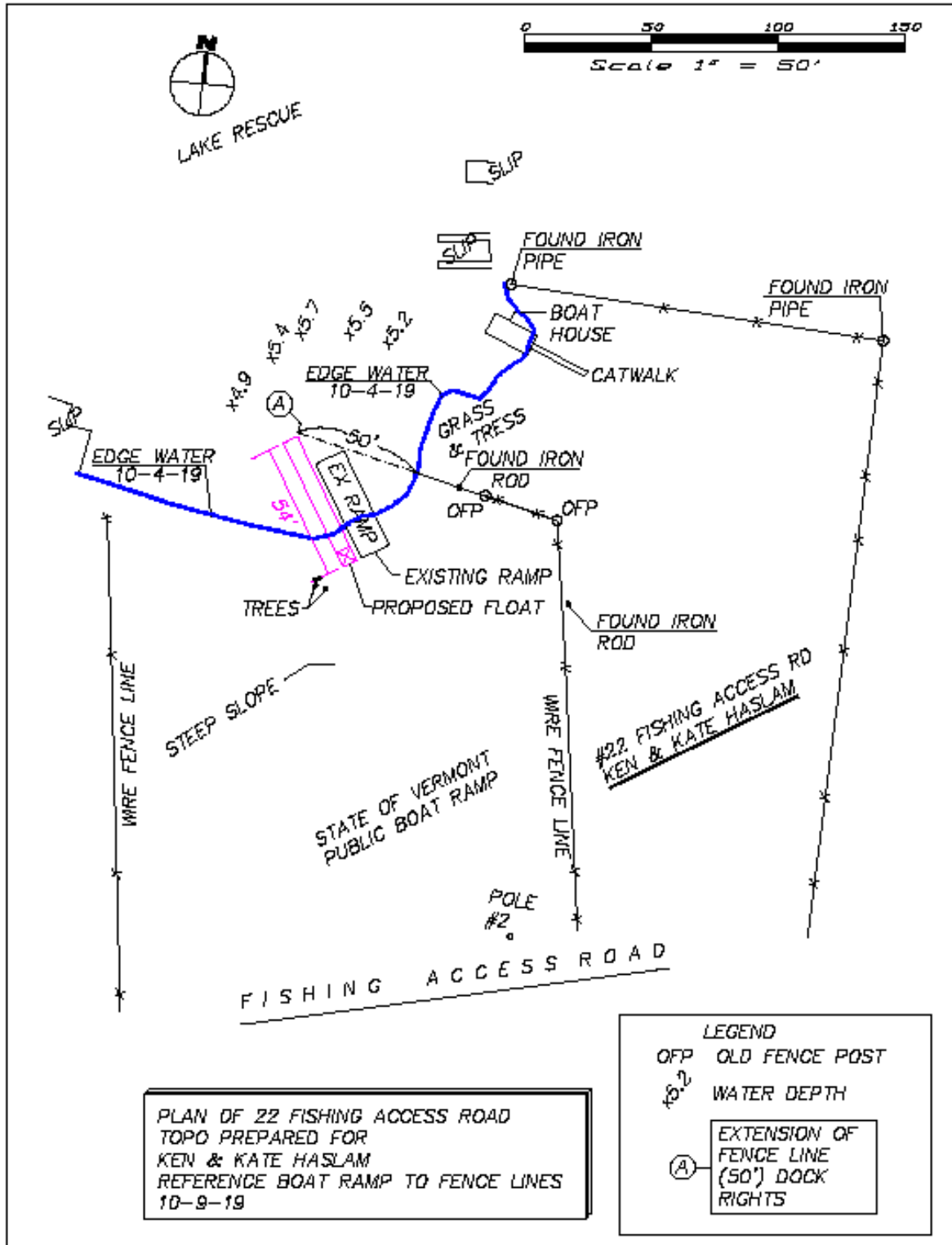


Figure D.12. Hall topographical plan of fishing access and abutting property lines

D.4 Boat Launch Activity

The level of summer activity at this small boat launch site is significant. Whether and how a 48' dock will attract additional boating and pedestrian/recreational activities, both permitted and prohibited, and how increased activity may exacerbate related adverse impacts, have been rejected for consideration via jurisdictional arguments. It is, however, the stated intent of the State to expand access through dock installations. Cogent arguments and personal experiences that represent first-hand knowledge by property owners and Lake Rescue boaters in the Public Comments point to safety, environmental, and practical concerns, and are summarily rejected.

Public Comment # 51 serves as an example. The State responded to the comment below with both the fallback jurisdictional argument ("beyond the scope of review"), the rejection without evidence of a navigation concern, and the fallback public good argument ("the size of the dock has been found to not adversely impact navigation or the public good, therefore the project shall be approved.")

51. Comment: The proposed design will negatively affect boat ramp operations. A nearly 50-foot boat dock will essentially reduce the area on the boat ramp by half. It's already difficult to back a boat trailer into the water. A large boat dock will make this task even more difficult. Moreover, on many summer days there is a significant wait for ingress and egress to the water. Currently there is enough room for one boat and trailer to be backing into the water while another boat and trailer are exiting the water. With the installation of the boat dock this will no longer be possible. The water side is narrow and is regularly full of kayakers, swimmers, and boaters. The land side has a small parking lot at the base of a steep hill. Without the addition of a dock, this is an unsafe area. I have witnessed many close calls between boaters, and I fear that with less area to navigate launching and landing boats, there will most definitely be accidents. More boats cueing up to come onto land also will mean more idling, noise, and fuel in the water.

The Appellants believe it is relevant to document some representative activity at the boat launch site referred to in the Public Comments. We rely on three sources of 2019 data to estimate and illustrate summer-time Lake Rescue boat launch activity.

- 1. Public Access Greeter Program.** As part of the state milfoil grant Lake Rescue Association receives, the Lake Rescue Association runs the required Public Access Greeter Program, the purpose of which is to inspect watercraft going into and out of the lake for the presence of aquatic invasive species, and to educate boaters about these issues. Figure D.13 reflects the official 2019 report submitted to the Vermont Department of Environmental Conservation, which corroborates the LRA video surveillance monitoring. This record represents 23 mornings from approximately 8 a.m. to 12:30 p.m. across 12 weekends from June 9 to September 2. A total of 214 launches or take-outs were recorded, 140 of which were motorized boats, and 74 of which were non-motorized. Note that this number does not reflect additional boat launch activity, including drop-off/pick-ups, or pedestrian activity. If the factor of 3.5 for afternoon activity is applied based on the LRA monitoring described below, the July 4th 2-day weekend (July 6-7), for example, likely saw a total of around 148 events (33 morning and 115 afternoon), or about a 50% increase over the August two-day, Saturday/Sunday weekends sampled through video surveillance. Note this number represents *just* launchings and take-outs, so the actual event number is likely even higher.

2. **LRA Video Surveillance Footage Count.** The LRA installed a video camera on the Haslam private abutting property to monitor the activity at the boat launch from July 9 - through September 2019. Figure D.14 shows a data set representing the activity during three 3-day weekends in August, from 5:00 a.m. to 10:00 p.m. Friday-Sunday on August 2-4, 9-11, and 16-18. Video reviewers counted an average of 131.3 “events” across a 3-day weekend. Events are defined as the launching or removing of motorized boats, non-motorized boats, as well as pedestrian visits (dog walkers, swimmers, fishermen, etc.) and boat beaching to pick up/drop off passengers. Activity increased each weekend day, with Sunday reflecting the most activity (Fridays averaged 34 events per day, Saturday 42.3 events, and Sunday 55 events), and afternoon activity far exceeded morning activity on each day, by an average of 3.5 times.

3. **Activity and Demonstrated Need - Video Still Shots.** The Appellants understand the goal of the dock installation is to increase access by the general public to Lake Rescue, including specifically those with disabilities. We do not think a 48’ dock is the answer for the variety of reasons expressed. In all the video surveillance, reviewers saw one elderly/disabled passenger being assisted onto a pontoon boat. They returned on several occasions across the two months of video surveillance. Figures D.15 illustrates their boarding method. Figures D.16 - D.23 illustrate another visit. Figure D.24 which follows is a letter submitted by Mr. Craig Peters, the gentleman in the photos, in opposition to the dock.

Following the letter, Figures D.25 - D.42 illustrate typical activity at the boat launch on weekend days in August, captured from video surveillance. These photos do not include the vessels idling in the cove waiting to egress or pick up/drop off passengers, nor is it clear that vehicles are often waiting in the parking area for their turn to access the launch.

date	mo-torboats	non-mo-torized	total	weather
9-Jun	8	3	11	
15-Jun	5	2	7	cool, showers
16-Jun	1		1	
22-Jun	8	1	9	nice
23-Jun	5	3	8	nice
4-Jul	9	5	14	nice
6-Jul	9	4	13	nice
7-Jul	15	5	20	nice
13-Jul	3	2	5	nice
14-Jul	7	1	8	nice
20-Jul	5	7	12	nice
21-Jul	7	5	12	cool, showers
27-Jul	5	9	14	nice
28-Jul	5	5	10	nice
3-Aug	8	2	10	nice
4-Aug	5	0	5	nice
10-Aug	5	3	8	nice
17-Aug	5	2	7	showers
18-Aug	5	3	8	nice
24-Aug	2	6	8	nice
25-Aug	4	2	6	nice
31-Aug	7	1	8	nice, cool
1-Sep	7	2	9	nice, cool
2-Sep	0	1	1	rained all day
Total	140	74	214	24 mornings

Figure D.13. Vermont 2019 Public Access Greeter Program Data Report

Figure D.14. Lake Rescue Boat Launch Sample Weekend Activity

date	time	remove motor	remove non-motor	launch motor	launch non-motor	pedestrian	events per hr	total am/pm	daily total
Friday, Aug. 2	5-6 am						0		
	6-7			1			1		
	7-8					1	1		
	8-9				1		1		
	9-10			2	1	2	6		
	10-11			1	1	1	1		
	11-12			2	1	1	4	14	
	12-1 pm	1	2	4			0		
	1-2			1	1	1	1		
	2-3			1	1	1	2		
Friday, Aug. 9	3-4	2	1	3-4	1	1	2		
	4-5	2	1	1	1	1	5		
	5-6	1	1	2	1	1	3		
	6-7	1	8	6	1	1	15		
	7-8	3	4	1	1	1	3	18	
	8-10	1	3	1	1	1	0	32	
	5-6 am			1			1		
	6-7	1		1			1		
	7-8	1					1		
	8-9	1		1	1	1	2		
Saturday, Aug. 3	9-10	1		1	2	3	3		
	10-11			2	1	1	3		
	11-12			2	1	1	7	18	
	12-1 pm	5	1	1	1	2	2		
	1-2	1	1	1	1	1	4		
	2-3	1	1	1	1	1	4		
	3-4	3	1	3-4	1	1	3		
	4-5	1	2	1	1	1	2		
	5-6	1	1	1	1	1	3		
	6-7	2		1	2	3	3		
Saturday, Aug. 10	7-8	4	1	3	1	9	5		
	8-10	3	1	1	1	2	1	25	43
	5-6 am						0		
	6-7						0		
	7-8			1			1		
	8-9						0		
	9-10			2	1	1	2		
	10-11			1	2	1	5		
	11-12			1	1	1	2	10	
	12-1 pm	1	2	3	1	1	6		
Saturday, Aug. 17	1-2	1	1	1	1	1	4		
	2-3						2		
	3-4	2	2	2	3	2	5		
	4-5	1	2	1	2	2	3		
	5-6	2	2	2	3	1	6		
	6-7	1	2	1	2	2	3		
	7-8	1	2	2	2	2	5		
	8-9	3	1	1	1	2	1	27	38
	5-6 am						0		
	6-7						0		
Saturday, Aug. 18	7-8			1			1		
	8-9						0		
	9-10			1	1	1	3		
	10-11			1	1	1	3		
	11-12			1	1	1	3		
	12-1 pm	1	2	1	2	8	12		
	1-2	1	1	2	2	7	18		
	2-3	4	7	4	6	2	9		
	3-4	1	6	2	2	1	7		
	4-5	3	4	2	4	1	4		
5-6	1	5	3	5-6	1	3			
Sunday, Aug. 4	6-7	4	2	1	2	1	10		
	7-8	1	2	2	1	1	4		
	8-10	1	2	1	1	1	3	38	127
	5-6 am						0		
	6-7						0		
	7-8			1			1		
	8-9						0		
	9-10			1	1	1	3		
	10-11			2	1	2	5		
	11-12			1	1	1	2	10	
Sunday, Aug. 11	12-1 pm	1	2	3	1	1	6		
	1-2	1	1	1	3	1	4		
	2-3	1	1	3	3	1	7		
	3-4	1	1	1	8	1	11		
	4-5	3	2	2	2	1	4		
	5-6	1	1	3	3	1	3		
	6-7	4	2	1	2	2	2		
	7-8	1	2	1	1	1	2		
	8-10	1	2	3	40	45	3	40	45
	total weekend								139
Friday, Aug. 16	5-6 am						0		
	6-7						0		
	7-8						0		
	8-9						0		
	9-10			1	1	1	3		
	10-11						0	rain	
	11-12						0	1	
	12-1 pm						0		
	1-2			1	2	3	3		
	2-3			1	1	1	2		
Friday, Aug. 17	3-4	1	1	2	3	7	7		
	4-5	3	3	1	4	4	15		
	5-6	2	2	1	5-6	1	3		
	6-7	2	2	2	6-7	2	2		
	7-8			1	1	1	3		
	8-9	1	1	1	8-9	1	1	21	102
	5-6 am						0		
	6-7			1			1		
	7-8						1		
	8-9						0		
Saturday, Aug. 18	9-10	1		1	1	1	2		
	10-11			1	1	1	3		
	11-12			1	4	1	6	11	
	12-1 pm			1	2	2	5		
	1-2			3	2	2	7		
	2-3			2	3	2	7		
	3-4			2	2	2	6		
	4-5			1	2	3	6		
	5-6			2	5-6	2	2		
	6-7			2	6-7	2	2		
Sunday, Aug. 19	7-8						0		
	8-9						0		
	9-10			1	1	1	3		
	10-11			1	1	1	3		
	11-12			1	1	1	3		
	12-1 pm			1	2	8	12		
	1-2			1	2	7	18		
	2-3			4	6	2	9		
	3-4			1	4	2	7		
	4-5			4	2	1	7		
5-6			5	5-6	1	6			
Total weekend	6-7			1	2	1	4		
	7-8			1	1	1	3		
	8-9			1	1	1	3		
	9-10			2	2	2	6		
	10-11			1	1	1	3		
	11-12			1	4	1	6		
	12-1 pm			1	2	2	5		
	1-2			3	2	2	7		
	2-3			2	3	2	7		
	3-4			2	2	1	5		
4-5			4	2	1	7			
5-6			5	5-6	1	6			
6-7			2	2	2	6			
7-8			2	2	1	5			
8-9			1	1	1	3			
Grand Total/avg.									

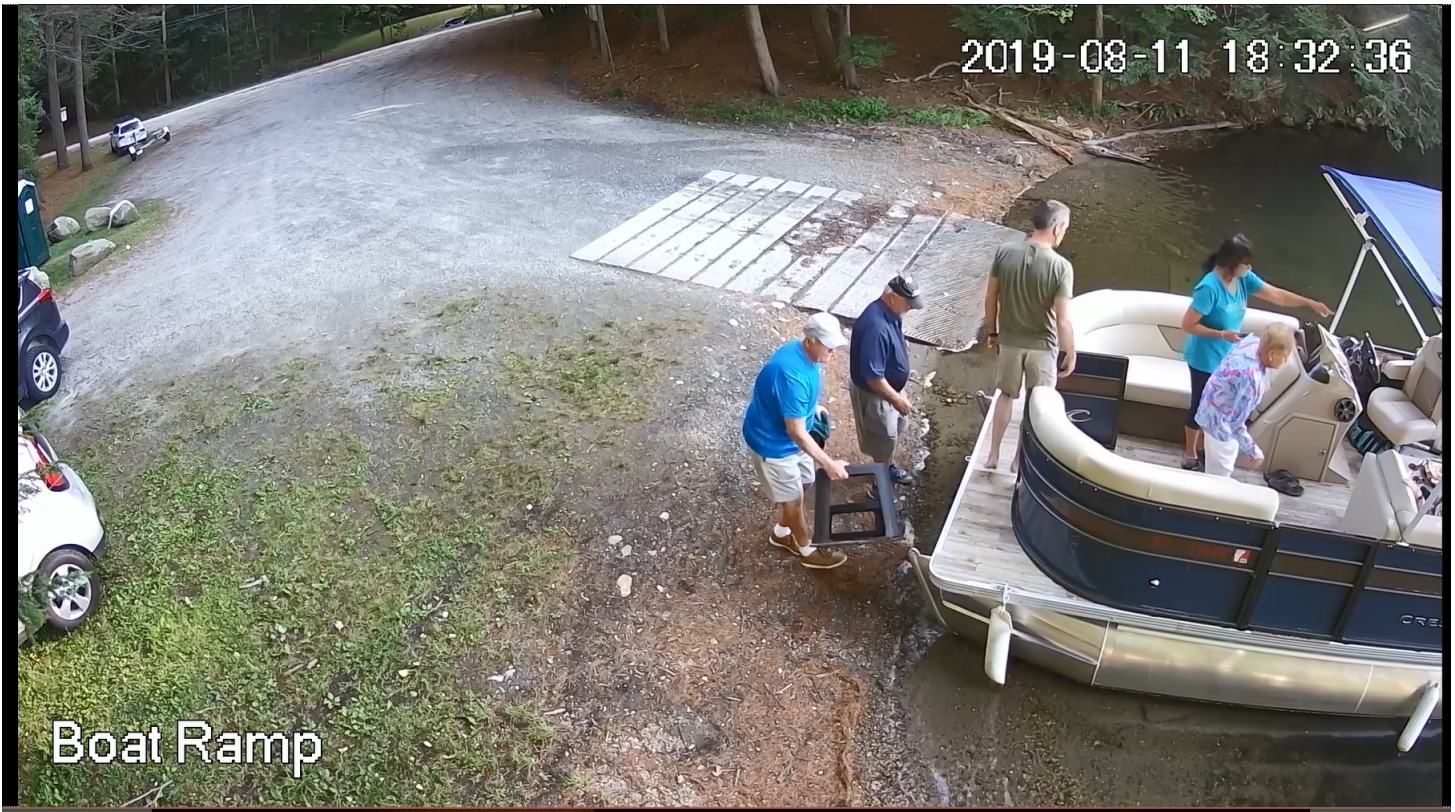
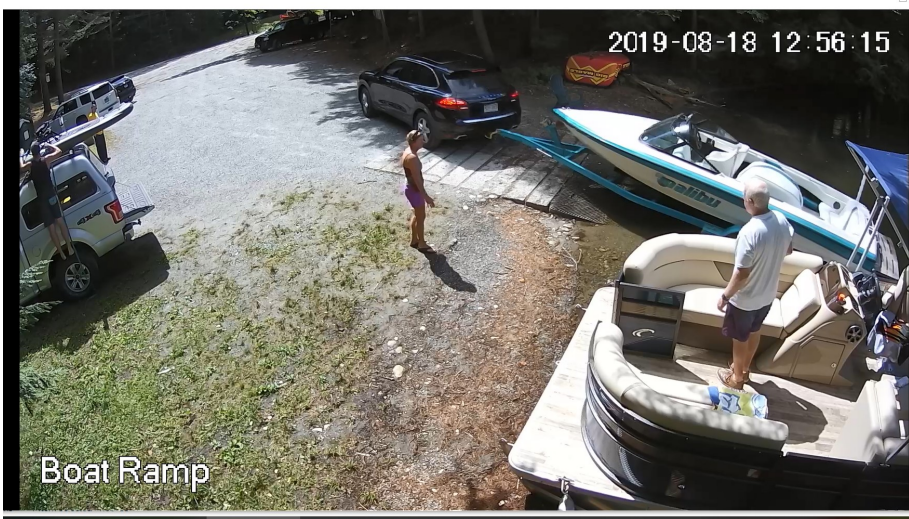
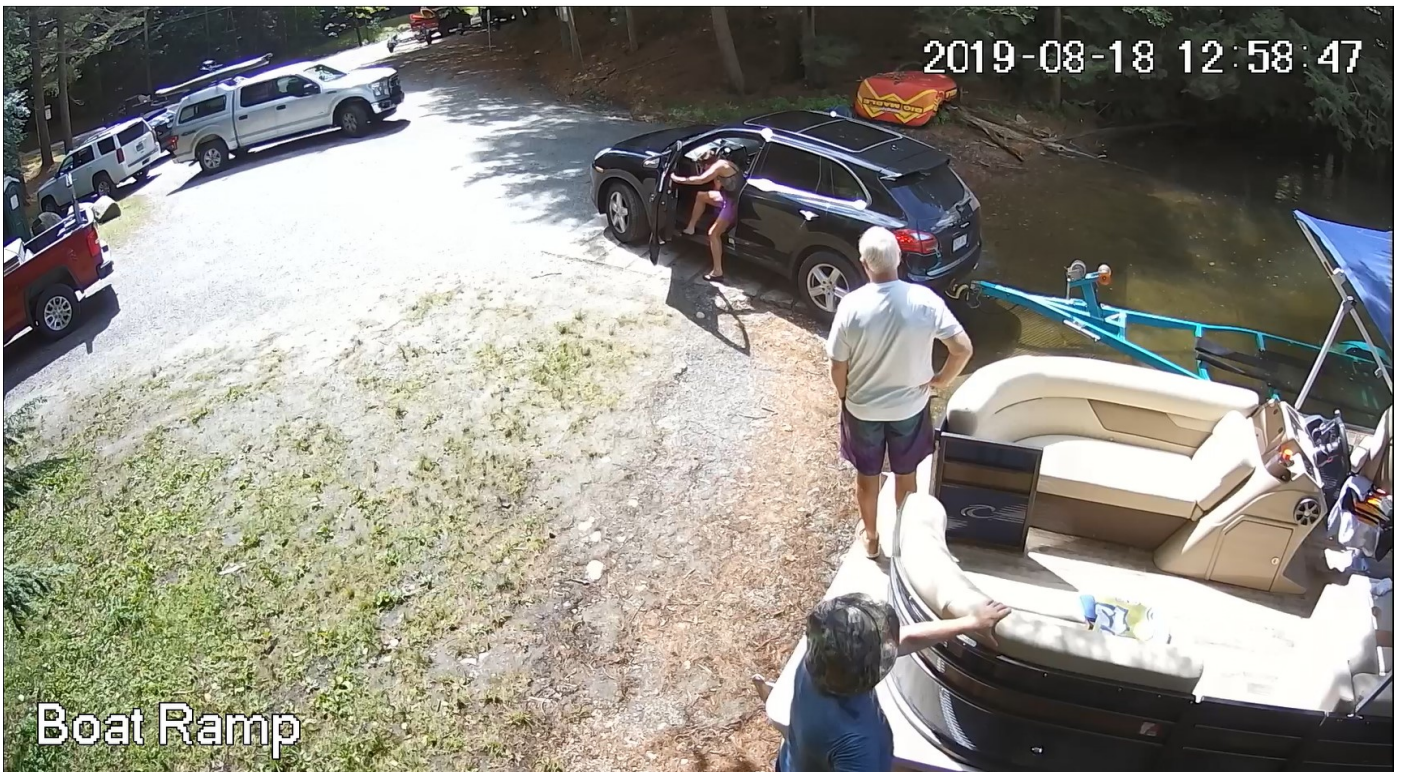
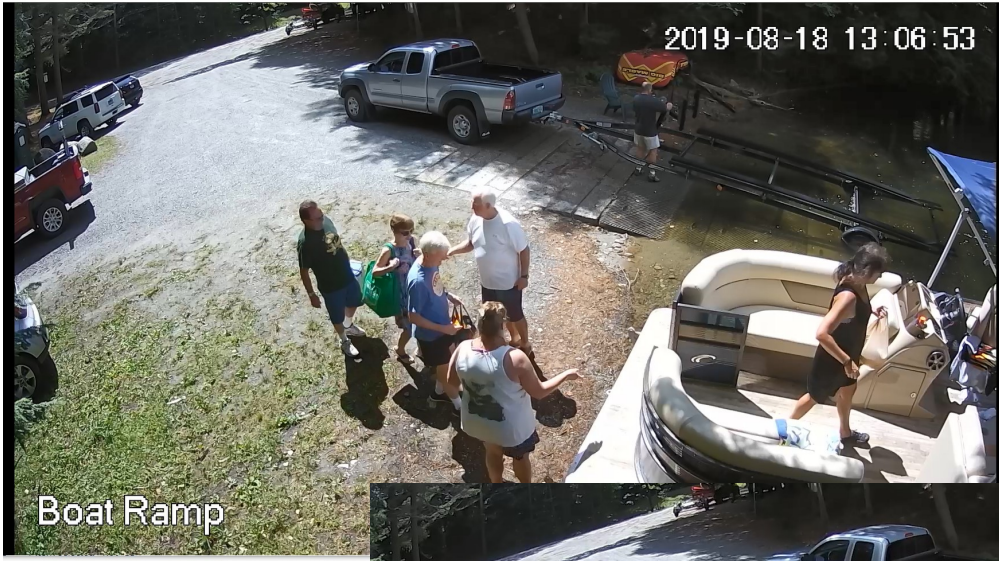


Figure D.15. Assistance boarding a pontoon boat



Figures D.16-D.18. Pontoon boat waiting to accept passengers.





Figures D.19 - D.21. Pas-
sengers embarking





Figures D.22 - D.23. Passenger needing assistance disembarking.



October 4, 2019

To Whom it May Concern:

We are writing to you about the handicapped dock that is proposed for the Lake Rescue Fishing Access in Ludlow, Vermont. My wife has had rheumatoid arthritis for thirty years. She is now disabled and uses a wheel chair and a walker to get around. We have had a house on the corner of Fishing Access Road and Ellisons Lake Road for 25 years. We also have a shared dock on the lake and have a pontoon boat.

We do not understand why the state is putting a handicapped dock which will be left in the water for the boating season at such a small fishing access. Currently this access has three very tight spaces at the shore for boaters to access the water: a boat launch ramp and two gravel areas. All three areas are needed for safe launches and landings. Lake Rescue has speed boats, pontoon boats, kayaks, canoes and pedal boats. Illegal swimming and fishing are also going on from the launch area. It is an active area and people come and go all day. We have been there many times when all three areas are being used. The launch is barely big enough for the present activity and to reduce the usable size seems dangerous.

We have developed our own routine to get my wife on the water. People with handicapped passengers have also used their own routines and have used the present boat launch successfully. At first the handicapped ramp seemed like a good idea for our situation. Thinking of all the implications that have been previously listed by lake residents and taking into account that 1/3 of the Fishing Access will be unusable, we are opposed to installing this ramp.

Craig Peters

Figure D. 24. Letter from Mr. Craig Peters, whose wife needs boarding assistance

Figure D.25



Figure D.26

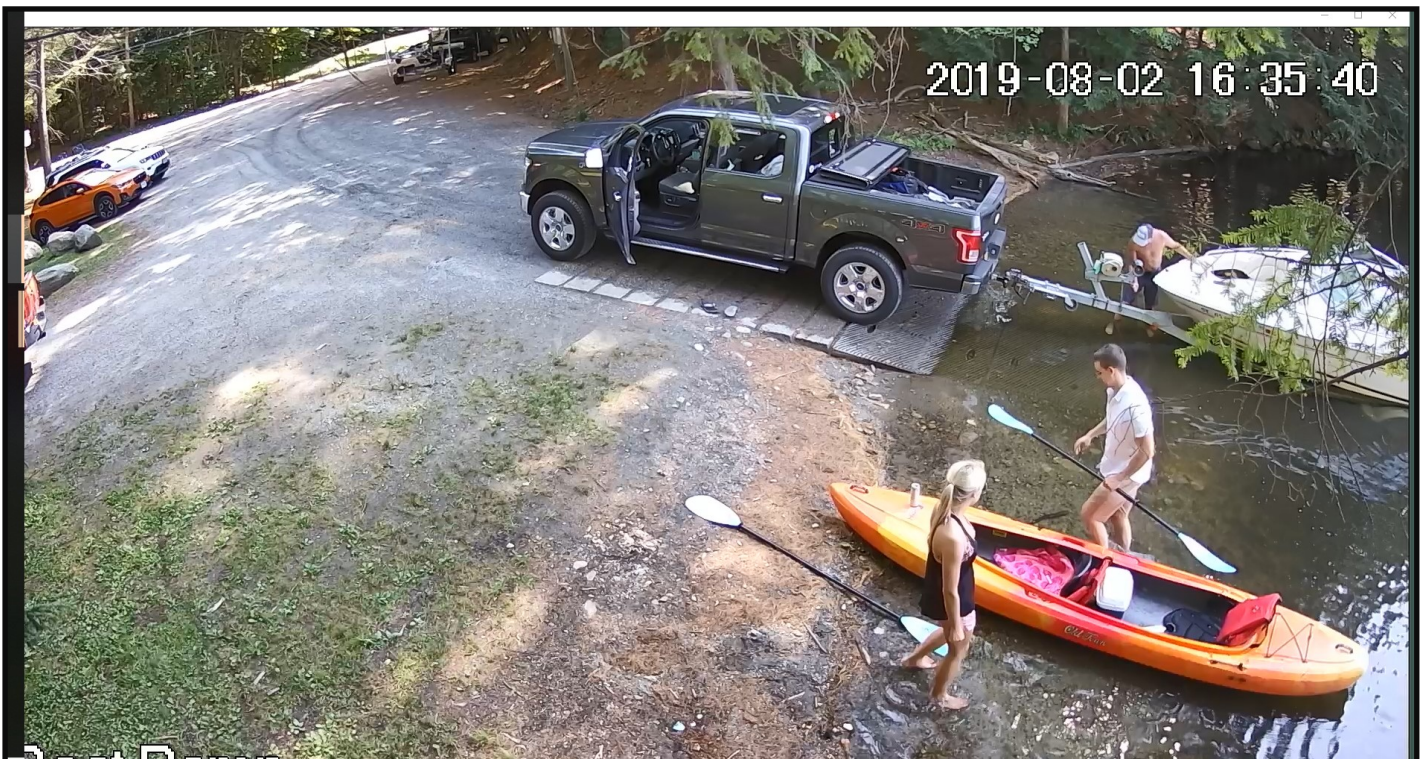


Figure D.27



Figure D.28



Figure D.29



Figure D.30

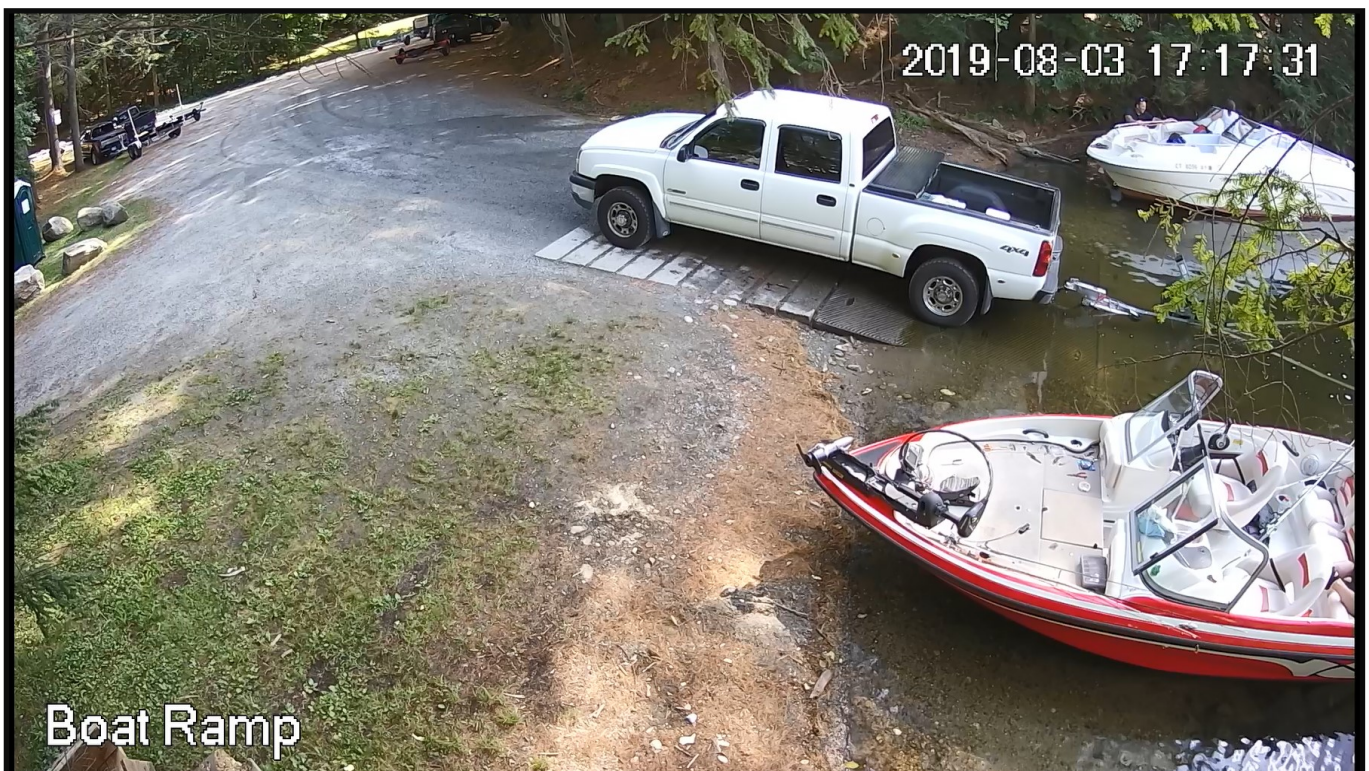


Figure D.31



Figure D.32



Figure D.33

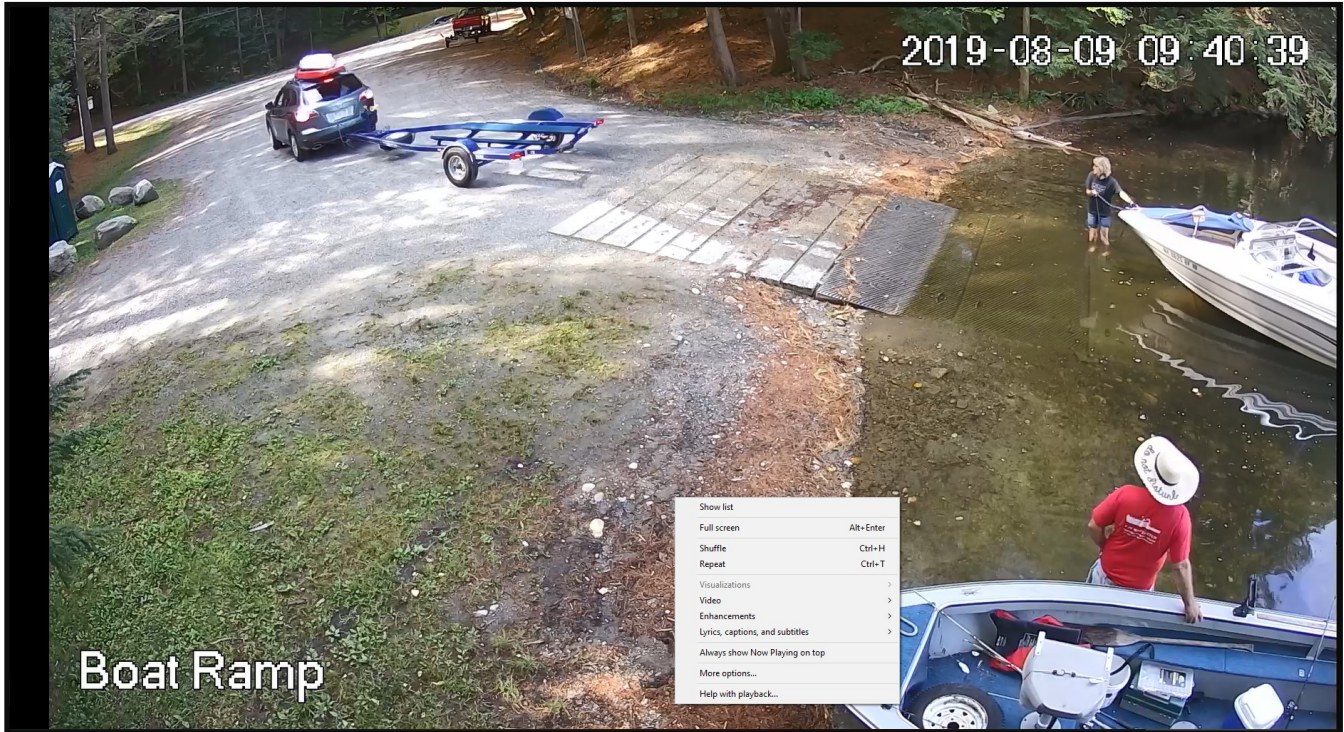


Figure D.34

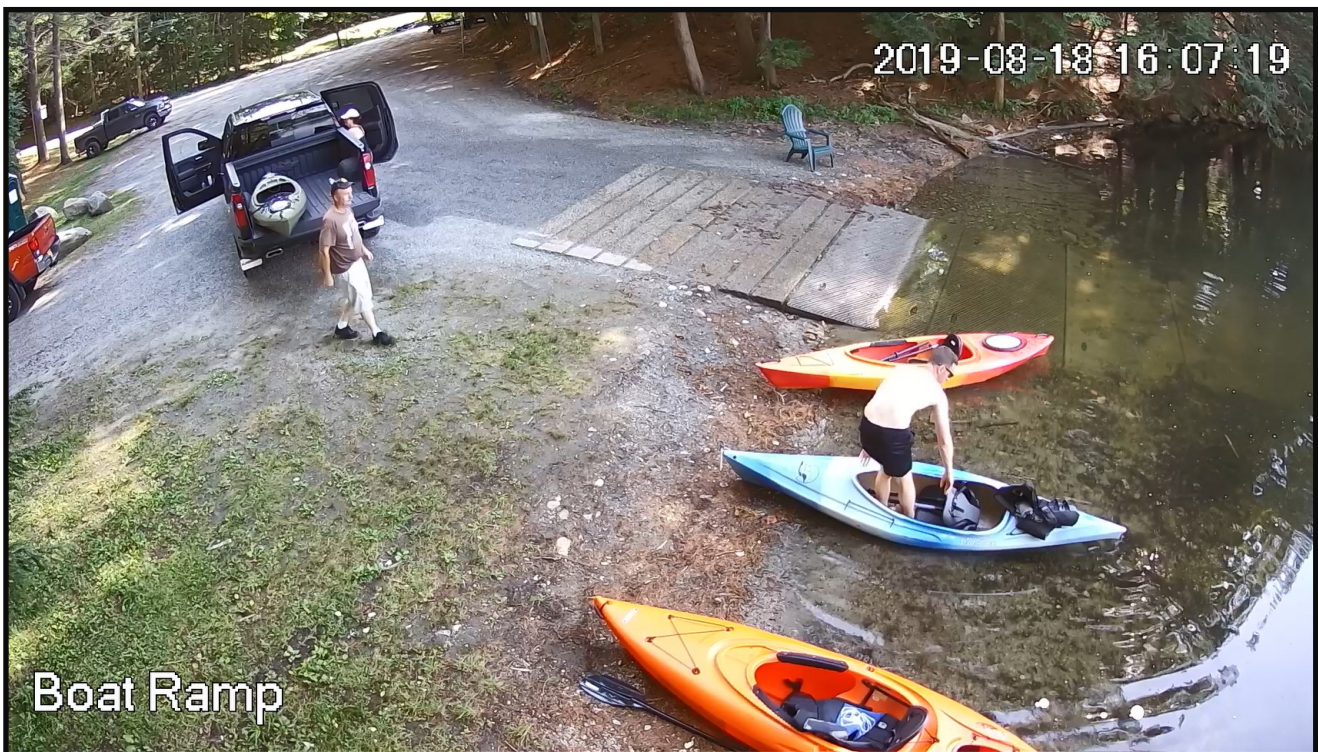


Figure D.35



Figure D.36



Figure D.37

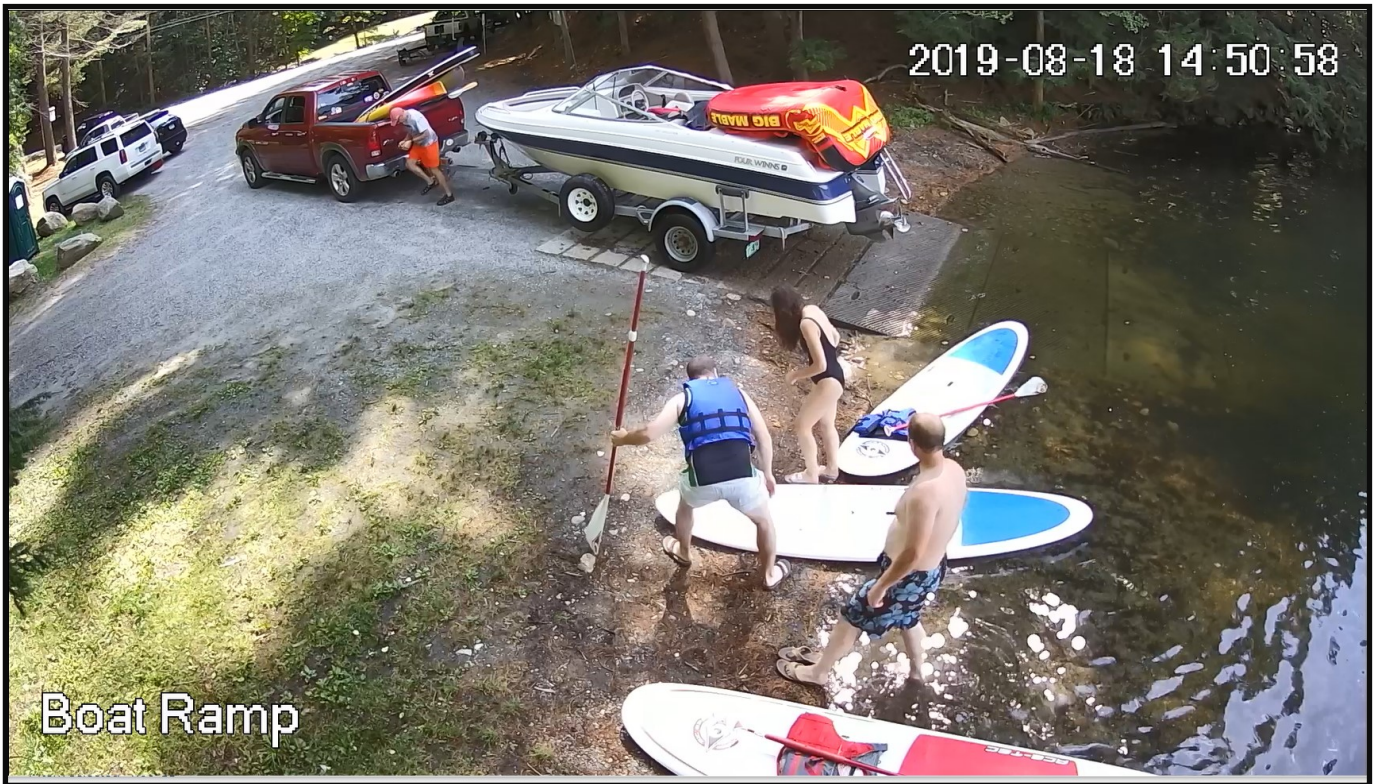


Figure D.38

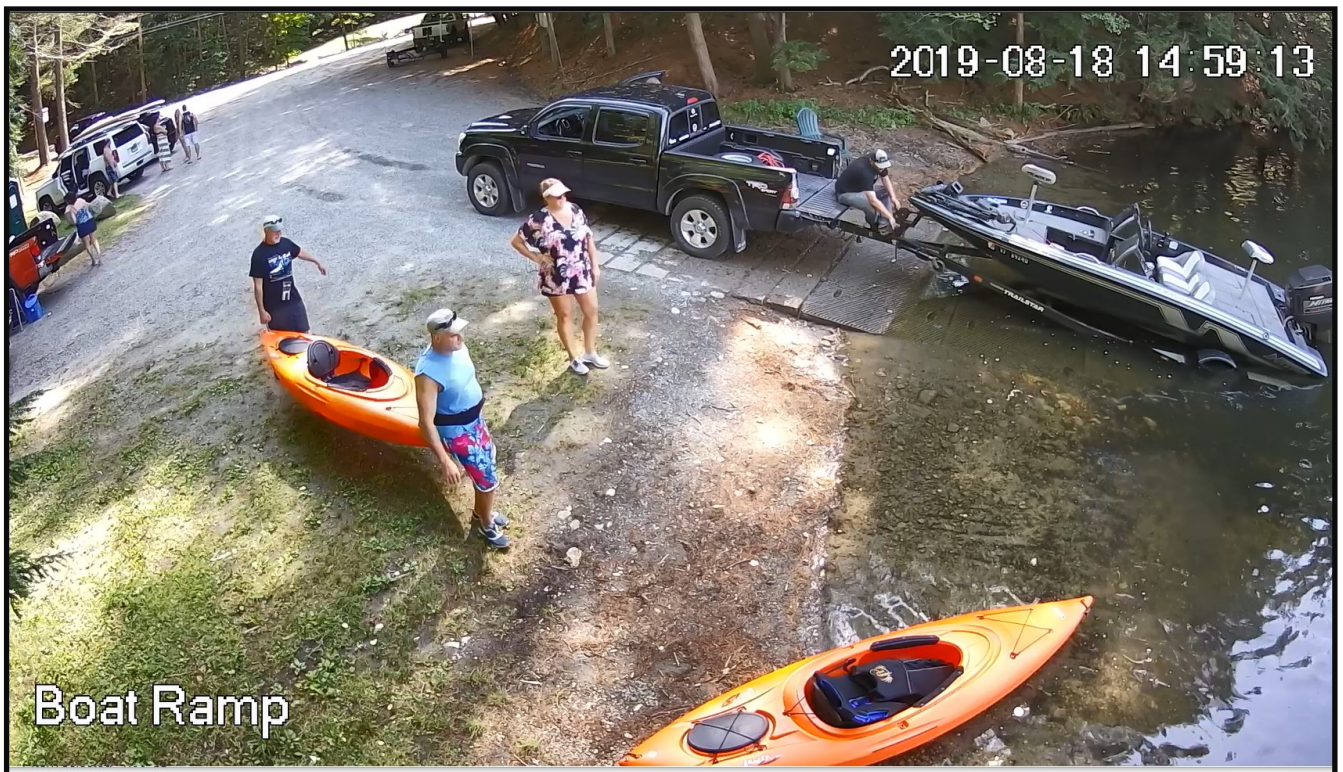


Figure D.39

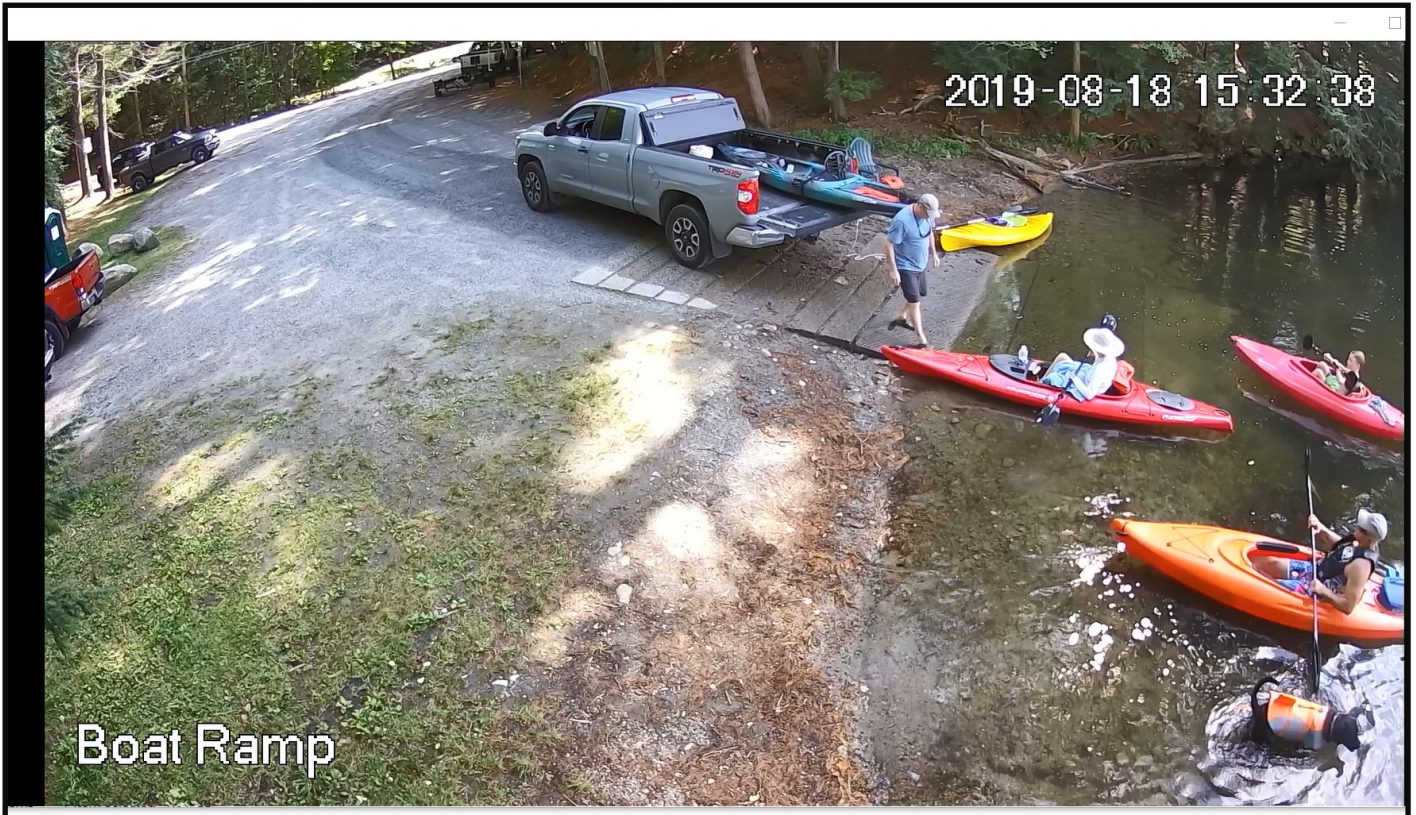


Figure D.40



Figure D.41

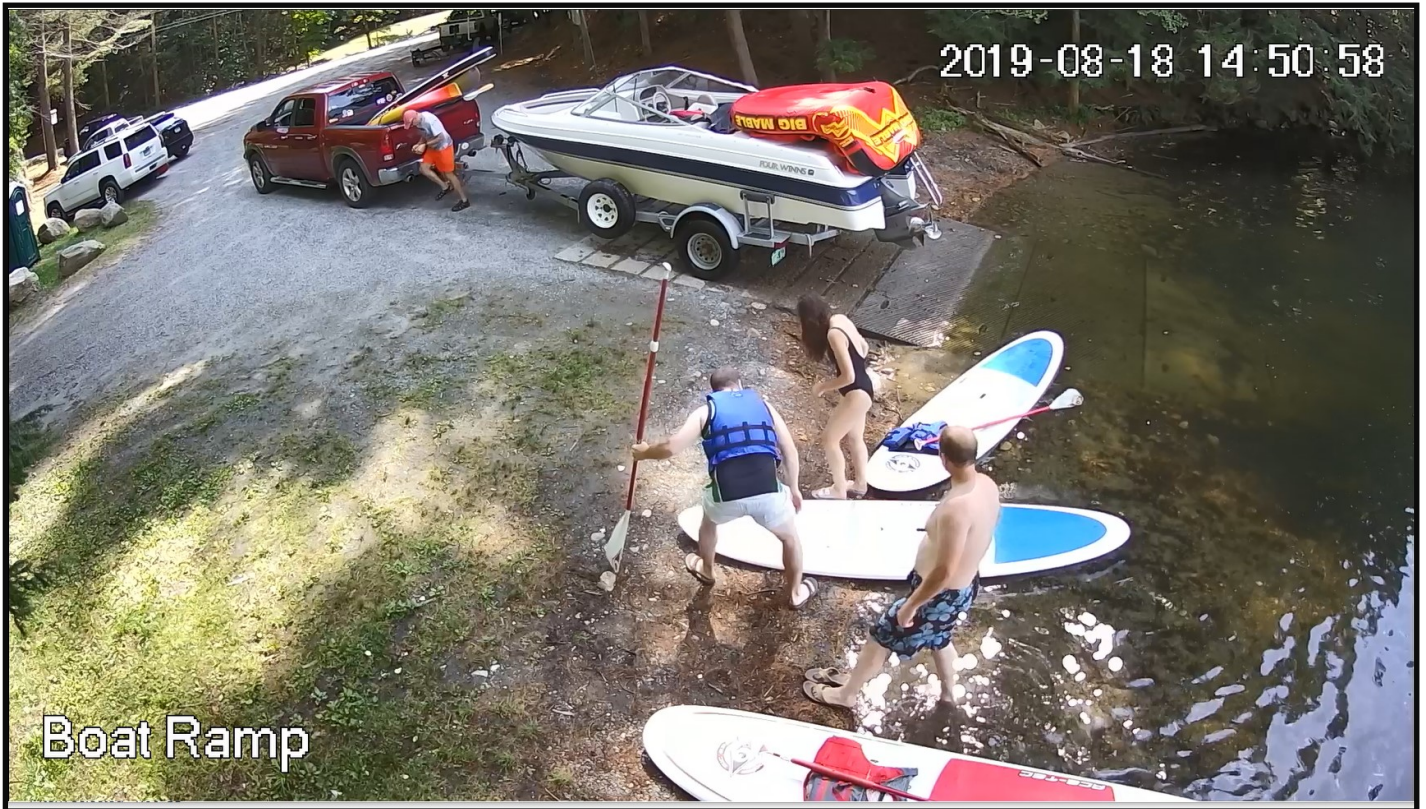


Figure D.42



Appendix E

Water Quality

There are two crucially significant issues that the VT DEC has determined are outside the jurisdiction of the encroachment permitting process. However, the increasing presence in Lake Rescue of the invasive aquatic plant, Eurasian milfoil, and the increasing sediment flowing into Round Pond near the fishing access boat launch and at the same location as milfoil “hotspots,” are absolute contributors to the adverse water quality impacts a dock will produce due to increased boat traffic. The LRA is working with the state both to mitigate milfoil proliferation and to secure grant funding to ameliorate the detrimental effects of sediment buildup. The dock permit works at cross purposes on both issues.

E.1 Eurasian Milfoil

In 2019, the State of Vermont Department of Environmental Conservation awarded the Town of Ludlow a grant of \$3,699 to control the aquatic invasive plant Eurasian watermilfoil growing in Lake Rescue. The LRA, comprised of approximately 130-150 property owners of Lake Rescue and Lake Pauline, have administered this grant, when awarded, for the past twenty years. Since 1999 the LRA has used state grants and funds raised by its membership to hire divers to monitor and hand pull milfoil when it was found. The LRA has also used these funds to employ public greeters to screen for milfoil plants at the boat access.

Lake Rescue was milfoil-free for 10 years, from 2004 until 2014, when the degraded water clarity after Tropical Storm Irene in 2011 cleared enough to enable milfoil monitoring efforts. Storm Irene also brought in a layer of sediment rich in nutrients that greatly increased plant growth in the lake. Round Pond, near the boat launch, has the most dense accumulations of milfoil. However, milfoil has increased every year and has spread beyond Round Pond and is now found in patches throughout Lake Rescue and now, for the first time in 2019, downstream in Lake Pauline.

As the State of Vermont clearly knows, it is extremely important to keep this aggressively invasive, non-native plant out of Lakes Rescue and Pauline. As a rooted, submerged perennial aquatic plant, it grows rapidly and aggressively competes with native plant communities, reducing biodiversity. Dense mats clog propellers, impair swimming, restrict boating and fishing accesses, and affect water quality. With the State of Vermont and the Town of Ludlow's help, the LRA remains committed to controlling and hopefully eradicating milfoil from our lakes. ***The LRA is deeply concerned that increased boating activity in Round Pond from a 48' dock will impede these efforts and increase remediation costs for our membership, already at a record high of \$19,059.***

Figure E.1 indicates the growth of Eurasian milfoil since 2015 and the related remediation costs. In 2019, The Lake Rescue Association applied for and received a permit from the State to place bottom barriers on a large, dense patch of milfoil just outside the Narrows in the main lake. This summer twelve 10 by 50 ft. bottom barriers were placed on this area, at a cost to the membership of \$4,607. Because of their

effectiveness, the milfoil harvest decreased, and the LRA will be purchasing additional barriers for 2020 for large and dense areas of milfoil, in addition to continuing the hand harvesting by our divers.

Year	Plants Harvested (estimate from gallons)	Diver visit days	Total Cost	Grants from State	Net Cost to LRA
2015	300-400	13.5	\$8,100	\$2,360	\$5,640
2016	500-600	19.5	\$12,750	\$7,580	\$5,170
2017	1,000	31	\$15,130	\$6,100	\$9,030
2018	2,058	27	\$16,605	\$7,698	\$8,907
2019	1,925	30	\$22,758	\$3,699	\$19,059

Figure E.1 Milfoil growth and remediation costs, 2015-2019.

Figure E.2 depicts the location of milfoil found by our divers during summer 2019. Note concentration at Fishing Access Boat Launch, throughout Round Pond and more recently into the northern part of Lake Rescue. Where four years ago there was minimal milfoil in the main body of the lake, today there is a significant presence due to boats hitting shallow areas, running aground, and fragmenting the plants, enabling them to be carried by boats or by the current into the main body of the lake. The full 2018 report can be found on our website: <http://lakerescue.org/wp-content/uploads/2018/12/Town-of-Ludlow-Grant-06140-AQ19-13-Final.pdf>. The 2019 report will be available in January 2020.

This is an ongoing, expensive battle to which the LRA is fully committed. We are working very hard to mitigate this aquatic scourge, and we believe the placement of a long dock in the very area where milfoil is most prevalent will work at cross purposes with the state’s and LRA’s efforts and financial commitment to eradicate milfoil. To summarize, the proposed dock usage will encourage the increased use of motorized boats which will contribute to the spread and propagation of Eurasian milfoil.

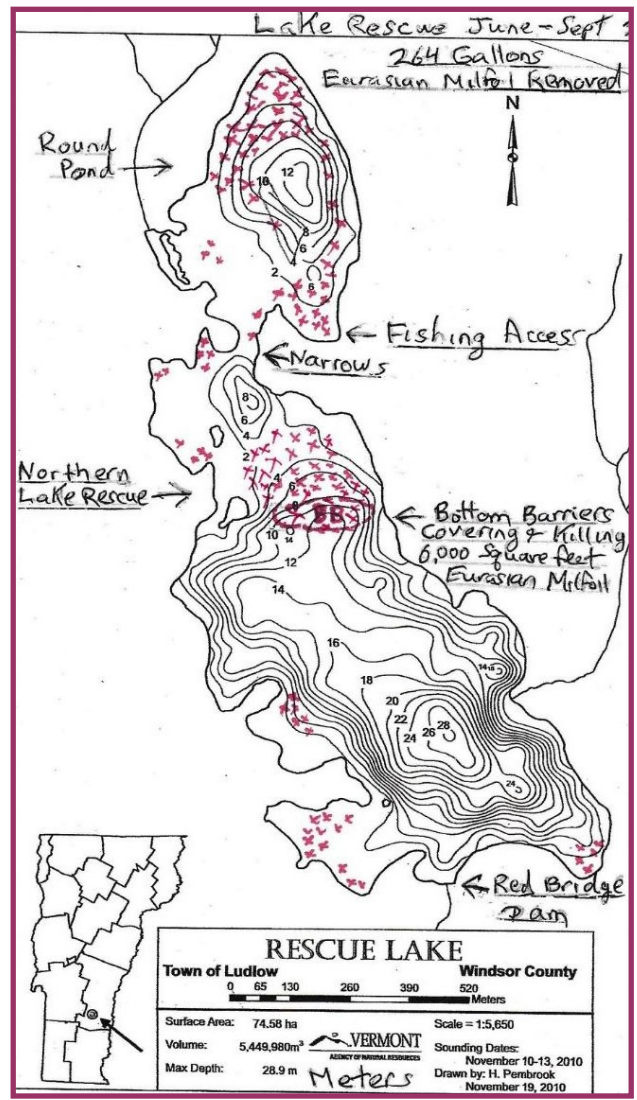


Figure E.2. Map to be included in Final Report to the State of Vermont documenting 2019 milfoil findings.

E.2 Sedimentation

In 2011, Tropical Storm Irene decimated Lakes Rescue and Pauline, temporarily raising the lake level at least 5 feet, and creating monumental problems with which the community is still grappling. In addition to property damage and the newly detected presence of Eurasian milfoil in Round Pond, a major outcome was a significant inflow of nutrient-rich sediment from the Black River and other tributaries entering the lake, a phenomena that is increasing (see Figures E.3 and E.4). In 2012 the Lake Rescue Association secured a dredging permit from the state and in 2013 dredged 600 cubic yards of drained sediment from the mouth of the Black River in Round Pond, at a cost to the membership \$85,436 (see Figures E.5 and E.6).

Today, the sediment buildup has surpassed that which Tropical Storm Irene produced. Round Pond is ever more shallow, and the channel into the lake (“The Narrows”), is in places nearly impassable. A dock will increase the activity and traffic in the shallow entry areas that will 1) increase turbidity, 2) increase the number of boats that run aground, and 3) exacerbate the spread of Eurasian milfoil, a vital concern to the LRA, the lake community, and the state.



Figure E.3. Sediment increase in Round Pond, 2019



Figure E.4. 2019 photo showing sediment increase in Round Pond, creating new “islands” throughout the Black River entry

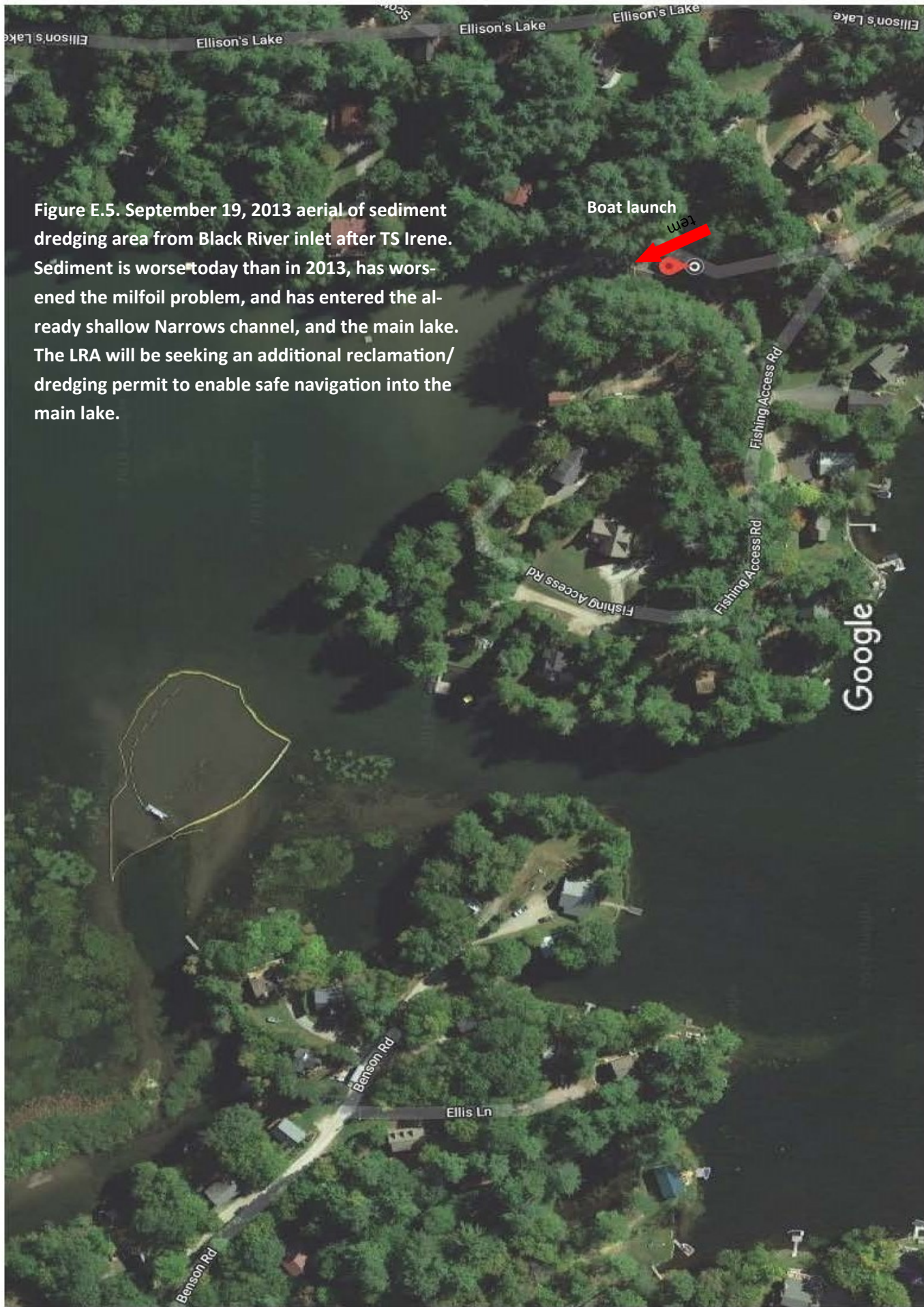


Figure E.5. September 19, 2013 aerial of sediment dredging area from Black River inlet after TS Irene. Sediment is worse today than in 2013, has worsened the milfoil problem, and has entered the already shallow Narrows channel, and the main lake. The LRA will be seeking an additional reclamation/dredging permit to enable safe navigation into the main lake.

Figure E.6. Containment of 2013 dredging area at the mouth of the Black River and proximity to the boat launch and Narrows channel into the main lake.



Griggs-Lang Bathymetric Survey 2018. The LRA is currently exploring remediation solutions in order to keep the Narrows Channel navigable. With boats increasingly running aground and the Narrows filling in, in 2018 the LRA contracted with Griggs-Lang Consulting Geologists and Engineers to conduct a comparative bathymetric investigation to measure the depth changes from their survey in 2013 in the Round Pond, Narrows, and northern areas of the main lake (see full report on the LRA website: <http://lakerescue.org/wp-content/uploads/2019/05/Grigg-Lang-Lake-Rescue-Report-2018.pdf>). Following is a relevant report summary and Figure E.7, which illustrate the current challenge.

*The mouth of the Black River and north of the Narrows **has filled in between 6 and 18 inches since the restoration was performed in 2013.** [emphasis added] There are large areas that have a depth of less than 4 feet after adjusting for the differences in lake level at the time of observation. After considering the effect of differences in the lake levels on the observation dates, any area marked by a 2018 contour line of [5 feet or less] would have a depth less than 4 feet compared to the 2012/13 lake level. (See Chart B)*



Appendix F

Jurisdictional Issues

A troublesome aspect of the permitting process has been the broad brush dismissal of the importance of interrelated issues that will have adverse distal impacts on the lake community and the environment. We believe the jurisdictional disconnection and compartmentalizing of issues evident throughout this process is ill-conceived, disrespectful to property owners, and ultimately may be more costly and more detrimental to all constituents and the environment. As mentioned earlier, these jurisdictional arguments appear to be solely a convenient vehicle for the dismissal of legitimate concerns, and are hypocritical to the pillars of encroachment permitting, that the adverse impacts will not outweigh the public good and the public trust.

The Public Comment Summary included 19 responses, or fully **one-third** of all responses, that dismissed comments based on the topic(s) being “beyond the scope of review” of the encroachment permit process. Below is a repeated response:

2. Response: *Beyond the potential for increased boat traffic, this comment is **outside the scope of review** under Lake Encroachment. The project is proposed at an existing public access area. The jurisdiction of Lake Encroachment permitting extends to public waters of the State and the lands lying thereunder, which lie beyond the shoreline or shorelines delineated by the mean water level. Use of the access area above mean water level is **beyond the scope of what is regulated** under this permit. See response to comment #4 relating to the potential for increased boat traffic. [emphases added]*

Beyond the overriding concern about the size and location of a large dock in a small, congested, busy cove, topics of concern that were deemed “beyond the scope of review” were:

- Parking and car traffic - 5 comments
- Consideration of an alternate water body or alternative solution - 6 comments
- Recreational uses (swimming, loitering, noise, trash, picnicking, etc.) - 7 comments
- Other—sediment accumulation, milfoil, privacy concerns, weather events, whether dock is ADA accessible, restricting an allowed use (fishing) - 8 comments

Parking. The boat launch parking area is at the bottom of a steep, narrow Fishing Access Road (see Figure F.1), and is a narrow parking area that can fit only 3-4 boat trailers, and a few cars. Often in the summer there is a lineup of cars waiting to launch boats, many pedestrians and boat passengers, and cars/trailers are parked up the steep public road leading to the fishing access area, impeding road travel, because the lot is full. Increasing lake access must consider this critical parallel concern as WITHIN the scope of review. Expanding the lot is unlikely as discussed earlier. Figures F.3 - F.4 illustrate how active the parking lot can be even post-season on a Saturday morning in mid-September. How does the decision to place the dock on the west side of the ramp in order to accommodate a paved walkway and a parking spot (both above mean water level) qualify as within the scope of review, but the impact on parking in general with increased car traffic, does not? Solutions to parking concerns should be a concurrent consideration here, as it is in any commercial development plan.



Figure F.1. Steep, partially graveled Fishing Access Road down to boat launch, where summer vehicles with trailers often park



Figure F.2. Parking lot entrance



Figure F.3. Saturday, Sept. 21, 2019 with one boat preparing to launch



Figure F.4. Saturday, Sept. 21, 2019 with one boat launched

Alternate Water Body. Claiming that consideration of an alternate water body is beyond the scope of review is self-serving, represents a conflict of interest, and is a circular argument. The Department of Fish and Wildlife absolutely considers alternate water bodies in its determination for dock placement, but then deflects any reasonable challenge to those decisions through the protection of a jurisdictional argument. As noted in the Response Summary Comment #16, the “Department of Fish and Wildlife tries to determine where usage is highest, so it can provide the largest benefit to the most boaters. The Department works to evenly spread access around the state . . . And after considering alternate locations ”Lake Rescue was identified as a top priority for outfitting with a dock” (#22). A jurisdictional refusal to consider alternate water bodies presents a circular Catch-22 and is inappropriate logic.

Recreational and Other Uses. Neglecting the impacts of a long dock to the surrounding area, including water safety, “attractive nuisance” activities, such as swimming, loitering, littering, picnicking, noise, traffic, parking, etc., and other impacts from increased usage, is antithetical to the public trust doctrine, which is ostensibly what drives this entire project. Band-Aid solutions offered, such as installing additional signage, calling the game warden, adhering to the 200’ no wake rule, etc., are meager and insufficient.

The State’s repeated response is that these concerns are “beyond the scope of review” as encroachment permitting jurisdiction “extends to public waters of the State and the lands lying thereunder, which lie beyond the shoreline or shorelines delineated by the mean water level.” Why, then, does the permit application ask whether the project is “consistent with the surroundings?” Or what the impact will be on “*navigation, recreation, and other public uses?*” And why is there scant scrutiny of what the effects of the proposed project “will be on fish and wildlife habitat?” How it “effects water quality?” And how it will effect changes in “aquatic or shoreline vegetation?”

Resorting to a jurisdictional argument to dismiss these concerns is duplicitous and directly contradicts the application criteria. As expressed earlier, the Appellants surmise from these observations that the entire application process is largely artificial, and therefore arguably invalid.

Conclusion

As referred to multiple times in the Public Comment Response Summary, VT Statute, Title 29, Chapter 11 §405 on encroachment permitting and the public good, states, *“the department shall consider the effect of the proposed encroachment as well as the potential cumulative effect of existing encroachments on water quality, fish and wildlife habitat, aquatic and shoreline vegetation, navigation and other recreational and public uses, including fishing and swimming, consistency with the natural surroundings and consistency with municipal shoreland zoning ordinances or any applicable state plans.”*

The Appellants argue that the decision to locate a state dock at the Fishing Access Boat Launch on Lake Rescue is unacceptable for the following reasons.

1. As mandated by VSA Title 29, Ch.11, §405, there is no evidence that the department seriously considered the effects of encroachment on: water quality, aquatic vegetation, navigation and other recreational and public uses, or consistency with the natural surroundings. Most of these legitimate issues that directly speak to protecting the public trust on Lake Rescue were brushed aside as jurisdictionally non-applicable.
2. The application and approval process reflects a lack of due diligence on the part of the Applicant and a lack of studious assessment by the granting department, suggesting that a fair and equitable evaluation was circumvented in the interest of installing a pre-contracted dock in a geographic location in Vermont that was desirable to connected state departments.
3. This overriding ulterior motivation is evidenced by the dismissal or oversight of several serious adverse impacts in the 1) application approval, 2) the March 2018 Ludlow public forum, 3) the written Response Summary, and 4) the February 2019 Mediation.
4. There has been no reported analysis of any demonstrated need for a 48-foot dock, or that the addition of a dock would serve the public good in a meaningful way. The benefits to the few, *if any*, individuals who would specifically benefit or desire to have dock access are far outweighed by the multiple adverse impacts a dock would produce in this specific location. Because the risks so far outweigh the benefits, this dock would be a detriment to the lake, not an enhancement. The costs and risks are not worth the extremely limited gain.

The Appellants and other members of the Lake Rescue community are disappointed in what we believe is a cavalier rejection of our efforts to protect and preserve the health and well-being of our lake environment and the safety and convenience of those who use it. The mission of the LRA in particular is *“to maintain, restore, and ensure the future of our lakes,”* and in that capacity has always enjoyed an active partnership with the State of Vermont as stewards of the lakes. We offer a sample brochure (Figure Conc.1) as an example of our work. We remain committed to this mission.

Lake Rescue is here for all to enjoy, and accessibility is an issue everyone supports. We do not take issue with a dock, per se. We do take issue with the location of this particular dock in this particularly challenged launch site, and with the permitting process itself. We believe this permit decision is fraught with contradictions, conflicts of interest, jurisdictional confusion, and a lack of interagency organization.

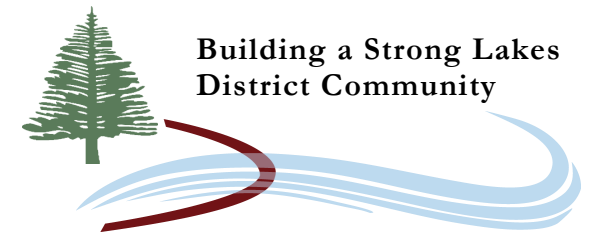
In summary, the Appellants maintain that the permit application be withdrawn and serious effort be made to consider 1) alternative solutions, and/or 2) alternative lake locations in Windsor or nearby counties.

Figure Conc. 1 Sample LRA Brochure

Lake Rescue Association, Inc.

The LRA is an environmental and ecological 501c3 non-profit organization dedicated to the preservation of waters in the lakes district. Our activities are intended to build a stronger lakes district community and protect the watersheds of Lakes Pauline and Rescue. Begun in 1933, the LRA has for over 85 years promoted water safety, environmental education, improved water quality, and resolution of pertinent lake matters. We invite you to join the LRA and support its activities.

The LRA relies on modest annual member dues, grants, and other donations from association members and community sponsors.



Lake Rescue Association



Our mission is to maintain, restore, and ensure the future of our lakes.

Join us!

PO Box 372
Ludlow, Vermont 05149
www.lakerescue.org



What Does the LRA Do?



The Lake Rescue Association is an active organization, using its funds to maintain many initiatives for our membership, some planned, and some, like recovering from Tropical Storm Irene in 2011, unexpected. It is managed by a volunteer board of 9 directors and invaluable help from volunteers. We address a variety of issues and questions as they arise. Today, the most pressing challenge we face is the control of the invasive aquatic plant, Eurasian Milfoil. On an ongoing basis, through direct initiatives and community education and outreach, the LRA promotes:

- ◆ **Lake Health** - shoreline protection, water quality monitoring, milfoil eradication, sediment and erosion control
- ◆ **Lake Safety** - boating safety, ice safety
- ◆ **Community** - environmental education, lake community connections, pertinent issues, member events, newsletters

Healthy Lakes Promote a Healthy Economy

Ludlow and the wider lakes region community is blessed to be situated in beautiful Okemo Valley with all its splendid natural and cultural amenities. As we know, the lure of our pristine lakes, mountains, quaint and historic villages, and New England charm are significant economic drivers in our region.

Ensuring responsible stewardship of Lakes Rescue and Pauline is not only the mission of the Lake Rescue Association, but is essential in maintaining robust property values, a vibrant lakes community, and strong tourism interest.



The work of the LRA benefits us all. We need your support. *Become a LRA Member* today.

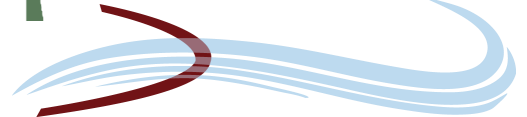
If you are already a member, or will help spread the word, share this pamphlet with a lakes district neighbor or friend. *Thank you!*

Join us! Please consider joining and/or supporting the Lake Rescue Association.

- ◆ If you are a lakes district property owner, we encourage you to become a **Full Member**. Dues are only \$50 a year per property.
- ◆ If you are not a property owner and are concerned about maintaining the health of our lakes, consider becoming an **Associate Member**. Dues are \$50 a year.
- ◆ If you are a concerned business or organization and wish to support our work for the betterment of our community, consider becoming a **LRA Sponsor**. Please inquire.
- ◆ We are always in need of and very grateful for donations; consider becoming a **LRA Donor**.



Membership, Sponsorship, and Donation information can be found by emailing us or on our website:



**lakerescueassn@gmail.com
www.lakerescue.org**