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November 27, 2024

VIA FIRST-CLASS AND ELECTRONIC MAIL:
Calvin.diessner@des.nh.gov

Mr. Calvin G. Diessner
Shoreland Section Supervisor
NH Department of Environmental Services
P.O. Box 96
29 Hazen Drive
Concord, NH 03301

Re: Goodhue Meredith Real Property, LLC
31 Lovejoy Sands Road, Meredith, NH 03253, Tax Map #U35, Lot #8A
NH DES File No. 2024-00754

Dear Mr. Diessner:

The Meredith Neck and Islands Alliance ("MerNIA"), through its attorneys, McLane Middleton, Professional Association, submits this letter in opposition to the Application of Goodhue Meredith Real Property, LLC ("Goodhue") for a Standard Dredge and Fill Permit and, specifically, to Goodhue's Response to the New Hampshire Department of Environmental Services ("Department" or "DES") Request for More Information ("RFMI"). In its Response, Goodhue continues to mislead the Department and to misrepresent material facts and information relating to its desire to significantly alter and expand the Goodhue Meredith boat yard formerly known as the Shep Brown's Boat Basin ("Boat Yard"). Due to these additional misrepresentations, Goodhue's failure to adequately address the deficiencies raised in the RFMI, and the Application's defects previously identified by MerNIA,[1] Goodhue does not, and cannot satisfy, the statutory and regulatory requirements to obtain a Standard Dredged and Fill Permit to substantially expand the Boat Yard. The Application therefore must be denied.

As set forth more fully in the sections below, the Application:

- Violates Env-Wt 513.23(a) because Goodhue seeks to increase—not decrease—the number of boat slips. Goodhue's existing and proposed boat slip counts are incorrect, misleading, and rely upon, illegal, and unpermitted slips.

[1] MerNIA fully incorporates by reference its April 19, 2024, May 8, 2024, and November 22, 2024 letters to the Department.

- Fails to satisfy the 20-foot setback requirements for new docks set forth in RSA 482-A:3, XIII(a). Goodhue violates statutory requirements by failing to provide DES with the required consent and approvals from the Town of Meredith *at the time of application*. *See* RSA 482-A:3, XIII(c) (requiring that "consent shall be signed by all parties, notarized and filed with the dock application.").

- Relies on false, incomplete, and/or misleading information about the status and viability of multiple necessary local approvals, including from the Meredith Planning, Zoning, and Select Boards, which also likely includes a Town vote on a Town Meeting Warrant Article. Whether Goodhue can secure these approvals is in serious doubt, and in any event, the lack of these approvals violates Env-Wt 513.07 (requiring certification that Applicant has received or has filed applications for needed local approvals). Federal approval is also likely necessary, due to the use of federal funding to develop property at issue, and upon information and belief, no such approval has been sought.

- Does not, and cannot, refute the evidence presented by MerNIA, MerNIA's experts Muriel Robinette (Calex Environmental Consulting), Rick Chellman (TND Engineering), and Damon Burt (Fraggle Rock Environmental), and the evidence presented in public comments that the proposed project will have significant negative impacts on shoreline setbacks, navigation, public access, public safety, and traffic. In particular, Goodhue has failed to demonstrate, as required by Env-Wt 513.03, that the project will not have an adverse impact on navigation, public safety, and on the public's access to, and use of, the public trust resource.

- Misrepresents and/or provides incomplete and inaccurate material facts and information related to the impact of the project on the use and enjoyment of abutting properties and the littoral rights of abutting property owners in violation of Env-Wt 513.03.

- Fails to include design plans for the proposed cantilevered negative well rendering the application incomplete in violation of Env-Wt 515.03 to 515.06.

Each of the above failures to satisfy statutory and/or regulatory requirements, in and of itself, compels the denial of the requested Permit. Additionally, the project is fundamentally and irreconcilably flawed in its design and application: (1) The Response continues to be replete with inaccuracies, missing, and/or misleading information; and (2) The Response does not refute MerNIA's well-substantiated claims of impact and resulting harm and does not adequately address the issues raised by DES, if the Response addresses them at all.

Goodhue re-states, without support or explanation, its claims that the proposed project will not have an adverse visual or environmental impact on the shoreline or public waters. *See* Response at pp. 3-4, ¶11. Even more troubling is Goodhue's unfounded and untenable

suggestion that the proposal will not adversely affect navigation, public access, and public safety. *Id.* at ¶10. This letter will demonstrate that among other things, the proposed project will create serious and dangerous navigational issues, will increase vehicle and boat traffic, will impede the public's ability and right to access, use, and enjoy public waters held in trust for their benefit, and will interfere with the property and littoral rights of abutting property owners.

The only acceptable and lawful result is for the Department to deny the Permit. *See* RSA 482-A:3, XIV(3)(B); Env-Wt 311.11(e)(2); Env-Wt 311.11(e)(3) (requiring that the Department deny applications that contain false, incomplete, or misleading information). Any other result would constitute an unlawful and unreasonable permitting decision by the Department.

I. GOODHUE CONTINUES TO ASSERT FALSE, INCOMPLETE, AND/OR MISLEADING INFORMATION TO THE DEPARTMENT WHICH MANDATES THE DENIAL OF THE REQUESTED PERMIT.

A. The Response continues to misrepresent the number and compliance status of claimed existing boat slips—which Goodhue seeks to increase in violation of Env-Wt 513.23.

Goodhue's counts of both existing and proposed boat slips are flawed and in violation of Env-Wt 513.23. In its Response, Goodhue now admits that its initial representation of the number of existing slips was wrong. Response at p. 3, ¶8. Rather than correct that mistake, however, Goodhue has compounded the error by artificially increasing its assertion of the number of existing boat slips from 102 in its initial filing to 109 in its Response. This is an obvious attempt to misleadingly manufacture a reduction in its boat slip count to satisfy DES regulation. *See* Env-Wt 513.23(a) (requiring that an applicant demonstrate, and that the DES find, a proposed docking structure is "(1) less environmentally impacting than the existing docking structure or (2) *provides for fewer boat slips* and less deck area over public submerged land than the existing docking structure.").[2] The Department should, as a matter of law, deny the Application for failing to satisfy Env-Wt 513.23(a).

As set forth in detail in MerNIA's letter dated May 8, 2024, Goodhue's initially asserted boat slip count of 102 was incorrect. MerNIA has previously shown that, at most, only 94 permitted boat slips exist at the boat yard. *See* MerNIA May 8, 2024 Letter at p. 2 (identifying,

[2] Goodhue has not attempted to establish, because it cannot establish, that its proposal to create an entirely new commercial boat launch area with entirely new docks, which would protrude far-into the public waters and negatively impact abutters with additional sedimentation, noise, water pollution, and navigational hazards, along with its proposed *additional* negative well, and its reconfigured docks to add boat slips would be "less environmentally impacting than the existing docking structure."

among other evidence, that the prior owner verified only 92 slips in 2003, which number expanded to 94 in 2014). [3]

Now, in its Response, Goodhue overcounts its existing slip count by no less than eleven (11) slips, while Goodhue undercounts its proposed slip count by no less than eleven (11) slips (and potentially multiple more). Accounting for these clear errors shows that even by Goodhue's own count, Goodhue seeks to increase—not decrease—its total slip count.

Goodhue's boat slip counts are wrong for at least the following reasons:

1. Goodhue claims four existing boat slips on a docking structure that is *unpermitted and not legally existing*. These four slips are shown in Sheet C1.2 along the unpermitted dock adjacent to the northern Town dock. Yet, Goodhue *omits* these same slips from its reconfiguration plan, Sheet C2.2. The result is that Goodhue overcounts its existing slip count by four unpermitted slips, while it undercounts its proposed slip count without any stated intention of discontinuing the use of these unpermitted slips in its proposed dock reconfiguration. *See* comparison figures below taken from Goodhue's existing and proposed conditions plans, Sheets C1.2 and C2.2:



Sheet C.1.2 (Existing Conditions)

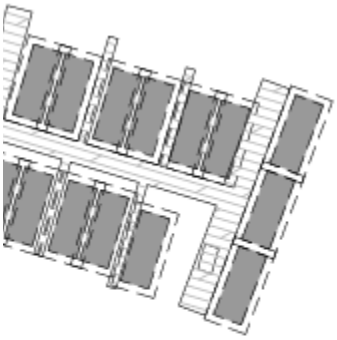


Sheet C2.2 (Proposed Conditions)

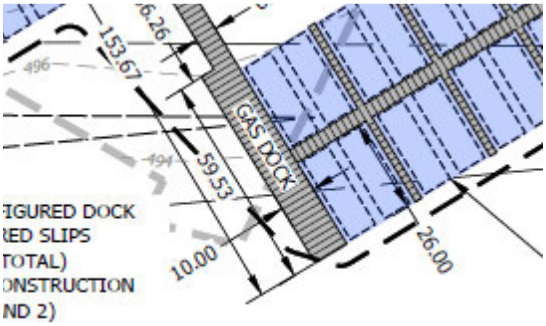
2. Goodhue claims it has three boat slips along the easternmost side of the existing southern dock in the location of an existing gasoline pumping and service station. Goodhue identifies these slips as "apparent permanent slips" despite the fact that they are used as service slips and not

[3] *See also* MerNIA November 22, 2024 Letter (requesting reopening of Land Resources Management Case File # 2024-001128 and denial of permit application for providing false, incomplete, and/or misleading information regarding the number of slips at the property).

"permanent slips." Goodhue *omits* at least two slips adjacent to its *proposed* gasoline dock. Again, the result is that Goodhue overcounts its existing slip count, while Goodhue also undercounts its proposed slip count. *See* comparison figures below:



Sheet C.1.2 (Existing Conditions)



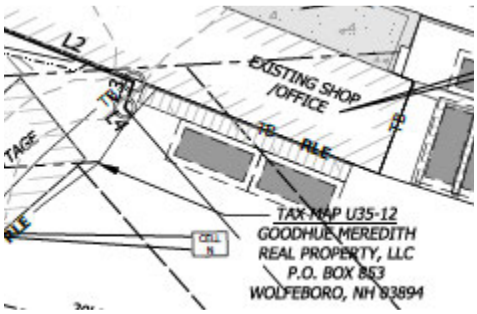
Sheet C2.2 (Proposed Conditions)

3. Further, that existing gasoline service dock measures roughly 65 feet in length—10 feet less than the required minimum of 75 feet to accommodate the three boat slips Goodhue claims exist. Thus, Goodhue overcounts existing boat slips by falsely including three service dock slips when, at most, the dock could accommodate two slips and then undercounts the proposed "apparent permanent slips" on its *proposed* gas dock. The above figure of Existing Conditions and the below image clearly shows that the asserted three existing "apparent permanent slips," which at most should be two, if any, are in fact gasoline service dock slips.

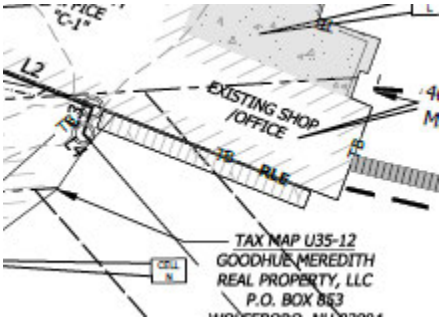


4. Goodhue identifies zero (0) existing service slips, despite the fact that, as shown above, multiple slips are used as service docks. Goodhue claims fourteen (14) proposed service docks yet *omits all purported service docks* from its proposed slip count. *See* figures and image in I(A)(6), showing service docks and use of same.

5. Goodhue claims two boat slips currently exist on the dock adjacent to the south of the building labeled as "Existing Shop/Office" on Sheet C1.2. Goodhue *omits* these same slips in its *proposed* slip count, Sheet C2.2, again overcounting existing slips and undercounting proposed slips. *See* comparison figures below:

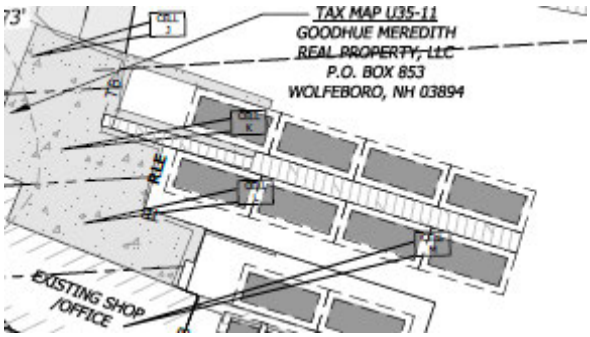


Sheet C.1.2 (Existing Conditions)

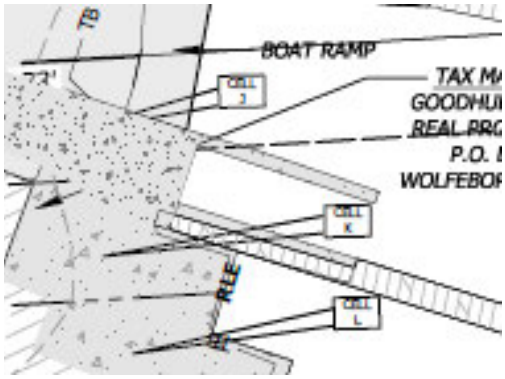


Sheet C2.2 (Proposed Conditions)

6. Goodhue claims one slip is currently located apparently within the existing negative well adjacent to the Town public launch. Goodhue claims this is a permanent slip despite the fact that the slip is located in the only existing negative well, such that it is not presently used as a "permanent slip." The diagrams and image below show active use of the existing negative well by Goodhue. Goodhue omits this slip from its proposed slip count on Sheet C2.2. In the same area, Goodhue claims multiple slips along the dock extending from the negative well that Goodhue also uses for gasoline pumping and service. Again, Goodhue claims these service slips are permanent slips. Goodhue cannot claim slips associated with service docks in its existing slip count, while omitting service slips from its proposed slip count. *See* figures below:



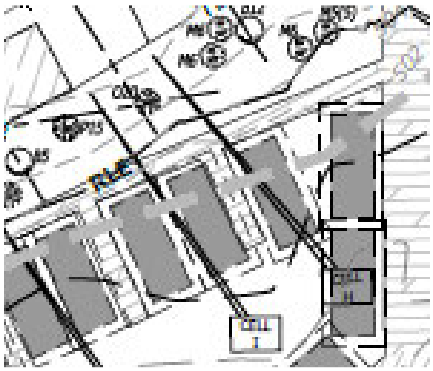
Sheet C.1.2 (Existing Conditions)



Sheet C2.2 (Proposed Conditions)



7. Goodhue claims three existing boat slips wedged into the corner area on the northern dock structure that shows multiple slips overlapping and precluding access to and egress from one of the claimed slips. The configuration does not comply with the statutory definition of "boat slip" or the navigational requirement of Env-Wt 513.14 (requiring a "maximum of 2 feet of navigation space between a boat slip and any other boat slip or structure."). This "apparent" slip would require a crane to place and remove a boat from it. *See* figure below:



Sheet C.1.2 (Existing Conditions)

In total, MerNIA has identified at least eleven (11) slips omitted from Goodhue's proposed boat slip count (not even including the fourteen (14) alleged "service slips"). The common theme in Goodhue's presentation is overcounting existing slips, while undercounting proposed slips. To exaggerate and to inflate its existing slip count, Goodhue includes existing service slips as "apparent permanent slips," while inconsistently and deceptively omitting from its total proposed reconfigured slip count all proposed service slips. Goodhue's apparent slip count is reflected in the chart below, excerpted from Sheet C2.2 appended to the Response:

RECONFIGURED DOCKING SUMMARY		
DESCRIPTION	EXISTING	PROPOSED
PERMANENT BOAT WET SLIPS	109	102*
TEMPORARY LOADING/SERVICE WET SLIPS	*0*	*14*
RECONFIGURED DOCKING	8,801 SF	8,800 SF
NET PERMANENT BOAT SLIPS (+ / -)		**-7 SLIPS**
NET DOCKING AREA (+ / -)		**-1 SF**

*PROPOSED PERMANENT BOAT WET SLIPS TOTAL DOES NOT INCLUDE GAS FACILITY, SERVICE & DROP-OFF, BOAT LAUNCH, OR NEGATIVE WELLS

Sheet C2.2 (Proposed Conditions)

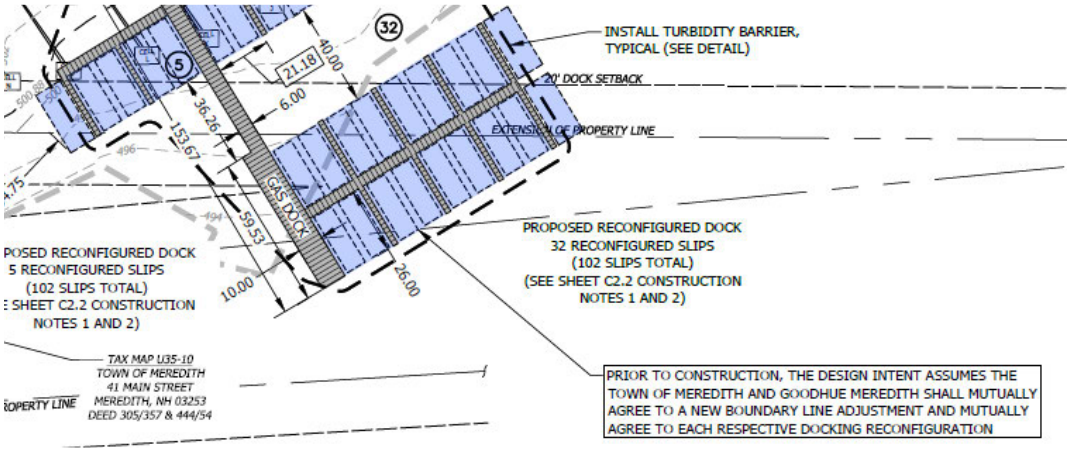
Goodhue's boat slip counts manufacture the impression of compliance with Env-Wt 513.23. However, the Department should closely scrutinize Goodhue's claimed slip counts reflected on Sheets C1.2 and C2.2 and, after confirming the facts and evidence set forth in this

letter, find that the proposed design fails to comply with the requirement to be less impacting and deny the Permit as a matter of law.[4] RSA 482-A:3 XIV(3)(B); Env-Wt 311.11(e)(3)(a).

B. Goodhue's dock design continues to violate statutory setback requirements in violation of statute that cannot be waived.

Goodhue now concedes that its proposed docking configuration will trespass on the Town's littoral rights in violation of RSA 482-A:3, XIII. Goodhue states in its Response that in lieu of meeting the statutory 20-foot setback requirement, Goodhue "intends to provide NH DES with a local permit approval or a mutually agreed to document stating the project may proceed concurrent to the separate Town public docking project." Response at p. 2, ¶5; *see also* Sheet C2.2 (showing proposed docks over the Town's littoral rights). Yet, RSA 482-A:3, XIII(c) requires that consent from an abutting property owner be submitted to the Department *at the time of application*. This statutory requirement cannot be waived, and such consent cannot be obtained after-the-fact, as a matter of law. *See* Env-Wt 204.05(a)(1)(3) (prohibiting granting any waiver that will "have the effect of waiving or modifying a statutory requirement."). Specifically, RSA 482-A:3, XIII(c) states that the consent "shall be signed by all parties, notarized and filed *with the dock application* with the department of environmental services." RSA 482-A:3, XIII(c); *see also* Sheet C2.2 below, reflecting violation of 20-foot setback requirement.

[4] The Department should also assess Goodhue's representation of a reduction in dock area of 1 sq/ft from 8,801 to 8,800. The Applicant's claim of measuring an existing dock facility and then re-creating it in a different configuration with new materials with 0.011% precision is unsupportable. Even assuming a low range of 2% variation in wood, there would a deviation of 176 sq/ft. Therefore, Goodhue's assertion of a 1 sq/ft reduction is, on its face, illogical, and moreover, it is not substantiated or identified in Goodhue's plans. The assertion is further belied by the fact that Goodhue proposes to increase the number of boat slips and by the fact that some of the slips do not meet the depth requirement of 25'x 8'x 3' deep. Goodhue's representation of a mere 1 sq/ft reduction is also troublesome because some of the existing docks were extended by four (4) feet without permits.



Extracted from Sheet C2.2.

Moreover, there is no evidence in the record that the Town is even considering moving ahead with a proposed "public docking project." As set forth in the next section, Goodhue's suggestion that the Town is proceeding with a Town dock project is at best false. Goodhue has therefore failed to comply with the statutory requirements of RSA 481-A:3, and the Permit must be denied on that basis, as a matter of law.

C. Goodhue's request for a waiver of Env-Wt 513.07 misrepresents the status of multiple necessary local approvals and should be denied.

Goodhue continues to rely on an uncertain, but necessary, future boundary line adjustment. Based on the evidence discussed below, it is highly unlikely that the Town and its representatives and citizens will provide Goodhue with separate approvals that Goodhue needs from three separate governing bodies (Select Board, Zoning Board, and Planning Board) as well as a full Town vote.

Further, Goodhue erroneously asserts that it is in negotiations with the Town of Meredith relating to an agreement over the purported boundary line adjustment. In fact, upon information and belief, there have been no discussions in roughly 1.5 years.

Simply, Goodhue has not provided any sound basis for DES to grant the requested waiver. Goodhue's request for a waiver puts the proverbial cart before the horse. DES should deny the requested waiver and deny the Permit.

1. There are compelling public policy and regulatory reasons to deny Goodhue's requested waiver.

The proposed expansion of the existing Boat Yard will have a material impact on the public and on the public's access to, and use of, the Town's own boat launch, docks, and public

trust waters. Due to the impact that the proposed project will have on the Town of Meredith and its residents, the local community should decide first whether to allow the project or not. DES should not make permitting decisions based upon speculation of uncertain future agreements and approvals between the Applicant and multiple governmental bodies.

As a matter of public policy and administrative efficiency, an applicant for a major docking structure must obtain local approvals *prior* to submitting a wetlands permit application to the Department. The policy behind this requirement is two-fold: (1) The Department should not waste time, energy, and money reviewing a State permit application that has not yet received all necessary federal and local approvals because such approvals may not come to fruition; and (2) If the State were to approve a State permit application before the local land use review, local government officials will experience unwanted and unnecessary pressure to issue local approvals and the public will be inappropriately stripped of its statutory and fundamental right to provide input. Goodhue's request for a waiver is entirely backwards—as a matter of law and policy, and the Permit should be denied.

2. Goodhue inaccurately describes the status of necessary local permitting and alleged negotiations with the Town of Meredith.

In a call to the Town of Meredith's interim Town Manager, MerNIA representatives confirmed that the Interim Town Manager is not aware of any negotiations relating to a boundary line adjustment taking place. The discussions were abandoned after legal challenges were previously raised. Contrary to Goodhue's representation in its request for a waiver, and based upon information and belief, no application has been made, and no discussions have occurred, since at least June of 2023 when the Meredith Select Board members publicly and unanimously agreed that Goodhue should go through the planning board process before the Meredith Select Board would even consider a proposed boundary line adjustment. *See* MerNIA April 19, 2024 Letter at p. 5.

In fact, despite now conceding in its Response that it needs, at the very least, a special exception for its project (Response at p. A-2), Goodhue has not submitted any applications with the Town Planning or Zoning Boards as suggested by the Meredith Select Board.[5] This adds further uncertainty and speculation to the purported "need" for Goodhue's waiver request, especially where Goodhue's local land use applications are anticipated to receive substantial public opposition.

Moreover, Goodhue's assertion that its Application for a wetlands permit has "concurrent timelines" with purportedly relevant Town improvements planned is also false. Upon

[5] Goodhue falsely claims that the Town of Meredith has no jurisdiction over the proposed Project. RFMI at A-11. However, as discussed infra note 8, to pursue this Application, Goodhue must obtain a special exception, and likely a variance, from the Town of Meredith's Zoning Ordinance to expand and to operate because it is a non-conforming use.

information and belief, the Town of Meredith has no current plans to alter or to improve its shoreline property or the littoral rights attached to its property. To the contrary, over the past two years, the Town has experienced significant budgeting issues, resulting in public outcry and pressure to reduce spending, such that there does not appear to be any appetite or funds to rebuild and/or to expand the Town docks. Indeed, on November 26, 2024, Meredith's Capital Improvements Program Advisory Committee met and voted unanimously to withhold contributions to the 2025 Waterfront Infrastructure Trust Fund. *See* **Exhibit 1**, Affidavit of Edward Touhey dated November 27, 2024[6] at ¶8; *see also* **Exhibit 2**, Meredith Capital Improvements Program Advisory Committee Report, October 11, 2023 (recommending no allocations for Waterfront Infrastructure in the 2024-2029 planning period because "there is no definitive path forward for any improvements at this time as costs and citizens' concerns over improvements at Lovejoy Landing have put a temporary hold on progress at that site."). Thus, contrary to Goodhue's suggestion, the Town has no current or future plans to alter or to improve its shoreland property.

Moreover, as set forth in MerNIA's April 19, 2024 letter to the Department, it is highly unlikely that Goodhue will secure the necessary boundary line adjustment in the near term, or ever, for several reasons:

First, it is likely that the necessary boundary line adjustment will require a Meredith Warrant Article and Town vote. Select boards in New Hampshire have implicitly determined that a warrant article is required for a boundary line adjustment when town property is involved.[7] *See also* RSA 41:14-a, II(c) (Select boards do not have unilateral authority to transfer town-owned land that performs a community function).

Second, a portion, albeit a very small portion of the proposed small land swap, is part of Lovejoy Sands Road. Swapping that land would therefore discontinue a part of a Town road, and the discontinuance of a Town road, or any portion of a Town road, requires a Town vote. RSA 231:43 ("[a]ny class IV, V or VI highway, or any portion thereof, in a town may be discontinued by vote of a town").

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[6] Mr. Touhey's fully executed November 27, 2024 Affidavit is being provided under separate cover to DES.

[7] *See*, for example, **Exhibit 3**, Town of Newfields Select Board Minutes (Sept. 12, 2023) (in which Chairman Sununu stated that a lot line adjustment between the Town and a private resident "would not be a simple lot line adjustment because the property belongs to the Town" and would "require a Town vote via a Warrant Article."); **Exhibit 4**, Town of Winchester Select Board Minutes (Jul. 17, 2019) ("the land swap was a warrant article and passed in 2018"). These and other examples demonstrate that it is widely understood by select boards across New Hampshire that a town vote is required for a land swap with a private party. *See* New Hampshire Practice Series 14 § 872, Disposition of Municipal Property (3rd ed., 2011) (citing *De Rochemont v. Holden*, 99 N.H. 80 (1954)) ("[t]he disposition of municipal real estate is not the ordinary business of the municipality and thus cannot be accomplished by a board of selectmen acting on its own, but rather requires a vote of the legislative body of the municipality.").

Third, the Town used federal grant funding under the Land and Water Conservation Fund ("LWCF"), to acquire and develop the land which the Town would "swap" in Goodhue's proposed boundary line adjustment. Federal law requires that the Town obtain federal approval prior to entering into Goodhue's proposed boundary line adjustment. The LWCF Project Agreement, Meredith Town Dock II expressly states as follows:

> Property acquired or developed with LWCF assistance shall be retained and used for public outdoor recreation. Any property so acquired and/or developed shall not be wholly or partly converted to other than public outdoor recreation uses without the approval of NPS pursuant to the LWCF Act (54 U.S.C. § 200305(f)(3)) and conversion requirements outlined in regulations (36 C.F.R. § 59.3).
>
> And
>
> No property acquired or developed with assistance under this section shall, without the approval of the Secretary [of the Interior], be converted to other than public outdoor recreation use.

Exhibit 5, LWCF Financial Assistance Manual (highlighted relevant pages: 3, 102). Here, the required land swap would "convert" Town-property "acquired and/or developed" with grant money into a private and commercial use from public outdoor recreational use. Such change in land ownership would therefore require approval from the United States Department of the Interior. Upon information and belief, neither Goodhue, nor the Town, have made any effort to secure such necessary federal approvals. Without the approvals, Goodhue's proposal is entirely unworkable.

D. <u>The Response falsely claims the existence and use of a second claimed commercial boat launch, which never existed nor operated at the site.</u>

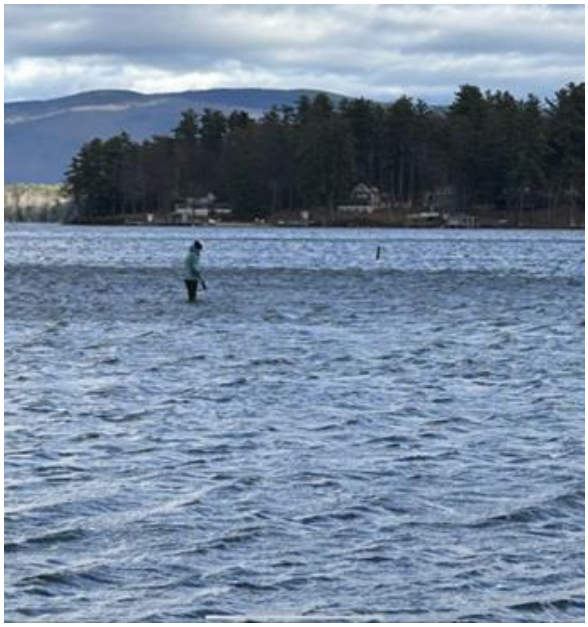
In an apparent attempt to "soften" the impact on abutters and the entire shoreline of its proposed new boat launch, cantilevered negative well, and associated commercial docking system in the northern portion of the property, Goodhue now asserts that the location of its proposed boat launch is "an existing commercial launch." Response at 6, ¶13(d)(6); ¶15. As the sole support for its assertion, Goodhue included the affidavit of John W. Dever, Jr. Mr. Dever, Jr., states that for a period of time in the mid-1900's a number of commercial barges "land[ed] at the northeastern end of Marina." Affidavit of John W. Dever, Jr. at ¶9. Mr. Dever, Jr., also attests that the alleged barge landing location was never a swimming beach. *Id.* Although MerNIA does not dispute that the area is currently used intermittently by Island Services Corporation as a landing location for its two barges that provide an essential service for island residents, this area was not used by Mr. Dever, Sr., for a boat barge business. Simply stated, it is not used as, and has never been used as, a commercial boat launch site.

As set forth in the Affidavit of Edward Touhey, who has resided in Meredith since 1976 and who has served as a member of the Meredith Planning Board, Chair of the Planning Board, and member of the Capital Improvement Programs Advisory Committee, Mr. Dever, Sr., used a right-of-way on Mr. Touhey's property, on the shoreline of Kelley Cove, for access for his business—not the area of the proposed commercial boat launch. **Exhibit 7**, Affidavit of Edward Touhey dated November 22, 2024 at ¶¶3, 7-8. Mr. Dever, Sr.'s business included towing a plywood raft from his boat. **Exhibit 1** at ¶6. That raft, which is believed to be the "barge" referred to by Mr. Dever, Jr., in his Affidavit, is depicted on the right in the below photo which also shows Mr. Dever, Sr.'s boat on the left:



Id. at ¶7. Additional witnesses confirm Mr. Touhey's recollection that Mr. Dever, Sr., did not use the proposed location for a commercial boat launch. For example, Gerald Whiteleather, who has lived in Meredith since 1971, attests that there has not been a commercial boat launch in the proposed location. **Exhibit 6**, Affidavit of Gerald Whiteleather at ¶8; *See also* Letter of James Crofts, President of Tall Pines, submitted under separate cover. Indeed, Mr. Touhey attests that the area was inactive prior to the late 1980's, but for one winter storm at the end of 1980. **Exhibit 7** at ¶12. The location was unsuitable for a boat launch because the slope was too steep, and the water was too shallow. **Exhibit 6** at ¶10; *see also* **Exhibit** 7 at ¶12.

The area remains shallow, rocky, and unsuitable for launching boats or for any commercial activity. Notably, Goodhue did not include a bathymetrical study because if it had, the study would have shown how shallow and rocky the area is and that it presents a navigational hazard. MerNIA included aerial photos in its April 19th letter. Even though the following image was taken this past week while the lake is approximately two feet shallower than during the summer peak, it demonstrates how shallow the water is in the vicinity of the proposed boat launch:



Goodhue wrongly suggests that the proposed boat launch in this location historically operated as a commercial launch. To the contrary, the location has only ever been used as a landing location for barges operating on the lake and even that did not occur until the late 1980's. The barge use has been intermittent and is nothing like the proposed intense increase in commercial use to launch boats.[8]

II. GOODHUE FAILS TO ADDRESS NUMEROUS ISSUES RAISED BY THE RFMI.

A. Goodhue failed to address or even to acknowledge the serious navigational impacts resulting from its proposed dock design.

Goodhue failed to address, and has simply ignored, the serious navigational issues presented by its flawed dock design and, therefore, has failed to demonstrate that its proposed design does not "represent a hazard to navigation" in violation of Env-Wt 513.16.

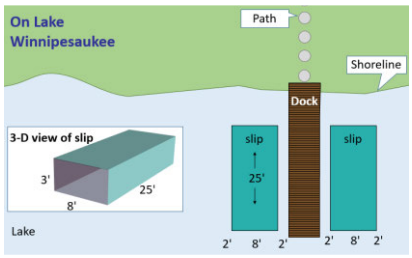
[8] Moreover, the proposed use would violate the Meredith Zoning Ordinance which does not include rental boat use in its definition of a Marina. The Boat Yard is an illegal, non-conforming use. Among other things in violation of local zoning, it has never obtained a special exception as is required to operate a commercial marina at its location in Meredith's Shoreline District. *See* Meredith Zoning Ordinance, Article V, Section D-4 (Shoreline District). Further, under Meredith's Zoning Ordinance, the use of property as a commercial marina does not include the selling, renting, and/or valeting of boats. *Id.* at 70 (commercial marina is defined as "[a] place for docking or storage of pleasure boats and providing service to pleasure boats, including service and repair, sale of fuel and marine supplies").

Goodhue erroneously asserts that the proposed dock modification has been designed in a manner that will not cause a hazard to navigation. *See* Response to RFMI at page 3, ¶10; *id.* at ¶11(3). As the sole support for its assertion, Goodhue states that the layout "provides a minimum 32-foot-wide watercraft access between the proposed docks and the existing public town docks." *Id.* Yet, as MerNIA explained in its April 19th letter, Goodhue's proposal and its claimed 32-foot-wide access ignores the fact that boats routinely dock on the southern side of the Town's dock. *See* MerNIA's April 19, 2024 Letter at p. 7, Ex. 6 (Google Earth Images showing use of the Town's dock for docking). Goodhue's proposal fails to account for the use of the Town's dock by members of the public, which will further reduce the available space to navigate.



Extracted from Sheet C2.2.

Accounting for boats docked to the Town dock reduces the available access by an additional minimum of 12 feet (8 feet wide with 2 feet of separation on either side) *to a mere 20 feet, less than the length of most boats on the lake.*[9] *See* RSA 482-A:11, VIII(a) (defining "boat slip" as "[a] volume of water 25 feet long, 8 feet wide, and 3 feet deep"); *see also* DES Fact Sheet WB-19 (2021) (Boat Slip Figure Extracted Below).



[9] Goodhue itself admits that the *average* boat it intends to valet into the lake is 26 feet. *See* Response to RFMI at p. 8, ¶16.

Regardless, whether the distance is 20 feet wide or 32 feet wide, the proposed design creates a boating hazard that is likely to cause accidents because 20 or 32 feet is insufficient for most boats to turn around. Consequently, any boat entering from the public launch via a trailer will have to navigate backwards, backing up until it has cleared the proposed docks before being able to turn around. *In fact, any boat backing into the water from the public launch would be required to reverse for upwards of 160 feet (at least double the existing distance)* before being able to turn safely and securely navigate out of the channel created by Goodhue's dock design.

As a result of this challenging circumstance, boats seeking to access the public boat launch from the lake will need to wait longer for access to clear. Any boaters seeking to enter the lake will similarly need to wait for access to clear, as will boaters intending to access their slips adjacent to the channel and boats trying to dock at the public dock. Management of this activity during moderate to high volume periods of the day will be virtually impossible and will create dangerous conditions on the water and traffic log jams on the land. The wait times will likely interfere with and limit some members of the public from being able to access and use the lake, especially during peak summer weekends or times when conditions on the lake are windy and/or rough. The wait times may be so prohibitive that they could deny some residents any access to the lake and to their vehicles. Notably, Goodhue does not deny that it intends to continue to use the boat launch and the existing negative lift. Goodhue's continued use in this area will compound the safety hazards and public access limitations. Town residents should not be placed in this danger and/or need to endure long wait times as a result of Goodhue's proposed overuse and burden of both the lake and land.

Goodhue's proposal increases danger to the public by relocating Goodhue's gas dock to the south of the center section of docks, adjacent to public access to the Town docks. This would place Goodhue's gas dock only approximately 85 feet from the location of where Meredith docks its emergency response boat. Consequently, boats hovering and waiting in line for gas will impede the Meredith Fire Department's ability to respond. Emergency access will be further impeded by the overcrowding because all boat traffic will be limited to, and funneled through, a channel of approximately only 140 feet of waterway.

Approval of the proposed design will exacerbate unsafe, hazardous, and impracticable conditions that will impede the Town's and the public's ability to access and use the Town's docks and public waters—a result that directly contravenes the Town's lawfully protected littoral rights and the public's right to access public waters.

B. <u>Goodhue's request for a reduced setback for its proposed boat launch should be denied because the additional boat launch will have significant adverse effects on neighboring properties.</u>

Goodhue's proposed boat launch violates the 50-foot setback requirement required by Env-Wt 518.06 and will increase congestion, create navigational problems for boaters, and

restrict space for boat maneuvering, among other harms. *See* Env-Wt 518.06(a) (setting a 50-foot setback "in order to minimize congestion, improve navigation, protect neighboring property values, provide adequate area for boat maneuvering, and protect public health, safety, and general welfare"). Further, Goodhue has failed to demonstrate that the limited 37-foot setback for the new boat launch will not adversely affect abutting properties and the rights, including littoral rights, of abutters in violation of Env-Wt 518.06. Env-Wt 518.06(b) (requiring applicants demonstrate the reduced setback will not "infring[e] on the property rights or unreasonably affect[ ] the value or enjoyment of property of abutting owners."); *see* Response at p. 7, ¶14. Goodhue's so-called "request" for a reduced setback does not comply with Env-Wt 518.06(a) and (b) and should be denied.

As the sole support for its *three-sentence* request, Goodhue states that its proposal includes a fence and screening—the bare minimum and an insufficient effort to mitigate the impact of their project on abutting properties. Goodhue fails to address the myriad additional impacts to the property and property rights of abutters. Importantly, Goodhue proposes to construct a new dock between the proposed boat launch and the abutting property line. By Goodhue's calculations, however, the addition of the dock reduces the setback associated with the boat launch even further to only 30.79 feet and the distance to the abutting property's dock to 44 feet. *See* Sheet C2.1, Sheet C2.2.[10]

The construction of the new boat launch and commercial docks will impede access to the adjacent dock owned by residents of the Tall Pines community. Due to existing navigational hazards, Tall Pines must access their dock adjacent to the proposed boat launch from the south as depicted below:



[10] The neighboring small dock was not surveyed as part of this plan and was based on 2021 aerial imagery. Therefore, all referenced distances are unreliable.

The proposed commercial docks will leave Tall Pines a mere 44 feet maximum to maneuver. *When the proposed commercial docks are in use, the available space would be reduced to as little as 20 feet.* On this issue, Goodhue fails to consider, or to address, the additional constraints imposed by the lake barges that currently utilize the landing area and measure as much as 24 feet or wider. Goodhue's plans (Sheet C2.2) identify only 44 feet of space between the proposed commercial dock to the north of the proposed boat launch. A 24-foot barge docked in this location will, therefore, certainly prevent access to, and use of, the abutting Tall Pines dock.

Moreover, the location of the proposed commercial docks will create an additional navigational hazard by directing significant boat traffic to the wrong side of an existing nearby black buoy, where the presence of submerged rocks will likely increase the risks of damage and injuries for boaters. To avoid the buoy, the proposal will also compel boat traffic to navigate closer to the Tall Pines Condominium properties, increasing the adverse impacts to those properties and interfering with the littoral rights of abutters.



As set forth in MerNIA's April 19th letter, the proposed boat launch, commercial docks, and negative well will harm the Tall Pines Condominium abutters in Kelley Cove to the north. The proposal will shift day-to-day Boat Yard related activities from its present location to the

northernmost area of the property immediately adjacent to private residential properties. This shift will result in new and additional noise, air, and water pollution.

The development will also increase vehicle traffic that will overburden the Tall Pines easement, identified on Sheet C2.2, and will exacerbate already existing traffic and parking issues. *See* MerNIA April 19, 2024 Letter, pp. 13-15 (discussing overburdening the easement). Notably, parking at the public parking lots is already such a problem that a Meredith Neck Lake Access Parking Committee was formed by the Select Board to consider parking remedies/alternatives and to protect Meredith residents from the burdens to the public lots from the growth in demand for parking at this location. After a season of review and data collection, the Committee is recommending that the Select Board approve a permit parking program that will protect Town taxpayers' interests at this site. By Goodhue's own admission, during certain times of the year, it anticipates launching as many as fifty (50) boats per day. *See* Response at p. 8, ¶16. In a typical eight-hour day, this would amount to roughly six boats per hour, or one every ten minutes. It is unclear whether Goodhue includes the need to remove the boats from the water at the end of the day in its launch counts. This level of traffic and activity will severely impact the use, enjoyment, and value of neighboring properties. Goodhue has failed to account for this significant change in land use in its Application.

Goodhue has failed to meaningfully mitigate and minimize the range of adverse impacts to abutting properties. Its proposed design will result in significant harm to abutters and its request for a reduced setback should be denied.

C. Goodhue fails to adequately address stormwater impacts.

Goodhue has failed to design the proposed boat launch in a manner that will sufficiently divert stormwater from the ramp surface in violation of Env-Wt 518.06(d). Goodhue asserts that it proposes to install a new trench drain and ADS Water Quality Unit, yet it admits that the system will only be able to manage the "first one-inch of rainfall." Response at p. 8, ¶17. Goodhue's response is vague. The proposed design, while failing to provide any meaningful information, appears insufficient to adequately control stormwater resulting from rain events, which with increasing frequency exceed 1-inch totals. Goodhue does not specify a time duration associated with its claimed one-inch treatment level. Is it one inch per hour, per day, or per storm event? According to data compiled by UNH Extension program, multiple storms in 2023 exceeded 1-inch totals, including one storm on July 16, 2023 that resulted in 4.8 inches of rain in Wolfeboro. *See UNH Extension 2023 NH Precipitation & Temperature Overview.*

The reconfigured plans do not provide any design or detail of stormwater controls including essential information needed for any assertions regarding handling and treatment of

stormwater, specifically an analysis of peak flows based on pre- and post-development surfaces, depth of seasonal high groundwater, and subsurface soil types.[11]

D. Goodhue has made no commitment to cease use of an existing negative well and has not demonstrated that its proposed additional negative well is the least intrusive option in violation of Env-Wt 513.03.

Goodhue has failed to provide clear design plans for its proposed cantilevered negative well sufficient to demonstrate that its proposal is the least intrusive on the public trust. Env-Wt 513.03. While Goodhue would have DES believe that its intent is to shift its boat yard operations to the proposed northern boat launch and negative well, Goodhue does not propose to remove the existing negative well that it uses for depositing boats into the public trust waters. In fact, the existing negative well is clearly shown on Goodhue's proposed design plans as remaining following construction. The more likely outcome of Goodhue's obvious expansion plans, therefore, is that it intends to use the proposed negative well *in addition to* its existing negative well. Under those circumstances, the proposal is certainly not the least intrusive on the public trust; rather, it is entirely unnecessary and is therefore the most intrusive option.

In any event, Goodhue has failed to provide clear design plans. DES cannot make the necessary regulatory determination of the least intrusive alternative. For this additional reason, the Permit should be denied.[12]

III. THE DEPARTMENT SHOULD SCHEDULE A PUBLIC HEARING ON THE APPLICATION.

For the reasons set forth in this letter, and MerNIA's April 19th and May 8th letters, it is MerNIA's position that DES must deny the Permit as a matter of law. If DES does not deny the Permit outright following review of this letter, MerNIA repeats its request that the Department schedule a public hearing, pursuant to the requirements set forth in RSA 482-A:8 and Env-Wt 202.01(b) ("[t]he department shall provide a reasonable opportunity for public comment on proposals under RSA 482-A:3 and *shall* hold a public hearing for projects with *significant impact* on the resources protected by this chapter *or* of *substantial public interest*." (emphasis added).

[11] Goodhue now admits that its originally submitted pre- and post-impervious coverage tables are incorrect because it used a 2018 survey even though there has been substantial damage to the shoreline and buffer zone since that survey. In response to Christina Touhey's letter, Goodhue states that it "is planning to revegetate current impervious ground cover which were surveyed as pervious ground cover in 2018." Thus, Goodhue's tables on Sheet C2.0 are incorrect, false, and misleading.

[12] To the extent permitting of the proposed negative well is considered "disposal of real estate" by the Department, Executive Council approval may also be required pursuant to RSA 4:40, I (requiring Executive Council approval where an agency "disposes" of State-owned property).

IV. CONCLUSION.

Due to Goodhue's clear failures to satisfy statutory and regulatory requirements, and to prevent further environmental harm and public health and safety impacts, MerNIA respectfully requests that the Department deny the Application.

Please contact me directly should you have any questions or wish to discuss our concerns.

Sincerely,



Adam M. Dumville