



State of New Hampshire

DEPARTMENT OF SAFETY

John J. Barthelmes, Commissioner of Safety

Division of State Police

James H. Hayes Safety Building, 33 Hazen Drive, Concord, NH 03305



Colonel Robert L. Quinn
Director

July 22, 2015

Her Excellency, Governor Margaret Wood Hassan
and the Honorable Council
State House
Concord, New Hampshire 03301

RE: Boat Moorings – NEWFOUND LAKE – FIVE MOORINGS

Requested Action

To **approve** the permit application of **Bourbon Beach Association** located on Newfound Lake in Alexandria, NH as recommended by the Department of Safety, Division of State Police for a Congregate Mooring Field of five (5) moorings under the authority of RSA 270:67. **Bourbon Beach Association** is requesting one (1) additional mooring to be added to the currently established four (4) moorings for a total of five (5) moorings. **It is recommended that the application be approved for five (5) moorings.**

Explanation

The petitioner has presented sufficient proof to sustain the request for the addition of one (1) mooring to the four (4) moorings previously approved for a total of five (5) moorings, thereby creating a Congregate Mooring Field in concurrence with RSA 270:67 and New Hampshire Code of Administrative Rules Saf-C 408.

Public Hearing held June 11, 2015.

Enclosed are the Application, Map and Public Hearing Report.

Respectfully submitted,

Colonel Robert L. Quinn
Director of State Police

Enclosures

Application Number: 0396

Permit Number: _____

Conditions: _____



DECAL #
15-1002662-2665

OF MOORINGS APPROVED _____

FOR OFFICIAL USE ONLY

APPLICATION FOR A CONGREGATE MOORING FIELD PERMIT

Instructions: This application should be used for all non-public mooring fields consisting of five or more moorings. The application must be completed in its entirety with all the required documentation. Mail the completed application to:
SAFETY SERVICES

**Department of Safety – Division of State Police
Moorings Program
P. O. Box 1150, Belmont, NH 03220
Telephone: 603-267-6453**

AUG 01 2014
MOORINGS

Applicant's name: BOURBON BEACH ASSOCIATION

Shorefront property location: WEST SHORE ROAD

Town/City: ALEXANDRIA Phone #: _____

NOTE: The applicant must be the owner or leaseholder, such as the Association, Corporation, Camp, etc., of the shore front property accessing the mooring field.

Contact Person: EDWARD WEINER

Mailing Address: 18 ONEIDA ROAD City: ACTON State: MA Zip: 01720

Phone #: 978-266-9663 Local Phone #: NONE Cell Phone #: 978-360-2635

The proposed mooring field is located on Lake: NEWFOUND

The town/city tax lot number of the shore front property is: PARCEL NO.2 AS REFERRED TO IN DEED

Number of moorings requested: 5 Applicant's shore frontage in feet: 260

The approximate area (size) of the mooring field in square feet: 6250

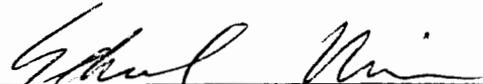
The distance from shore to the furthest proposed mooring in feet is: 100

The number of docks at the property: 1 The number of boat slips: 4 Is there a swim line? NO

Is there a swim raft at the property? YES What is the square footage of the raft? 144

Does the applicant have title ownership to the shore front property? YES, AS AN ASSOCIATION

I, the applicant, certify that the petitioner shall indemnify and hold harmless the state, its officers and employees from all claims, liabilities or penalties resulting from the acts or omissions of the petitioner in maintaining, managing or operating the mooring field:

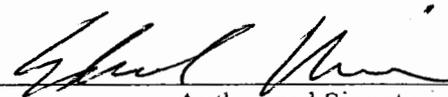

Authorized Signature

I, the applicant, certify that all abutters to the shore front property have been notified of this application by certified mail, (based on municipal tax data) return receipt requested, and have been provided copies of the application and grid map.

NOTE: Abutters: The record owner of land immediately adjacent to, and/or of any portion of land that is located within 300 feet of, the boundaries of the proposed mooring field, including properties adjacent to the water within 300 linear feet, such as in the case of coves.


Authorized Signature

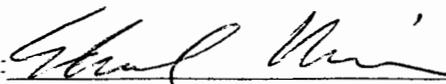
The applicant hereby gives permission for the director or his agents to enter the property for the purpose of performing a field investigation to review this application:

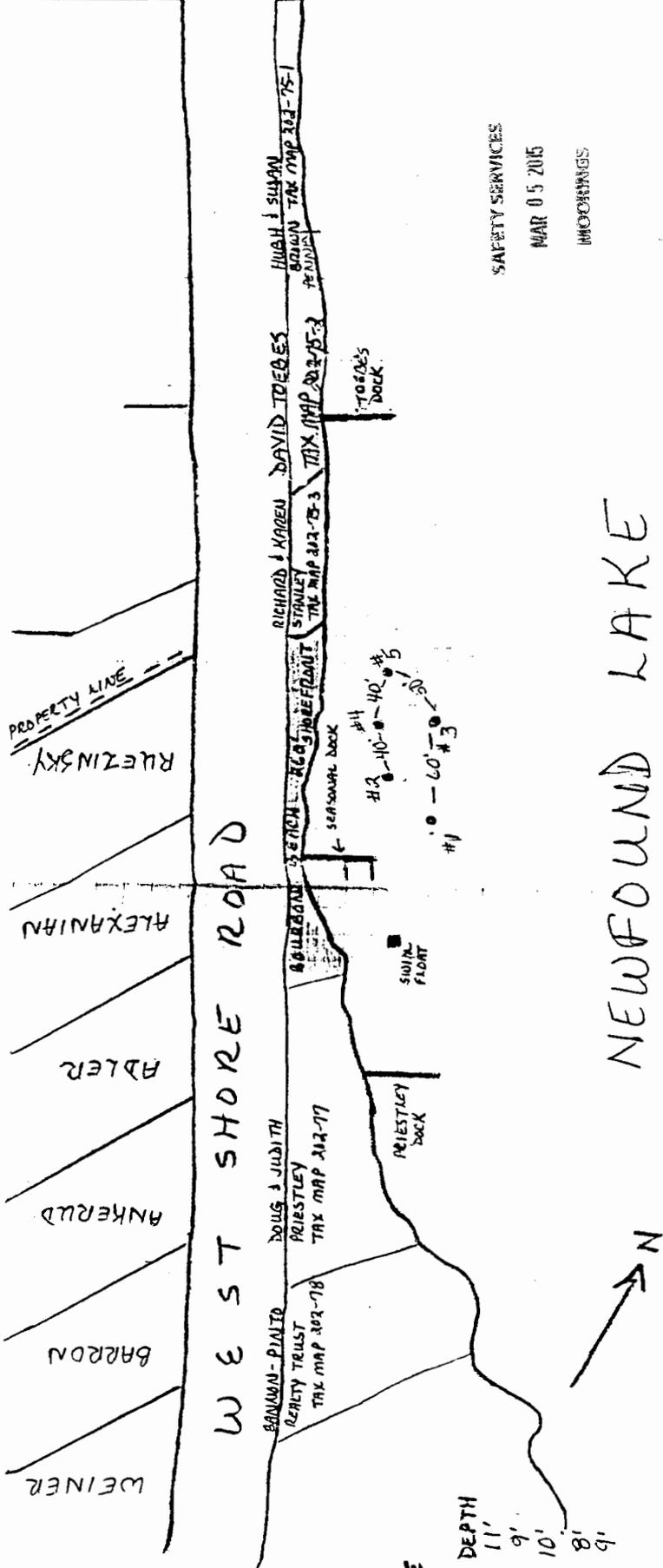

Authorized Signature

NOTE: This application may require a public hearing. The applicant and abutters will be notified as to the date, place and time of the hearing. The Department of Safety, Division of State Police will submit a recommendation to the Governor and Council who will approve or deny the application. The applicant and abutters will be notified in writing of the recommendation prior to the scheduled Governor and Council meeting.

Do not send any fee with this application. If approved, by Governor and Council, notification will be sent requesting the decal fee. Your annual mooring decal(s) will be forwarded to you upon receipt of payment of the current decal fee. Decals must be renewed annually and must be attached to each mooring above the waterline prior to using the moorings. **Perimeter lighting, if required, must be installed prior to use.**

I hereby certify that all statements on this application and all documentation supplied with this application are true. Supplying false information on this application will result in revocation of any permit issued and is punishable by imprisonment. This application is signed under penalty of unsworn falsification pursuant to RSA 641:3.

Authorized Signature:  Date: 7/28/14



MOORING TABLE

NO.	DISTANCE	DEPTH
1	87.5'	11'
2	60'	9'
3	80'	10'
4	45'	8'
5	50'	9'

NEWFOUND LAKE

BOURBON BEACH ASSOCIATION
 WEST SHORE ROAD
 ALEXANDRIA, NH

CONGREGATE MOORING FIELD
 MOORINGS REQUESTED 5
 SHOREFRONT - 260'

SAFETY SERVICES
 MAR 05 2015
 MOORINGS

SCALE: 20' = 1/4"

CONTACT: ED WEINER
 CELL - (978) 360-2635
 HOME - (978) 266-9663

DATE: 03/02/2015



State of New Hampshire

DEPARTMENT OF SAFETY
OFFICE OF THE COMMISSIONER
33 HAZEN DR. CONCORD, NH 03305
603/271-2791

JOHN J. BARTHELMES
COMMISSIONER

Petition in the Matter of

Bourbon Beach Association
Newfound Lake, Alexandria, N.H.

HISTORY:

The Department of Safety received a petition from Edward Weiner which was prepared and submitted as a congregate mooring plan on behalf of Bourbon Beach Association, (Association) or (Petitioner).

The Petitioner is requesting to add 1 mooring to a mooring field of 4 moorings, for a total of 5 moorings in a congregate mooring field. The petition, dated July 28, 2014, offered the reasons for adding the mooring.

Proof by the Petitioner of notification to all the abutters was received by the Department of Safety, allowing the requested hearing to be scheduled.

Notification of the June 11, 2015 public hearing was published in a newspaper of statewide circulation, the Union Leader, on May 22, 2015; in addition, it was sent to the town of Alexandria for posting. The Notice of Hearing and petition were placed on the Department of Safety web site in accordance with RSA 270:12, III on or about May 1, 2015

Pursuant to RSA 541-A, a public hearing was held on Thursday, June 11, 2015 at 11:00 a.m. at the New Hampshire Department of Safety, 33 Hazen Drive, Concord, New Hampshire. The scope of the hearing was to allow for and consider public comment in accordance with RSA 270:62, VI, RSA 270:67, RSA 270:68 and New Hampshire Code of Administrative Rules, Saf-C 408 (*et seq.*) on the Petitioner's request.

Hearings Examiner Christopher Casco, Esq., as my designee, conducted the public hearing.

OPENING REMARKS:

Everyone present was informed of the following:

- the Notice of Hearing was read to the persons in attendance;
- the Petition and all supporting documents were available for review;
- the public hearing was recorded;
- the recording will be preserved for seventy-five (75) days along with an explanation of the procedure by which to receive a copy of the recording;
- their opportunity to sign the appropriate "sign-up sheet" to present comment on the petition;
- notification of the public hearing was published in The Union Leader on May 22, 2015 which is a newspaper of statewide circulation;
- they could review the legal notice, along with the original petition and any other documents; and,
- how and where to submit written comment that must be received by the Department of Safety within ten (10) calendar days following the hearing.

STATISTICS:

- On June 11, 2015, two (2) persons spoke at the public commentary hearing in favor of granting the petition. Within the ten days following, no comment was received. No one spoke against the petition.
- On Monday, June 22, 2015, at the end of the business day, the hearing was closed to public comment.

OFFICIAL NOTICE:

- The Association's petition for hearing, application and attached exhibits dated July 28, 2014, and received by the Bureau of Hearings requesting to add 1 mooring to an existing mooring field of 4 moorings. The attached and updated diagram describes the area which clarifies the existing moorings and how the field will be positioned should the petition be granted; marking the location of each of the proposed mooring locations;
- the Division of State Police, Bureau of Marine Patrol Sgt. David Ouellette's conclusion that the proposed site presents no issues;
- notification of the June 11, 2015 hearing to the public was published in a newspaper of statewide circulation on May 22, 2015; in addition, it was sent to the town of Alexandria for posting. The Notice of Hearing and petition were placed on the Department of Safety web site in accordance with RSA 270:12, III; and,
- no public commentary was received in written or electronic form before the end of public comment at the end of the business day on Monday, June 22, 2015.

SYNOPSIS OF TESTIMONY:

Ms. Sharon Champagne, Moorings Supervisor, provided an overview of the proposal. She sent notice of this request to the NH Fish and Game Department and they indicated that they feel that the plan does not have any negative impact. She also sent written notice to the NH Department of Environmental Services and did not receive a response. Sgt. Ouellette represented to her that NH Marine Patrol found no issues with the proposal.

Arthur Barron testified as an association member representing Petitioner. They are requesting to add 1 mooring to an existing field of 4 moorings, for a total of 5 moorings. He owns one of the lots. Originally, they had 6 moorings but two of the moorings lapsed because they were not being used. At that time, he had a boat and used one of those moorings, but due to his busy schedule, he was unable to use his boat, and therefore, did not use his mooring. When he intended to resume using his boat, he learned that his mooring was no longer available. He requested that the association take action to obtain this mooring, which lead to the hearing. He has dock space but that is insufficient for storing and launching his boat.

Charlotte Baron spoke in support of the petition. She spoke with other property owners and they weren't aware that 2 moorings had been lost. They worked to resolve this issue by petitioning for the additional mooring.

SYNOPSIS OF COMMENTARY: RECEIVED PRIOR TO OR AFTER THE HEARING

No comment was received.

LEGAL ANALYSIS:

In gathering findings of fact, the following relevant, legal authority is given consideration:

RSA 270-D: 2 General Rules for Vessels Operating on Water.

"...Vessels shall be operated at headway speed only, while passing under all bridges. VI. (a) To provide full visibility and control and to prevent their wake from being thrown into or causing excessive rocking to other boats, barges, water skiers, aquaplanes or other boats, rafts or floats, all vessels shall maintain headway speed when within 150 feet from: (1) Rafts, floats, swimmers; (2) Permitted swimming areas; (3) Shore; (4) Docks; (5) Mooring fields; (6) Other vessels. . . ."

RSA 270:60 Mooring of Boats on Public Waters

The general court finds that:

- (a) Water is a public resource held in trust by the state and that the state maintains jurisdiction to control the use of public waters for the greatest public benefit; and
 - (b) The public waters are a significant asset which enhance the well-being and lifestyle of the state's citizens, benefit the state's substantial tourist industry and the environment, and are a habitat for many fish and wildlife; and
 - (c) That undue proliferation of moorings is detrimental to the integrity of the state's waters and the public's enjoyment thereof.
- I. The general court intends to establish through this subdivision a means of regulating the usage of moorings on public waters. Existing moorings may be permitted in their existing locations, provided such moorings comply with the provisions of this subdivision.
 - II. The general court does not intend, by passage of this legislation, to convey to, create for, or recognize any rights of shorefront property owners.

RSA 270:64 Moorings Prohibited

- I. No mooring shall be located:
 - (a) In such a manner that it constitutes a hazard to the public safety because it interferes with or impedes, or could potentially interfere with or impede, navigation; or
 - (b) In such proximity to other moorings as to constitute a hazard to public safety; or
 - (c) In such a manner that it presents an unreasonable adverse effect on the environment, including but not limited to water quality, wildlife habitats, or natural areas; or
 - (d) In such a manner that it unreasonably interferes with other recreational uses of the water and adjacent land.
- II. The director shall develop rules to carry out the purposes of this subdivision pursuant to RSA 270:71 and RSA 541-A.
- III. The director shall consult with the fish and game department, the department of environmental services, or the office of energy and planning to assist in the assessment required under subparagraph I(c).

270:67 Public and Congregate Mooring Fields; Permit Required.

- I. Public Mooring Fields.
 - (a) The division of state police shall identify suitable locations for public mooring fields and prioritize the need for the development of such sites. In determining said locations the division of state police shall recommend each location size and the configuration of each public mooring field. Further, it shall be determined by the division of state police that adequate access exists to serve the needs of the users of the public mooring field. Said site proposal shall then be transmitted to the respective political subdivision or subdivisions in which the proposed mooring field is to be located, where a public hearing on said site proposal may be conducted by the division of state police. The division of state police shall review all recommendations received and submit their final

site proposal to governor and council for approval. All such recommendations shall be consistent with any existing master plans, zoning ordinances, wetlands conservation district ordinances, and capital improvement programs of the adjacent municipality.

- (b) The division shall issue a permit to any applicant for a mooring in a public mooring field who fulfills the mooring requirements in this subdivision subsequent to approval under subparagraph (a).
- (c) Each public mooring field applicant shall be assessed a fee of \$25 which shall be deposited in the navigation safety fund established under RSA 270-E:6-a.
- (d) No mooring shall be sold or leased except as provided in this section.

II. Congregate Mooring Fields.

- (a) The division of state police may identify suitable locations for congregate mooring fields. In determining said locations the division of state police shall recommend each location size and the configuration of each congregate mooring field. Further, it shall be determined by the division of state police that adequate access exists to serve the needs of the users of the congregate mooring field. Said site proposal shall then be transmitted to the respective political subdivision or subdivisions in which the proposed mooring field is to be located, where a public hearing on said proposal may be conducted by the division of state police. The division of state police shall review all recommendations received and submit their final proposal to governor and council for approval. All such recommendations shall be consistent with any existing master plans, zoning ordinances, wetlands conservation district ordinances, and capital improvement programs of the adjacent municipality.
- (b) Subsequent to approval by the governor and council, the division shall issue a permit to any applicant for a congregate mooring field who shows that:
 - (1) The location and size of the congregate mooring field meet the criteria established pursuant to RSA 270:71; and
 - (2) Adequate access exists to serve the needs of the users of the congregate mooring field; and
 - (3) The congregate mooring field will comply with the provisions of RSA 270:64; and
 - (4) No mooring shall be sold or leased except as provided in this section.
- (c) Each congregate mooring field permitted by the director shall be assessed an annual mooring fee of \$25 for each mooring installed in the congregate mooring field which shall be deposited in the navigation safety fund established under RSA 270-E:6-a.
- (d) Operators in charge of maintaining congregate mooring fields may charge no more for the use of a mooring than an amount which reasonably covers the costs of mooring installations and maintenance. Said charges shall be reported to the division of state police who shall submit an annual report to the governor and council and the general court on all congregate mooring fields.

III. Notwithstanding RSA 270:61, III, small mooring sites may be established without the approval of governor and council, but subject to the approval of the division. Such sites shall be only for the use of motels, cottages, condominiums, other rental property, or homogeneous use group.

270:68 Mooring Areas; Designation

- I. The division shall determine the need and suitable locations, size, and configuration for mooring areas. The director shall designate appropriate mooring areas and assign mooring sites within such designated areas to individuals who meet all other requirements of this subdivision and can demonstrate a need for a site in such area. All designated mooring areas shall be consistent with any existing master plans, zoning ordinances, wetlands conservation district ordinances, and capital improvements programs of the adjacent municipality.
- II. Any mooring which does not comply with the specifications of this section may be subject to removal at the owner's expense.

Selected Administrative Rules

- Saf-C 401.04** "Congregate mooring field" means a mooring field dedicated to homogeneous use groups, such as, but not limited to clubs, associations and youth camps.
- Saf-C 401.16** "Mooring field" as defined in RSA 270:59, VII includes congregate and public mooring fields.
- Saf-C 408.05** Mooring Permit Application.
- Saf-C 408.07** Congregate Mooring Permit Application.

Pursuant to RSA 270:61 through and including RSA 270:68 along with New Hampshire Code of Administrative Rules, Saf-C 408 (*et seq.*) defines and regulates the practice of mooring of boats. RSA 270:67 further delineates designation of locations and other specific criteria to consider.

LEGAL ANALYSIS ~ DISCUSSION:

The number of people in attendance at the hearing and the numbers of persons recorded for or against the proposed petition is given weight in determining findings; however, greater significance is given to the specific information submitted for review by testimony and the information within the petition. Petitioner is asking to add 1 mooring to an existing mooring field of 4 moorings. The Petitioner testified that at one time the association had 6 moorings, but 2 lapsed. Sgt. Ouellette indicated to Ms. Champagne that adding 1 mooring will not have any negative impact. Also, the Fish and Game Department concluded that the petition does not have a significant impact, and therefore, is appropriate.

In my evaluation, there was appropriate information in the application supplied by the petitioner on the topics specifically required under statute and rule when applying for adding a mooring to an existing mooring field, and creating a congregate mooring field of 5 moorings. The abutters and the public were notified in accordance with RSA 270:12. After the hearing and the ten days following which allowed for public comment, I carefully weighed the request within the petition, the testimony and documents presented at the hearing and the Marine Patrol conclusion of no negative impact in my determination of facts to consider. Comments included that granting this request will restore a mooring that previously existed and that association residents didn't realize that 2 moorings had been lost. The association is asking for only 1 mooring because that is what is needed at this time. Both Marine Patrol and Fish and Game concluded that approving the mooring will not have any negative impact.

After carefully considering the exhibits, testimony and public comment presented, Findings of Fact are issued (*Infra*).

FINDINGS OF FACT:

1. Pursuant to RSA 270:67, Bourbon Beach Association, (Petitioner) requested the Department of Safety to conduct a public hearing seeking to add a mooring to an existing mooring field of 4 moorings, thereby making a congregate mooring field of 5 moorings.
2. Official notification to the public of the June 11, 2015 hearing was published in a newspaper of statewide circulation on May 22, 2015; in addition, notice of the hearing was sent to the town of Alexandria. Finally, the Notice of Hearing was placed on the Department of Safety web site in accordance with RSA 270:12, III.
3. A public hearing was scheduled on Thursday, June 11, 2015 at 11:00 AM on the issue and conducted pursuant to RSA 541; RSA 270:67; RSA 270:68 and Administrative Rule, Saf-C 408 at the Department of Safety, 33 Hazen Drive, Concord, New Hampshire.
4. The Petitioner seeks approval to add 1 mooring to an existing, approved mooring field of 4 moorings in Newfound Lake, located in the town of Alexandria. The described area, shown on a diagram submitted by the Petitioner, off of West Shore Road, encompasses 6250 square feet for the mooring field. The Petitioner owns 260 feet of shorefront property.
5. The diagram provides satisfactory placement and distances referenced within the Petitioner's application, testimony at the public hearing, and submitted plan, which plan is hereby incorporated by reference.
6. The Department of Safety, Division of State Police, Field Operations Bureau, Marine Patrol Unit enforces the statutes and rules governing Newfound Lake in Alexandria, New Hampshire and navigational laws are enforced through that agency.
7. Adding another mooring will not have a negative impact, and previously, the Petitioner had a total of 6 moorings.

8. Mooring users get to and from the moorings by use of 2 dinghies or kayaks.
9. The mooring users are property owners who have easy access to their property for use of restrooms, and have parking for vehicles and trailers, and therefore, have adequate support facilities for the mooring field.
10. Water depth in the mooring field is adequate as is evidenced by the depths depicted on the site diagram, and is supported by the findings of both Marine Patrol and Fish and Game that there are no issues with the field.
11. Adding 1 mooring does not present an unreasonable adverse effect on the environment because the Department of Environmental Services did not indicate any negative impact after they were contacted.
12. Because the mooring field is in front of Petitioner's shore front property, adding 1 mooring will not interfere with recreational uses of the water adjacent to land.

DISCUSSION - DISPOSITION:

The submitted information has been thoroughly taken into account within the Petitioner's application and testimony, along with public commentary received. I recommend supporting the Petition based upon the Findings of Fact listed (*Supra*) and that you reach the following Conclusion of Law.

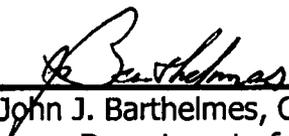
CONCLUSION OF LAW:

The Petitioner has presented sufficient proof to sustain the request for the addition of 1 mooring in a Congregate Mooring Field in concurrence with RSA 270:67, RSA 270:68 and New Hampshire Code of Administrative Rules, Saf-C 408.

RECOMMENDATION: New Hampshire Governor and Council

I respectfully recommend this Petition submitted by Bourbon Beach Association **be granted**. The evidence demonstrates that the Petition is in the public interest fulfilling the purpose of law. There is sufficient proof that the Petitioner has met the burden by a preponderance of the evidence, therefore showing cause for adding a mooring to 4 existing moorings for 5 total moorings in a Congregate Mooring Field, and that such be allowed pursuant to RSA 270:67, RSA 270:68 and Administrative Rule, Saf-C 408.

Very truly yours,



John J. Barthelmes, Commissioner
Department of Safety

Date: 7/14/15

cc: Edward Weiner & Arthur Barron, Petitioners

Town of Alexandria

Colonel Robert L. Quinn,
Division of State Police

Sharon Champagne, Moorings Supervisor

File