



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

Telephone: 603-223-8813



Colonel Christopher J. Wagner
Director

DEC31 '18 AM10:41 DAS

December 21, 2018

His Excellency, Governor Christopher T. Sununu
and the Honorable Council
State House
Concord, NH 03301

Boat Moorings- NEWFOUND LAKE- SIX 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 six (6) moorings under the authority of RSA 270:67. **Bourbon Beach Association** is requesting one (1) additional mooring to be added to the currently established five (5) moorings for a total of six (6) moorings. **It is recommended that the application be approved for six (6) moorings.**

Explanation

The petitioner has presented sufficient proof to sustain the request for the addition of one (1) mooring to the five (5) existing moorings previously approved for a total of six (6) moorings in a Congregate Mooring Field in accordance with RSA 270:67 and New Hampshire Code of Administrative Rules Saf-C 408.

Public Hearing held November 5, 2018.

Enclosed are the Application, Map and Public Hearing Report.

Respectfully submitted,

Colonel Christopher Wagner
Director of State Police

Enclosures

Application Number: _____

DECAL # _____

Permit Number: _____

Conditions: _____



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:

Department of Safety – Division of State Police
Moorings Program
31 Dock Road Gilford, NH 03249
Telephone: 603-293-2037 Ext: #3

NEW HAMPSHIRE
DIV. OF STATE POLICE

DEC 25 2017

MARINE PATROL
INITIAL: _____

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: PO BOX 363 City: BRISTOL State: NH Zip: 03222

Phone #: NONE Cell Phone #: 978-844-3778 E-Mail: EWEINER683@VERIZON.NET

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: 6 ^{ALL 500' FROM TOTAL 6} Applicant's shore frontage in feet: 260

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

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

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? NO What is the square footage of the raft? _____

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

Please describe the membership of the group that will have the use of the moorings. Include any membership requirements:

6 OF THE 6 PROPERTY OWNERS OF THE BOURBON BEACH ASSOCIATION

Please explain how the moorings will be distributed within the group: TO 6 OF THE 6 PROPERTY OWNERS

Please state all proposed charges for the use of the moorings: NOTE: (The law requires that charges for moorings shall not unreasonably exceed the cost of mooring installation and maintenance.(RSA 270:67,II(d).

NONE

Please explain how the mooring users will get to and from the mooring field:

2 DINGHIES AND KAYAKS AVAILABLE

Please give an explanation of support facilities such as public or private restrooms and parking for automobiles and trailers:

ALL OWNERS WALK TO BEACH FROM THEIR PRIVATE HOMES

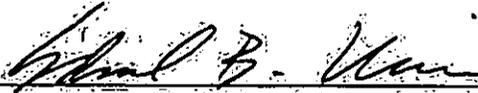
Please describe the mooring buoys, including the color, shape, size and material:

15"-18" HIGH DENSITY POLYURETHANE FOAM BUOYS WITH PERMANENTLY BONDED EYE BOLTS

Please describe the mooring anchors, including the material used and the weight:

50-GALLON CONTAINERS FILLED WITH ROCK AND CONCRETE WEIGHING APPROXIMATELY 400 LBS.

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:



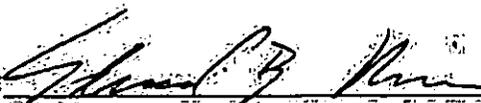
Authorized Signature

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:

12/20/17



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



43

Colonel Christopher J. Wagner
Director

On June 12, 2018 Sgt. Dirth performed a site inspection at Bourbon Beach off of West Shore Rd. in Alexandria on Newfound Lake.

The applicants request, at that time, to add an additional mooring (#6) was DENIED. However, with some modifications and conformity to what had previously been approved, it was felt that they should be able to eventually gain approval.

The applicant was able to address the concerns and the proposal for 1 mooring to be added to the congregate mooring field has been approved by Marine Patrol and the application is able to move forward.

There is no significant impact as stipulated in RSA 270:64, I (C).

Thank you.

Mary Jo Howe

Mary-Jo Howe
Mooring Supervisor
NH State Police-Marine Patrol



State of New Hampshire
Department of Safety

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

JOHN J. BARTHELMES
COMMISSIONER

Report and Recommendation

Petition in the Matter of:

**Bourbon Beach Association,
Newfound Lake, Alexandria, New Hampshire**

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 5 moorings, for a total of 6 moorings in a congregate mooring field. The petition, dated December 20, 2017, offered the reasons for adding the mooring.

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

Notification of the November 5, 2018 public hearing was published in a newspaper of statewide circulation, the Union Leader, on October 25, 2018; in addition, it was sent by email to the town of Alexandria for posting. The Notice of Hearing was placed on the Department of Safety web site in accordance with RSA 270:12, III on or about October 23, 2018.

Pursuant to RSA 541-A, a public hearing was held on Monday, November 5, 2018 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 October 25, 2018 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 November 5, 2018, One (1) person spoke at the public commentary hearing in favor of granting the petition. No one spoke against the petition.
- On Thursday, November 15, 2018, at the end of the business day, the hearing was closed to public comment. No written public comment was submitted.

OFFICIAL NOTICE:

- The Association's petition for hearing, application and attached exhibits dated December 20, 2017, and received by the Bureau of Hearings requesting to add 1 mooring to an existing mooring field of 5 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. Joshua Dirth's conclusion that the proposed site with the additional mooring is appropriate and presents no issues as modified;
- notification of the November 5, 2018 hearing to the public was published in a newspaper of statewide circulation on October 25, 2018; in addition, it was sent by email to the town of Alexandria for posting. The Notice of Hearing was 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 Thursday, November 15, 2018.

SYNOPSIS OF TESTIMONY:

Ms. Mary-Jo Howe, 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 they feel that the plan does not have a negative impact. Sgt. Dirth of the Marine Patrol Division, New Hampshire State Police represented to her that NH Marine Patrol found no issues with the proposal as amended.

Ms. Kathy Weiner testified as an association member representing Petitioner. They are requesting to add 1 mooring to an existing field of 5 moorings, for a total of 6 moorings. She is an owner of one of the lots. Originally, the association had 6 moorings but two of the moorings lapsed because they were not being used. Since that time, an additional owner desired a mooring and in 2015 they petitioned for and were granted an additional mooring which gave them 5 moorings. Now, another owner has requested a mooring, and they filed the petition to regain another mooring based on the present demand and need. They notified all abutting property owners. Granting the petition will restore the prior number of moorings to 6. Nothing has changed since 2015, and therefore, the same rationale that resulted in approval of an additional mooring still exists and supports approving another mooring due to demand.

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 5 moorings. The Petitioner testified that at one time the association had 6 moorings, but 2 lapsed. Since then, one was added in 2015 after a public hearing and approved by the Governor and Executive Council. This request will add back the second lapsed mooring that now needs to be used. Sgt. Dirth indicated to Ms. Howe that adding 1 mooring will not have any negative impact. Although the Marine Patrol initially disapproved of the original plan submitted, the Petitioner made alterations which addressed the concerns and it is now satisfactory. Also, the Fish and Game Department and the Department of Environmental Services

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 6 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. Testimony at the hearing included that granting this request will restore a mooring that previously existed and that the Association's current need and demands warrant adding it back. No one opposed.

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 5 moorings, thereby making a congregate mooring field of 6 moorings.
2. Official notification to the public of the November 5, 2018 hearing was published in a newspaper of statewide circulation on October 25, 2018; in addition, notice of the hearing was sent to the town of Alexandria by email. 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 Monday, November 5, 2018 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 5 moorings on 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.¹ 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.

¹ Hearing report Bourbon Beach Association, page 7, paragraph 4, 7/14/15.
Page 7 of 9 Pages

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. This will restore the prior mooring field to its prior number.
8. Mooring users get to and from the moorings by use of 2 dinghies or kayaks.²
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.³
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.
13. No one objected to the petition including abutting property owners.

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

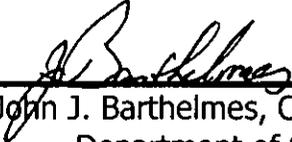
I respectfully recommend that this Petition submitted by Bourbon Beach Association **be granted**. The evidence demonstrates that the Petition is in the public interest fulfilling the purpose of law. There is sufficient proof that the Petitioner has

² Hearing report Bourbon Beach Association, page 8, paragraph 8, 7/14/15.

³ Hearing report Bourbon Beach Association, page 8 paragraph 9, 7/14/15.

met the burden of proof by a preponderance of the evidence, therefore showing cause for adding a mooring to a field of 5 existing moorings for 6 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: 12/10/18

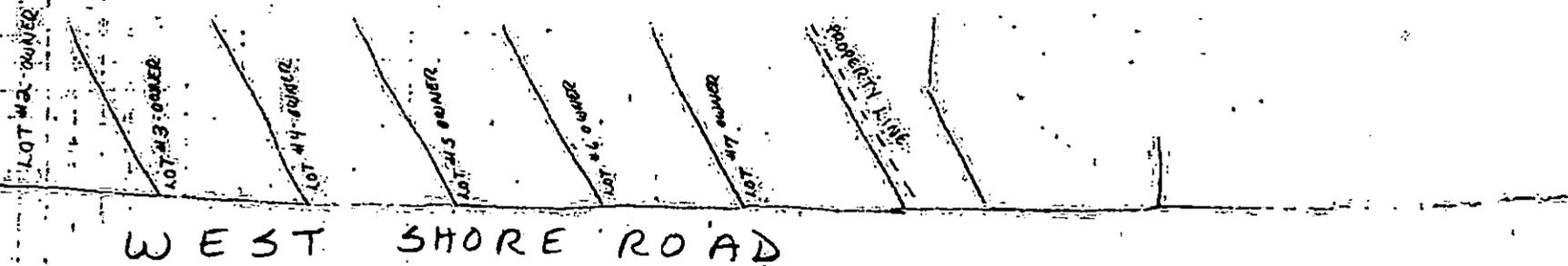
cc: Edward Weiner, Petitioner

Town of Alexandria

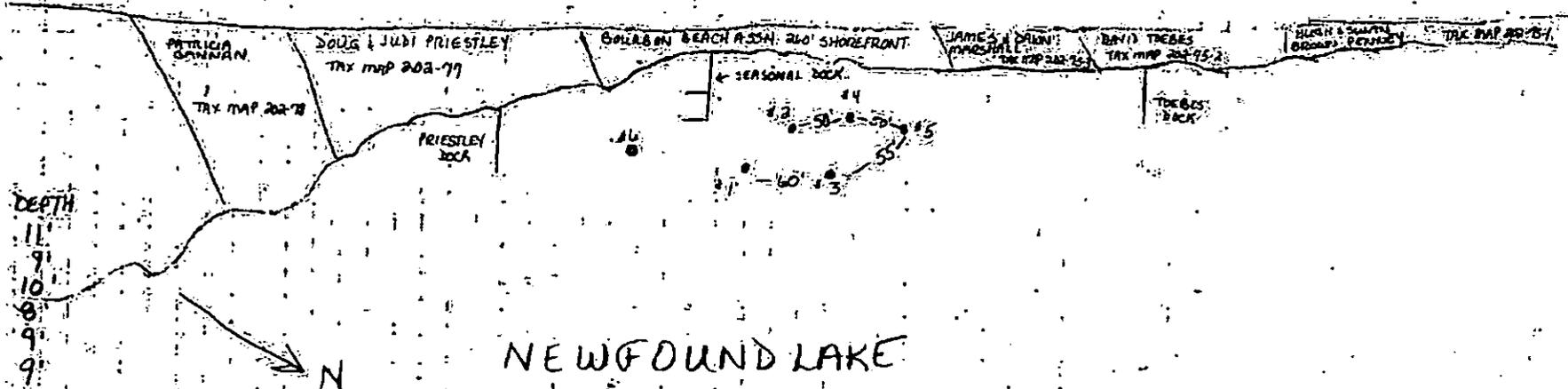
Colonel Christopher Wagner,
Division of State Police

Mary-Jo Howe, Moorings Supervisor

File



WEST SHORE ROAD



MOORING TABLE

NO.	DISTANCE	DEPTH
1	87.5	11'
2	60	9'
3	80	10'
4	45	8'
5	50	9'
6	60	9'

NEWFOUND LAKE

BOURBON BEACH ASSOCIATION
WEST SHORE ROAD
ALEXANDRIA NH

CONGREGATE MOORING FIELD
MOORINGS REQUESTED 6
SHOREFRONT = 260'

SCALE: 20' = 1/4"

CONTACT: EDWARD WEINER
CELL - (978) 844-3778

DATE: 12/18/2017

NEW HAMPSHIRE
DIV. OF STATE POLICE
DEC 19 2017
MARINE PATROL
DITK