



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



39 Am

Colonel Christopher J. Wagner
Director

September 25, 2017

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

Boat Moorings- LAKE WINNISQUAM- EIGHT MOORINGS

Requested Action

To approve the permit application of **Lord Hampshire Resort** located on Lake Winnisquam in Tilton, NH, as recommended by the Department of Safety, Division of State Police for a Congregate Mooring Field of eight (8) moorings under the authority of RSA 270:67. **Lord Hampshire Resort** is requesting four (4) additional moorings to be added to the currently established four (4) moorings for a total of eight (8) moorings. **It is recommended that the application be approved for eight (8) moorings**

Explanation

The petitioner has presented sufficient proof to sustain the request for the addition of four (4) moorings to the four (4) existing moorings previously approved for a total of eight (8) moorings, thereby creating a Congregate Mooring Field in accordance with RSA 270:67 and New Hampshire Code of Administrative Rules Saf-C 408.

Public Hearing held August 9, 2017.

Enclosed are the Application, Maps 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:

SAFETY SERVICES

Department of Safety – Division of State Police

MAY 25 2017

Moorings Program

P. O. Box 1150, Belmont, NH 03220

Telephone: 603-267-6453

MOORINGS

Applicant's name: Lord Hampshire Resort, A Condominium

Shorefront property location: 885 Laconia Road

P.O. Box 455 Winnisquam

Town/City: Tilton Phone #: 603-524-4331

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: James Johnston jamesh.johnston@comcast.net

Mailing Address: 146 Maynard Ave City: Manchester State: NH Zip: 03103

Phone #: 603-315-8847 Local Phone #: 603-623-0827 Cell Phone #: 603-315-8847

The proposed mooring field is located on Lake: Winnisquam

The town/city tax lot number of the shore front property is: Lot N# R8-16, B.C.K.D. 1679/480 (2001)

Number of moorings requested: 8 * Has 4 requesting an additional 4 Applicant's shore frontage in feet: 288

The approximate area (size) of the mooring field in square feet: 1750

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

The number of docks at the property: 2 The number of boat slips: 4 Is there a swim line? Yes

Is there a swim raft at the property? Yes What is the square footage of the raft? 225 (approx. 15'x15')

Does the applicant have title ownership to the shore front property? Yes

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

Only Condominium owners have use of the moorings.

Please explain how the moorings will be distributed within the group: The moorings will be distributed on a rotating schedule yearly.

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)).

The Condominium^{ASSOC.} will charge \$150 per mooring per year.

Please explain how the mooring users will get to and from the mooring field: The users swim, kayak or raft to the moorings

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

N/A

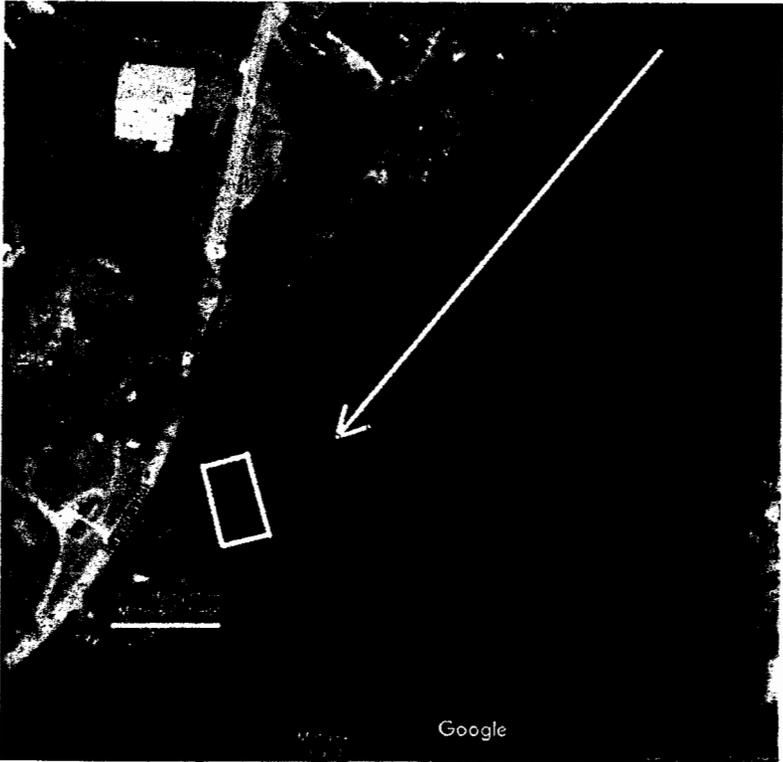
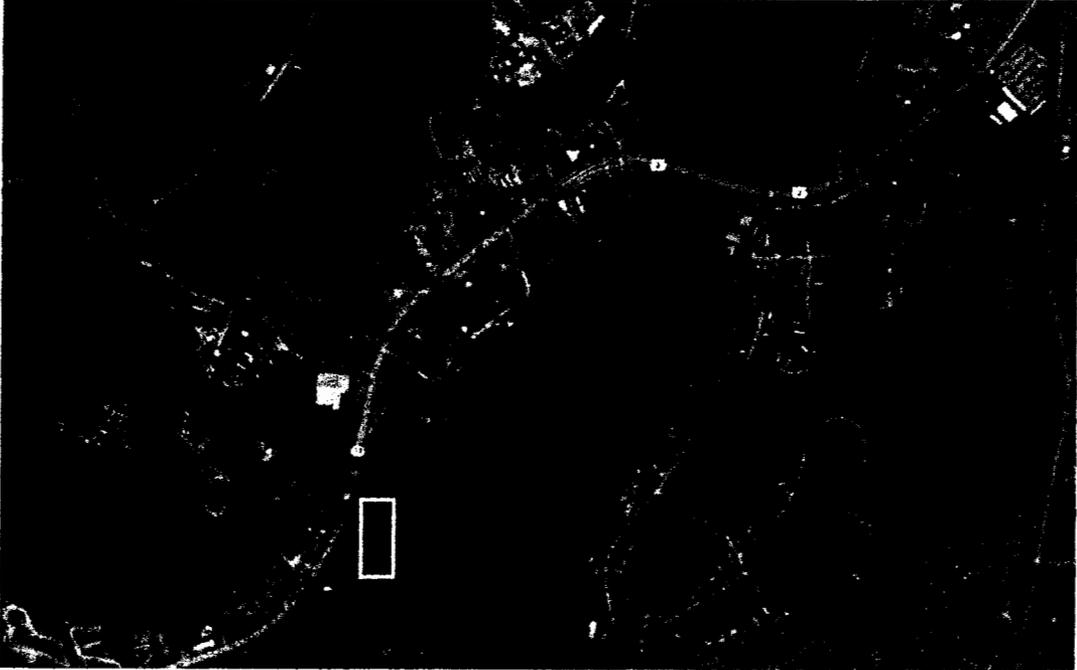
Please describe the mooring buoys, including the color, shape, size and material: The buoys are 12 inch white plastic balls that have a bluestripe and a swivel.

Please describe the mooring anchors, including the material used and the weight: The anchor consists of a 250lb. concrete block with a galvanized chain.

Land and Water directions to shore front property at Lord Hampshire, 885 Laconia Rd, Tilton NH 03276

Land - travel on US-3/NH-11, Laconia Rd to Lord Hampshire, 885 Laconia Rd, Tilton NH 03276, indicated on the maps below.

Water - travel south on Lake Winnisquam, go under the US-3/NH-11, Laconia Rd bridge, Lord Hampshire is about 1/2 mile on the right indicated on the map below.



SAFETY SERVICE

JUN 09 2017

MOORINGS

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:

James H. Johnston
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.

James H. Johnston
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:

James H. Johnston
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:

James H. Johnston

Date:

5/21/17



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

Lord Hampshire Resort Lake Winnisquam, Tilton, N.H.

Congregate Mooring Field

HISTORY:

The Department of Safety received a petition from James Johnston which was prepared and submitted as a congregate mooring plan on behalf of Lord Hampshire Resort, hereafter Petitioner.

The Petitioner is requesting 4 additional moorings for a total of 8 moorings and thereby establishing a congregate mooring field. The petition, dated May 21, 2017, provided all of the necessary information in order to conduct a public hearing to review the request.

The Petitioner verified before the hearing and signed the application to verify that he had sent certified mail notice to all abutters of the petition which allowed the requested hearing to move forward.

Notification of the August 9, 2017 public hearing was published in a newspaper of statewide circulation on July 24, 2017; in addition, it was sent to the Town of Tilton for posting. Finally, the Notice of Hearing and Application for a Congregate Mooring Field Permit were placed on the Department of Safety web site in accordance with RSA 270:12, III.

Pursuant to RSA 541-A, a public hearing was held on Wednesday, August 9, 2017 at 1:00 p.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., Administrator of Hearings, 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, including a map of the proposed mooring field, 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 July 24, 2017 which is a newspaper of statewide circulation;
- any person in attendance could review the legal notice, along with the original petition and any other documents; and,
- the procedure and addresses for where to submit written comment that must be received by the Department of Safety within ten (10) calendar days following the hearing.

STATISTICS:

- On August 9, 2017, two (2) persons spoke at the public commentary hearing. Within the ten days following, no public comment was received. No one spoke against the petition. On Monday, August 21, 2017, at the end of the business day, the hearing was closed to public comment.

EXHIBITS:

1. Notice to Department of Environmental Services
2. Notice to NH Fish & Game Department
3. Report of Officer Jason Patten

OFFICIAL NOTICE:

- The petition for hearing, application and attached exhibits dated May 21, 2017, and received by the Marine Patrol on or about May 25, 2017 requesting to add 4 moorings to an existing mooring field of 4 moorings for a total of 8 moorings. The attached and updated diagram of the area depicting the proposed new moorings and their locations;
- the Division of State Police, Marine Patrol Unit, Mooring Program Supervisor Mary-Jo Howe's testimony concerning the process;
- notification of the August 9, 2017 hearing to the public was published in a newspaper of statewide circulation on July 24, 2017; in addition, it was sent by email to the Town of Tilton for posting. The Notice of Hearing was placed on the Department of Safety web site in accordance with RSA 270:12, III; and,
- public commentary received in written or electronic form before the end of public comment at the end of the business day on Monday, August 21, 2017, although

the department received no public comment; and the testimonials received at the hearing. The mailing and email addresses were provided.

SYNOPSIS OF TESTIMONY:

James Johnston testified representing Petitioner. They are requesting to add 4 moorings for a total of 8 moorings in a congregate mooring field. As justification for the additional moorings, he stated that condominium owners use rafts, kayaks, paddleboards or swim to the moorings. They don't have a water taxi service. Each condominium has sanitary restroom facilities. There is a dumpster on site for disposal of trash from boats. There is a lot with 42 parking spaces to support the mooring field. They have frontage of 288 feet in front of their property, and therefore, the mooring field does not interfere with any other shorefront property. The additional moorings will not cause any negative environmental impact.

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 to the NH Department of Environmental Services, DES. DES indicated that there is no significant environmental impact. Fish and Game did not respond. Moreover, Officer Jason Patten of the Marine Patrol conducted a site investigation and recommends approval of the petition. He measured the moorings and concluded that the additional moorings did not present a hazard to boat traffic.

SYNOPSIS OF COMMENTARY: RECEIVED PRIOR TO OR AFTER THE HEARING

No public comment was received.

LEGAL ANALYSIS:

In gathering findings of fact, the following 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. The Petitioner is asking to add 4 additional moorings.

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 4 additional moorings. The abutters and the public were notified in accordance with RSA 270:12. After the hearing and the ten days following, once all public commentary was received, I carefully weighed the request within the petition, all of the public commentary along with the Marine Patrol investigation in my determination of facts to consider. The hearing record included an investigative report of Marine Patrol Officer Jason Patten that indicated that the mooring field presented no

hazard to the boating public. Officer Patten conducted measurements using a laser device and found that the moorings in use were approximately 50 feet from shore. Officer Patten met with the Petitioner and reviewed the diagram depicting where the additional moorings will be located. They will all be within 150 feet from shore. Officer Patten measured beyond the additional moorings out to a distance of 200 feet and concluded that even at that distance, there would be no hazard to boating traffic.

Moreover, the DES determined that the additional moorings will not have a negative environmental impact. The moorings are accessible by Route 3, the property has 42 parking spaces, and each condominium has its own restroom facility. In addition, the moorings will be accessed by raft, kayak, paddleboat or swimming. The additional moorings will not interfere with other recreational uses of the water.

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, Lord Hampshire Resort requested the Department of Safety to conduct a public hearing seeking to add 4 moorings.
2. Official notification to the public of the August 9, 2017 hearing was published in a newspaper of statewide circulation on July 24, 2017. In addition, notice of the hearing was sent to the Town of Tilton. Finally, the Notice of Hearing was placed on the Department of Safety web site in accordance with RSA 270:12, III on or about July 21, 2017, and it remained on the web until after the comment period closed.
3. A public hearing was scheduled on Wednesday, August 9, 2017 at 1:00 PM on the issues 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 4 moorings to an on Lake Winnisquam, located in the Town of Tilton, for a total of 8 moorings in a congregate mooring field. The described area, shown on a diagram submitted by the Petitioner, encompasses the shorefront property at 885 Laconia Road and depicted in the diagram included with the petition, Lot N#R8-16, B, C, K, D 1679/480(2001).
5. The condominium association owns 288 feet of shorefront property and the moorings are in front of that property.
6. The diagram provides satisfactory placement and distances referenced within the Petitioner's application, testimony at the public hearing, and submitted plan.
7. The approximate size of the mooring field is 1750 square feet and the furthest mooring from shore is 100 feet.

8. The Department of Safety, Division of State Police, Field Operations Bureau, Marine Patrol Unit enforces the statutes and rules governing Lake Winnisquam in Tilton, New Hampshire and navigational laws are enforced through that agency.
9. Based on the evidence presented, it is appropriate to add 4 more moorings to the existing mooring field of 4 moorings for a total of 8 moorings.
10. Officer Jason Patten of the Marine Patrol conducted a site inspection of the congregate mooring field and found that the proposed mooring field with the additional moorings does not present any hazard to boating traffic. His report supports approval of 4 additional moorings.
11. There are adequate support facilities for this mooring field if 4 moorings are added.
12. Each mooring holder is a condominium owner with access to a restroom in the condominium.
13. The property has a dumpster on site for waste disposal.
14. The mooring field is accessible by public roads, Route I-93 and Route 3.
15. Docking is available and there is storage for small boats.
16. The moorings are accessible by use of kayak, paddleboard, raft, and by swimming.
17. There are 42 parking spaces on the property to support the mooring field.
18. There is no water taxi service but such is unnecessary because mooring holders use other small vessels to access their moorings.
19. There are no sanitary waste disposal facilities or boat holding tank pumping out facilities but such are not necessary given that each condominium has its own restroom.
20. There is no environmental impact as is evidenced by the position of the Department of Environmental Services that the plan does not present any significant impact as defined in RSA 270:64, I(c) in that it does not present an unreasonable adverse effect on the environment including water quality, wildlife habitats, or natural areas.

DISCUSSION - DISPOSITION:

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

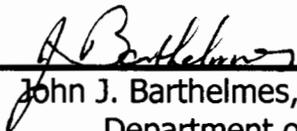
CONCLUSION OF LAW:

The Petitioner has presented sufficient proof to sustain the request for 4 additional moorings 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 Lord Hampshire Resort **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 4 moorings in a Congregate Mooring Field, 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: 9/20/17

cc: James H. Johnston, Petitioner

Town of Tilton

Colonel Christopher Wagner,
Division of State Police

Captain Timothy Dunleavy
Division of State Police
Marine Patrol Unit

Mary-Jo Howe, Moorings Supervisor

File