



# State of New Hampshire

DEPARTMENT OF SAFETY  
OFFICE OF THE COMMISSIONER  
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ROBERT L. QUINN  
COMMISSIONER OF SAFETY

## 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 an update to a congregate mooring plan on behalf of Lord Hampshire Resort, hereafter Petitioner.

The Petitioner is requesting 3 additional moorings for a total of 11 moorings in a congregate mooring field. The petition, dated July 3, 2021, 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 November 17, 2021 public hearing was published in a newspaper of statewide circulation on October 11, 2021; 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 on October 7, 2021 in accordance with RSA 270:12, III.

Pursuant to RSA 541-A, a public hearing was held on Wednesday, November 17, 2021 at 10:00 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., Administrator of Hearings, as my designee, conducted the public hearing.

## **OPENING REMARKS:**

Everyone present was informed of the following:

- the Notice of Hearing was summarized 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 October 11, 2021 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 November 17, 2021, (1) person spoke at the public commentary hearing. Within the ten days following, no public comment was received. No one spoke against the petition. On Monday, November 29, 2021, at the end of the business day, the hearing was closed to public comment. The department did not receive written public comment.

## **EXHIBITS:**

1. Notice to Department of Environmental Services (DES)
2. Notice to NH Fish & Game Department
3. Report of Captain Timothy Dunleavy

## **OFFICIAL NOTICE:**

- The petition for hearing, application and attached exhibits dated July 3, 2021, and received by the Marine Patrol on or about July 15, 2021 requesting to add 3 moorings to an existing mooring field of 8 moorings for a total of 11 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 submission of documents on behalf of Marine Patrol;
- notification of the November 17, 2021 hearing to the public was published in a newspaper of statewide circulation on October 11, 2021; 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, November 29, 2021, 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 3 moorings for a total of 11 moorings in a congregate mooring field. As justification for the additional moorings, as stated at the prior hearing on August 9, 2017, he confirmed that condominium owners continue to use rafts, kayaks, paddleboards or swim to the moorings. They do not 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. The only new fact is that the 3 additional moorings will extend the mooring field to 150 feet from shore rather than the current field which extends out 100 feet from shore.

### **SYNOPSIS OF COMMENTARY: RECEIVED PRIOR TO OR AFTER THE HEARING**

No public comment was received.

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### **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.<sup>1</sup>
- (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.

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<sup>1</sup> See also RSA 270:62-V which provides for a \$50 annual mooring fee for the decal for each mooring in a congregate mooring field.

## **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 3 additional moorings to its existing mooring field of 8 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 3 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 from Marine Patrol Captain Timothy Dunleavy that indicated that the mooring field presented no hazard to the boating public. He wrote, "Based upon the proposed location of the new moorings, it is believed that there are no adverse impacts on navigation or the use of the waters by other members of the public."

Moreover, the DES determined that the additional moorings will not have a negative environmental impact. The Fish & Game Department did not respond to the request for input which reflects that they do not have any concerns about the additional moorings. The moorings are accessible by Route 3, a main thoroughfare in Tilton, 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 3 moorings.
2. Official notification to the public of the November 17, 2021 hearing was published in a newspaper of statewide circulation, the N.H. Union Leader on October 11, 2021. 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 October 7, 2021, and it remained on the web until after the comment period closed.
3. A public hearing was scheduled on Wednesday, November 17, 2021 at 10:00 AM 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 3 moorings to an existing mooring field 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 150 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 3 more moorings to the existing mooring field of 8 moorings for a total of 11 moorings.
10. Captain Timothy Dunleavy of the Marine Patrol conducted a site inspection of the congregate mooring field and found that the proposed mooring field with the additional moorings will not have any adverse impacts on navigation or impede the use of the water by the public. His report supports approval of 3 additional moorings.
11. Captain Dunleavy cautions that hereafter, the mooring field will not support any future expansion at this site beyond 11 moorings.
12. There are adequate support facilities for this mooring field if 3 moorings are added.
13. Each mooring holder is a condominium owner with access to a restroom in the condominium.
14. The property has a dumpster on site for waste disposal.
15. The mooring field is accessible by public roads, Route I-93 and Route 3, main thoroughfares in Tilton.
16. Docking is available and there is storage for small boats.
17. The moorings are accessible by use of kayak, paddleboard, raft, and by swimming.
18. There are 42 parking spaces on the property to support the mooring field.
19. There is no water taxi service but such is unnecessary because mooring holders use other small vessels to access their moorings.
20. There are no sanitary waste disposal facilities, public restrooms or boat holding tank pumping out facilities but such are not necessary given that each condominium has its own restroom.
21. 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. Moreover, Fish and Game did not respond to the request for input which indicates no adverse environmental impact.

**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 3 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 3 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,



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Robert L. Quinn, Commissioner  
Department of Safety

**Date:** 12/28/21

**cc:** James H. Johnston, Petitioner

Town of Tilton

Colonel Nathan Noyes,  
Division of State Police

Captain Timothy Dunleavy  
Division of State Police  
Marine Patrol Unit

Mary-Jo Howe, Moorings Supervisor

File