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**State of Vermont
Water Resources Board**

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Memorandum

To: Legislative Committee on Administrative Rules •

From: David J. Blythe, Chairman

A handwritten signature in black ink, appearing to read "D. Blythe", written over the printed name.

Subject: Final Proposed Rules Regulating the Use of Public Waters within the City of Newport

Date: September 20, 2000

1. Background

In April of 2000 the Vermont Water Resources Board (Board) was petitioned under the provisions of 10 V.S.A. § 1424 by the City of Newport (the City) to adopt rules delegating to the City the state's authority to regulate the mooring of vessels in the public waters located within the City of Newport including a portion of Lake Memphremagog (the petition).

In response to this petition, the Board proposed rules granting the delegation requested by the City's petition for purposes of receiving public comment. Following public notice, the Board and the City Council held a joint public hearing/ informational meeting at the City of Newport, Vermont on July 17, 2000 to receive public comment on the Board's proposed rules and a draft of the City's implementing ordinance. The Board established August 15, 2000 as the deadline for the filing of written comment regarding its proposed rules.

At its meetings on August 30, 2000 and again on September 19, 2000, the Board reviewed and discussed the public comment received both at the public hearing and in writing. At its meeting on September 19, 2000 the Board voted unanimously to grant the City's petition and to proceed with the adoption of rules, modified somewhat in response to public comment, delegating to the City the state's authority to regulate the mooring of vessels in the public waters located within the City.

2. Final Proposed Rules

The Board's final proposed rules are annotated to reflect the changes to the Board's initial proposal made in response to public comment. Throughout this rulemaking proceeding the City and the Agency of Natural Resources (ANR), assisted by the Board's staff, exchanged ideas about how to "improve" the clarity of the Board's initial proposed rules.

While the final proposal is not conceptually different from the initial proposal, a number of substantive changes were made in response to natural resource and recreational management

issues raised by ANR. These include a prohibition of boat moorings in the Clyde and Black Rivers and within 300 feet of the Pender Cove inlet, all areas where few, if any, boat moorings currently exist or are likely to exist within the foreseeable future.

A number of additional, "editorial" changes were made to the Board's initial proposal to improve clarity. Finally, it should be noted that the Board's initial and final proposed rule provide for a delegation of State authority for a five year period of time. If this final proposed rule is adopted, it would be only the third such delegation made by the Board under the provisions of 10 V.S.A. §1424(f). By making this delegation for a limited period of time under these rules, the Board and City will have an opportunity to evaluate the mooring management program based on the experience of the first five years and in a subsequent rulemaking make any needed adjustments after an opportunity for further public review and comment. The Board has attempted to structure its final proposed rule to encourage ANR, the City, and others with an interest in the issue of mooring management to work collaboratively in a long term planning mode to develop recommendations for improving the program in advance of an anticipated request by the City for a further extension of this delegation.

3. Responsiveness Summary (3 V.S.A. §841)

In the course of this rulemaking proceeding the Board received a total of eight written comments, copies of which are enclosed. In deciding on its final proposed rule, the Board overruled the following substantial argument and considerations:

a. The City's mooring management plan should give special consideration to existing moorings, specifically with respect to the Newport Harbor Club, a group of shoreline condominium owners. (See comment # 4)

The Board does not agree that existing boat moorings should be given special consideration in these rules. The waters in question are a public trust resource and thus must be managed as such. Moreover as a practical matter, the relatively small number of vessels actually moored within the affected waters makes it likely that Club members will be able to moor in proximity to their condominiums. Moreover, it is very unlikely that the lottery provision contained in the City's draft ordinance will need to be used in the foreseeable future.

The Newport Harbor Club is encouraged to work with the City to address its members concerns within the framework of the delegation of authority and the City's implementing ordinance. Any decisions made by the City regarding mooring management are appealable to this Board.

b. There aren't enough boat moorings in the affected waters to justify regulation by the City. (See comment # 5)

The Board feels this is an issue for the City to decide through its local elected officials, which apparently it has, by developing and filing its petition. The Board views the City's efforts are reasonable, appropriate and clearly within what is contemplated by applicable Vermont law, 10 V.S.A. §1424.

c. The regulation of boat moorings will negatively impact lake access and will be costly to the City. (See comment # 6)

The Board does not believe that the delegation of authority proposed here will have any adverse impact on access to the lake. The Board believes that having moorings subject to local management will reduce conflicts between boat moorings and other uses of the same waters, including for access.

As to whether the City's efforts to manage boat moorings will generate sufficient revenues to meet the City's expenses or will in some other way be costly to City taxpayers, again this is an issue for the City to decide through its local elected officials.

For the reasons outlined above, the Board has respectfully overruled the above arguments and considerations in deciding on its final proposed rules. The Board feels this delegation is appropriate and applauds the City for taking this initiative.