

State of Vermont
Water Resources Board

Petition of the Town of Colchester
Delegation of Authority by rule to
regulate the mooring of vessels in
the public waters in Malletts Bay,
Lake Champlain

10 V.S.A. § 1424

Responsiveness Summary and Statement of Regulatory Intent

The Town of Colchester (Town) has petitioned the Vermont Water Resources Board (Board) to adopt rules delegating the Board's authority to regulate the use of public waters to the Town under 10 V.S.A. § 1424(f). The rules initially requested in the Town's petition are appended as Attachment A.

On the basis of its record in this proceeding, and after extensive discussions with the Town, ANR and others who have expressed an interest in this matter, the Board has decided to proceed with the adoption of final proposed rules (Attachment B) that make a more limited delegation than initially requested by the Town. The Board's final proposed rules delegate to the Town, the authority to regulate the placement of boat moorings in portions of Malletts Bay for a trial period of five years. These rules also require the Town, in cooperation with the Agency of Natural Resources (ANR), to develop a comprehensive management plan for Malletts Bay prior to the Board's consideration of any extension or expansion of the delegation of authority to the Town beyond the initial five year trial period.

To the extent that the Board has overruled substantial arguments and considerations raised in this proceeding, the reasons for those actions are described in the findings below as required by 3 V.S.A. § 841(b).

PROCEDURAL HISTORY

On July 5, 1991, the Town filed a petition with the Board under 10 V.S.A. § 1424(f) seeking the adoption of rules delegating the Board's authority to regulate boat moorings and other uses of public waters in Malletts Bay and portions of the Lamoyille and Winooski Rivers. The Town subsequently amended its petition in May of 1992.

On July 17, 1992, the Board initiated a rulemaking by proposing the rules requested by the Town. Those rules provided for the immediate regulation of boat moorings in portions of Malletts Bay, and also included a mechanism for expansion of the delegation to the full extent of 10 V.S.A. § 1424 without further rulemaking (see Rule 4, Attachment A). These rules also sought the Board's approval of the Town's draft enabling ordinance prior to that ordinance's adoption. The Board held a

public hearing on the initially proposed rules on August 26 at the Colchester High School and established September 14, 1992, as the deadline for the submittal of written comment.

Following its consideration of all public comment on the rules initially requested, the Board after further discussion with the Town, ANR and other parties with an interest in this matter proposed revised rules for further public comment on January 8, 1993. The revised proposed rules were limited to a delegation of authority to regulate boat moorings. The delegation would be granted for a limited period of time to encourage completion of a management plan as a cooperative effort by the Town and the ANR which has primary planning responsibility for public waters (see 10 V.S.A. § 1423). The Board, in response to concerns raised during the public comment process, established a number of requirements that the local ordinance must meet.

Notice of the revised proposed rules was provided to all persons who had participated in this rulemaking and was published in the Burlington Free Press on January 12. A second public hearing was held on January 25 and the public comment period was extended until February 8.

Following the close of the public comment period, the Board on two occasions requested and received an extension of time from the Legislative Committee on Administrative Rules (LCAR) to complete this rulemaking as provided for in 3 V.S.A. § 843(c). On March 29, 1993, the Board voted unanimously to submit its final proposed rules for review by the Legislative Committee on Administrative Rules.

FINDINGS

1. The State of Vermont has an interest in the management of public waters and a duty to resolve conflicts in uses of those waters. By regulating boat moorings, the Water Resources Board, or its delegate, can eliminate or reduce use conflicts for the benefit of all citizens of the State.
2. The portion of Malletts Bay identified in the Town's petition and in the final proposed rules constitutes public waters within the meaning of 10 V.S.A. § 1422(6).
3. The Legislature has delegated to the Board the authority to establish rules to regulate the use of public waters. 10 V.S.A. § 1424 (Attachment C). The Legislature has also enabled the Board to make a subdelegation of this authority to a municipality that is adjacent to such waters when the municipality accepts the delegation by creating or amending a bylaw or ordinance for regulation of the waters. 10 V.S.A. § 1424(f).

4. The scope of the delegation possible under 10 V.S.A. § 1424 includes the designation of areas on public waters wherein certain uses may be conducted, the designation of uses which may be conducted in the defined areas, and the regulation of conduct in these areas. 10 V.S.A. § 1424(a) (1, 2, and 3). In establishing regulations, the Board or its delegate must consider, among other things, the size and flow of the navigable waters, the uses for which the waters are adaptable, and the established recreational and other uses for those waters. 10 V.S.A. § 1424(b). To the extent possible, the Board or its delegate is charged with managing the waters so that the various established uses of the waters affected may be enjoyed in a reasonable manner, in the best interests of all the citizens of the State.
5. The use of public waters for the moorings of vessels is a use of public waters that is subject to regulation by the Board under the authority of 10 V.S.A. § 1424 and therefore may be delegated to a municipality. The power to regulate moorings is in addition to and not inconsistent with the power to establish permits for docks and other certain encroachments under 29 V.S.A. Chapter 11.
6. The petitioner in this proceeding, the Town of Colchester, is a municipality located adjacent to those portions of Malletts Bay of Lake Champlain affected by the proposed rules. The Town has sought delegation of the Board's authority to regulate moorings and proposes to implement that delegation through an ordinance adopted pursuant to its municipal charter authority. The Board has set forth specific requirements and minimum standards that must be incorporated in the Town's implementing ordinance. The Board also has provided for a final review of the ordinance once adopted to assure that the permitting of moorings is done in an equitable manner and in conformance with state law including the Board's policies governing the use of public waters.
7. The Board views the proposed delegation to the Town of Colchester as an appropriate and necessary experiment that, if successful, will serve as a model for future delegations to Vermont municipalities seeking to manage specific use conflicts involving public waters within or adjacent to their boundaries. In view of the experimental nature of this delegation, the Board has narrowed the scope of the initial delegation to the regulation of boat moorings. The Board has also limited the delegation to a trial period of five years, with the understanding that the Town may seek an extension and expansion of its delegated powers in the future should it, in cooperation with the Agency of Natural Resources, complete a comprehensive management plan for the waters in question. See Rule 15.

8. To the extent that either a federal or another state agency has jurisdiction over the waters in question, Rule 13 makes clear that the other agency's rules shall apply, when inconsistent with or more restrictive than a requirement imposed by the Town of Colchester pursuant to its implementing ordinance. Therefore, the proposed delegation will not supplant or conflict with other regulatory schemes applicable to the waters in question.
9. In response to concerns that the Board's delegation might result in the Town of Colchester regulating docks already permitted by the Agency of Natural Resources, the Board has carefully created a definition of the term "mooring" that expressly excludes from regulation under this delegation dock structures. See Rules 16(c). Moreover, to avoid redundant review requirements, the Town of Colchester proposes to implement its mooring permit program so as to dovetail with existing town zoning and subdivision application and permitting requirements, where applicable. Finally, in response to public concerns about duplicative permitting, the Board has proposed that the Town further examine the issue of concurrent and overlapping agency jurisdiction in the development of the comprehensive management plan. See Rule 15(a)(1).
10. In addition to the mooring of vessels, the established uses of the waters in question include wide variety of recreational uses such as swimming, motor boating, sailing, nonmotorized boating, fishing, and waterskiing as well as water supply and quiet enjoyment of the water's aesthetic value.
11. The essentially unregulated use of extensive portions of Malletts Bay for the mooring of vessels limits or prohibits the use of these waters for other established uses. There are some portions of the Bay in which, due to their existing use for other purposes or because they are environmentally sensitive, the placement of boat moorings should be limited or prohibited.
12. The Town has been studying the need to regulate boat moorings since the late 1970's. The current petition is a culmination of many years of concerted effort by the Town as reflected by: (1) the Town of Colchester Master Plan dated July 1988, (2) the Malletts Bay Capacity Study dated 1989, (3) the Malletts Bay Water Quality Inventory dated 1990, (4) the Town's initial petition dated July 1991, and (5) its amended petition dated May 1992.
13. The Town's petition and therefore the Board's initial proposal contemplated the regulation of boat moorings in the "Colchester halves" of the Lamoille and Winooski

Rivers. However, based on comments from several sources including ANR, the Board had decided to limit the delegation of authority to portions of Malletts Bay.

The Board agrees that the issue of boat moorings in riverine settings needs to be considered but is convinced that efforts to regulate boat moorings on one side of a river and not on the other is not an appropriate management approach. The Board will instead consider addressing the issue of boat moorings in rivers in a separate rulemaking on either a case-by-case, regional (i.e. Lake Champlain wide) or statewide basis. Accordingly, the geographic scope of the Board's delegation (Rule 1) and the number of mooring management zones (MMZ's) (Rule 2) have been reduced.

14. The Board's review of the Town's ordinance implementing this delegation (Rule 3 (b)) will involve opportunities for review and comment by the public including interested state or federal agencies. The Board would at a minimum provide 30 days notice in advance of its review of the Town's ordinance and would schedule the meeting at which this review would occur in the Colchester area. Board meetings are open to the public.
15. The Board in response to concerns raised during the public comment process, (Rule 5) has identified a number of requirements that the Town's implementing ordinance must meet. The Town is free to meet these requirements in the manner it sees fit subject to final Board review as provided for in Rule 3 (b). Since the Town's implementing ordinance must be locally adopted, Town voters, shoreland property owners and businesses will have ample opportunity to influence the specific manner in which the Town meets these requirements.
16. A few shoreland owners and marina operators have expressed concern that the proposed rules do not "grandfather" existing moorings. Some believe that because their moorings have long been unregulated by the state that they should not now be regulated by the Town.
17. In Rule 5 (a) the Board has expressly required that all boat moorings be subject to Town regulation. The Board feels that such a comprehensive approach is essential when attempting to establish a comprehensive management system where the activity in question (boat moorings) has been largely unregulated in the past. For that reason the Board has required an approach that is comprehensive and avoids the quagmire of attempting to decide who is "grandfathered" and who is not.
18. All uses of public waters are subject to police power of the state and, a consequence, they may be reasonably regulated by the Board or its delegate. Furthermore, while

mooring equipment, structures or systems may constitute private property, public waters and lands thereunder to which the moorings are attached are subject to the public trust doctrine and should be managed for the benefit of all the State's citizens.

19. In developing the proposed rules delegating authority to the Town of Colchester, the Board has attempted to balance the public's interest in the sound management of a limited water resource and the private property owner's concerns in continued use of existing moorings.
20. The Board has attempted to address the concerns of shoreland owners and marina operators by expressly requiring that existing moorings receive highest priority in the issuance of permits by the Town. The priority system specified in Rule 6 reasonably protects the interests of those who have already established moorings and at the same time provides a rational framework for the development of a management process for the future.

Moreover, the rules are crafted to allow the Town of Colchester to prohibit new moorings or require relocation of existing moorings based on impacts to environmentally sensitive public resources or on existing recreational or other uses. See Rule 5(b), (c), and (d); Rule 16(g). Nevertheless, all applicants for mooring permits must demonstrate that their moorings meet certain minimum requirements concerning siting, on-shore support facilities, and applicable zoning requirements. See Rule 8.

21. In its discussions with the Town, the Board has been assured that although regulation may eventually result in some reconfiguration of the current pattern of boat moorings, with few exceptions, those with existing boat moorings will continue to be able to moor their vessels in a convenient and reasonable manner. Any final regulatory action by the Town is appealable to the Board. (See Rule 12).
22. The Board does not agree with the argument that the regulation of boat moorings somehow constitutes the removal or a diminution of the privileges of shoreland property owners or others. The Board believes that the regulation of moorings will in fact benefit all users of Malletts Bay including shoreland property owners, marinas and organizations with an interest in the recreational value of the Bay. By managing boat moorings at the local level to insure that other uses are not unreasonably impacted, everyone including boaters themselves will benefit.

For example, a Town-administered mooring program will provide a forum in which shoreland property owners can seek

to address many of their current concerns about unregulated moorings such as the impact on their use of the shoreland property and on private water supplies.

23. The Board received comment that the rules as proposed give preference to dock moorings over buoy (open water) moorings even though buoy moorings are less consumptive of surface area and are more affordable. Others argued that space efficiency is only applicable in shallow water and is an inequitable requirement, in deep water.

Without determining the merits of these arguments, Rule 6 (d) gives preference during the initial five year term of this delegation to the most space-efficient method of mooring. The Board believes this is an important and appropriate policy requirement. However, the rule's preference is for space efficiency and not for any particular type of mooring system. The intent of this rule is to require that less of the Bay's surface area be used for mooring boats so that more of it will be available for other uses, including the use of boats when they are not moored.

The long term management plan (Rule 15 (a) (3)) is required to identify a strategy for reducing the surface area of Malletts Bay devoted to the mooring of vessels in a cost effective manner. It is in this planning process that the Board envisions decisions being made as to the appropriate density and method of boat mooring in various portions of the Bay within the larger context of how all competing uses of the Bay can be best accommodated.

24. The Town with assistance from the ANR has received a planning grant of \$60,000 per year for two years from the Lake Champlain Basin Program to assist in the preparation of the management plan for Malletts Bay envisioned by Rule 15.
25. A number of commentators expressed concern that fees for boat moorings be limited to those costs necessary to meet the Town's administrative costs and not serve as a tax to increase Town revenues. The Board (and the Town) agree and language to that effect has been included in Rule 9. Moreover, such fees must be incorporated in the Town's ordinance and are therefore subject to Town voter approval under the municipal charter, and Board review under the process described in Finding 14 above.
26. The Board has previously delegated its authority to regulate the use of public waters to a municipality. In re: Town of Shelburne Mooring Management Zone, April 5, 1983. However the scale of this proposed delegation to the Town of Colchester and the scope of the management effort envisioned here is significant. Accordingly, the Board has

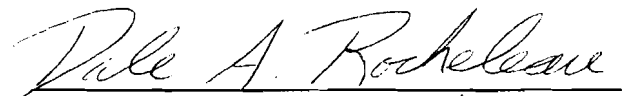
carefully considered the Town's request and in the process has worked closely with the Town, ANR, and a variety of individuals and groups with an interest in this matter. The Board has attempted to strike a reasonable balance between, on the one hand, providing the Town of Colchester with sufficient latitude that it has enough discretion and incentive to assume the task of mooring management and, on the other hand, insuring that the state's interests in its public waters and the land lying thereunder are fully protected.

The state through its delegate, the Town, will begin to manage comprehensively the largest single concentration of boat moorings in Vermont. At the same time this delegation will serve as the catalyst for the development of the first management plan for Malletts Bay.

It is hoped that the practical experience that accrues from the Town's initial management efforts, combined with the results of the planning process, will allow the Board, the Town, ANR and others with an interest in this matter to make more informed decisions regarding the future management of this valuable public resource in the near future.

Dated at Montpelier, Vermont this 31st day of March,
1993.

For the Vermont Water Resources
Board


Dale A. Rocheleau, Chair

Board members concurring:

Mark DesMeules
Ruth Einstein
Jane B. Potvin
Stephen Reynes

Attachment A

RULES REGULATING THE USE OF MALLETT'S BAY

LAKE CHAMPLAIN COLCHESTER, VERMONT

RULE #1: All waters within Malletts Bay, located in the extended Town of Colchester municipal boundaries and easterly of the railroad fill; and, within the broad lake of Lake Champlain extending southerly and easterly from Colchester's Point to the mouth of the Winooski River; and, portions of the Lamoille River and the Winooski River which lie within the municipal boundaries of the Town of Colchester, are hereby designated as a Mooring Management Area. The Mooring Management Area is comprised of eight (8) Mooring Management Zones described in detail below.

RULE #2: Within the Mooring Management Area, moorings shall be prohibited except within the Mooring Management Zones (MMZ) described as follows:

MMZ-1; Lamoille River:

Beginning at a point at the intersection of the centerline of the Lamoille River and the Colchester/Milton Town Line, X 96916 - Y 234404, then westerly along the centerline of said watercourse for a total distance of 12,828.3 FT (3910.03 M), to a point of intersection with the waters of outer Malletts Bay, X 93614.7 - Y 234766, then 333.6 FT (101.7 M) in an easterly direction to a point on the shoreline X 93702.3 - Y 234714, then in an easterly direction along the shoreline of the river to a point on the Colchester/Milton town line, X 96955.2 - Y 234384, then north westerly for a distance of 144.2 FT (44.0 M) along the town line to the beginning point, X 96916 - Y 234404.

MMZ-2; Clay Point/Malletts Creek:

Beginning at a point, X 93614.7 - Y 234766, in the centerline of the Lamoille River, then southerly for a distance of 2,085.02 FT (635.51 M) to a point, X 93880 - Y 234188, then southerly for a distance of 10,270 FT (3130.3 M) to a point, X 94613.1 - Y 231145, then south easterly for a distance of 4,830.3 FT (1472.3 M) to a point, X 95889.4 - Y 230411, then easterly for a distance of 5,843.4 FT (1781.1 M) to a point, X 97577.7 - Y 230978, then southerly for a distance of 1,797.1 FT (547.75 M) to a point, X 97559.2 - Y 230431, then in an easterly direction for a distance of 1,372.3 FT (418.3 M) to a point on the shoreline, X 97975.4 - Y 230389, then northerly along the shoreline to the beginning point, X 93614.7 - Y 234766.

MMZ-3; Malletts Creek/ Bayside Park:

Beginning at a point, X 97975.4 - Y 230389, on the shoreline north of the confluence of Malletts Creek and inner Malletts Bay, then in a westerly direction for a distance of 1,372.29 FT (418.3 M) to a point, X 97559.2 - Y 230431, then in a south, south westerly direction for a distance of 5,300.6 FT (1615.62 M) to a point, X 97229.5 - Y 228849, then south westerly for a distance of 7,055.4 FT (2150.48 M) to a point on the shoreline, X 95562.2 - Y 227496, then in a northerly direction along the shoreline to the beginning point, X 97975.4 - Y 230389.

then southerly 176.5 FT (53.8 M) to the beginning point,
X 90891.6 - Y 225886.

RULE #3: Within the Mooring Management Area and the Mooring Management Zones MMZ-3 through MMZ-5, the placement of moorings shall be regulated, on behalf of the Vermont Water Resources Board in accordance with the provisions of 10 V.S.A., section 1424, by the Town of Colchester. All moorings shall be placed so that no moored vessels extends beyond the limits, so described above, for each Mooring Management Zone.

RULE #4: Within the Mooring Management Area and all Mooring Management Zones, special conditions shall be allowed for the establishment and maintenance of; fairways, control of wakes, and other use restrictions as may be determined to be necessary to protect the public's health, safety, welfare and the water resource as prescribed in Title 10 VSA Chapter 49 Section 1424 (a) thru (d).

Special conditions shall be established by amendment to the Town Ordinance Chapter 14 pursuant to the Town's Charter and Title 10 VSA Chapter 49 Section 1424 (f) as amended.

Prior to the enactment of any amendment adopted under this rule the Town shall file a copy of the amendment along with certified copies of the public notices, a list of places the notices were sent or posted, and a transcript of all public comments received, and any supporting documents demonstrating the necessity of the amendment six (6) weeks prior to its effective date. Submission of the proposed amendment and supporting documents shall be consistent with the filing requirements of the original application and to any other parties the Water Resources Board deems appropriate.

All public notices relating to an amendment to this Rule or ordinance enacted pursuant to this Rule shall comply with Title 1 VSA, Chapter 5 Subchapter 2 and have placed at the top of the notice the following: " Notice of Intent to Enact a Special Rule Regulating the Use of Public Waters Adjacent to the Town of Colchester".

The Water Resources Board retains its right to assume jurisdictional authority and to convene a public hearing on any amendments to the Town's Harbor Regulation Ordinance or for any amendments considered under this Rule.

The Water Resources Board shall notify The Town of its intent to assume jurisdiction in regards to the proposed amendment. The Board after hearing the merits of the request shall ratify, veto or remand for further consideration by the Town the proposed amendment. Any such request shall stay the effective date of the proposed amendment. No such action within the six (6) week period shall be deemed approval of the amendment.

RULE #5 The Water Resources Board hereby approves the Town of Colchester Ordinance, Chapter 14 Boats, Docks, Moorings and Waterways attached hereto and made part hereof.

MMZ-4; Bayside Park/ Coates Island:

Beginning at a point on the shoreline at Bayside Park, X 95562.2 - Y 227496, then in a northerly direction for a distance of 4,516.0 FT (1376.5 M) to a point on the northeast shoreline of Coates Island, X 95341.3 - Y 228854, then along the shoreline in a southerly direction to the point of beginning, X 95562.2 - Y 227496. (Includes a fairway for Malletts Bay Yacht Club)

MMZ-5; Spaulding Bay/ Marble Island:

94398.0 — Beginning at a point on the northeast shoreline of Coates Island, X 95341.3 - Y 228854, then in a northerly direction for a distance of 6,555.6 FT (1998.2 M) to a point on the north end of Marble Island, X 94390.0 - Y 230611, then in a westerly direction for a distance of 2,391.6 FT (728.9 M) to a point on the northern shore of Malletts Head, X 93664 - Y 230555, then in a south, south easterly direction along the shoreline to the beginning point, X 95341.3 - Y 228854. (Including a fairway for the State Fishing Access)

MMZ-6; Malletts Head/Thayer Beach/Porters Point/Mills Point:

Beginning at a point on the west shoreline of Malletts Head, X 93449 - Y 230350, then in a southerly direction for a distance of 2,636.8 FT (803.7 M) to a point, X 93184.1 - Y 229592, then in a westerly direction for a distance of 7,854.3 FT (2394.0 M) to a point, X 90953 - Y 228724, then north westerly for a distance of 2,333.7 FT (711.3 M) to a point, X 90374.4 - Y 229138, then westerly for a distance of 6,500.6 FT (1998.6 M) to a point on the east side of the railroad fill, X 88394.3 - Y 229068, then southerly along the railroad fill to its intersection with the shoreline, X 88697.3 - Y 228724, then in an easterly direction along the shoreline to the beginning point, X 93449 - Y 230350.

MMZ-7; Colchester Point/ Delta Park:

Beginning at a point on the west side of the railroad fill, X 88377.4 - Y 299060, then in a south westerly direction for a distance of 2,662.3 FT (811.5 M) to a point X 87886 - Y 228414, then southerly for a distance of 656.5 FT (189.8 M) to a point, X 87895.8 - Y 228214, then south easterly for a distance of 10,928.6 FT (3331.0 M) to a point, X 90278.5 - Y 225886, then easterly for a distance of 2,011.4 FT (613.1 M) to a point, X 90891.6 - Y 225886, in the centerline of the Winooski River, then 176.5 FT (53.8 M) northerly to a point, X 90865.1 - Y 225933 on the shoreline, then northerly along the shoreline to the beginning point, X 88377.4 - Y 299060.

MMZ-8; Winooski River:

Beginning at a point at the confluence of the Winooski River and Lake Champlain, X 90891.6 - Y 225886, and then continuing upstream along the centerline of the river for a distance of 14,976.9 FT (4565.0 M) to a point of intersection with the Heineberg Bridge, X 92228.6 - Y 225203, then northerly 140.9 FT (42.9 M) to a point on the Town of Colchester shoreline, X 92220.6 - Y 225245, then along the shoreline in a westerly direction to a point, X 90865.1 - Y 225933,

RULES REGULATING THE MOORING OF VESSELS IN
MALLETTS BAY, LAKE CHAMPLAIN

Rule 1. All public waters in Malletts Bay and portions of Lake Champlain adjacent to the Town of Colchester are hereby designated a Mooring Management Area. This Mooring Management Area is depicted on a map, entitled "Town of Colchester Mooring Management Area and Mooring Management Zones" dated March 29, 1993 hereby incorporated.

Rule 2. Within the Mooring Management Area, six (6) Mooring Management Zones (MMZ) are designated, as depicted on the above-referenced map.

Rule 3. Pursuant to 10 V.S.A. § 1424(f), the Board delegates authority to regulate moorings in MMZ 1-6 to the Town. This delegation shall be effective only when both of the following requirements are met:

a. The Town has a duly adopted ordinance for implementing this delegation; and

b. The Board has determined in writing that the implementing ordinance, and any subsequent amendment to that ordinance, is consistent with the provisions of 10 V.S.A. § 1424, any general management policies pertaining to the use of public waters adopted by the Board, and these rules.

Rule 4. When the delegation to the Town is in effect, moorings are prohibited in the Mooring Management Area except as may be allowed in the Mooring Management Zones under the implementing ordinance.

Rule 5. The Town's implementing ordinance shall contain the following provisions:

a. No existing moorings shall be "grandfathered" in the Mooring Management Area.

b. Within MMZ 1, 5, and 6 the Town may prohibit new moorings or limit their placement until May 30 of the year following the adoption of a management plan for these waters.

c. Within any MMZ, the Town may prohibit new moorings or limit their placement taking into consideration the actual or potential adverse impacts on Class I and II wetlands, endangered plant and animal species, fish or wildlife habitat, public lands and natural scenic areas.

d. Within any MMZ, the Town may prohibit new moorings or require relocation of existing moorings taking into consideration the actual or potential adverse impacts on established recreational and other uses of the water, including public and private water supplies.

e. Mooring permits shall be for a specified period of time determined by the Town with due regard for the economic considerations attending the regulated activity. All such permits shall expire within a period not to exceed one year if not used. A permit for an existing mooring that has been authorized by a permit issued under 29 V.S.A. Chapter 11 or that has a specified expiration date may be issued for a period not to exceed that expiration date. All other mooring permits shall be issued for a period not to exceed the term of this delegation. However, all permitted moorings as of January 1, 1999 may be renewed subject to criteria established by any extension or expansion of the delegation granted pursuant to Rule 15.

Rule 6. The Town's implementing ordinance shall identify classes of applicants and shall establish criteria for prioritizing the granting of mooring permits that are consistent with the following:

a. First priority in the issuance of mooring permits shall be given to existing moorings that have been authorized by a permit issued under 29 V.S.A. Chapter 11;

b. Second priority in the issuance of mooring permits shall be given to existing lawful moorings that are not authorized by a permit issued under 29 V.S.A. Chapter 11;

c. Third priority shall be given to those moorings that do not qualify under priority one or two.

d. Within each class of applicants, higher priority shall be given to those mooring arrangements that are the most space efficient per vessel accommodated.

Rule 7. The Town's implementing ordinance shall ensure that the general public is able to compete for available mooring capacity in all MMZ's on an equitable basis.

Rule 8. The Town shall require all applicants to demonstrate that:

a. Moorings are located within a reasonable distance of the point of access; and

b. The point of access has adequate on-shore support facilities for the number of moorings served; and

c. The point of access support facilities are consistent with applicable zoning requirements and state law.

Rule 9. The Town may establish and collect reasonable mooring fees. However, said fees shall be established only to meet the administrative costs of the Town directly related to the regulation of moorings within the MMZ's. Any schedule of fees shall be incorporated in the implementing ordinance and in the case of multiple-year permits shall allow payment on an annual basis.

Rule 10. The Town may enforce the implementing ordinance through its general police power, consistent with the penalty and enforcement provisions of the Charter of the Town of Colchester, as amended.

Rule 11. The Town shall appoint a Harbormaster, who shall be a law enforcement officer of the Town of Colchester, to administer and enforce the implementing ordinance.

Rule 12. The Town's implementing ordinance shall provide for a process by which a person in interest aggrieved by a decision or act of the Harbormaster may appeal to the Town. The ordinance also shall specify that appeals from any final action of the Town, other than an enforcement action, shall be filed with the Board.

Rule 13. Any powers not expressly delegated to the Town by these rules and incorporated in the implementing ordinance as approved by the Board under Rule 3, shall be retained by the Board. If another state or federal agency has jurisdiction over the waters otherwise subject to regulation under 10 V.S.A. § 1424, the other agency's rules shall apply if inconsistent with, or more restrictive than, the implementing ordinance.

Rule 14. This delegation shall expire on January 1, 1999. The Board may terminate this delegation upon six months notice to the Town as provided for in 10 V.S.A. § 1424(6).

Rule 15. The Board will propose additional rules extending and expanding the scope of this delegation of authority to the Town when:

a. A management plan for the public waters within the Mooring Management Area, is developed that addresses the following provisions:

- (1) Identifies those waters in which specific uses of public waters, including but not limited to the mooring of vessels, should be further regulated or prohibited in a manner that avoids or minimizes redundancies in the review process where there is concurrent jurisdiction by state or federal agencies; and
- (2) After considering all uses of the waters, identifies a basis for determining limits on the number of moored vessels that should be accommodated in each MMZ; and
- (3) Identifies a strategy for reducing the surface area of Malletts Bay devoted to the mooring of vessels by encouraging more space efficient methods of moorage. This strategy shall consider the cost of implementation and in that context may provide for achieving this objective over a reasonable period of time provided that well defined mileposts are established so that progress can be tracked; and

- (4) Identifies a strategy for insuring that access to the limited capacity of Malletts Bay for appropriate recreational and other uses, including the mooring of boats, is available to the general public in an equitable manner; and
- (5) Identifies a strategy by which the Town and State will work in a coordinated manner to increase and improve public access; and
- (6) Is consistent with any general management policies pertaining to the use of public waters adopted by the Board; and

b. The Town petitions the Board under 10 V.S.A. § 1424 for such a delegation where the petition is consistent with the presented management plan.

Rule 16. For purposes of these rules, the terms below shall have the following meanings:

- a. Board shall mean the Vermont Water Resources Board.
- b. Town shall mean the Town of Colchester.
- c. Mooring shall mean any equipment, structure or system for securing a vessel in the water beyond the mean water level. Each vessel shall be considered to be attached to a separate mooring for the purpose of counting moorings. Mooring shall not mean docks, that are either exempt or permitted, pursuant to 29 V.S.A. Chapter 11, but shall include the equipment, structure or system to attach vessels to the docks. Mooring shall not mean anchoring.
- d. Anchoring shall mean to secure a vessel within a MMZ for a period not exceeding 72 hours.
- e. Vessel means every description of watercraft, other than a seaplane on the water, used or capable of being used as a means of transportation on water (23 V.S.A. § 3302 (11)).
- f. Existing mooring means any mooring determined by the Town to have been established as of January 1, 1992.
- g. New mooring means any mooring not determined by the Town to have been established as of January 1, 1992.
- h. Management plan means a surface use management plan prepared in cooperation with the Town and the Secretary of the Vermont Agency of Natural Resources.
- i. On-shore support facilities includes but is not limited to roads or other means of access, parking areas, sanitary waste disposal facilities and trash disposal.

ADDENDUM

MMZ - 1, Clay Point/Malletts Creek - Beginning at a point, X 93614.7 - Y 234766, in the centerline of the Lamoille River, then southerly for a distance of 2,085.02 FT (635.51 M) to a point, X 93880 - Y 234188, then southerly for a distance of 10,270 FT (3130.3 M) to a point, X 94613.1 - Y 231145, then south easterly for a distance of 4,830.3 FT (1472.3 M) to a point, X 95889.4 - Y 230411, then easterly for a distance of 5,843.4 FT (1781.1 M) to a point, X 97577.7 - Y 230978, then southerly for a distance of 1,797.1 FT (547.75 M) to a point, X 97559.2 - Y 230431, then in an easterly direction for a distance of 1,372.3 FT (418.3 M) to a point on the shoreline, X 97975.4 - Y 230389, then northerly along the shoreline to the beginning point, X 93614.7 - Y 234766.

MMZ - 2, Malletts Creek/Bayside Park - Beginning at a point, X 97975.4 - Y 230389, on the shoreline north of the confluence of Malletts Creek and inner Malletts Bay, then in a westerly direction for a distance of 1,372.29 FT (418.3 M) to a point, X 97559.2 - Y 230431, then in a south, south westerly direction for a distance of 5,300.6 FT (1615.62 M) to a point, X 97229.5 - Y 228849, then south westerly for a distance of 7,055.4 FT (2150.48 M) to a point on the shoreline, X 95562.2 - Y 227496, then in a northerly direction along the shoreline to the beginning point, X 97975.4 - Y 230389.

MMZ - 3, Bayside Park/Coates Island - Beginning at a point on the shoreline at Bayside Park, X 95562.2 - Y 227496, then in a northerly direction for a distance of 4,516.0 FT (1376.5 M) to a point on the northeast shoreline of Coates Island, X 95341.3 - Y 228854, then along the shoreline in a southerly direction to the point of beginning, X 95562.2 - Y 227496. (Includes a fairway for Malletts Bay Boat Club).

MMZ - 4, Spaulding Bay/Marble Island - Beginning at a point on the northeast shoreline of Coates Island, X 95341.3 - Y 228854, then in a northerly direction for a distance of 6,555.6 FT (1998.2 M) to a point on the north end of Marble Island, X 94390.8 - Y 230611, then in a westerly direction for a distance of 2,391.6 FT (728.9 M) to a point on the northern shore of Malletts Head, X 93664 - Y 230555, then in a south, south easterly direction along the shoreline to the beginning point, X 95341.3 - Y 228854. (Including a fairway for the State Fishing Access).

MMZ - 5, Malletts Head/Thayer Beach/Porters Point/Mills Point - Beginning at a point on the west shoreline of Malletts Head, X 93449 - Y 230350, then in a southerly direction for a distance of 2,636.8 FT (803.7 M) to a point, X 93184.1 - Y 229592, then in a westerly direction for a distance of 7,854.3 FT (2394.0 M) to a point, X 90953 - Y 228724, then north westerly for a distance of 2,333.7 FT (711.3 M) to a point, X 90374.4 - Y 229138, then westerly for a distance of 6,500.6 FT (1998.6 M) to a point on the east side of the railroad fill, X 88394.4 - Y 229068, then

southerly along the railroad fill to its intersection with the shoreline, X 88394.3 - Y 229068, then southerly along the railroad fill to its intersection with the shoreline, X 88697.3 - Y 228724, then in an easterly direction along the shoreline to the beginning point, X 93449 - Y 230350.

MMZ - 6, Colchester Point/Delta Park - Beginning at a point on the west side of the railroad fill, X 88377.4 - Y 229060, then in a south westerly direction for a distance of 2,662.3 FT (811.5 M) to a point X 87886 - Y 228414, then southerly for a distance of 656.5 FT (189.8 M) to a point, X 87895.8 - Y 228214, then south easterly for a distance of 10,928.6 FT (3331.0 M) to a point, X 90278.5 - Y 225886, then easterly for a distance of 2,011.4 FT (613.1 M) to a point, X 90891.6 - Y 225886, in the centerline of the Winooski River, then 176.5 FT (53.8 M) northerly to a point, X 90865.1 - Y 225933 on the shoreline, then northerly along the shoreline to the beginning point, X 88377.4 - Y 229060.



A. Attachment C

STATE OF VERMONT
WATER RESOURCES BOARD
MONTPELIER, VERMONT 05602
(802) 828-2871

10 V.S.A., §1424. Use of public waters

- (a) The board may establish rules to regulate the use of the public waters by:
 - (1) Defining areas on public waters wherein certain uses may be conducted;
 - (2) Defining the uses which may be conducted in the defined areas;
 - (3) Regulating the conduct in these areas, including but not limited to the size of motors allowed, size of boats allowed, allowable speeds for boats, and prohibiting the use of motors or houseboats;
 - (4) Regulating the time various uses may be conducted.
- (b) The Board in establishing rules shall consider the size and flow of navigable waters, the predominant use of adjacent lands, the depth of the water, the predominant use of the waters prior to regulation, the uses for which the water is adaptable, the availability of fishing, boating and bathing facilities, the scenic beauty and recreational uses of the area.
- (c) The Board shall attempt to manage the public waters so that the various uses may be enjoyed in a reasonable manner, in the best interests of all the citizens of the state. To the extent possible, the board shall provide for all normal uses.
- (d) If another agency has jurisdiction over the waters otherwise controlled by this section, that other agency's rules shall apply, if inconsistent with the rules promulgated under this section. The board may not remove the restrictions set forth in sections 320 and 321 of Title 25.
- (e) On a petition signed by not less than ten freemen or the legislative body of a municipality the board shall hold a hearing and consider the adoption of rules authorized or promulgated under the section.
- (f) By rule, the board may delegate authority under this section for the regulation of public waters where:
 - (1) the delegation is to a municipality which is adjacent to or which contains the water; and
 - (2) the municipality accepts the delegation by creating or amending a bylaw or ordinance for regulation of the water. Appeals from a final act of the municipality shall be taken to the board. The board may terminate a delegation for cause or without cause upon six months notice to the municipality.