



Board's interpretation of the public trust doctrine. However, over a period of several years, this Board has extensively reviewed this matter with both our own legal staff and that of the Attorney General's Office. Our position that we cannot delegate under any terms other than first-come, first-served is based on these discussions. In a sense both this Board and your Board are hostage to a conflict that is not of our making and which neither of us can resolve in this setting. Nevertheless, I would like to suggest how we might resolve the issue of how to manage boat moorings in Malletts Bay in a way that is responsive to both the public trust doctrine and the interest of shoreline owners.

It is our understanding that based on the Town's own initial survey of Malletts Bay that even if the first-come, first-serve process is used, no shoreland owner, as a practical matter, will be denied access to mooring space. Moreover, in the highly unlikely event that a shoreland owner were in fact to be denied a permit, your ordinance (section 14-30) provides for appeals to the Water Resources Board. See also Rule 12 of the Board's Rules Regulating the Mooring of Vessels in Malletts Bay, Lake Champlain ("Board's Rules"). The Board may make its own findings of fact and serve as a check against arbitrary decisionmaking by the Harbormaster.


We think that this is a good arrangement for accommodating and protecting the rights of the individual as well as the collective needs of the people of this State, especially since the term of the delegation is so short. See Rules 14 and 15 of the Board's Rules (delegation expires on January 1, 1999, unless extended). Nevertheless, as a result of our discussion with Dave Timmons, we have come to appreciate that some persons in your Town may find even this regulatory arrangement unacceptable.

Therefore, although it is not expressly provided for in our own Rules, the Board will (1) consider terminating the delegation if it receives a petition filed by ten or more freemen in accordance with 10 V.S.A. § 1424 and the Board's Rules of Procedure requesting that the delegation be terminated because it has resulted in the denial of mooring space to shoreland property owners; and (2) determine on its motion that the delegation is terminated should the Colchester Board of Selectmen indicate that they want the delegation to end. Whether or not you should elect to request such termination based on the result of an advisory vote of the Town is your own business. Moreover, if you should communicate your desire to terminate the delegation prior to the Board making a final determination concerning the consistency of your ordinance with the provisions of 10 V.S.A. § 1424 and the Board's rules and policies pertaining to the use of public waters (See Rule 3(b) of the Board's Rules, then the Board may determine that the delegation has not been perfected.

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Please advise me of your intentions. If I or the Board staff can provide you with additional assistance to facilitate the adoption process, please call the Board office. I also would be happy to attend any of your meetings or any of your public hearings if that would be helpful, and also arrange for a representative from the Attorney General's Office to do the same.

Sincerely,



William Boyd Davies,  
Chairman  
Water Resources Board