

STATE OF VERMONT
Water Resources Board

In re: Petition for the adoption of 10 V.S.A. § 1424
 rules regulating the use of
 Curtis Pond, Town of Calais

BACKGROUND

In May of 1994, a petition was filed with the Vermont Water Resources Board (Board) under the provisions of 10 V.S.A. § 1424 seeking the adoption of the following rule for Curtis Pond:

Vessels powered by motor shall not exceed a
speed of 5 miles per hour (m.p.h.).

In response to this filing, the Board proposed the rule requested by petition and held a public hearing on August 15, 1994, at the Calais Town Hall for purposes of receiving public comment. The Board also established October 3, 1994, as the deadline for the filing of written comment. The public hearing was held jointly with the Vermont Department of Public Safety, represented by Sgt. Alan Buck, which is considering a request for a waiver under 23 V.S.A. § 3315(d) of the 5 m.p.h. speed limit within 200 feet of the shoreline required by 23 V.S.A. § 3311 (the "200 foot rule").

Representing the Board at the hearing were Board member Ruth Einstein and William Bartlett the Board's Executive Officer.

OPPORTUNITY FOR FURTHER COMMENT

These findings are intended as a report to the full Board summarizing the testimony received at the August 15, 1994 public hearing without offering judgements as to the validity of any particular argument or fact presented.

Copies of these "findings" have been sent to all persons who signed the attendance sheet circulated at the hearing. Those persons have until October 3, 1994 to file written comments as to the thoroughness and accuracy of the findings. In addition, all persons whether or not they were at the August 15 hearing have until October 3, 1994 to file written comments on the rule requested by the petition. All written comments should be addressed to: Vermont Water Resources Board, 58 East State Street, Drawer 20, Montpelier, Vermont 05620-3201.

In deciding what, if any, action to take in response to the petition, the Board will consider this report as well as all written comments filed by October 3, 1994. All persons attending

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the public hearing and/or filing written comments on this matter will be notified of any final action in this matter. The Board will make every effort to make its decision as quickly as possible.

Any questions regarding this matter should be directed to the Water Resources Board office at the address indicated above or at 828-2871.

FINDINGS

1. Curtis Pond (the Pond) located in the Town of Calais constitutes public waters within the meaning of 10 V.S.A. § 1422(6). The Pond has a surface area of 72 acres. The physical configuration of the Pond consists of two roundish areas at the north and south ends of the Pond connected by a narrower portion of the Pond referred to as the "narrows." At its narrowest point the "narrows" is less than 100 feet wide and in some places is not more than five feet deep.
2. Most of the western shoreline of the Pond is undeveloped. The balance of the shoreline is developed by mostly summer camps but there are a number of year round residences. A public fishing access, the only public access to the Pond, is located at the southern end.
3. The Pond has traditionally been used for a variety of recreational uses including swimming, fishing and boating by both nonmotorized and motorized vessels. Motorboats have used the Pond for several decades at both high speeds (i.e. waterskiing) and at low speeds (i.e. fishing at trolling speed).
4. The Pond has been the subject of two previous petitions to the Board under 10 V.S.A. § 1424. These petitions were considered in 1980 and 1986. In both cases the Board declined to proceed with the adoption of rules. The Pond has not previously been the subject of a "petition" for a waiver of the 200 foot rule under 23 V.S.A. § 3315(d).
5. Existing Vermont boating law (23 V.S.A. § 3311) requires that vessels, except for sailboards, police or emergency vessels, not operate at speeds exceeding 5 mph within 200 feet of the shoreline, vessels containing people or persons in the water. This provision of Vermont boating law is commonly referred to as the "200 foot rule."
6. As illustrated in a map of the Pond prepared by the Agency of Natural Resources (ANR) (Attachment A) 54 acres (75%) of the

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Pond's surface area is within 200 feet of the shoreline. The remaining 18 acres of the Pond's surface area (25%) are divided into two roughly equal sized areas at the north and south ends of the Pond.

7. The two areas of the Pond that are more than 200 feet from the shoreline are as a practical matter too small to allow recreational towing including waterskiing.
8. Existing Vermont boating law (23 V.S.A. § 3315(d)) also provides for the designation of areas within 200 feet of the shoreline of a lake or pond in which recreational towing, including waterskiing, can be allowed. In effect such a petition seeks a waiver of the "200 foot rule" (see finding #5 above).
9. Testimony at the August 15, 1994, was directed at both the petition to the Board to establish a 5 m.p.h. speed limit for the entire Pond and the request filed with the Vermont Department of Public Safety seeking a waiver of the 200 foot rule (23 V.S.A. § 3311).
10. At the August 15 public hearing a total of seventy-six people signed the attendance list of which approximately forty individuals testified.
11. Waterskiing and other forms of motorboating at speeds well in excess of 5 m.p.h. have been a traditional use of the Pond for many years dating back to at least the 1950's. The provisions of the "200 foot" rule notwithstanding, these uses have continued on the Pond, often within 200 feet of the shoreline and in the narrows, to the present day.
12. It is not uncommon on peak summer days for the Pond to be used by more than one motorboat at waterskiing speeds. Occasionally as many as four or five motorboats may be using the Pond at such speeds however, motorboat usage is often limited to one or two vessels operating at the same time. On many occasions, particularly during the week or during inclement weather, the Pond is often free of motorboats operating at waterskiing speeds.
13. The proponents of the Pond-wide 5 m.p.h. speed limit offered the following arguments in favor of their position:
 - a. Under existing law 75% of the Pond has had a 5 m.p.h. speed limit for years, the Petition seeks to extend this speed limit to the two small areas at either end of the

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Pond. The fact that "high speed" motorboat use is technically allowed in these two small areas encourages violations of the 200 foot rule in the narrows and elsewhere on the Pond.

- b. De facto, high speed motorboat uses of the Pond were prohibited years ago with the adoption of the 200 foot with rule even through the law has not been fully enforced. The petition seeks the belated enforcement of the law.
 - c. The Pond is not suited to high speed motorboat use due to its size and configuration. High speed motorboating use intrudes on other uses of the Pond often preempting or adversely impacting other low speed or nonmotorized uses (so-called "quiet uses") of the Pond. These "quiet uses" are also traditional uses of the Pond and existed on the Pond long before high speed motorboat use began.
 - d. The wakes caused by high speed motorboat use damages shoreland property (i.e. retaining walls), degrades water quality by increasing turbidity and by adding gasoline/oil into the water column.
 - e. High speed motorboat use threatens two rare aquatic plants found at Curtis Pond.
 - f. High speed motorboat uses creates unacceptably high safety risks to other users of the Pond.
 - g. High speed motorboat uses have routinely and willfully violated state boating law for years therefore nothing less than a total prohibition is enforceable.
14. Those opposed to the 5 m.p.h. speed limit requested by the Petition offered the following arguments:
- a. Waterskiing and other forms of high speed motorboat are traditional uses of Curtis Pond often dating back several generations among shoreland residents.
 - b. The level of motorboat usage on the Pond is less today than it has been in the past.
 - c. There are no records of any boating accidents at Curtis Pond involving high speed motorboats.
 - d. Water-skiers on the Pond by local convention follow a counterclockwise rotation in the north and south ends of

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the Pond as a safety measure. The "guidelines" offered by the CPA would further enhance boating safety.

- e. High speed boating uses are only occurring on the Pond a relatively few hours per week (12-15 hours by one estimate) and therefore the Pond is available to "quiet users" a large percentage of the time. The Pond is not crowded most of the time so there is no need for regulation.
 - f. The underlying conflicts inherent in the petition to the Water Resources Board and to the Department of Public Safety should be resolved at the local level.
 - g. Swimmers and other quiet users should stay in designated areas or close to shore to avoid conflicts with high speed motorboats.
 - h. The narrows will silt in or become choked with weeds if high speed motorboat use is not maintained in this area.
 - i. Curtis Pond is a body of public water should be available to all uses including high speed motorboat use.
15. The Curtis Pond Association (the CPA), an organization of shoreland property owners was formed in early July of 1994. The CPA reports having thirty-six members representing thirty-three of the approximately fifty properties adjacent to the Pond. At the August 15 hearing, CPA filed with the Board "Water Use Guidelines" for Curtis Pond that it has developed. These include:
1. Personal watercraft, waterskiing and related activities will be limited to the hours between 1:00 p.m. and 7:00 p.m.
 2. No more than three vessels will be permitted to engage in waterskiing at any one time.
 3. No more than three personal watercraft can be in use at any one time.
 4. In the south end of the pond, vessels powered by motor shall travel in a counterclockwise direction.
 5. The area commonly called "the narrows," defined as the area between properties CP-026 and CP-016, shall have the

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following restrictions:

- a. Only one boat going over 5 mph will be allowed in this area at a time and must stay within 75 feet from the unpopulated (west) shore.
- b. Waterskiiers and related activities will remain in the wake of the vessel.
- c. No waterskiiers may be "started" in the narrows.

In addition to the guidelines the CPA also identified a number of tasks that would be needed to implement the guidelines.

16. The Friends of Curtis Pond (the FCP) has been formed since the formation of the CPA. The FCP reports a membership of 41 people including 12 shoreland property owners. The FCP supports the 5 m.p.h. petition and opposes the waiver of the 200 foot rule.
17. Bruce Epstein the Vermont State Safety Director for the American Water Ski Association testified that Curtis Pond has many physical characteristics that make it ideal for waterskiing. However, he also testified that "As safety director with the American Waterski Association, I cannot support high speed use through the narrows." Mr. Epstein went on to suggest that a waiver of the 200 foot rule on the undeveloped west shore at the north and south ends of the Pond, would allow waterskiing and other forms of recreation towing to safely continue in those two areas.
18. The Agency of Natural Resources filed written comments in a memorandum date August 15, 1994. ANR's position which was described in its oral testimony as "preliminary" is that it opposing the request for a waiver of the 200 foot rule for Curtis Pond and supports the adoption of a rule limiting motorboat speeds on the Pond to 5 m.p.h.
19. Some people commented on the process by which issues such as those raised in this petition are addressed. Some suggested that these issues should be decided by a public vote with several different suggestions as to whom should participate in such a vote. Others felt that it is too easy to file such petitions, that the process is inherently too confrontational

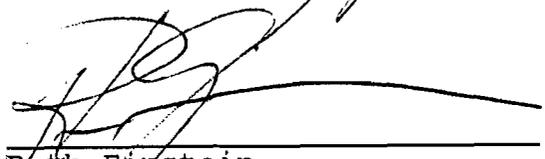
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because there is not enough incentive to try to address
issues locally and that mediation services should be
available to promote such local solution efforts.

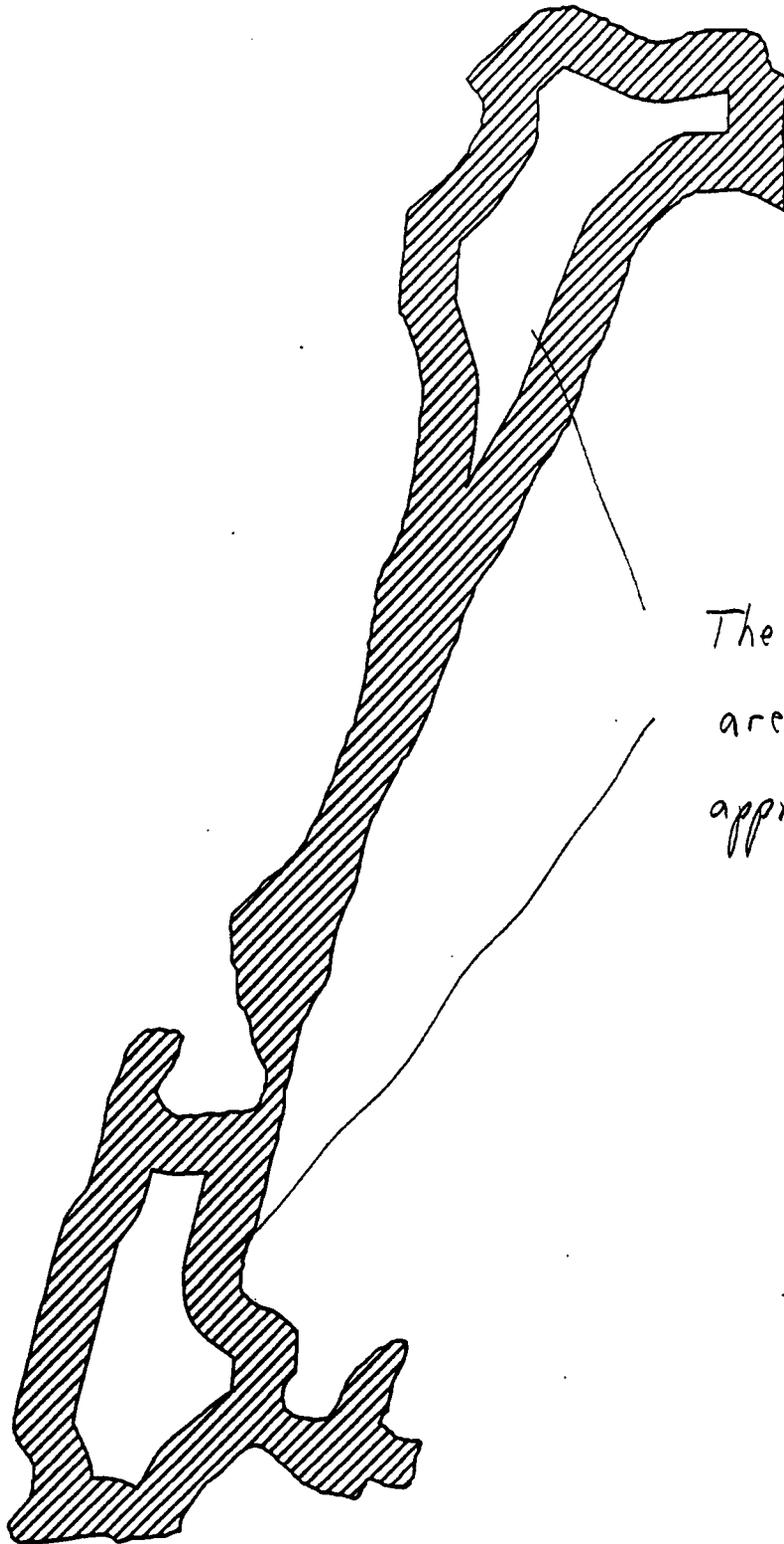
Dated this 14th day of September, 1994, at North Ferris,
Vermont.



William A. Bartlett
Hearing Referee



Ruth Einstein
Hearing Referee

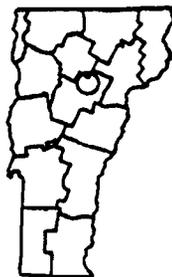


The two unshaded areas total approximately 18 acres

0 1000 FEET

Map produced 03/20/33

CURTIS POND
CALAIS
72 ACRES



PREPARED FOR THE
WATER RESOURCES BOARD
PROPOSED USE OF
PUBLIC WATERS POLICY



DISCLAIMER:
THE ACREAGE LISTED IS
FROM 1:5000 OR 1:24000
SOURCE DATA. IT REPRESENTS
THE BEST AVAILABLE
DATA AT THIS TIME.

AGENCY OF NATURAL RESOURCES
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