



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

DATE: July 5, 1990

TO: All Parties

FROM: William A. Bartlett, Executive Officer

A handwritten signature in cursive script that reads "William A. Bartlett".

RE: Point Bay Marina

This memorandum is to acknowledge receipt on June 21, 1990, of the settlement agreement reached in this matter. On the basis of that agreement, it is the Board's understanding that this appeal has been withdrawn. Please let me know if there are any questions.

kgr

c:90-06-1.mem

COPY

PE&C #2, 6/20/90

AGREEMENT

-THIS AGREEMENT is made this _____ day of June, 1990, by and among POINT BAY MARINA, INC. ("Point Bay"), the DEPARTMENT OF ENVIRONMENTAL CONSERVATION OF THE AGENCY OF NATURAL RESOURCES OF THE STATE OF VERMONT ("Department"), and DEAN LEARY.

RECITALS

A . By letter dated May 17, 1990 (the "Approval"), the Department approved a request by Point Bay to alter the location of the swim area and service dock **previously** approved in Permit No. 85-83 issued by the Department on January 2, 1986, under the **provisions** of Title 29 V.S.A. Chapter 11.

B. The Approval **was**' **appealed** by Dean **Leary** to the Water Resources Board.

C. The parties have agreed that Dean Leary will withdraw his appeal **and** that certain conditions more **fully** described below shall be deemed a part of the Approval.

Based upon the foregoing, the parties agree as follows:

1. **The following** terms and **conditions** shall be deemed by the parties hereto to be a part of the Department's Approval of **minor** modifications to Point Bay Marina, Inc. Permit No. 85-83, as set forth **in the Department's** letter to Point Bay Marina, Inc. dated May 17, 1990:

A. The, Department's Approval of the swim area and service **dock relocation** shall be the subject of a formal permit amendment review by **the** Department under the applicable **provisions** of Title 29 V.S.A. Chapter 11, and any procedures, policies or rules **mandated by** the public trust doctrine, when the first of the following events **occurs**:

i. The expiration of five (5) years from the date of this Agreement.

ii. Any **review** by the Department of any application by Point Bay Marina, Inc. for an amendment of its existing permits to allow expansion or enlargement o.f **Point Bay** Marina.

iii. Any review of the Point Bay Marina **permits** undertaken by the' Department as part of a review of all marina **facilities under the public trust doctrine.**

B. During its regular open and operating hours, Point Bay will continue to make available to the boating public access

to the swim dock, the toilets; picnic tables and a self-service boat launch ramp.

C. For purposes hereof, "boating public" shall mean members of the public who are in the process of launching, retrieving or using any watercraft, provided that such watercraft and the manner of such use shall be in compliance with applicable state and federal laws and regulations.

D. Access to the marina toilets shall be provided through use of a key available at the marina store and at the service dock.

E. Point Bay may post notice of its regular service and operating hours and require that visitors check in at the office or service dock.

F. Point Bay will continue to manage the use of its facilities to ensure, that each facility is used only within its capacity as established by safety and health considerations and the requirements of applicable permits and approvals. In resolving any conflicts between Point Bay residents and non-residents, Point Bay is expected to be fair and equitable. For purposes hereof, "Point Bay residents" shall mean boaters who have entered into a seasonal USE contract with Point Bay Marina, Inc.,

G. Point Bay will continue to maintain general operating rules and regulations. All users of the marina will be subject to such rules and regulations and to enforcement of the rules and regulations by Point Bay management.

H. Point Bay will continue to operate a holding tank pump-out facility at no charge to users for the remainder of 1990.

I. Point Bay will not place or cause to be placed any new moorings west of the new service dock location or within two hundred feet (200') of the breakwater or dock system.

J. This Agreement shall be construed only to provide for continued day use of the Point Bay facilities by the boating public and not to entitle the boating public to free overnight use of moorings or docks or free use of other facilities for which Point Bay has or establishes usual and customary charges or fees. With the exception of the free holding tank pump-out, for the remainder of 1990, Point Bay may impose such use fees and charges as it may deem appropriate; provided that such fees and charges shall not be so disproportionate to fees charged for use of similar facilities by other marinas on Lake Champlain as to be clearly intended to discourage use of such facilities by the boating public.

2. Except as expressly set forth herein, this Agreement shall not be construed to restrict Point Bay's normal business practices or the charges and profits generated by Point Bay from the boating public.

3. This Agreement shall not be construed or used in any way to prejudice any position that Point Bay, or Dean Leary, or the Department may take in any future permit proceedings.

4. This Agreement shall not be deemed or construed to commence any new period within which an appeal may be taken from the Department's Approval letter dated May 17, 1990.

5. Upon execution hereof by Point Bay, the Department and, Dean Leary, and delivery of an executed copy hereof to the Executive Officer of the Water Resources Board, Dean Leary shall be deemed to have withdrawn his appeal.

Dated as of the date and year first above written.

POINT BAY MARINA, INC.

BY: *P. A. Mad...*
Duly Authorized Agent

DEPARTMENT OF ENVIRONMENTAL
CONSERVATION OF THE AGENCY OF
NATURAL RESOURCES OF THE STATE OF
VERMONT

BY: _____
Duly Authorized Agent

Dean Leary
DEAN LEARY