

GEORGE B. BACON
Director
Idaho Department of Lands
300 N. 6th St. Ste. 103
P.O. Box 83720
Boise, Idaho 83720-0050

BEFORE THE STATE BOARD OF LAND COMMISSIONERS
STATE OF IDAHO

In the Matter of;)
)
Encroachment Permit No. L-95-S-5158) **FINAL ORDER**
Lower Loch Haven View Manor Homeowners)
Association, Inc.)
Applicant.)
_____)

I. NATURE OF PROCEEDINGS/ISSUES

A public hearing was held on May 10, 2007 at 6:00 pm PST at the Idaho Department of Lands office in Coeur d'Alene, Idaho. Eric Wilson served as Hearing Coordinator. The Hearing Coordinator issued his Recommendations on December 12, 2007.

My responsibility is to render a decision on the behalf of the State Board of Land Commissioners based on the record reviewed in the context of my personal expertise gained through education, training, and experience. In making this determination I have relied on the record provided. Specifically,

- I have read the transcript of the public hearing conducted in Coeur d'Alene, Idaho on May 10, 2007.
- I have reviewed the record including all documents and exhibits.
- I have examined the Hearing Coordinator's Recommendations in light of the entire record.

Encroachments, including docks, placed on the navigable waters, require a permit issued by the Department of Lands pursuant to the requirements of Title 58, Chapter 13, Idaho Code and the Rules for the Regulation of Beds, Waters and Airspace over Navigable Lakes in the State of Idaho, IDAPA 20.03.04 as promulgated by the State Board of Land Commissioners.

II. FINDINGS OF FACT

I concur with the Findings of Fact presented by the Hearing Coordinator.

III. CONCLUSIONS OF LAW

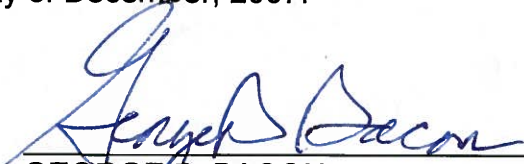
I concur with the Conclusions of Law presented by the Hearing Coordinator.

IV. FINAL ORDER

On the basis of the record, it is my order that Encroachment Permit L-95-S-5158 be denied. This decision is based on The Regulation of Beds, Water, & Airspace Over Navigable Lakes in Idaho, IDAPA 20.03.04.015.03.b and IDAPA 20.03.04.060.05. The hearing officer has determined that the proposed encroachment will have an adverse effect on adjacent littoral property, and the size of the proposed dock is too large for the location and proposed use.

This is a final order of the agency. Any party may file a motion for reconsideration of this final order within twenty (20) days of the date of this final order. The agency will dispose of the petition for reconsideration within thirty (30) days of its receipt, in accordance with IDAPA 20.03.04.030.09.

DATED this 18 day of December, 2007.



GEORGE B. BACON
Director

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that on this 19th day of December, 2007, I caused to be served a true and correct copy of the foregoing document, by the method indicated:

Mr. Steve Strack
Idaho Department of Lands
954 W. Jefferson
Boise, ID 83720-0050

- U.S. Mail, postage prepaid
- Hand Delivery
- Federal Express
- Facsimile: _____
- Statehouse Mail

Ms. Janette M. McKenna
1222 Syringa Ave
Coeur d'Alene, ID 83814

- U.S. Mail, postage prepaid
- Hand Delivery
- Federal Express
- Facsimile: _____
- Statehouse Mail

Mr. Malcolm Dymkoski
7272 Valley St.
Dalton Gardens, ID 83815

- U.S. Mail, postage prepaid
- Hand Delivery
- Federal Express
- Facsimile: _____
- Statehouse Mail

Ms. Lisa D. Key
8930 N. Government Way
Hayden, ID 83835

- U.S. Mail, postage prepaid
- Hand Delivery
- Federal Express
- Facsimile: _____
- Statehouse Mail

Mr. Mel T. Schmidt
11555 N. Hughes Dr.
Hayden, ID 83835

- U.S. Mail, postage prepaid
- Hand Delivery
- Federal Express
- Facsimile: _____
- Statehouse Mail

Ms. Nancy Stricklin
PO Box 1545
Coeur d'Alene, ID 83816

- U.S. Mail, postage prepaid
- Hand Delivery
- Federal Express
- Facsimile: _____
- Statehouse Mail

Mr. Mike Denney
Department of Lands
3706 Industrial Avenue South
Coeur d'Alene ID 83815

- U.S. Mail, postage prepaid
- Hand Delivery
- Federal Express
- Facsimile: _____
- Statehouse Mail

Mr. George B. Bacon
Idaho Department of Lands
300 N. 6th St. Ste. 103
PO Box 83720
Boise, ID 83720-0050

- U.S. Mail, postage prepaid
- Hand Delivery
- Federal Express
- Facsimile: _____
- Statehouse Mail



ERIC WILSON
IDL Program Manager - Navigable Waters and Minerals

**BUREAU OF SURFACE AND
MINERAL RESOURCES**
300 N. 6th Street Suite 103
Post Office Box 83720
Boise ID 83720-0050
Phone (208) 334-0200
Fax (208) 334-3698



GEORGE B. BACON, DIRECTOR
EQUAL OPPORTUNITY EMPLOYER

STATE BOARD OF LAND COMMISSIONERS
C. L. "Butch" Otter, Governor
Ben Ysursa, Secretary of State
Lawrence G. Wasden, Attorney General
Donna M. Jones, State Controller
Tom Luna, Sup't of Public Instruction

December 17, 2007

MEMORANDUM

TO: George B. Bacon, Director

FROM: Eric Wilson, Navigable Waters/Minerals Program Manager

SUBJECT: Public Hearing – Community Dock for Lower Loch Haven View Manor Homeowners Association, Inc. L-95-S-5158

I. INTRODUCTION

The following document, which includes a recommendation for your consideration, was prepared following a public hearing conducted by the Idaho Department of Lands (IDL). The public hearing was conducted in conjunction with the processing of an encroachment permit for a community dock on Hayden Lake, a navigable lake in Idaho. Jurisdiction in this matter rests with IDL pursuant to Idaho Code § 58-1303, which empowers the State Board of Land Commissioners to regulate, control, and permit encroachments on, in, or above the beds or waters of the navigable lakes of Idaho.

II. FINDINGS OF FACT

1. On February 15, 2007, Lower Loch Haven View Manor Homeowners Association, Inc. (Applicant) submitted to IDL an encroachment permit application (L-95-S-5158) requesting the approval to construct a community dock on Hayden Lake. The application is incorporated into this document by reference.
2. IDL initiated the processing of the encroachment permit application as a navigational encroachment pursuant to the Lake Protection Act (Idaho Code § 58-1306) and the associated Rules (IDAPA 20.03.04.030). On February 26, 2007 and March 5, 2007, IDL published the required Notice of Application in the Coeur d'Alene Press for the encroachment permit application submitted by Applicant. The Notice of Application is incorporated into this document by reference.
3. In a letter dated February 22, 2007, IDL notified the following parties of the

encroachment permit application submitted by Applicant and requested that the parties provide comments to IDL:

- Idaho Department of Fish and Game
- Idaho Department of Environmental Quality
- Idaho Department of Water Resources
- U.S. Army Corps of Engineers
- Panhandle Health District
- Kootenai County Parks, Recreation, and Waterways
- Kootenai County Marine Division
- Kootenai County Building, Planning, and Zoning
- City of Hayden Lake
- City of Hayden
- Lakes Commission
- Kootenai Environmental Alliance
- Save Hayden Lake
- Dalton Gardens Irrigation District, adjacent landowner
- Martin Laney, adjacent landowner

The letter is incorporated into this document by reference.

4. IDL received seven (7) letters from agencies, neighbors, and members of the public. All these letters are incorporated into this document by reference.

a. Mr. A. Bradley Daly with U.S. Army Corps of Engineers sent a letter dated January 29, 2007 to the Applicant stating that a Department of the Army permit was not needed.

b. Mr. Ronald B. McIntire, Mayor of the City of Hayden, sent a letter dated March 14, 2007 stating grave concern over the proposed dock. He stated that it would be detrimental to the public interest by precluding possible future public access from the property owned by Dalton Irrigation District. This property owned by Dalton Irrigation District is one of the few remaining public parcels with sufficient lake frontage to address the growing demand for public access on Hayden Lake. Approval of the applicant's dock would deprive the many to benefit a few.

c. Joseph H. Wuest, Road Supervisor with the Lakes Highway District, sent a letter dated March 21, 2007 stating that they opposed the application based on a lack of adequate vehicle parking. E. Hayden Lake Road and the Dike Road are not sufficient for designated parking. If, however, designated parking was provided, the Highway District would not oppose the application.

d. Charles E. Corsi with Idaho Department of Fish and Game sent a letter dated March 21, 2007 stating that shared docks, as proposed, are less of an impact on fisheries than individual docks. Construction with cedar materials, as proposed, is also more beneficial than other construction materials. He recommended that all construction be completed during low water and BMPs be employed during construction.

- e. Paul Montreuil of Dalton Gardens Irrigation District send a letter dated March 23, 2007 stating that they are opposed to the application. They own the parcel on the southern end of the Hayden Lake dike (west of the applicant's property). Due to the presence of the lake spillway on the District's property north of the applicant's property, the applicant's dock would preclude any dock construction on the District's property. The District also stated that the proposed dock is for parcels which do not border Hayden Lake, and the dock could be used by ten (10) boats, not four (4) as stated in the application.
- f. Luella Franklin of Dalton Gardens Irrigation District sent a second letter dated March 27, 2007 requesting a public hearing on the application.
- g. Robert Haakenson of Residents for Hayden Lake sent an e-mail dated March 28, 2007 objecting to the application. He stated that at least eight (8) boats could be moored at the "four (4) slip" dock, and the applicants building lots do not have lake access. He also stated that the proposed lots are not buildable for residential use, and the docks would have to be extended into the lake for quite a distance to make them usable during the summer. This would set an undesirable precedent for future applications.
- h. Terry Morgan, Marge Nisbet, and Noel Nisbet sent in an undated letter objecting to the application. They stated that six (6) to eight (8) boats could be moored at the proposed community dock, and approval would open the door to similar applications around the lake. Community docks are not needed everywhere on the lake, and would create a "one-way 5 mile per hour" lake similar to what has happened on California lakes. They also stated that the applicants do not have parking at the site, and providing lake access to non-lake frontage lots could raise land values and taxes. In addition, the dike area is shallow and the other docks in this area become high and dry for most of the summer. The docks will then not provide much benefit to the applicant. They also stated that the increased traffic at the Honeysuckle Beach boat launch has resulted in the dike area being used as a boat turn around area. This raises safety issues for the public.
5. Based on the Dalton Gardens Irrigation District's request, and in accordance with IDAPA 20.03.04.030, IDL initiated a public hearing process for the proposed community dock. On April 25, 2007 and May 2, 2007 IDL published the required Notice of Hearing in the Coeur d'Alene Press. The public hearing was scheduled for May 10, 2007 at 6:00 pm at the IDL office in Coeur d'Alene. The Notice of Hearing is incorporated into this document by reference.
6. On May 10, 2007 IDL held a public hearing at 6:00 pm in IDL's Coeur d'Alene office. Mr. Eric Wilson, Navigable Waters/Minerals Program Manager, served as hearing coordinator. In attendance were Mr. Jim Newton, IDL Acting Area Manager; Mr. Carl Washburn, IDL Navigable Waters Specialist; Ms. Janette McKenna, the applicant; and several members of the public. The public hearing was recorded on audio tape and was subsequently transcribed. The transcript of the public hearing is incorporated into this

document by reference.

a. Ms. Janette McKenna, the applicant, provided an overview of the project. She drew a diagram of the lots in her project and the Irrigation District property. The diagram is incorporated into this document by reference. She has a joint venture with an adjacent (upland) lot owner. A homeowner's association will manage the community dock. The dock will consist of cedar, which is beneficial to fish. No dredging will be needed and the U.S. Army Corps of Engineers has no objection. Construction will be done during low water when impacts will be minimized. Currently the dock location is a dirty place that collects a lot of garbage and is subject to vandalism. A dock should improve the area. Ms. McKenna also stated that the dock was at least thirty (30) feet within the riparian right lines. Since the City of Hayden would like to install docks on the adjoining parcel sometime in the future, perhaps a joint project could be undertaken at that time. When questioned about how many boats would be able to use the proposed dock, she stated that the proposed dock has four (4) slips. Two will be for lots 139 and 140, and two will be for the other (upland) lots. Four (4) slips would be four (4) boats. A walking path for access would be constructed on lot 140. The path is near a dangerous intersection where people park at the dike and then pull out into traffic. Accidents have happened here. The applicant suggested a crosswalk and speed bump to mitigate the pedestrian safety. When asked about surveyed riparian (littoral) right lines, she responded that the lots had been surveyed but the riparian right lines had not. When questioned about the littoral right lines, the applicant committed to having a surveyor plot the littoral right lines using the chord method with the proposed dock location. This will help to determine whether or not the proposed dock is infringing on the Irrigation District's littoral rights.

b. Mr. Malcolm Dymkoski, representing the Dalton Gardens Irrigation District, stated that they are not opposed to a dock at this location. Their objection to this application is due to the size of the proposed dock, which will encroach on the Irrigation District's littoral rights. The Irrigation District has a concrete spillway, and their northern property line is about five (5) feet from the north end of their spillway. The old spillway is south of the concrete spillway and is in the middle of the Irrigation District's parcel. The Irrigation District may want a dock on their parcel in the future, and the spillways would require that the dock be in the southern portion of their parcel next to the applicant's proposed dock. The applicant's proposed dock will be able to moor eight (8) to ten (10) boats because the slips are twenty-one (21) feet wide and can accommodate two (2) boats each. Boats tied on the outside of the last slip will extend the sixty-eight (68) feet of the dock length. This will restrict the ability of the Irrigation District to use a dock on their property. When questioned on the ownership status of the Irrigation District's property, Mr. Dymkoski stated that it was not a public access property. The dike road is fenced and is not a public road. It is currently open for fishing, swimming, and other activities. The parcel to the north of the Irrigation District is private property owned by Tom Richards or his company.

c. Ms. Lisa Key, representing the City of Hayden, gave a slide presentation as

part of her testimony opposing the application. That presentation is incorporated into the record by reference. She pointed out the location of Honeysuckle Beach, one of only two public launches on Hayden Lake. This beach is owned by the City of Hayden and is located north of the Richards property. Ms. Key then showed a diagram depicting the applicant's lots and proposed dock. The proposed dock appeared to preclude the construction of a dock on the Irrigation District's property. She stated that the Irrigation District's property is the only remaining public property with sufficient lake front access to provide another public dock. The proposed community dock would preclude boat access to the Irrigation District property. The City of Hayden has been in discussions with the Irrigation District to acquire their property, but nothing has been finalized. The Irrigation District property could be sold to anyone at this point in time.

d. Mr. Mel Schmidt stated that he had concerns about the size of the proposed dock and the distance it projected out into the lake.

e. Ms. Nancy Stricklin, representing the City of Hayden, stated that the shoreline at the proposed dock location is not straight. As a result, the littoral rights do not go straight out into the water and the proposed dock will impair the Irrigation District's littoral rights.

7. Following the public hearing, the record was held open pending the applicant's submission of the littoral right line survey. The survey was received on November 20, 2007 and is incorporated into this document by reference. The survey depicts littoral right lines that are approximately perpendicular to shore, and the proposed dock is not shown.

8. Several comments were received by e-mail and fax on or about the day of the hearing. These comments are all incorporated into this document by reference.

a. An e-mail was received from Mr. Cecil Hathaway on May 10, 2007 objecting to the application. Mr. Hathaway stated that the owners will live too far from the proposed docks to effectively police them, and the Lakes Highway District does not support the application.

b. An e-mail was received from Mr. Stephen J. Davis on May 10, 2007 objecting to the application because it provides a dock for non-waterfront landowners.

c. An e-mail was received from Ms. Genie Higbee on May 10, 2007 objecting to the application because it threatens blockage of the dike area, the area near Honeysuckle Beach is already congested, and no parking is available during the summer on the narrow streets.

d. An e-mail was received from Mr. Jeff Hanna on May 10, 2007 objecting to the application because it would provide a dock for non-waterfront owners and it contains moorage for up to ten (10) boats. He also stated that the lake has an impaired status.

- e. An e-mail was received from Mr. James Curtis on May 10, 2007 objecting to the application because it provides a dock for secondary waterfront housing and it is near the already congested Honeysuckle Beach. He also stated that Hayden Lake is a threatened body of water.
- f. A fax letter was received from Mr. C.R. Weaver on May 10, 2007 objecting to the application because it is for non-waterfront lot owners, contains moorage for up to ten (10) boats, is located in a congested area of the lake, and would increase traffic and parking problems. He also stated that the dock would not improve water quality on Hayden Lake.
- g. A fax letter was received from Ms. Sharon Kohls on May 10, 2007 objecting to the application because it would impact water quality and open the door to other community docks on Hayden Lake.
- h. A fax and e-mail letter was received from Mr. Paul T. Leonard Jr. with the Hayden Lake Protective Association on May 10, 2007 objecting to the application because of the existing uses of the dike area and nearby Honeysuckle Beach, the narrow street and lack of parking, and the number of boats that could use the proposed dock. Mr. Leonard also stated that due to water quality concerns, approving a community dock at this location is not in agreement with the Public Trust Doctrine.
- i. An e-mail was received from Mr. Patrick Ross on May 10, 2007 objecting to the application because it would set an unacceptable precedent for other community docks on Hayden Lake. He also stated that property values will drop in the area due to this dock, and the area will decline.
- j. An e-mail was received from Ms. Sheilah Ross on May 10, 2007 objecting to the application because her domestic water comes from the lake and the proposed dock will contribute to the deterioration of Hayden Lake.
- k. An e-mail was received from Ms. Sheila Sayles on May 10, 2007 objecting to the application because the Honeysuckle Beach area is already heavily impacted.
- l. An e-mail was received from Ms. Jackie Hallett on May 10, 2007 objecting to the application because it will affect water quality and provide lake access to secondary lots. She also stated that there is inadequate parking in the area.
- m. An e-mail was received from Mr. Don Vogt on May 11, 2007 objecting to the application. Mr. Vogt stated that Hayden Lake had existing water quality problems related to docks, and the dock would be used by non-waterfront owners. He also stated that smaller, single-family docks should be considered instead of community docks.

III. CONCLUSIONS OF LAW

1. The Idaho Board of Land Commissioners (Board) is designated in Idaho Code § 58-104(9) and § 58-1303 to regulate, control and permit encroachments on, in, or above the beds of navigable lakes in the state of Idaho. IDL is the administrative agency of the Board, as per Idaho Code § 58-119.
2. Hayden Lake is a navigable lake as defined by Idaho Code § 58-1302(a). Pursuant to IDAPA 20.03.04.011.02, encroachments of any kind on, in, or above the beds of a navigable lake require a permit prior to encroaching on the lake.
3. Pursuant to Idaho Code § 58-1301, lake encroachments must be regulated to protect property and the lake value factors of navigation, fish and wildlife habitat, aquatic life, recreation, aesthetic beauty, and water quality. These values must be given due consideration and weighed against the navigational or economic necessity or justification for, or benefit to be derived from, the proposed encroachment.
4. IDL shall make decisions on proposed encroachments in accordance with the Public Trust Doctrine as set forth in Idaho Code § 58-1201 through 1203. This statute protects the property rights of private land owners, including the ability to utilize their riparian rights as a means to access the waters of the navigable lakes of Idaho.
5. IDL shall also make decisions on proposed encroachments in accordance with the Public Trust Doctrine as explained by the Idaho Supreme Court in Kootenai Environmental Alliance, Inc. v. Panhandle Yacht Club, Inc., 105 Idaho 622, 671 P.2d 1085 (1983) (KEA) and subsequent cases. The court in KEA stated that encroachment permits and submerged land leases remain subject to the public trust, and are not irretrievable commitments. The court in KEA also stated that mere compliance of IDL with its' legislative authority is not sufficient to determine if their actions comport with the requirements of the public trust doctrine.
6. IDAPA 20.03.04.015.03.b limits the surface decking area of a community dock to seven (7) square feet per lineal foot of shoreline owned by the applicant with a minimum allowance of 700 (seven hundred) square feet, and it states that IDL, at its discretion, may limit the ultimate size when evaluating the proposal and public trust values. The applicant in this instance claims to own one hundred fifty (150) feet of littoral frontage, which could allow a maximum dock size of 1,050 square feet. The proposed dock has 1,032 square feet.
7. IDAPA 20.03.04.060.05 establishes a twenty-five (25) foot setback from adjacent littoral property for community docks unless the adjacent property owner signs off on the dock application. The adjacent property owner, Dalton Gardens Irrigation District, has objected to the proposed dock, so the proposed dock must meet the twenty-five (25) foot setback standard or it is presumed to interfere with the adjacent landowner.
8. The applicant's dock will be twenty-five (25) feet from the eastern property line and seventy-three (73) feet from the western property line at the ordinary high water mark.

9. The shoreline is curved near the proposed dock, especially near the applicant's western property boundary with Dalton Gardens Irrigation District.
10. The applicant's survey depicts the applicant's two littoral lots extending up to twenty-five (25) feet into the lake, and the western property boundary is shown approximately thirty (30) feet west of the ordinary high water mark (OHWM).
11. The property owned by Dalton Gardens Irrigation District is not, strictly speaking, public property.
12. No authority is delegated to IDL over roads, road safety, and parking areas for community docks.
13. Idaho law, including Idaho Code § 58-1301 *et. seq.* (the Lake Protection Act), delegates no authority to IDL for the regulation of boats and water craft. Water craft are regulated by the United States Coast Guard through the Idaho Department of Parks and Recreation and local County Sheriff's Departments.
14. Water quality is a public trust value that the department should consider when evaluating proposed encroachments. Idaho law, however, including Idaho Code § 58-1301 *et. seq.* (the Lake Protection Act), delegates no authority to IDL for the establishment or enforcement of water quality standards. Water quality standards are regulated by the United States Environmental Protection Agency and the Idaho Department of Environmental Quality.
15. Applicant and IDL satisfied all procedural requirements in the processing of the application included in Idaho Code § 58-1306 and IDAPA 20.03.04.

IV. HEARING COORDINATOR CONCLUSIONS AND RECOMMENDATIONS

Most of the objections raised through written and oral testimony concern issues outside the jurisdiction of IDL. Many of these objections relate to traffic and road safety. Absent unusual circumstances, the Lake Protection Act does not contemplate that road issues will be considered when evaluating the merits of an encroachment application. Dock users would own lots near the proposed dock and could park at their own residences, so parking does not appear to be a substantive issue. More importantly, IDAPA 20.03.04 does not contain parking requirements for community docks.

Other objections relate to boat congestion in this area of Hayden Lake. While the Lake Protection Act and associated rules authorize IDL to consider an encroachment's impacts on navigation, the testimony relating to increased boat traffic and the possibility of congestion did not demonstrate that the proposed dock would obstruct navigation by other users of Hayden Lake. Objections related to water quality gave no specific testimony regarding the capacity of Hayden Lake to support motorized recreation. In the absence of a credible witness or study that addresses a link between boat use and water quality, the department has no basis for considering the effects of increased boat use on water quality.

The potential for a public dock on the Irrigation District's property was mentioned in some testimony, but the Irrigation District is a private entity, not a public entity. In addition, publicly owned littoral lands do not necessarily have rights over and above those of privately owned littoral lands. The potential infringement of the community dock on the Irrigation District's littoral rights, however, is relevant to the applicant's proposal.

Although the proposed dock appears to be within the littoral, or riparian, right lines at the ordinary high water mark, the lakeward end of the proposed dock is difficult to evaluate with respect to infringement on the Irrigation District's littoral rights. The littoral right lines are lines that extend out into the lake from the point where a property boundary meets the ordinary high water mark. These lines are used to make sure each littoral owner can construct a dock without physically interfering with their neighbor's right to construct or use a dock on their own property. On fairly straight shorelines, the littoral right lines are extended out into the lake approximately perpendicular to the OHWM. The applicant's eastern property boundary is along a fairly straight shoreline, so by this method the furthest lakeward extent of the dock remains at least twenty-five (25) feet from the eastern littoral right line.

For curved shorelines, the littoral right lines are best determined using the chord method. With this method, the littoral right lines are created by dividing evenly, or bisecting, the angle created by the two property owner's lakeshore boundaries. When this method is applied to the applicant's western property boundary with the Dalton Gardens Irrigation District, some infringement on the required twenty-five (25) foot buffer appears to be possible. The proposed dock would extend sixty-eight (68) feet into the lake, and the west side of the dock fingers is seventy-three (73) feet from the property line at the edge of the lake. Since the shoreline turns approximately 90° where the mutual property boundary meets the OHWM, the chord method requires bisecting this angle to determine this littoral right line. The west edge of the dock fingers, the shoreline, and the littoral right line create a shape that closely approximates a 45° - 45° - 90° triangle. Basic geometry rules dictate that a 45° - 45° - 90° triangle has legs of equal length, so the littoral right line will run very close to the northwest corner of the proposed dock.

In order to better evaluate the potential for infringement on the Irrigation District's littoral rights, a survey was requested of the applicant. The survey was requested to have the proposed dock plotted on the lake with the littoral right lines depicted using the chord method. Instead, a survey was created that shows the littoral right lines determined with the perpendicular method. This is not appropriate for the applicant's western property boundary, because the littoral right line ends up almost paralleling the shoreline as shown on the survey. In addition, the property lines have not been adjusted to the ordinary high water mark, so the applicant's property appears to extend out into Hayden Lake, and the public trust property appears to extend up onto shore. In order to fairly judge whether or not infringement occurs, the actual ordinary high water mark should be used instead of the mislocated littoral lot lines. Close examination of the dock application and the survey indicates that infringement on the Irrigation District's littoral rights is almost certain. The only way to be certain that infringement will not occur with a dock on this property is to properly draw littoral right lines using the chord method and the ordinary high water mark. The applicant was requested to supply this information, which should have been submitted

with the original application due to the unique shoreline and lot configuration. This information was not received so the application was evaluated using the information given.


A rough approximation of the proposed dock location and the lot lines was supplied by Dalton Gardens Irrigation District in their exhibits. They overlaid the lot lines and the proposed dock on an air photo. While the exhibit is somewhat crude the northwest corner of the proposed dock appears to be closer to the Irrigation District's property than the applicant's property. This also suggests that infringement will occur.

The application, and testimony from many different people, indicates that up to ten (10) boats may park in the proposed community dock. The applicant has stated that they only plan to moor four (4) boats. That could easily be accomplished with a smaller design that does not infringe on the neighbor's littoral rights. Also, the actual length of the applicant's littoral ownership may be less than the 150 feet claimed due to the curved shape of the shoreline. This would reduce the allowable square footage for the community dock.

Based on the information in the hearing record and the testimony provided at the public hearing, and based upon the fact that the proposed community dock will be closer than twenty-five (25) feet from the western littoral right line, I conclude that the proposed encroachment will have an adverse effect on adjacent littoral (riparian) property as stated in Subsection 060.05 of IDAPA 20.03.04. In addition, the proposed community dock contains more moorage than the applicant has stated they desire, may contain more square feet than allowed by IDAPA 20.03.04.015.03.b, and the Department can limit the ultimate size of the proposed encroachment as stated in IDAPA 20.03.04.015.03.b.

Based upon the information provided to me as the hearing coordinator, I recommend that the Director of IDL issue a Final Order stating that the Mica Supervisory Area of IDL should **deny** the encroachment permit application submitted by the applicant.

DATED this 17th day of December, 2007.



ERIC WILSON
Hearing Coordinator

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that on this 19th day of December, 2007, I caused to be served a true and correct copy of the foregoing document, by the method indicated:

- | | |
|---|---|
| Mr. Steve Strack Idaho Department of Lands 954 W. Jefferson Boise, ID 83720-0050 | <input type="checkbox"/> U.S. Mail, postage prepaid <input checked="" type="checkbox"/> Hand Delivery <input type="checkbox"/> Federal Express <input type="checkbox"/> Facsimile: _____ <input type="checkbox"/> Statehouse Mail |
| Ms. Janette M. McKenna 1222 Syringa Ave Coeur d'Alene, ID 83814 | <input checked="" type="checkbox"/> U.S. Mail, postage prepaid <input type="checkbox"/> Hand Delivery <input type="checkbox"/> Federal Express <input type="checkbox"/> Facsimile: _____ <input type="checkbox"/> Statehouse Mail |
| Mr. Malcolm Dymkoski 7272 Valley St. Dalton Gardens, ID 83815 | <input checked="" type="checkbox"/> U.S. Mail, postage prepaid <input type="checkbox"/> Hand Delivery <input type="checkbox"/> Federal Express <input type="checkbox"/> Facsimile: _____ <input type="checkbox"/> Statehouse Mail |
| Ms. Lisa D. Key 8930 N. Government Way Hayden, ID 83835 | <input checked="" type="checkbox"/> U.S. Mail, postage prepaid <input type="checkbox"/> Hand Delivery <input type="checkbox"/> Federal Express <input type="checkbox"/> Facsimile: _____ <input type="checkbox"/> Statehouse Mail |
| Mr. Mel T. Schmidt 11555 N. Hughes Dr. Hayden, ID 83835 | <input checked="" type="checkbox"/> U.S. Mail, postage prepaid <input type="checkbox"/> Hand Delivery <input type="checkbox"/> Federal Express <input type="checkbox"/> Facsimile: _____ <input type="checkbox"/> Statehouse Mail |
| Ms. Nancy Stricklin PO Box 1545 Coeur d'Alene, ID 83816 | <input checked="" type="checkbox"/> U.S. Mail, postage prepaid <input type="checkbox"/> Hand Delivery <input type="checkbox"/> Federal Express <input type="checkbox"/> Facsimile: _____ <input type="checkbox"/> Statehouse Mail |

Mr. Mike Denney
Department of Lands
3706 Industrial Avenue South
Coeur d'Alene ID 83815

- U.S. Mail, postage prepaid
- Hand Delivery
- Federal Express
- Facsimile: _____
- Statehouse Mail

Mr. George B. Bacon
Idaho Department of Lands
300 N. 6th St. Ste. 103
PO Box 83720
Boise, ID 83720-0050

- U.S. Mail, postage prepaid
- Hand Delivery
- Federal Express
- Facsimile: _____
- Statehouse Mail



ERIC WILSON
IDL Program Manager - Navigable Waters and Minerals