

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

BEFORE THE STATE BOARD OF LAND COMMISSIONERS
STATE OF IDAHO

In the Matter of;)	
)	
Encroachment Permits No. ERL-95-S-0675E and)	FINAL ORDER
ERL-95-S-0675F)	
Hagadone Hospitality Co.)	
)	
Applicant.)	
_____)	

I. NATURE OF PROCEEDINGS/ISSUES

A public hearing was held on December 13, 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 January 8, 2008.

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 December 13, 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 Permits ERL-95-S-0675E and ERL-95-S-675F be denied. This decision is based on The Regulation of Beds, Water, & Airspace Over Navigable Lakes in Idaho, IDAPA 20.03.04.020, IDAPA 20.03.04.030.02, IDAPA 20.03.04.060.03, IDAPA 20.03.04.060.05. The hearing officer has determined that both applications are incomplete because they were not signed by the landowner, who is not the applicant for these encroachments. ERL-95-S-0675E is also incomplete because the littoral right lines are not properly drawn and the proposed encroachment will adversely affect the adjacent littoral property. The hearing officer has also determined that both encroachments will have an unnecessary adverse impact on navigation, and that the nonnavigational encroachment (ERL-95-S-0675F) does not provide major benefits to the general public and a reasonable alternative exists.

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 14 day of January, 2008.



GEORGE B. BACON
Director

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that on this 14th day of January, 2008, I caused to be served a true and correct copy of the foregoing document, by the method indicated:

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EQUAL OPPORTUNITY EMPLOYER

STATE BOARD OF LAND COMMISSIONERS

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Ben Ysursa, Secretary of State
Lawrence G. Wasden, Attorney General
Donna M. Jones, State Controller
Tom Luna, Sup't of Public Instruction*

January 8, 2008

MEMORANDUM

TO: George B. Bacon, Director

FROM: Eric Wilson, Navigable Waters/Minerals Program Manager

SUBJECT: Public Hearing – Commercial Navigational Encroachment ERL-95-S-0675E and Nonnavigational Encroachment ERL-95-S-0675F for Hagadone Hospitality Co.

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 both a commercial navigational encroachment (ERL-95-S-0675E) and a nonnavigational encroachment (ERL-95-S-0675F) on Lake Coeur d'Alene, a navigable lake in Idaho. The commercial navigational encroachment proposed the relocation of an existing 170-foot long dock with slips and a boat garage to the south side of the property, and the construction of a new 200-foot long dock with two slips on the north side of the property. The nonnavigational encroachment proposed expanding a swim dock for use as a helicopter landing area, or a helipad.

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 September 14, 2007, Hagadone Hospitality Co. (Applicant) submitted to IDL an encroachment permit application requesting approval to construct both a commercial navigational encroachment and a nonnavigational encroachment on Lake Coeur

d'Alene. Due to the differences between navigational and nonnavigational encroachments, the commercial navigational encroachment was accepted for filing on that date but more information was requested for the nonnavigational encroachment. On October 12, 2007, Hagadone Hospitality Co. (Applicant) submitted to IDL the revised encroachment permit application requesting approval to construct a nonnavigational encroachment. Both applications were processed at the same time for efficiency. Both applications are incorporated into this document by reference.

2. When the permits were initially processed, the IDL Mica Area office thought the previously approved permit at this location was ERL-95-S-0675C¹. As a result, they advertised encroachment permit applications ERL-95-S-0675D (commercial navigational) and ERL-95-S-0675E (nonnavigational). In reality, ERL-95-S-0675D was the previously approved permit, so the current applications are more properly numbered ERL-95-S-0675E (commercial navigational) and ERL-95-S-0675F (nonnavigational). These latter numbers will be used for the remainder of this document even though the former numbers were used by the department and all persons submitting written or oral testimony concerning this application. The written and oral testimony refers to the docks or the helipad, regardless of the permit numbers cited, so there is no question about which encroachment the comments pertain to.

3. ERL-95-S-0675E proposes to move the existing permitted 170-foot dock from the north end of the Hagadone residential property to the south end of the Hagadone residential property. This dock includes a 30-foot square platform for mooring the Hagadone family's sailboat, a 3-slip boat garage measuring 37 by 47 feet, a single-slip measuring 30 by 58 feet, and a covered finger dock measuring 8 by 30 feet. The application also proposes constructing a new 200-foot long dock with two 30-foot slips near the north end of the Hagadone residential property. The purpose of this dock is to moor two large cruise boats end-to-end. ERL-95-S-0675F proposes to enlarge a 30-foot by 12-foot swim dock to a 35-foot square helipad. The helipad would extend 160 feet offshore the middle of the property.

4. Both applications were signed by John Barlow on behalf of Hagadone Hospitality Co. They were not signed by Duane Hagadone, and no evidence of a lease arrangement between Hagadone Hospitality Co. and Duane Hagadone has been presented.

5. The application does not show a littoral property line near the proposed northern dock. A littoral property line is shown near the relocated southern dock, and it continues along the same bearing as the adjacent upland property line.

6. Neither the proposed south dock nor the proposed north dock appears to be oriented perpendicular to the shoreline shown in the application.

¹ The initial permit was number ERL-95-S-0675. When the permit was later modified, an alphabetical character was added to the permit number (ERL-95-S-0675A). Each successive permit modification advances the alphabetical character, so the permit has been modified three more times with -0675B, -0675C, and -0675D. This is the standard permit numbering system used by IDL.

7. Air photos indicate that the single family docks north and south of the Hagadone property extend approximately 100 feet from shore (attachments 1 and 2). The Murphy commercial encroachment south of the Hagadone property extends 290 feet from shore.

8. The helipad was previously permitted as ERL-95-S-0675C. This previous application, processing documents, and the resulting permit are incorporated into this document by reference. It was not constructed within the three year time period stipulated in the permit, and therefore the permit expired.

9. The road to the Hagadone residence is a private road.

10. Hundreds of encroachment permits are processed every year on Lake Coeur d'Alene, and many of the permitted encroachments are secured to piling driven into the bottom of the lake. IDL is not aware of any link to metals contamination and the placement of piling.

11. IDL initiated the processing of ERL-95-S-0675E as a navigational encroachment and ERL-95-S-0675F as a nonnavigational encroachment pursuant to the Lake Protection Act (Idaho Code § 58-1306) and the associated Rules (IDAPA 20.03.04.030). On October 22nd, 2007 and October 29th, 2007, IDL published the required Notice of Application in the Coeur d'Alene Press for the encroachment permit applications submitted by Applicant. The Notice of Application is incorporated into this document by reference.

12. In a letter dated October 17th, 2007, IDL notified several agencies, organizations, and persons of the encroachment permit applications submitted by Applicant and requested that the parties provide comments to IDL. The letter is incorporated into this document by reference. Some of those notified included:

- 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
- Kootenai Environmental Alliance
- Lakes Commission
- Skip Murphy
- John Powell

13. IDL received nine (9) letters from agencies, neighbors, and members of the public by November 22, 2007, the deadline for hearing requests. All these letters are

incorporated into this document by reference. These letters stated concerns including the disturbance of polluted lake bottom sediments, a disruption of the residential character of Casco Bay, a lack of public access via road and boat, a lack of public benefit, the increased privatization of lake, the availability of the uplands to serve as a helipad, the unnecessary isolation of the littoral area by house construction, and the impacts to navigation.

14. Based on a request by Ms. Julie Dalsaso, and in accordance with IDAPA 20.03.04.030, IDL initiated a public hearing process for the proposed commercial navigational and nonnavigational encroachments. The public hearing was scheduled for December 13th, 2007 at 6:00 pm at the IDL office in Coeur d'Alene. On November 26th, 2007 and December 3rd, 2007 IDL published the required Notice of Hearing in the Coeur d'Alene Press. A memo dated November 21st, 2007 concerning the hearing was also sent to the applicant, Ms. Julie Dalsaso, and the following agencies and individuals:

- 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
- Kootenai Environmental Alliance
- Lakes Commission

The Notice of Hearing and the memo are incorporated into this document by reference.

15. IDL received fourteen (14) letters concerning this application between the hearing publication and the date of the hearing. These letters are incorporated into this document by reference. These letters stated concerns including a lack of justification for the encroachments, a lack of spill containment for the helipad, the potential for an upland helipad and restroom facility, the impacts to navigation, a lack of public benefit, the threats to wildlife and water quality, the disturbance of polluted lake bottom sediments, the elimination of road access, a lack of public access, the increased privatization of lake, the unnecessary isolation of the littoral area by the house construction, a disruption of the residential character of Casco Bay, the inappropriateness of the commercial status, the excessive square footage, the noise and aesthetic impacts of helipad, the lack of demonstrated need for all proposed encroachments, the location on personal residential property, the private nature of functions, the alternative access by road, the helipad is nonnavigational, and the encroachments are not supported by the public trust doctrine. One letter supported the application and stated that the proposed changes are acceptable.

16. On December 13th, 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. Mike Denney, IDL Area Manager; Mr. Paul Wagner, IDL Navigable Waters Specialist; Mr. John Barlow, representing

Applicant; Ms. Janet Robnett, representing Applicant; Mr. Duane B. Hagadone, representing Applicant; ten (10) members of the public who testified, and eight (8) members of the public who did not testify. 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 brief description of the pertinent testimony follows.

a. Mr. John Barlow, representing Applicant, provided an overview of the project, including the presentation of an exhibit that showed the location of the new house under construction and the proposed encroachments. The exhibit is incorporated into this document by reference. Mr. Barlow stated that he represented Hagadone Hospitality Company, the applicant. The upland property is owned by Duane B. Hagadone. This property has over 1,000 feet of lake frontage and the commercial encroachment permit has existed since 1992. The commercial activity was from the Coeur d'Alene resort, and groups come to this property via resort boats. This provides a service to the public in that resort guests are public guests. Two or three large events are held each year, and up to 600 attendees can be expected. These are charitable events that have benefited the Humane Society, Coeur d'Alene library, Coeur d'Alene Summer Theatre, Three Cs cancer event, and others. About \$500,000 has been raised at these events over the last few years. The larger events require a considerable number of support staff and security, estimated to be 50 to 60 people. They will use the southern, relocated dock. Attendees pay a fee that goes 100% to the respective charity. Hagadone covers all event expenses. Many other events are held each summer with fewer people, approximately 15 to 30 attendees. These smaller events are associated with conventions at the Coeur d'Alene Resort or groups of Resort guests. A fee is paid and the event is held, so it is a public, commercial enterprise.

The new house is located at the base of the steep hills that surround Casco Bay. Site clearing has started and the foundation will be started on January 7th. This cuts off road access to the lake side of the house from the private driveway. The private road is about 1.5 miles long, and the property is not large enough for guest parking. The events are oriented toward the lake. Part of the experience is to go by water and enjoy the cruise. The new dock is needed to moor two large cruise boats used for the larger events. They also provide restroom facilities for the guests. This property is not on sanitary sewer, and a septic system sized for 600 guests would not work well when used only a few times per year and would not be appropriate. The dock has to be large to accommodate both boats and stay floating while receiving all the guests. Pages B1 through B6 of the July 25, 2007 Spokesman Review newspaper was submitted for entry into the record. An article in this section described the Humane Society event held this summer at the Hagadone residence. The article is incorporated into this document by reference.

The helipad is needed for the charitable events. A barge attached to the swim dock has been used in the past because the swim dock is too small. The tennis

court has also been used. A silent auction is held during the events, and a helicopter ride is one of the auction items. It has always raised the most money. The helipad was previously permitted, but the three year window expired. Reapplication seemed appropriate. All the events are oriented to the lake, so it is part of the experience. No spill containment has been in place, and no refueling is planned. No FAA or ITD Division of Aeronautics requirements exist for private helipads.

b. Testimony presented by members of the public was generally in opposition to the project. In general, this testimony stated that the use of the residential property for these events is not appropriate, events could be held on the cruise boats or at the resort, the use would disrupt a quiet residential area, natural scenery will be reduced, the house should be constructed to allow lake access, the public and staff should be allowed to access the property by the road, the encroachments are not improving public access to the lake, the encroachments benefit a small number of people at the cost of public access, the lease income does not fairly compensate the public for the permitted use, the proposed encroachments do not seem to be justified, not all events will be charitable, and the proposals do not meet the requirements of the public trust doctrine.

Comments specific to the docks stated that the neighbor's industrial use for a dock that is 200 feet out does not establish the line of navigability, the restrooms could be built on the uplands, the proposed docks interfere with navigation, the piling will be pounded into the lake sediments which are contaminated with heavy metals, and the docks will remain after Mr. Hagadone sells his house or the commercial use ceases.

In regards to the helipad, comments stated that it is a nonnavigational encroachment, swim docks are not permitted so neither should helipads, the previous permit expired and therefore has no bearing on the current application, the helipad interferes with navigation, the helipad could be placed on the upland, it will set a bad precedent, and the helicopter will be noisy and intrusive.

In addition to the oral testimony several written materials were submitted as testimony. Ms. Julie Dalsaso submitted a copy of a document titled "Issue Analysis: Contaminant Management for Coeur d'Alene Lake and the Spokane River upstream of Post Falls Dam", a group of papers titled "Talking Points", and an oversized sheet of paper with square footage calculations for existing and proposed encroachments at the Hagadone residence. Mr. Pat Behm supplied a written letter dated 12/13/07. Ms. Bev Twillmann supplied a written letter dated 12/13/07. Ms. Maj Stormogipson supplied a written letter dated 12/13/07. Mr. Wes Hanson supplied a written letter dated 12/13/07. Mr. Barry Rosenberg supplied a written letter dated 12/13/07. All of these written materials are incorporated into this document by reference.

c. The southern neighbor, Mr. Fred Murphy, gave testimony in support of the

proposed encroachments. He owns the commercial operation on the south side of the applicant's property. His commercial docks extend 290 feet out from shore and he runs tug boats and equipment out of his facility. The applicant's proposed dock is shorter, and noise from the helipad will not be a problem.

d. Ms. Janet Robnett, representing the applicant, gave testimony in support of the proposed encroachments. The statute does not adequately define commercial navigational encroachment. The applicant's neighbor, Mr. Murphy, has one of these encroachments. Other commercial encroachments include restaurants and other facilities that are not necessarily in aid of navigation. The benefit to be derived by the public does not have to be related to boats and paddlers. Large numbers of the general public access the lake through cruises or events involving the lake such as those that occur at the Hagadone home. For some of these people, these cruises and events are the only way they can enjoy the lake. All commercial uses should be judged according to whether they provide access to an enjoyment by the general public.

The alternatives to the dock expansions are not without controversy. Expanded septic systems on the upland may or may not work due to sporadic use, and this could be far more disruptive than the proposal. The helipad was permitted in 2003, and the rules have not changed since that time, so it should be considered in the fashion that it was in 2003. The structures would not be permanent in nature as claimed by some people, because the leases are not permanent. Also, cumulative effects related to this application can not be considered because the rules do not allow the application of such a standard.

e. Mr. Duane Hagadone gave testimony in support of the proposed encroachments. He resides at his house in Casco Bay in the summer time. He has lived at the property for over 40 years. The commercial encroachment permit dates to 1992. Since that time numerous functions have been held every year. Probably a dozen functions were held in the last year, and 10 to 15 functions per year in the future. The Humane Society fundraiser was the best one. The guests paid about \$100 each, and every penny of the \$165,000 raised went to the Humane Society. It was a sell out. A raffle was held for a helicopter ride off the barge. The \$100 a ticket raffle raised \$26,000 by itself. The Coeur d'Alene Community Theatre, public library, and a cancer charity have all held events at Casco Bay. Over \$500,000 has been raised for charities at this site, and Mr. Hagadone pays for all events related costs. The Western Governor's Conference and the National Attorney's General Conference were also hosted at the site, and all day garden tours for the benefit of the Garden Club. The garden tour is another opportunity for those who do not have or can not afford boats to take a beautiful boat ride and enjoy the gardens. It is open to anyone who wants to come.

Coming by boat is part of the charm of these events. With groups as large as 500 to 600, the large boats are needed to provide restroom facilities. Guests are not allowed in the house. When the project is finished the facility will be opened

up to more events and the parking for the two large boats will be needed. The two large tour boats are each 100 feet in length. The long dock is needed to safely offload passengers. The current dock has almost sunk a couple of times due to too many people, and the addition of the employees adds to the congestion. Many requests for future events have already been received.

Since 1992 no complaints from the public or neighbors have been received. Five or six cruises a day go by the property during the summer. The helicopter has been landing at the property for five years, also without complaint. The swimming dock has been there since the 1970's, and it does not protrude out farther than the Murphy docks. The application is not extending out in the water any further, and navigation is not being impeded.

The north dock would be heavily commercial in use and the south dock would be a mixture of private and commercial use. A large sailboat is still moored there in the summer.

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. Lake Coeur d'Alene 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 20.03.04.020.02 states "Only persons who are riparian owners or lessees of a riparian owner shall be eligible to apply for encroachment permits." IDAPA 20.03.04.020.05.a states "Where the owner is not the applicant, the application shall bear the owner's signature as approving the encroachment prior to filing."

7. IDAPA 20.03.04.060.05 establishes a twenty-five (25) foot setback from adjacent littoral property for commercial and nonnavigational encroachments.

8. IDAPA 20.03.04.060.02 states in part that where feasible, all docks, piers or similar structures shall be constructed so as to protrude as nearly as possible at right angles to the general shoreline.

9. IDAPA 20.03.04.010.05 defines a commercial navigational encroachment as a navigational encroachment for the use of which patrons pay a fee.

10. ERL-95-S-0675E meets the definition of a commercial navigational encroachment. Most of the events do involve a fee. Whether these fees go toward a charity or to the Hagadone Hospitality Co. is irrelevant. The fees are paid by the person attending, and not by the boat that is docking, but the distinction does not seem to be significant in this instance.

11. A definition for "commercial marina" does not currently exist in the Idaho Administrative rules or Idaho Code. The encroachment proposed by ERL-95-S-0675E will not provide services for lake users, as do many commercial marinas, and moorage will not be available for rent or free. As a result, ERL-95-S-0675E does appear to fit the traditional description of what IDL would consider to be a "commercial marina". Not all commercial navigational encroachments, however, are required to be commercial marinas.

12. IDAPA 20.03.04.030.02 states that nonnavigational encroachments will normally not be approved by the Department and will be considered only in cases involving major environmental, economic, or social benefits to the general public. Approval under these circumstances is authorized only when consistent with the public trust doctrine and when there is no other feasible alternative with less impact on public trust values.

13. ERL-95-S-0675F is a nonnavigational encroachment. Prior processing of the helipad in 2003 did not recognize this fact, and the standard for approval of a nonnavigational encroachment, as stated in IDAPA 20.03.04.030.02, was not addressed at that time.

14. IDAPA 20.03.04.060.03 limits the length of docks to the normal accepted line of navigability established through use unless additional length is authorized by permit or order of the director.

15. Applicant did not satisfy all procedural requirements in the processing of the application included in Idaho Code § 58-1306(a) and IDAPA 20.03.04.020. That is, the application is not submitted by or approved by the littoral owner. The land is owned by Duane Hagadone, and the applicant has not secured Mr. Hagadone's approval of the application.

IV. HEARING COORDINATOR CONCLUSIONS AND RECOMMENDATIONS

This application proposes a combination of private use and commercial use that may not be unique, but which presents an important issue to be considered. That issue is the fate of the proposed encroachments after the property changes hands and the commercial use ceases. The existing dock was admittedly permitted as a commercial navigational encroachment in 1992, but the property is still a private residence. This permit should be conditioned upon continuing commercial usage and upon a reduction in size to meet the single-family dock standards when commercial use ceases.

The applications contain both procedural and substantive flaws. The procedural flaws include a lack of proper signatures and inadequate or improper delineation of littoral right lines, and should have resulted in the application being returned to the applicant as incomplete. The applications from Hagadone Hospitality Co. were signed by John Barlow. The proposed encroachments are on land owned by Mr. Hagadone, not Hagadone Hospitality Co. Signature by the landowner is required under IDAPA 20.03.02.020.02 and IDAPA 20.03.02.020.05(a). The lack of Mr. Hagadone's signature or written approval of the applications is sufficient grounds to deny both applications.

Another procedural flaw, although it may also involve some substantive issues, is the north and south littoral right lines. Without proper delineation of these lines, the potential impact on adjacent littoral landowners can not be properly evaluated by the adjacent littoral owners or IDL. The north property line is not depicted at all, so this littoral right line can not even be estimated. The drawing suggests that the property line is 175 feet from the centerline of the dock at the lakeward end, but this can not be confirmed by the drawing. The south property line is shown, and an extension of this property line is used to depict the southern littoral right line. The relocated dock near the south side of the property is 50 feet from, and parallel to, this littoral right line which is oriented approximately N85E. Upland property lines, however, do not necessarily indicate where littoral right lines extend. Littoral right lines usually extend into the lake perpendicular to the shoreline. The short section of shoreline shown on the application suggests that the littoral right line could be approximately N50E instead of approximately N85E. This would result in the littoral right line intersecting the proposed location of the south dock. If an encroachment is closer than 25 feet to a littoral right line, then an adverse effect upon adjacent littoral property is presumed to occur (IDAPA 20.03.02.060.05). This presumption is automatically rebutted with written consent of the adjacent littoral owner. Written consent on the prescribed IDL form was not obtained for this application. A letter was received from the northern adjacent littoral owner, John Powell, which stated his support for the project. Skip Murphy, the southern adjacent

littoral owner, testified in support of the project at the hearing. This support, however, was for the project in general, and without specific delineation of the littoral boundaries.

Substantive flaws in the applications were the source of some of the objections to the applications. One of the common objections stated that the proposed encroachments extended farther into the lake than needed and will disrupt navigation. The applicant stated that one reason for the long dock was to allow safe disembarking and boarding. With over 1,000 feet of frontage, however, the applicant could use more of that frontage to construct one or more docks that would serve the desired purpose and not extend so far into the lake. The single-family docks north and south of the Hagadone residence only extend about 100 feet into the lake, which establishes the line of navigability for this part of the lake. If the larger events that require both large cruise boats are only held a few times per year, then a 200-foot long dock at the north end of the property cannot be justified. The length of the 170-foot long dock at the south end of the property is not as problematic as the length of the north dock because the adjacent Murphy property has a commercial encroachment that extends over 200 feet into the lake. The Murphy business, by contrast, is used all year for dock storage and construction, and their waterfront is much shorter which necessitates a longer encroachment. Murphy's use also dates back to the 1930's.

Interference with navigation also applies to the helipad. The helipad in the application extends 160 feet from the ordinary high water mark, but air photos indicate the swim dock currently extends about 190 feet from the ordinary high water mark. While the swim dock may be currently permitted, it does not appear to be constructed in conformance with the permit. In any case, the helipad should also be located within the line of navigability, which is 100 feet. In summary, the north dock and the helipad unnecessarily hinder navigation by extending into the lake farther than needed.

The other substantive flaw relates to the need for the helipad. The helipad is a nonnavigational encroachment, and as such it must involve major environmental, economic, or social benefits to the general public. Past approval of this encroachment did not address whether the helipad provided any public benefits. Given the information in the current application and the hearing testimony, this encroachment does not appear to provide major environmental, economic, or social benefits to the general public. In addition, the upland could be used as an alternative landing site. Testimony from John Barlow, the applicant's representative, indicated that the tennis court on the residential property has been used in the past as a helipad, so a reasonable alternative to the floating helipad exists.

Other objections were not found to be sufficient reasons for denying the applications, with one exception noted below. One of the main objections to the applications is the ability to access the Hagadone residence by vehicle instead of boat. The road to the residence, however, is a private road and may not be appropriate for some of the functions held at the residence. Public access from road or by water is not required because it is not a commercial marina and the upland is a private residence, not a commercial business. In addition, the applicant clearly explained that the events held at the residence were special because they were oriented toward the lake. Access is

across the lake, the event is held lakeside at the residence, a stage is set up looking across the lake, etc. Access by road could change the nature of the events.

Road access by the support staff and security, however, is possible and would not detract from the lake-oriented nature of the events. The larger events that require up to 60 support staff are infrequent, so moorage for this many support staff does not appear justified and some of the slips or boat garages could be eliminated.

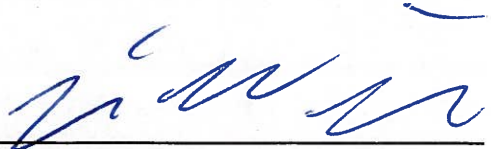
Some objections related to the perceived need for both cruise boats to remain docked and serve as restroom facilities. The need for the restroom facilities on the boats, however, is demonstrated by the impracticality of constructing a functioning septic system that would only be at capacity once or twice a year.

Several objections stated that the lake sediments contaminated with heavy metals should not be disturbed by pile driving. A report was even referenced that allegedly set forth best management practices for dock construction. The report, however, does not directly address dock construction or the placement of pilings. IDL is not aware of the risk of any metals mobilization related to driving piling. Pile driving is a transient physical action that does not change the chemical characteristics of the sediment and does not significantly displace lake sediments. IDL has no evidence that pile driving increases metals mobilization or bioavailability.

Based on the information in the hearing record and the testimony provided at the public hearing, and based upon the fact that both applications are incomplete due to a lack of signature by the landowner, and the application for the commercial navigational encroachment (ERL-95-S-0675E) is additionally incomplete because it does not show proper littoral right lines and the littoral rights of adjacent land owners will be adversely affected. In addition, neither encroachment meets the standard for length contained in IDAPA 20.03.04.060.03, and therefore I conclude that both proposed encroachments will have an unnecessary adverse impact on navigation (a public trust value). In addition, the applicant has not shown sufficient need for all of the slips and the boat garage proposed to be used by support personnel. Lastly, I conclude that the proposed nonnavigational encroachment (ERL-95-S-0675F) does not provide sufficient benefits to the general public, and a reasonable alternative exists.

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** both encroachment permit applications submitted by the applicant.

DATED this 8th day of January, 2008.


ERIC WILSON
Hearing Coordinator

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that on this 14th day of January, 2008, I caused to be served a true and correct copy of the foregoing document, by the method indicated:

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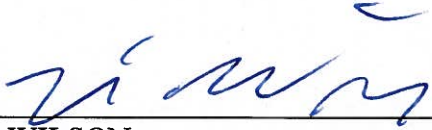
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ERIC WILSON
IDL Program Manager - Navigable Waters and Minerals

Attachment 1
Recommendation for
ERL-95-S-0675E and
ERL-95-S-0675F



Attachment 2
Recommendation for
ERL-95-S-0675E and
ERL-95-S-0675F

