

IN THE MATTER OF : *APPLICATION #034/9904-348*

CANDLEWOOD LAKE
A.K. WATER SKI ASSOCIATION : *DECEMBER 30, 1999*

PROPOSED FINAL DECISION

SUMMARY

The Candlewood Lake A. K. Water Ski Association has filed an application with the Department of Environmental Protection (DEP) seeking a permit to place markers for a water ski slalom course on Candlewood Lake in Danbury, Connecticut. Section 15-134(f) of the Connecticut General Statutes requires that an applicant receive written authorization from the Commissioner of the DEP (the Commissioner) for the placement of Any marked course . . . for use by any water skier or vessel@on a state body of water that is 100 acres or more.

The parties to this proceeding are the Candlewood Lake A.K. Water Ski Association (the applicant) and the DEP Boating Division, Navigation Safety/Boating Access Unit (staff). The staff supports the issuance of the draft permit in accordance with specific conditions contained therein.

I conducted a site visit on December 2, 1999; all parties were present. That evening, I conducted a public hearing on this matter at the Danbury City Hall, Danbury, Connecticut. The record closed on December 6, 1999.

Prior to issuing or denying the requested authorization, the Commissioner shall, after a public hearing in the town in which authorization is sought, consider the following criteria in accordance with ' 15-134(f)(2):

- (a) the completeness, accuracy and detail of the application;
- (b) public safety;
- (c) any environmental impacts; and
- (d) the possible conflicts with other water uses.

The record demonstrates that the application is complete and accurate; that placement and use of the course in accordance with the draft permit, as amended and modified, would have no adverse impacts on public safety or significant adverse impacts on the environment; and that there would be no conflicts with other uses of the lake.

Accordingly, I recommend that the Commissioner issue a permit for the applicant-s placement of a marked portable water ski course on Candlewood Lake in accordance with the amended draft permit as modified herein.

FINDINGS OF FACT

1. On September 18, 1998, the Candlewood Lake A.K. Water Ski Association (the applicant) filed an application with the DEP Boating Division, Navigation Safety/Boating Access Unit (staff), seeking authorization under ' 15-134(f) to place water ski slalom course markers on the waters of the State. The proposed course would be portable and would be located on Candlewood Lake along the west shore of Danbury Bay just north of property owned by the Federal Correctional Institute. (Exs. APP-1, 3, 4, 5, 6, 16, 17, 18, 20)

2. Staff reviewed the application, considered it to be complete and accurate, and concluded that placement and use of the course would have no adverse impacts on public safety, on the environment, and on other uses of the lake. Accordingly, staff has recommended that the course be authorized in accordance with specific conditions contained in the draft permit, attached hereto as Appendix A. (Exs. APP-3 through 19; Exs. DEP-5, 9A; test. M. Payton, 12/2/99) (N.B. On my motion, Ex. DEP-9A is marked as a Adraft permit.@

3. At the hearing, the parties stipulated to two permit amendments. The first amendment clarifies the description of the portable anchoring system in Condition #1. The second changes the explanation of insurance coverage set out in Condition #14 from a declaration of the limits of coverage, to a statement that the applicant is required to provide effective liability coverage as offered to all clubs affiliated with the American Water Ski Association and USA Water Ski Association. Hereinafter, the term Adraft permit@shall refer to

the draft permit as amended.¹ (Exs. APP-5, 19; Exs. DEP-9, 9A, 9A- Attachment B; test. M. Payton, 12/2/99)

4. Candlewood Lake has a surface area of 5,420 acres. The lake is located in New Milford, Sherman, New Fairfield, Brookfield, and Danbury. The course would be entirely located in the section of the lake within the city of Danbury. (Exs. APP-8, 20; Ex. DEP-1)

5. The course would be marked with twenty-two spherical or cylindrical lightweight vinyl or similar smooth plastic buoys of not over twelve inches in diameter or height. All buoys would be international orange or yellow in color. The buoys would be attached by elastic synthetic rope to submerged PVC pipe sections. A synthetic rope called a mainline would connect each section to another. The mainline would be anchored at each end and optionally at the mid-point of the course. Each of the two anchors (and an optional third if wind requires its use) would be of a commercially available design. The components would be removed when the course is not in use. All of the components would be made largely of synthetic materials with no major metal parts, as required by the draft permit. (Exs. APP-15, 17, 20; Ex. DEP-9A, Attachment B; test. M. Ferrandino, 12/2/99)

6. The course would be located in one of the widest sections of the lake. The southwestern-most gate buoy would delineate the start of the course, most of which would be located more than 200 feet from shore (an approximate magnetic bearing of 315 degrees) to two large rocks on the west bank, approximately 500 feet north of the boat ramp on the Federal Correctional Institute property. The course would run from this buoy northeast on an

¹Attachments A, C, and D from the draft permit were not amended and are incorporated into the amended draft permit.

approximate magnetic bearing of 40 degrees north for approximately 850 feet. The course would be approximately seventy-six feet wide. The minimum distance to the nearest shore would be 160 feet at one section of the course, the location of the outermost buoy. Approximately 700 feet on one side of the course and 1,000 feet on the other would be left for general navigation on the lake, which typically runs in a north/south direction. (Exs. APP-8, 11, 16, 17, 18, 20; test. M. Ferrandino, 12/2/99; test. M. Payton, 12/2/99)

7. The water depth at thirty feet from shore is greater than eight feet and the depth in the area of the course is forty feet. The required minimum depth is six feet. (Exs. APP-8, 17, 20; test. M. Ferrandino, 12/2/99; test. M. Payton, 12/2/99)

8. A ski boat would operate along the mainline of the course; the boat would tow water skiers as they maneuver from side to side around the buoys and through gates.² (Exs. APP-2, 15, 17; Ex. DEP-9A, Attachment B; test. M. Ferrandino, 12/2/99)

9. The applicant has a membership of approximately twelve people, most of whom own homes or property in the lake community. The applicant is affiliated with the USA Water Ski Association, the national governing body for the sport of water skiing. Approximately six or seven boats would use the recreational course on a regular basis. Typically, two or three boats would use the course at any one time -- one boat in the course and one or two boats nearby waiting for a turn.

²Applicant's Exhibit #2 is a videotape of a water skier being towed through a slalom course. I previewed this tape prior to the hearing; the parties stipulated to its admission as evidence at the November 19, 1999 prehearing conference. DEP staff waived its right to view the tape. (Test. M. Payton, 12/2/99)

Because ski boats try to avoid wakes, use of the course would result in more controlled traffic in the area of the lake where the course would be located. The volume of ski boat traffic in that area would also be less compared to the traffic associated with the free skiing that occurs at the present time. (Ex. APP-20; test. M. Ferrandino, 12/2/99³; test. C. Stein 12/2/99)

10. There are no lakeside homes on the shore nearest the course. The applicant noted that this absence of homes would allow the course to be used without disturbing anyone, particularly in the early morning hours. (Exs. APP-8, 14; test. M. Payton, 12/2/99; test. C. Stein, 12/2/99)

11. There are no underwater or overhead transmission/distribution wires installed by or authorized by CL&P in the area of the course. (Exs. APP-8, 9, 20)

12. The course would not interfere with channels or historical lanes of traffic or traffic patterns as it would be set-up and used during low traffic times and would be removed daily. There would be a negligible impact on safe boating activities on the lake since the entire course would be removed when not in use. (Exs. APP-8, 10, 20)

13. The shoreline in the area of the course is characterized as sunken, sloping directly into the water, without any typical marsh transition zone. The underlying landmass is bedrock controlled and there are no inland wetlands within 200 feet of the course area; areas sensitive to shoreline erosion are therefore avoided. This type of shoreline is characterized as Armored. There would therefore be no measurable degree of shoreline erosion as a result of placement of the course. The activity would have no impact on wetlands or watercourses to any greater degree

³ At the hearing, the applicant offered as evidence copies of its slide presentation given as part of its testimony. Staff reviewed the offered evidence, had no objection to its admission, and waived receipt of a hard copy. The evidence was admitted as Applicant's Exhibit #20.

than that posed by other normal boating activities on the lake. (Exs. APP-8, 11, 11A, 20; test. M. Payton, 12/2/99)

14. There are bald eagles in the vicinity of the proposed course. The eagles, a federally threatened and state endangered species, regularly use nonfrozen areas of Candlewood Lake during the winter months of December to March for extensive roosting, perching and feeding. However, since the course is a summer activity, it would not affect wintering eagles. (Exs. APP-8, 12, 20)

15. There are no waterfowl nesting areas within 300 feet of the course. (Exs. APP-8, 13, 20)

16. There are no known historical fish spawning or nursery areas within fifty feet of the site of the course. The course would therefore not harm the fish population in Candlewood Lake. (Exs. APP-8, 14, 20)

17. A DEP District Supervisor of Fisheries agrees with the restrictions set out in the draft permit and concurs that safety concerns require the course placement as described therein. (Exs. APP- 8, 14, 20; Ex. DEP-6; test. M. Payton, 12/2/99)

18. The draft permit incorporates by reference DEP safety and environmental guidelines for water ski slalom courses and the safety and operational requirements contained in the American Water Ski Association Official Tournament Rules. (Ex. DEP-9A, Attachments C and D)

19. The applicant would limit use of the course to low traffic times and proposed using the course between May 15 and October 31 at times listed in its application. The applicant agrees to the times listed in the draft permit that authorize the use of the course during the

following hours with a thirty minute set-up or breakdown period before and after each use. The draft permit prohibits use of the course at other times and requires complete removal of the course when not in use.

Hours of operation, from May 15 through October 31:

- a) Monday through Friday - 6:30 a.m. to 2:00 p.m.
- b) Saturdays - 6:30 a.m. to 10:00 a.m.
- c) No use on Sundays or Holidays.

(Ex. APP-3; Exs. DEP-9A, 20; test. M. Ferrandino, 12/2/99; test. M. Payton, 12/2/99)

20. Issuance of the permit would not interfere with use of the lake. The Executive Director of the Candlewood Lake Authority has no objection to the issuance of the permit. If the course is used as proposed, there would be a negligible impact on safe boating activities on the lake. Boat traffic near the course at the time the course would be used is typically very light. The proposed use of the course would not conflict with other lake uses or create potential hazards. (Exs. APP-8, 10, 20; test. M. Ferrandino, 12/2/99; test. M. Payton, 12/2/99; test. C. Stein, 12/2/99)

21. The permit conditions require that the applicant (therein, the permittee), before making any of the types of changes listed in the draft permit, submit to the Commissioner for his review and approval detailed plans regarding any such change. Further, no such change shall be made until the permittee receives the written approval of the Commissioner. (Ex. DEP-9A)

CONCLUSIONS OF LAW

A. The application is complete, accurate and sufficiently detailed to provide an accurate basis for my decision.

B. Placement and use of the course would likely have no adverse impacts on public safety, provided the applicant adheres to the terms of the issued permit with the modifications recommended below .

C. Placement and use of the course would likely have no significant adverse impacts on the environment, provided the applicant adheres to the terms of the issued permit with the modifications recommended below.

D. Use of the course does not conflict with other uses of the lake.

E. By satisfying the criteria in ' 15-134(f), the applicant has also satisfied the substantially similar requirements of Section 15-121-A5 of the Regulations of Connecticut State Agencies.

RECOMMENDATIONS

In consideration of the preceding conclusions, I respectfully recommend that the Commissioner approve the application of the Candlewood Lake A.K. Water Ski Association, Inc. for a permit to place markers for a portable water ski slalom course on Candlewood Lake in Danbury, Connecticut.

I further recommend that this permit be issued with the following modifications.

1. In Condition # 7, the word *As* in the first sentence should be changed to *Use*
2. The words *It* and *They* and derivations thereof are used interchangeably throughout the permit to describe the Permittee. Use of any of these terms does always refer to the Permittee.

December 30, 1999
Date

/s/ Janice B. Deshais
Janice B. Deshais, Hearing Officer