

LAKE PROTECTION

Attachment	Policy	Board Meeting Dates			Remarks	OM
1	Float Home - Relocation Policy	6/20/1977	5/18/1981		Applications for float home relocation by processed as prescribed in the rules for non-navigational encroachments; that proof of fee ownership or long term lease for adjacent upland be required; that a State lease with a rental set at 5% of the fee value of the adjacent upland be required; that transportation of all wastes and waste water to Health Department approved disposal systems be required. 05/18/81 - amended the policy to establish a flat annual rate of \$100 instead of the 5% fee value of the adjacent upland. The flat fee would be reviewed annually.	
2	Float Home - rental rate	11/13/1997	7/6/1999	9/14/1999	Established leasing process and rates.	
3	Float Homes - Health Standards	12/19/1973	5/23/1974		Board directed that all float houses must meet health standards set by the Panhandle Health District before occupancy. (5/23/1974 - Structures may not be occupied until they comply with existing environmental health standards.)	
4	Hearings - Lake Protection Act	6/5/1978			The Board authorized the automatic hearings (having hearing officers)for commercial applications for encroachment permits to authorize marinas, fills, or bulkheads on the lakes of Idaho.	
5	Marinas Rental Rate	2/14/1984	3/14/2000		2/24/84 - Lease rate established at \$100 per acre or fraction thereof, or 3.75% of gross moorage receipts, whichever is greater. 3/14/00 - Established rental rate for ships' stores at either \$250 or 1% of gross receipts (except gas), whichever is greater.	

REQUEST FOR HARDSHIP CONSIDERATION - Cal Olson/cont.

After considerable discussion, Mr. Olson was informed that if he could substantiate that there is any further information that has not been presented that would prove further hardship, he should present this information to the Land Department for review.

Mr. Olson asked that his leased land be put up for sale. He was informed that this could not be done immediately. However, he should apply now for the land to be offered for sale in the future.

COTTAGE SITE LEASE - Mrs. Hattie Wagnon

Mr. Trombley stated that this matter involves one large lot on which two cottages were built. The Department has decided to attempt to divide the lot into two lots, as it is large enough to accommodate two separate leases. He stated that this attempt was made at the expiration of the lease, but Mrs. Wagnon will not accept this unless she can have total say on how the division of the lot will be made. She has refused to execute her lease renewal, which makes her cottage exist on an expired lease. She still is objecting to where the dividing line will be. The Department has met with her several times and has exhausted all ability to convince her to sign the new lease and get on with the project. Therefore, the Department recommends that Mrs. Wagnon be informed that she may renew her lease no later than July 1, 1977. If the lease is not renewed, the Department recommends that the matter be submitted to the Attorney General for proper disposition. The Department does not want to acquire or deprive Mrs. Wagnon of her cottage and improvements, but she will not sign the lease.

Mr. Williams moved that the Board approve the recommendations of the Department. Dr. Truby seconded the motion, which passed unanimously.

RELOCATION OF FLOAT HOMES

Mr. Trombley stated that there are several float homes on Lake Coeur d'Alene and tributary waters, which have caused sanitation problems. The Department desires to establish a policy relating to where float homes are going to exist. The Department recommends that applications be processed in the manner prescribed in the rules for non-navigational encroachments. That proof of fee ownership or long term lease for adjacent upland be required; that a State lease with a rental set at 5% of the fee value of the adjacent upland be required; and that transportation of all wastes and waste water to Health Department approved shore disposal systems be required.

Mr. Williams moved that the Board accept the Department's recommendation as policy. Governor Evans seconded the motion. The motion passed with two ayes. Dr. Truby voted in opposition to the motion.

CLASSIFICATION OF PRIEST RIVER

Mr. Trombley informed the Board that Priest River is one of the study rivers under the Wild and Scenic Rivers Act. Mr. Martel Morach, State Coordinator for Wild and Scenic Rivers, works with the Forest Service and other State agencies. He is desirous of having a statement from the Land Board and Department as to what their recommendation would be for this study. The Department recommends that the Priest River north of Priest Lake be classified as a wild river. That portion of the Priest River below Priest Lake is recommended not to be included in any of the basic classifications of wild, scenic or recreational.

Dr. Truby moved that the Board approve the Department's recommendation. Mr. Williams seconded the motion, which passed unanimously.

RIVERBED LEASE APPLICATION - Frank E. Kinney

Mr. Trombley stated that this involves pumping sand and gravel out of the bed of the Snake River. The Department recommends that the application be approved and a lease be issued. Water Resources will issue a Stream Channel Alteration Permit.

Dr. Truby moved that the Board approve the Department's recommendation. Mr. Williams seconded the motion. The motion passed unanimously.

LEASES AND PERMITS - United States

Mr. Trombley explained that this is a situation where the rules and requirements of two public agencies are in conflict with one another. The federal leases and permits generally pay after the fact. Idaho's statutes require payment in advance. This causes an on-going conflict over procedures.

Mr. Williams moved that this item be held until legal counsel is present. Dr. Truby seconded the motion, which passed unanimously.

LEASE APPLICATION - Richard L. Blei

This is a material source application at the mouth of the drainway of the Snake River. It provides a pump bay for irrigation. The applicant owns the adjacent upland. The Department recommends that the application be approved and the lease be issued.

Mr. Williams moved that the Board approve the Department's recommendation. Governor Evans seconded the motion. The motion passed unanimously.

LAND EXCHANGE - Boise National Forest (Boise #3)

This exchange has an estimated value difference of \$600 in favor of the State. The Department recommends approval of this land exchange involving 120 acres.

Mr. Williams moved that the Board approve the Department's recommendation. Dr. Truby seconded the motion. The motion passed unanimously.

MEMO TO THE STATE LAND BOARD

SUBJECT: Relocation of Float Homes.

DISCUSSION:

Since the early 1900's, float homes (dwellings on log rafts) have been used on Lake Coeur d'Alene and tributary waters. The rafts have been moored to shore or pilings depending on location. In some instances the float home owners held title to the upland; in other instances the float home owners were "squatters." In the early years the float homes discharged human wastes and waste water directly into the lakes and rivers. Recently, the Department of Health and Welfare has instituted a partially effective inspection program to eliminate this source of pollution.

Under the Lake Protection Act and the administrative rules, float homes are considered non-navigational encroachments. As an administrative procedure the Department has been denying applications for new float homes on the basis of degradation of water quality and aesthetics and requiring Health Department approval for relocation of any existing float homes even though the uplands are owned or leased by the applicant.

For several years the Department of Parks and Recreation has authorized float home occupancy on Hidden Lake in Snyburn State Park. Recent action by the Board denying lease renewal has or will affect continuation of float home occupancy on Hidden Lake. The Department anticipates a number of applications for relocation of the Hidden Lake dwellings.

The options available to the State in the matter of float home relocation are:

1. Deny applications for relocation.
2. Process applications in the manner prescribed in the rules for non-navigational encroachments.
 - a. Require proof of fee ownership or long term lease for adjacent upland.
 - b. Require a State lease with a rental set at 5% of the fee value of the adjacent upland.
 - c. Require transportation of all wastes and waste water to Health Department approved shore disposal systems.

RECOMMENDATION: That the Board adopt the second option as policy.

RECOMMENDATION APPROVED: JUN 20 1977

RECOMMENDATION DENIED:

OTHER ACTION:

WAS:ph
5-11-77

Amendment of Float Home Relocation Policy

Mr. Trombley said that in 1977 the Board approved a float home policy which had as a requirement the proof of fee ownership or long-term lease adjacent upland be required before the Department would issue a permit to anchor float homes; that a state lease adjacent to the upland be required and rental be set at 5% of the fee value of the adjacent upland. Determining the value of the upland for purposes of determining lease fees has become time consuming and difficult for the Department. Therefore, it is asking for an amendment to the policy that would establish a flat rate per year. Mr. Cenarrusa made a motion to approve the Department's request; Mr. Williams seconded. Governor Evans asked if this means that a float home does not have to have adjacent fee land or lease land available. Mr. Trombley said he was not sure if that was made clear, but the intent was to have the same requirements with the exception of the fee. Mr. Scribner explained that there is very little activity in the relocation of float homes. Mr. Evans pointed out that whenever there is a flat rate as opposed to a percentage, it becomes outdated very quickly and he suggested a policy for an annual adjustment. Mr. Cenarrusa said he would be willing to accept the policy on the basis that setting rentals as prescribed in the policy is time consuming and difficult to establish with equity. Governor Evans said his main concern is that the rates might be set too low and cause an influx of float home applications. Mr. Cenarrusa suggested a stipulation that these be reviewed annually. Mr. Evans said he could support the Department recommendation so long as the Board has an annual review of the rates, and if it turns out the rate is so low it is encouraging more float homes, that could be corrected. Therefore, Mr. Evans made a substitute motion to approve the Department recommendation with the understanding that the Board annually review this rental rate. Mr. Williams seconded the motion which passed unanimously.

Goldfinger Mines Dredge & Placer Mining Permit Applications #79 and #82

Wayne Eskridge, president of Goldfinger Mines, and Counsel John Runft appeared before the Board. Mr. Eskridge said this matter involves two permit applications on Ross Fork on the South Fork of the Boise River. These are two large sites upstream from Featerville which they wish to test. He said it will be a dry operation involving lagoons. Mr. Cenarrusa moved to approve the Department recommendation. Mr. Williams seconded. Since Fish & Game has asked that the recommendation not be approved, Mr. Evans said he would like to hear from a Fish & Game representative. The sealing of lagoons and the use of bulldozers are two critical features. Mr. Herb Pollard, State Fishery Manager for Idaho Fish & Game, said these are two separate applications and it should be clear which of the two is being discussed. On Application #79, Fish & Game had recommended denial. Mr. Pollard said one basic reason is that Mr. Walker who is an engineer for the Forest Service and who inspected the site felt that the soil type and large rock would preclude the establishment of an adequate settlement pond. The application also indicates an exploratory trench in the range of 1000-1200' in length x 24' wide to bedrock which seems like a massive exploration for a test site. Mr. Eskridge said he had a letter from Mr. Walker retracting his earlier comments. Mr. Pollard said that on that basis, Fish & Game would withdraw its objections although the Forest Service should still be involved.

Mr. Leroy offered the following motion: Move for approval upon four stipulations: (1) That the minimum \$15,000 bond be posted and maintained for each ten acres to be affected; (2) that the Department of Lands be notified for an on-site inspection upon the completion of construction of settling ponds and placement of equipment; (3) that all special precautions as needed be taken to seal the lagoon and sealing program be previously approved by the Department of Lands with a copy to the Department of Fish & Game; (4) that no bulldozers be used for prospecting or exploratory trenches except after prior notice and opportunity for on-site inspection by the Department of Fish & Game. Mr. Evans seconded the motion. Governor Evans again expressed concern with how the Department will be able to monitor the operation with the available personnel. Mr. Riddoch said it seems that the Forest Service has been monitoring quite closely on federal lands. Governor Evans suggested somehow putting a plan together with other agencies in order to cut down on monitoring costs. Mr. Evans again commented that perhaps a future moratorium might be considered on these types of operations. There being no further discussion, the motion passed unanimously.

Mr. Leroy then made a motion to approve Application #82 with the standard two stipulations plus adding the following two: (3) that all special precautions as needed be taken to seal the lagoon given the soil conditions at site #82 and plans for the sealing be approved by the Department of Lands with a copy to Department of Fish & Game; (4) that no bulldozer activity for prospecting or exploratory trenching be done except after prior notice and opportunity for on-site inspection by Fish & Game. Mr. Williams seconded. The motion passed unanimously.

Minerals Policy - Boise City Airport

Visitors, Ferd Koch, Don Duvall, and City Attorney Mike Moore were invited to appear before the Board. They are interested in the Department recommendation. Mr. Trombley read the Department recommendation aloud. Mr. Moore said that they had been unable to obtain a copy of the recommendation before the meeting, and have not had an opportunity to review it. The main concern is that any activities at that end of the airport not interfere with landings, taking off, or place them in violation of FAA regulations, etc. The Boise Airport Commission asked to have a chance to review this recommendation and come back to the Board. Mr. Evans said that he would move this item be deferred to the next regular meeting in order to allow the Airport Commission time to review the recommendation. Mr. Cenarrusa seconded the motion. The motion passed unanimously.

Surplus Sale - Department of Transportation

Mr. Trombley said this is a small 2.09 acre parcel of surplus property in Latah County. Sale price is \$150 cash day of sale. Joe Williams moved to approve this sale. Pete Cenarrusa seconded. The motion passed unanimously.

MEMO TO THE LAND BOARD

SUBJECT: Amendment of Float Home Relocation Policy

DISCUSSION: On June 20, 1977 the Board adopted, at the request of the Department, the following policy:

There are several float homes on Lake Coeur d'Alene and tributary waters, which have caused sanitation problems. The Department desires to establish a policy relating to where float homes are going to exist. The Department recommends that applications be processed in the manner prescribed in the rules for non-navigational encroachments. That proof of fee ownership or long term lease for adjacent upland be required; that a State lease with a rental set at 5% of the fee value of the adjacent upland be required; and that transportation of all wastes and waste water to Health Department approved shore disposal systems be required.

Determining a value of the adjacent upland for the purpose of setting rental as prescribed in the policy is time consuming and difficult to establish with equity. Use of a flat rate would require less time and could be applied universally with equity.

RECOMMENDATION: That the June 20, 1977 policy be amended to require a flat rate annual rental of \$100.00 for relocated float homes.

RECOMMENDATION APPROVED: ✓ MAY 18 1981

RECOMMENDATION DENIED:

OTHER ACTION:

Annual review of rate presented

that there is a sizeable land exchange being developed that will probably be back to the Land Board in the next month or so.

No decisions were made on this issue at the meeting.

10. Report on Floathome Sub-Committee Meeting of 11/13/97
Presented by members of the sub-committee

Attorney General Lance presented a report on the floathome sub-committee meeting. The Board proposed raising the floathome rates to \$1,000 per year minimum. The Attorney General, Controller Williams and Superintendent Fox met with the floathome owners at Bayview for a public meeting. After the meeting, the sub-committee indicated to the owners that they would make a recommendation to the Board that if the floathome is in a marina, they would pay \$250.00 per year or 3 ¾% of the rental they pay to the marina owner per year. If the floathome were outside of a marina, the assessment would be based upon a square footage basis because the 3 ¾% touchstone is not available. The square footage parameters have not been determined. Attorney General Lance said the recommendation would be \$250.00 for floathomes outside the marina until this data is available.

The motion was made by Attorney General Lance and seconded by Superintendent Fox to accept the recommendation of the sub-committee. The motion carried on a vote of 5-0.

11. Report on Lakeview Village Issue
Presented by members of the sub-committee and
Bryce Taylor, Bureau Chief, Range Management and Surface Leasing

Mr. Bryce Taylor provided the background information. Ms. Yvonne Ferrell, Director for the Idaho Department of Parks and Recreation was available for questions. This is a Miscellaneous Lease #M-5031, Lakeview Village, to Idaho Department of Parks and Recreation (IDPR) and the potential acquisition by IDPR of Lakeview Village and other endowment lands located within Ponderosa State Park.

IDPR took over the operation in April 1992 after considerable discussion with the Department and the Board. Since taking it over, they have incorporated it into their plans with Ponderosa State Park.

In the process of determining rent, the Department has not been able to adequately address the maintenance of improvements on this site. The sewer lift stations are undersized and out of code at this time. Some of the sewer lines are undersized and out of code. There are some significant building problems on the property. There has to be some investment back in this property if it is to be maintained in its current condition. This lease expires in December 1997. This lease was a five-year lease and the Department has granted an extension of the lease while the sub-committee examined the issue.

LAND BOARD MEMORANDUM
for the
November 19, 1997 Land Board Meeting
Regular Agenda

SUBJECT

Board Subcommittee report on proposed rental for floathomes on navigable waters.

BACKGROUND

The board discussed rental for floathomes at the October 21, 1997 regular meeting. Attachment #1 is the memorandum for that meeting and provides a summary of the concerns expressed by the floathome owners.

DISCUSSION

The board subcommittee met November 13, 1997 to consider the issues raised. They also had a conference call with Mr. Denny Davis, legal counsel for the floathome owners.

After thorough discussion, the subcommittee made a motion to recommend to the board that rental for non-navigational non-commercial uses (floathomes) be set at:

- 1) a minimum \$250.00 per year or 3.75% times gross moorage receipts, whichever is greater, for floathomes moored at a marina, or
- 2) a minimum \$250.00 per year or 3.75% times the average moorage charged at marinas, whichever is greater, for floathomes not moored at a marina.

The subcommittee also asked staff to examine whether different rental rates should be established according to the size of floathomes. We have examined thirty-five (35) floathomes as a representative sample regarding the square footage. We found that of these 35 floathomes the average float is 1,169 square feet, the high is 1,920 square feet, and the low is 544 square feet.

Staff believes that "bracketing" floathomes could create an inequity by charging larger floathomes less per square foot than we would charge smaller floathomes. This can best be explained by an example:

<u>Square Feet</u>	<u>Rental</u>	<u>\$ Per Square Foot</u>
500	\$250.00	\$.50
1000	\$300.00	\$.30
1500	\$350.00	\$.23

The difference in size of floathomes could be recognized by charging rental on a square foot basis. Again, an example is the easiest way to show this process:

<u>Square Feet</u>	<u>\$ Per Square Foot</u>	<u>Rental</u>
500	\$.50	\$250.00 (minimum)
750	\$.50	\$375.00
1000	\$.50	\$500.00
1250	\$.50	\$625.00
1920	\$.50	\$960.00

Implementing a rental for floathomes based on square feet would take more effort. However, once implemented it would not take any additional effort to maintain as compared to a flat rate rental.

The subcommittee also asked staff to respond to two questions asked by Mr. Davis:

1) Mr. Davis asked whether lessees would receive six (6) months notice if rental were to be increased. The answer is yes. Idaho Code 58-304 requires the department to give lessees six (6) months notice if rental is increased. This is also a requirement of the lease.

This provision would effect the current lease with Boileau's Resort. We cannot increase rent for the floathomes at Boileau's except by giving six (6) months notice. We will be issuing new leases to J.D.'s Resort, Scenic Bay Resort, and McDonald's Hudson Bay Resort. Since these are new leases, the six (6) month notice to "increase" rent does not apply.

Staff does not believe that a real inequity is developed here due to some floathomes paying a minimum \$250.00 rent in 1998 while the floathomes at Boileaus would pay approximately \$100.00. The floathomes at Boileau's have been paying rent for several years while the other floathome owners have not.

2) Mr. Davis also questioned the length of lease and the date of expiration. Idaho Code 58-307(1) limits these leases, except to public agencies, to a term of ten (10) years. Idaho Code 58-307 (6) requires that leases expire on December 31 of the year of expiration.

The department views year one of a lease term to be any time during the year that the lease is issued. Subsequently, a lease that was issued in June would literally only be for 9 years and 6 months, since the lease is required to expire December 31 of the year of expiration. The department does not have the latitude to expire the

lease in June.

Current administration of leases and lease renewal requirements (application deadline is April 30 beginning 1998) are set up to deal with all expiring leases expiring on December 31. Staff is not seeking a change in the expiration date for leases.

RECOMMENDATION

That the board set rental for non-commercial non-navigational uses (floathomes) at:

1) a minimum \$250.00 per year or 3.75% times the moorage rate charged for floathomes, whichever is greater, for non-commercial non-navigational uses moored at a marina, or

2) a minimum \$250.00 per year or 3.75% times the average moorage rate charged for floathomes at a marina whichever is greater, for floathomes not moored at a marina.

BOARD ACTION

APPROVED NOV 19 1997

ATTACHMENT:

1. October 21, 1997 Land Board Memorandum



BT:lf
November 17, 1997

LAND BOARD MEMORANDUM
for the
October 21, 1997 Regular Land Board Meeting
Regular Agenda

SUBJECT

Submerged Lands Lease Rates for Floating Homes

BACKGROUND

Attachment #1 is a copy of the November 12, 1996 Land Board Memorandum wherein the board approved submerged lands leasing rules (IDAPA 20.03.17), rental and fees. It provides a summary of the rulemaking procedures the department followed, including advertisement of the proposed rules and public hearings.

The Idaho Legislature approved the submerged lands leasing rules in March 1997. Land Board members and the department began receiving and responding to letters from constituents regarding the approved rental for floathomes in April 1997. The letters received requested relief and reconsideration of the approved \$1,000.00 per year rental for floathomes. Many indicated disappointment that floathome owners had not had an opportunity to present their concerns to the board.

DISCUSSION

Board members Attorney General Alan Lance, Superintendent of Public Instruction Anne Fox, Controller J.D. Williams, and department staff met with the Bayview Floating Homes Association in the Bayview Community Center on Sunday September 21, 1997 to hear the floathome owners' concerns. Attorney General Alan Lance chaired the meeting. Testimony from floathome owners was taken from 2:00 - 4:00 p.m.. After the meeting, the board members and staff were taken on a tour of the Bayview floathome community.

The floathome owners feel that a rental of \$1,000.00 per year is too high compared to the rental charged for similar sized docks and when compared to the license fee charged for boat houses (a licensed boat that has living accommodations). From a rental standpoint, the focus should be on the displacement of surface water and that all uses should be treated similar and fair.

The rental difference is often a result of a navigational use versus a non-navigational use. A boat house or single family dock is classified as a navigational use or one that is water dependent. The user of those types of facilities generally has a riparian right associated with the use. A non-navigational use like a floathome is normally considered an upland use (homesite).

November 12, 1996 Regular Land Board Meeting
Regular Agenda

SUBJECT

Proposed Rules Governing Leases on State-Owned Submerged Lands and Formerly Submerged Lands, IDAPA 20.03.17

RECOMMENDATION

- 1) Approve the proposed submerged lands leasing rules and direct the department to move forward with a publication of changes and subsequent presentation to the 1997 legislature.
- 2) Pending legislative approval, approve implementation of these rules effective July 1, 1997.
- 3) Approve the proposed rental and fees for submerged lands leases.

OVERVIEW

The Board adopted an Interim Submerged Lands Leasing Policy in February 1984. That policy established that any new or expanded commercial marina or multi-family dock would be required to enter into a lease with the Department.

Rental under the interim policy was established at \$100.00/acre or fraction thereof or 3.75% times gross moorage receipts, whichever is greater, for commercial marinas.

Multi-family docks were charged rent at \$100.00/acre, or fraction thereof, or 5% times the average moorage rate charged at commercial marinas in the same geographic area, whichever is greater. Multi-family docks are charged rent at the higher rate since they are not available for public use as are commercial marinas.

The interim policy was reviewed by the Board on April 11, 1989. A minimum rate of \$250.00 per year was established for any lease and the per acre rate was increased to \$150.00.

Under the interim policy there are currently 74 submerged lands leases.

IDAHO STATE BOARD OF LAND COMMISSIONERS

legal counsel review. These changes provide clarification but are not felt to be substantive, otherwise.

With board approval, the changes in these rules will be published in the Administrative Bulletin January 1, 1997. (The changes must be submitted for publication by November 27, 1996). The rules will then go to the 1997 legislature for approval with implementation effective July, 1997.

Attachment D is a partial list of existing facilities. A review of records and a re-inventory of docks will also be required to fully implement these rules.

BOARD ACTION **APPROVED** NOV 12 1996

ATTACHMENTS

- A. ~~Proposed rules with changes in strike/underline~~
- B. Notice of Proposed Rules in the Administrative Bulletin September 4, 1996
- C. Proposed Rental Rates for Submerged Lands Leases
- D. Partial list of existing facilities
- E. Summary of comments from hearings


BT:lf

Governor Kempthorne asked Director Hamilton in the event this water was made available to this state land is this a significant enhancement to the land. Director Hamilton stated it would be over dry grazing land.

Governor Kempthorne asked Mr. Faulkner if he had intended for the Board to make a decision at this time. Mr. Faulkner said this was information only but as a landowner, he would appreciate support from the Board.

There was no decision made regarding this issue.

2. Proposed lease at 590 West Washington with Health & Welfare, Emergency Medical Services – Staffed by Alvin Carr, Leasing Specialist

Director Hamilton introduced Alvin Carr. Mr. Carr provided background information.

This issue was before the Board at the April 13, 1999 meeting. Attorney General Lance stated if this was acceptable to all the Board members, he would move for the approval of the lease. State Controller Williams seconded the motion.

Governor Kempthorne asked if this would provide us with a model in future leases or will each of these types of leases with other departments be just as contentious. Mr. Carr said the lease provides the model for future leases. Each lease will still have to be looked at on its own merits.

Director Hamilton said the Department would like to enter into leases directly with the Department of Administration. He felt this would simplify the process even more in the future.

Pam Ahrens, Director of the Department of Administration, said there are a lot of issues to be resolved. She stated that the Department of Health and Welfare had been more than patient. She feels the departments are on good solid ground to move forward on future leases.

The motion carried on a vote of 5-0.

3. Scenic Bay Marina, Land Board policy on floathome rental – Presented by Bryce Taylor, Bureau Chief, Range Management/Surface Leasing

Mr. Bryce Taylor stated that the Land Board memorandum before the Board includes Scenic Bay Marina, but the department intends that this be a policy for all commercial marinas.

The Board had expressed concern that when marinas are established over public trust beds, those owners must maintain the marinas in a safe and sanitary condition. Also, that marinas should charge equitable moorage rental rates based on the local area they are serving. The Department has struggled with this issue in the past because they did not want to place the Board in a position of controlling rents between two private parties (the marina owners and the floathome owners).

The Department drafted a policy that sends a strong message to marina owners that they should charge rates based on the local market. Also drafted in the policy is a statement that marina owners must maintain the marinas in a safe and sanitary condition. The leases require

or reserve to the state the right to require changes in the sanitation or other facilities of the marina for the protection of public health and safety.

Attorney General Lance was concerned about putting the Board in the position of being between marina owners and the lessees (floathome owners). State Controller Williams agreed with the Attorney General, except these marinas are not on private property. This is state land and people need to be treated fairly.

Governor Kempthorne asked Mr. Taylor if he felt this would be difficult to achieve. Mr. Taylor said it would be difficult to enforce by the Board but seeking judicial relief would help alleviate his concerns.

Mr. Taylor said if the Board adopts the policy, the Department would issue a lease to Scenic Bay Marina. The marina has resolved their safety and sanitation problems. They are trying to sell the marina. If they were to sell the marina, they need a lease to be able to move the property.

Attorney General Lance said he did not have the answers but could see problems. There should be some mechanism in the lease itself to assure the Board could enforce their own policies without dependence on the judicial branch of government. He questioned whether this could be written into the lease.

State Controller Williams stated that these people need some help. With several marinas on the lake, it should be easy to find an average rent. Mr. Taylor said Scenic Bay is higher than the others currently are and they want to go higher.

Governor Kempthorne stated if you let the marketplace work, it generally works well. He asked how mobile the floathomes are. Mr. Taylor stated that they are not mobile and very difficult to move.

Governor Kempthorne stated that he was sympathetic to the Attorney General Lance's concerns, but the Board needs to establish policy. Attorney General Lance stated that we need something in the master lease with the marina owner. Mr. Taylor stated that the lease does not exist so the Board would have full latitude with this new lease to Scenic Bay.

Governor Kempthorne asked if the Department had looked at any other situations – such as with mobile homes. Mr. Taylor said the Department had not examined the mobile home residency act.

Superintendent Howard asked how much is owed to the state by the marina owner. Mr. Taylor said it is somewhere in the area of \$12,000.00 for base rent. That figure does not include the percentage owed on their boat moorage receipts.

State Controller Williams said if we were to adopt this policy it could be incorporated either specifically or by reference within the lease. We need to move ahead.

Governor Kempthorne asked Director Hamilton and Mr. Taylor if they were comfortable with the policy statement as written. Mr. Taylor suggested the Board could make the determination to

settle the fair rent question. He believed the Board has always been able to reach what is a "fair" conclusion – what is fair market rent and what is fair to all sides.

Governor Kempthorne stated to the members of the Board that there was a policy and the Board could proceed with that policy, modify it or send it back to look at other models that may be on the books.

Attorney General Lance stated that this might be a two-step process. He said maybe the real implementation should be in the lease and it states "if the Land Board, by majority, determines that you are charging unreasonable rates – unreasonably high rates – in comparison with the local community appraised evaluation, etc., we have the right to terminate your lease." He said this gave him some solace as to putting the authority back to the Land Board rather than just pushing it on to judiciary to figure out. There needs to be some mechanism to terminate the lease in the event there is a violation of what the Board considers to be "its policy." He stated that he was not prepared to say this is a good start until he sees the language in the lease.

Governor Kempthorne asked the Attorney General how he would do this. Attorney General Lance stated he would start with what would be the value – not what was paid – but the value of the property with improvements as determined by assessment or appraisal. Then he would look at a fair rate of return for that facility. Secondly, if he were a floathome owner, he would like to be able to enter into a lease knowing that it is not going to be increased every six months. He felt this rate should be locked in for a period of time. He felt this would be the Land Board's adaptation of the mobile home act along the lines that all could agree.

Governor Kempthorne asked if the Land Board takes the two points that have been raised, and this is the first step, should the Board proceed with this as step one? He asked how step two would be accomplished. Attorney General Lance stated that Department staff, legal counsel and Denny Davis would sit down and fashion the language that could be written into the master lease that would make sense and be fair to all concerned.

Director Hamilton said that item #2 of the recommendation asked the Land Board to proceed with the lease. This is clear direction that the Department would need to look at a term in that lease that would recognize the policy that the Land Board would adopt.

State Controller Williams moved to adopt the policy and that the Department staff work with legal counsel to incorporate the provisions with more precise language within the lease following the parameters as outlined by the Attorney General. Superintendent Howard seconded the motion. The motion carried on a vote of 5-0.

4. Process for handling 1995/1996 Grazing Leases on remand and discussion of Attorney General's opinion on implication of Supreme Court decision on Idaho Code § 58-310. – Presented by Bryce Taylor, Bureau Chief, Range Management/Surface Leasing and Nick Krema, Deputy Attorney General

Attorney General stated that this is not an Attorney General's opinion. This is a response to a request.

LAND BOARD MEMORANDUM
for the
July 6, 1999 Regular Land Board Meeting
Regular Agenda

SUBJECT

Board policy regarding marinas, including Scenic Bay Marina at Bayview.

BACKGROUND

The Board has expressed concern that marinas established over public trust lakebed must maintain the marina in a safe and sanitary condition. Marinas should also establish moorage rental rates based on comparable rental at other marinas in the local area.

DISCUSSION

Staff has drafted a Marina Maintenance and Moorage Rental Policy for the Board's consideration. The policy declares that failure to adhere to the Board's policy could jeopardize acquiring a submerged lands lease or renewal of an existing lease.

RECOMMENDATION

1. Adopt the attached policy.
2. Authorize the Department to proceed with issuance of a lease to Scenic Investments, Inc. for Scenic Bay Marina. A lease would include rental from 1998.

BOARD ACTION

APPROVED JUL 0 6 1999

State Controller Williams moved to adopt the policy and that the Department staff work with legal counsel to incorporate the provisions with more precise language within the lease following the parameters as outlined by the Attorney General. Superintendent Howard seconded the motion. The motion carried on a vote of 5-0.

ATTACHMENTS

1. Marina Maintenance and Moorage Rental Policy

BT:md

MARINA MAINTENANCE AND MOORAGE RENTAL POLICY

Idaho's public trust lands include the beds of navigable lakes and rivers, which are to be managed to further public trust values such as navigation, aesthetics, water quality, recreation, boating, fishing and swimming. The State Board of Land Commissioners seeks to ensure that marinas established over public trust lands be maintained in a safe and sanitary condition to protect public trust values. Marinas shall be maintained in a safe and sanitary manner including, but not limited to, visible lighting and safe electrical connections, secure piles and anchors, secure decking and approved sewer/water connections.

The State Board of Land Commissioners also seeks to ensure that moorage rental rates charged by marinas are equitable. Since floathomes do not enjoy the ability to be able to readily move to other marinas, as boats do, floathome moorage rental rates shall be reasonable, taking into consideration rates for similar floating home moorage in the vicinity of the marina lease site. Marina Lessors shall not charge unreasonably high floating home moorage rental rates.

LAKE COEUR D'ALENE SAILING CLUB LEASE

On September 11, 1973, the Land Board ordered cancellation of the permit to the Lake Coeur d'Alene Sailing Club, Inc., and that the effective date of the cancellation be October 15, 1973. The Sailing Club was to have started action to cause removal of all the facilities, restoration of the beach and compensation for occupancy.

Mr. Williams moved that the Attorney General should take proper action to cause removal of the facilities. Mr. Park seconded the motion. Voting was unanimous.

HEYBURN PARK FLOATHOUSES

At its October 18, 1973, meeting the Land Board approved assignment of a floathome in Heyburn Park and asked for a report on the waste disposal systems existing in relation to the 33 floathome leases. After discussion of the report, Mr. Williams moved that the Department of Parks and Recreation should notify the floathome owners that they must meet Health District standards. Mr. Park seconded. Voting was unanimous.

COMMUNICATION SITE LEASE APPLICATION

The Idaho Telephone Company's application for a telephone exchange and microwave station was approved unanimously in a motion by Mr. Engelking. Mr. Park seconded the motion. This is a Fish and Game Department administrative site at Lowman, a request for surplus designation has not been made. Mr. Engelking moved that the lease be approved. Mr. Park seconded the motion, which carried unanimously.

AMENDMENT OF ROYALTY RATE - Kyanite

The C & B Claims Partnership, ML 3868 for kyanite and related minerals, requested the lease royalty rate be amended to 30 cents per gross ton. Due to the small margin of profit and the fact that all subsequent kyanite leases have been issued for 30 cents a gross ton, the Department recommended that this lease be amended from \$1 per gross ton to 30 cents per gross ton.

Mr. Park moved the Department recommendation. Mr. Cenarrusa seconded. Voting was unanimous.

CANCELLATION OF EASEMENT - Lloyd Stolworthy

In 1969, Mr. Stolworthy built a section of road across State land in trespass. After much negotiation easement 4154 was issued in September 1970, subject to four special provisions which have been worked out as a solution to the controversy. Mr. Stolworthy has not complied with these provision. He was granted an extension on provisions 2 and 3 until October 1, 1973. He has not yet complied and indicated to the Idaho Falls Land Department personnel that he does not now intend to grant the required easement across his land to the BLM. Mr. Stolworthy has not replied to correspondence informing him that a decision to cancel the easement had been made.

The Department recommendation was to cancel the easement by official Land Board action for failure to comply with the required provisions called for in the easement.

Mr. Engelking moved that the easement be cancelled. Mr. Park seconded the motion, which carried unanimously. Mr. Park informed the Board that it may be necessary to take legal action.

CLEARWATER-POTLATCH TPA BUDGET - 1974

As required in Section 38-111 ICA, a proposed budget was submitted by the Clearwater-Potlatch Timber Protective Association for 1974. The proposed budgeted income and expenses are within the statutory maximum of 18 cents per acre for private lands. Total estimate of expenditures was \$885,990.

Mr. Williams moved that the budget be approved as submitted. Mr. Cenarrusa seconded the motion. Voting was unanimous.

REFORESTATION CLASSIFICATION - Forest E. Robb

On October 18, 1973, the Board accepted Mr. Robb's petition to have the tract reclassified and ordered the Department to prepare a report of fact as required by Section 38-207, Idaho Code. Department recommendation was that a hearing be scheduled as required in Section 38-205, Idaho Code, for mid-January.

Mr. Park moved that the hearing be scheduled. Mr. Williams seconded the motion. Voting was unanimous. Mr. Williams will attend the hearing to represent the Board.

TIMBER SALE APPRAISALS

In a motion by Mr. Williams and seconded by Mr. Engelking, the following timber sales were approved unanimously by the Board.

TSA 1600 - Gold Creek Pole Sale. 32 acres Public School land in Clearwater county for a one year contract, appraised at 920 poles for a total of \$14,893.50. Sale description is parts SE $\frac{1}{4}$ NW $\frac{1}{4}$ Sec 30, Twp 40 N, Rge 4 E, BM.

TSA 1601 - Tyson Mine Pole Sale. 220 acres of Science School land in Benewah county for a two-year contract, appraised at 50M bd ft and 1,100 CP, for a total of \$8,550.45. Sale description is parts SW $\frac{1}{4}$, W $\frac{1}{2}$ SE $\frac{1}{4}$, SE $\frac{1}{4}$ SE $\frac{1}{4}$ Sec 35, Twp 44 N, Rge 1 W, BM.

TSA 1602 - Isabella Ridge Pole Sale. 300 acres Public School land in Clearwater county for a two-year contract, appraised at 400M bd ft and 3,900 CP totalling \$79,608.45. Sale description is parts SW $\frac{1}{4}$ NW $\frac{1}{4}$, N $\frac{1}{2}$ SW $\frac{1}{4}$ Sec 17; parts NE $\frac{1}{4}$ NE $\frac{1}{4}$, N $\frac{1}{2}$ NE $\frac{1}{4}$, NE $\frac{1}{4}$ NW $\frac{1}{4}$, S $\frac{1}{2}$ NW $\frac{1}{4}$, SW $\frac{1}{4}$, N $\frac{1}{2}$ SE $\frac{1}{4}$ Sec 18 all in Twp 41 N, Rge 4 E, BM.

TSA 1603 - Lower Lion Salvage Sale. 334 acres of Public School land in Bonner county for a two-year contract, appraised at 2,385M bd ft, totalling \$146,453.25. Sale description is parts S $\frac{1}{2}$ N $\frac{1}{2}$, NE $\frac{1}{4}$ SE $\frac{1}{4}$ Sec 11; Parts Sec 12, Twp 62 N, Rge 4 W, BM.

MEMO TO THE STATE LAND BOARD

SUBJECT: Heyburn Park Floathouses

REMARKS:

In October the Board approved the assignment of a floathouse lease in Heyburn Park. This lease is one of 33 such leases. The Board requested a report on the waste disposal systems existing in relation to these 33 leases.

In August, 1973, the Panhandle Health District contacted the floathouse owners on Lake Coeur d'Alene to advise them of Health District requirements. The floathouse occupants on Hidden Lake were not included because the District assumed waste disposal service would be available through the Heyburn Park sewer development. Actual service will be several years away.

The Panhandle Health District has furnished an extract from the District Rules on waste water discharge:

1. The dumping of sink, shower, bathtub, washing machine and other waste waters must cease. They should be routed to sealed retention tanks or approved sewage treatment facilities.
2. All toilet wastes must be either routed to a retention tank, approved sewage facility, gas or electric toilets, chemical toilets, or sealed vault privy.
3. All septic tanks must meet state standards outlined in Bulletin #6 (rules and regulations of subsurface sewage disposal).

The District has offered to make individual lease inspections as early in 1974 as the floathouses are occupied.

The District recommends that the floathouses owners on Hidden Lake be required to meet the above listed requirements.

WAS:pw
12-7-73

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DEC 19 1973

Parks advised floathouse
owners required to meet
health Dept standards
and to notify them

F

TIMBER SALE APPRAISALS - Continued

TSA 1617 - Brown's Creek Timber Sale. 31 acres Charitable Institutions land in Clearwater county for a one-year contract, appraised at 855 M bd ft, totalling \$82,480.50. Parts SE $\frac{1}{2}$ NE $\frac{1}{2}$ Sec 23, Twp 35 N, Rge 5 E, BM.

TSA 1618 - Contrary Creek Poles. 570 acres University land in Boundary county for a two-year contract, appraised at 75M bd ft 1,499 pcs, totalling \$19,174.07. Description is parts: S $\frac{1}{2}$ Sec 2; NE $\frac{1}{2}$, NW $\frac{1}{2}$, SW $\frac{1}{2}$, SE $\frac{1}{2}$ Sec 10, Twp 60 N, Rge 1 E, BM.

TSA 1619 - Smith Ridge. 1200 acres Public School land in Clearwater county for a five-year contract, appraised at 20,000 M bd ft, totalling \$1,153,184. Description: Parts all the following Sections 24, 25, Twp 41 N, Rge 4 E; and parts Sections 19, 21, 28, Twp 41 N, Rge 5 E, BM.

TSA 1620 - North John Lewis Timber Sale. 522 acres of Public School and Charitable Inst. land in Clearwater county for a one-year contract, appraised at 2360 M bd ft, totalling \$77,546.20. Described as parts SW $\frac{1}{2}$ SW $\frac{1}{2}$, Sec 14, pts NW $\frac{1}{2}$ SE $\frac{1}{2}$, SW $\frac{1}{2}$ Sec 15, SE $\frac{1}{2}$ Sec 16, pts E $\frac{1}{2}$ Sec 20, pts Sec 21, Twp 14 N Rge 4 E, BM.

OFFICIAL TRANSACTIONS - March & April 1974

Mr. Park moved that the official transactions of the Department for the months of March and April 1974 be approved. Mr. Williams seconded the motion, which carried unanimously.

LEWISTON PORT DISTRICT - Memorandum of Agreement

In anticipation of the increased frequency of applications for loading facilities and other navigational aids within the Lewiston Port District, the Board acted to adopt option 2 of several suggested by the Department in regulation and control of the area. The Attorney General's office advised that in 1969 the Legislature gave the District authority to lease unoccupied state land lying within its plan of harbor improvement. In addition to authority to lease, the District also has authority to control and regulate all navigable and non-navigable waters within and adjacent to the boundaries of the district, which includes all of Nez Perce county.

Mr. Park moved adoption of Alternative 2, which states: "By Memorandum of Agreement, defer to the Port District only navigational permit and leasing authority for the area encompassed by the comprehensive plan as it now exists or is amended in the future and retain authority over areas within the Port District and over easements for all the beds of navigable waters." Mr. Cenarrusa seconded the motion. Voting was unanimous.

BIGHORN CORPORATION - Bob Parker

Bob Parker, general manager for the Bighorn Corporation's projected ski area, appeared before the Board to present information on the project, which is located on U.S. Forest Service land. They are concerned that the state has leased land to Don Harding near Malad for another ski area which would be within 30 miles of the Bighorn project. They asked that feasibility studies be done on the Harding proposal before development begins.

LIEU LAND SELECTIONS - Fremont County

The Fremont County Planning and Zoning Commission, represented by Joyce Wilson, chairwoman, expressed concern with the state's selection of a large block of land in the Island Park area of Fremont County. They urged that development be along long-range plans with the best interests of all considered and the beauty of the area protected. They were concerned that the efforts to maximize income would result in too rapid development, a problem the county is already trying to correct.

Governor Andrus assured the Commission that it was not the intention of this Board to subdivide and sell the land. He said the prime consideration in selection of the land was because of its fragility and need of protection.

FLOATHOUSES - Panhandle Health District

On December 19, 1973, the Board directed that all floathouses must meet health standards set by the Panhandle Health District before occupancy. After that time, the District made a survey of the floathouses on Hidden Lake in Heyburn State Park and found them to be seriously lacking in sanitation facilities. They offered several alternative measures to alleviate the problem should the floathomes continue to be allowed to exist.

After discussion, Mr. Park moved that the Commissioner solicit the views of the Parks and Recreation Department on allowing the floathomes to continue and to notify owners of the floathouses that the structures may not be occupied until they comply with existing environmental health standards. Mr. Williams seconded the motion, which carried unanimously.

APPLICATION TO EXTEND LEASE - Dee L. Jeppesen

Following renewal of Lease No. 5474 to Dee L. Jeppesen for a two-year period, Mr. Jeppesen and his son R. N. Jeppesen appeared to request that the lease be extended eight years to give them the maximum 10-year lease. Merlin Sharp explained that the lease was issued for a two-year period to adjust the expiration date to Mr. Jeppesen's adjacent leases which will now expire at the same time. He said there are presently five leases on land adjoining this same lease. It is the intention of the area to bring the land together under one lease in a large farmable block. It was explained further that some leases were also being issued for a shorter time than the 10-year maximum in order to shift the work load of expiring leases more evenly throughout the 10-year cycle. Presently 80 percent of agricultural leases expire within a two-year period, which creates problems in proper management for maximum income.

Several farmers expressed concern that this effort to combine leases would result in their losing their entire operation.

Mr. Williams moved that the lease continue as presently issued for the two-year term. Mr. Engelking seconded the motion. Voting was unanimous.

defray the cost of scaling the State's timber. He stated that the Department was now recommending that the cost for scaling logs be increased 30¢/bd. ft. making it \$2.30/MBF and a half cent per lineal foot for poles, making the poles \$.025/lin. ft. This would increase the dedicated fund for recruiting and hiring of more scalers to scale State timber.

Dr. Truby moved to approve the Department's recommendation which was seconded by Mr. Williams which passed unanimously with Mr. Kidwell being absent.

APPLICATION TO DRILL FOR OIL AND/OR GAS - Nu-Day Exploration, Inc. and Great Basin Petroleum Company

Mr. Trombley explained that the rules and regulations of the Oil and Gas Conservation Commission were met by the applications and the other agencies such as Water Resources were contacted and their recommendations would be incorporated in the permit.

Dr. Truby moved to accept the recommendation of the Department which was seconded by Mr. Williams. The motion passed unanimously with Mr. Kidwell being absent.

HEARINGS - Lake Protection Act

Mr. Trombley explained that this dealt with a request for a hearing by the Kootenai Environmental Alliance and in their request they felt that they shouldn't have to apply and put down the \$25.00 fee to cover cost of advertising in order to participate in the public's interest on these various encroachment requests. He stated further that the hearings process for the Land Department without a hearings officer was becoming quite burdensome with the prospects of having to conduct more of them so the Department was suggesting that the Board should consider having a full-time hearings officer or have the monies to go out and hire attorneys or fee-type hearings officers which would be costly. He said indications were that the Attorney General's office would have difficulty doing hearings regularly because they were referring the Department to fee hearings officers.

Dr. Truby moved to establish a policy by the Board to have automatic hearings for commercial applications for encroachment permits to authorize marinas, fills or bulk-heads on the lakes of Idaho. The motion was seconded by Mr. Williams and passed unanimously with Mr. Kidwell being absent.



OTHER BUSINESS

Mr. Williams moved to grant a 5% increase in the salary of the Department Director. The motion was seconded by Dr. Truby and passed unanimously.

OTHER BUSINESS

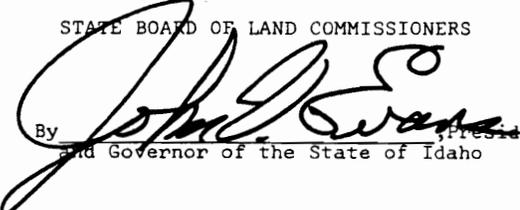
Mr. Cenarrusa brought up the fact that the citizens of Silver City were having problems acquiring the lands their homes were on from the BLM. He said that the BLM had offered an alternative of a 20 year lease with certain restrictions. He said also that the residents of the city were not happy because of so many restrictions being imposed on them and the BLM wanted it resolved.

Mr. Cenarrusa wondered if the State could acquire those lands either through exchange or lieu lands and then be able to sell the land to the principals involved. He stated that one problem with that would be that the State would have to auction the land off and might create more problems than the people have now.

Mr. Cenarrusa then moved to have the Director of the Land Department look into the matter, contact the BLM to see if there was a possibility of exchange of land in some way or re-establish the city as a historical entity and look into the legal aspects of it so see what the Board would be confronted with. The motion was seconded by Dr. Truby and passed unanimously with Mr. Kidwell being absent.

With nothing further to bring before the Board, the meeting was adjourned.

STATE BOARD OF LAND COMMISSIONERS

By  President and Governor of the State of Idaho

COUNTERSIGNED:


Secretary of




Director, Department of Lands

MEMO TO THE STATE LAND BOARD

UBJECT: Request for Hearings by Kootenai Environmental Alliance.

SCUSSION: The Lake Protection Act and the applicable rules adopted by the Land Board, permit the Director, Department of Lands in unusual circumstances to require a hearing. As a matter of practice, hearings have not been scheduled unless requested under Rule 4.22 or unless an obvious controversy existed.

The cost of hearing, except for advertising, is born by the State rather than the applicant. The actual dollar cost in salaries, transportation and subsistence averages about \$500.00 per hearing. Actual out-of-pocket cost is about \$150.00. The time of staff and secretarial personnel is the greatest impact because hearings create an abnormal workload.

The concern of the Kootenai Environmental Alliance is well founded. The public is placing greater and greater stress on a limited water resource. The demand for access is being accommodated by private investment - resort and marinas.

Hearings, per se, may not eliminate the proliferation of marina and resort development, but the public would be afforded a more viable means for comment.

Due to increasing workload and pressures for the time of departmental hearing officers, funding is needed for a full-time hearing officer, or for an outside contracted officer, or for a hearing officer in the Office of the Attorney General.

Requests for notification of all applications can place an expensive burder on the department.

The Kootenai Environmental Alliance, as well as other organizations, are requesting notification of all applications which presents the question of liability if they are inadvertently missed on occasion. In cases of conflict, other agencies or parties not notified raise the issue of why they did not receive notification of said applications. The Department feels legal guidance is needed

*Held for
L.B. Decision*

RECOMMENDATION: That all application for encroachment permits to authorize marinas, fills or bulkheads be considered to embody unusal circumstances as implied in Rule 4.13 and be scheduled for hearing as provided.

RECOMMENDATION APPROVED: *All Commercial encroachments automatic hearing.*
JUN 05 1978

RECOMMENDATION DENIED:

OTHER ACTION:

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The whole is greater than the sum of its parts.

May 23, 1978

Gordon Trombley, Director
Idaho Dep't of Lands
Statehouse
Boise, Idaho 83720

Dear Sir:

It has come to our attention that the Panhandle Yacht Club, Inc. has made application for a permit to construct a marina on Lake Coeur d'Alene about 417 ft. along the shore by about 470 ft. out into the water (L-95-S-2402).

We have not objected to applications for single docks for individual lakefront home owners but it seems to us that any project of this magnitude, and the potential effect it would have on navigation and the fishery resource, should automatically require a public hearing--as a minimum--particularly since if approved it would establish a precedent for similar projects in the future. We can easily foresee the entire shorelines of our lakes being cluttered with a series of marinas.

Therefore, we request that in this instance a public hearing be held in this area before action is taken on this application. It is our understanding that we must include \$25.00 with this request to cover the cost of publication of the hearing. We do so and we want it understood that this is strictly under protest. We do not feel that the burden of proof in an instance such as this should be on those seeking to protect the public interest but rather on those who seek special privilege.

We request further that the State Land Department review this policy and effect a change so that any similar request (that is for more than one or two boat slips or docks at a single location) for marina-type facilities on any of our lakes would automatically require a public hearing.

Finally, we ask that we be notified by your office of any similar application for a large marina-type facility on any of the lakes in north Idaho.

Respectfully,

Robert Kabler, President
Kootenai Environmental Alliance

cc: Gov. John Evans

KOOTENAI ENVIRONMENTAL ALLIANCE

P.O. Box 1515 Coeur d'Alene Idaho 83814

Mr. Hamilton said that in the future, the Department will proceed in this manner on these types of matters, and try to bring the rules to the Board in a preliminary form.

Governor Evans asked that he also see that the Board have substantially important updating of those rules and regulations of the Department as rapidly as they can be addressed.

Submerged Lands Policy - Attorney General

Jim Jones said that recently the Federal Energy Regulatory Commission (FERC) granted the south half of Lake Coeur d'Alene to the Coeur d'Alene Indian Tribe without consulting with the State of Idaho and that he has learned that perhaps some of the users of our State's submerged lands are not paying usage fees. He has checked around and some other states do require payment for at least a portion of the submerged lands in riverbeds and lakebeds.

Mr. Jones suggests that the Board appoint a subcommittee to consider what its policy should be in charging for private parties utilizing State riverbeds and lakebeds. They can start gathering information as to the extent of that usage, particularly the number of dams on the Snake River, that may not be paying their fair share. They need to look at that and see what can properly be required in connection with usage of those river and lake beds, and to see also whether some of those uses may fall within the small hydro policy the Board has developed. He would suggest, and made a motion, to appoint a subcommittee to study the State's submerged lands policy, consult with the users, consult with the private parties, and then come back to the Board at some future time with a suggested submerged lands policy. Jerry Evans seconded the motion.

With no objections, Governor Evans appointed Attorney General Jones, Superintendent Evans and State Auditor Williams, and asked them to report back as quickly as they can get some proposals firmly in place. Hearing no objections, he so ordered.

Marina Lease Rates

Marv Vandenberg said this has been before the two previous Land Board meetings and various proposals have been discussed as to a lease rate to be tied to commercial and condominium type marinas located over state-owned lakebeds. The first proposal was for a \$20 rate per slip rate; the second was to adopt a square foot approach. The present proposal is for a flat term percentage of gross receipts. This approach is used by other states and involves a minimal amount of administrative preparation. It would use the gross receipts from the marina operation multiplied by the applicable percentage rate. In developing this rate, the criteria other states have developed as to maintenance costs, operation costs, various costs involved in marina operations was used. Realizing that all of those may not be applicable to the State of Idaho, he does feel it is a reasonable approach. As a result of the Supreme Court decision last summer, the State has the authority to enter into these leases. The Department recommends Proposal No. 1.

Mr. Hamilton said he concurs with the recommendation with one minor change: that the minimum rate of \$150 be changed to \$200-\$250 an acre or a fraction thereof, to have something to work against the gross moorage receipts of 3.75%. There could be situations that would be less than that. He also suggests this be considered an interim rate. Other states are working on this right now, and within a year or so, there would be more information.

Jerry Evans said he would move approval of Proposal No. 1 with the insertion of \$200 per acre or fraction thereof in the appropriate place. Joe Williams seconded.

Governor Evans said there are some guests here wanting to testify on this matter, and invited them to speak to the Board.

1) Jim McDonald, Bayview: Mr. McDonald said he has been in the resort business 34 years. In contrast with other areas, the business in Idaho is seasonal. Also in some areas of the lake (Lake Pend Orielle), the Corps of Engineers drops the level of the lake and makes it unusable up to nine months of the year. \$200 is too much for those people. Those who can trailer won't pay the fees. Some neighbors have docks and allow their friends to rent. In north Idaho, between the weather, the small population, and the low income rate, his recommendation is that the Board postpone any set policy at this time; that hearings be held in Coeur d'Alene, Sandpoint, Priest River, etc., and then come up with a good proposal.

2) Bill Reagan: Mr. Reagan said he is an attorney in Coeur d'Alene representing Western Frontiers who own the Northshore Marina. He said the Board needs to consider the cost of the land giving the right to put a marina in to begin with. It is very expensive and is reflected in property taxes. Marinas need parking and require capital improvement costs. Increases will have to be passed on to the boating public. Their leases for this year have already gone out, so they could not pass that on this year.

In reply to questions of Mr. Hamilton, Mr. Reagan said their gross income for the last year was \$284,671.00 and of that, \$93,463 was moorage income for about 211 slips.

Jerry Evans said this testimony further emphasizes the need to keep this as a topic for further study. In the meantime, the Board needs to come up with some kind of a rate for this year. Jim Jones agreed and said one of the reasons for the Submerged Lands Study Committee is to get into the field and get comments on this type of thing.

Governor Evans said he is swayed by the comments that some private lessees are renting to their friends. Mr. Vandenberg said there is a need for a charge to be developed for the private dockages around our lakes and navigable streams. He said it is something that could be addressed in the rules and regulations as a fee or something of that nature.

3) Richard Hansen, Mr. Hansen said he owns a sailboat marina on Pend Oreille Lake. He is concerned as an average size marina owner in regard to the proposed tax. The State should encourage endeavors in recreation, and his marina is an approach in that direction. Bayview in recent years went from four year-round restaurants to one. The area has lost several resorts in the past few years. He asks the Board to give careful consideration to individual circumstances when establishing the proposed fee. Their slips rent by the year or month and rates vary from \$35 a month to \$60 a month depending on size, hook-ups, etc. A yearly average would be \$300-500 per slip. The problem is they are only 50-60% occupied, and there are maintenance costs to consider. They are already taxed as personal property and don't want to be taxed doubly.

4) Wally Wright, Bayview: His operation consists of 35 floathouses. In talking about a per acre rate, those floathouses are being taxed now, and he is concerned about being doubly taxed.

Mr. Hamilton said he does not view the rent on public lands as a tax.

5) Donna Shaeffer, Hayden Lake: She has a very small operation, about 116 slips. She thinks that until the Board is ready to tax their neighbors, individuals who are far more able to pay a tax than the marina owners are, they should not be taxed. There is one individual who has built a dock big enough to accommodate six boats and they do not pay.

Governor Evans asked what does she pay the State now. Ms. Shaeffer said they are just paying personal property tax, nothing to the State for the use of the lake. She thinks it would be more fair, if the proposal drops back to the initial \$100 minimum, at least for a start.

6) Don Johnson, Coeur d'Alene Marina: Mr. Johnson said he thinks the Board is overlooking the high rate of taxes they pay on their marina operations which generally exceeds that of neighboring residential property owners. They also provide a service for the licensing of boats. As the rate is proposed, it will cost him about \$2,000 a year for 94 slips.

Mr. Cenarrusa said he has a lot of questions right now and wonders inasmuch as there has been a subcommittee appointed, if this matter could be deferred another month, in order to study it. He would not be able to vote for the amended proposal as of right now.

Jerry Evans said some kind of an interim rate structure is needed. If \$200 is not the right figure, he would, with the consent of his second, be willing to drop that to \$100. A very thorough and complete study of this whole issue is needed. Mr. Evans said he would amend his motion to lower to \$100 per acre (or fraction thereof) in order to give an interim rate, with the understanding the Board will make a complete and thorough study of this whole issue. Joe Williams seconded.

Jim Jones said he thinks this all started with Western Frontiers request for a renewal and extension of their lease. The Board has since gotten into a discussion of the policy, and he is not sure if the Board is at a point where it is saying this is going to apply to everybody. If we confine this motion to those existing leases, including Western Frontiers, the Board may be on more solid ground.

Jerry Evans said he agrees that is how the Board got into this, but many points have been made here about equity and fairness. The Board also must proceed to see why some of those others are not leased.

Joe Williams said he is of the opinion that everyone who has a marina should pay; if they have a dock with one or two boats, they still pay. Everybody who uses the lake would pay their share.

Governor Evans said he appreciates what Mr. Williams is saying. Everybody who has a commercial program needs to be involved in paying their fair share. By establishing a minimal level, that stimulates the Department to get out, make the contacts, survey and establish that policy.

Jim Jones said this should apply initially to those existing leases and then direct the Department to start looking into the other parties that ought to be included in that program, and possibly implementing some rules and regulations to get the coverage extended where it is needed.

Governor Evans asked how many more marinas are existing. Mr. Vandenberg said the Department estimates there are in excess of 80 major marinas statewide. Of the 80, eight are presently under lease. He explained that the others are not under lease yet, but notices went out that at some future time, when the court decisions were handed down, the Department would be considering bringing them under lease. The Lake Protection Act went into effect in 1974 and the Department has been issuing leases to marinas that came into existence since that time.

Jim Jones said that under those rules, it may be that we can go ahead and implement the policy. It may define who is covered and who is not, and it should be a simple matter of getting the machinery in order.

The motion that a lease rate be established at \$100 per acre or fraction thereof, or 3.75% of gross moorage receipts, whichever is greater, as recommended by Proposal No. 1, for an interim measure, passed unanimously. Governor Evans asked that a report get back to the Board as rapidly as possible.

MEMO TO THE LAND BOARD

SUBJECT: Lease Rate Proposals for Determination of Lease Rates for Marinas and Moorage Facilities Over State Owned Lake and Stream Beds

BACKGROUND: This matter was last before the Board on January 10, 1984 at which time further study was directed. The Department was also requested to consider an alternative taking into account gross receipts. This proposal does not address private dock fees as that will be studied separately. Any subsequent fee schedule (docks) will involve amendment of rules covering navigable waters.

DISCUSSION: Lease rates will have an economic effect on related tourist industries, therefore, the proposals presented were prepared in that perspective, keeping with the public trust doctrine and the following guidelines:

1. Generation of income to the General Fund from the use of state lands.
2. Equitable treatment of all operators, relative to each other.
3. Simplicity of reporting and rate determination on a predictable basis.
4. Minimization of administrative costs of the program and those of the lessee in compliance.

While it is not possible to design a lease rate which will meet all situations and geographic areas, two alternative sets of proposals for Board consideration are presented.

Proposal #1 - Basic Fee with a Percentage of Gross Receipts Option.

- A. That commercial marinas operating under the public trust doctrine of first-come-first-served and open to the general public be charged a rate of \$150 or 3.75% of gross moorage receipts, whichever is the greater.
- B. That condominium or multiple family moorage facilities, not having 50% of it's moorage available to the general public at prevailing rates on a first-come-first-served rental basis, be charged a rate which would represent 5% of the average moorage rate charged by commercial marinas open to the public in general in the same geographic areas on each lake or river upon which that condominium or multiple family moorage facility is located.

Proposal #2 - Minimum Rate plus Square Footage of Moorage Facilities.

- A. That commercial marinas operating in accordance with the public trust doctrine on a first-come-first-served rental basis open to the public in general be charged \$150 for the first 500 sq. ft. of moorage area and

This should be interim rate only -

Minimum is very low - \$200/250 per sq. ft.

*11/10/84
Van Der Lugt*

\$.05 per sq. ft. for each sq. ft. thereafter.

- B. That condominium or multiple family moorage facilities not having 50% of it's moorage available to the general public on a first-come-first-served rental basis be set at a \$.065 per squane ft. of moorage area.

RECOMMENDATION: Approval of Proposal #1.

RECOMMENDATION APPROVED: ✓

FEB 14 1984

RECOMMENDATION DENIED:

OTHER ACTION:

*with amendment that
to \$100 per acre (or
fraction thereof) instead
of \$150.*

FAK
FAK/mt
2-7-84

Mr. Maynard complimented Mr. Medberry for attending one of the Group's meetings and for engaging in constructive discussions during that meeting. The Group also prepared a letter to Governor Kempthorne voicing concerns regarding the Clinton roadless initiative. The letter expressed the Group's efforts to identify suitable land for the pilot projects to work on a collaborative basis.

Mr. Maynard said the Administration is coming forth with ecosystem and collaborative approaches to management yet the major problem is the one-size-fits-all directive of locking up a substantial portion of the lands that are in need of management for forest health reasons. The Group is concerned that the directive will impair the Group's efforts to come up with a good chunk of land that works in terms of sound science-based collaborative, cooperative management.

DISCUSSION: Governor Kempthorne thanked Mr. Maynard for speaking with the board. He next asked Mr. Medberry if he had any further comments. Mr. Medberry thanked the board for allowing him an opportunity to speak and thanked the board for engaging in discussion. He feels discussion is what is needed. It has really been absent. It has been both sides speaking to the press, speaking to the courts, speaking to everyone but each other. Mr. Medberry commented he hopes discussions will now begin.

Governor Kempthorne observed that while it might seem this issue has been going on for years, the current effort appears to be on the fast track. It seems to be causing frustration even among some of the professionals working for the Forest Service because forest health activities, for example, and a number of other activities, are not on a priority basis right now. The roadless initiative is the priority. And they are moving so fast. The Governor stated he feels it is very appropriate for the state to ask the federal government and the Administration to be specific.

In fact, about three weeks ago the Governor said he had the opportunity to meet with Mike Dombeck, Chief of the Forest Service, George Frampton, the President's Chairman of the Council on Environmental Quality and Jim Lyons. The Governor said he actually read Judge Lodge's conclusion to them. Judge Lodge points out that it is legitimate for a state to be asking for this information. He stated that it did not require someone learned in the law to know that you should have the maps there if you are going to be asked to participate in a meaningful partnership. The Governor said he does subscribe to Mr. Medberry's approach regarding meaningful discussion and that is what the state has been seeking from the federal government.

BOARD ACTION: No action was taken on this agenda item.

8. Consideration of Lease G-6381 – Fish and Game, presented by Tracy Behrens, Range Management Specialist

DEPARTMENT RECOMMENDATION: The Department recommends that the lands in expired lease G-6381 be identified for exchange to IDFG and included in an exchange package that is currently being negotiated and should be completed by spring 2001. In the interim, the Department recommends issuing IDFG a five-year miscellaneous lease authorizing them to manage the parcel in conjunction with the Charcoal Creek unit of the Boise River WMA. Annual rent for the miscellaneous lease will be \$450.00.

BOARD ACTION: A motion was made by Attorney General Lance to instruct the Department of Lands to either exchange or sell this property. State Controller Williams seconded the motion. The motion carried on a vote of 4-0 with Governor Kempthorne absent for this vote.

9. Consideration of Board's Minimum Rental at Marinas, presented by Bob Snapp, Leasing Specialist

B

DEPARTMENT RECOMMENDATION: The department recommends that rentals for ships' stores be set at \$250.00 or at 1% of gross receipts (except gasoline), whichever is greater.

DISCUSSION: Controller Williams asked Mr. Snapp why gasoline was excluded from gross receipts. Mr. Snapp responded the department felt it was a better option to exclude gasoline sales to encourage the public to use those facilities as opposed to pouring gas from cans or other containers into their boats at various locations. The department felt it was a safer and less polluting option.

BOARD ACTION: A motion was made by Attorney General Lance to adopt the department's recommendation. Secretary of State Cenarrusa seconded the motion. The motion carried on a vote of 5-0.

10. Wolford/State of Idaho Land Exchange – Request for Final Approval to Complete a State/Private Land Exchange, presented by Perry A. Whittaker, Chief, Bureau of Real Estate – deferred one month

DEPARTMENT RECOMMENDATION: Department staff recommends Land Board approval to complete this exchange.

BOARD ACTION: A motion was made by Attorney General Lance to defer this agenda item for one month. State Controller Williams seconded the motion. The motion carried on a vote of 5-0.

11. Gooding T. B. Hospital – Request to Offer 4.21 Acres of General Fund Property for Surplus Sale, presented by Perry A. Whittaker, Chief, Bureau of Real Estate

DEPARTMENT RECOMMENDATION: IDL staff request approval to declare the 4.21 acres as surplus property. The property will then be offered first to state agencies, as required by statute, for \$63,000 cash. The City of Gooding will be provided an opportunity to acquire the property on the same terms, if state agencies are not interested in the property. The department will return at the April board meeting with its findings and a recommendation for disposal.

AUDIENCE WITH THE BOARD: Governor Kempthorne invited Ervin Dains, Mayor, City of Gooding, to address the board.

Mayor Dains thanked the Governor and the board for making the demolition of the TB Hospital possible. Mayor Dains asked the board to deed the TB Hospital land back to the City of Gooding. If the board agrees, the city would draw up a long-term lease agreement with the Gooding Basque Association. The Basque Association has plans to build a 6,000 square foot convention/cultural center that would be available to the whole community, which Gooding needs.

DISCUSSION: Attorney General Lance asked Mayor Dains what advantage there is to giving the property to the city for lease to the Basque Association versus the state holding onto the land and leasing it to the Basque Association. Mayor Dains responded the advantage would be for the City of Gooding to have a convention center and meeting place. The Basque Association draws a lot of people into the area with various activities.

AUDIENCE WITH THE BOARD: Mr. Julian Legarreta, President of the Gooding Basque Association, was granted an audience with the board. Governor Kempthorne asked Mr. Legarreta to briefly sketch what the Basque Cultural Center may look like and what it would entail.

Mr. Legarreta said the Basque Association has been pondering this idea for a number of years. A representative of the Basque government visited a couple of years ago and he strongly suggested that the Association go ahead with a Basque Cultural Center.

LAND BOARD MEMORANDUM
for the
March 14, 2000 Regular Land Board Meeting
Regular Agenda

SUBJECT

Rentals for submerged lands leases with ship's stores.

BACKGROUND

Current policy adopted November 19, 1997, for rental rates applicable to ship's stores states "for commercial encroachments not in aid of navigation rental shall be 1) a percentage of the gross receipts, as determined by the Director, for those uses where gross receipts can be readily determined; or 2) one thousand (\$1,000.00) per acre or fraction thereof, whichever is greater."

Ship's stores are usually part of a marina, however, they are treated separately for rental purposes as they are a commercial encroachment, not in aid of navigation.

DISCUSSION

We currently have four submerged lands leases which include ship's stores. These stores sell fishing and boating gear, convenience store items, etc. They operate seasonally for an average of four to five months each year. In the past, rentals have been set at \$1,000 or 3.75% of gross receipts, whichever is greater and \$1,000 or 2% of gross receipts, whichever is greater.

Due to such variables in business volumes, seasonal limitations and locations, the Department contracted an appraisal last summer to determine a more consistent and equitable rental. Based on the recommendation in the appraisal, we are recommending a rental for ship's stores of \$250.00 minimum, or one percent (1%) of gross receipts (excluding gasoline sales), whichever is greater. In essence, a ship's store would have to have annual sales of \$25,000 before they would pay rent above \$250.00 at a 1% rate of return. Staff does not expect that sales would exceed \$25,000 to any great degree due to the limited retail business at these stores, except for the store on Payette Lake. It has a good volume of sales and will generally pay a larger rent based on 1% times receipts.

RECOMMENDATION

Rental for ship's stores be \$250.00 or 1% of gross receipts (except gasoline), whichever is greater.

BOARD ACTION

March 14, 2000 -- A motion was made by Attorney General Lance to adopt the department's recommendation. Secretary of State Cenarrusa seconded the motion. The motion carried on a vote of 5-0.

RS:md