

July 19, 2020

### Hearing Officer for ERL95S1378B

#### Attention:

Amidy Fuson, Resource Specialist Sr., Navigable Waters  
Mike Ahmer, Resource Supervisor – Public Trust  
Idaho Department of Lands  
Mica Supervisory Area  
3258 W. Industrial Loop  
Coeur d’Alene, ID 83815

### **RE: OBJECTIONS to Commercial Navigational Encroachment Permit, APPLICATION ERL95S1378B – North Idaho Maritime / John Condon.**

**These comments are to be presented to the Hearing Examiner for this application.**

There are many reasons why the North Idaho Marine/John Condon Encroachment Permit should be denied within the scope of the **Public Trust Doctrine**, which at all times forms the outer boundaries of permissible government action with respect to public trust resources.

As administrators of the Public Trust in navigable waters on behalf of the public, the Idaho Department of Lands does not have the power to abdicate its role as Trustee in favor of private parties. Granting this permit would do exactly that. The encroachment is clearly a commercial enterprise with no navigational or economic necessity clearly established, yet threats to the public trust resources and beneficial uses are evident.

#### **THREATS TO PUBLIC RESOURCES/BENEFICIAL USES**

1. Fish and Wildlife Habitat: The placement of the 10x150 ft (1500 sq. ft.) pier is directly between the Kokanee spawning beds to the west and the warmer, shallow waters to the east, where the young Kokanee fry “incubate” after hatching before heading to deeper water. Besides the pier, there will be a huge floating barge (100 ft by ? -dimensions unknown) in a “mooring area” to the west of the pier and additional mooring area (unknown number of boats, equipment etc.) to the east. The aforementioned south portion (Kokanee fry survival habitat) is slated to become a “work area,” (120x80 = 9600 sq. ft.) presumably for building docks. This will result in even more habitat destruction, that is if the poor Kokanee fry can even get past the gauntlet of the Northern pike and Small Mouth Bass that will thrive in the covered “hiding areas” -11,100 sq. ft., not including the “mooring stations” on either side of the pier – that this industrial operation will create.  
In addition, the constant turbidity from this operation (beginning with “vibrational” removal of existing old pilings) threatens to cover the spawning beds with lake sediment.

Wolf Lodge Bay provides one of the best fishing areas on the lake, hence the numerous fishing derbies that take place there every year. None of the fisherman, whose sport greatly contributes to the local economy, wants to be dodging commercial marine equipment, boats and barges.

If the Kokanee suffer, the Bald Eagles will suffer. Tourist flock to Wolf Lodge Bay every winter to witness the magnificence of these iconic birds as they swirl, swoop and dive for the spawning salmon. Coeur d'Alene Resort Eagle viewing tours alone brings close to half a million people to the area, pouring millions into the local economy.

A full, independent, Environmental Impact Study (EIS) should be conducted on the potential effects this industrial operation would have on the fish and wildlife habitat of Wolf Lodge Bay before it is allowed to proceed. Otherwise the broad public uses of the Public Trust Doctrine get set aside in favor of limited private ones, hence the *public purpose* of the Public Trust Doctrine is not served.

2. Aesthetic Beauty: Wolf Lodge Bay, Wolf Lodge Bay Creek and wetlands are the scenic views framed at the beginning of our Lake Coeur d'Alene National Scenic Byway, SH 97. This special highway status is granted to less traveled roads with outstanding scenic qualities. Thousands of people seek to enjoy these "roads less traveled." Who would even be enticed to head south on SH 97 when the aesthetic beauty of this stunning area has been obliterated by an industrial complex covering the water, and plugging the highway with commercial vehicles coming and going constantly from the site? The noise pollution from heavy construction and transportation would be disruptive to both humans and wildlife.

This area is the eastern Gateway to Coeur d'Alene and a crown jewel of the beauty people come to visit and enjoy. It is one of the last undeveloped bays on the lake. The surrounding lands to the north and south are public, BLM lands dedicated to recreation. People come to Wolf Lodge Bay in droves to enjoy hiking, boating, kayaking, fishing, wildlife and unsurpassed landscape views in every direction. There can be no denying that the aesthetic beauty of Wolf Lodge Bay would be forever marred by this commercial development. The Public Trust Doctrine is intended to prevent such an egregious loss of aesthetic beauty and the feelings of gratitude such landscapes inspire.

3. Water Quality: Wolf Lodge Creek is classified as Special Resource Water. The Special Resource Water classification recognizes the fact that Wolf Lodge Creek is a unique and sensitive resource, requiring special attention and protections. Wolf Lodge Bay is the domestic water supply for homes to the northwest of the proposed industrial marine complex. Wolf Lodge Creek is a vital source of cold, clean water into Lake Coeur d'Alene which is essential for salmonid spawning purposes. It is also a primary contact area for recreation. *All of these beneficial uses are protected in Idaho Water Quality Standards and should not be ignored in favor of private, commercial development.*

Lake Coeur d'Alene escaped Super Fund designation only because it agreed to enact a Lake Management Plan. That plan has failed miserably due to poor land use planning and lack of regulatory enforcement. Now the lake is in danger of eutrophication and dissolved oxygen that would cause the heavy metals (75 million metric tons) in the lake bottom to rise in the water column. This would render the lake un-swimmable,

undrinkable and unfishable. Allowing this encroachment would be another nail in the coffin of our dying lake.

According to a study by the CdA Tribe, lead concentrations in the Wolf Lodge Bay area reach as much as 500-1,000ppm. The potential for commercial operations in the bay to disturb the heavy metals laden sediment is very real and the shallow nature of the bay increases that risk. The notion that a single entity would be allowed an over water, large scale industrial operation that would increase that risk is preposterous. The cumulative effects of saying yes to every encroachment permit the comes before IDL needs to be weighed against the Public Trust Doctrine, particularly when no navigational or economic *necessity* for this commercial/industrial development has been established. There are numerous other marine services available to contract services. In addition, North Idaho Marine already has a work area in Cougar Bay and mooring privileges at Blackwell Island. This encroachment it superfluous to the business's needs.

*Coeur d'Alene Lake is subject to IDL Lake Specific Encroachment Permit Terms and has lake specific environmental concerns that are managed under the Coeur d'Alene Lake Management Plan 2009 (LMP) specifically heavy metals contamination.*

The applicant/NIM has not addressed threats to water quality. NIM's Increased boat/barge traffic in the shallow bay will assuredly disturb heavy metals sediments, plus increase water temperature and turbidity. This is another reason there should be a full EIS to establish mitigating the negative effects to water quality in Wolf Lodge Bay. In addition, NIM will have many petroleum products on site – stored on land, barges and boats. The spit of ground that will be used in its operations lies in the flood plain. What would prevent these toxic products from being washed into the lake during extreme high water? Should that happen, the consequences would be devastating. It is a risk not worth taking.

Please consider the Public Trust Doctrine when making your decision as to whether or not to grant this application. As Trustees of our public resources, particularly in regard to the already tenuous health of our beautiful Lake Coeur d'Alene, it is incumbent upon you to serve the needs of the greater good for all, rather than the specific desires of a single entity for private profit.

Thank you.

Respectfully submitted,

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