June 12, 2020

Chris Bromley, Hearing Coordinator for ERL95S1378B

C/O Amidy Fuson
Resource Specialist Sr., Navigable Waters
Idaho Department of Lands
Mica Supervisory Area
3258 W. Industrial Loop
CdA, ID 83815

RE: Kootenai Environmental Alliance objection to Commercial Navigational Encroachment Permit APPLICATION ERL95S1378B – North Idaho Maritime / John Condon. Building a commercial dock and a commercial work area on Lake Coeur d'Alene in Wolf Lodge Bay.

Dear Sir,

Water is one of our nation's most valuable resources. It is becoming increasingly important that we protect the quality of our inland waters and wetlands for the use and benefit of future generations.

Prior to building an encroachment (*ex.*, dock, marina, or shoreline stabilization) on a navigable lake, an encroachment permit from the Idaho Department of Lands (IDL) is required under the Lake Protection Act, Idaho Code, Title 58, Chapter 13 and IDAPA 20.03.04, Rules for the Regulation of Beds, Waters, and Airspace Over Navigable Lakes in the State of Idaho.

Idaho Department of Lands (IDL) is the governmental organization whose duty it is to manage Idaho's State Trust Lands and protect the public's natural resources. Idaho's public trust lands are the lands submerged below the ordinary high water mark of navigable lakes and rivers. **It is the mission of the IDL to protect public trust values such as navigation, fish and wildlife habitat, aquatic life, recreation, aesthetic beauty & water quality** Idaho Code §58-1301. **Title to these lands is held in trust and is administered for the**

public benefit rather than for a specific beneficiary. IDL has an obligation to protect water quality and other public trust values.

Encroachments on navigable lakes are regulated in order that the protection of property, navigation, fish and wildlife habitat, aquatic life, recreation, aesthetic beauty and water quality be given due consideration and weighed against the navigational or economic necessity or justification for, or benefit to be derived from the proposed encroachment. Idaho Code §58-1301

Idaho Statute TITLE 58; PUBLIC LANDS, CHAPTER 13, NAVIGATIONAL ENCROACHMENTS **58-1301.ENCROACHMENT ON NAVIGABLE LAKES — LEGISLATIVE INTENT** The legislature of the state of Idaho hereby declares that the public health, interest, safety and welfare requires that all encroachments upon, in or above the beds or waters of navigable lakes of the state be regulated <u>in order that the protection of property, navigation, fish and wildlife habitat, aquatic life, recreation, aesthetic beauty and water quality be given due consideration and weighed against the navigational or economic necessity or justification for, or benefit to be derived from the proposed encroachment.</u> No encroachment on, in or above the beds or waters of any navigable lake in the state shall hereafter be made unless approval therefor has been given as provided in this act.

Kootenai Environmental Alliance objects to the application for a commercial navigational encroachment permit (ERL95S1378B) and the construction and operation of a commercial dock and a commercial work area on Lake Coeur d'Alene in Wolf Lodge Bay for the following reasons;

The proposed encroachments will have negative effects on public trust values such as: fish and wildlife habitat, aquatic life, recreation, aesthetic beauty and water quality.

<u>Fish and Wildlife Habitat & Aquatic Life</u>

The following fish and wildlife concerns are listed in a comment letter to IDL submitted by IDFG, Charles Corsi, 4-22-2020.

- Docks, piers and pilings are an encroachment in lakes and rivers that can be detrimental to fish habitats and public angling opportunities.
- Shoreline modifications such as docks and breakwaters tend to benefit species such as smallmouth bass and northern pike, which have become widespread in the lake.
- Pike predation s considered to be a significant threat to the small but important population of adfluvial westslope cutthroat that uses Wolf Lodge Creek for spawning and rearing habitat.
- Lake CdA is designated as critical habitat for bull trout by the USFWS. Native westslope cutthroat trout, a species of concern in Idaho, are present year round throughout the lake.
- Additionally there are significant kokanee spawning areas nearby that require clean gravels to provide for successful egg incubation.

- IDFG recommends that construction be completed during low water, that all appropriate erosion/sediment control and sound/vibration suppression BMP's be employed during construction and until disturbed areas are fully stabilized.
- Additionally IDFG recommends all pilings removed from the area be properly disposed of due to the probability of heavy metals contamination.
- IDFG further recommends deferring construction work until later in January when Bald Eagles have left the area and minimize disturbance to eagle feeding and roosting

Wolf Lodge Bay is extremely important locally and regionally for fisheries and wildlife including kokanee, Chinook salmon, cutthroat trout, several warm water fish species, deer, raptors (including bald eagles), shorebirds, songbirds, upland birds, water birds and waterfowl. The value of fisheries from the north end of CdA Lake to the local economy is extensive and is derived largely from kokanee production in the Beauty Bay/Wolf Lodge Bay vicinity. This fishery generates millions of dollars for the local economy. Increased boat traffic in this shallow bay has the great potential to stir up bottom sediments negatively effecting water quality and fisheries spawning and rearing habitat decreasing fisheries populations' in the northern half of CdA Lake.

The applicant has not provided any proposals for mitigating the effects of North Idaho Maritime operations on spawning kokanee salmon and migrating, newly hatched fry including timing of proposed construction activities. Wolf Lodge Creek and the shoreline around it is critical salmon spawning habitat as is noted by IDFG. The operation will include extensive boat/barge traffic to and from the site daily, directly through salmon spawning habitat. This shallow bay is completely undeveloped and has never experienced the proposed levels of motorized boat traffic a commercial maritime operation would visit on the environmentally sensitive bay.

Boat/barge traffic from the proposed North Idaho Maritime commercial operations/activity has the potential to increase water temperature and stir up bottom sediments, increasing water turbidity and burying the gravel beds of the bay that are critical for salmon spawning reducing water quality in the bay. Further, the proposed shoreline bulkhead will negatively affect Wolf Lodge Bay Creek, an extremely important source of cool, oxygenated water for native fish and hatching fry.

Again, as stressed by IDFG the proposed 150' x 10' pier/dock and infrastructure ~100' mooring stations on each side of the pier with an additional work station 120' x 80' over the lake placed in CdA Lake has the potential to negatively affect native fish populations creating optimal sites for non-native pike to prey on natives.

The applicant has not provided any proposals for mitigating the effects of North Idaho Maritime operations on raptor populations, in particular Bald Eagles, which depend on the site and kokanee salmon populations during winter. In addition to potential kokanee population declines associated with spawning bed habitat loss caused by commercial operations in the bay other factors such as increased traffic and noise pollution have the potential to negatively affect raptor populations. Because birds communicate primarily by sound, loud environments interfere with their communications and reduce pairing by almost 15 percent. The site's winter

mud flat is also used quite extensively by eagles during the time period between Thanksgiving and New Year's for feeding and loafing.

Recreation

This bay is used by anglers, kayakers, hunters, wildlife watchers, hikers, bird watchers and other members of the public year round. The proposed development site is located within a mile of the Wolf Lodge Bay public boat launch and the Mineral Ridge Scenic Area and National Recreation Trail on the Coeur d'Alene Lake National Scenic Byway.

The proposed development and operations in Wolf Lodge Bay would undoubtedly have negative effects on recreation and the public's ability to enjoy the scenic byway and Wolf Lodge Bay for several reasons; historic, unmarred view sheds would be lost, noise and other commercial activity has the potential to displace wildlife and bald eagles frequenting the site (which is a HUGE draw for recreating community members and tourists from far and wide), boat traffic and construction has the potential to negatively affect fisheries and waterfowl habitat and populations in the area, decreasing hunting and angling recreational opportunities in the bay.

In addition to the above mentioned negative effects to recreation, the applicant proposes (CURRENTLY DOES NOT HAVE PERMIT FROM BLM) to have operational vehicles turn around at the BLM Wolf Lodge Bay public boat launch and or the Mineral Ridge Scenic Area and National Recreation Trail parking lot during peak hours of the summer. These two public recreational sites are heavily utilized not only in the summer months but also in winter months. These sites are some of our areas most prized and beloved recreational sites and it would be an extreme burden to the public to have to accommodate commercial traffic which will include large trucks and semi's utilizing these areas as turnaround sites.

Increased commercial activity of this sort will create safety issues and increased traffic problems on our Scenic Byway and negative effects for area tourism and recreational activities.

Aesthetic Beauty

Development in this location is extremely sparse and the area is one of the last undeveloped bays on Lake CdA with the next closest development to the west in Beauty Bay. Wolf Lodge Bay is an environmentally sensitive area possessing sensitive area characteristics such as; fresh water streams, wetlands and wildlife corridors.

The proposed development encompasses a portion of lakeshore property which directly abuts the Lake CdA National Scenic Byway, HWY 97. In order to be recognized by the United States Department of Transportation the road must possess one or more of six "intrinsic qualities": archeological, cultural, historic, natural, recreational, and scenic. The program was established by Congress in 1991 to preserve and protect the nation's scenic but often less-traveled roads and promote tourism and economic development. The scenic, undeveloped Wolf Lodge Bay, Wolf Lodge Bay Creek and wetlands are the scenic views framed at the beginning of our Lake CdA National Scenic Byway, HWY 97. The aesthetic beauty of Wolf Lodge Bay would be perhaps forever marred by commercial use and development, a great and preventable loss.

The proposed project would negatively affect the aesthetic beauty and the scenic and intrinsic qualities of the Lake CdA National Scenic Byway via increased commercial traffic and motorized boat traffic from commercial activities, loss of scenic view sheds, increased noise pollution, negative effects to area fish and wildlife habitats and populations. Negative effects to aesthetic beauty, scenic views and wildlife populations will decrease tourism and the economic prosperity of Kootenai County.

Further, the proposed project would increase urban sprawl on Lake CdA with the development of another "maritime operation" /dock building/materials transportation service on the shoreline of the lake. As stated by the applicant in their joint 404 permit application supplemental responses to concerns from IDEQ they have another workspace/operation in Cougar Bay. Further, four additional maritime operations" /dock building/materials transportation services are already located on the shorelines of CdA Lake.

In addition, the CdA area hosts 11 other dock building businesses/operations not located on shoreline properties. While it might be easier and cheaper for the applicant to develop yet another marine staging area on the north end of the lake in Wolf Lodge Bay, it by no means is a requirement for these types of operations to be located on the shorelines of Coeur d'Alene Lake, as is proven by the 11 other dock building operations providing services to our local shoreline property owners. In truth, granting the applicant a permit to develop an additional operational work station on the northern shoreline of CDA Lake would create an unfair competitive advantage over other local dock building businesses.

Water quality

Idaho Water Quality Standards specify that *Wolf Lodge Creek shall be protected for its beneficial use as a domestic water supply, for its cold water biota, for salmonid spawning purposes, and for primary contact recreation.* Wolf Lodge Creek is also classified as a 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.

Significant land changes or development proposals for the Wolf Lodge Creek drainage must be considered based on their ability to meet the Idaho Water Quality Standards and criteria necessary to protect these designated beneficial uses from nonpoint sources of pollution.

Lake CdA hosts 75 million metric tons of heavy metals laden sediment at its base. According to a study by the CdA Tribe, lead concentrations in the Wolf Lodge Bay area reach as much as 500-1,000ppm (see appendix A). The potential for commercial operations in the bay to disturb those heavy metals laden sediments exists and is exacerbated due to the shallow nature of the bay.

Increased boat/barge traffic in the shallow bay has the potential to disturb bottom sediments increasing water temperature and turbidity. The applicant has not addressed threats to water quality (increased temperature, turbidity and heavy metals disturbance) posed by commercial operations in the bay nor provided any proposals for mitigating the negative effects to water quality in Wolf Lodge Bay.

Idaho Statute TITLE 58; PUBLIC LANDS, CHAPTER 13, NAVIGATIONAL ENCROACHMENTS; 15. **Lake Specific Encroachment Permit Terms.** (3-29-10) a. The department may use encroachment permit conditions specific to individual lakes if the permit conditions are needed to protect public trust values and the permit condition is approved by the Land Board. (3-29-10) b. Lake specific encroachment permit conditions may supplement, negate, or alter encroachment standards established in Section 015 of these rules. (3-29-10) c. Lake specific encroachment permit conditions shall be used to assist with implementing lake management plans authorized by Title 39, Chapter 66, Idaho Code; Title 39, Chapter 85, Idaho Code; Title 67, Chapter 43, Idaho Code; and Title 70, Chapter 2, Idaho Code. The purpose for using such lake specific permit conditions is to address lake specific environmental concerns that require attention and create a need for a variance from what is allowed on other lakes. (3-29-10) d.

As noted earlier, historic mining practices have severely polluted Coeur d'Alene Lake and the CdA River watershed with over 100 million metric tons of heavy metals laden sediments (75 million Lake CdA & 25 million CdA River). These sediments contain toxic elements such as cadmium, arsenic, zinc and lead. According to a study by the CdA Tribe, lead concentrations in the Wolf Lodge Bay area reach as much as 500-1,000ppm (see appendix A). Currently the management of these heavy metals is facilitated via the Coeur d'Alene Lake Management Plan (LMP).

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.

Recommended alternatives

It is the mission of the IDL to protect public trust values (navigation, fish and wildlife habitat, aquatic life, recreation, aesthetic beauty & water quality) Idaho Code §58-1301. *Title to these lands is held in trust and is administered for the public benefit rather than for a specific beneficiary.*

IDL is obligated to place public trust values above the economic benefit of a particular individual or small minority of community members, that is, the greater good of the public must outweigh the economic benefit of the few.

As stated above, four dock building operations currently exist on the shorelines of CdA Lake and 11 identical businesses exist and are in operation in the CdA region on the northern end of CdA Lake.

Alternative plans for the applicant include

1. Continuing to operate out of Cougar Bay and or

2. Developing another commercial maritime operation in a less environmentally sensitive area on the lake and or

3. Develop an inland operation (as have 11 other dock building businesses) have locally.

All proposed alternatives will have less negative impacts on public trust values than the commercial operations proposed by the applicant in Wolf Lodge Bay. The detrimental effects to public trust values highlighted in the above statement will likely far exceed benefits gained by a singular business owner and a small group of shoreline property owners.

Conflicting Bathymetry data

The applicant was required to provide IDL with bathymetric data for Wolf Lodge Bay (404 application page 9 of 37). The applicant provides no references for the hand drawn bathymetric data provided in the application and data submitted by the applicant doesn't match IDEQ bathymetric data obtained by KEA via a public records request in May 2020 (see appendix B). Data provided by the applicant indicates that the water depth in the region of the proposed encroachment/pier ranges from 6-11 feet (high pool) while IDEQ bathymetric data indicates that a maximum high pool water depth in the region of the proposed encroachment/pier is five feet.

Dredging in this area was not anticipated by the applicant based on water depths/ bathymetric data provided in the application. If this data is incorrect and the bay is shallower than reported by the applicant in the 404 application dredging may very well be necessary for commercial marine vessels such as barges and cranes to access mooring sites on the east and west of the pier.

Kootenai Environmental Alliance (KEA) would like to thank the Idaho Department of Lands and Hearing Officer (HO) for working collaboratively with the community members of Kootenai County and giving thoughtful, considerate attention to the comments of the public. Decisions made by you today will have generational impacts on this beloved bay.

With deepest respect,

Amy Anderson
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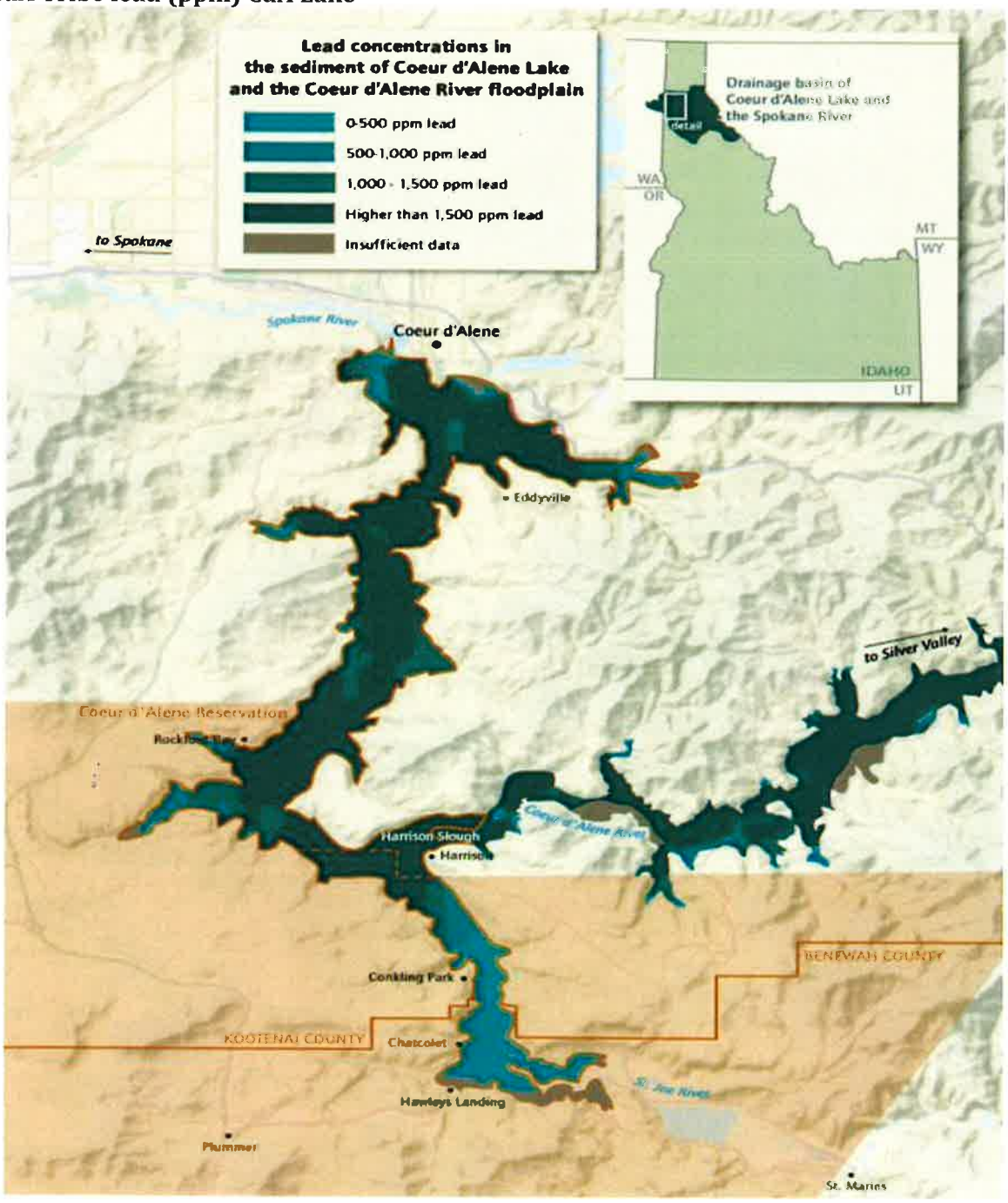
Appendix A:
CdA Tribe lead (ppm) CdA Lake
Appendix B:
IDEQ bathymetric data high pool Wolf Lodge Bay May 2020

Appendix A:
CdA Tribe lead (ppm) CdA Lake



Appendix B:
IDEQ bathymetric data high pool Wolf Lodge Bay May 2020