

GEORGE B. BACON
Director
Idaho Department of Lands
954 W. Jefferson Street
P.O. Box 83720
Boise, Idaho 83720-0050

BEFORE THE STATE BOARD OF LAND COMMISSIONERS
STATE OF IDAHO

In the Matter of;)
)
Encroachment Permit No. L-95-S-5149) **FINAL ORDER**
Big Rock Timber & Development, LLC.)
)
Applicant.)
_____)

I. NATURE OF PROCEEDINGS/ISSUES

A reconsideration hearing was held on May 29, 2007 at 6:00 pm PST at the Idaho Department of Lands office in Coeur d'Alene, Idaho. Mike Murphy served as Hearing Coordinator. The Hearing Coordinator issued his Recommendations on August 24, 2007.

My responsibility is to render a decision on the behalf of the State Board of Land Commissioners based on the record reviewed in the context of my personal expertise gained through education, training and experience. In making this determination I have relied on the record provided. Specifically,

- I have read the transcript of the public hearing conducted in Coeur d'Alene, Idaho on May 29, 2007.
- I have reviewed the record including all documents and exhibits.
- I have examined the Hearing Coordinator's Recommendations in light of the entire record.

Encroachments, including docks, placed on the navigable waters require a permit issued by the Department of Lands pursuant to the requirements of Title 58, Chapter 13, Idaho Code and the Rules for the Regulation of Beds, Waters and Airspace over Navigable Lakes in the State of Idaho, IDAPA 20.03.04, as promulgated by the State Board of Land Commissioners.

II. FINDINGS OF FACT

I concur with the Findings of Fact presented by the Hearing Coordinator.

III. CONCLUSIONS OF LAW

I concur with the Conclusions of Law presented by the Hearing Coordinator.

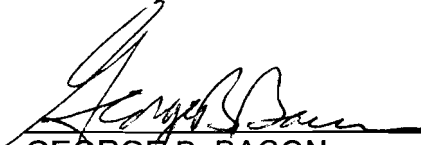
IV. FINAL ORDER

On the basis of the record, it is my order that Encroachment Permit L-95-S-5149 be approved and the permit be issued by the Mica Supervisory Area to the Applicant, subject to the following condition:

- Prior to approval, Applicant and the Inland Northwest Council of Boy Scouts of America shall submit to the IDL their written agreement regarding the use of Gotham Bay to be incorporated by reference into the encroachment permit. Adherence to this agreement shall be a requirement of the permit.

This is a final order of the agency.

DATED this 30th day of August, 2007.



GEORGE B. BACON
Director

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that on this 30th day of August, 2007, I caused to be served a true and correct copy of the foregoing document, by the method indicated:

- | | |
|---|---|
| Nick Crema
Idaho Department of Lands
954 W. Jefferson
Boise, ID 83720-0050 | <input type="checkbox"/> U.S. Mail, postage prepaid
<input checked="" type="checkbox"/> Hand Delivery
<input type="checkbox"/> Federal Express
<input type="checkbox"/> Facsimile: _____
<input type="checkbox"/> Statehouse Mail |
| Mr. Jim Magnuson
1250 Northwood Center Ct
Coeur d'Alene, ID 83814 | <input checked="" type="checkbox"/> U.S. Mail, postage prepaid
<input type="checkbox"/> Hand Delivery
<input type="checkbox"/> Federal Express
<input type="checkbox"/> Facsimile: _____
<input type="checkbox"/> Statehouse Mail |
| Mr. Steven Hersrud
10776 N. Magic Ct.
Hayden, ID 83835 | <input checked="" type="checkbox"/> U.S. Mail, postage prepaid
<input type="checkbox"/> Hand Delivery
<input type="checkbox"/> Federal Express
<input type="checkbox"/> Facsimile: _____
<input type="checkbox"/> Statehouse Mail |
| Mr. Jes W. Erling
7508 North Heartland Drive
Coeur d'Alene, ID 83814 | <input checked="" type="checkbox"/> U.S. Mail, postage prepaid
<input type="checkbox"/> Hand Delivery
<input type="checkbox"/> Federal Express
<input type="checkbox"/> Facsimile: _____
<input type="checkbox"/> Statehouse Mail |
| Mr. Tim McCandless
411 W. Boy Scout Way
Spokane, WA 99201 | <input checked="" type="checkbox"/> U.S. Mail, postage prepaid
<input type="checkbox"/> Hand Delivery
<input type="checkbox"/> Federal Express
<input type="checkbox"/> Facsimile: _____
<input type="checkbox"/> Statehouse Mail |
| Jackie McNamara
5223 S Catamaran
Harrison, ID 83833 | <input checked="" type="checkbox"/> U.S. Mail, postage prepaid
<input type="checkbox"/> Hand Delivery
<input type="checkbox"/> Federal Express
<input type="checkbox"/> Facsimile: _____
<input type="checkbox"/> Statehouse Mail |

Barbara A. Dennis
PO Box 2323
Coeur d'Alene, ID 83816

- U.S. Mail, postage prepaid
- Hand Delivery
- Federal Express
- Facsimile: _____
- Statehouse Mail

Dick L. Swart
1021 N. 2nd St.
Coeur d'Alene, ID 83814

- U.S. Mail, postage prepaid
- Hand Delivery
- Federal Express
- Facsimile: _____
- Statehouse Mail

Scott W. Reed
PO Box A
Coeur d'Alene ID 83816

- U.S. Mail, postage prepaid
- Hand Delivery
- Federal Express
- Facsimile: _____
- Statehouse Mail

Linda VanFleet
733 E. Pine Ridge Dr.
Harrison, ID 83833

- U.S. Mail, postage prepaid
- Hand Delivery
- Federal Express
- Facsimile: _____
- Statehouse Mail

Laurie A. Frank
1968 E. Gotham Bay Road
Harrison, ID 83833

- U.S. Mail, postage prepaid
- Hand Delivery
- Federal Express
- Facsimile: _____
- Statehouse Mail

Bev Twillmann
15143 S. Asbury Rd.
Harrison, ID 83833

- U.S. Mail, postage prepaid
- Hand Delivery
- Federal Express
- Facsimile: _____
- Statehouse Mail

Linda Johnson
12881 S. Stormy Point Lane
Harrison, ID 83833

- U.S. Mail, postage prepaid
- Hand Delivery
- Federal Express
- Facsimile: _____
- Statehouse Mail

David H. Wardsworth
9261 S. Gozzer Road
Harrison, ID 83833

- U.S. Mail, postage prepaid
- Hand Delivery
- Federal Express
- Facsimile: _____

Tom E. Little
1427 E. Gotham Bay Road
Harrison, ID 83833

- Statehouse Mail
- U.S. Mail, postage prepaid
- Hand Delivery
- Federal Express
- Facsimile: _____
- Statehouse Mail

Howard L. Harder
593 E. Pine Ridge Dr.
Harrison, ID 83833

- U.S. Mail, postage prepaid
- Hand Delivery
- Federal Express
- Facsimile: _____
- Statehouse Mail

Sylvia B. Lampard
31545 S. Highway 97
Harrison, ID 83833

- U.S. Mail, postage prepaid
- Hand Delivery
- Federal Express
- Facsimile: _____
- Statehouse Mail

James J. Norconk, Jr.
901 E. Pine Ridge Dr.
Harrison, ID 83833

- U.S. Mail, postage prepaid
- Hand Delivery
- Federal Express
- Facsimile: _____
- Statehouse Mail

Tamera L. Fredy
1009 N. Adkins Dr.
Post Falls, ID 83854

- U.S. Mail, postage prepaid
- Hand Delivery
- Federal Express
- Facsimile: _____
- Statehouse Mail

Joan Orr
838 N. 7th St.
Coeur d'Alene, ID 83814

- U.S. Mail, postage prepaid
- Hand Delivery
- Federal Express
- Facsimile: _____
- Statehouse Mail

Paul R. Checketts
1803 E. 2nd Ave.
Post Falls, ID 83854

- U.S. Mail, postage prepaid
- Hand Delivery
- Federal Express
- Facsimile: _____
- Statehouse Mail

Jim Trittin
7701 S. Jo Lee Lane
Harrison, ID 83833

- U.S. Mail, postage prepaid
- Hand Delivery
- Federal Express
- Facsimile: _____
- Statehouse Mail

Ryan N. Foses
2665 W. Broadmoore Dr.
Hayden, ID 83835

- U.S. Mail, postage prepaid
- Hand Delivery
- Federal Express
- Facsimile: _____
- Statehouse Mail

Myra M. Sherman
8169 S. Jeni Lane
Harrison, ID 83833

- U.S. Mail, postage prepaid
- Hand Delivery
- Federal Express
- Facsimile: _____
- Statehouse Mail

Chad J. Johnson
PO Box 2791
Post Falls, ID 83877

- U.S. Mail, postage prepaid
- Hand Delivery
- Federal Express
- Facsimile: _____
- Statehouse Mail

Susan M. Allman
12861 S. Stormy Point Lane
Harrison, ID 83833

- U.S. Mail, postage prepaid
- Hand Delivery
- Federal Express
- Facsimile: _____
- Statehouse Mail

Rachel A. Wickham
23516 S. Highway 97
Harrison, ID 83833

- U.S. Mail, postage prepaid
- Hand Delivery
- Federal Express
- Facsimile: _____
- Statehouse Mail

Tom E. Frey
10364 Morris Road
Hayden, ID 83835

- U.S. Mail, postage prepaid
- Hand Delivery
- Federal Express
- Facsimile: _____
- Statehouse Mail

Janet Torline
1802 E. Litten Lane
Harrison, ID 83833

- U.S. Mail, postage prepaid
- Hand Delivery
- Federal Express
- Facsimile: _____
- Statehouse Mail

Todd Lund
6889 S. Svenska Lane
Coeur d'Alene, ID 83814

- U.S. Mail, postage prepaid
- Hand Delivery
- Federal Express
- Facsimile: _____
- Statehouse Mail

Scott S. Dickinson
411 S. 12th St.
Coeur d'Alene, ID 83814

- U.S. Mail, postage prepaid
- Hand Delivery
- Federal Express
- Facsimile: _____
- Statehouse Mail

Charles E. Corsi
Idaho Dept. of Fish and Game
2885 W. Kathleen Ave.
Coeur d'Alene, ID 83815

- U.S. Mail, postage prepaid
- Hand Delivery
- Federal Express
- Facsimile: _____
- Statehouse Mail

Ron Meldrum
18255 E. Nuthatch Lane
Harrison, ID 83833

- U.S. Mail, postage prepaid
- Hand Delivery
- Federal Express
- Facsimile: _____
- Statehouse Mail

James Fedewitz
905 East Kurt Road
Harrison, ID 83833

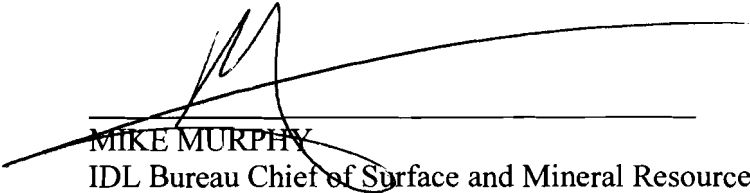
- U.S. Mail, postage prepaid
- Hand Delivery
- Federal Express
- Facsimile: _____
- Statehouse Mail

Mike Denney
Department of Lands
3706 Industrial Avenue South
Coeur d'Alene ID 83815

- U.S. Mail, postage prepaid
- Hand Delivery
- Federal Express
- Facsimile: _____
- Statehouse Mail

George Bacon
Idaho Department of Lands
954 W. Jefferson
Boise, ID 83720-0050

- U.S. Mail, postage prepaid
- Hand Delivery
- Federal Express
- Facsimile: _____
- Statehouse Mail



MIKE MURPHY
IDL Bureau Chief of Surface and Mineral Resources

**BUREAU OF SURFACE AND
MINERAL RESOURCES**

954 West Jefferson
Post Office Box 83720
Boise ID 83720-0050
Phone (208) 334-0200
Fax (208) 334-3698



GEORGE B. BACON, DIRECTOR
EQUAL OPPORTUNITY EMPLOYER

STATE BOARD OF LAND COMMISSIONERS

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

August 24, 2007

MEMORANDUM

TO: George B. Bacon, Director

FROM: Mike Murphy, Bureau Chief, Surface and Mineral Resources

SUBJECT: Reconsideration Hearing – Community Dock for Big Rock Timber & Development, LLC L-95-S-5149

I. INTRODUCTION

The following document, which includes a recommendation for your consideration, was prepared following a reconsideration hearing conducted by the Idaho Department of Lands (IDL). This hearing was conducted in conjunction with the processing of an encroachment permit for a community dock on Lake Coeur d'Alene, a navigable lake in Idaho. Jurisdiction in this matter rests with IDL pursuant to Idaho Code § 58-1303, which empowers the State Board of Land Commissioners to regulate, control, and permit encroachments on, in, or above the beds or waters of the navigable lakes of Idaho.

II. FINDINGS OF FACT

1. On December 22, 2006, Big Rock Timber & Development, LLC (Applicant) submitted to IDL an encroachment permit application (L-95-S-5149) requesting the approval to construct a community dock on Lake Coeur d'Alene. The application is incorporated into this document by reference.

2. IDL initiated the processing of the encroachment permit application as a navigational encroachment pursuant to the Lake Protection Act (Idaho Code § 58-1306) and the associated Rules (IDAPA 20.03.04.030). A public hearing for this application was held on March 14, 2007. Mr. Eric Wilson, IDL Program Manager, served as the hearing coordinator. Mr. Wilson developed a written recommendation, dated April 9, 2007, for consideration by Mr. George Bacon, IDL Director. Mr. Bacon issued a Final Order, dated April 12, 2007, stating that an encroachment permit for a community dock should be issued to Applicant, subject to specific conditions related to the nearby Boy Scout Camp. The Final Order, the written recommendation, and the hearing record are incorporated into this document by reference.

3. A request for reconsideration of the Final Order for Encroachment Application L-95-S-5149 was submitted to IDL by Attorney Mr. Scott Reed dated April 30, 2007. The letter indicated Mr. Reed was representing Mr. James J. Norconk, Jr. and additional members of the public that attended the initial public hearing. The grounds for reconsideration cited in the letter were: safety concerns with the Boy Scout Camp, Fish and Game testimony, parking and road safety, water rights issues, dock size, riparian ownership, and disregarded hearing testimony. The letter of request is incorporated

into this document by reference.

4. In a letter dated May 9, 2007, IDL notified the following parties that a reconsideration hearing for Encroachment Application L-95-S-5149 would be held:

- Mr. Tim McCandless;
- Mr. Jim Trittin;
- Ms. Jackie McNamara;
- Mr. Dick Swart;
- Mr. James Norconk, Jr.;
- Ms. Joan Orr;
- Ms. Sylvia Lampard;
- Ms. Tamera Freddy;
- Mr. Paul Checketts;
- Mr. Jes Erling;
- Ms. Bev Twilman;
- Mr. David Wardsworth;
- Mr. Tom Little;
- Mr. Howard Harder;
- Mr. Steven Hersrud;
- Ms. Linda Johnson;
- Mr. Scott Reed;
- Ms. Linda Van Fleet;
- Ms. Laurie Frank;
- Mr. Ron Meldrum;

- Mr. James Fedwitz;
- Mr. James Magnuson; and
- Applicant.

These individuals testified at the original public hearing held on March 14, 2007. The letter is incorporated into this document by reference.

5. A reconsideration hearing for Encroachment Application L-95-S-5149 was held at 6 pm on May 29, 2007 in IDL's Coeur d'Alene staff office. Mike Murphy, Bureau Chief of Surface and Mineral Resources, acted as the hearing coordinator. In attendance were Mike Denney, IDL Area Manager; Mr. Carl Washburn, IDL Navigable Waters Specialist; Applicant and several members of the public. The transcript of the hearing is incorporated into this document by reference. IDL also received written comments from several individuals eligible to testify at the hearing. These letters are incorporated into this document by reference. A multi-media presentation was presented by Mr. Norconk.

6. The testimony provided by the public, both in verbal and written form, can be summarized by reviewing the points made by Mr. Scott Reed, attorney for the parties which called for the public hearing. According to Mr. Reed and the collective testimony of the objecting parties, the following issues surround the potential permitting of the community dock:

- **Navigation** – The presence of the community docks will increase boat traffic in Gotham Bay and will impact use of the bay by the Boy Scout Camp. This will increase the burden of the marine patrol.

- **Fish Habitat and Aquatic Life** – The community dock will be placed in front of the outlet to Gotham Bay and will impact Kokanee spawning. IDL ignored previous Fish and Game testimony.
- **Recreation** – The recreational use of the bay will be adversely impacted by the presence of the encroachment and the associated boats.
- **Aesthetic Beauty** – Applicant has recently violated the Kootenai County Site Disturbance Ordinance by removing vegetation from the shoreline associated with the proposed community dock. The size of the proposed community dock was not limited based on its impact on private property, fish habitat, aquatic life and aesthetic beauty.
- **Water Quality** – The presence of the additional boats and potential fuel spills associated with the proposed community dock will adversely impact water quality.
- **On-Shore Impact** - The presence of the community dock will create an unsafe situation where pedestrian traffic will need to cross Highway 97 to reach the proposed community dock. IDL did not consider parking and pedestrian safety. Additionally IDL did not consider established water rights.

Because of the issues delineated above, Mr. Reed and the testifying objectors requested that the application for the proposed community dock be denied.

7. Mr. Jim Magnuson, attorney representing Applicant, provided testimony indicating that although any existing water rights issues will be resolved, they are outside of the jurisdiction of the encroachment permitting process. Mr. Magnuson

indicated that Applicant has worked with ITD and Kootenai County regarding pedestrian traffic, vehicle traffic and parking and have obtained the appropriate subdivision approvals which consider these issues. Mr. Magnuson indicated that Fish and Game has provided no testimony which indicates the proposed community dock will adversely impact fish habitat. Mr. Magnuson indicated that Applicant and the Boy Scout have reached a cooperative agreement related to boat traffic, safety and interactions with the Boy Scout camp.

III. CONCLUSIONS OF LAW

1. The Idaho Board of Land Commissioners (Board) is designated in Idaho Code § 58-104(9) and § 58-1303 to regulate, control and permit encroachments on, in, or above the beds of navigable lakes in the state of Idaho. IDL is the administrative agency of the Board, as per Idaho Code § 58-119.

2. Lake Coeur d'Alene is a navigable lake as defined by Idaho Code § 58-1302(a). Pursuant to IDAPA 20.03.04.011.02, encroachments of any kind on, in, or above the beds of a navigable lake require a permit prior to encroaching on the lake.

3. Gotham Creek is not a navigable stream as recognized by the State of Idaho, and is therefore outside the jurisdiction of IDL. The Idaho Department of Water Resources administers the Stream Channel Protection Act (Title 42, Chapter 38, Idaho Code) which may apply to Gotham Creek.

4. Pursuant to Idaho Code § 58-1301, lake encroachments must be regulated to

protect property and the lake value factors of navigation, fish and wildlife habitat, aquatic life, recreation, aesthetic beauty, and water quality. These values must be given due consideration and weighed against the navigational or economic necessity or justification for, or benefit to be derived from, the proposed encroachment.

5. IDL shall make decisions on proposed encroachments in accordance with the Public Trust Doctrine as set forth in Idaho Code § 58-1201 through 1203. This statute protects the property rights of private land owners, including the ability to utilize their riparian rights as a means to access the waters of the navigable lakes of Idaho.

6. IDL shall also make decisions on proposed encroachments in accordance with the Public Trust Doctrine as explained by the Idaho Supreme Court in Kootenai Environmental Alliance, Inc. v. Panhandle Yacht Club, Inc., 105 Idaho 622, 671 P.2d 1085 (1983) (KEA) and subsequent cases. The court in KEA stated that encroachment permits and submerged land leases remain subject to the public trust, and are not irretrievable commitments. The court in KEA also stated that mere compliance of IDL with its' legislative authority is not sufficient to determine if their actions comport with the requirements of the public trust doctrine.

7. IDAPA 20.03.04.015.03b limits the surface decking area of a community dock to seven (7) square feet per lineal foot of shoreline owned by the applicant. The applicant in this instance owns 441.15 feet of littoral frontage. The proposed dock has 3,081 square feet, which is in compliance with the cited rule.

8. IDAPA 20.03.04.060.05 establishes a twenty-five (25) foot setback from adjacent littoral property for community docks. The applicant's dock will be 41 feet from the eastern property line and 131 feet from the western property line, so this standard appears to have been met.

9. The Idaho Department of Fish and Game stated a concern that the design of the dock should be changed so it would not act as a breakwater. The applicant stated that the dock would be floating and would not contain a breakwater under the dock.

10. When permitting community docks, no authority is delegated to IDL over roads, road safety, and parking areas, and the applicant has satisfied the requirements of the Idaho Transportation Department, the Eastside Highway District, and the Kootenai County Planning and Zoning Commission.

11. Idaho law, including Idaho Code § 58-1301 *et. seq.* (the Lake Protection Act), delegates no authority to IDL for the regulation of boats and water craft. Water craft are regulated by the United States Coast Guard through the Idaho Department of Parks and Recreation and local County Sheriff's Departments.

12. Kootenai County Waterways Ordinance No. 279D, Section 6 - Limits for Certain Waterways establishes a 5 mph "no-wake" zone within 100' of shoreline, docks, and structures for Lake Coeur d'Alene.

13. Applicant and IDL satisfied all procedural requirements in the processing of the application included in Idaho Code § 58-1306 and IDAPA 20.03.04.

IV. HEARING COORDINATOR CONCLUSIONS AND RECOMMENDATIONS

According to the Lake Protection Act all navigational encroachments must be regulated in order to protect the public health, safety, and welfare (Idaho Code § 58-1301). In order to properly exercise that regulatory authority, IDL must weigh the protection of property, navigation, fish and wildlife habitat, aquatic life, recreation, aesthetic beauty, and water quality against the navigational and economic necessity of the encroachment. In processing Applicant's request for a community dock encroachment permit, IDL has successfully met the obligations set forth in the Lake Protection Act as demonstrated by the record established in the original public hearing. This is further demonstrated by the record established in this reconsideration hearing process including the following responses to the objections outlined by Mr. Reed and the collective objecting parties:

- **Navigation**

Objection: The presence of the community docks will increase boat traffic in Gotham Bay and will impact use of the bay by the Boy Scout Camp. This will increase the burden of the marine patrol.

Response: IDL recognizes that anytime a new single-family, two-family, community or commercial dock is permitted, it will have some impact on navigation. This impact, however, has to be balanced by the public's right to use public waterways and the ability of littoral property owners to "wharf out" to extent

allowed by the Lake Protection Act. Existing Idaho law, including the Lake Protection Act and the associated IDAPA Rules, does not provide IDL with the authority to limit the number of encroachments on a given navigable lake. Absent changes to existing Idaho law, the public must rely on county zoning and comprehensive planning or perhaps other local, state or federal agencies to regulate development densities. Additionally IDL has no statutory authority to regulate boat traffic.

- **Fish Habitat and Aquatic Life**

Objection: The community dock will be placed in front of the outlet to Gotham Bay and will impact Kokanee spawning. IDL ignored previous Fish and Game testimony.

Response: All testimony provided by Idaho Fish and Game was considered. Although the testimony of the public may differ, IDL must rely extensively on “sister” agencies such as Idaho Fish and Game to provide the technical assistance necessary to make informed and consistent permitting decisions. Idaho Fish and Game provided no testimony or evidence suggesting that the proposed community dock should not be permitted due to impacts on fish habitat and aquatic life.

- **Recreation**

Objection: The recreational use of the bay will be adversely impacted by the presence of the encroachment and the associated boats.

Response: IDL recognizes that anytime a new single-family, two-family,

community or commercial dock is permitted, it will have some impact on recreation. This impact, however, has to be balanced by the public's right to use public waterways and the ability of littoral property owners to "wharf out" to extent allowed by the Lake Protection Act. Existing Idaho law, including the Lake Protection Act and the associated IDAPA Rules, do not provide IDL with the authority to limit the number of encroachments on a given navigable lake.

- **Aesthetic Beauty**

Objection: Applicant has recently violated the Kootenai County Site Disturbance Ordinance by removing vegetation from the shoreline associated with the proposed community dock. The size of the proposed community dock was not limited based on its impact on private property, fish habitat, aquatic life and aesthetic beauty.

Response: IDL has no jurisdiction above the ordinary high water mark of navigable lakes in Idaho and any violations of the Kootenai County Site Disturbance Ordinance have no bearing on the encroachment permitting process.

Applicant's property contains 441.15 feet of littoral frontage, which according to IDAPA 20.03.04.015.03.b, allows a maximum community dock of 3,088 square feet. The proposed community dock is less than 3,088 square feet. IDAPA 20.03.04.015.03.b does allow IDL to limit the ultimate size of a proposed community dock based on public trust values. In this case, however, those public trust values have been evaluated against the installation of the proposed community dock and IDL finds no compelling evidence or measurable benefit in

reducing the proposed square footage of the community dock.

- **Water Quality**

Objection: The presence of the additional boats and potential fuel spills associated with the proposed community dock will adversely impact water quality.

Response: IDL recognizes that anytime a new single-family, two-family, community or commercial dock is permitted, it will have some impact on water quality. This impact, however, has to be balanced by the public's right to use public waterways and the ability of littoral property owners to "wharf out" to extent allowed by the Lake Protection Act. IDL must rely on "sister" agencies such as the Idaho Department of Environmental Quality (DEQ) to provide technical insight into the impacts of encroachments and the use of public waterways on water quality. Neither DEQ nor any other agency provided testimony indicating that the installation of this community dock would result in water quality impacts significant enough to warrant permit denial.

- **On-Shore Impact**

Objection: The presence of the community dock will create an unsafe situation where pedestrian traffic will need to cross Highway 97 to reach the proposed community dock. IDL did not consider parking and pedestrian safety. Additionally IDL did not consider established easement and water rights.

Response: Existing Idaho law, including the Lake Protection Act and the associated IDAPA Rules, does not provide IDL with the authority to regulate

traffic or parking related to community docks. IDL and the public must rely on Kootenai County and the Idaho Transportation Department (ITD) to exercise their own authority to ensure the public's safety.

As stated in the hearing coordinator's decision document for the original public hearing, dated April 9, 2007, the easement on privately owned uplands is a property issue between Mr. Norconk and Applicant and has no bearing on the encroachment permitting process.

Based upon the information provided to me as the hearing coordinator and based upon the fact that the encroachment permit application for the community dock meets all the requirements of Idaho Code § 58-1301 *et. seq.* (the Lake Protection Act) and IDAPA 20.03.04, I recommend that the Director of IDL issue a Final Order stating that the Mica Supervisory Area should **approve** the proposed encroachment permit, subject to the following condition:

- Prior to approval, Applicant and the Inland Northwest Council of Boy Scouts of America shall submit to the IDL their written agreement regarding the use of Gotham Bay to be incorporated by reference into the encroachment permit. Adherence to this agreement shall be a requirement of the permit.

DATED this 24th day of August, 2007.



MIKE MURPHY
Hearing Coordinator

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that on this 30th day of August, 2007, I caused to be served a true and correct copy of the foregoing document, by the method indicated:

Nick Krema
Idaho Department of Lands
954 W. Jefferson
Boise, ID 83720-0050

- U.S. Mail, postage prepaid
- Hand Delivery
- Federal Express
- Facsimile: _____
- Statehouse Mail

Mr. Jim Magnuson
1250 Northwood Center Ct
Coeur d'Alene, ID 83814

- U.S. Mail, postage prepaid
- Hand Delivery
- Federal Express
- Facsimile: _____
- Statehouse Mail

Mr. Steven Hersrud
10776 N. Magic Ct.
Hayden, ID 83835

- U.S. Mail, postage prepaid
- Hand Delivery
- Federal Express
- Facsimile: _____
- Statehouse Mail

Mr. Jes W. Erling
7508 North Heartland Drive
Coeur d'Alene, ID 83814

- U.S. Mail, postage prepaid
- Hand Delivery
- Federal Express
- Facsimile: _____
- Statehouse Mail

Mr. Tim McCandless
411 W. Boy Scout Way
Spokane, WA 99201

- U.S. Mail, postage prepaid
- Hand Delivery
- Federal Express
- Facsimile: _____
- Statehouse Mail

Jackie McNamara
5223 S Catamaran
Harrison, ID 83833

- U.S. Mail, postage prepaid
- Hand Delivery
- Federal Express
- Facsimile: _____
- Statehouse Mail

Barbara A. Dennis
PO Box 2323
Coeur d'Alene, ID 83816

- U.S. Mail, postage prepaid
- Hand Delivery
- Federal Express
- Facsimile: _____
- Statehouse Mail

Dick L. Swart
1021 N. 2nd St.
Coeur d'Alene, ID 83814

- U.S. Mail, postage prepaid
- Hand Delivery
- Federal Express
- Facsimile: _____
- Statehouse Mail

Scott W. Reed
PO Box A
Coeur d'Alene ID 83816

- U.S. Mail, postage prepaid
- Hand Delivery
- Federal Express
- Facsimile: _____
- Statehouse Mail

Linda VanFleet
733 E. Pine Ridge Dr.
Harrison, ID 83833

- U.S. Mail, postage prepaid
- Hand Delivery
- Federal Express
- Facsimile: _____
- Statehouse Mail

Laurie A. Frank
1968 E. Gotham Bay Road
Harrison, ID 83833

- U.S. Mail, postage prepaid
- Hand Delivery
- Federal Express
- Facsimile: _____
- Statehouse Mail

Bev Twillmann
15143 S. Asbury Rd.
Harrison, ID 83833

- U.S. Mail, postage prepaid
- Hand Delivery
- Federal Express
- Facsimile: _____
- Statehouse Mail

Linda Johnson
12881 S. Stormy Point Lane
Harrison, ID 83833

- U.S. Mail, postage prepaid
- Hand Delivery
- Federal Express
- Facsimile: _____
- Statehouse Mail

David H. Wardsworth
9261 S. Gozzer Road
Harrison, ID 83833

- U.S. Mail, postage prepaid
- Hand Delivery
- Federal Express
- Facsimile: _____
- Statehouse Mail
- U.S. Mail, postage prepaid

Tom E. Little
1427 E. Gotham Bay Road
Harrison, ID 83833

- Hand Delivery
- Federal Express
- Facsimile: _____
- Statehouse Mail

Howard L. Harder
593 E. Pine Ridge Dr.
Harrison, ID 83833

- U.S. Mail, postage prepaid
- Hand Delivery
- Federal Express
- Facsimile: _____
- Statehouse Mail

Sylvia B. Lampard
31545 S. Highway 97
Harrison, ID 83833

- U.S. Mail, postage prepaid
- Hand Delivery
- Federal Express
- Facsimile: _____
- Statehouse Mail

James J. Norconk, Jr.
901 E. Pine Ridge Dr.
Harrison, ID 83833

- U.S. Mail, postage prepaid
- Hand Delivery
- Federal Express
- Facsimile: _____
- Statehouse Mail

Tamera L. Fredy
1009 N. Adkins Dr.
Post Falls, ID 83854

- U.S. Mail, postage prepaid
- Hand Delivery
- Federal Express
- Facsimile: _____
- Statehouse Mail

Joan Orr
838 N. 7th St.
Coeur d'Alene, ID 83814

- U.S. Mail, postage prepaid
- Hand Delivery
- Federal Express
- Facsimile: _____
- Statehouse Mail

Paul R. Checketts
1803 E. 2nd Ave.
Post Falls, ID 83854

- U.S. Mail, postage prepaid
- Hand Delivery
- Federal Express
- Facsimile: _____
- Statehouse Mail

Jim Trittin
7701 S. Jo Lee Lane
Harrison, ID 83833

- U.S. Mail, postage prepaid
- Hand Delivery
- Federal Express
- Facsimile: _____
- Statehouse Mail
- U.S. Mail, postage prepaid

Ryan N. Foses
2665 W. Broadmoore Dr.
Hayden, ID 83835

- Hand Delivery
- Federal Express
- Facsimile: _____
- Statehouse Mail

Myra M. Sherman
8169 S. Jeni Lane
Harrison, ID 83833

- U.S. Mail, postage prepaid
- Hand Delivery
- Federal Express
- Facsimile: _____
- Statehouse Mail

Chad J. Johnson
PO Box 2791
Post Falls, ID 83877

- U.S. Mail, postage prepaid
- Hand Delivery
- Federal Express
- Facsimile: _____
- Statehouse Mail

Susan M. Allman
12861 S. Stormy Point Lane
Harrison, ID 83833

- U.S. Mail, postage prepaid
- Hand Delivery
- Federal Express
- Facsimile: _____
- Statehouse Mail

Rachel A. Wickham
23516 S. Highway 97
Harrison, ID 83833

- U.S. Mail, postage prepaid
- Hand Delivery
- Federal Express
- Facsimile: _____
- Statehouse Mail

Tom E. Frey
10364 Morris Road
Hayden, ID 83835

- U.S. Mail, postage prepaid
- Hand Delivery
- Federal Express
- Facsimile: _____
- Statehouse Mail

Janet Torline
1802 E. Litten Lane
Harrison, ID 83833

- U.S. Mail, postage prepaid
- Hand Delivery
- Federal Express
- Facsimile: _____
- Statehouse Mail

Todd Lund
6889 S. Svenska Lane
Coeur d'Alene, ID 83814

- U.S. Mail, postage prepaid
- Hand Delivery
- Federal Express
- Facsimile: _____
- Statehouse Mail

Scott S. Dickinson
411 S. 12th St.
Coeur d'Alene, ID 83814

- U.S. Mail, postage prepaid
- Hand Delivery
- Federal Express
- Facsimile: _____
- Statehouse Mail

Charles E. Corsi
Idaho Dept. of Fish and Game
2885 W. Kathleen Ave.
Coeur d'Alene, ID 83815

- U.S. Mail, postage prepaid
- Hand Delivery
- Federal Express
- Facsimile: _____
- Statehouse Mail

Ron Meldrum
18255 E. Nuthatch Lane
Harrison, ID 83833

- U.S. Mail, postage prepaid
- Hand Delivery
- Federal Express
- Facsimile: _____
- Statehouse Mail

James Fedewitz
905 East Kurt Road
Harrison, ID 83833

- U.S. Mail, postage prepaid
- Hand Delivery
- Federal Express
- Facsimile: _____
- Statehouse Mail

Mike Denney
Department of Lands
3706 Industrial Avenue South
Coeur d'Alene ID 83815

- U.S. Mail, postage prepaid
- Hand Delivery
- Federal Express
- Facsimile: _____
- Statehouse Mail

George Bacon
Idaho Department of Lands
954 W. Jefferson
Boise, ID 83720-0050

- U.S. Mail, postage prepaid
- Hand Delivery
- Federal Express
- Facsimile: _____
- Statehouse Mail



MIKE MURPHY
IDL Bureau Chief of Surface and Mineral Resources