

GEORGE B. BACON
Director
Idaho Department of Lands
300 N. 6th St., STE 103
P.O. Box 83720
Boise, Idaho 83720-0050

BEFORE THE STATE BOARD OF LAND COMMISSIONERS
STATE OF IDAHO

In the Matter of;)
)
Encroachment Permits No. L-95-S-5303) **FINAL ORDER**
North Idaho Maritime and Murphy Marine)
Construction)
)
Applicants)
_____)

I. NATURE OF PROCEEDINGS/ISSUES

A public hearing was held on October 16, 2008 at 6:00 pm PST at the IDL Staff Office in Coeur d'Alene, Idaho. Eric Wilson served as Hearing Coordinator. The Hearing Coordinator issued his Recommendations on November 6, 2008.

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 October 16, 2008.
- 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 piling and log booms, placed on navigable waters require a permit issued by the Idaho 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

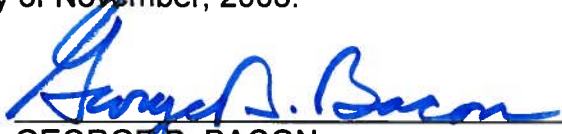
I concur with the Conclusions of Law presented by the Hearing Coordinator.

IV. FINAL ORDER

On the basis of the record, it is my order that Encroachment Permit L-95-S-5303 be denied. Furthermore, it is my order that the Mica Supervisory Area shall issue a temporary permit to authorize the current use as a seasonal dock storage area from November of 2008 through May of 2009 pending a long term resolution of this issue. In addition, the Mica Supervisory Area shall work with Applicants to have all of their unauthorized encroachments, structures, and debris removed from Cougar Bay. Lastly, it is my order that IDL pursue a comprehensive plan for management or removal of the piling and log booms in Cougar Bay.

This is a final order of the agency. If the Applicant, or a party who appeared at the hearing, is aggrieved by the director's final decision, they shall have the right to have the proceedings and final decision of the director reviewed by the district court in the county in which the encroachment is proposed. A notice of appeal must be filed within thirty (30) days from the date of the final decision in accordance with IDAPA 20.03.04.030.09.

DATED this 17 day of November, 2008.



GEORGE B. BACON
Director

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that on this 17th day of November, 2008, I caused to be served a true and correct copy of the foregoing document, by the method indicated:

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Ben Yursa, Secretary of State
Lawrence G. Wasden, Attorney General
Donna M. Jones, State Controller
Tom Luna, Sup't of Public Instruction

November 6, 2008

MEMORANDUM

TO: George B. Bacon, Director

FROM: Eric Wilson, Navigable Waters/Minerals Program Manager

SUBJECT: Public Hearing – Encroachment L-95-S-5303 for North Idaho Maritime and Murphy Marine Construction.

I. INTRODUCTION

The following document, which includes a recommendation for your consideration, was prepared following a public hearing conducted by the Idaho Department of Lands (IDL). The public hearing was conducted in conjunction with the processing of an encroachment permit (L-95-S-5303) in Cougar Bay on Lake Coeur d'Alene, a navigable lake in Idaho. The application proposes a ten (10) acre area for the winter storage of docks and for the temporary storage of other structures prior to dismantling and off-lake disposal.

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 July 28, 2008, North Idaho Maritime and Murphy Marine (Applicants) submitted to IDL an encroachment permit application (L-95-S-5303) requesting approval to construct an encroachment on Lake Coeur d'Alene. The application is incorporated into this document by reference.

2. Brix Maritime Co., formerly Foss Maritime, currently has the log storage area proposed to be used by North Idaho Maritime under encroachment permits 95-S-0164 and L-95-S-3009 and submerged lands lease B-2186.

3. L-95-S-5303 proposes to reconfigure existing log booms and pilings in Cougar Bay to serve as a ten (10) acre storage area. Other structures, such as boat garages and float homes, would also be temporarily stored for dismantling and then removal from the lake for disposal. Each applicant would use a five (5) acre area.

4. IDL initiated the processing of L-95-S-5303 as an encroachment pursuant to the Lake Protection Act (Idaho Code § 58-1306) and the associated Rules (IDAPA 20.03.04.030). On August 4th, 2008 and August 11th, 2008, IDL published the required Notice of Application in the Coeur d'Alene Press newspaper for the encroachment permit applications submitted by Applicants. The Notice of Application is incorporated into this document by reference.

5. In a letter dated July 30th, 2008, IDL notified several agencies, organizations, and persons of the encroachment permit applications submitted by Applicants and requested that the parties provide comments to IDL. Those notified included:

- Idaho Department of Fish and Game
- Idaho Department of Environmental Quality
- Idaho Department of Water Resources
- U.S. Army Corps of Engineers
- Panhandle Health District #1
- Kootenai County Parks, Recreation, and Waterways
- Kootenai County Marine Division
- Kootenai County Building, Planning and Zoning
- Kootenai Environmental Alliance
- Lakes Commission
- Eight (8) littoral landowners in and adjacent to Cougar Bay

The letter is incorporated into this document by reference.

6. IDL received a letter dated August 27th, 2008 from North Idaho Maritime stating that the primary use of the storage area would be for winter storage of docks from Fall to Spring. Debris collected from the lake would also be stored for a few days until it was removed. New docks would also be staged for a few days until they were ready to be installed. Temporary permits would be obtained for demolition of boat garages as they are acquired.

7. IDL received a letter on August 28th, 2008 from Janet Robnett representing Rick Powers, a littoral landowner in Cougar Bay, objecting to the application and requesting a hearing. The letter stated that the proposed encroachment was a hazard to navigation, interfered with the littoral rights of the adjacent land owners, and did not meet the standards required for a nonnavigational encroachment in IDAPA 20.03.04.030.02. The letter is incorporated into this document by reference.

8. IDL received a letter dated September 16th, 2008 from North Idaho Maritime stating that they would be interested in continuing debris clean up on the lake and river to offset any leasing fees.

9. IDL received 14 letters from other adjacent littoral owners, agencies, and members of the public. Objections included a lack of specificity regarding the duration of storage, lack of construction details for the log booms, boat garages and float homes on the north side of Cougar Bay that are outside the designated storage area, development of a floating junkyard by allowing demolition work, poor choice of location in front of existing homes, the location is too far from North Idaho Maritime's facility at Blackwell Island, impacts to navigation, impacts to littoral rights of adjacent land owners, impacts to visual aesthetics, impacts to wildlife, impacts to water quality, existing storage without an appropriate permit, lack of consistency in what the application proposes, lack of adjacent land for removal of debris, lack of detail about debris removal, lack of interaction with the Lake Management Plan, excessive size based on past storage use, nonnavigational nature of the proposal, and the changed uses of the Foss Maritime area require a closer look at any new proposed uses. Supporting comments stated a need for Kootenai County Parks and Waterways to temporarily store structures, a need for seasonal dock storage, water depths were better suited at the proposed location than the previously proposed location, and the location away from nearby conservation areas is an improvement over previously suggested locations. These letters are incorporated into this document by reference.

10. Based on the request by Ms. Robnett, and in accordance with IDAPA 20.03.04.030, IDL initiated a public hearing process for the proposed encroachment. The public hearing was scheduled for October 16th, 2008 at 6:00 pm at the IDL office in Coeur d'Alene. On September 27th, 2008 and October 4th, 2008 IDL published the required Notice of Hearing in the Coeur d'Alene Press. The Notice of Hearing is incorporated into this document by reference.

11. A letter from IDL dated September 23rd, 2008 notified the following agencies and individuals of the scheduled hearing:

- Idaho Department of Fish and Game
- Idaho Department of Environmental Quality
- Idaho Department of Water Resources
- U.S. Army Corps of Engineers
- Panhandle Health District #1
- Kootenai County Parks, Recreation, and Waterways
- Kootenai County Marine Division
- Kootenai County Building, Planning, and Zoning
- Kootenai Environmental Alliance
- Lakes Commission
- Eight (8) littoral landowners in and adjacent to Cougar Bay

The letter is incorporated into this document by reference.

12. This application was originally assigned the number L-95-S-3615C. This number assignment was in error, and a memo in the file dated September 4th, 2008 indicates the new number for the permit is L-95-S-5303. This does not materially affect the

application, the public involvement process, or the review of the application.

13. On October 16th, 2008 IDL held a public hearing at 6:00 pm in IDL's Coeur d'Alene office. Mr. Eric Wilson, Navigable Waters/Minerals Program Manager, served as hearing coordinator. In attendance were Jarrod Kovosh, IDL Navigable Waters Technician; Mike Denney, IDL Mica Supervisory Area Manager; Mr. John Condon, representing Applicant North Idaho Maritime; Mr. Fred "Skip" Murphy, representing Applicant Murphy Marine Construction; and forty five (45) members of the public. The public hearing was recorded on audio tape and was subsequently transcribed. The transcript of the public hearing is incorporated into this document by reference.

a. The Applicants, through the testimony of Mr. Condon and Mr. Murphy, provided a brief overview of the project. Mr. Condon stated that the Applicants want to provide a service and create some jobs by creating a dock storage area where log storage formerly occurred. Ninety percent (90%) of North Idaho Maritime's revenue was gone with the closed sawmills. The log storage area would be cleaned up, and they would keep ten (10) acres for dock storage use. The exact location of the storage area is not too important. Permission from Brix Maritime would be obtained for the use of the piling. The prevailing currents and winds bring debris into Cougar Bay from the rest of the lake. A temporary permit was obtained this year for disposal of boat garages and other structures. Lights in the log storage area are not maintained as they once were due to the expense and lack of log storage income. Dock demolition at sites around the lake is not generally feasible because those work areas are not confined and the debris would not be contained. A location closer to their land facility would be better, but public input from the previous application caused him to relocate it to the previously used area. Mr. Condon believes the permit is for a navigational encroachment. Mr. Murphy stated that he has stored docks since 1941. The weather prevents year-long dock use at many sites around the lake. Approximately 100 to 150 docks are stored per year from mid-October through mid-May. The docks are boomed up in Cougar Bay. Permission was obtained from Foss Maritime seven (7) to eight (8) years ago. They have used the same location as that in the proposed permit. Noncommercial uses of the lakes are escalating to the detriment of commercial lake uses. Barges or tugs are needed to access many houses around the lake. The dock companies' access points are limited. Log booms in Cougar Bay have historically prevented development of this area. They need water depths of at least ten (10) feet for dock storage. Debris in Cougar Bay located outside of the booms has drifted in from other sources on the lake. While the location of the storage area is not too critical, the back of the bay (west side) is too shallow and fragile to be effectively used. Murphy's existing site in Casco Bay will be used as a construction area.

b. Testimony in opposition to the project was presented by fourteen (14) agency representatives, adjacent littoral owners, and members of the public.

i. Joanne Wing stated that she did not support any part of the proposed project, but many others supported the concept of dock storage

somewhere in Cougar Bay. Buddy Paul, Robyn Miller, Jerry Carlson, Keith Kroetch, Rick Powers, Edwin Haglund, Donald Gross, Anni Meyer, and Bob MacDonald testified in support of seasonal dock storage somewhere in Cougar Bay. Mr. Haglund stated that docks have been stored in this bay for seven (7) years. Janet Robnett stated that a proper location for the storage area is a key issue, and the proposed location is not appropriate. Mr. Carlson and John Reinhardt suggested moving the storage area northward closer to the North Idaho Maritime facility at Blackwell Island, and placing it more within the bay (westward) so it did not extend out into the lake. Mr. Kroetch stated that the storage area would need water at least ten (10) feet deep so the tugboats could access it. Mr. Gross stated that a temporary permit was issued earlier in the year for storage of sheds and other structures. Mr. Powers questioned whether or not some of the currently stored materials were functional docks, and showed many photos of half-sunk and broken docks. He also stated that the current activities in Cougar Bay are unpermitted.

- ii. Several objectors mentioned the proposed encroachments effect on navigation. Mr. Powers, an adjacent littoral owner, stated that the only access to his property, and others in Cougar Bay, is by boat. Mr. Carlson, Mr. Powers, Mr. Reinhardt, and Ms. Meyer stated the proposed storage area interfered with navigation and the north end of the lake has a lot of boat traffic. Mr. Reinhardt also stated that the log booms are especially a hazard to navigation for boat traffic between Blackwell Island and Casco Bay. He also stated that the lights on the booms are not working on a regular basis, and he has seen frequent accidents involving the log booms and their escaped contents. Mr. Powers stated that he frequently runs into debris that has broke loose from the log booms. Mr. Haglund stated that the log booms and no wake zone make Cougar Bay a safe and desirable location for small watercraft.
- iii. Some testimony indicated that the historic uses in the bay should not be used to justify the proposed use. Ms. Wing and Ms. Robnett stated that the historic log storage was a different use than the dock storage. Mr. Paul, Mr. Gross, and Ms. Robnett stated that the boat garage and float home rebuilding or demolition is a departure from the historic use of the area, and would likely increase the amount of debris that accumulates in the bay. Mr. Powers stated that the current activities in the permitted log storage area are not related to log storage.
- iv. Debris in the bay was a common concern due to environmental impacts to the lake and adverse impacts to aesthetics. Kurt Pavlat stated that the Bureau of Land Management cannot support the current application because the debris situation in Cougar Bay would get worse if the application was approved. Mr. Gross stated that the booms sometimes break and release their contents, and that some structures fall apart when being towed to the storage area. This debris may have a negative impact

on the lake. Ronald Fritz stated that the debris generated from the proposed activities was his main concern, and not the dock storage area. Ms. Miller, Ms. Meyer, and Greg Delavan suggested requiring the permittee to continue cleaning up debris as Foss Maritime has done over the last few years. Mr. Paul, Ms. Miller, Mr. Carlson, Mr. Kroetch, and Mr. MacDonald stated that they did not support the storage and dismantling of boat garages and float homes due to the visual impacts and potential environmental impacts of demolition activities. Mr. Paul stated that a debris portal was needed, but he did not think this was the best place. Mr. Powers and Ms. Wing stated that the barges, cranes, docks under construction, and other equipment stored in the bay were unsightly. Ms. Wing stated that the equipment stored in the bay was a potential source of pollution due to the oil, fuel, and hydraulic fluids they use. Mr. Reinhardt stated the potential for pollution from fuel and oil was great with all the equipment storage.

- v. Wildlife impacts were frequently mentioned partly due to the many osprey that nest and perch on the piling. Mr. Carlson stated that osprey fledged at the site this fall. Mr. Haglund stated that 22 osprey nests were present this year. He also stated that Foss Maritime had helped to create nesting platforms in the log storage area. Ms. Miller stated that a bald eagle nest is within a quarter mile of the proposed site. A nature preserve is present in the back part of the bay and many of those testifying stated that the storage area should be kept away from it. Ms. Miller and Mr. Pavlat stated that the Nature Conservancy, the Bureau of Land Management, and others have invested a considerable amount of time, effort, and money in protecting Cougar Bay, and the proposed encroachment puts these investments at risk.
- vi. Some testimony related to technical aspects of the proposed encroachment. Roberta Larsen and Janet Robnett stated that the application lacked specificity and consistency, especially in sections 6 and 8. Ms. Miller stated that the permit was too vague. Ms. Larsen also stated that time frames and disposal methods are needed for the structures. Ms. Robnett stated that the encroachment is nonnavigational and therefore has a higher standard for approval. Mr. Powers also stated the log booms were nonnavigational and should be removed because they offer no benefit to the public trust.
- vii. Many different opinions on the future use of Cougar Bay were presented in testimony. Ms. Robnett stated that a more holistic approach for management of Cougar Bay is needed. Ms. Miller stated that all the piling in Cougar Bay must be kept and protected. Mr. Haglund stated that the piling in the bay was good for the osprey. Brett Bowers stated that removing the piling would greatly increase boat speeds in the area, which is a no-wake zone. Mr. Powers stated that all the log booms should be removed from the bay, and a larger scale plan for Cougar Bay is needed.

Mr. Reinhardt stated that the booms and piling outside the bay should be removed. Ms. Wing stated that all piling in the bay should be removed.

c. Six (6) members of the public spoke in support of the project. Bob Bjelland, Mark Hall, and Oscar Mooney stated that Cougar Bay has worked well in the past for the proposed activities and should continue to be used. A storage area for docks and debris is needed at the north end of the lake. Kurtis Robinson stated that log storage has occurred in Cougar Bay for over 90 years. Growth in the area has increased demand for docks and construction services. Mr. Robinson also stated that three other dock storage areas are permitted in Harrison Slough, Powderhorn Bay, and Rockford Bay, but the nearest storage area is fourteen (14) miles from Coeur d'Alene. Mr. Mooney stated that docks and debris have always come down the lake and accumulated in Cougar Bay, especially during floods. Cougar Bay is a no wake zone, and the proposed activities will not affect wildlife. According to Mr. Mooney, the Osprey are tolerant of slow moving, or working, boats. They do not, however, like fast moving boats.

d. Several letters, slideshows, maps, and photos were given to IDL prior to and during the public hearing. All of these materials are incorporated into this document by reference. Many of these materials were from those who testified, and they generally restated the testimony described above. Some of the submitted materials were from those who did not testify. The written testimony is summarized as follows:

- i. As with the oral testimony, many people supported the concept of dock storage somewhere in Cougar Bay. Elizabeth Cowles and David Larsen testified in support of seasonal dock storage somewhere in Cougar Bay. Ms. Cowles suggested placing the storage area more within the bay (westward) so it did not extend out into the lake. John Brewer stated that the storage area should be closer to North Idaho Maritime's marina. Julie Dalsaso stated that dock storage should take place on uplands owned by the Applicants. Pat Behm stated that no storage should take place without specific plans to remove trash that accumulates.
- ii. The other proposed uses in the application were not supported. Mr. Larsen stated that except for temporary dock storage, the uses proposed will turn the area into a long-term junkyard. Joan Murphy stated that demolition activities should not take place in the bay, and derelict docks should not be stored. Barry Rosenberg stated that the proposed permit had no tangible public benefit. Ms. Dalsaso and Jeri Sahlin stated that debris should be removed from the bay, and not stored in it. Mr. Behm stated that existing debris floating unsecured in Cougar Bay came from materials that escaped from the storage area over the years.
- iii. Several objectors mentioned the proposed encroachments effect on navigation. Ms. Cowles stated that the existing log booms are a hazard

and boating accidents were common in the past. Mr. Rosenberg and Joan Murphy stated that the storage area would be a navigational hazard. Ms. Sahlin stated that the construction traffic generated on the lake would be a safety hazard for those recreating on the lake.

- iv. Aesthetics were also raised as an issue for year-long storage. Ms. Cowles stated that tourism and property values could be negatively affected by the storage area. Ms. Murphy and Mr. Brewer also stated that their property values could be negatively affected in Cougar Bay. Mr. Behm and Ms. Sahlin stated that machinery storage and construction activities should not take place in Cougar Bay.
 - v. Water quality and impacts to wildlife were mentioned in many of the written materials. Eric Thomson of the Bureau of Land Management, Mr. Rosenberg, and Ms. Sahlin stated that the proposed use will add to the pollution and degradation of Cougar Bay. Ms. Murphy stated that a commercial operation in the bay could have negative environmental impacts. Ms. Dalsaso stated concerns about pollution from treated wood products, petroleum spills, and demolition debris associated with the proposed activities.
 - vi. A lack of specificity in the application was mentioned by Mr. Larsen. He stated that sections 6 and 8 of the application are too vague. He also stated that the permit mentions nothing about corralling loose and broken logs, although it was mentioned in a newspaper article.
- e. In conjunction with the public hearing, several attendance cards were filled out with comments. The comments on the cards stated the same concerns and views that were stated in the previously described written and oral comments. These cards are incorporated into this document by reference.
14. The proposed storage area has been used for at least seven (7) years to store docks over the winter. This was stated by both the Applicants and some objectors. No mention was made of complaints regarding previous seasonal dock storage.
15. A need for winter dock storage is demonstrated through the testimony given and the fact that it has occurred for the last seven (7) years.
16. The proposed location is in front of several littoral owners. The diagram provided by Mr. Reinhardt shows the dock storage area 260 feet offshore of the closest adjacent littoral owner.
17. The single-family docks south of the proposed storage area extend approximately 100 feet into to the lake.
18. Many of the objectors, including some of the adjacent littoral owners, support the

concept of winter dock storage in Cougar Bay.

19. Cougar Bay has some unique public trust values such as wildlife and recreation use due to the nature preserves created on the west side of the bay, the designation as a no-wake zone, and the presence of a log storage area.

20. No assignments of permits or the lease have been made from Brix Maritime Co. to North Idaho Maritime.

21. The proposed storage of docks and other structures is a different use than that of the current log storage use permitted to Brix Maritime Co.

22. Aerial photos and photos from the lake show a small storage area enclosed by log booms is located on the eastern shoreline of the Nature Conservancy's Cougar Bay Preserve. This appears to be outside the boundaries of the permitted log storage area and the proposed dock storage area, and is unpermitted.

23. Equipment storage and other unpermitted uses are present based on written and oral testimony from Mr. Powers, Mr. Reinhardt, Mr. Behm, Ms. Wing, and Ms. Sahlin.

24. A temporary permit was issued by IDL to North Idaho Maritime this summer for the temporary storage and demolition of boat garages and float homes.

25. The existing piling and booms extend outside the confines of Cougar Bay, as shown in the presentations and photos given by Mr. Powers and Mr. Reinhardt.

26. Warning lights on the log booms or piling are not being maintained as they once were based on testimony from Mr. Condon, the applicant, and Mr. Reinhardt.

27. Mr. Powers and Mr. Reinhardt testified that the log booms in Cougar Bay have been involved with many boating accidents through the years.

28. No details were provided in the application regarding how the piling and log booms would be maintained, replaced, or repositioned.

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 20.03.04.012.02, encroachments of any kind on, in, or above the beds of a navigable lake require a permit prior to encroaching on the lake.

3. 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.
4. 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.
5. 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 Supreme Court in KEA determined that public trust uses include those of fish and wildlife habitat, recreation, aesthetic beauty, and water quality. 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.
6. The Applicants' letters dated August 27th and September 16th, 2008 did not substantively alter the application, and the public involvement process was not significantly affected by the submission. Many of the public comments stated concerns that these letters addressed.
7. Idaho Code § 58-1302(h) and IDAPA 20.03.04.010.15 define navigational encroachments as docks, piers, jet ski and boat lifts, buoys, pilings, breakwaters, boat ramps, channels or basins, and other facilities used to support water craft and moorage on, in, or above the beds or waters of a navigable lake.
8. Idaho Code § 58-1302(i) and IDAPA 20.03.04.010.16 define nonnavigational encroachments as all encroachments on, in, or above the beds or waters of a navigable lake, including landfills, bridges, utility and power lines, or other structures not constructed primarily for use in aid of navigation.
9. IDAPA 20.03.04.030.02 states that nonnavigational encroachments will normally not be approved by the Department and will be considered only in cases involving major environmental, economic, or social benefits to the general public, and approval under those circumstances is authorized only when consistent with the public trust doctrine and when there is no other feasible alternative with less impact on public trust values.
10. IDAPA 20.03.04.015.05.a states that boat garages are nonnavigational encroachments.
11. Float homes do not support water craft or moorage, and are therefore

nonnavigational encroachments.

12. The proposed encroachment appears to have characteristics of both navigational and nonnavigational encroachments. The winter storage of docks supports moorage on Lake Coeur d'Alene and is a navigational encroachment. Boat garages and float homes, however, are nonnavigational encroachments and storage, demolition, and reconstruction of them is therefore a nonnavigational activity. While the Applicants believe the encroachment is navigational, the rationale set forth by Ms. Robnett and Mr. Powers supports the designation of the proposed encroachment as nonnavigational.

13. The nonnavigational uses of the proposed encroachment do not provide major environmental, economic, or social benefits to the general public, and other alternatives with less impact on public trust values are feasible. Both the Applicants' own facilities that have associated upland properties and these facilities could be used for the nonnavigational uses. This would also move these activities approximately one-half mile away from several adjacent littoral owners and eliminate the visual blight the activities create.

14. Idaho Code § 58-1302(g) and IDAPA 20.03.04.010.20 define the line of navigability as a line located at such distance waterward of the low water mark established by the length of existing legally permitted encroachments, water depths waterward of the low water mark, and by other relevant criteria determined by the board when a line has not already been established for the body of water in question.

15. IDAPA 20.03.04.010.34 states that littoral right lines extend out to the line of navigation.

16. The existing single-family docks near the proposed storage area indicate that the line of navigability is approximately 100 feet from the ordinary high water mark. The proposed storage area is approximately 260 feet offshore of the closest adjacent littoral area, which places it beyond the littoral right lines of the littoral owners. The proposed storage area is outside of the objectors' littoral rights, and as a result the proposed storage area does not interfere with the objectors' littoral rights.

17. The existing piling and log booms are currently under permit to Brix Maritime Co., formerly Foss Maritime, for log storage. Overlapping permits for the same pilings and log booms, but for different uses, would confuse the issues of ownership and responsibility for the removal or upkeep of the encroachments.

18. The small storage area along the eastern shoreline of the nature preserve is not permitted. Other unpermitted uses exist in the bay, as stated by Mr. Powers.

19. 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

As stated by some of the hearing participants, an overall plan is needed to address the existing encroachments in Cougar Bay. Piecemeal permitting runs a risk of failing to address specific issues and concerns. In addition, some of the current activities are unpermitted. These noncompliance issues must be addressed prior to any new encroachment permit applications being considered. A real need for seasonal dock storage is demonstrated, but a different permanent location is needed for this storage. More details about the storage and how it will be designed and managed are also needed. Any application that may meet IDL's standards for approval of an encroachment permit should contain the following information:

- A clear transfer of authority over, and responsibility for, the respective piling and log booms from Brix Maritime to the local companies;
- Storage area that was confined to Cougar Bay and did not extend into the lake;
- A lighting plan;
- Log boom construction details;
- Maintenance plan for log booms and lights;
- Information on impacts to existing Osprey nest and planned mitigation;
- Lake cleanup to help offset the use of public trust lands;
- Timelines for storage and removal of structures and debris, especially debris that accumulates in Cougar Bay.

Based upon the information provided to me as the hearing coordinator, the fact that the piling and log booms are already permitted to a different company, the fact that potential violations are occurring in Cougar Bay, and the fact that the application does not meet the requirements of Idaho Code § 58-1301 *et. seq.* (the Lake Protection Act) and IDAPA 20.03.04.030.02, I recommend that the Director of IDL issue a Final Order stating that the Mica Supervisory Area of IDL should **deny** the encroachment permit application submitted by the Applicants. Furthermore, the Mica Supervisory Area should issue a temporary permit to authorize the current use as a seasonal dock storage area from November of 2008 through May of 2009 pending a long term resolution of this issue. Except for log and debris storage activities that have been performed by Foss/Brix Maritime Co. in the past, and any outstanding Temporary Permits, no other uses are authorized. All other nonnavigational structures and equipment must be removed from the permitted log storage area within 60 days of this decision. Lastly, I recommend that IDL pursue a comprehensive plan for management or removal of the piling and log booms in Cougar Bay.

DATED this 6th day of November, 2008.



ERIC WILSON
Hearing Coordinator

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that on this 17th day of November, 2008, I caused to be served a true and correct copy of the foregoing document, by the method indicated:

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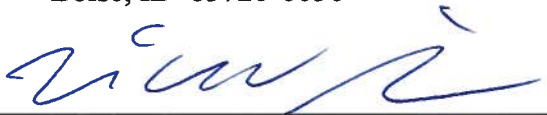
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