

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 Permit No. L-96-S-740) **FINAL ORDER**
Harborview Village Condominium Owners)
Association)
)
Applicant)
_____)

I. NATURE OF PROCEEDINGS/ISSUES

A public hearing was held on August 18, 2009 at 6:00 pm PST at the Idaho Department of Lands Supervisory Office in Coeur d'Alene, Idaho. Eric Wilson served as Hearing Coordinator. The Hearing Coordinator issued his Recommendations on September 15th, 2009.

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 August 18, 2009.
- 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 commercial marinas, placed on navigable waters, and dredging conducted in 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 1 through 8, 14 through 37, and 40 presented by the Hearing Coordinator. However, after careful consideration, I do not concur with Conclusions of Law 9 through 13 and 38 through 39. Approving this permit with the recommended stipulations places too large of a burden on IDL to monitor the activities at Harborview over the next three years. The Applicant is responsible for bringing forward an application that meets the requirements of IDAPA 20.03.02. That has not occurred in this instance. Specifically, this application has the following shortcomings:

1. Application must properly document the dedication of the parking area on the withdrawn condo parcel.
2. Inadequate parking currently exists, and the application does not provide adequate parking. A total of at least thirty five (35) constructed parking spaces are required for the existing marina with twenty (20) float homes and twenty nine (29) boat moorages. Only thirty three (33) spaces currently exist. The application should have supplied thirteen (13) additional parking spaces, for a total of sixty three (63) parking spaces.
3. Application must show the location of all sixteen (16) side ties proposed to be added.
4. Application must show the currently approved layout of the twelve (12) public boat slips in Dock C.
5. Application must show that it is in compliance with local fire codes.

IV. FINAL ORDER

On the basis of the record, it is my order that Encroachment Permit L-96-S-740 **be denied** by the Pend Oreille Supervisory Area.

In addition, the Pend Oreille Supervisory Area office will perform the following:

1. Ensure the terms of the existing submerged lands lease are enforced to include appropriate action and fines for violations related to waste water discharge.
2. Document that boat registration for the house boat between float homes 8 and 9 is obtained by November 1, 2009. If it is not registered by this time, it should be considered an unpermitted, non-navigation encroachment and the Area shall follow up with the appropriate action to resolve this violation.
3. Document by November 1, 2009 that the waste water issue with the house boat located between float homes 8 and 9 has been properly resolved.

4. Meet formally with Kootenai County staff to review their applicable ordinances related to marinas and parking. The goal is to firmly establish the county parking requirements that overlap with those requirements in IDAPA 20.03.04.015.03(c). Uniform implementation of those requirements at all Kootenai County marinas on Lake Pend Oreille should also be discussed.
5. Investigate the Ragan float home and the 20-foot dock extension on a float home to determine if violations have occurred. Any violations will be addressed by working with the marina owner and the float home owners.
6. Examine the boat shed with two (2) boat slips and classify it as a boat garage or slip cover. They will then use the history of the structure with this classification to determine whether it should be approved as is, approved with modifications, or removed from the marina. This must be done prior to writing the permit so Condition 11 above can be documented properly.

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 1 day of October, 2009.



GEORGE B. BACON
Director

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that on this 5th October day of ~~September~~, 2009, I caused to be served a true and correct copy of the foregoing document, by the method indicated:

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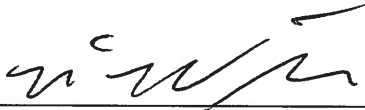
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GEORGE B. BACON, DIRECTOR
EQUAL OPPORTUNITY EMPLOYER

STATE BOARD OF LAND COMMISSIONERS
C. L. "Butch" Otter, Governor
Ben Yursa, Secretary of State
Lawrence G. Wasden, Attorney General
Donna M. Jones, State Controller
Tom Luna, Sup't of Public Instruction

September 15th, 2009

MEMORANDUM

TO: George B. Bacon, Director

FROM: Eric Wilson, Navigable Waters/Minerals Program Manager

SUBJECT: Public Hearing – Navigational Encroachment L-96-S-740 for Harborview Village Condominium Owners Association

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-96-S-740) on Lake Pend Oreille, a navigable lake in Idaho. The application proposes to create twenty eight (28) private float home moorages and three (3) private boat moorages, relocate a boat pump out station, and remove a portion of public boardwalk. 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. Waterford Park Homes, LLC (Waterford) started selling condominiumized upland vehicle parking spaces in 2007. Each parking space was associated with a float home or boat moorage. IDL determined that, under the rules existing at that time, the sale of upland parking with associated float home moorage was outside the jurisdiction of IDL. Those sales continued through 2007, 2008, and into 2009.
2. On April 2, 2008, new rules came into effect (IDAPA 20.03.04) that addressed private moorage at commercial marinas. Float home moorage acquired with the transfer of real property is considered private moorage. In this case, parking spaces

were the real property being sold. This required a new encroachment permit for any private moorage created after April 2, 2008.

3. On June 23rd, 2009, Harborview Village Condominium Owners Association (Applicant) submitted to IDL an encroachment permit application (L-96-S-740) requesting approval to construct encroachments on Lake Pend Oreille. The application is incorporated into this document by reference. Please refer to Attachment 1 for a list of the application materials.

4. L-96-S-740 proposes the following actions:
- a. Converting a portion of the moorage to private use.
 - b. Designating moorage space for eight (8) additional float homes.
 - c. Installing sewer lines for future service.
 - d. Relocating the boat pump out station.
 - e. Providing improved fire protection.
 - f. Changing the approved boardwalk configuration near the proposed pump out station.
 - g. Providing all parking on immediately adjacent uplands.

5. IDL initiated the processing of L-96-S-740 as a navigational encroachment pursuant to the Lake Protection Act (Idaho Code § 58-1306) and the associated Rules (IDAPA 20.03.04.030). The Applicant requested that a hearing be scheduled. On July 18th, 2009 and July 25th, 2009, IDL published a joint Notice of Application and Notice of Public Hearing in the Coeur d'Alene Press newspaper for the encroachment permit application submitted by Applicant. The Notice of Application and Public Hearing is incorporated into this document by reference.

6. In a letter dated July 17th, 2009, IDL notified several agencies, organizations, and persons of the encroachment permit application and the scheduled hearing, 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
- US Army Corps of Engineers
- Kootenai County Parks, Recreation, and Waterways
- Kootenai County Marine Division
- Kootenai County Building & Planning & Zoning
- Kootenai Environmental Alliance
- Panhandle Health District 1
- Tri-State Water Quality Council
- Lakes Commission
- Bayview Chamber of Commerce
- Bayview Water and Sewer
- Bayview Community Council
- Waterford Park Homes, LLC

- U.S. Navy
- JD's Scenic Bay Marina
- Timberlake Fire District

The letter is incorporated into this document by reference.

7. The following substantive comments were received prior to the scheduled public hearing. All the letters and emails are incorporated into this document by reference.

- a. A series of letters and e-mails from bankcda and IDL discussed bankcda's initial objection to the application and then their later withdrawal of objection. Bankcda holds a Deed of Trust on parts of Lots 1, 2, 3, and 4, Block 28, and Lots 1 and 2, Block 24 (Tax #4884), Section 34, Township 54 North, Range 2 West, B.M., Kootenai County, Idaho. This property is owned by Waterford Park Homes, LLC, but the littoral rights were dedicated to the Applicant earlier this year and the building permit for an eight (8) unit condominium project on this parcel was relinquished to allow more room for parking associated with the Harborview Marina. This property will be referred to in this document as the "withdrawn condo parcel". Bankcda initially believed these actions diminished the value of their security. Their letter dated August 18, 2009 withdrew the objections with the understanding that their rights in the security they hold are not compromised. IDL's Deputy Attorney General replied that their security interest was solely a matter between bankcda and the Applicant and had no bearing on IDL's administration of Title 58, Chapter 13, Idaho Code.
- b. A series of letters and e-mails between the Timberlake Fire Protection District (TFPD) and the Applicant and IDL discussed the current status of fire protection at the Harborview Marina and the need for additional upgrades to meet the applicable fire codes. Applicant and TFPD appear to have worked out most of the details related to the current application and fire codes. Applicant will provide TFPD with final standpipe construction drawings for review to make sure they meet code. Applicant will then install the standpipes and sign them appropriately. Fire extinguishers and labeled power shut-offs will also be installed. TFPD will also require that any reorganization of the float home structures include a minimum of six (6) feet of structural separation to provide increased fire protection.
- c. A series of e-mails were exchanged between George Grandy, representing the Bayview Chamber of Commerce, Development Analysis Committee (DAC) and IDL personnel. Mr. Grandy asked several questions related to IDL parking requirements and IDL's approval of "business models". Some questions were sent to the Hearing Coordinator prior to the hearing. The Hearing Coordinator initially thought the questions were in regards to a negotiated rulemaking that was underway at that time. When he discovered that some questions were in regards to Harborview Marina, the Hearing Coordinator responded to Mr. Grandy that such ex-parte communication was not appropriate and those questions were not answered by the Hearing Coordinator. Jim Brady, an IDL Navigable Waters

Specialist, responded to those questions related to Harborview.

- d. Panhandle Health District (PHD) sent a letter dated August 3, 2009 to Doug Schroeder. This letter states that a boat house located between float homes #8 and #9 was connected to a water supply line but not to a sewer line. The Health District stated that if grey or black wastewater was being discharged it would be a serious violation.
 - e. Panhandle Health District sent a letter dated August 12, 2009 to IDL stating that a permit was needed from PHD for the new parking spaces, the Idaho Department of Environmental Quality (DEQ) would need to review and approve the pump out relocation, new float homes would require a capacity verification from Bayview Water and Sewer District, and sewer line repairs should be completed by a licensed plumber in conformance with Plumbing Bureau standards.
 - f. An e-mail dated Friday, July 31, 2009 from Kathi Ellis was received. This e-mail indicated that Fran's Landing may just be stored at Chan's marina for the time being.
 - g. Two (2) hand-written pages of notes and eleven (11) unlabeled photos were submitted to IDL from the Bayview Chamber of Commerce Development Analysis Committee (DAC). Jim Brady provided the Hearing Coordinator with context for the photos. They show the inaccessible pump out dock and an unfinished dock extension at Vista Bay Marina. All other photos were of Harborview. These remaining photos show floating debris stored on site, the current location of Fran's Landing, a houseboat that is discharging gray water and has not been registered as a boat for three (3) years, an unpermitted dock extension on a float home, and a double slip boat shed.
 - h. A letter dated August 17, 2009 from Kootenai County Building and Planning Department (County) to IDL stated that they will require sixty (60) parking spaces for the project. This is in excess of the IDL requirement because the county will now require one (1) parking space for each float home. In addition, a new site disturbance plan will be needed for the proposed on-site parking. Some follow up e-mails between the County and IDL indicate that county ordinances require one (1) off-street parking space per dwelling. The County explained that this was not a new requirement, but it had been overlooked in the past in regards to float homes.
8. On August 18th, 2009 IDL held a public hearing at 6:00 pm in the IDL Staff Office in Coeur d'Alene, Idaho. Mr. Eric Wilson, Navigable Waters/Minerals Program Manager served as hearing coordinator via video conference from Boise. Those attending in Coeur d'Alene were Mr. Jim Brady, IDL Navigable Waters Specialist; Mr. Ed Robinson, IDL Area Manager for Pend Oreille Supervisory Area; Mr. Dennis Scott, representing Applicant; and seventeen (17) 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 Applicant, through the testimony of Mr. Scott, provided a brief description of the project. Mr. Scott stated that the project proposed to privatize a portion of the marina, reduce the length of a permitted but unbuilt boardwalk, relocate a boat pump out station, and install a dry fire line. The Applicant owns the littoral rights and the private submerged lands at the Harborview Marina. The Applicant is a legal condominium association which fulfills one of the requirements for creating private moorage. Condominiums were created with upland parking spaces that are tied to moorages, essentially the same as the privatization approved at Boileau's Marina.

According to Mr. Scott, the proposed privatization covers twenty eight (28) float home moorage sites, and three (3) boat moorages consisting of a two-slip boat shed and a house boat moorage. Sixteen (16) occupied float home moorages, one (1) unoccupied float home moorage, the boat shed, and the house boat moorage have already been sold for a total of nineteen (19) existing private moorages. Four (4) existing float home moorages would also be converted to private moorage, and seven (7) new private float home moorages would be created. The boat shed is connected to sewer, presumably for a toilet. The house boat is not hooked up to sewer, and the Applicant stated it would never be hooked up to sewer because it is a self contained house boat. The Applicant also stated he had no knowledge of any gray or black waste water discharges from the house boat, and that it was a matter between Panhandle Health and the house boat owner. He also stated that problems with the Ragan float home are being worked out with IDL. Float home owners are not being forced to purchase their slips and some are in fact still under lease. Fran's restaurant is being removed from Harborview under a separate permit application, and that will help to create the space needed for the additional float homes. Recent correspondence from the Timberlake Fire Protection District may reduce the number of float homes allowed, but Mr. Scott stated they would like to keep the application for the thirty (30) moorages because the Applicant is not sure how the fire district's requirement will affect the proposed design.

The twenty eight (28) private float homes require fifty six (56) public boat moorages, and the three (3) private boat moorages require three (3) additional public boat moorages for a total of fifty nine (59) public boat moorages required by the IDL rules. Twenty six (26) public boat moorages currently exist and fifty two (52) are permitted. Sixteen (16) seasonal side ties near the boardwalk would also be added with this application, which would bring the public moorage up to a total of sixty eight (68). Eight (8) of the side ties would be on the boardwalk, and the other eight (8) would be adjacent to the landward slips of the boatsheds. Mr. Scott stated that they were negligent in not showing the eight (8) side ties adjacent to the slips in the application. These side ties are located on the landward side of the first fingers of Docks A and B. They would have a seasonal use restriction due to the nearby spawning gravels. Mr. Scott then explained that fifty nine (59) equivalent private boat slips and sixty eight (68) public slips would

create fifty four (54) percent public use. The similar size and quality requirement is not pertinent because of the predominance of the float home moorages and the new condition of the public boat slips.

Mr. Scott then explained that while the slip numbers fulfill the IDL rules, the issue of privatization at Harborview is complex because some moorages had already been privatized prior to the adoption of the current IDAPA regulations. The proposed application must therefore recognize these prior actions and propose how to implement the future plans for the marina. Twenty six (26) public boat slips currently exist and twelve (12) side ties are also available to the public for a current total of thirty eight (38) existing public boat slips. Nineteen (19) moorages consisting of sixteen (16) float homes, one (1) empty float home site, a boat shed, and a house boat moorage have been sold. Four (4) additional float home moorages are currently rented. The rented float home moorages each offset one (1) of the private float home moorages, so only fifteen (15) float home moorages need to be offset by two public boat moorages. This requires thirty (30) public boat moorages, so four (4) additional float home moorages could therefore be sold and the public use would still be fifty (50) percent. C and D docks are planned to be built prior to the permit expiring.

Mr. Scott then discussed the proposed parking plan for the new facility. The building permit for a condominium project has been forfeited so the space can be used to provide more parking for Harborview. With thirty (30) float home moorages and sixty eight (68) boat moorages, a total of ninety eight (98) moorages would require forty nine (49) parking spaces. They have room to provide fifty (50) parking spaces, so they claimed to have met the IDL requirements of one parking space per two (2) moorages. Mr. Scott stated that ideally sixty four (64) parking spaces would be available for use at Harborview. The county would like to require one (1) parking space per float home, but they do not have an ordinance that states this requirement. At the current time the county just has an opinion and not any rules. The Applicant did state support for a stipulation to abide by local parking requirements.

The current approved permit includes a boardwalk from the Dock A access to the county boat ramp. This application proposes to eliminate this boardwalk except for a 30-foot section approximately 60 feet northward from Dock A, be located near the boat ramp on the seawall. A five-foot ladder would be present to provide upland access. The previously approved location, which was criticized by members of the public, was on the east end of Dock A and required navigation through the marina. The new location is more accessible but could only be used seasonally because of the location. A pump out at Boileau's could be used instead during the off season. Gates will be installed at each boat shed to provide security, and these gates are not prohibited by the IDAPA regulations. Designs for dry fire lines and fire extinguishers are being reviewed by the local fire district to satisfy their requirements. The Applicant stated that formal approval is expected from the fire chief.

b. Public testimony focused on parking, ownership of the new parking area, other needed permits, inadequate fire protection, lack of a public restroom, public moorage being less than fifty (50) percent, the pump out station, sewer lines, Fran's restaurant, noncompliance issues, grandfathering of private moorage, moorage quality issues, complications associated with approval, bankcda's interest, and the late addition of eight (8) more side ties.

- i. **Parking.** George Grandy, representing the Bayview Chamber of Commerce, stated that the Applicant claims fifty (50) total parking spaces are available, twenty five (25) of which have been committed to the condominiums. Mr. Grandy also stated that forty six (46) or less parking spaces may be possible, and sixty four (64) total parking spaces are actually required. Twenty three (23) or twenty five (25) of the committed spaces have been sold. The sold spaces are private and may not be used by anyone else. Some spaces are already signed as reserved. With the addition of the new side ties, thirty four (34) public parking spaces are required but only twenty five (25) spaces may be available for public use. Bob Brooke stated that the county is requiring sixty (60) spaces, and IDL should use that standard because their rules require deference to local ordinances. Mr. Brooke also objected to the public parking spaces being smaller than the private parking spaces. Jamie Berube questioned whether or not handicapped parking was available.
- ii. **Ownership of New Parking Area.** Ken Saunders questioned the ownership of the lower parking area and stated that he was not aware it was owned by Harborview Village Condominiums. Richard Nixon, with bankcda, stated that the property was owned by Waterford Park Homes.
- iii. **County Permits.** Mr. Grandy and Mr. Brooke stated that a new site development permit from the county is needed for the parking lot that replaces the condominium. Skip Wilcox stated that all the upland plans should be approved by the county prior to state approval. Mr. Saunders stated that parking is unresolved without the county permits.
- iv. **Fire Protection.** Mr. Grandy and Mr. Brooke stated that the proposed parking areas have poor access for firefighting equipment. Mr. Wilcox stated that the permit should not be approved until fire codes are met. Mr. Saunders stated that the number of float homes possible with the 6-foot fire safety separation is unresolved. Mr. Brooke stated that the fire suppression systems on the docks are inadequate.
- v. **Restroom.** Mr. Grandy and Mr. Wilcox stated that a public restroom for this marina is needed but not provided. Ms. Berube stated that handicapped accessible public restrooms were needed.
- vi. **Public Moorage Percentage.** Mr. Wilcox stated that the permit should be denied until Docks C and D are built and the public moorage is more than

fifty (50) percent. Prior to the late addition of the eight (8) more public side ties, the existing public moorage is forty three (43) percent and private moorage is fifty seven (57) percent. If the application is approved, the Applicant will have thirty five (35) percent public and sixty five (65) percent private because Docks C and D are not constructed yet. When all the docks are built, the public moorage would be 48.8 percent and private moorage would be 51.2 percent. The addition of eight (8) more side ties would put them over fifty (50) percent public. Mr. Saunders stated that fifty (50) percent public moorage needs to be resolved and phasing needs to be specified. Mr. Brooke also stated that Docks C and D need to be built and the project should be sequenced because the public/private percentages are not in compliance. The three (3) year deadline for construction of these docks is 12/26/10, so they must be built by November of next year.

- vii. **Pump Out Station.** Mr. Wilcox stated that the permit should not be approved until the pump out station is operational to avoid the Vista Bay situation. Mr. Saunders and Mr. Brooke stated that the proposed pump out location is not favorable because it is not accessible at low water. Mr. Brooke stated that a five-foot ladder is the only access from the land, and it should be built as currently permitted. He also suggested that the presence of a pump out station at Boileau's is immaterial.
- viii. **Sewer Lines.** Mr. Wilcox stated that the permit should not be approved until the sewer line upgrades previously approved have been implemented.
- ix. **Fran's.** Mr. Wilcox stated that the permit should not be approved until Fran's restaurant is moved. Mr. Brooke thought the plan was premature because Fran's move has not been approved.
- x. **Noncompliance.** Mr. Wilcox and Mr. Brooke stated that the permit should not be approved until the oversized (Ragan) float home and the 20-foot dock extension without permit are addressed. Ms. Berube also stated that the Ragan float home must be addressed prior to any other approvals. Mr. Wilcox also stated that the house boat discharging gray water must be addressed and that the float home dock extension is an impediment to navigation. Mr. Wilcox also stated that a diver went down to look at the house boat, and confirmed that sink water was draining into the lake. The diver also observed a two-inch line bypassing the holding tank, but was unable to determine where it went. Mr. Wilcox and Ms. Berube stated that the Applicant was behind in lease payments to IDL. Ms. Berube questioned why this application was even coming to a hearing with all the noncompliance issues.
- xi. **Grandfathering of Private Moorage.** Kathi Ellis questioned whether the entire Harborview Village Condominium Association was grandfathered, or

just those units sold prior to April 2, 2008. She then went on to say that if all the private moorages were grandfathered then the hearing would not be held. She also asked questions related to an opinion given by the Attorney General's office regarding grandfathering and if more float home moorages were sold than were permitted. Only twenty one (21) float homes are currently permitted at Harborview, but twenty three (23) condominium memberships have been sold. The memberships are only available to float home owners. Ms. Ellis stated that twelve (12) memberships were sold prior to April 2, 2008, and eleven (11) memberships were sold after this date. Copies of deeds were submitted to document these sales, and are incorporated into this document by reference. She then stated that this does not agree with the Applicant's statement that nineteen (19) float home moorages and one (1) boat shed were sold prior to April 2, 2008. Ms. Ellis also stated that the Applicant now proposes to privatize a total of thirty (30) float home moorages, but the condominium documents only have twenty five (25) parking units. Five (5) additional condominium units would have to be added.

- xii. **Quality of Moorage.** Mr. Saunders stated that quality issues are unresolved because a float home with a view of the lake is not the same as two side ties with a view of the pump out station.
- xiii. **Complications Associated With Approval.** Mr. Saunders stated that approval would require too much follow up by IDL. A clear approval or denial is needed to limit IDL's ongoing involvement.
- xiv. **Bankcda's Interest.** Mr. Nixon stated that bankcda had withdrawn their objections. Mr. Brooke stated that the previous letters indicated the bank has a deed of trust on the property, and the severance of the littoral rights would result in their foreclosure on the property. With twenty five (25) condominium owners, Mr. Brooke stated foreclosure would be a mess. Ms. Berube stated that the condominium association could not own the littoral rights if it has a debt to bankcda.
- xv. **Eight Side Ties.** Mr. Grandy stated that the effect of the eight (8) new side ties is to increase the parking requirement by four spaces. Mr. Wilcox stated that since they did not get a chance to review the eight (8) additional side ties they do not think they should allowed.

9. Several exhibits from the Applicant and members of the public were given to IDL on the night of the hearing. All of the written materials are incorporated into this document by reference.

10. Deed copies supplied by Kathi Ellis show thirteen (13) deeds for fourteen (14) condominium units were issued prior to April 2, 2008. In addition, nine (9) deeds for nine (9) condominium units were issued after April 2, 2008. This is a total of twenty three (23) sold units. The units numbered 19 and 23 appear to be unsold.

11. The hearing coordinator received two (2) e-mails from Jamie Berube on August 19, 2009 after the record was closed. The hearing coordinator replied with a request to not engage in ex parte communication with the hearing coordinator after the hearing record was closed. In spite of this request, Ms. Berube sent a third e-mail which was not replied to. The content of these e-mails did not go to the merits of the application and have no bearing on the recommendation to be made, and these comments are not being considered in this decision. All of these e-mails are incorporated into this document by reference.

12. Permit L-96-S-74L was the initial approval of the replacement boat sheds for Docks A, B, C, and D. This permit is incorporated into this document by reference. The permit specifically states that Docks A, C, and D each have twelve (12) boat slips. Dock B had fourteen (14) boat slips for a total of fifty (50) boat slips. Twenty (20) float homes were also included. The permit drawings show the existing boat shed with two (2) slips in the current location between float homes 15 and 16, but do not show the house boat where it is currently located between float homes 8 and 9. The boat shed with two (2) slips and the house boat are not specifically mentioned in the application or permit.

13. The current permit, L-96-S-74N, authorizes twenty (20) float home moorages and fifty (50) boat slips. This permit is incorporated into this document by reference. The permit drawings show the existing boat shed with two (2) slips in the current location between float homes 15 and 16, but do not show the house boat where it is currently located between float homes 8 and 9. The boat shed with two (2) slips and the house boat are not specifically mentioned in the application or permit.

14. The Applicant stated that fifty two (52) boat slips are currently approved in Docks A, B, C, and D. That statement was in error. The drawings in L-96-S-74L and L-96-S-74N clearly show fifty (50) boat slips.

15. The Applicant stated that nineteen (19) units have been sold. Those units included seventeen (17) float home moorages, one (1) house boat moorage, and one (1) boat shed with two boat slips. The deeds provided by Kathi Ellis, however, indicate that twenty three (23) units have been sold. The Applicant also stated that four (4) existing float homes moorages are not sold, so the other four (4) sold units must be float home moorages that are not yet permitted. These facts are merely pointed out in the interest of full disclosure.

16. One (1) float home moorage shown on Part D.2 of Attachment 1 is present but not permitted. It is also unoccupied according to the Applicant's testimony. This moorage was not considered to be part of the existing approved permit. It would be included with the proposed changes under review in this document.

17. The Applicant stated that twelve (12) side ties are currently available to the public for rent, and in fact some are rented. The location of these side ties includes the eight (8) side ties along the boardwalk in the application and four (4) side ties along the

shoreward side of Docks A and B that were added at the public hearing.

18. The following table summarizes the **existing** state of moorage at Harborview as described by the Applicant:

	Moorage	Public Boat Moorage Offset	Parking Spaces Needed for IDL Rules
Private	16 Occupied Float Home Moorages	32	8
	1 Vacant Float Home Moorage*	0	0
	1 House Boat Moorage	1	0.5
	1 Boat Shed with 2 Boat slips	2	1
<i>Subtotals</i>	<i>19 Units sold</i>	<i>35</i>	<i>10</i>
Public	4 Occupied Float Home Moorages	8	2
	26 Constructed Boat Slips (A&B)	26	13
	24 Permitted Boat Slips (C&D)	0 (24 when constructed)	0 (12 when constructed)
	12 Side Ties	12	6
<i>Subtotals</i>	<i>4 Float Home Moorages 38 Existing Boat Moorages 24 Unconstructed Boat Moorages</i>	<i>46 (70 when constructed)</i>	<i>21 (33 as above)</i>
Totals	20 Occupied Float Home Moorages, 41 constructed Boat Moorages, 24 Permitted but Unbuilt Boat slips		31 (43 when C & D are constructed)

* This moorage was identified by the applicant, but it is currently not approved by IDL. Only twenty (20) float home moorages are currently approved, and this would make twenty one (21). It cannot be occupied until additional float home moorage is approved by IDL. As a result, no public moorage offset or parking is required for this unoccupied and unapproved moorage space.

19. The existing facility has fifty eight (58) percent public moorage and forty two (42) percent private moorage. This is determined by first using the four (4) public float homes to offset the same number of private float homes, which results in a net amount of twelve (12) private float homes. These private float homes are equivalent to two boat moorages, as per IDAPA 20.03.04.015.03.g. The resulting twenty four (24) equivalent boat moorages are then combined with the three (3) existing private boat moorages for a total of twenty seven (27) equivalent private boat moorages. This number is then compared to the thirty eight (38) public boat moorages that currently exist.

20. The following table summarizes the moorage proposed by the Harborview application at full build out and proposed sale of moorage:

	Moorage	Public Boat Moorage Offset	Parking Spaces Needed for IDL Rules
Private	28 Float Home Moorages	56	14
	1 House Boat Moorage	1	0.5

	1 Boat Shed with 2 Boat slips	2	1
Subtotals	<i>30 Units sold (28 Float home and 3 boat moorages)</i>	59	15.5
Public	50 Boat Slips (A, B, C, & D)	50	25
	16 Side Ties	16	8
Subtotals	<i>66 public boat moorages</i>	66	33
Totals	28 Float Home Moorages, 69 Boat Moorages		49

21. The proposed facility has fifty three (53) percent public moorage and forty seven (47) percent private moorage. This is calculated by first determining that fifty six (56) equivalent private boat moorages result from the private float home moorages, as per IDAPA 20.03.04.015.03.g. These private moorages are then combined with the three (3) private boat moorages for a total of fifty nine (59) equivalent private boat moorages. This number is then compared to the sixty six (66) public boat moorages.

22. IDAPA 20.03.04.015.03(c) states in part "Commercial marinas shall provide a minimum of upland vehicle parking equivalent to one (1) parking space per two (2) watercraft moorages, and one (1) parking space per two (2) float home moorages. Local city or county ordinances governing parking requirements for marinas will apply if such have been enacted."

23. Section 9-17-6(B.1) of the Kootenai County ordinances states in part "The minimum number of off-street parking spaces required for each type of use, or similar use, shall be in accordance with the following list." Furthermore, the ordinance states "If a specific use is not listed for parking standards, then the requirements for the closest similar use shall be used." Marinas are not specifically listed in this ordinance. Section 9-17-6 of the Kootenai County ordinances is incorporated into this document by reference.

24. The two (2) slip boat shed and the house boat have likely been present for at least the last three years, as evidenced by the house boat's expired boat registration, the presence of the boat shed on the 2007 condominium drawings (Sheet 1 in Attachment 1.B), and the presence of the boat shed in the L-96-S-74L drawings.

25. IDAPA 20.03.04.015.10(b) requires an encroachment application for float home relocation.

26. All past due payments related to the Harborview submerged lands lease (B-2052) were made to IDL following the hearing. The lease is incorporated into this document by reference.

27. Term 7A of Attachment A to B-2052 states "Full Compliance. Lessee's use of the leased site and all improvements constructed thereon, shall fully comply with all statutes, ordinances, rules, regulations and laws of applicable federal, state and local

governmental authorities. Lessee shall comply with all applicable rules and regulations and standards currently in effect or hereafter adopted by the Idaho State Board of Land Commissioners or the Idaho Department of Lands.”

28. Term 8A of Attachment A to B-2052 states “Sanitary Requirements. Lessee shall at all times keep the leased site in a clean and sanitary condition, free of trash, noxious weeds, garbage and litter, so that the leased site is maintained in as nearly natural state as possible. Lessee shall not dispose of sewage except in conformity with applicable federal, state, and local laws, rules and regulations pertinent to Lessee's use. The Lessee shall store and dispose of all trash and garbage in conformity with all legal requirements. Lessee is responsible for all costs associated with sewage, garbage and litter disposal.”

29. Idaho Code § 58-1312(2) states “Every person seeking a permit for a navigational or nonnavigational encroachment constructed, replaced or modified on or after January 1, 1975, shall submit a permit application and enter the same permitting process as required for new encroachments.”

30. Article 18 in Attachment 1.E (pages 13 and 14) provides for supplemental declarations and amendments to the master declaration and plat for Harborview Village.

31. IDAPA 20.03.04.015.03(g) states in part “Commercial marinas with private float home moorage shall be required to provide either non-private float home moorage or two (2) public use boat moorages for every private float home moorage in addition to any other required public use boat moorages.”

32. IDAPA 20.03.04.015.03(h) states “When private moorage is permitted, the public moorage must be of similar size and quality as private moorage, except for float home moorage as provided in Paragraph 015.03.g. of these rules.”

33. Any Findings of Fact that are later found to be Conclusions of Law shall be treated as such.

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 Pend Oreille 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. Handicapped parking is not a requirement of IDAPA 20.03.04, and the size of parking spaces is not regulated by IDL.

7. No distinction is made between public moorage and private moorage for the parking requirements in IDAPA 20.03.04.015.03(c). With twenty (20) float homes and forty one (41) boat moorages, thirty one (31) parking spaces are required for the current facility to meet the IDL minimum standards. According to Part D.4 of Attachment 1, the project currently contains thirty three (33) parking spaces, so the minimum requirements of IDAPA 20.03.04.015.03(c) appear to be satisfied for the existing moorage. Twenty five (25) of these spaces are located on the Applicant's property, and eight (8) are located on the withdrawn condo parcel. At full build out, the facility would contain twenty eight (28) float home moorages and sixty nine (69) boat moorages. This would require forty nine (49) parking spaces. According to Part D.6 of Attachment 1, the project would contain fifty (50) parking spaces so the minimum requirements of IDAPA 20.03.04.015.03(c) appear to be satisfied for the proposed project. Twenty five (25) of these spaces are located on the Applicant's property, and twenty five (25) are located on the withdrawn condo parcel.

8. The applicability of Kootenai County (County) parking requirements to marinas is still uncertain. In Kootenai County's list of commercial activities in 9-17-6, a float home's closest similar use is either a hotel room or a cabin under outdoor recreation activities. Either category requires one (1) off-street parking space per unit. Boat moorage, however, is not similar to any of the uses listed in 9-17-6, so it is unclear what the county's parking requirement for boat moorage would be. IDAPA 20.03.04.015.03(c) requires local standards to prevail if they have been enacted. For marinas in Kootenai County, this appears to require IDL to use the county's requirements for float home moorage and IDL requirements for boat moorage.

9. For the twenty (20) existing float home moorages, the Kootenai County ordinance would require twenty (20) parking spaces. For the forty one (41) existing boat moorages, IDAPA 20.03.04.015.3(c) requires twenty one (21) parking spaces. This results in a total parking requirement of forty one (41) spaces. The facility as it exists does not contain sufficient designated parking spaces, although the room exists for their construction in the withdrawn condo parcel. The boating season is now over, and the applicant could construct those parking spaces prior to the next season.

10. For the proposed marina design with twenty eight (28) float home moorages, twenty eight (28) parking spaces would be required. In addition, the proposed sixty nine (69) boat moorages require thirty five (35) parking spaces. This results in a total parking requirement of sixty three (63) spaces. The proposed expansion with fifty (50) parking spaces does not provide sufficient parking. Additional parking could be supplied by the lot also used by Boileau's Marina and located next to the Buttonhook Restaurant (Lots 1 through 15 in Block 23 of Bayview, Idaho). This lot is being expanded to ninety nine (99) spaces, and Boileau's only needs seventy five (75) spaces. The boating season is now over and the applicant will not be constructing C & D Docks this fall, so the thirteen (13) needed parking spaces will not be needed until next season at the earliest. The applicant could designate the additional thirteen (13) parking spaces prior to the next season.

11. IDAPA 20.03.04.015.03(i) requires the Applicant to own and manage the marina, littoral rights, upland property sufficient to maintain and operate a marina, and private submerged land, if present. The littoral rights and private submerged lands are owned by the Applicant, as shown in Attachment 1.G. The original parking lot containing the condominium parking spaces is also owned by the Applicant. A lease or dedication of the withdrawn condo parcel for the Applicant's parking was not provided, but the need for this documentation is unclear. Mr. Nixon stated that the proposed parking lot on the withdrawn condo parcel was owned by Waterford. This is confirmed by the Deed of Trust he provided. Waterford, however, is the declarant of the Harborview Village Condominium Owners Association (Attachment 1.E), is listed as the seller on the deeds provided by Ms. Ellis, and is a member of the condominium association due to Waterford's ownership of some condo units. The Applicant should therefore be able to easily obtain any documentation needed for the dedication of this parking area. If the withdrawn condo parcel becomes unavailable for parking, then the permit could be subject to revocation if replacement parking is not provided.

12. Other county permits may be needed, but IDAPA 20.03.04 does not require county site development permits to precede an encroachment permit.

13. Fire protection is not addressed by IDAPA 20.03.04. The Applicant does appear to have a plan that addresses most of the concerns of the local fire district. Term 9 of the current permit states "This permit does not relieve the Permittee from obtaining additional local or federal permits as required." Term 7A of lease B-2052 requires the lessee to comply with all local ordinances. The 6-foot structure separation is

unresolved, but the applicant will have to work that out with the fire district or risk being in violation of the submerged lands lease.

14. Restrooms are not required by IDAPA 20.03.04. Public restrooms are available at the adjacent county boat ramp.

15. IDAPA 20.03.04.020.05 allows commercial marinas to rearrange their components without going through a full permitting process in certain circumstances.

16. Sold and unoccupied float home moorages do not materially impact the lake or its use. The Hearing Coordinator examined and weighed the evidence concerning this application based on its own merits or shortcomings, and not the Applicant's prior execution of real estate transactions that may have been premature.

17. The application drawings showing fourteen (14) slips in Dock C are in error. Adding more fingers to Dock C would add additional encroachment to the lake. The current application, however, does not discuss increasing the moorage at Dock C from twelve (12) to fourteen (14), the drawings merely depicts fourteen (14) slips. It is unknown if the Applicant actually wants fourteen (14) slips for Dock C because these would be narrower slips similar to those in Dock B. As a result, this permit application cannot be used to gain approval for the two (2) additional slips in Dock C. Since these two (2) slips would not expand the footprint of the marina nor alter its entrances or exits, the Applicant might be able to receive administrative approval under IDAPA 20.03.04.020.05(b) at a later time.

18. Sixteen (16) float home moorages have been sold and occupied and four (4) float homes are still under leases. That adds up to the twenty (20) float homes currently permitted.

19. In addition to the sixteen (16) sold and occupied float home moorages, the Applicant's testimony indicates that one (1) additional unoccupied float home moorage was sold. This unoccupied moorage is not currently approved by a permit. The house boat and two (2) slip boat shed moorages were also sold, for a total of nineteen (19) sold units. As indicated by the twenty three (23) deeds, however, four (4) more unoccupied float home moorages have apparently been sold. That means the Applicant has sold a total of five (5) more float home moorages than are currently permitted. These five (5) unpermitted and unoccupied moorages do not require any additional encroachment on the lake because the existing permitted docks at the marina will be the moorage. The movement of float homes, however, does require a new encroachment application to make sure sanitation can be provided.

20. The facility as it exists now, and when fully built out, provides more than 50% of the moorage to the public as required by IDAPA 20.03.04.015.03(e). If the proposed changes are not implemented properly, however, the marina could have less than 50% public use during a transition time before Docks C and D are constructed. Regardless

of whether or not float home moorage has been sold, additional private float home moorage could not be occupied until sufficient public moorage was available to keep the public use at a minimum of 50%. Only five (5) additional float homes at private moorage could be added to the existing sixteen (16) before Docks C and D would have to be constructed. In addition, since five (5) have already been sold, no other sales should take place until Docks C and D are constructed. This will ensure that future buyers will not be in jeopardy if the additional public moorages are not constructed and they are unable to occupy the private moorage they purchased.

21. The proposed new pump out station would only be usable during the summer months. Off season use, however, is not very high and another pump out station is available at Boileau's on the other side of the county boat ramp. The new location will be better during the summer season because it is close to the county ramp and easily accessible when it is most needed. Access is from the five-foot ladder mentioned by Mr. Brooke, and the water. Since it is a boat pump out station, most access to the pump out will be from a boat. The boardwalk, and adjoining parking lot, will be accessible to the public. While it is a desirable amenity to encourage proper sanitation, a pump out station is not required for commercial marinas by IDAPA 20.03.04.

22. IDAPA 20.03.04 does not require a permit to be implemented prior to the next permit being applied for. If sewer line upgrades are not constructed by the applicable sunset date, then the applicant must reapply for this encroachment.

23. The permitting of Fran's relocation is beyond the scope of this decision. If the relocation is denied and it no longer has a place at Harborview, then it must be removed from the lake.

24. The potential violations associated with the Ragan float home and with a twenty (20) foot dock extension on another float home are beyond the scope of this decision. No factual evidence, aside from photos, regarding the float homes was provided. The legality of the float homes cannot be determined without information from the float home inventory and additional facts. IDL staff at the Pend Oreille Supervisory Area will have to investigate this issue and work with the marina owner and the float home owners to address the noncompliance, if any exists.

25. IDAPA 20.03.17.060.05 allows IDL to assess civil penalties for non-monetary breaches of the lease.

26. The house boat does not require any additional encroachment to be moored at the marina, so its absence from the existing permit does not impact navigation. Aside from some other issues related to registration and waste water, no complaints were received regarding the presence of the house boat. Apparently its moorage space has been overlooked during past permitting activities. In addition, the house boat moorage does not expand the footprint of the marina nor alter its entrances or exits, so it could be approved administratively under IDAPA 20.03.04.020.05(b).

27. The house boat has discharged waste water to Lake Pend Oreille. The letter from Panhandle Health District and testimony from Mr. Wilcox provide convincing evidence that this has occurred. A structure with a water supply line and no sewer line should have alerted the marina owner that something was amiss. The water going down the drain must go someplace, and without a sewer line it must have been discharging waste water to the lake. The Hearing Coordinator believes that the marina owner is responsible for activities that occur within his facility, especially when all hookups must be approved by him.

28. Terms 7A and 8A of lease B-2052 appear to have been breached due to the lack of current boat registration for the house boat and the discharge of waste water from this same vessel. Since these actions appear to be more related to the lease than the encroachment permit, civil penalties under IDAPA 20.03.17.060.05 should be assessed to the Applicant by the Area office. In addition, if this "boat" does not obtain, and keep current, Idaho boat registration, then it should be treated as an unpermitted nonnavigational encroachment.

29. IDAPA 20.03.04.010.06 defines a boat garage as "A structure with one (1) or more slips that is completely enclosed with walls, roof, and doors, but no temporary or permanent residential area."

30. IDAPA 20.03.04.015.05(a) states that boat garages are considered nonnavigational encroachments. IDAPA 20.03.04.015.05(c) states that existing permitted boat garages may be maintained or replaced at their current size.

31. IDAPA 20.03.04.010.12 defines a covered slip as "A slip, or group of slips, with a tubular frame, fabric canopy, and no eaves."

32. IDAPA 20.03.04.015.04(a) states "Covered slips, regardless of when constructed, may not have a temporary or permanent residential area." IDAPA 20.03.04.015.04(c) states "Covered slips with permanent roofs and up to three (3) walls may be maintained or replaced at their current size if they were previously permitted or if they were constructed prior to January 1, 1975. These structures may not be expanded nor converted to boat garages."

33. The boat shed with two (2) slips is an additional encroachment on the lake. The classification of this structure as either a boat garage or covered slips is not certain at the present time. This classification may be important because boat garages are considered nonnavigational encroachments. The history of this structure is also not known, although it appears to have been at this marina for many years. This history and the boat shed's classification will be important facts for determining whether or not it is in compliance. Apparently it has been overlooked during past permitting activities. In addition, this boat shed does not expand the footprint of the marina nor alter its entrances or exits, so the Applicant might be able to receive administrative approval

under IDAPA 20.03.04.020.05(b). No objections were received regarding this structure.

34. Moorage that is sold after April 2, 2008 must go through the encroachment permitting process. Since that permitting process creates an entirely new permit, all encroachments covered by the permit must conform to the current rules as required by Idaho Code § 58-1312(2).

35. The alleged disparity between the current condominium documents and the thirty (30) proposed private parking/moorage units can be easily solved by amending the declaration as provided in the Master Declaration.

36. The requirement for similar moorage is most applicable when comparing boat moorage to boat moorage or float home moorage to float home moorage. Comparing boat moorage to float home moorage is a specific exception for similarity in IDAPA 20.03.04.015.03(h). For this reason, the issue of similar quality does not appear to have merit.

37. IDL is not a party to any deeds of trust involving bankcda. Any deeds of trust that were issued are a private matter between the Applicant and bankcda. To IDL's knowledge, the required littoral rights for the marina are held by the Applicant. A deed of trust by itself does not convey littoral rights. If the Applicant somehow loses those littoral rights, then the permit will be subject to revocation.

38. Several people mentioned that this application has multiple unresolved issues. Many of the attempts to quantify the amount of moorage and parking available were inaccurate, both on the part of the applicant and those who testified. Some people indicated that the unresolved issues should require IDL to deny the application. Others stated that it could be conditioned for approval. One purpose of the public hearing is to collect all the information provided by the applicant and others, and determine whether or not the application is complete, and whether or not it should be approved. IDAPA 20.03.04.030.04(a) suggests that comments on an application can recommend "alternate plans they believe will be economically feasible and will accomplish the purpose of the proposed encroachment without unreasonably adversely affecting adjacent littoral property or public trust values." This suggests that the public review process can be used by members of the public to alter the permit that ultimately results from an encroachment application. IDL has also used stipulations to create a permit that differs from the original application while respecting littoral right lines and adhering to the public trust doctrine.

39. The Applicant added eight (8) additional side ties to the application after submitting it for review and approval. These side ties do not add any additional encroachment to the lake surface. They will have a seasonal restriction due to the proximity to the spawning gravels. The side ties do not expand the footprint of the marina nor alter its entrances or exits, so the Applicant could likely receive administrative approval for them under IDAPA 20.03.04.020.05(b). In addition, they will be available to the public. As stated by Mr. Grandy, the only affect these side ties have

is to increase the parking requirement by four (4) spaces. The additional side ties would also increase the percentage of public use to over 50% for the proposed layout. The addition of the side ties appears to address the stated concerns regarding a perceived shortage of public moorage. Mr. Wilcox, however, stated that since the public was not able to review the additional side ties, they should not be allowed. Public review is an important part of permitting for commercial navigational encroachments. The public benefit of having these side ties should then be weighed against the public benefit of additional public hearings on this application. All other issues aside, two probable outcomes are discussed below.

- a. IDL does not recognize the eight (8) additional side ties and denies this application due to a lack of public moorage. The applicant would resubmit the application with the eight (8) additional side ties. Another hearing would result and much of the same testimony would be given, albeit with slightly different numbers. The revised application would likely be approved because it would then meet the applicable standards. This additional review and hearing process would expend valuable, but limited, public resources.
- b. IDL allows the additional eight (8) sides ties to be included. The application is approved because it meets the applicable standards and it addresses public concerns regarding the amount of public moorage.

On balance, allowing the additional moorage to be included appears to benefit the public trust more than denying the permit based solely on a lack of public input. IDAPA 20.03.04.020.05(b) provides for, and past IDL decisions approved, altering permits beyond the original applications. Repeating the full permitting and hearing process produces little perceived benefit. This Hearing Coordinator cannot see any substantive reason why the additional side ties would be objected to based on concerns related to the public trust doctrine.

40. Any Conclusions of Law that are later found to be Findings of Fact shall be treated as such.

IV. HEARING COORDINATOR CONCLUSIONS AND RECOMMENDATIONS

Based upon the information provided to me as the hearing coordinator, the fact that some parts of this application could be approved administratively without public involvement, the fact that this application has some minor flaws, the timing of construction has implications on compliance in regards to the availability of sufficient public moorage and parking, the lack of facts regarding potential violations related to two (2) float homes, the lack of boat registration for a house boat and its discharge of waste water, I recommend that the Director of IDL issue a Final Order stating that the Pend Oreille Supervisory Area of IDL should approve the encroachment permit application with the following conditions:

1. Applicant will properly document the dedication of the parking area on the withdrawn condo parcel by November 1, 2009.

2. Additional parking must be constructed on the withdrawn condo parcel by May 1, 2010. A total of at least forty one (41) spaces are required for the existing marina.
3. Applicant must designate an additional thirteen (13) parking spaces, for a total of sixty three (63), prior to May 1, 2010. Additional float home moorage may not be occupied, or additional boat moorage provided, until the Applicant provides sufficient parking.
4. Twelve (12) public boat slips are in Dock C, as shown in L-96-S-74N.
5. Private float home moorage may not be occupied if it would result in less than 50% of the total moorage being public. At the current time, only five (5) additional private float home moorages could be occupied, for a total of twenty five (25) occupied float home moorages, prior to additional public moorage being constructed on C and D Docks.
6. No additional moorage may be sold until additional public moorage in either Docks C or D, or both, is constructed.
7. Float home relocations will go through additional permitting activities prior to relocation, as required by IDAPA 20.03.04.015.10(b).
8. Applicant will provide documentation of boat registration and proper waste water disposal for the house boat between float homes 8 and 9 or remove it from the marina by November 1, 2009.
9. A fine of \$500 will be paid by Applicant for violations of the submerged lands lease related to waste water discharge prior to the permit being issued.
10. The Applicant will submit a revised Sheet 6 from Attachment 1.D showing all sixteen (16) side ties to the IDL Area office by November 1, 2009.
11. The permit will specifically list all moorages, including the sixteen (16) side ties desired by the applicant, the house boat moorage, and the boat shed with two (2) boat slips.
12. Applicant will pay an additional \$1,338 for IDL costs associated with processing this application. This is allowed pursuant to IDAPA 20.03.04.020.07(e.ii).

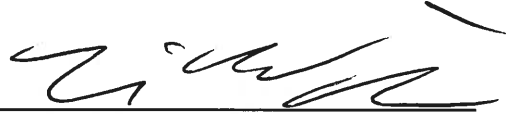
If any of the above conditions are not met, then the permit may be subject to revocation.

In addition, the Area office will perform the following:

1. Meet formally with Kootenai County staff to review their applicable ordinances related to marinas and parking. The goal is to firmly establish the county parking requirements that overlap with those requirements in IDAPA 20.03.04.015.03(c). Uniform implementation of those requirements at all Kootenai County marinas on Lake Pend Oreille should also be discussed.
2. Investigate the Ragan float home and the 20-foot dock extension on a float home to determine if violations have occurred. Any violations will be addressed by working with the marina owner and the float home owners.
3. Examine the boat shed with two (2) boat slips and classify it as a boat garage or slip cover. They will then use the history of the structure with this classification to determine whether it should be approved as is, approved with modifications, or

removed from the marina. This must be done prior to writing the permit so Condition 11 above can be documented properly.

DATED this 15th day of September, 2009.

A handwritten signature in black ink, appearing to read "Eric Wilson", written over a horizontal line.

ERIC WILSON
Hearing Coordinator

Attachment 1
Application Materials for Permit Application L-96-S-740

The application contained the following documents:

- A. Application form. A two page document time stamped June 23, 2009.
- B. Attachment A. A three page document describing the application, privatization of moorage, and how the condominium association is organized.
- C. Attachment B. A two page document describing the boardwalk changes, sewer lines, pump out station, and fire suppression.
- D. Six diagrams. These diagrams are:
 - 1. Vicinity map
 - 2. Current permitted layout of marina
 - 3. Sold parking spaces and assigned float home sites
 - 4. Proposed new float home sites and existing parking spaces
 - 5. Proposed Harborview Parking
 - 6. Parking allocation at Boileau's parking lot
- E. Exhibit A. Master Declaration Submitting Harborview Village to Condominium Ownership and First Phase Supplemental Declaration for Float Home Parking Unit
- F. Exhibit B. Harborview Village Condominiums – Recorded Documents
- G. Exhibit C. Harborview Village – Littoral Rights, Director Resignation and Replacement Appointment to Execute Application Permits

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that on this 5th day of ~~September~~ October, 2009, I caused to be served a true and correct copy of the foregoing document, by the method indicated:

Steve Schuster
Idaho Department of Lands
300 N. 6th St. Ste. 103
PO Box 83720
Boise, ID 83720-0050

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

Dennis Scott
Waterford Park Homes, LLC
PO Box 339
Bayview, ID 83803

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

George Grandy
PO Box 121
Bayview, ID 83803

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

Skip Wilcox
PO Box 716
Bayview, ID 83803

U.S. Mail, postage prepaid
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 Facsimile: _____
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Kathi Ellis
PO Box 255
Bayview, ID 83803

U.S. Mail, postage prepaid
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Ken Saunders
PO Box 297
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Richard A. Nixon
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Coeur d'Alene, ID 83814

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Robert Brooke
2933 East Point Hayden Dr.
Hayden Lake, ID 83835-9537

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Jamie M. Berube
3821 S. Union
Spokane, WA 99206

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Ed Robinson
Idaho Department of Lands
2550 Highway 2 West
Sandpoint, ID 83864-7305

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- Federal Express
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George B. Bacon
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PO Box 83720
Boise, ID 83720-0050

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



ERIC WILSON
IDL Program Manager - Navigable Waters and Minerals