

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

BEFORE THE STATE BOARD OF LAND COMMISSIONERS  
STATE OF IDAHO

In the Matter of;

Encroachment Permit No. L-95-S-5208  
Mica View Estates Homeowners Association, Inc  
  
Applicant.

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**FINAL ORDER**

**I. NATURE OF PROCEEDINGS/ISSUES**

A public hearing was held on September 19, 2007 at 5:00 pm PST at the Idaho Department of Lands office in Coeur d'Alene, Idaho. Eric Wilson served as Hearing Coordinator. The Hearing Coordinator issued his Recommendations on October 15, 2007.

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

- I have read the transcript of the public hearing conducted in Coeur d'Alene, Idaho on September 19, 2007.
- I have reviewed the record including all documents and exhibits.
- I have examined the Hearing Coordinator's Recommendations in light of the entire record.

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

## II. FINDINGS OF FACT

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

## III. CONCLUSIONS OF LAW

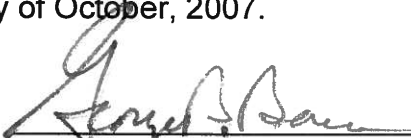
I concur with the Conclusions of Law presented by the Hearing Coordinator.

## IV. FINAL ORDER

On the basis of the record, it is my order that Encroachment Permit L-95-S-5208 be denied. This decision is based on The Regulation of Beds, Water, & Airspace Over Navigable Lakes in Idaho, IDAPA 20.03.04.060.03, and the Idaho Supreme Court in Kootenai Environmental Alliance, Inc. v. Panhandle Yacht Club, Inc., 105 Idaho 622, 671 P.2d 1085 (1983). The hearing officer has determined that the proposed encroachment will have an unnecessary adverse impact on navigation, and the actual location of the proposed dock is not the same as that in the application.

This is a final order of the agency. Any party may file a motion for reconsideration of this final order within twenty (20) days of the date of this final order. The agency will dispose of the petition for reconsideration within thirty (30) days of its receipt, in accordance with IDAPA 20.03.04.030.09.

DATED this 19 day of October, 2007.



\_\_\_\_\_  
GEORGE B. BACON  
Director

## CERTIFICATE OF SERVICE

I HEREBY CERTIFY that on this 19<sup>th</sup> day of October, 2007, I caused to be served a true and correct copy of the foregoing document, by the method indicated:

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GEORGE B. BACON, DIRECTOR  
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**STATE BOARD OF LAND COMMISSIONERS**

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October 15, 2007

**MEMORANDUM**

TO: George B. Bacon, Director

FROM: Eric Wilson, Navigable Waters/Minerals Program Manager

SUBJECT: Public Hearing – Community Dock for Mica View Estates Homeowners  
Association, Inc. L-95-S-5208

**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 for a community dock on Lake Coeur d'Alene, a navigable lake in Idaho. Jurisdiction in this matter rests with IDL pursuant to Idaho Code § 58-1303, which empowers the State Board of Land Commissioners to regulate, control, and permit encroachments on, in, or above the beds or waters of the navigable lakes of Idaho.

**II. FINDINGS OF FACT**

1. On June 28 2007, Mica View Estates Homeowners Association, Inc. (Applicant) submitted to IDL an encroachment permit application (L-95-S-5208) requesting the approval to construct a community dock on Lake Coeur d'Alene. The application is incorporated into this document by reference.

2. IDL initiated the processing of the encroachment permit application as a navigational encroachment pursuant to the Lake Protection Act (Idaho Code § 58-1306) and the associated Rules (IDAPA 20.03.04.030). On July 3, 2007 and July 10, 2007, IDL published the required Notice of Application in the Coeur d'Alene Press for the encroachment permit application submitted by Applicant. The Notice of Application is

incorporated into this document by reference.

3. In a letter dated June 29, 2007, IDL notified the following parties of the encroachment permit application submitted by Applicant and requested that the parties provide comments to IDL:

- 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
- Kootenai County Parks, Recreation, and Waterways
- Kootenai County Marine Division
- Kootenai County Building, Planning, and Zoning
- Lakes Commission
- Kootenai Environmental Alliance
- Jason Plummer, adjacent landowner
- Paul Huetter, Jr., adjacent landowner

The letter is incorporated into this document by reference.

4. IDL received thirty-three (33) letters from agencies, neighbors, and members of the public prior to August 3, 2007, the deadline for hearing requests. All these letters are incorporated into this document by reference.

a. Mr. Perrin Zanck sent an undated letter objecting to the application based on the increased boat traffic stirring up and spreading excess sediment from US 95 construction. The proposed dock would also cause problems with navigation.

b. Mr. Bill and Ms. Pat Swann sent an undated letter stating opposition to the dock due to congestion in Mica Bay and the dock's effect on children from Camp Lutherhaven using the lake.

c. Ms. Jane and Mr. Douglas Salvalalern sent an undated letter objecting to the proposed dock due to boat congestion and the resulting waves increasing sand erosion and impacting swimming and skiing.

d. Mr. Ward and Ms. Joan Simpson sent an undated letter opposing the application due to the applicant's wall construction that restricted public use of Gould's Landing. The applicant may also try to expand the dock in the future, and add more boats to the existing heavy use in Mica Bay. Much of this use is by boaters from outside Mica Bay. Finally, adding a large dock in this area creates a hazard due to the proximity of Camps Lutherhaven and Sweyolakan.

e. Ms. Beth and Mr. Vaughn Paragamian sent an undated letter objecting to the proposed dock due to the increased boat traffic in an already congested area. Two boat launches and the boater's park make Mica Bay a popular destination. The proposed dock will pose a safety risk for non-motorized lake users from Camps Lutherhaven and Sweyolakan.



- f. Ms. Louise Shadduck sent an undated letter objecting to the application.
- g. Mr. Nick and Ms. Roberta Elliott sent an undated letter opposing the application due to the applicant's illegal wall construction. They also stated that the application is illegal, and Mica Bay is one of the few places that non-motorized users can confidently enjoy the lake.
- h. Mr. John Huckabay sent a letter dated July 11, 2007 stating that the proposed dock should only be used by littoral owners and the existing dock on the applicant's land should be removed. Granting the permit would set a dangerous precedent for other owners of unbuildable, littoral property. A single-family dock is more appropriate and less intrusive than the proposed dock.
- i. Ms. Elizabeth Stroschein Ries sent a letter dated July 23, 2007 opposing the proposed dock because it would add to the congestion of the adjacent public launch. The proposed dock is also close to two (2) camps where children regularly canoe. Lastly, the dock is too large for the littoral ownership, and the dock should not be allowed because the littoral property is unbuildable.
- j. Mr. Allan and Ms. Mearle Roy sent a letter dated July 23, 2007 opposing the application because it exceeds the allowed square footage and provides access to non-littoral residents. Mica Bay is already too crowded and more boats would not be safe. Two children's camps are in Mica Bay and the children often sail and canoe in the bay, so more boats in the bay would be a safety hazard.
- k. Ms. Jai K. Nelson sent a letter dated July 23, 2007 opposing the application because it provides moorage to non-littoral owners and sticks too far out into the bay to be safe. The proposed dock is near the mouth of Mica Bay, which is also where Camps Lutherhaven and Sweyolakan are located. Lots of boaters use the bay due to the excellent fishing and water skiing. The proposed dock is also next to Gould's landing, increasing upland congestion and reducing the public's ability to use the public launch. A community dock will decrease water and air quality and otherwise degrade the existing environment.
- l. Ms. Marian and Mr. Tom Flahavin sent a letter dated July 23, 2007 objecting to the application because it provides lake access to non-littoral owners and the proposed dock exceeds the allowed square footage.
- m. Ms. Emmy and Mr. David Bertschi sent a letter dated July 24, 2007 opposing the application due to its proximity to Camps Lutherhaven and Sweyolakan. Campers typically use non-motorized craft and traverse the entire length of the bay. The proposed dock is much larger than the nearby single-family docks and will be a hazard due to its length.
- n. Mr. Jim and Ms. Lovina Yates sent a letter dated July 24, 2007 opposing the application because Mica Bay is a good place for non-motorized use and it

has two youth camps. The proposed dock is also next to Gould's Landing, which will create problems for boat traffic and for parking. Lastly, the dock provides moorage for non-littoral lots.

o. Mr. Patrick Murphy sent a letter dated July 24, 2007 opposing the proposed dock because it will add to the congestion around Gould's Landing and decrease safety. The proposed dock is near the mouth of Mica Bay, as are Camps Lutherhaven and Sweyolakan. These camps have a lot of non-motorized use on the lake and their safety will be at risk. The addition of the proposed dock will not benefit the scores of littoral homeowners nor the hundreds of boaters who currently enjoy Mica Bay.

p. Ms. Cathleen Hobson sent a letter dated July 25, 2007 opposing the application because it will change the character of the lake. The proposed dock is also close to Camps Lutherhaven and Sweyolakan and the increased motorized traffic will be a detriment.

q. Ms. Helen Moyle Johnson sent a letter dated July 25, 2007 opposing the proposed dock because it provides lake access to non-littoral lots. The dock will also be a safety risk because of the many nearby boaters and anglers, and Camps Lutherhaven and Sweyolakan. With two nearby public boat launches and numerous moorage facilities around the lake, the proposed dock is not needed.

r. Mr. Steve Yates sent a letter dated July 25, 2007 opposing the application because it provides lake access to secondary lots. In Rockford Bay, secondary lot access has caused increased milfoil and boat congestion.

s. Ms. Gladys and Mr. Lawrence Peretti sent a letter dated July 25, 2007 opposing the proposed dock due to the proximity of Gould's Landing and increased congestion. The nearby children's camps will also be impacted by the increased boat traffic. Approval of the dock will set a precedent for providing secondary lots access to the lake, and will destroy the natural beauty of the bay.

t. Mr. Paul J. Huetter sent a letter dated July 25, 2007 expressing concerns about the application. The applicant stated the actual dock location was 50 west of that shown on the application. The length of the dock poses a navigational hazard, and does not seem needed because winter use is rare and most single-family docks are partially out of the water in the winter. Even at low water, the depth at the end of the dock would be over 10 feet and most of the structure would be floating.

u. Mr. John Griffin sent a letter dated July 26, 2007 opposing the proposed dock because it provides lake access for non-littoral lots. Over time, more of these types of docks will fill the lake. The dock will also increase boat traffic in an area that is already congested. In addition, camps Lutherhaven and Sweyolakan are nearby and have a lot of non-motorized traffic.

v. Ms. Karen Zanck Chuday sent a letter dated July 26, 2007 stating that she does not support the application due to it's large size and effects on safety. The dock will also be a visual detriment and could adversely impact property values for other residents. The access provided by Gould's Landing should be sufficient and the proposed dock is not needed.

w. J. Roye Ely sent a letter dated July 27, 2007 expressing concern over the proposed dock which will increase road traffic and parking problems near Gould's Landing. Allowing multiple slip docks will also increase overcrowding in the bay.

x. Mr. Patrick Murphy sent a letter dated July 27, 2007 requesting a hearing for the application.

y. Ms. Danforth D. Keating sent a letter dated July 28, 2007 opposing the application because it would provide lake access to secondary lots. The proposed dock violates the rules governing docks. Waterfront access should only be available to those who pay the waterfront property taxes.

z. Mr. Alfred Linn, Ms. Cheryl Barclay Gillespie, and Mr. David W. Gillespie sent a letter dated July 28, 2007 opposing the application because the tranquility of the lake should be preserved. The increased boat traffic will increase the danger to non-motorized lake users from Camps Lutherhaven and Sweyolakan. The wall construction by the applicant has already limited the public's use of Gould's Landing.

aa. Mr. John Ely sent a letter dated July 29, 2007 stating opposition to the proposed dock due to the congestion at Gould's Landing. The safety of non-motorized use in Mica Bay will also be impacted.

bb. Ms. Nanette Swendig sent a letter dated July 29, 2007 opposing the dock because it provides lake access to secondary lots. The dock is too large for the lot's lake frontage, and no parking is available. The lack of parking will adversely affect use of the adjacent launch. The dock is also near Camps Lutherhaven and Sweyolakan and will create safety concerns with the camp users.

cc. Ms. Adrenne Ely sent a letter postmarked July 30, 2007 opposing the application because the dock users will add to the parking and traffic problems at Gould's Landing. Increased gas contamination and noise pollution from big boats will also occur. The proximity to Camps Lutherhaven and Sweyolakan will endanger those non-motorized users. Lastly, it provides lake access to secondary lots.

dd. Mr. Charles Butts sent a letter dated July 30, 2007 opposing the proposed dock because it provides lake access to non-littoral lots. Over time, more of these types of docks will fill the lakes. The proposed dock will also increase boat traffic in an area that is already congested. Camps Lutherhaven and Sweyolakan are also nearby and have a lot of non-motorized traffic.

ee. Mr. Mark and Ms. Jane Prescho sent a letter that was received by IDL on July 30, 2007. This letter opposed the application because the proposed dock is illegal and provides lake access to secondary lots.

ff. Ms. Karin Scott sent a letter dated July 31, 2007 expressing concern about the proposed dock because it represents change that is detrimental to the environment and unsafe.

gg. Mr. John P. Whelan sent a letter dated July 31, 2007 opposing the application because it uses lake frontage on unbuildable land. The proposed dock will also change the use of this area which contains youth summer camps. Lastly, the dock is larger than warranted.

5. Based on Mr. Patrick Murphy's request, and in accordance with IDAPA 20.03.04.030, IDL initiated a public hearing process for the proposed community dock. On August 14, 2007 and August 21, 2007 IDL published the required Notice of Hearing in the Coeur d'Alene Press. A memo dated August 8, 2007 concerning the hearing was also sent to the applicant, Mr. Patrick Murphy, and the same agencies and individuals that received the prior notification of application dated June 29, 2007. The public hearing was scheduled for September 19, 2007 at 5:00 pm at the IDL office in Coeur d'Alene. The Notice of Hearing and the memo are incorporated into this document by reference.

6. IDL received three (3) letters concerning this application between the hearing publication and the date of the hearing. These letters are incorporated into this document by reference.

a. Mr. Cecil W. Hathaway submitted an e-mail letter dated August 30, 2007 protesting the proposed dock due to a homeowners association's lack of supervision and responsibility in policing activities and conduct at the dock. This creates a safety issue for other water users. He also stated that ownership by a homeowners association creates uncertainty in regards to upkeep and taxes.

b. Ms. Theresa Hauenstein sent a letter dated September 5, 2007 expressing concern in regards to the application. The proposed marina will add another safety hazard to the thousands of campers that use the lake. It will also add to the hazard of all the other lake users, and add to the pollution which will affect fish and wildlife.

c. Ms. Mary Schuldheisz of Concordia University submitted a letter dated September 11, 2007 stating her objection to the application. The objection was due to increased boat traffic creating safety issues for the non-motorized lake users at Camp Lutherhaven.

7. On September 19, 2007 IDL held a public hearing at 5:00 pm in IDL's Coeur

d'Alene office. Mr. Eric Wilson, Navigable Waters/Minerals Program Manager, served as hearing coordinator. In attendance were Mr. Mike Denney, IDL Area Manager; Mr. Carl Washburn, IDL Navigable Waters Specialist; Mr. Jim Magnuson, representing Applicant; Mr. Mark Wagner, representing Applicant; Dan Martinsen, representing Applicant; Mr. Denny Ryerson, the Applicant; 17 members of the public who testified, and 28 members of the public who did not testify. 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. Mr. Jim Magnuson, representing Applicant, provided an overview of the project, including the presentation of seven exhibits concerning the proposed community dock. These exhibits are incorporated into this document by reference. Mr. Magnuson stated the project involves 12 dwelling lots and the common lots. All lots are connected, so it is actually one large parcel. Kootenai County and other local entities have approved the project. A common water system for the lots was created which also provides hydrants for fire protection at the new and existing houses. Gould's Landing is north of the community lot with the proposed dock, and some land was dedicated to the road right of way accessing the dock and the existing public launch. No agency comments were received, and about 30 written objections were received. The proposed dock will be accessed by golf carts or non-motorized means from the dwelling lots. The access point is just south of the proposed dock. A wall was constructed around the community lot and is permitted by Kootenai County. A survey error led to part of the wall being placed on the lakebed. That portion of the wall will be removed this winter during low water.

b. Mark Wagner, representing applicant, provided details on the dock design and construction. Part of the dock will be on the beach at low water. The outer portion will act as an under-deck breakwater. A total of 54 community docks are permitted on Lake Coeur d'Alene, including the White Sands Community Dock on the south side of Mica Bay. The water depth during low water will be approximately eight (8) feet on the outside edge. Winter usage is estimated at 20% of summer usage. The proposed dock does conform to the seven (7) square foot per littoral foot rule, as do all 54 community docks. The dock has 2,591 square feet over the water, and the applicant is dedicating 418.75 feet of littoral frontage. The nearby single-family docks extend about 100 feet out into the lake, and the proposed dock extends about 137 feet out into the lake. The nearby Baxter dock is about 140 feet long, but due to the angled shape the end of the dock is still only about 100 feet from the shore. The proposed dock has been moved about 50 feet away from Gould's Landing and shortened ten (10) feet from the original design.

c. Mr. Denny Ryerson, the applicant, stated that the rock wall had been planted to improve the aesthetics. It was constructed due to problems with dust, trespassing, arson, trash, and other nuisances. The lot will be accessed by the users with golf carts, and no cars will be parking in the Gould's Landing area. The CC&Rs will enforce the prohibition against lot owners parking near the

community lot.

d. Mr. Jim Slavin, Jr., representing the Camp Fire Girls, stated that his position on the application was neutral at the current time, but he was concerned about the safety of kids in the bay.

e. Mr. Charlie Butts stated that Mica Bay does not have and does not need marinas or community docks at the current time. The lot owners should use Gould's Landing instead.

f. Ms. Bob Crawford stated concerns about increased boat traffic.

g. Ms. Katelyn Jentges stated concerns about increased boat traffic near camp Sweyolakan. Large wakes from motorboats make it difficult for small children to learn swimming and boating in the lake. She also presented a letter which is incorporated into this document by reference.

h. Mr. Patrick Murphy stated that the wall was constructed prior to any permits being obtained and the applicant was fined. Winter use at a level 20% that of summer use was way too high in his opinion. The value of a lot with lake access is \$80,000 higher than a lot with no access. The White Sands Community Dock serves a development of all lakefront lots, in contrast to the proposed dock for non-littoral owners. He stated concerns about the proposed dock including increased traffic, congestion, and decreased safety. The dock would be located out from a point, and not in a bay, so it would extend far out into the lake. He also stated that the increased traffic would stir up sediments that contribute to the poor water quality in Mica Bay. Mr. Murphy left a copy of his notes, which are incorporated into this document by reference.

i. Perrin Zanck stated that the proposed dock will exacerbate sediment issues associated with past construction on US Highway 95. He expressed concern for an increased risk to children at the two nearby camps, and the boaters at Gould's Landing. Boaters can not see safely around the wall that was constructed next to the Gould's Landing launch. The proposed dock would be located on a point and would stick way out into the bay, and in the future they will want to add a marina.

j. Ms. Jai Nelson stated concerns with the proposed dock's impact on water quality and wildlife, as well as activities at the nearby camps. It will also increase the already considerable traffic of motor craft, and increase congestion at Gould's Landing. The dock has a footprint of about 5,000 square feet on the liquid land, which is too large, and the public resource should not be for sale. The littoral ownership which governs dock size is on two unconnected parcels, and the applicant is therefore exploiting the rules. She also stated that IDL is the governing body for waterways, so they are responsible for following the Kootenai County Comprehensive Plan as it relates to waterways and the shoreline. The application does not fit in with that plan, and should be denied. Ms. Nelson

presented a letter which is incorporated into this document by reference.

k. Mr. Stephen Yates stated that he has extensive experience building docks, and all the existing Mica Bay docks have one slip per lakefront lot. The applicant's dock is therefore excessive. One multi-family dock is present in Mica Bay, but it does not exceed a length of 100 feet from the shoreline. The proposed dock projects too far out into the bay and will disrupt public use at Gould's Landing. The proposed dock will also be a hazard to boat traffic and safety. A shelf out from the dock is only under nine (9) feet of water, so the applicant's depths may be in error.

l. Ms. Emmy Michaelsen stated that the constructed wall is up to ten (10) feet high on encroaches on the road right of way by five (5) feet. It is also too close to Gould's Landing. Mica Bay has lots of non-motorized traffic. The proposed dock is located near the mouth of the bay, where a lot of boat traffic is entering or leaving the bay. This combination of factors means the proposed dock is an accident waiting to happen. Ms. Michaelsen also left copies of twelve (12) sheets of photographs, all of which are incorporated into this document by reference.

m. Mr. Jason Plummer stated that he lived near the constructed wall. It was constructed out into the lake and blocks the view from Gould's Landing. The proposed private marina will devalue lake front lots. It will also detract from the beauty and safety of the bay.

n. Mr. Steve Syrcle stated that the lake has capacity for twelve (12) more slips, and he supports the project.

o. Ms. Peggy Clark stated that she is the Camp Swayolakan director. The camp is only accessible by boat. It was started in 1922 as a youth camp. About 2,600 total users come to the camp over the summer. Lots of non-motorized use occurs on the lake near the camp, and they have a lot of traffic to the boat-in camp. The lake already has too much traffic. No campers are allowed in the channel on the weekends due to the large volume of boat traffic. The proposed dock's location and size make it invasive. It increases traffic and risk to users of all three camps in the bay. Ms. Clark also presented a letter that is hereby incorporated into this document by reference.

p. Mr. Robert Baker stated that he represented Lutherhaven Ministries. Lutherhaven Camp was started in 1946 as a post WWII camp. It is now open to all users as a retreat facility and for use by kids. They have about 12,000 users a year. He also stated concerns related to safety of the non-motorized lake users with a private marina being built. About 4,000 kids per year enjoy boating and swimming in Mica Bay, and many are only beginners. Mr. Baker presented a letter which is incorporated into this document by reference. The letter stated that many children at the camp were in boats for the first time and the large waves from passing boats made boating difficult, if not dangerous. A letter

signed by Ms. Rebecca Smith, the Lutherhaven Camp's program director, was also left by Mr. Baker. The letter stated that the camp has had many problems with rude and inconsiderate motorboat users at their camp and out on the lake. This letter is also incorporated into this document by reference.

q. Mr. John Huckabay stated that the White Sands Community Dock was not a marina, but it was for the littoral owners. The proposed dock is for non-littoral owners. It is also not located in an inlet which makes it prominent. Approval of the dock could cause many other unbuildable lots to be used for the same purpose. Mica Bay has enough water quality problems related to elevated E. Coli and phosphate concentrations. Phosphorus is most often delivered with sediment. Up to 16 feet of sediment has been deposited by ITD in Mica Bay.

r. Mr. Allan Roy with White Sands Estates stated that he opposed the application. White Sands replaced their existing dock and had to follow the rules. They have 560 front feet at White Sands, and all dock users own littoral lots. Approving the proposed dock will set a precedent. He also stated concerns with the wall that was constructed.

s. Mr. Dennis Wilson stated that he was opposed to the application due to concerns with water quality in Mica Bay. The proposed dock is also too long, at either 137 or 145 feet in length depending on which drawing is read. The dock also presents some safety issues related to increased motorized boat traffic and the proximity to Camps Sweyolakan and Lutherhaven.

t. Mr. Paul Huetter stated that the Baxter dock north of the proposed dock is bent due to the prevailing winds out of northwest. The proposed dock will have the breakwater on the southwest side, which is not a good orientation. After the notice of the proposed dock was received, the applicant met with Mr. Huetter and stated that the dock was going to be moved 50 feet further away from Gould's Landing. This relocation should require a new application.

8. In conjunction with the public hearing, several attendance cards from people who did not testify were filled out with comments. These cards, and all other attendance cards filled out at the hearing, are incorporated into this document by reference. The comments on the cards stated the same concerns and views that were stated in the previously described written and oral comments.

### **III. CONCLUSIONS OF LAW**

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

2. Lake Coeur d'Alene is a navigable lake as defined by Idaho Code § 58-1302(a).



Pursuant to IDAPA 20.03.04.011.02, encroachments of any kind on, in, or above the beds of a navigable lake require a permit prior to encroaching on the lake.

3. 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 court in KEA stated that encroachment permits and submerged land leases remain subject to the public trust, and are not irretrievable commitments. The court in KEA also stated that mere compliance of IDL with its' legislative authority is not sufficient to determine if their actions comport with the requirements of the public trust doctrine.

6. IDAPA 20.03.04.010.06 defines a community dock as "Structures that provide moorage facilities for more than two (2) adjacent riparian owners, or for a homeowners' association that is a riparian owner owning a riparian common area including riparian rights. A community dock shall not have less than fifty (50) feet combined shoreline frontage. A community dock shall be considered a commercial navigational aid for purposes of processing the application." The proposed dock meets this definition.

7. IDAPA 20.03.04.015.03b limits the surface decking area of a community dock to seven (7) square feet per lineal foot of shoreline owned by the applicant. The applicant in this instance owns approximately 418 feet of littoral frontage. The proposed dock has approximately 2,591 square feet, which is in compliance with the cited rule. This paragraph of the rules also states that IDL may limit the ultimate size when evaluating the proposal and public trust values.

8. IDAPA 20.03.04.060.03 limits the length of docks to the normal accepted line of navigability established through use unless additional length is authorized by permit or order of the director. The end of the proposed dock is 137 feet from shore, and the ends of the nearby docks are about 100 feet from shore. The White Sands community dock across the bay does not extend more than 100 feet from shore.

9. IDAPA 20.03.04.060.05 establishes a twenty-five (25) foot setback from adjacent littoral property for community docks. The application shows the proposed dock approach is 180 feet from the southeast property line with Gould's Landing, but it does not state where it is in relation to the northwestern lot boundary. The application and

hearing exhibits show that the community lot containing the proposed dock is approximately 337 feet long. The approach is four (4) feet wide, so the northwest lot boundary is approximately 153 feet (337-184) from the approach. The dock structure extends approximately twenty-eight (28) feet out from both sides of the approach, and the littoral right lines appear to extend perpendicular to shore. As a result, the dock appears to be at least 152 feet from the southeast littoral right line and 125 feet from the northwest littoral right line. The dock appears to be in compliance with the twenty-five (25) foot setback from adjacent littoral property.

10. The dock length in the application is 137 feet, and the exhibits submitted by the applicant at the hearing show a dock of the same length. The 145 feet referenced in testimony is due to the eight (8) feet of approach above the ordinary high water mark. No evidence of dock shortening from the original application was observed.

11. The location of the dock in Exhibit #6 submitted by the applicant appears to be different from that of the original application. The landscape plan, which the applicant stated was approved by Kootenai County and is in the process of construction, shows the proposed dock is only about 100 feet from the northwest property line, which is 50 feet further away from Gould's Landing. The applicant and a member of the public also testified that the dock was moved 50 feet further away from Gould's Landing.

12. No authority is delegated to IDL over roads, road safety, and parking areas, and the applicant has satisfied the requirements of the Eastside Highway District and the Kootenai County Planning and Zoning Commission.

13. Title 58, Chapter 13, Idaho Code, delegates no authority to IDL over wall building and other development activities that occur above the ordinary high water on private land.

14. Title 67, Chapter 6503, Idaho Code, states that every city and county shall exercise the powers conferred by the Land Use Planning Act. As a result, Title 67, Chapter 6508, Idaho Code governs local land use planning and does not apply to the regulatory activities administered by IDL.

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

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

17. Camp Sweyolakan and Camp Lutherhaven have been on Mica Bay since 1922 and 1946, respectively. Motorized craft from all over the lake come to Mica Bay for fishing, water skiing, and other uses. The existing boat traffic in the bay is already heavy enough for one of the camps to avoid using the bay on weekends. Camp

Sweyolakan is approximately 3,600 feet south of the proposed dock, and Camp Lutherhaven is approximately 1,600 feet west of the proposed dock.

18. The applicant did construct part of a wall below the ordinary high water mark of Lake Coeur d'Alene without an encroachment permit. A plan is already in place for resolving this violation by removing the materials below the ordinary high water mark.

19. Mica Bay is approximately 2,500 feet wide at the proposed dock, and the bay is approximately two (2) miles long.

20. 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**

Many of the objections raised through written and oral testimony concern issues outside the jurisdiction of IDL. Some of these objections relate to wall construction on the upland, boat congestion, and boater safety. The Lake Protection Act and associated rules, however, do not clearly authorize IDL to consider these issues. The testimony also indicated that uses of Mica Bay are impacted by too much motorized boat traffic. IDL does not regulate boat traffic.

Objections regarding a lack of adequate shoreline length appear to be unfounded. The property contains 418 feet of littoral frontage, and the dock has less than the 2,926 square feet maximum. The littoral property is not continuous along the lakeshore, although it is continuous through the uplands. Continuous littoral ownership is not required for community property associated with a community dock.

Many objections were received regarding the lake access provided to non-littoral owners. The standards for community docks do not require that they be restricted to littoral home owners. By definition, community docks may provide moorage facilities for a homeowners' association that is a littoral owner owning a littoral common area including littoral rights. As shown in the application and applicant's Exhibit #3, the applicant has met this standard by forming a homeowner's association with the required littoral common area.

Many other objections related to the potential impact the community dock may have on Gould's Landing. This boat ramp is owned by Kootenai County, and the applicant has obtained all the needed permissions from Kootenai County. The proposed dock location, as shown on the landscaping plan in Applicant's Exhibit 6, appears to be far enough from Gould's Landing to not affect navigation if boaters are obeying the county boating regulations. The littoral rights of the Gould's Landing boat ramp are not infringed on.

Consistent with the Public Trust Doctrine, each riparian owner has the presumptive right to construct a navigational encroachment, subject to the permitting process and the

physical limitations established by the Lake Protection Act (e.g. extraordinary circumstances, setbacks from adjacent riparian properties, and locations relative to the existing line of navigability). Camps Lutherhaven and Sweyolakan were of particular concerns to many members of the public, but they do not clearly fit the department's previous uses of extraordinary circumstances. The camps appear to be too far from the proposed encroachment for an extraordinary circumstance to exist.

The riparian setbacks follow the established rules. The length of the proposed dock, however, does appear to be excessive. The dock would extend approximately 37 feet past the normal accepted line of navigability established through use. When asked why the extra length was needed, the applicant replied that it was needed for safe moorage in summer and winter, and the rules allow a length that provides for three feet of water depth at low water (winter). The standard of three feet water depth at low water is contained in subsection 015.01 of the rules, which applies to single-family and two-family docks and not community docks. The standard for community dock length is actually contained in Subsection 060.03 of the rules, which states that no structure may extend beyond the line of navigability. Safe moorage in summer may be an issue for the design that was submitted. Water depth at the proposed landward slips is approximately six (6) feet at ordinary high water conditions. The dock may, however, be redesigned, or some slips eliminated, in order to keep it within the line of navigability. Additional length could be authorized by permit or order of the director, but no substantive public economic or navigational necessity justifies the additional length. The adjacent uses at Gould's Landing are sufficient justification for keeping this dock within the line of navigability.

The location of the dock has also changed since the application was submitted. The application that was accepted and disclosed to the public had the proposed dock approach located 180 feet from Gould's Landing. The landscape drawing, that has been approved by the county and the landscaping is under construction, shows the proposed dock approach approximately 50 feet farther away from Gould's Landing. While this change would result in less conflict with the users of Gould's Landing, it appears to be a substantive change and the application process should start from the beginning with the new location.

Based on the information in the hearing record and the testimony provided at the public hearing, and based upon the fact that the proposed community dock does not meet the standards for length contained in Subsection 060.03 of IDAPA 20.03.04, I conclude that the proposed encroachment will have an unnecessary adverse impact on navigation (a public trust value). In addition, the actual proposed dock location is 50 feet northwest of the location shown in the application. Approval of the permit application would go against one of the Idaho Supreme Court findings in KEA. In this case, the court stated that public trust resources may only be alienated or impaired through open and visible actions, where the public is in fact informed of proposed actions and has a substantial opportunity to respond to proposed actions before a final decision is made thereon.

Based upon the information provided to me as the hearing coordinator, 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 applicant.

DATED this 15th day of October, 2007.

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

ERIC WILSON  
Hearing Coordinator

## CERTIFICATE OF SERVICE

I HEREBY CERTIFY that on this 19<sup>th</sup> day of October, 2007, I caused to be served a true and correct copy of the foregoing document, by the method indicated:

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Idaho Department of Lands  
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