

GEORGE B. BACON  
Director  
Idaho Department of Lands  
300 N. 6<sup>th</sup> 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-95-S-5384 – Mountain Top Home Owners ) **FINAL ORDER**  
Association )  
Applicants. )  
\_\_\_\_\_ )

#### I. NATURE OF PROCEEDINGS/ISSUES

A hearing was held on March 25, 2010 at 6:00 pm PST at the IDL Staff Office in Coeur d'Alene, Idaho. Jim Brady served as Hearing Coordinator. The Hearing Coordinator issued his Recommendations on April 30, 2010.

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 hearing conducted in Coeur d'Alene, Idaho on March 25, 2010.
- 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 Idaho Department of Lands pursuant to the requirements of Title 58, Chapter 13, Idaho Code, and the Rules for the Regulation of Beds, Waters and Airspace over Navigable Lakes in the State of Idaho, IDAPA 20.03.04, as promulgated by the State Board of Land Commissioners.

## II. FINDINGS OF FACT

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

## III. CONCLUSIONS OF LAW

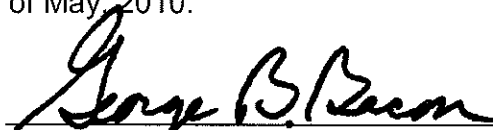
I concur with the Conclusions of Law presented by the Hearing Coordinator.

## IV. FINAL ORDER

On the basis of the record, it is my order that Encroachment Permit L-95-S-5384 be denied by the Mica Supervisory Area and the Mica Supervisory Area.

This is a final order of the agency. If the Applicants, 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 4th day of May, 2010.



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

**CERTIFICATE OF SERVICE**

I HEREBY CERTIFY that on this 5<sup>TH</sup> day of May, 2010, I caused to be served a true and correct copy of the foregoing document, by the method indicated:

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\_\_\_\_\_  
JIM BRADY

Lands Resource Specialist, Sr. - Navigable Waters and Minerals

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GEORGE B. BACON, DIRECTOR  
EQUAL OPPORTUNITY EMPLOYER

**STATE BOARD OF LAND COMMISSIONERS**  
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*Ben Ysursa, Secretary of State*  
*Lawrence G. Wasden, Attorney General*  
*Donna M. Jones, State Controller*  
*Tom Luna, Sup't of Public Instruction*

April 30, 2010

## **MEMORANDUM**

**TO:** George B. Bacon, Director

**FROM:** Jim Brady, Lands Resource Specialist, Sr., Navigable Waters and Minerals, designated Hearing Coordinator

**SUBJECT:** Recommended Order – Navigational Encroachments L-95-S-5384  
Mountain Top Home 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) for the littoral property in the recent subdivision for The Mountain Top Home Owners Association. The hearing was conducted on March 25, 2010 at 6:00 p.m. in conjunction with the processing of encroachment permit L-95-S-5384 on Lake Coeur d'Alene, a navigable lake in Idaho. The application proposes the installation of a 4' x 36' ramp, 62' x 97' community six (double) slip float dock of 2,258 square feet with 8 piling, including 8 boat lifts and 8 jet ski lifts. Jurisdiction in this matter rests with IDL pursuant to Idaho Code § 58-1303, which empowers the State Board of Land Commissioners to regulate, control, and permit encroachments on, in, or above the beds or waters of the navigable lakes of Idaho.

### **II. FINDINGS OF FACT**

1) On December 17, 2009, Mountain Top Home Owners Association (MTHOA), the Applicant, submitted to IDL an encroachment permit application requesting approval to

construct a 4' x 36' ramp, 62' x 97' community six (double) slip float dock of 2,258 square feet with 8 piling, including 8 boat lifts, 8 jet ski lifts and a breakwater built into the most waterward end of the float dock, extending approximately 133' waterward of the ordinary high water mark (OHWM). The community float dock extends from Tax #22156 (49N04W016900) and Tax #22156 (49N04W122425). The application was considered incomplete until additional information was submitted on January 5, 2010. The community dock extends into the lake from ground that is leased by the Applicant - and is comprised of 325' of shoreline. The application is incorporated into this document by reference.

2) IDL initiated the processing of L-95-S-5384 a navigational encroachment, a community dock, pursuant to Idaho Code § 58-1306 and the associated Rules (IDAPA 20.03.04.030). On January 9, 2010, and January 16, 2010, IDL published the required Notice of Application in the Coeur d'Alene Press for the encroachment application submitted by Applicant. The Notice of Application is incorporated into this document by reference.

3) In a letter dated January 5, 2010, IDL notified the following parties of the encroachment permit application submitted by the 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
- Idaho Department of Transportation
- Idaho Department of Parks and Recreation
- U.S. Army Corps of Engineers - CDA
- Panhandle Health District 1
- Kootenai County Parks and Waterways
- Kootenai County Marine Division
- Kootenai County Building, Planning and Zoning
- Kootenai Environment Alliance

- Lakes Commission
- Leithe Family Trust – adjacent neighbor

The letter is incorporated into this document by reference.

4) IDL received 17 letters from agencies, neighbor representative and members of the public. All these letters are incorporated into this document by reference.

a. Everett B. Coulter, Jr., submitted a letter dated January 14, 2010, objecting to the community dock and requested a public hearing on the application.

b. Everett B. Coulter, Jr., submitted a letter dated January 27, 2010, the letter has documents such as deeds, easements and various subdividing agreements.

c. Mr. Charles Corsi, Regional Supervisor, Idaho Department of Fish and Game, sent a letter dated January 28, 2010, stating concerns that due to the lack of community infrastructure the application is speculative and should be deferred until the community exists to support the community dock.

d. Mr. Ben Tarbutton, Planner II, Kootenai County Building and Planning Department, sent a letter dated February 5, 2010, stating that the county would require 1 parking space for every 2 boat slips and according to the application would need 6 parking spaces. However, the Applicant had provided them a conceptual drawing that appeared to meet these requirements. The county also informed the applicant a Site Disturbance Permit from their department would be required for the parking area.

e. Mr. Shawn Ellison, Environmental Health Program Manager, PHD1, sent an email dated January 12, 2010, and stated that the Applicant will not be required to install a boat pump out station for this community dock and had no other concerns or comments.



- f. Ms. Lisa Fitzner sent an email dated March 9, 2010, requesting a copy of the MTHOA encroachment application which was scanned and provided that same day.
- g. Ms. Meghan Coulter sent an email dated March 10, 2010, stating concerns for swimmers and boaters due to the increased boat traffic.
- h. Ms. Marty Coulter Laing sent an email dated March 11, 2010, stating concerns that the proposed community dock extends too far into the lake and will be a hazard to navigation.
- i. Mr. Robert Broyles sent an email dated March 12, 2010, stating the community dock extending 133' into the lake will be a hazard to navigation. He further stated it appears the Applicant is only building the community dock to enhance the value of unsold and undeveloped lots and the Applicant already has docks that are not being used.
- j. Ms. Carolyn Coulter Liesy sent a letter dated March 6, 2010, stating concerns that the proposed community dock extends too far into the lake and will be a hazard to navigation and will alter the flow of water and sand in the Lower Twin Beach area.
- k. Ms. Lisa Fitzner sent a letter dated March 9, 2010, stating concerns the proposed community dock extends too far into the lake and will be a hazard to navigation and is excessive for 6 families.
- l. Mark Wagner, authorized agent for the Applicant submitted a public records request on March 16, 2010, for all comments submitted for this proposal.
- m. Jim Magnuson, legal counsel for the Applicant, submitted a public records request on March 16, 2010, for a copy of the file for this proposal.

n. David and Carol Porter sent an email on March 18, 2010, that had an attached comment letter. The letter states the proposed community dock extends too far into the lake and would be a hazard to navigation. The letter further states it appears the location of the community dock would have a negative impact on the neighbor to the north, Leithe, when there is room to locate the dock further to the south.

o. Ms. Karen Larson Duddlesten sent an email dated March 22, 2010, stating the proposed dock extends too far into the lake, will be a hazard to navigation because of its length and will endanger swimmers in the area due to increased boat traffic.

p. Ms. Sandra Swick sent an email dated March 22, 2010, stating the proposed dock is excessive, extends too far into the lake, will be a hazard to navigation due to its length and will endanger swimmers in the area due to increased boat traffic.

q. Ms. Lucia Kegan Sullivan sent an email dated March 25, 2010, stating concerns the proposed community dock extends too far into the lake and will be a hazard to navigation.

5) Based on the Everett B. Coulter letter, dated January 15, 2010, and in accordance with IDAPA 20.03.04.030, IDL initiated a public hearing process for the proposed community dock. On February 12, 2010, a letter was sent to all the parties that were notified of the initial encroachment permit application. Also, on February 16, 2010, and February 23, 2010, IDL published a Notice of Hearing in the Coeur d'Alene Press. The Public Hearing was scheduled for March 25, 2010, at 6:00 p.m. in the Sundance Room at the Idaho Department of Lands office located at 3284 W. Industrial Loop, Coeur d'Alene, Idaho 83815. The Notices of Public Hearing are incorporated into this document by reference.

6) On March 25, 2010, IDL held a public hearing at 6:00 p.m. in IDL's Coeur d'Alene office. Mr. Jim Brady, Lands Resource Specialist Sr., coordinated the public hearing. In attendance were Mr. Michael Denney, Area Manager Mica Area; Carl Washburn, Land Resource Specialist; Mr. Jim Magnuson, representing Applicant; Mr. Mark Wagner, representing Applicant; Roy Newton, representing Applicant; and 23 members of the public.

a. Mr. Jim Magnuson, representing Applicant, provided a brief overview of the project, including presentation of exhibits, more specifically, declarations of protective covenants, ground lease agreement, plat map, lease area, line of navigation with existing docks to south, existing docks to north, lake traffic illustration, aerial photos of different scales Coeur d'Alene Lake overview and copies of three (3) other community dock public hearings documents IDL conducted. Mr. Jim Magnuson referred to the three (3) IDL documents as Authorities, they were three (3) Findings of Facts, Conclusions of Law and Recommendations for the IDL Director and his Final Order. They were:

a) L-95-S-5149 - Big Rock Timber & Development LLC, in Gotham Bay of Lake Coeur d'Alene. It was a forty six (46) lot subdivision and a twenty two (22) slip community dock. Final Order, after reconsideration and with conditions, was approved August 30, 2007.

b) L-95-S-5208 – Mica View Estates Home Owners Association in Mica Bay of Lake Coeur d'Alene. It was a twelve (12) lot subdivision and a twelve (12) slip community dock. Final Order was approved February 28, 2008.

c) L-95-S-3185B – The Falls at Hayden Lake Home Owners Association. It was for a forty six (46) lot subdivision and a forty six (46) slip community dock. Final Order was approved February 5, 2010.

Mr. Magnuson stated the 6 residential parcels were validly created that comprise the MTHOA. MTHOA and Rock Island, LLC entered into a ground lease that gives MTHOA the littoral rights to make application for the community dock. That ground lease limits the use to only the members of MTHOA for the operation of a community dock facility, outdoor recreation and boating, no structures may be

constructed on the leased land. The illustrations are to show the lake is a half mile wide in the vicinity of the proposed community dock.

b. Mr. Mark Wagner, representing Applicant, noted how he had participated twice in the IDL negotiated rule making process that also includes the rules for community docks which became more stringent with the passage of the rules by the legislature. Mr. Wagner also noted that there are more than 63 community docks on Lake Coeur d'Alene and this proposal is not out of the ordinary. He further stated that the parcel associated with the community dock is 325' of shoreline which would allow 2,275 square feet of dock but the proposal is for only 2,258 square feet of dock and has a built-in breakwater. The dock is located 68' from the north property, Leithe, and 195' to the CAV OK property line. This site was chosen for its adequate water depths and concave nature of the shoreline to minimize distance into the lake. Mr. Wagner claims the 133' extension into the lake is consistent with other docks in the area; Stacey dock 160', Coulter dock 135' and docks south and west of the proposal being greater than 100'. Mr. Wagner also shows that drawing a line from the Leithe dock and a dock just south (L-95-S-5271), not built yet but permitted to be 53' long, establishes the line of navigation and the proposal is inside that line of navigation, even though IDL standards allow for docks to extend beyond the line of navigation. He states that because of the design and location of the dock, the proposed community dock meets or exceeds the current regulations and should be permitted to allow 6 families access to the lake.

c. Ms. Lisa Fitzner, a local resident, stated the extension of 133' into the lake will be a hazard to navigation. She qualifies the statement because she lives on the lake all the time and sees boats traveling fast close to the shoreline.

d. Mr. Erick Fasholds stated the proposed community dock will be a navigational hazard.

e. Mr. Dan Denike stated he is in favor the proposed community dock

because buying secondary lots that have lake access are more affordable for families like his.

f. Mr. Everett Coulter, attorney at law representing the Leithe family, also owns property in Twin Beaches and is familiar with navigation issues in this area because the Leithes built their cabin in approximately 1967 and the Coulters have had their property since 1955. Mr. Coulter also disputes the lengths of the docks that Mr. Wagner stated for the Coulter and Stacey docks; they are 120' and 105' respectively. Mr. Coulter states the 133' extension into the lake will be a hazard to navigation. Mr. Coulter says the property where this dock is located is only under covenants of four single family residences, for the whole shoreline. Mr. Coulter suggests that the Applicant wants 6 slips but when you look at the drawing there are actually 12 boat slips and this is an excessive use of public lands when there are only 6 lots.

g. Mr. Keith Laing stated that any pier or slip built off of a point out into the lake will be a hazard to navigation. It should be re-engineered to run parallel to the shore.

h. Eric Hanson stated there is a mooring buoy near Twin Beaches that isn't 133' from shore and there is an accident every year from someone hitting that buoy. The proposed community dock will be a hazard to navigation. He further stated that he has lived there all his life and stated all boats travel close to this shoreline.

i. Mr. Joel Moore stated he used to be a search and rescue and safety officer in the Coast Guard and has been in the Twin Beaches area since 1946. He claims the proposed community dock extending 133' into the lake will be a hazard to navigation. He further stated that when bad storms come out of the south this shoreline can get 5' to 6' waves and this proposed location is a risk.

j. Mr. Roy Newton, representing the Applicant, says he has lived on the lake

for 26 years very close to this location and has boated a lot in the area. He further stated he disagreed that the proposed community dock will be a hazard to navigation. Mr. Newton also believes he is within his rights to develop this property as proposed. He described how he and the dock builder determined the line of navigation, the same method Mark Wagner described, and the proposed community dock is in a cove.

k. Mr. Terry Phillips stated he grew up at Twin Beaches and has been a builder in the area for 40 years and is concerned the proposed community dock will turn into a commercial venture. He stated the Twin Beaches owners could all have individual docks but have chosen to have a community dock for convenience sake so the proposal before us is different. Mr. Phillips continued, saying the proposed community dock will be a hazard to navigation and therefore should be redesigned so it doesn't protrude so far into the lake. He believes if it is permitted as proposed it should have navigational lighting on the dock.

l. Mr. John Thompson stated he has known Mr. Newton for 40 years and knows he did a lot of planning to choose the location of the community dock and does not believe the proposed community dock will be a hazard to navigation.

m. Mr. Andy Porter stated he grew up in the Twin Beaches area and believes the proposed 133' community dock will be a hazard to navigation. He further states that with all the development in Mica Bay to the south, there is more boat traffic going north towards Coeur d'Alene and everybody hugs the shore in the vicinity of the proposed community dock.

n. Marty Coulter Laing stated she has lived on Lower Twin Beaches for most of her life and believes the proposed community dock will be a hazard to navigation, especially since the volume of boat traffic has grown.

o. Ms. Nancy Newton has lived in Everwell Bay, south and west of the proposal, for 26 years and believes it is their right to develop this property this

way and the proposal meets all regulations.

p. Mr. Jim Magnuson, representing Applicant, then gave his closing remarks. He referred to the agency comments submitted; Fish and Game had no comment pertaining to fish or the environment; PHD1 stated they had no comment because it is a community dock not a commercial enterprise; and Kootenai County made a limited objection requesting some sort of parking for the community dock. He further stated many issues get brought into the matter at hand, such as over-use, traffic and safety and are not in the purview of the concerns for the matter at hand. He says IDL needs to focus on the regulations and the proposal meets those regulations.

q. Jim Brady, hearing coordinator, asked Mr. Magnuson and Mr. Wagner questions for clarification. It was clarified there are only 6 building lots for MTHOA and the design of the proposed community dock will protect the boats in the slips from prevailing southwest weather.

7) In conjunction with the public hearing, several attendance cards from people who did and 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.

a. Mr. Keith Laing stated part of the Magnuson testimony stated that control of use is provided by MTHOA CC&R's. These are subject to change at the whim of the homeowners. If approved they should be locked into specific rule not subject to future change. Dock must not stick out in lake, navigation hazard.

b. Ms. Suzanne Q. Thompson stated in favor.

c. Ms. Evelyn Leithe stated opposed to proposed dock.

- d. Mr. Bill Clark stated I agree with property rights and support the request for the proposed community dock on Lake Coeur d'Alene.
- e. Ms. Mary Newton stated I'm for development because I believe it creates jobs, puts people to work and increases tax revenues all of which we need.
- f. Ms. Connie M. Stacey stated this is an unprotected location and will cause damage to the dock with summer storms and is opposed to the proposed community dock.
- g. Ms. Patricia A. Coulter stated the proposed dock will be extremely hazardous to boats and swimmers and that the application is not clear who the dock will serve.
- h. Ms. Joy W. Moore stated she was opposed to proposed dock.
- i. Ms. Lisa Fitzner stated she was opposed.
- j. Mr. Joel Moore stated he was against.
- k. Mr. Roy E. Newton stated for approval.
- l. Mr. Eric Hanson stated against.
- m. Ms. Nancy Newton stated in favor.
- n. Mr. John S. Thompson stated in favor of permit.
- o. Mr. Lance B. Haynie stated I vote yes for this project, it will be great for our community.



### III. CONCLUSIONS OF LAW

1. The Idaho Board of Land Commissioners (Board) is designated in Idaho Code § 58-104(9) and § 58-1303 to regulate, control and permit encroachments on, in, or above the beds of navigable lakes in the state of Idaho. IDL is the administrative agency of the Board, as per Idaho Code § 58-119.
2. Lake Coeur d'Alene is a navigable lake as defined by Idaho Code § 58-1302(a). Pursuant to IDAPA 20.03.04.012.02, encroachments of any kind on, in, or above the beds of a navigable lake require a permit prior to encroaching on the lake.
3. Pursuant to Idaho Code § 58-1301, lake encroachments must be regulated to protect property and the lake value factors of navigation, fish and wildlife habitat, aquatic life, recreation, aesthetic beauty, and water quality. These values must be given due consideration and weighed against the navigational or economic necessity or justification for, or benefit to be derived from, the proposed encroachment.
4. IDL shall make decisions on proposed encroachments in accordance with the Public Trust Doctrine as set forth in Idaho Code § 58-1201 through 1203. This statute protects the property rights of private landowners, including the ability to utilize their littoral 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. IDAPA 20.03.04.015.02b limits the surface decking area of a community dock to

seven (7) square feet per lineal foot of shoreline. However, IDL at its discretion, may limit the ultimate size when evaluating the proposal and public trust values. The Applicant in this case is leasing 325' of shoreline from Rock Island, LLC initially for a period of fifty (50) years and then the lessee has the option for nine (9) consecutive five (5) year periods on the same terms and conditions as the original fifty (50) year lease. The proposed dock is within the community dock square footage guidelines.

7. IDAPA 20.03.04.020.02 states only persons who are littoral owners or lessees of a littoral owner shall be eligible to apply for encroachment permits. In this case, the Applicant is a lessee of a littoral owner and qualified to make application for an encroachment permit.

8. IDAPA 20.03.04.015.13.e establishes a twenty five (25) foot setback from adjacent littoral property for community docks. The Applicant's dock will be sixty eight (68) feet from the northerly property line and one hundred ninety five (195) feet from the southerly property line.

9. IDAPA 20.03.04.010.20 defines the line of navigability as a line located at such distance waterward of the low water mark established by the length of existing legally permitted encroachments, water depths waterward of the low water mark, and by other relevant criteria determined by the board when a line has not already been established for the body of water in question.

10. IDAPA 20.03.04.015.13.d states that community docks and commercial navigational encroachments or other works may extend to a length that will provide access to a water depth that will afford sufficient draft for water craft customarily in use on that particular body of water, except that no structure may extend beyond the normal accepted line of navigability established through use unless additional length is authorized by permit or order of the director. If a normally accepted line of navigability has not been established through use, the director may from time to time as he deems necessary, designate a line of navigability for the purpose of effective administration of these rules.

11. IDAPA 20.03.04.015.13.b.iii states community docks are allowed one (1) boat lift or two (2) jet ski lifts per moorage. The Applicant has applied for the maximum number of lifts allowed for the proposed community dock.

12. Idaho law, including Idaho Code § 58-1301 et seq. (the Lake Protection Act), delegates no authority to IDL to regulate boats and watercraft. Watercraft are regulated by the United States Coast Guard through the Idaho Department of Parks and Recreation and local County Sheriff's Departments.

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

14. 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**

Based upon the following information provided to me as the hearing coordinator:

1. The line of navigability is a line located at such distance waterward of the low water mark established by the length of existing legally permitted encroachments, water depths waterward of the low water mark, and by other relevant criteria determined by the board when a line has not already been established for the body of water in question. The docks immediately adjacent on each side of the proposed community docks are sixty five (65) feet long to the north and fifty three (53) feet long to the south (Exhibit A-5). The distance between these two (2) encroachments is approximately six hundred (600) feet and the shore is somewhat concave between the two (2) but not what I would classify as a cove or bay as alluded to in the application and testimony by Applicant representatives (Exhibit A-7). The appropriate way to determine the line of navigability is to examine the length of existing legally permitted encroachments in the immediate vicinity, preferably immediately adjacent to the

proposed dock, and to extrapolate that same length into the lake along the subject property. Drawing a straight line between encroachments that are six hundred (600) feet apart on an indented shoreline is not an appropriate way to determine the line of navigability. The longer docks of Stacey and Coulter are in a cove or bay that is more sheltered and protected, which typically indicates shallower water than the more exposed location similar to that of the proposed community dock (Exhibits A-6 & A-7). Regardless, the Stacey and Coulter docks to the north, over a thousand feet away, are not the best evidence because they are not immediately adjacent to and do not establish the line of navigability for the shoreline at the proposed community dock location. The line of navigation in the proposed community dock location should be an average of the immediately adjacent docks, which would be approximately sixty (60) feet and not one hundred thirty three (133) feet as proposed by the Applicant. Examination of the profile drawing submitted with the application indicates the water depth at sixty (60) feet is sixteen and one half (16.5) feet deep at summer pool or eleven (11) feet at low winter pool level. These types of water depths should be more than adequate to accommodate moorage for a community dock.

2. The overall size of the proposed community dock is excessive. The proposal is for six (6) double slips (12 moorages) for a six (6) lot subdivision, or a 2:1 ratio of moorage to lots. The Applicant has submitted into the record three (3) recent Findings of Fact and Conclusions of Law for other community dock permits issued by IDL on Lake Coeur d'Alene and Hayden Lake in support of its application. These other approved community docks, however, have a ratio of moorage to lots of about 1:1 or less, and do not support the Applicant's request for two (2) moorages for every lot. A community dock with a moorage to lot ratio closer to one, or less, would create a smaller footprint on the public water, and would be consistent with the size of other permitted community docks.

3. People associated with activity on Lake Coeur d'Alene generally accept the prevailing weather comes from the southwest especially during the boating season, as was noted by Joel Moore's testimony (Findings of Fact 6.i). The orientation of the proposed community dock has half of the moorage slips facing

the south-southwest potentially exposing moored vessels in these slips to occasional severe weather and damage to their vessels.

4. My conclusion is the proposed community dock extending one hundred thirty three (133) feet waterward of the OHWM would be an unnecessary hazard to navigation. A different design configuration could be made that will offer more protection for all vessels from the prevailing southwesterly weather, not exceed the established line of navigation of approximately sixty (60) feet, is not excessive and meet the needs of the proponent.

Therefore, 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 for a community dock and appurtenances submitted by the Applicant, Mountain Top Home Owners Association.

DATED this 30th day of April, 2010



JIM BRADY

Hearing Coordinator

**CERTIFICATE OF SERVICE**

I HEREBY CERTIFY that on this 5<sup>th</sup> day of May, 2010, I caused to be served a true and correct copy of the foregoing document, by the method indicated:

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