Memorandum

Date: October 15, 2021

To: Dustin T. Miller, Director

From: Eric Wilson, Resource Protection and Assistance Bureau Chief

Question:

Shall the Idaho Department of Lands (“IDL”) approve HDB Marine’s application to amend Submerged Land Lease B300002?

I. Procedural Background

A. Background

Previously, IDL issued a Notice of Noncompliance to HDB Marine (HDB) dated April 20, 2020 due to winter dock storage in Powderhorn Bay on Coeur d’Alene Lake, in violation of encroachment permit L-95-S-3955A. This notice is attached as Exhibit 1. HDB submitted an encroachment application on November 4, 2020 as shown in Exhibit 2. A public hearing on the application was scheduled for January 6, 2021, but was stayed on January 5, 2021 due to a hearing decision on a similar application submitted by North Idaho Maritime. The HDB application was then dismissed by stipulation of the parties and order of the hearing officer on March 2, 2021.

The North Idaho Maritime application was the result of similar Notice of Noncompliance for their winter dock storage in Cougar Bay on Coeur d’Alene Lake. On December 3, 2020, IDL Director Dustin Miller issued a Final Order denying North Idaho Maritime’s encroachment permit application for the Cougar Bay winter dock storage. The Final Order adopted the Preliminary Order’s Factual and Procedural Background and Conclusions of Law dated November 2, 2020 (L-95-S-5884 Order). (Both Orders are attached hereto as Exhibit 3 and incorporated herein by reference). The lack of littoral rights to support the encroachment permit application was cited as a reason for denying the encroachment permit (L-95-S-5884 Order, Conclusions of Law B on pgs. 17-19). The Preliminary Order also expressed concurrence with IDL’s analysis and conclusions, and stated, “The Hearing Coordinator would encourage IDL to evaluate any submerged lands lease application with the same or similar scope of the current encroachment permit Application, the same way IDL evaluated the encroachment permit Application.” (L-95-S-5884 Order, Conclusions of Law C.4 on p. 21).

Following the L-95-S-5884 Order for North Idaho Maritime and dismissal of HDB’s application for encroachment permit L-95-S-3955B, IDL instructed HDB to amend its submerged lands lease to resolve
its Notice of Noncompliance for winter dock storage in Powderhorn Bay. On July 16, 2021, IDL received an application to amend HDB’s Submerged Land Lease B300002 (“Lease”). The application is attached hereto as **Exhibit 4** and incorporated herein by reference. In this application, HDB seeks to lease an additional four (4) acres in Powderhorn Bay on Coeur d’Alene Lake for winter dock storage.

IDL held a public meeting regarding HDB’s lease application on July 28, 2021. IDL took comment from HDB and the public at that meeting, and that comment, as well as written comments, have been taken into consideration when making this recommendation.¹

### B. Winter Dock Storage Generally

Winter dock storage is an issue on many lakes. A review of professional recommendations for dock storage in several states and Canadian provinces is found as **Exhibit 5** hereto. In general, the recommendation for floating or non-permanent pier docks is removal during the winter months, if possible, to prevent damage from lowered lake levels, ice build-up, and the effects of wind or water currents. The combination of wind or water currents with ice or rocks on the lakebed or shore is particularly damaging. When removal is not possible, the recommendation is to remove all ladders, ramps, and other peripheral attachments and let the dock float freely in a protected cove while tied loosely to a secure tree or rock. Anchor chains should also be given some slack so the dock can float more freely.

Many docks in Idaho still use cedar logs for flotation due to the ready supply from local timberlands. Winter removal of cedar log float docks from the water is simply not feasible. Docks with more modern flotation such as encased foam or poly-floats are lighter and might be easier to remove for winter storage, but dock construction in Idaho rarely uses segmented docks that can easily be disassembled and removed by hand or with equipment. Where sandy beaches are present, like many locations around Priest Lake, Idaho, dock owners will often drag their floating dock partially up on the beach to minimize ice and wind effects. Lakes with more rocky shorelines such as Pend Oreille, Coeur d’Alene, and Hayden do not provide many options for this type of winter dock removal. Several marine contractors on these lakes, including HDB, offer a service to collect docks in the fall, tow them to a sheltered bay, and store them for the winter. In the spring the docks are towed back and reinstalled. Northern Idaho appears to be the only place where this is a common practice.

### C. Past Powderhorn Bay Dock Storage

Dock storage in this location started in the late 1980s or early 1990s. Rec 5:40. Encroachment Permit L-95-S-3955A was issued to HDB on November 19, 1999. **Exhibit 1**, pages 4 to 9. The 0.72 acre winter dock storage area was 25 feet from shore, extended another 70 feet out into Powderhorn Bay, and extended 500 feet parallel to shore. Water depths are seven (7) feet at a distance of 25 feet from the ordinary high water shoreline at full pool, and 26 feet at a distance of 95 feet from the ordinary high water shoreline. **Exhibit 1**, page 9. Dock storage exceeded the 0.72 permitted acres sometime around 2005. Rec 7:50.

HDB (through Isacc Shannon, its Secretary) stated at the hearing that it has a signed document from the previous littoral owner granting permission for L-95-S-3955 and would send a copy the following day. Rec 8:54. Rick Safranski stated that he represented St. Joseph Woodlands, the adjacent upland owner.

¹ IDL references the recording of that meeting throughout this memo as “Rec m:s”.

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for the last two years. Rec 34:33 and 38:39. The dock storage occurs all year and would prevent St. Joseph Woodlands from installing a dock. Rec 35:54. Mr. Safranski has not given permission for the dock storage activity on the shoreline. Rec 28:15. He spoke with the prior property owner and they had also not given permission for dock storage on the shoreline. Rec 34:50. The past assumption was that the state owned the shoreline. Rec 34:58. Jim Riley also stated that in the past he assumed the adjacent uplands were state land managed by the Idaho Transportation Department. Rec 28:03. HDB submitted a statement on August 29, 2021. Exhibit 6. This additional statement from HDB did not include proof of littoral rights, but HDB did state that Mr. Safranski “was well aware that there was a well-established dock storage area in the bay in front of his property before purchasing that property.” Exhibit 6, page 1.

Powderhorn Bay is a protected bay subject to less adverse weather due to the shape and surrounding topography. This bay also has deep water. Rec 6:26, Exhibit 4, page 1, and Exhibit 6, page 1. Docks on Coeur d’Alene Lake need storage because of the winter drawdown of the lake level and the frequent storms. Rec 6:12. The angled shoreline, uneven lakebed, and shallow conditions require some floating docks to be stored. Rec 11:47.

Some snapshots of storage activity in Powderhorn Bay are shown in Exhibit 7 via thirteen (13) aerial images from 1998 through 2020.

Docks or debris can be seen before, during, or after the winter dock storage season during most years. Docks are present during the storage season on pages 5, 9, and 10 of Exhibit 7. Docks are present after the storage season in pages 1, 2, 4, and 11 of Exhibit 7. Docks are present before the storage season in pages 3, 7, 8, 12, and 13 of Exhibit 7. Nothing is present after the storage season on page 6 of Exhibit 7.

A barge is present only on page 13 of Exhibit 7. Jim Riley stated that a barge and a tug were parked in the storage area for two (2) months this year. They were both swinging out into the bay and impeding navigation. Rec 27:45. He also provided a video of the barge and tug, and photos from 7/22/21. Exhibit 8, pages 16 and 17. Mr. Riley also stated that Powderhorn Bay now appears to be used as a home base for tugs, barges, and other dock building equipment, but acknowledged it was probably not HDB. Rec 27:24 and Exhibit 8, page 1. Four letters from other people also mentioned that the tug and barge parking was not appropriate in Powderhorn Bay. William Dowd also stated that a sailboat was in the storage area over the 2020/2021 winter season and provided a photo. Exhibit 9, pages 4 and 7.

The usual storage season is October 1st to early May. Exhibit 4, page 1. Approximately 233 customers were served this past year, and the number is expected to drop by 10 for the next storage season. Rec 10:25. As more customers upgrade their docks, HDB expects winter dock storage to reduce. Rec 6:32 and Exhibit 4, page 1. Customers are charged $120 plus $0.45/ft² for winter dock storage. Rec 9:28. Thirty four comments on the lease application were received from customers supporting dock storage in this location. Additional supportive comments were received last year on the encroachment permit application.

Sometimes dock parts end up missing during storage, but not very often. Rec 12:40 and 13:40. HDB removes debris from the lakebed about every other year, sometimes more often if bad weather requires it. Rec 13:08. Jim Riley stated that year round storage is increasing. Rec 24:53. This concern was repeated in many of the written comments. With boat wakes and other disturbance this creates more dock debris that escapes confinement and becomes a hazard for boaters and nearby land owners. Rec
More docks and debris are present during the summer than ever before over the last 30 years. **Exhibit 8**, page 1. Docks and debris are floating, half submerged, and on the shore. Some are not secured and drift throughout the bay. **Exhibit 8**, pages 1 through 15. The most common written objection was about the debris in Powderhorn Bay resulting from the dock storage. In addition, commenters were concerned that removal has not occurred by the date specified in the lease. Rec 20:49.

Some unauthorized disposal of other docks takes place in Powderhorn Bay, but it is not common. Usually it is a “fly by night” dock construction company. Rec 14:18. HDB does remove the material regardless. Rec 14:40. Some docks get sent to storage in the fall with damage to them and they cannot be redeployed the following spring until they are repaired. **Exhibit 6**. The abundance of docks in the storage area this summer was due to the Labor Day storm in 2020 that damaged or destroyed several docks and sank several vessels. Rec 10:00, **Exhibit 6**, and **Exhibit 10**.

**D. Potential Remedies for Noncompliance Issues**

Encroachment Permit L-95-S-3955A was for a 0.72 acre winter dock storage area along the shoreline. **Exhibit 1**, pages 4 to 9. In October 2019, IDL became aware that the area being used for winter dock storage was much larger than 0.72 acres. Idaho Code § 58-1308 and 1309 provide remedies for IDL to address unpermitted encroachments. This commercial use also requires a submerged lands lease, and Idaho Code § 58-1203(1) and IDAPA 20.03.17 provide remedies for IDL to address lease related violations. More specifically:

A. Idaho Code § 58-1308(1) allows for injunctive relief due to encroachments without a permit.
C. Idaho Code § 58-1308(2) allows for an additional civil penalty of either $10,000 or $1,000 per day for violations that cause harm to water quality, fisheries, or other public trust values. If the storage area has exceeded the permitted capacity since 2005, or 16 years, that is a total of 5,840 days. This suggests a civil penalty of up to $5,840,000 is allowable under statute.
D. Idaho Code § 58-1308(3) allows for recovery of expenses incurred by the state in enforcing the chapter, or in enforcing or terminating any nuisance, source of environmental degradation, cause of sickness or health hazard. Several IDL and Attorney General staff have been working on this issue in Powderhorn Bay for over a year. Dozens of hours would be a conservative estimate with an overall cost of $7,000 or more.
E. Idaho Code § 58-1309 allows the Board to recommend to a court that the responsible party undertake restoration of the lake. This could include removal of all unauthorized encroachments such as debris.
F. Idaho Code § 58-1203(1) grants the Board the authority to “approve, modify or reject all activities involving the alienation or encumbrance of the beds of navigable waters in accordance with the public trust doctrine.”
G. IDAPA 20.03.17.060 allows several remedies for violating the terms of a submerged lands lease including lease cancellation, civil penalties to be collected as additional rent,
Analysis of HDB Lease Application

The HDB lease application is Exhibit 4 hereto. It proposes expanding the currently permitted winter dock storage south and west. The expanded area is 75 feet from the ordinary high water mark and averages 215 feet wide and 800 feet long parallel to shore. Exhibit 4, page 5. The docks will be secured to two (2) dolphin piles and twelve (12) single pilings with marine grade rope. Exhibit 4, page 1. Two (2) or three (3) existing piling on the south side of the current storage area would be pulled out and relocated 75 feet from shore. Rec 19:12 and 39:57. Ropes would circle around the stored docks and be secured to those piling 75 feet from the shore. Rec 40:16. The application for L-95-S-3955B shows all the piling 70 feet from shore, but the lease application does not specifically show the piling location. Exhibit 2, page 5 and Exhibit 4, page 5.

Storage activity in the expansion area appears to be outside the line of navigability. Water depths are just over 30 feet at 75 feet from the ordinary high water mark east of the storage area, and 78 feet on the west side toward the middle of Powderhorn Bay and 300 feet from the ordinary high water mark. Exhibit 2, page 5, and Exhibit 4, page 5.

Several suggestions were received for alternative dock storage locations in Loffs Bay, Aberdeen Bay, and Harrison Slough. (e.g. Exhibit 9, page 2, and Rec 20:17, 30:00, 30:36, and 31:13). In response, HDB stated that the Powderhorn location is already established and is therefore more appropriate than Loffs Bay, Aberdeen Bay is too exposed to the north winds with a fetch up to fifteen (15) miles long, and Harrison Slough is too shallow for the number of docks. Rec 20:28 and Exhibit 6, page 1.

A. Pertinent Legal Principles

At statehood, Idaho took title to the beds and banks of navigable waters below the ordinary high water mark, pursuant to the equal footing doctrine. However,

Idaho obtained that title subject to a public trust, which “preserves the public's right of use in such land, and, as a result, restricts the state's ability to alienate any of its public trust land.” Mesenbrink v. Hosterman, 147 Idaho 408, 410, 210 P.3d 516, 518 (2009) (quoting Idaho Forest Indus., [Inc. v. Hayden Lake Watershed Improvement Dist., 112 Idaho 512, 516, 733 P.2d 733, 737 (1987)] (internal quotation marks omitted and bracketed material added). The PTD traditionally protected the public's right to navigation, but has since expanded to protect fish and wildlife habitation, recreation, aesthetic beauty, and water quality. Idaho Forest Indus., 112 Idaho at 516, 733 P.2d at 737.

Newton v. MJK/BJK, LLC, 167 Idaho 236, 242, 469 P.3d 23, 29 (2020). See also Title 58, Chapter 12, Idaho Code.

Because the state owns the bed and banks of Coeur d’Alene Lake in Powderhorn Bay below the OHWM, including the area that HDB proposes to use for dock storage, IDL has authority to issue or amend a submerged lands lease.

When considering whether to issue a submerged lands lease amendment, and the terms and conditions that should be included with any such amendment, IDL applies the Rules Governing Leases on State-Owned Submerged Lands and Formerly Submerged Lands, IDAPA 20.03.17.000 et seq. (“Submerged
Leasing Rules”). IDL further relies on guidance from the Idaho Supreme Court in the case of *Kootenai Env’t Alliance v. Panhandle Yacht Club, Inc.*, 105 Idaho 622, 626, 671 P.2d 1085, 1089 (1983). *KEA*. In that case, the Court used a two-part test to determine the validity of a permit, lease or other encumbrance upon public trust property: “One, is the grant in aid of navigation, commerce, or other trust purposes, and two, does it substantially impair the public interest in the lands and waters remaining?” *KEA*, citing *Illinois C.R. Co. v. Illinois*, 146 U.S. 387, 460 (1892).

The proposed use in the lease application will be evaluated using the two-part test enunciated in *KEA*, with the second part of the test applied using the public trust doctrine values.

**B. Winter Dock Storage Area**

HDB’s proposed winter dock storage would be a commercial use of a navigable waterway – Coeur d’Alene Lake. A need for winter dock storage is demonstrated by the thirty (30) or more years HDB has conducted winter storage at this location. Several letters of support were received in support of the 2020 encroachment permit application and the 2021 lease amendment. Winter dock storage at this location does appear to meet the public trust purposes of navigation and/or commerce, and satisfies the first criteria outlined in *KEA*.

The issue of impairment of the public interest is more difficult to judge. Several comments and photos document ongoing issues related to debris, loose docks, constricted boat traffic, and year round usage for dock and barge storage. *Exhibits 7, 8, and 9*. Some of the barge and tug storage may be other marine contractors. With the appropriate lease terms in place and resolution of approximately fifteen (15) years of exceeding the lease boundaries, winter dock storage does not appear to present a substantial impairment to the public trust values. As to the specific public trust doctrine factors:

1. **Navigation**

Docks are navigational encroachments and having a location to safely store them during the winter months enhances navigation. Wind and ice are likely to break up docks that are left on some parts of Coeur d’Alene Lake over the winter. Storing them prevents this break up and the resulting dock debris. This protects everyone on the lake from potential property damage and the safety hazard that dock debris creates. Rec 6:03. Several neighbors and members of the public expressed concern about the expanded storage, barges, and year-round storage restricting navigation at the back of Powderhorn Bay. William Dowd also expressed concerns regarding inadequate lighting of piling, stored docks, barges, and tugs, and inadequate management of log booms. *Exhibit 9*, page 3.

Concerns were expressed by Jim Riley about the increasing boat traffic and incompatibility with the current amount of dock storage. Rec 24:40 and *Exhibit 8*, page 2. Several written comments stated concerns about the impact on boating in Powderhorn Bay. Docks and barges have also been stored outside of the winter storage season in the past. *Exhibit 7*, page 13; *Exhibit 8*, pages 1 and 15 through 17; and *Exhibit 9*, page 2. Some written comments cited the increased development around the lake as justification for increasing the size of the dock storage area.

The dock storage occurs primarily from October to early May as described in the application. Boat use during this time is reduced from summertime levels, so the overall impact on public navigation is small. The storage area is beyond the line of navigation. *Exhibit 4*. Summertime dock storage was not included.
in the lease application and would not be allowed under the lease. Dock construction can and should occur at the location where the new dock will be installed and should not be conducted in the winter dock storage area.

Barge storage or parking is a more difficult issue. A barge is only seen in one of the photos in Exhibit 7. Several comments were received objecting to a barge or tug parked for long periods of time in the dock storage area. It is unclear whether the barge or tug was in fact parked by HDB. This commercial use of the storage area would otherwise be served by a commercial encroachment. It is also possible that it was parked at the adjacent storage area permitted to Frey Dock & Barge. HDB owns a commercial littoral property near the mouth of the Coeur d’Alene River where a barge or tugboat could be parked. It is certainly convenient for a contractor to leave a barge staged in Powderhorn and not pay mooring fees, but this type of commercial use of state-owned lakes beyond the line of navigability should be approved through a lease or lease amendment. Simply leaving it for weeks at a time externalizes that cost of doing business and unfairly burdens the residents and recreationists in Powderhorn Bay.

As a result, the proposed winter dock storage does not appear to substantially impair navigation in Coeur d’Alene Lake. In order to reduce potential impacts to navigation, IDL has included terms in the proposed lease amendment to limit dock storage to the period of October 1 to June 1 of the succeeding year, thus avoiding the presence of dock storage during the busier boating season. In addition, IDL is requiring that HDB properly light the storage area, scan the lakebed and beach for dock debris and remove all such debris associated with the lease area; ensure that any docks that are stored are secured to the piling; remove any remaining log booms; and that a maintenance plan be submitted and implemented, including at least two inspections during the storage season. (see Lease Adjustment, sections 2.M, 2.N, 2.O, 2.P, 2.Q, and 2.R). Lastly, barge or tug parking for more than fourteen (14) consecutive days in Powderhorn Bay further constricts navigation and is an unauthorized commercial use of the lakebed. (see Lease Adjustment, section 2.J)

2. Fish and Wildlife

The Idaho Department of Fish and Game submitted comments on the 2020 application for encroachment permit L-95-S-3955B. They stated general concerns about the dock storage area benefitting fish species that prey on westslope cutthroat trout, and recommended keeping the facility away from the creek channel. The proposed expansion is over 400 feet from the mouth of the creek channel. Winter dock storage is not expected to unreasonably restrict fishing in Powderhorn Bay.

The Idaho State Department of Agriculture submitted comments on the 2020 application for encroachment permit L-95-S-3955B. They stated that Powderhorn Bay remains free of aquatic invasive weeds and measures should be taken to avoid introduction from other parts of the lake. Potential issues with noxious weeds and invasive species in the existing submerged lands lease are addressed by requiring that HDB comply with noxious weeds and invasive species laws (see Lease, section 7.C). An additional lease term will be added to require that HDB conduct inspections and otherwise ensure that it is not introducing quagga or zebra mussels into Hayden Lake. (See Lease Adjustment, section 2.G).

3. Water Quality
The Idaho Department of Environmental Quality submitted comments on the 2020 application for encroachment permit L-95-S-3955B and expressed concerns about petroleum products, dock debris, and wood preservatives. They recommended that the operator have absorbent pads to address any spills or releases, remove dock debris without dragging it across the lakebed, and follow published guidance for using wood preservatives in aquatic environments. Additional lease terms will be added to address potential issues regarding petroleum products and spills (See Lease Adjustment, section 2.H), wood preservatives (See Lease Adjustment, section 2.I), and dock debris (See Lease Adjustment, sections 2.N, P, Q, and R).

Submerged land leases have a term of 10 years (IDAPA 20.03.17.025.07), so the issuance of a lease for winter dock storage is not a permanent impact on Coeur d'Alene Lake. In addition, insurance and other lease requirements give IDL the ability to regulate the uses occurring under the lease. If changes are needed to the lease terms, then those changes can be implemented either upon the issuing of a new lease following lease expiration, or via lease amendment if necessary prior to expiration of the lease.

4. Recreation

The primary recreational uses of Powderhorn Bay are boating and fishing. The measures that IDL is requiring to address potential impacts to those uses are discussed above, in subsections 1 – 3. In addition, IDL notes that recreation opportunities will be enhanced by providing a safe place for dock owners to store their docks for the winter. Dock storage enhances recreational opportunities for those dock owners, and provides a benefit for all lake users by minimizing the amount of debris in the lake due to dock breakage, etc.

5. Aesthetics

Several nearby residents expressed strong concern about the impact of dock and barge storage on the aesthetic component of the public trust doctrine. Most of those concerns focused on the docks and debris present outside the normal storage season. Aesthetic values are often subjective, so it is difficult to factor those values into a public trust doctrine evaluation. Some comments objected to the proposed piling 75 feet from the shoreline, but some or all of those piling are already present at a distance of 70 feet from the shoreline. Outside of the storage season, those piling should be the only things present. IDL understands that the past storage practices resulted in some docks and debris being stored during the summer. However, as noted above, the change to only winter dock storage and elimination of other commercial uses should eliminate most concerns.

When the navigational and commercial justification for winter dock storage is evaluated in light of the public trust doctrine factors, IDL concludes and recommends that HDB be offered an amendment to the existing submerged lands lease to enlarge the winter dock storage area, on the terms and conditions set forth in the lease adjustment and the existing lease.

III. Conclusions

1. Approve the application to lease an additional four acres for winter dock storage with sufficient conditions to ensure safe operation of the storage area and as otherwise determined by IDL staff.
2. Require the removal from the lake and lakeshore any stray docks or dock debris within the storage area and along the shoreline by June 1, 2022. The removal of any sunken dock parts from the lakebed under the vicinity of the storage area must occur by December 1, 2022.
3. All piling must be located 75 feet from the ordinary high water mark.
4. All log booms must be removed from the storage area and disposed of at an upland location by June 1, 2022.

Exhibits:

- Exhibit 1 April 20, 2020 Notice of Noncompliance to HDB Marine
- Exhibit 2 2020 L-95-S-3955B Encroachment Application and supplemental maps
- Exhibit 3 Preliminary and Final Orders regarding Application for Encroachment Permit L-95-S-5884
- Exhibit 4 Application to amend Submerged Lands Lease B300002
- Exhibit 5 References for Winter Dock Storage
- Exhibit 6 HDB statement dated August 29, 2021
- Exhibit 7 Aerial Photos from 1998 through 2020
- Exhibit 8 Jim Riley letter dated July 22, 2021
- Exhibit 9 William Dowd letter dated July 28, 2021
- Exhibit 10 2020_09_08_LaborDayStormNews
April 20, 2020

Keith Shannon
HDB Marine
48401 S Hwy 97/ PO Box 8
Harrison, ID 83833

Re: Notice of Non-Compliance - L-95-S-3955A
Winter Dock Storage in Powderhorn Bay

Dear Mr. Shannon:

This Notice of Noncompliance is being sent pursuant to Rule 80.02 of The Regulation of Beds, Waters, and Airspace Over Navigable Lakes in the State of Idaho, IDAPA 20.03.04.000et seq. ("Rules"). The noncompliance is as follows:

1. The dock storage area in Powderhorn Bay appears to be larger than what was originally approved and permitted by Idaho Department of Lands back in 1999.

IDAPA 20.03.04.012.02. No Encroachments Without Permit. No encroachment on, in or above the beds or waters of any navigable lake in the state shall hereafter be made unless approval therefore has been given as provided in these rules. An encroachment permit does not guarantee the use of public trust lands without appropriate compensation to the state of Idaho.

IDAPA 20.03.04.060.03. Compliance with Permit. All work shall be done in accordance with these rules, and the application submitted, and is subject to any condition specified in the permit.

Encroachment Permit L-95-S-3436 was issued on November 19, 1999 and allowed for: “increase winter dock storage to 450’ along shoreline by 95’ waterward OHWM (0.72 ac)” along the eastern side of Powderhorn Bay (attachment 1). The application drawing showed an existing 300’ storage area and an additional 200’ area, which would seem to indicate the dock storage area should have been permitted to be 500’, as opposed to the 450’ listed on the permit. Additionally, the same drawing shows that the dock storage area would be 70’ in width, starting 25’ from shore (thus the 95’ waterward of OHWM comment). However, a 2016 image from GoogleEarth shows the dock storage area at approximately 750’x250’ in size, well above the 500’x70’ area that was permitted (attachment 2). It should be noted that Idaho Department of Lands did not include the dock storage area maintained by Frey Dock and Barge at the northern end of your area into our size calculation from GoogleEarth.
Please note that IDAPA 20.03.04.020.02 states in part, “[o]nly persons who are littoral owners or lessees of a littoral owner shall be eligible to apply for encroachment permits.” IDL has observed dock storage areas within the line of navigability and beyond the line of navigability. For dock storage areas beyond the line of navigability, IDL will consider applications from persons who are littoral owners, but may not own the littoral property immediately adjacent to the dock storage area. For dock storage areas within the line of navigability, IDL will only consider applications if the applicant owns, or otherwise has been granted, the littoral rights associated with the property immediately adjacent to the dock storage areas.

Additionally, IDL will hold public hearings for the encroachment permit applications for dock storage areas pursuant to Idaho Code § 58-1306(c).

If an encroachment permit is granted for the dock storage area, a term of the permit will be to obtain/maintain a submerged land lease. Annual rent for a submerged land lease is typically $1,000 per acre or fraction thereof. The size will be based on the area described in the application and authorized in the permit.

In order to come into compliance and avoid permit revocation and other penalties outlined in Idaho Code §§ 58-1308 and -1309 and IDAPA 20.03.04.080, please submit a plan by the close of business May 20, 2020, to remove any infrastructure, docks, or debris associated with winter dock storage by June 1, 2020 and cease future dock storage operations, or submit an encroachment permit application if you choose to continue providing winter dock storage services for your customers. If you have any questions or concerns regarding this matter, please contact Mike Ahmer or me at (208) 769-1577, or mahmer@idl.idaho.gov or esjoquist@idl.idaho.gov respectively.

Sincerely,

Erik Sjoquist, Area Manager Mica Supervisory Area

Enclosures: 1 – Encroachment Permit L-95-S-3955A
2 – Aerial Imagery

cc: Andrew Smyth/ Public Trust Program Manager - Boise
ENCROACHMENT PERMIT NO. L-95-S-3955A

Permission is hereby granted to Harrison Dock Builders of P.O. Box 8, Harrison, ID 83833 to increase winter storage to 450' along shoreline by 95' waterward GHWM (.72 ac) located: Coeur d'Alene Lake, 22
Powderhorn Bay, NWSW Section, Township 48 North, Range 4 West, Boise Meridian, Kootenai County.

1. All applicable provisions of the Rules for Regulation of Beds, Waters, and Airspace over Navigable Lakes and Streams in the State of Idaho are incorporated herein by reference and made a part hereof.

2. Construction will follow details and specifications shown on the approved drawings and data provided by the applicant. Should such information and data prove to be materially false, incomplete and/or inaccurate, this authorization may be modified, suspended, or revoked in accordance with the Administrative Procedures Act, Idaho Code title 67, chapter 52.

3. This permit does not convey the State's title to or jurisdiction or management of lands lying below the natural or ordinary high water mark.

4. Acceptance of this permit constitutes permission by the Permittee for representatives of the Department of Lands to come upon Permittee's lands at all reasonable times to inspect the encroachment authorized by this permit.

5. The Permittee shall indemnify and hold harmless and free from liability the Permittor for any injuries to persons or damage to property occurring as a result of the use authorized under this permit.

6. Idaho Code §58-1306(e) requires recordation of this permit in the records of respective county assessor's office as a condition of this permit.

7. Upon transfer of this real property, you are required to notify this office of the subsequent name change (see enclosure).

8. If the activity authorized herein is not completed on or before the 19th day of November, 2002 (three years from the date of issuance), this permit shall automatically expire unless it was previously revoked or otherwise extended.
9. This permit does not relieve the Permittee from obtaining additional local or federal permits as required.

10. This permit supersedes and voids any permit previously issued for this property.

11. Construction materials shall be natural or pressure treated utilizing only those preservative chemicals registered for the specific uses, such as CCA (Chromated Copper Arsenate), by the U.S. Environmental Protection Agency (EPA). All treated wood materials shall be produced in compliance with "Best Management Practices (BMPs) For the Use of Treated Wood in Aquatic Environments" issued by the Western Wood Preservers Institute (WWPI), July 1996. Treated materials not in contact with the water shall be completely dry before use near navigable waters. Contact Idaho Department of Health and Welfare, Division of Environmental Quality, at (208)769-1422 for information on acceptable treatment methods and materials.

12. Location of the bulkhead must be as specified in the attached site plan.

13. The Permittee shall maintain the structure or work authorized herein in a good and safe condition and in accordance with the plans and drawings attached hereto.

14. This permit is issued contingent upon the Permittee’s agreement to enter into a sovereign land lease when notified by the director that a lease is necessary to occupy state-owned lakebeds. The lease will be consistent with other sovereign land leases and policy adopted by the State Board of Land Commissioners.

15. All construction shall be completed in accordance with descriptions and methods provided unless otherwise specified. Any changes shall be approved in writing by the department prior to construction.

16. In the event the lease is terminated, the Permittee shall be solely responsible for removal of the encroachment within 60 days of the cancellation.

17. An adequate supply of petroleum-absorbing products shall be on site in the event of a spill.

18. Storage facility shall not be utilized between April 30 and October 1. Docks shall be removed by April 30 of each year. Docks are not to be stored prior to October 1 of each year.

19. No activity shall occur landward of elevation 2,121 feet Washington Water Power datum (winter lake level); more specifically but not limited to construction, transportation, parking, delivery or sales or any maintenance of docks.

20. In no way does this authorize work on or passage to the site landward of elevation 2,128 feet WWP datum.
ENCROACHMENT PERMIT NO. L-95-S-3955A
November 19, 1999
Page three

19. This permit is not valid until the identification number is displayed on the outermost area of the encroachment.

FOR THE DIRECTOR
By: Carl Washburn
CARL WASHBURN
Navigable Waters Specialist

STATE OF IDAHO )
) as
COUNTY OF KOOTENAI )

On November 19, 1999, personally appeared before me Carl Washburn, whose identity is personally known to me and who by me duly affirmed that he is the Navigable Waters Specialist of the Idaho Department of Lands, and acknowledged that the foregoing document was signed by him in behalf of said state agency by authority of a Resolution of the State Land Board.

Merlene Cherry
Notary Public for Idaho Department of Lands
Residing at Post Falls, Idaho
My commission expires on 1/24/2004
The Department of the Army permit program is authorized by Section 10 of the Rivers and Harbors Act of 1899 and Section 404 of the Clean Water Act. These laws require permits authorizing structures and work in or affecting navigable waters of the United States and the discharge of dredged or fill material into waters of the United States, including their adjacent wetlands. State permits are required under the State of Idaho, Stream Channel Protection Act (Title 42, Chapter 38, Idaho Code) and the Idaho Lake Protection Act, Section 38-143. This application will meet the requirements of the above agencies.

<table>
<thead>
<tr>
<th>1. Corps of Engineers #</th>
<th>2. State of Idaho #</th>
</tr>
</thead>
<tbody>
<tr>
<td>Date Received</td>
<td>L-95-S-3955 A</td>
</tr>
<tr>
<td>$20 Rec’d By:</td>
<td></td>
</tr>
<tr>
<td>Receipt #</td>
<td></td>
</tr>
</tbody>
</table>

**PARK TYPE OR PRINT**

<table>
<thead>
<tr>
<th>3. Applicant</th>
<th>Authorized Agent</th>
</tr>
</thead>
<tbody>
<tr>
<td>Marine Co dba Harrison Dock Builders</td>
<td>Harrison Dock Builders</td>
</tr>
<tr>
<td>Mailing Address</td>
<td>Mailing Address</td>
</tr>
<tr>
<td>P. O. Box 8, Harrison, ID 83833</td>
<td>P. O. Box 8, Harrison, ID 83833</td>
</tr>
<tr>
<td>Work Phone (Area)</td>
<td>Work Phone (Area)</td>
</tr>
<tr>
<td>(208) 689-1248</td>
<td>208-689-3248</td>
</tr>
<tr>
<td>Fax Number</td>
<td></td>
</tr>
</tbody>
</table>

**Location where proposed activity exists or will occur.**

<table>
<thead>
<tr>
<th>Waterway</th>
<th>County</th>
</tr>
</thead>
<tbody>
<tr>
<td>Coeur d'Alene Lake</td>
<td>Kootenai</td>
</tr>
</tbody>
</table>

**Tributary:**

ERL-95-S-3955 or NW SW Sec 28 Twn 46N R 4W *(See instructions)*

**UTM Coordinate Grid:**

Z transformations:

<table>
<thead>
<tr>
<th>Section</th>
<th>Township</th>
<th>Range</th>
</tr>
</thead>
<tbody>
<tr>
<td>1/4 3A</td>
<td></td>
<td></td>
</tr>
</tbody>
</table>

**6. Describe the proposed activity. Provide a general description of the proposed work including all discharges of fill material and any structures such as piers, floats, boat lifts, bulkheads, and cofferdams.**

Site will be used for winter dock storage. Use will be primarily between Oct 1 and approximately early May.

Describe construction methods and equipment:

- Pile driving of wood pilings

Let all soil samples obtained at project site, and indicate if any are on the county's hydro sites list:

<table>
<thead>
<tr>
<th>Length of project along the stream or ex anion into lake or reservoir: 95'</th>
</tr>
</thead>
</table>

<table>
<thead>
<tr>
<th>Will material be placed waterward of ordinary high water mark?</th>
<th>NO</th>
</tr>
</thead>
<tbody>
<tr>
<td>If yes, volume: (cubic yards)</td>
<td></td>
</tr>
</tbody>
</table>

<table>
<thead>
<tr>
<th>Will material be placed in wetlands?</th>
<th>NO</th>
</tr>
</thead>
<tbody>
<tr>
<td>If yes, total area: (acres)</td>
<td></td>
</tr>
</tbody>
</table>

Type and composition of fill material:

- N/A (i.e. sand, etc.) Material Source:

<table>
<thead>
<tr>
<th>Will excavation or dredging be required?</th>
<th>NO</th>
</tr>
</thead>
<tbody>
<tr>
<td>If yes, volume: (cubic yards)</td>
<td></td>
</tr>
</tbody>
</table>

<table>
<thead>
<tr>
<th>Disposal site for excavated material:</th>
<th>N/A</th>
</tr>
</thead>
</table>

<table>
<thead>
<tr>
<th>Method of excavation:</th>
<th></th>
</tr>
</thead>
</table>

<table>
<thead>
<tr>
<th>Steam gradient:</th>
<th>N/A</th>
</tr>
</thead>
</table>

| Method of controlling turbidity and/or sedimentation: | N/A |

| Size and flow capacity of proposed bridge or culvert and area of drainage served (sq. miles): (Idaho Department of Water Resources requirement) | N/A |

IDWR Form 3804-B
8. Preparation of drawings. One set of original or good quality reproducible drawings must be attached to this application. DRAWINGS LESS THAN 8-1/2 X 11 INCHES IN SIZE. See the Instructions pamphlet for instructions and a checklist for completion of the drawings. Include photographs of the project site mounted on 8-1/2 x 11 sheets.

9. Purpose and intended use: Commercial x Public Private Other Describe
Dock storage

10. Proposed Starting Date 10/1/99 Estimated Duration 2 days

11. If any portion of the activity is complete, indicate month and year of completion
Indicate the existing work on the drawings.

12. Names, addresses, and telephone numbers of adjoining property owners, lessees, etc., whose property also adjoins the waterway.
Wayland Lipscomb
RT 2 Box 15
Harrison, ID 83833

Frey Dock & Barge
10376 Morris Ave.
Hayden, ID 83835

☐ Check here if the alteration is located on endowment lands administered by the Idaho Department of Lands

13. LEGAL OWNER IF OTHER THAN APPLICANT
State of Idaho

14. List other applications, approvals, or certifications from other Federal, interstate, state, or local agencies for any structures, constructions, discharges, deposits, or other activities described in this application.

Issuing Agency Type of Approval Identification No. Date of Application Date of Approval

15. Has any agency denied approval for the activity described herein or for any activity directly related to the activity described herein? Yes x No
(If "Yes" explain)

16. Remarks or additional information:

17. Application is hereby made for a permit or permits to authorize the activities described herein. I certify that I am familiar with the information contained in this application, and that to the best of my knowledge and belief, such information is true, complete, and accurate. I further certify that I possess the authority to undertake the proposed activities. I hereby grant to the agencies to which this application is made, the right to come upon the above-described location to inspect the proposed or completed work.

x 9/2/99

Signature of Applicant (ORIGINAL SIGNATURE REQUIRED)

19. If an authorized agent is to be designated, Item 4 and the following information should be completed.

I hereby designate Hannah Dock Builders to act as my agent in matters related to this permit application. I understand that if a Federal permit is issued, I must sign the permit.

9/2/99

Original Signature of Authorized Agent

Original Signature of Applicant

18 U.S.C. Section 1001 provides that: "Whoever, in any matter within the jurisdiction of any department or agency of the United States knowingly falsifies, conceals, or covers up by any trick, scheme, or device a material fact or makes any false, fictitious, or fraudulent statements or representations or makes or uses any false writing or document knowing same to contain any false, fictitious, or fraudulent statement or entry, shall be fined not more than $10,000 or imprisoned not more than 5 years or both."

This application is being submitted in accordance with the requirements of the Idaho Department of Water Resources. The appropriate fee will be assessed when a permit is issued.
Case No. PH-2020-PUB-22-005

JOINT APPLICATION FOR PERMITS

U.S. ARMY CORPS OF ENGINEERS - IDAHO DEPARTMENT OF WATER RESOURCES - IDAHO DEPARTMENT OF LANDS

Authorities: The United States Army Corps of Engineers (Corps), Idaho Department of Water Resources (IDWR), and Idaho Department of Lands (IDL) established a joint process for activities impacting jurisdictional waterways that require review and approval of both the Corps and State of Idaho. The Corps of Engineers permits are required by Section 10 of the Rivers and Harbors Act of 1899 for any structure(s) or work in or affecting navigable waters of the United States and by Section 404 of the Clean Water Act for the discharge of dredged or fill materials into waters of the United States, including adjacent wetlands. State permits are required under the State of Idaho Stream Protection Act (Title 42, Chapter 56, Idaho Code) and Lake Protection Act (Section 58, Chapter 13 et seq., Idaho Code). In addition, the information will be used to determine compliance with Section 404 of the Clean Water Act by the appropriate State, Tribal or Federal entity.

Joint Application: Information provided on this application will be used in evaluating the proposed activities. Disclosure of requested information is voluntary. Failure to supply the requested information may delay processing and issuance of the appropriate permit or authorization. Applicant will need to send a completed application, along with one (1) set of legible, black and white (8½” x 11”), reproducible drawings that illustrate the location and character of the proposed project activities to both the Corps and the State of Idaho.

See Instructions Guide for assistance with Application. Accurate submission of requested information can prevent delays in reviewing and permitting your application.

Drawings including site maps, plan view and section view drawings must be submitted on 8½” x 11” paper.

Do not start work until you have received all required permits from both the Corps and the State of Idaho.

FOR AGENCY USE ONLY

USACE

NWW

Date Received

Date Received

Idaho Department of Water Resources

No

Idaho Department of Lands

No

Date Received

Date Received

$1,075

Idaho Dept. of Lands

Local Supervision Fees

INCOMPLETE APPLICATIONS MAY NOT BE PROCESSED

1 CONTACT INFORMATION - APPLICANT Required

Name

Isabell Smolian, Secretary

Company

IDL Marine

Mailing Address

PO Box 8

City Harrison

State ID 83833

Zip Code 83833

Phone Number (include area code)

208-689-3248

E-mail

Jessica Hutson

2 CONTACT INFORMATION - AGENT:

Name

Jessica Hutson

Company

IDL Marine

Mailing Address

PO Box 8

City Harrison

State ID 83833

Zip Code 83833

Phone Number (include area code)

208-689-3248

E-mail

jessica@idlmarine.com

3 PROJECT NAME OR TITLE

Yearly Winter Dock Storage

4 PROJECT STREET ADDRESS

Powderhorn Bay

5 PROJECT COUNTY

Kootenai

6 PROJECT CITY

Harrison

7 PROJECT ZIP CODE

83833

8 NEAREST WATERWAY/WATERBODY

IDM Marine, Lake Coeur d'Alene

9 TAX PARCEL ID

Y-0000-031-0000

10 LATITUDE

11 a 1/4

11b 1/4

11c SECTION

31

11d TOWNSHIP

48N

11e RANGE

SW

12a ESTIMATED START DATE

Fall Spring Yearly

12b ESTIMATED END DATE

Fall Spring Yearly

12c IS PROJECT LOCATED WITHIN ESTABLISHED TRIBAL RESERVATION BOUNDARIES?

X NO

YES Tribe

12d IS PROJECT LOCATED IN LISTED ESA AREA?

X NO

YES

14 DIRECTIONS TO PROJECT SITE:

Include nearby map with legible crossroads, street numbers, names, landmarks.

Powderhorn Bay, Lake Coeur d'Alene is located in the IDL Marine, Lake Coeur d'Alene.

15 PURPOSE AND NEED

X Commercial

□ Industrial

X Public

□ Private

□ Other

Describe the reason or purpose of your project. Include a brief description of the overall project. Continue to Block 16 to detail each work activity and overall project.

Provide safe dock storage in Powderhorn Bay on Lake Coeur d'Alene.

NWW Form 1145-1/IDWR 3804-8 Page 1 of 4
16. DETAILED DESCRIPTION OF EACH ACTIVITY WITHIN OVERALL PROJECT. Specifically indicate portions that take place within waters of the United States, including wetlands. Include dimensions, equipment, construction, methods, erosion, sediment and turbidity controls; hydrological changes: general stream/surface water flows, estimated winter/summer flows; borrow sources, disposal locations etc.: Storage of existing docks on Lake CDA. Will use miscellaneous hand tools, tugboat, pile driver. Docks being stored for winter are tied together using marine grade ropes in groups and then secured to existing pilings in Powderhorn Bay.

17. DESCRIBE ALTERNATIVES CONSIDERED to AVOID or MEASURES TAKEN to MINIMIZE and/or COMPENSATE for IMPACTS to WATERS of the UNITED STATES, INCLUDING WETLANDS. See Instruction Guide for specific details.

Dock Systems are stored off site at Customer's permitted locations during the the Summer Season. There maybe temporary storage (1-2 weeks in duration) of docks during the summer months while they are awaiting installation to customer's permitted location. Docks are stored in Powderhorn Bay Fall through Spring yearly for winter storage, towed into permitted locations, no impact will occur.

18. PROPOSED MITIGATION STATEMENT or PLAN: If you believe a mitigation plan is not needed, provide a statement and your reasoning why a mitigation plan is NOT required. Or, attach a copy of your proposed mitigation plan.

No Mitigation Plan needed due to no impact. See line item #17

19. TYPE and QUANTITY of MATERIAL(S) to be discharged below the ordinary high water mark and/or wetlands:

<table>
<thead>
<tr>
<th>Material</th>
<th>Quantity</th>
</tr>
</thead>
<tbody>
<tr>
<td>Dirt or Topsoil</td>
<td>_______ cubic yards</td>
</tr>
<tr>
<td>Dredged Material</td>
<td>_______ cubic yards</td>
</tr>
<tr>
<td>Clean Sand</td>
<td>_______ cubic yards</td>
</tr>
<tr>
<td>Clay</td>
<td>_______ cubic yards</td>
</tr>
<tr>
<td>Gravel, Rock, or Stone</td>
<td>_______ cubic yards</td>
</tr>
<tr>
<td>Concrete</td>
<td>_______ cubic yards</td>
</tr>
<tr>
<td>Other (describe)</td>
<td>_______ cubic yards</td>
</tr>
<tr>
<td>Other (describe)</td>
<td>_______ cubic yards</td>
</tr>
</tbody>
</table>

TOTAL: _______ cubic yards

20. TYPE and QUANTITY of impacts to waters of the United States, including wetlands:

<table>
<thead>
<tr>
<th>Activity</th>
<th>Quantity</th>
</tr>
</thead>
<tbody>
<tr>
<td>Filming</td>
<td>_______ acres _______ sq ft. _______ cubic yards</td>
</tr>
<tr>
<td>Backfill &amp; Bedding</td>
<td>_______ acres _______ sq ft. _______ cubic yards</td>
</tr>
<tr>
<td>Land Clearing</td>
<td>_______ acres _______ sq ft. _______ cubic yards</td>
</tr>
<tr>
<td>Dredging</td>
<td>_______ acres _______ sq ft. _______ cubic yards</td>
</tr>
<tr>
<td>Flooding</td>
<td>_______ acres _______ sq ft. _______ cubic yards</td>
</tr>
<tr>
<td>Excavation</td>
<td>_______ acres _______ sq ft. _______ cubic yards</td>
</tr>
<tr>
<td>Draining</td>
<td>_______ acres _______ sq ft. _______ cubic yards</td>
</tr>
<tr>
<td>Other</td>
<td>_______ acres _______ sq ft. _______ cubic yards</td>
</tr>
</tbody>
</table>

TOTALS: _______ acres _______ sq ft. _______ cubic yards

NWW Form 1145-1/IDWR 3804-B

Page 2 of 4
21. HAVE ANY WORK ACTIVITIES STARTED ON THIS PROJECT?  [NO] [YES]  If yes, describe ALL work that has occurred including dates.

Yearly Winter Storage

22. LIST ALL PREVIOUSLY ISSUED PERMIT AUTHORIZATIONS:
L-95-S-3955A

23. [ ] YES. Alteration(s) are located on Public Trust Lands, Administered by Idaho Department of Lands

24. SIZE AND FLOW CAPACITY OF BRIDGE/CULVERT AND DRAINAGE AREA SERVED: __________________________ Square Miles

25. IS PROJECT LOCATED IN A MAPPED FLOODWAY?  [NO]  [YES]  If yes, contact the floodplain administrator in the local government jurisdiction in which the project is located. A Floodplain Development permit and a No-rise Certification may be required.

26a. WATER QUALITY CERTIFICATION: Pursuant to the Clean Water Act, anyone who wishes to discharge dredge or fill material into the waters of the United States, either on private or public property, must obtain a Section 401 Water Quality Certification (WQC) from the appropriate water quality certifying government entity.

See Instruction Guide for further clarification and all contact information.

The following information is requested by IDEQ and/or EPA concerning the proposed impacts to water quality and anti-degradation:

[ ] NO [ ] YES Is applicant willing to assume that the affected waterbody is high quality?

[ ] NO [ ] YES Does applicant have water quality data relevant to determining whether the affected waterbody is high quality or not?

[ ] NO [ ] YES Is the applicant willing to collect the data needed to determine whether the affected waterbody is high quality or not?

26b. BEST MANAGEMENT PRACTICES (BMPs): List the Best Management Practices and describe these practices that you will use to minimize impacts on water quality and anti-degradation of water quality. All feasible alternatives should be considered - treatment or otherwise. Select an alternative which will minimize degrading water quality.

Systems are floated to permitted.

Through the 401 Certification process, water quality certification will stipulate minimum management practices needed to prevent degradation.

27. LIST EACH IMPACT to stream, river, lake, reservoir, including shoreline. Attach site map with each impact location.

<table>
<thead>
<tr>
<th>Activity</th>
<th>Name of Water Body</th>
<th>Intermittent Perennial</th>
<th>Description of Impact and Dimensions</th>
<th>Impact Length Linear Feet</th>
</tr>
</thead>
<tbody>
<tr>
<td>Dock Storage</td>
<td>Powderhorn Bay/Lake CoA</td>
<td>Intermittent</td>
<td>800'x300' Dock Storage</td>
<td></td>
</tr>
</tbody>
</table>

TOTAL STREAM IMPACTS (Linear Feet):

28. LIST EACH WETLAND IMPACT include mechanized clearing, fill, excavation, food, drainage, etc. Attach site map with each impact location.

<table>
<thead>
<tr>
<th>Activity</th>
<th>Wetland Type: Emergent, Forested, Scrub/Shrub</th>
<th>Distance to Water Body (linear ft)</th>
<th>Description of Impact Purpose</th>
<th>Impact Length (acres, square ft, etc.)</th>
</tr>
</thead>
</table>

TOTAL WETLAND IMPACTS (square ft):
29. ADJACENT PROPERTY OWNERS NOTIFICATION REQUIREMENT: Provide contact information of all adjacent property owners below.

Name: Idaho Department of Lands
Mailing Address: 3258 W. Industrial Loop
City: Coeur d' Alene State: ID Zip Code: 83815
Phone Number (include area code): Phone Number (include area code): E-mail:

Name: St. Joseph Woodlands LLC
Mailing Address: 540 SE Blair Rd
City: Washougal State: WA Zip Code: 98671
Phone Number (include area code): Phone Number (include area code): E-mail:

Name:
Mailing Address:
City: State: Zip Code:
Phone Number (include area code): E-mail:

Name:
Mailing Address:
City: State: Zip Code:
Phone Number (include area code): E-mail:

Name:
Mailing Address:
City: State: Zip Code:
Phone Number (include area code): E-mail:

Name:
Mailing Address:
City: State: Zip Code:
Phone Number (include area code): E-mail:

Name:
Mailing Address:
City: State: Zip Code:
Phone Number (include area code): E-mail:

30. SIGNATURES: STATEMENT OF AUTHORIZATION / CERTIFICATION OF AGENT / ACCESS
Application is hereby made for permit, or permits, to authorize the work described in this application and all supporting documentation. I certify that the information in this application is complete and accurate. I further certify that I possess the authority to undertake the work described herein; or am acting as the duly authorized agent of the applicant (Block 2). I hereby grant the agencies to which this application is made, the right to access/corne upon the above-described location(s) to inspect the proposed and completed work/activities.

Signature of Applicant: ____________________________ Date: 10-21-2020

Signature of Agent: ____________________________ Date: 10/23/2020

This application must be signed by the person who desires to undertake the proposed activity AND signed by a duly authorized agent (see Block 1, 2, 30). Further, 18 USC Section 1001 provides that: "Whoever, in any manner within the jurisdiction of any department of the United States knowingly and willfully falsifies, conceals, or covers up any trick, scheme, or disguises a material fact or makes any false, fictitious, or fraudulent statements or representations or makes or uses any false writing or document knowing same to contain any false, fictitious or fraudulent statements or entry, shall be fined not more than $10,000 or imprisoned not more than five years or both".
Proposed Dock Storage Area

(2) Dolphin Pilings to secure Dock Storage
(12) Single Pilings to secure Dock Storage

HDB Marine
WWW.HDBMARINE.COM  (208) 689-3248  48401 S. HWY 97, HARRISON, ID 83833
CANCELLATION OR AMENDMENT OF
CERTIFICATE OF ASSUMED BUSINESS NAME

To the SECRETARY OF STATE, STATE OF IDAHO
Pursuant to Section 53-507 and 53-508, Idaho Code, the undersigned gives notice
of the action(s) indicated below:

1. The assumed business name is: Harrison Dock Builders

2. The assumed business name was filed with the Secretary of State's Office
   on 08/06/2002, as file number D57107.

3. □ Cancellation. The persons who filed the certificate no longer claim an interest in
   the above assumed business name and cancel the certificate in its entirety.

4. ☑ The assumed business name is amended to: HDB Marine

5. □ The true names and business addresses of the entity or individuals doing
   business under the assumed business name are amended as follow:

   Add: Delete: Name: Address:
   □ □ ____________________________ ____________________________
   □ □ ____________________________ ____________________________
   □ □ ____________________________ ____________________________

6. □ The type of business is amended to read:
   □ Retail Trade □ Manufacturing □ Transportation and Public Utilities
   □ Wholesale Trade □ Agriculture □ Finance, Insurance, and Real Estate
   □ Services □ Construction □ Mining

7. □ The name and address to which future correspondence should be addressed
   is changed to read:
   ____________________________ ____________________________

8. Name and address for this acknowledgment copy is:

   MARINE Co., Inc.
   P.O. Box 8
   HARRISON, IDAHO 83833

Signature: ____________________________
Printed Name: Keith Shannon
Capacity: President

(see instruction #9 on back of form)
SINGLE AND TWO-FAMILY LOT ENCROACHMENT PERMIT APPLICATION

This information sheet and checklist must be completed when submitting an encroachment permit application. Incomplete applications will be returned without processing.

Encroachment Type:  
☐ - Single family dock (58-1305)  
☐ - Riprap (58-1306)  
☐ - Two-family dock (58-1305)  
☐ - Waterline (58-1306)  
☐ - Mooring buoy (58-1305)  
☐ - Other – describe:  
Fall and Spring Dock Storage

Applicant's Littoral Rights Are:  
☐ - Owned, fee simple title holder  
☐ - Leased  
☐ - Other – describe:  
☐ - Signature of littoral rights owner is obtained if applicant is not the owner of the riparian/littoral rights

Provide a Black/White Copy of Each Required Document on 8 1/2"x14" or Smaller Paper:  
☐ - County plat map showing both neighboring littoral lots.  
☐ - Tax record identifying the owner of the upland parcel(s)  
☐ - Lakebed profile with encroachment and water levels of winter and summer  
☐ - General vicinity map that allows Department to find the encroachment  
☐ - Scaled air photo or map showing lengths of nearby encroachments, distances to adjacent encroachments, and location and orientation of the proposed encroachment

Are Existing Docks or Other Encroachment(s) Permitted On This Parcel(s)?  
☐ - No
☐ - Yes  
Please attach a current photograph and a "to scale" drawing (see Document Requirements Above)  
Permit # L-95-S-3955A  
Date of Construction:  
What will happen to the existing dock or encroachment if this permit application is approved?  
☐ - Remain unchanged  
☐ - Complete removal  
☐ - Modification (800' x 300' Storage Area)  
☐ - Other:  
(Please note that old dock materials must be removed from the lake. Discarding these materials creates serious boating safety issues and offenders will be subject to prosecution and penalties.)

Does the Property Have 25 Feet of Lake Frontage for a Single-Family Dock or 50 Feet for a Two-Family Dock?  
☐ - Yes  
Total front footage:  ___________ feet  
☐ - No

How Many Feet Does the Proposed Encroachment Extend Beyond the Ordinary (or Artificial) High Water Mark?  
300' ___________ feet  
(during storage)

The Proposed Dock Length Is:  
☐ The same or shorter than the two adjacent docks  
☐ Longer than the two adjacent docks  
☐ Longer than the two adjacent docks, but within the line of navigability established by the majority of existing docks in the area.

☐ ___________ feet and not located near any other docks or other encroachments.

Single and Two-Family Lot Application
Page 1 of 2

RECEIVED  
OCT 13 2009  
Idaho Dept. of Lands  
Mica Supervisory Area
Will the Proposed Encroachment Exceed the Maximum Width of 10 Feet?  N/A
☐ - No  ☐ - Yes  If yes, explain why: ______________________________

Will the Proposed Encroachment Be Located Closer Than 25 Feet to the Riparian/Littoral Right Lines Established With Your Neighbors?  N/A
☐ - No  ☐ - Yes  If yes, what are the proposed distances? ______ feet
☐ - Consent of affected neighbor was obtained

Determining Riparian/Littoral Right Lines
Littoral right lines are not simple extensions of the upland property lines. Littoral right lines are generally perpendicular, or at right angles, to the shoreline. Curved shorelines or unusual circumstances may require Department Staff, or other professionals, to closely examine littoral right lines and assess the potential for infringement on adjacent littoral property owners.

Jessica N Hutson  9/4/2020
Printed Name  Date

[Signature]
Signature of Applicant or Agent

RECEIVED
OCT 13 2020
Idaho Dept. of Lands
Mica Supervisory Area
October 23, 2020

Idaho Department of Lands
Amidy Fuson, Resource Specialist Sr.
3258 W Industrial Loop
Coeur d’ Alene, ID 83815

RE: Dock Storage Justification

Ms. Fuson,

Please find enclosed HDB Marine’s application for Dock Storage in Powderhorn Bay.

HDB Marine is requesting to use the area that is governed by the Idaho Department of Lands. The proposed location of storage is 70’ out from the Ordinary High Water Mark and not attached to any parcel. Docks being stored are tied together using marine grade rope in groups to (2) Dolphin Piles and (12) Single Piles.

Dock Storage provides various benefits to Public Safety. Docks that are stored during the winter months are not subject to ice jams, rough waters, and harsh weather conditions that can lead to docks being damaged and/or breaking loose. When a dock is damaged or floating a drift it poses a safety hazard to the public who utilizes the lake to recreate. These floating hazards of debris can be unavoidable or unforeseeable to the public who recreate on the lake resulting in safety concerns. By storing docks in a protective Bay, such as Powderhorn, these docks are subject to less adverse weather that could cause breakage and debris thus protecting the public. Powderhorn Bay provides an ideal protected bay for storage due to the shape, surrounding topography that provides protection, and deeper water.

Due to logistics, docks maybe stored on a temporary basis in the summer months. This is a temporary situation, approximately 1-2 weeks in duration, while new construction docks are awaiting delivery to their permitted location. Storing new construction docks temporary in the summer months, assists HDB Marine in reducing the congestion at its facilities that is located on the Coeur d’ Alene River.

Should you have any questions or need additional information, please contact HDB at 208-689-3248.

Sincerely,

Jessica Hutson, Authorized Agent
HDB Marine

Tel: 208-689-3248
HDBMarine.com
Kootenai County

Owner Information:
MARINE CO INC
PO BOX 8
HARRISON, ID 83833

Site Address:
48401 S HIGHWAY 97
HARRISON

Legal Description: GOVT LT 2 W OF HWY 95A, TAX# 19173 [IN GL3]

BKG:
Acres: 20.0830  TRS: 483W31.PDF

https://gis.kcgov.us/app/kcearth/
BEFORE THE IDAHO STATE BOARD OF LAND COMMISSIONERS

In the Matter of Encroachment Permit Application ) Case No. PH-2020-PUB-22-003
No. L-95-S-5884 ) FINAL ORDER
North Idaho Maritime – John Condon, )
Applicant. )

I. NATURE OF PROCEEDINGS

The Idaho Department of Lands ("IDL"), through the State Board of Land
Commissioners, “shall regulate, control and may permit encroachments in aid of navigation or
not in aid of navigation on, in or above the beds or waters of navigable lakes” as provided in the
Lake Protection Act, title 58, chapter 13, Idaho Code. Idaho Code § 58-1303. The corresponding
administrative rules promulgated by the State Board of Land Commissioners are IDAPA
20.03.04, “Rules for the Regulation of Beds, Waters, and Airspace over Navigable Lakes in the
State of Idaho.”

On or around May 20, 2020,1 IDL received an encroachment permit application filed by
North Idaho Maritime. A public hearing was held on November 4, 2020. Michele Andersen
served as duly appointed hearing coordinator. On November 23, 2020, the hearing coordinator
issued her Preliminary Order, which contains a Factual and Procedural Background and
Conclusions of Law.

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1 The Application was received on or around May 20, 2020. After IDL notified NIM that the
application was incomplete, NIM submitted an amended application on July 20, 2020 with
As Director of IDL, my responsibility is to render a decision pursuant to Idaho Code § 58-1306(c) and IDAPA 20.03.04.030 on behalf of the State Board of Land Commissioners and based on the record, which I have reviewed in the context of my personal expertise gained through education, training, and experience. I relied on the record for this matter, including examining the hearing coordinator’s Preliminary Order in light of the entire record in this matter.

II. FINDINGS OF FACT

I adopt the Preliminary Order’s Factual and Procedural Background as my Findings of Fact.

III. CONCLUSIONS OF LAW

I adopt the Preliminary Order’s Conclusions of Law as my Conclusions of Law.

IV. ORDER

I conclude that the hearing coordinator’s Preliminary Order is based on substantial evidence in the record, and I adopt the Preliminary Order’s Factual and Procedural Background and Conclusions of Law as my decision in this matter. I hereby incorporate by reference the Preliminary Order’s Factual and Procedural Background and Conclusions of Law into this Final Order. I have enclosed and served the Preliminary Order along with this Final Order.

Based on the adopted Factual and Procedural Background and Conclusions of Law, I HEREBY ORDER that Encroachment Permit Application L-95-S-5884 is DENIED.

This is a final order of the agency. Pursuant to Idaho Code § 58-1306(c) and IDAPA 20.03.04.30.09, the Applicant or any aggrieved party who appeared at the hearing has a right to have the proceedings and Final Order reviewed by the district court in the county where the encroachment is proposed by filing a notice of appeal within thirty (30) days from the date of the final decision. The Applicant does not need to post a bond with the district court for an appeal.

FINAL ORDER - 2
The filing of the petition for review to the district court does not itself stay the effectiveness or enforcement of the order under appeal. Idaho Code § 67-5274.

Dated this 3rd day of December 2020.

[Signature]

DUSTIN T. MILLER
Director, Idaho Department of Lands
CERTIFICATE OF MAILING

I hereby certify that on this 4th day of December 2020, I caused to be served a true and correct copy of the foregoing by the method indicated below, and addressed to the following:

North Idaho Maritime
c/o John Condon
4020 N. Huetter Rd
Coeur d'Alene, ID 83814

- U.S. Mail, postage prepaid
- Email: John@northidahomaritime.com

North Idaho Maritime
c/o Colton Carlson
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Angela Schaer Kaufmann
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Counsel for IDL

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Kourtney Romine on behalf of
Michele Andersen, Hearing Coordinator

- Hand Delivery
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Copy sent via email and/or regular U.S. Mail, postage prepaid to Those Who Have Provided Comments.

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FINAL ORDER - 6
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I. FACTUAL AND PROCEDURAL BACKGROUND

A. Background of Administrative Record.

1. On April 20, 2020, the Idaho Department of Lands ("Department" or "IDL") issued a Notice of Non-Compliance to North Idaho Maritime LLC through its manager, John Condon (collectively "NIM" or "Applicant"), for its dock storage in Cougar Bay because NIM did not have an encroachment permit for that activity. On May 20, 2020, NIM submitted its original encroachment permit application. On May 21, 2020, NIM responded to the Notice of Non-Compliance. On June 1, 2020, the Department extended the deadline for NIM to submit a complete application. On June 19, 2020, IDL informed NIM their application was still incomplete. On July 20, 2020, NIM submitted a revised encroachment permit application ("Application"). On July 27, 2020, NIM submitted additional information in support of the Application.

2. In a letter dated August 13, 2020, the Department informed the Coeur d'Alene Press regarding legal notice of an application the Department received from NIM for a winter dock storage area and a year round work area, located on Lake Coeur d'Alene in Cougar Bay.

3. On August 13, 2020, the Department sent a Memorandum to various public agencies, the Kootenai Environmental Alliance ("KEA"), the Idaho Conservation League, and
adjacent neighbors of the Application: “Enclosed is an application requesting permission to have a winter dock storage area and year-round work area in Cougar Bay on Lake Coeur d’Alene. Please submit your comments, recommendations or objections to IDL by September 15, 2020...”

4. On September 1, 2020, the Idaho Department of Fish & Game (“IDFG”) sent written comments to the Department regarding the Application and providing technical information addressing “potential effects on wildlife and wildlife habitat and how any adverse effects might be mitigated.” The IDFG recommended “keeping the footprint of the facility to the smallest size practical, and away from the Cougar Creek Channel.”

5. On September 9, 2020, the Department sent a Memorandum noticing the recipients of a revised application “for winter and year-round storage area location on Lake Coeur d’ Alene. Please contact the Department within 30 days from the date of this letter to comment in writing on this proposal.”

6. On September 16, 2020, the Idaho State Department of Agriculture submitted written comments requesting that the “applicant mention their aquatic noxious weeds spread prevention plan” in the Application.

7. On September 18, 2020, the Department received consent from an adjacent property owner, Thomas Burns, agreeing to the encroachment.

8. On September 23, 2020, the Department received consent from an adjacent property owner, Edwin Haglund, agreeing to the encroachment.

9. On October 1, 2020, the Department received written comments from the Idaho Department of Environmental Quality regarding the disposition of demolition debris, Best Management Practices (“BMPs”) for petroleum products, retrieval and removal of submerged
demolition debris, and guidance on BMPs for the use of treated and preserved wood products in or around aquatic environments.

10. On October 2, 2020, the Department received consent from an adjacent property owner, Martha Cornwall McCain, agreeing to the encroachment.

11. On October 7, 2020, the Department received consent from an adjacent property owner, David Yadon, agreeing to the encroachment.

12. On October 29, 2020, the Hearing Coordinator issued an Amended Notice of Hearing re: Exchange of Hearing Exhibits and Official Notice.

B. The Applications.

1. On May 20, 2020, North Idaho Maritime filed its initial Joint Application for Permits ("initial application") with the Department. The initial application states that fees were received by IDL on May 20, 2020. Initial Appl'n at 1. According to the initial application, the "[p]urpose of the project is for a designated area to perform winter storage, along with a designated work area within the footprint to be in use all year round." Id. "Bring floating encroachments to Cougar bay with 1-2 man crew and tugboat. They will be tied together and secured to existing pile with rope. These will be stored from October-May. Storage area will be ~5-10 acres as needed. The max area would be ~1100' long and ~400' wide. Inside of the winter storage area will be a ~1-2 acre designated 'work area' ... will include the intermittent storage of miscellaneous docks for repair, resale, and disposal all year-round...suitable for assembly of modular dock sections that are built off site. ... no dredging or fill material will be used at this site." Id. at 2, ln. 16. "Deadheads will be avoided in transport. Employees will practice responsible measures while building, repairing, and demolition when needed. Boats will be reasonably maintained to prevent any leaks of fluids. All necessary infrastructure is in place. ... Floating encroachments secured with multiple
lines and additional log boom if necessary. Docks are brought in in groups of up to 4 to maximize efficiency and to limit trips through bay.” Id. at 2, ln. 17. “Mitigation plan not necessary. BMP’s cover relevant hazards. …Vessels are equipped with necessary prevention and containment equipment.” Id. at 2, ln. 18. It is anticipated no impacts will be caused. Id. at 2, ln. 20. “There have been ongoing operations in Cougar bay for over 100 years.” Id. at 2, ln. 21. The “Idaho Department of Lands Lease B-2186” was listed as a previously issued permit authorization. Id. at 2, ln. 22.

2. Attachments to the initial application include the Department’s required form titled Commercial/Community/NonNavigational Encroachment Permit Application (“Encroachment Application”) in which NIM states the type of encroachment is “Other - Winter Storage”. The proposed encroachment will exceed the maximum width of 10 feet. According to the Encroachment Application, necessary attachments included; county plat map, lakebed profile, general vicinity map, scaled air photos. According to the Encroachment Application, the littoral rights are, “Other – Public Trust.” According to the Encroachment Application, the tax record identifying the owner of the upland parcel indicated “N/A” and no tax record was included in the attachments.

3. Photos attached to the initial application display the dimensions of the encroachment, the location within Cougar bay, and indicate the distances from other encroachments and neighboring littoral right lines.

4. Another attachment depicts the encroachment footprint with existing pilings.

5. On June 19, 2020, IDL notified NIM that their application was incomplete as submitted. The Department stated that additional information was required for the “404 Joint Application for Permits. Questions: (9.) Tax Parcel ID# - provide the Littoral Rights that will be used for this application. (11c-e) Section, Township and Range of this proposed encroachment. (16) Detailed Description of Each Activity with overall Project – this narrative will need to clearly state
amounts of acres and or feet of area will be used during each use.” Additionally, the “lake profile
drawing” and a “brief project narrative” that the proposed “Encroachment Not in Aid to Navigation
meets IDAPA 20.03.04.030.02” were necessary for IDL to receive within “30 days of receiving this
letter”… “before the application can be considered complete.”

6. On July 20 2020 the Department received an amended application. The amended
application included an attachment depicting the lakebed profile for the proposed encroachment.
The amended application also included an attachment with answers to the application questions that
the Department identified as incomplete in its Notice of Incomplete Application. For Question (9)
Tax Parcel ID, NIM answered that, “this location does not have a parcel; however, the Applicant
owns littoral rights at his property located at 6719 S Highway 97, Coeur d’Alene, ID. Sec. 06 Twp
49 N. R.2 W.B.M. Parcel AIN Number 111552.” For Question (11c-e) NIM added the following
information, “property adjacent to the encroachment is in SE Sec. 15 Twn 50 N. R.4 W.B.M.” As
an explanation that the Application is for Encroachments Not in Aid to Navigation, NIM stated:

The said encroachment is not in aid of navigation, but we do strongly
believe our encroachment will provide environmental and economic
benefits to the general public. Winter storage is a valuable service provided
and hundreds of residents with littoral rights to Coeur d’Alene Lake take
advantage of such service every year. In shallow areas, areas that ice over,
and areas of the lake susceptible to storms are all detrimental locations to
floating encroachments. Encroachments in these areas are at a greater risk
to damage that is costly to fix and in extreme cases this damage can cause
floating debris. By storing encroachments in a protected area with ample
water depth we can help to mitigate the costs and safety hazards associated
without having storage service.

7. Referring to the year-round work area, NIM stated that it “will include the
intermittent storage of miscellaneous docks for repair, resale, and disposal all year-round …
suitable for assembly of modular dock sections that are built off-site. This will benefit the public
because it will minimize the actual effect of work being done at their site location. … When new

PRELIMINARY ORDER – PAGE 5
docks are installed ... old docks need to be disposed of. ... This area would also act as a temporary storage area.” The year-round work area would also be used “in the recovery of derelict and miscellaneous hazards in the form of docks and logs.”

8. The amended application also included a copy of an Idaho Commercial Lease Agreement between John & Gaila Condon and NIM for land and improvements at 6719 S Highway 97 Coeur d’Alene, ID, AIN 111552, TX#5934. The amended application along with the additional materials provided to the Department on July 27, 2020 and on September 4, 2020, appear to have been accepted by IDL as the complete Application.

C. Appointment of the Hearing Coordinator and Notice of the Public Hearing.

On October 2, 2020, the Director appointed the Hearing Coordinator to preside over a public hearing to be held on November 4, 2020. According to the Notice of Appointment of Hearing Coordinator and Public Hearing, and considering the current public health climate and COVID-19¹, the public hearing would be held both in-person at the Department’s office in Coeur d’Alene, as well as by Zoom, enabling any member of the public to “attend and present comments at the public hearing. You may also submit written comments.... In order to be considered, all written comments must be received by the close of the hearing.”

D. Written Public Comments.

1. Numerous written comments from members of the public were received by the Department, most of which opposed the Application. Comments opposing the Application generally discussed adverse esthetics effects; potential impacts to property values for property owners in and near Cougar Bay; negative impacts to wildlife habitat, specifically related to noxious weed transport; impacts to water quality; adverse impacts from floating debris; impacts from an

¹ See https://coronavirus.idaho.gov/.
increased dock storage footprint; concerns regarding NIM’s “after the fact” application; concerns regarding storage of floating debris rather than disposal of debris at an appropriate upland location; that the proposed encroachment will not greatly contribute to environmental, economic or social benefits to or for the general public, as compared to benefits to the fewer lakefront property owners who are NIM’s customers; negative impacts to native fish populations and other wildlife species; negative impacts due to noise pollution from operational activities; negative impacts for boater safety; infringement on the use and enjoyment of the area in Cougar Bay by the public; concerns regarding the littoral right eligibility of the Applicant; incompatibility with current uses; reduction in sportsman access; disturbing potentially contaminated lakebed sediments; and whether there is truly a need for a floating work area in addition to NIM’s existing upland work area adjacent to its littoral property in Wolf Lodge Bay on Lake Coeur d’Alene.

2. Comments supporting the Application generally discussed the essential services that marine contractors provide for constructing and managing public facilities on area waterways; critical service support provided by NIM during emergencies; the need for winter dock storage; and the historic industrial and commercial use of Cougar Bay for log storage and transportation to area mills that previously operated, but no longer in business.


1. On November 4, 2020, a public hearing was held at the Idaho Department of Lands office in Coeur d’Alene and utilizing the Zoom videoconference platform. The hearing started just after 6:00 p.m. Pacific Time. The order of testimony was established by the Hearing Coordinator as follows: (1) testimony from North Idaho Maritime’s representatives; (2) testimony from public agencies other than IDL; (3) testimony from members of the public; (4) testimony from IDL; and (5) any reply from North Idaho Maritime.
2. Testimony on behalf of the Applicant was first given by Rand Wichman. Mr. Wichman started off by thanking IDL staff for their assistance with the Application and stated that dock storage on Cougar Bay has been an issue in search of a solution for more than 10 years. Mr. Wichman explained that NIM is seeking an encroachment permit for winter dock storage with a work area that would allow for assembly of new docks and repair and rebuilding of docks that required such service. The total area covered by the Application is 5 acres, winter dock storage is the primary purpose of the Application and would take up most of the area, likely 2-3 acres as needed. A smaller portion of the site would be used for interim storage for floating encroachments that are awaiting repair, delivery to a new owner, or awaiting removal from the lake. The other activity proposed for this site is a work area for the repair and assembly of modular dock sections. These modular sections would not be built on this site.

3. Mr. Wichman stated that the need for winter dock storage has been well documented by the Department and that the Department has issued permits to other operators in different areas of Coeur d’Alene Lake as well as in Cougar Bay and referred to Staff remarks in the record supporting this request.

4. Referring to the year-round aspect of the storage area, Mr. Wichman explained that with wintertime storage, the stored docks return home at the end of each season, yet the infrastructure for that storage remains. The referenced infrastructure includes existing pilings, containment booms, and other materials necessary to secure the docks.

5. Mr. Wichman explained that cast-off docks, deadheads, and floating debris are year-round hazards for the (Kootenai County Sheriff’s Office) Marine Division and recreational boaters. These are items that must be removed from the lake so that they are not a hazard to navigation or a nuisance to downwind property owners. Lake currents and wind make Cougar Bay a logical place
to tow and store these items until they can be removed. Removal of these hazard items is a service that NIM provides. The year-round dock storage infrastructure provides a suitable location to store these items until they can be removed. Mr. Wichman went on to explain that there is a need for the storage area to exist year-round and that “it serves a clear public benefit sequestering these navigational hazards until they can be removed from the lake.”

6. Referring to the public’s concern regarding the accumulation of “junk” and debris in Cougar Bay, Mr. Wichman stated that removal of these navigational hazards from the lake has been difficult due to the lack of necessary shoreline infrastructure. He then explained that NIM believes that they will have approval for that use (i.e. a crane) at their Wolf Lodge Bay commercial site in the near future. This will allow NIM to remove unserviceable docks and ameliorate the concerns regarding floating junk accumulation in the proposed year-round storage area in Cougar Bay.

7. Regarding the use of the proposed work area in Cougar Bay for dock repair and assembly, Mr. Wichman explained that dock repairs cannot always be completed at a shoreline owner’s location. Dock repair generally needs to be done in a protected area with relatively calm water and that these conditions do not always exist at a property owner’s location. Water depth, nearby encroachments, and shoreline configuration, and other conditions can prevent easy access for equipment necessary to facilitates repairs. These circumstances require towing the dock to an approved work area to facilitate repairs. Approval of the Wolf Lodge location will provide a work area for repairs; however, that site is inaccessible due to water depth for a significant portion of the year and has limited space, “the space in Cougar Bay is needed to fill that gap.” Mr. Wichman then stated his opinion that “all aspects of the Application are in aid of navigation and safety on the lake.”
8. Following Mr. Wichman, comments were given by NIM’s manager, John Condon. Mr. Condon provided perspective regarding the historical use of Cougar Bay including historical log storage of 104 acres and the remaining infrastructure from those activities. Mr. Condon explained that it is their plan to “rehabilitate and upgrade that facility to handle this future need.”

9. Mr. Condon discussed the revamping of NIM’s business model from historically doing 90% of its business for the local mills, to now servicing waterfront development and dock construction. With this business reinvention, NIM started storing docks in Cougar Bay approximately 12-15 years ago.

10. Mr. Condon discussed how the lake hydrology contributes to debris accumulation within Cougar Bay, the historical lack of development along the shoreline, that there are shallow water depths within areas of the bay, and that the historic use of the area for log storage and transportation has protected the shoreline from boat wakes and enable the parts of the bay to become a nature conserve. These factors also contribute to the circumstance of a “safe harbor” that NIM would like to have for its year-round storage and work area.

11. Mr. Condon discussed the need for replacement of some of the piling and booms that would be used within the proposed encroachment area, the need to install lighting that meets Coast Guard requirements, and conducting regular safety inspections. In response to related questions from the Hearing Coordinator, Mr. Condon said that they would replace existing piling as necessary, would also upgrade the existing log boom system, which it is in disrepair. After further questioning by the Hearing Coordinator, Mr. Condon estimated that there are at least 30 pilings within the “backbone” system of 4-pilings per clusters that need to be replaced. These pilings are not identified or depicted in the Application but were discussed by both Mr. Wichman and Mr. Condon as being part of the infrastructure facilities of the proposed encroachment area.
12. Mr. Condon also stated that all the pilings NIM would use (if the Application were granted) were previously permitted by IDL to Foss Maritime, and that NIM sublet from Foss Maritime for the use of that encroachment area. While the Submerged Lands Lease No. B-2186 to Foss Maritime is in the record, it terminated by its own terms on December 31, 2009. There is no document in the administrative record that confirms Mr. Condon’s statement that NIM sublet the pilings from Foss Maritime or that NIM has had any type of written permission from the Department to utilize Cougar Bay for its business operations since 2009.

13. No representatives from other government agencies were present at the hearing to provide testimony in addition to any written comments previously provided to IDL. Therefore, after the Applicant’s representatives concluded, comments were taken into the record from members of the public. Most of the oral comments were opposed to the project, for the same or similar reasons given in writing and identified in paragraph D.1., above.

14. One gentleman, Mr. William Chapman, commented and agreed that there is a need for the pilings and log boom facility. However, Mr. Chapman disagreed that NIM just inherited the infrastructure from the logging companies. Mr. Chapman also suggested that, if the Application is granted, the shape of the encroachment area be changed from a long rectangle to a square-shaped area, so that it has less of a visual impact.

15. After comments were taken from the public, Mike Ahmer, Lands Resource Supervisor – Public Trust, with the Department, read into the record his revised written Hearing Statement, which contains comments on and recommendations for the Application (“IDL Report”). The initial IDL Report was made part of the record on November 2, 2020, as Exhibit IDL-1, along with Exhibit IDL-2 (Kootenai County GIS webpage depicting the Applicant’s littoral ownership in Wolf Lodge Bay), and Exhibit IDL-3 (Google Earth Image dated 9/27/2005 showing historical log
storage in Cougar Bay). Mr. Ahmer explained that since the IDL Report was submitted, the Department had made some additional written recommendations and that he would be submitting a revised version prior to the close of the record. Mr. Ahmer also indicated that, based on Mr. Condon’s representations at the beginning of the hearing, the Department had three additional recommended conditions, if the Application were to be granted.

16. The IDL Report explains that the initial application was received on April 20, 2020, but the application was incomplete. Following a series of exchanges with NIM, the Application was deemed complete on September 4, 2020. The Application proposes a 5-acre winter storage area and a 2-acre year-round work area on Cougar Bay in Lake Coeur d’Alene. Mr. Ahmer explained the timeline of events surrounding the Application. After reviewing pertinent sections of title 58, chapter 13, Idaho Code; and IDL’s navigable water rules at IDAPA 20.03.04, the IDL Report states: “The location of the proposed encroachments is in Cougar Bay and not within nor near the applicant’s littoral right area in Wolf Lodge Bay.” IDL Report p. 5. “Historically, Cougar Bay was used as a log storage area. ... IDL leased a portion of the bed of Cougar Bay to Foss Maritime between 2000 and 2009 for log storage area.” Id. at 5. In 2008, North Idaho Maritime and Murphy Marine Construction Company applied together for an encroachment permit for a dock storage area, but after holding a public hearing, the application was denied. In 2010, Murphy Marine Construction Company applied for a dock storage area and after a public hearing, the permit was granted.” Id. at 5. “IDL has determined that NIM is seeking an encroachment permit for a winter storage area as well as a year-round work area. The winter storage area is for ‘floating encroachments’ which may include navigational encroachments such as single-family docks and nonnavigational encroachments such as boat garages and float homes. IDL also notes that it has no jurisdiction over tugs and barges.” Id. at 5.
17. The IDL Report explained that: “The [Lake Protection Act] Rules do not have
specific size limitations for winter dock storage areas or year-round work areas.” *Id.* at 5. The IDL
Report also commented that:

There is a significant public benefit from the storing of floating
encroachments through the winter ... the storing of docks prevents them
from being damaged and becoming floating hazards throughout the lake, as
well as from washing up on shore and becoming another waterfront owner’s
problem to deal with. Additionally, the storage occurs in the winter months,
when the water is lower and colder, and there is much less public recreating
on the water. However, allowing a year-round area in Cougar Bay prevents
the public from utilizing a portion of the lake during the prime summer
months and it ensures that all members of the public see floating
encroachments in Cougar Bay all year long. IDL does not see a significant
benefit to the public by allowing a year-round work area in Cougar Bay.

*Id.* at 7.

18. The IDL Report recommended, “denying the year-round construction area and if the
winter storage area is approved,” applying specific terms and conditions to that encroachment
permit. *Id.* at 7.

19. After the Department gave its report and recommendation, a reply was given by Mr.
Condon. Mr. Condon explained that his proposed encroachment does not represent a new impact on
the lake and that their proposal would clean up, repair, and better manage the existing
infrastructure. Mr. Condon stated that NIM has been trying to do this for 12 years. Mr. Condon
explained that Wolf Lodge Bay is not suitable for winter dock storage. Mr. Condon acknowledged
the differences between the year-round work area and the winter dock storage, but maintained that
there is a necessity for each. In response to questions from the Hearing Coordinator, Mr. Condon
stated that NIM had most-likely started moving docks into Cougar Bay for storage during the 2020-
2021 winter, and that he was not aware of all the personal property or equipment that NIM
currently has at the proposed encroachment location.
20. The public hearing concluded at approximately 7:51 p.m. (PT) on November 4, 2020. The record was left open by the Hearing Coordinator through 5:00 p.m. (PT) on November 5, 2020, to allow for additional, requested documents to be provided to the Hearing Coordinator.

21. Additional written comments were received by IDL after the record closed on November 5, 2020. Those materials have not been reviewed by, and will not be considered by the Hearing Coordinator in rendering this Preliminary Order. With all evidence submitted, the matter is fully before the Hearing Coordinator.

II. CONCLUSIONS OF LAW

A. IDL Has Jurisdiction Over the Beds, Banks and Waters of Lake Coeur d’Alene.

1. Under the Notice of Appointment of Hearing Coordinator and Public Hearing, the Hearing Coordinator is authorized by the Director of the Department to issue this Preliminary Order. I.C. § 67-5245.

2. Lake Coeur d’Alene is a navigable lake within the state of Idaho. See Newton v. MJK/BJK, LLC, et al, 167 Idaho 236, 469 P.3d 23, 27 (2020); Kootenai Envtl. Alliance, Inc. v. Panhandle Yacht Club, Inc., 105 Idaho 622, 624, 671 P.2d 1085, 1087 (1983). A “navigable lake” is “any permanent body of relatively still or slack water ... capable of accommodating boats or canoes.” I.C. § 58-1302(a); see also IDAPA 20.03.04.010.024 (iterating definition).

3. Upon admission of the State of Idaho into the Union, and under the Equal Footing Doctrine, the title to the beds and banks of navigable waters became state property that is subject to the Public Trust Doctrine. I.C. § 58-1201(1). Under the Public Trust Doctrine, the “state board of land commissioners may approve, modify or reject all activities involving the alienation or encumbrance of the beds of navigable waters in accordance with the public trust doctrine.” I.C. § 58-1203(1). The Public Trust Doctrine “traditionally protected the public’s right to navigation, but
has since expanded to protect fish and wildlife habitation, recreation, aesthetic beauty, and water quality.” *Newton*, 469 P.3d at 29 (citing *Idaho Forest Indus., Inc. v. Hayden Lake Watershed Improvement Dist.*, 112 Idaho 512, 516, 733 P.2d 733, 737 (1987) (citing *Kootenai Envtl. Alliance, Inc.*, 105 Idaho at 625, 632-33, 671 P.2d at 1088, 1095-96)).

4. Compatible with the Public Trust Doctrine are the Land Board’s general legislative authorities, which include the power to “regulate and control the use or disposition of lands in the beds of navigable lakes … so as to provide for their commercial, navigational, recreational or other public use; provided, that the board shall take no action in derogation of or seeking to interfere with the riparian or littoral rights of the owners of upland property abutting or adjoining such lands … .” I.C. § 58-104(9)(a); see also Idaho Const. art. IX, § 7 (providing the Land Board shall have the power to direct, control, and dispose of public lands of the state, under such regulations as may be prescribed by law).


6. The scope of the state’s title in the beds of navigable lakes “extends to the natural high water mark as it existed at the time the state was admitted into the Union.” *Idaho Forest Indus., Inc. v. Hayden Lake Watershed Improvement Dist.*, 112 Idaho 512, 516, 733 P.2d 733, 737 (1987) (citations omitted); see also I.C. § 58-1302(b) (defining “beds of navigable lakes” as the lands lying under or below the natural or ordinary high water mark of a navigable lake).

7. As a navigable lake, Lake Coeur d’Alene may be used and disposed of by the state, but no such disposition shall interfere with the rights of the Land Board “to regulate commerce on . . . the navigable lakes, rivers, or streams as public highways over which every citizen has a natural
right to carry [on] commerce, whether by ships, boats, or the floating of logs or lumber, having due
consideration and reasonable care for the rights of individuals, as well as the public, in the common
use of such public highways.” Callahan v. Price, 26 Idaho 745, 146 P. 732, 735 (1915) (citing
Illinois C.R. Co. v. Chicago, 176 U.S. 646 (1900)).

8. The granting of an encroachment permit or a submerged land lease is not a disposal
of property in fee simple to a private party. Such grants maintain the public trust land within the
control of the state because “the state is not precluded from determining in the future that this
conveyance is no longer compatible with the public trust imposed on this conveyance.” Kootenai

9. The Idaho Supreme Court has adopted a two-part test to determine the validity of a
disposal, including the lease, of public trust property: “One, is the grant in aid of navigation,
commerce, or other trust purposes, and two, does it substantially impair the public interest in the
lands and waters remaining?” Kootenai Envtl. Alliance, Inc., 105 Idaho at 626, 671 P.2d at 1089
(citing Illinois C.R. Co. v. Illinois, 146 U.S. 387, 460 (1892)).

10. With limited exceptions that do not apply in this matter, the Land Board exercises its
rights, powers and duties through IDL. I.C. § 58-119(1). “It is clear, therefore, that the Department
of Lands acting as the representative of the State Land Board has the power to dispose of public

11. With “the public trust doctrine at all times [forming] the outer boundaries of
permissible government action with respect to public trust [lands],” the Land Board and, therefore,
IDL may manage navigable waters through any applicable statutory and regulatory framework.
Kootenai Envtl. Alliance, Inc., 105 Idaho at 631-33, 671 P.2d at 1094-96. Such statutory and
regulatory framework includes the Land Board’s general authority in Idaho Code § 58-104(9)(a);
and the Public Trust Doctrine, as codified in title 58, chapter 12, Idaho Code; along with the related administrative rules at IDAPA 20.03.17 – Rules Governing Leases on State-Owned Submerged Lands and Formerly Submerged Lands. The other often-used framework is the Lake Protection Act at title 58, chapter 13, Idaho Code (“LPA”); along with the administrative rules promulgated to implement the purposes and policy of the LPA at IDAPA 20.03.04 – Rules for the Regulation of Beds, Waters, and Airspace Over Navigable Lakes in the State of Idaho (“Rules”). Kootenai Envtl. Alliance, Inc., 105 Idaho at 631-33, 671 P.2d at 1094-96 (upholding the LPA and Rules as consistent with the Public Trust Doctrine).

**B. The Application is Denied because the Applicant, in this Specific Circumstance, is Not Qualified Under the LPA to Hold an Encroachment Permit at the Proposed Location in Lake Coeur d’Alene.**

1. The Application and this administrative matter are being conducted according the LPA and the Rules. However, as discussed, below, the LPA and the Rules are not an applicable framework because the Applicant does not have littoral rights adjacent to land that has a common boundary with the low water mark at any location in or above the bed of Lake Coeur d’Alene that the Applicant seeks to encumber. Such littoral rights are a threshold requirement of the LPA.

   a. Under the LPA, IDL must “regulate, control and may permit encroachments in aid of navigation or not in aid of navigation on, in or above the beds or waters of navigable lakes as provided herein.” I.C. § 58-1303 (emphasis added).

   b. An application for a commercial navigational encroachment or a nonnavigational encroachment **must be submitted or approved by the riparian or littoral owner.”** I.C. § 58-1306(a) (emphasis added); see also IDAPA 20.03.04.020.02 and 20.03.04.020.07.b (reiterating that only littoral owners or lessees shall be eligible to apply for an encroachment permit).
c. The “littoral owner” is the “fee owner of land immediately adjacent to a navigable lake, or his lessee, or the owner of … littoral rights that have been segregated from the fee specifically by deed, lease, or other grant.” IDAPA 20.03.04.010.33 (emphasis added). The word “adjacent” is expressly defined in the Rules to mean “[c]ontiguous or touching, and with regard to land or land ownership having a common boundary.” IDAPA 20.03.04.010.01.

d. The two other phrases that must be understood in order to define who, as a littoral owner, is qualified to submit an LPA application for a commercial navigational encroachment or a nonnavigational encroachment are “littoral rights” and “low water mark.” The term “littoral rights” means “only the rights of owners or lessees of land adjacent to navigable waters of the lake to maintain their adjacency to the lake and to make use of their rights as … littoral owners or lessees in building or using aids to navigation but does not include any right to make any consumptive use of the waters of the lake.” I.C. § 58-1302(f) (emphasis added); see also IDAPA 20.03.04.010.32 (iterating the definition). Finally, the term “low water mark” is defined as “that line or elevation on the bed of the lake marked or located by the average low water elevations over a period of years and marks the point to which the riparian rights of adjoining landowners extend as a matter of right, in aid of their right to use the waters of the lake for purposes of navigation.” I.C. § 58-1302(e) (emphasis added); see also IDAPA 20.03.04.010.21 (repeating definition).

e. In summary of the above-quoted statutes: As provided for in the LPA, an application for a commercial navigational encroachment or a nonnavigational encroachment may...

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2 “[O]ne of the basic rights enjoyed by owners of properties upon a navigable lake is the right to have access to the waters of such lake at the low water mark; this right is valuable and in many instances it is the controlling aspect of the value of such lands.” Lake CDA Inv., LLC v. IDL, 149 Idaho 274, 283, 233 P.3d 721, 730 (2010) (emphasis in Lake CDA Inv.).
be approved by IDL when the application is submitted by the owner or lessee of upland real
property, the littoral rights of which touch and share the common boundary line with the low water
mark at the location in or over the bed of navigable lake where the applicant requests an
encroachment permit.3

2. Here, the Applicant admittedly is not a littoral owner on Cougar Bay. See Appl’n;
Exhibit IDL-2. The Applicant does not hold the littoral rights of any upland location bordering
Lake Coeur d’Alene anywhere near the location of the proposed encroachment area. Id. Under the
LPA, the Applicant is not qualified to be issued an encroachment permit at the proposed
encroachment location. Therefore, no part of the Application can be granted.

3. Indeed, no person’s littoral rights extend to and exist at the proposed encroachment
location. The most landward point of the encroachment location is approximately 431 feet
waterward from the closest intersection with the line of navigability4 — as depicted in an aerial
photograph submitted with the Application. See Appl’n; IDL Report p. 5. At the proposed
location, the bed of Lake Coeur d’Alene is unencumbered public trust land owned by the state.
Consequently, the legal authority to allow either of NIM’s proposed encroachments is not the LPA
and Rules since that framework is for permitting encroachments to enable adjacent littoral rights.

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3 The single exception to the requirement of littoral ownership or permission appears to be at IDAPA
20.03.04.020.07.d, which requires that applications “for noncommercial encroachments intended to
improve waterways for navigation, wildlife habitat and other recreational uses by members of the
public must be filed by any municipality, county, state, or federal agency, or other entity empowered
to make such improvements.”

4 The “line of navigability” means “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 the line has not already
been established for the body of water in question.” I.C. § 58-1302(g).
C. The Applicant Could Be Issued a Submerged Lands Lease as the Requisite Government Approval for a Proposed Encumbrance of Lake Coeur d'Alene.

1. As discussed, above, IDL could evaluate whether to approve NIM’s proposed encumbrances to Lake Coeur d'Alene through another statutory and regulatory framework — namely the Land Board’s constitutional and statutory authority, including the Public Trust Doctrine, along with the corresponding administrative rules at IDAPA 20.03.17 — Rules Governing Leases on State-Owned Submerged Lands and Formerly Submerged Lands. Idaho Const. art. IX, § 7; I.C. §§ 58-104(9)(a), 58-1203(1); see also IDAPA 20.03.17.000 (citing as its legal authorities I.C. § 58-104(9) and title 58, chapter 12, Idaho Code).

2. In the Submerged Lands Rules, and consistent with its legal authorities, the state “asserts the right to issue leases for all encroachment, navigational or non-navigational, upon, in or above the beds or waters of navigable lakes and rivers” and provides instruction and the procedure for the issuance of a submerged lands lease that is “in the public interest and consistent with these rules.” IDAPA 20.03.017.001.02.b. and 20.03.017.025.02 (emphasis added).

3. Without permission from the state, and therefore in violation of Idaho law, NIM has been encumbering the water and bed of Lake Coeur d’Alene, in Cougar Bay, for at least 12 years. See J. Condon testimony; IDL Report pp. 1 and 5. While Mr. Condon expressed frustration with the government regulation of Lake Coeur d’Alene’s public trust resource, he also acknowledged that the lack of government approval has not caused NIM to cease its unauthorized uses of the lake. See J. Condon testimony.

a. In the administrative matter currently before the Hearing Coordinator, NIM has applied to receive the requisite government approval. However, as discussed, above, given the specific circumstances of the Applicant and Application, such permission cannot be granted.
pursuant to the LPA and the Rules, and therefore cannot be approved by the Hearing Coordinator whose authority arises from the LPA and Rules.

b. NIM and Mr. Condon must be diligent in securing a submerged lands lease if it is to continue its occupation of Cougar Bay.

c. As the responsible regulatory agency, IDL must be diligent in either approving a submerged lands lease, if possible under those rules, or requiring NIM to completely remove all encroachments related to its business in Cougar Bay.

4. Although the IDL Report, including its written conclusions and recommendations and IDL’s additional verbal recommendations offered during the public hearing in this matter, were presented under the legal framework of the LPA and Rules, the Hearing Coordinator is in agreement with IDL’s analysis and conclusions, and believes that IDL’s analysis and conclusions can be recast under the legal framework of the Submerged Lands Rules and its legal authorities. The Hearing Coordinator would encourage IDL to evaluate any submerged lands lease application with the same or similar scope of the current encroachment permit Application, the same way IDL evaluated the encroachment permit Application.

III. ORDER

Based upon the foregoing findings of fact and conclusions of law, IT IS HEREBY ORDERED that Encroachment Permit Application No. L-95-S-5884 is DENIED, subject to any conditions imposed by the Director of the Idaho Department of Lands.

This order issued herein is a Preliminary Order, pursuant to Idaho Code §§ 58-1306(c), 67-5270 and 67-5272, and the Notice of Appointment of Hearing Coordinator and Public Hearing issued on October 2, 2020, which states as follows:
In accordance with Idaho Code § 67-5240, the Hearing Coordinator shall submit a preliminary order to the Director of the Idaho Department of Lands, who shall issue a Final Order no more than thirty (30) days after the conclusion of the hearing.

The Preliminary Order can and will become final without further action of the agency if the Director does not issue a Final Order within thirty (30) days of the close of the hearing.

If this Preliminary Order becomes final, or if the Director issues a Final Order, pursuant to Idaho Code § 58-1306(c), the Applicant or other aggrieved party has the right to have this decision reviewed by the district court in the county where the encroachment is proposed by filing notice of appeal within thirty (30) days from the date of the final decision. Idaho Code § 58-1306(c). The filing of an appeal to the district court does not itself stay the effectiveness or enforcement of the order under appeal. Idaho Code § 67-5274.

DATED this _23_ day of November, 2020.

Michele Andersen
Hearing Coordinator
CERTIFICATE OF MAILING

I hereby certify that on this ___23__ day of November, 2020. I caused to be served a true and correct copy of the foregoing by the method indicated below, and addressed to the following:

Idaho Department of Lands
Dustin Miller, Director
c/o Renee Jacobsen
300 N 6th Street, Suite 103
Boise, ID 83702-0050

Kristina Fugate
Office of the Attorney General
P.O. Box 83720
Boise, ID 83720-0010

□ U.S. Mail, postage prepaid
□ Hand Delivery
☒ Email: rjacobsen@idl.idaho.gov

☐ Statehouse Mail
☐ Hand Delivery
☒ Email: kristina.fugate@ag.idaho.gov

Kourtney Romine
Workflow Coordinator
July 15, 2021

Idaho Department of Lands
Mike Ahmer  Resource Supervisor – Lands and Waterways
3258 W Industrial Loop
Coeur d’ Alene, ID 83815

Dock Storage Justification,

Please find enclosed HDB Marine’s application for an additional lease area to our existing permitted lease for Dock Storage in Powderhorn Bay.

HDB Marine is requesting a lease to use the area that is governed by the Idaho Department of Lands. The proposed location of storage lease is 70’ out from the Ordinary High Water Mark on the south side of our existing permitted dock storage and will extend around our current dock storage into the bay. We are not looking to expand any further then the docks we currently store. However we have outgrown our current permitted storage size, and in order to maintain services to our customers we are asking for what we like to refer to as an overflow lease. We are anticipating that over time, as we see more and more customers upgrading their docks we will be able to reduce this storage area. When replacing a dock we try to design the dock so that it would not need to be stored. With people taking consideration of storage in mind, along with advances in dock construction, fewer docks will need to be stored year after year. We currently see this trend happening, which in turn will allow this lease size to be reduced over time until we are back to our original permitted size. Docks being stored are tied together using marine grade rope in groups to (2) Dolphin Piles and (12) Single Piles.

Dock Storage provides various benefits to Public Safety. Docks that are stored during the winter months are not subject to ice flows, rough waters, and harsh weather conditions that can lead to docks being damaged and/or breaking loose. When a dock is damaged or floating adrift it poses a safety hazard to the public who utilizes the lake to recreate. Not to mention the repair or replacement costs associated with this. These floating hazards of debris can be unavoidable or unforeseeable to the public who recreate on the lake resulting in safety concerns. These docks need to be stored in a protective area to avoid damage due to the irregular shape of Lake Coeur D’Alene coinciding with the winter drawn down of the lake. By storing docks in a protective Bay, such as Powderhorn, these docks are subject to less adverse weather that could cause breakage and debris thus protecting the public. Powderhorn Bay provides an ideal protected bay for storage due to the shape, surrounding topography that provides protection, and deep water.

The Storage will have little impact on navigation as it will occur between October and May when recreational boating is at a minimum. In the spring when boaters get back out on the water this should reduce navigational hazards from debris of damaged docks.
We understand Fish and Wildlife’s concerns about predatory fish and waterfowl. We think this additional storage lease will have little to no impact, and hope to phase this out over time.

The additional storage should not have any adverse effects on water quality. It has always been HDB Marine’s policy to clean up the lake as much as possible and be good stewards of the lake. After all we live and work here. We try to remove as much debris as possible from the lake. Storage will help eliminate debris in the lake and lessen the need for dock repairs.

This lease should have little to no impact on recreational boaters as it will only be used during a specified time of year, and will not intrude in other times of the year to fisherman or pleasure crafts. This should enhance their experience by reducing debris in the lake overall.

Aesthetically everyone has their own opinion. Some people say it’s neat and they like seeing all the docks back there, others don’t care for it. Recently we were made aware of the solar lights on the docks over the winter that where bothering some people. We are looking in to that to find ways to mitigate any inconveniences this causes people in a reasonable way.

In conclusion HDB Marine strives to work with all agencies, home owners, and recreationist to keep Coeur D’Alene Lake safe and clean for everyone to enjoy.

Your approval of this request will do the same.

Should you have any questions or need additional information, please contact HDB at 208-689-3248.

Sincerely,

Isaac Shannon

RECEIVED

JUL 16 2021

Idaho Dept. of Lands
Mica Supervisory Area
Application for Use
Submerged Land Lease

Instructions: This form is used by persons seeking to lease state owned submerged and formerly submerged lands pursuant to IDAPA 20.03.17. Please complete this form and submit it, along with the non-refundable filing fee of $150 and required attachments to your local Idaho Department of Lands Supervisory Area Office.

Section 1: Applicant Information

Full legal name of applicant: Marine Co Inc. DBA HDB Marine

Legal status:

- Individual
- State government
- City, County, or Federal government
- Trust or non-profit (attach Affidavit of Existence)
- Business (attach Secretary of State Certificate of Existence)
- Other:

Name of primary contact: Isaac Shannon

Mailing address: PO Box 8

City: Harrison  State: ID  Zip: 83814

Contact phone number: 208-659-0262  Phone number type: Work

Email address: isaac@hdbmarine.com

Do you currently hold a lease with the Idaho Department of Lands?
- No
- Yes

If yes, provide lease number(s): B220170, B220171, B30002

Are you required to obtain worker compensation insurance?
- No
- Yes

Are there multiple applicants?
- No
- Yes

Section 2: Description of Associated Upland Property

Facility name: Marine Co Inc

Physical Address: 483401 S HWY 97

City: Harrison  State: ID  Zip: 83833

County: Kootenai  AIN/Parcel ID: 215726/ Y-0000-031-0800

Government Lot: 2  Section: 31  Township: 48  Range: 3W

Body of water: Coeur D'Alene Lake

Section 3: Encroachment Description

Encroachment or Stream Channel Alteration Permit Number:

Please, attach a copy of the recorded permit.

Identify all encroachments/uses to be under lease:

- Single-family dock
- Two-family dock
- Community dock
- Commercial marina
- Store
- Boat ramp
- Restaurant
- Swim area
- Fill
- Other(s): Dock Storage

Section 4: Discounts

If a commercial marina, you may qualify for a discount on your annual lease payment. Select one of the following that best describes the marina facilities:

- 25% discount: All marina facilities are made available to the public on a first come, first served basis.
- 50% discount: All marina facilities are made available to the public on a first come, first served basis AND fifty percent (50%) or more of the boat slips are set aside for day use only.
- None of the above.
Section 5: Attachments

Please attach all of the following required attachments, as applicable:

☑ $150 nonrefundable filing fee
☐ Encroachment or Stream Channel Alteration Permit
☐ A scale drawing of the proposed lease area with plans detailing all intended improvements, including reference to the nearest known property corner(s) (Only required if not included in encroachment/stream channel alteration permit)
☑ Secretary of State Certificate of Existence (Only required if applicant is a business)
☐ Affidavit of Existence (Only required if applicant is a trust or non-profit)
☐ Attachment A – Multiple Applicants (Only required if multiple applicants)

Section 6: Affidavit

I hereby certify that I am the applicant or authorized representative of the applicant and that the information contained in this application is true and correct to the best of my knowledge and further acknowledge that falsification or misrepresentation of any information contained herein, or provided herewith, will be grounds for denial of the application.

Applicant Signature

7-15-21

Isaac Shannon

Applicant Name

Applicant Title (if applicable)

State of Idaho ss.

County of Kootenai

On this 15th day of July, in the year 2021, personally appeared Isaac Shannon, known or identified to me to be the person whose name is subscribed to the within instrument, and acknowledged to me that he/she/they executed the same.

Notary Public

My Commission Expires: 12/31/2024

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JUL 16 2021

Idaho Dept. of Lands
Mica Supervisory Area

Page 2 of 2

IDLRPP0004 (11/16)
CERTIFICATE OF EXISTENCE

OF

MARINE CO., INC.

File Number C 92152

I, BEN YSURSA, Secretary of State of the State of Idaho, hereby certify that I am the custodian of the corporation records of this State.

I FURTHER CERTIFY That the record of this office show that the above-named corporation was incorporated under the laws of Idaho on April 27, 1990.

I FURTHER CERTIFY That the corporation is in goodstanding on the records of this office.

RECEIVED

JUL 16 2021

Idaho Dept. of Lands
Mica Supervisory Area

Dated: August 22, 2013

Ben Ysurra
SECRETARY OF STATE

By

[Signature]
National and Canadian Winter Dock Storage References

**Shoremaster** is a Northwest based dock manufacturer. Recommend pulling docks out and stacking them in a flat location to protect from ice damage.


**Alumidock** is a New York based dock manufacturer. Recommend pulling their sectional pier systems out of the water and stacking them.

[https://alumidock.com/blog/storing-your-dock-winter-120](https://alumidock.com/blog/storing-your-dock-winter-120)

**Multinautic** is a Canadian based dock manufacturer. Recommend pulling docks out and stacking them to protect from ice or other damage.

If they are to be left in the water, they recommend detaching docks from the shoreline and from other dock sections, making all anchor chains slack, and connecting everything to shore with ropes. Bumpers should be used as needed. This will allow the dock sections to float freely all winter.

[https://www.multinautic.com/winter-storage/](https://www.multinautic.com/winter-storage/)

**Lakeside Dock Sales** is a Maryland based dock manufacturer. They recommend leaving docks in the water if three conditions are met:

1. The area is protected from wind and waves are 1 foot high or less.
2. The floats will not rub on the lake bottom or rocks when the water drops.
3. The docks should have two feet of clearance around them for freedom of movement after the water freezes.

They also recommend loosening anchor chains, removing ramps, and tying the dock to something solid on shore with a rope.

If the conditions are not as described, they recommend removing the dock from the water.

[https://www.lakesidedocksales.com/winter-storage-keeping-your-dock-in-the-water/](https://www.lakesidedocksales.com/winter-storage-keeping-your-dock-in-the-water/)

**EZ Dock** is a nationwide dock manufacturer. Recommend pulling docks out and stacking them protect from ice or other damage. They recommend removing their polyethylene float docks and storing them on shore.

If removal is not possible, then they recommend installing a bubbler system around the dock to minimize ice formation. The dock should be tied to shore with a rope and then detached from the shore.

[https://www.ez-dock.com/blog/how-to-winterize-your-boat-dock/](https://www.ez-dock.com/blog/how-to-winterize-your-boat-dock/)

**Technidock** is a New York based dock manufacturer. Recommend pulling docks out in northern states to protect from ice or other damage.

[https://www.technidock.com/preparing-your-docks-for-winter/](https://www.technidock.com/preparing-your-docks-for-winter/)
Accudock is a Florida based dock manufacturer. Recommend pulling docks out and stacking them to protect from ice or other damage. Pulling them up on shore is an option if stacking cannot be done.

Docks can be left in if:

1. The dock has room to shift around with the freezing water.
2. The area is protected from the wind.
3. Waves do not exceed one foot in height.
4. Floats do not rub on the bottom at lowest water level.

They also recommend loosening anchor chains and tying the dock to shore with a rope.

https://www.accudock.com/blog/residential-floating-dock-winter/

Dock Hardware is a New York based dock manufacturer. Recommend pulling docks out and stacking them to protect from ice or other damage.

https://www.dockhardware.com/should-i-remove-my-floating-boat-dock-for-winter-months/

Decks & Docks Lumber Co. is an eastern US dock manufacturer. Recommend pulling docks out to protect from ice or other damage. Pipe docks (see Alumidock above) must be removed. Pier docks can have oscillators (de-icers) or bubblers installed to prevent ice buildup. This may not protect against moving ice.

Docks can be left in if:

1. The area is protected from the wind and waves.
2. The lake is drained every winter.
3. The dock will not rest on rocks when the water is down.
4. The dock has two feet of space to shift.

In addition, the anchor chains should be loosened and a rope should be used to tie the dock to the shore.

https://www.decks-docks.com/prepare-your-dock-for-winter

CanadaDocks is a Canadian dock manufacturer. They recommend that all “standing docks” on “legs” (see Alumidock above) be removed for winter due to ice damage.

Floating docks exposed to wind and ice movement, or moving current along a river, are also recommended for removal.

Floating docks in sheltered areas on a lake may be left in the water if the ramp is removed, anchors are loosened, and the dock is tied to the shoreline with rope.

https://www.canadadocks.ca/preparing-your-dock-for-winter

Cottage Life magazine recommends removing a pipe dock (see Alumidock above) to protect from ice damage. Floating docks should only be left in the water if they are tied up in a protected bay. Lift docks (boat lifts) should be winched up to five feet above the normal summer water level.

Pier docks subject to ice buildup may require bubblers to prevent ice formation around the legs.
Lake Front Living Blog is New England based and recommends pulling docks out and stacking them to protect from ice or other damage. Bubblers will not protect a dock from wind driven ice that heaves onto shore or is just blown into shore. They recommend pulling out all docks except those on fixed piling.

Idaho Winter Dock Storage References

Boondocks, LLC is based in Spirit Lake, Idaho. They recommend either moving the dock to a protected bay or securing it in place properly to avoid damage from winter ice and strong winds.

North Idaho Maritime is based in Coeur d'Alene, Idaho. They recommend dock storage in a protected bay, removing slip covers due to snow load and ramp removal due to changes in lake level. If docks are not moved, then anchor systems may need adjustment for changing water levels. Winter hazards include grounding out as the lake water level drops, ice, and heavy winter winds in unprotected areas.
In response to some of the topics raised at the meeting, HDB Marine would like to add to the conversation. We have looked at other storage areas as mentioned. Unfortunately Aberdeen Bay has a possible 15 mile fetch to it from north winds that makes it unusable. The slew is too shallow, and Loffs Bay to get the water depth needed we would have to be out by the camp. Loffs Bay was the best alternative location out of the options we explored, however since storage was already established in Powderhorn Bay we felt that it was more appropriate to stay in this area. As for the Gentleman who purchased the property behind the storage area, I am sure he was well aware that there was a well-established dock storage area in the bay in front of his property before purchasing that property. Powderhorn Bay is one of the few really protected deep water bays on Lake Coeur D’Alene. Many other areas of the lake deal with large sheets of Ice that can shift and take out anything in their path. We understand that the amount of docks has increased over the years, but we believe we are trending in the other direction. This should reduce the impact on powderhorn bay. As I stated earlier I think we will always have a need for storage due to ice and the winters we get here in North Idaho. However we also believe over time we can reduce this to an acceptable size for everyone. Last but not least to answer where the junk or broken docks come from that end up in powderhorn. Sometimes at the end of the year when we go store docks we find a dock has been damaged or destroyed. We have to take it back to powderhorn with the raft as we are actively doing dock storage. Then we try to leave them at storage while we deliver the docks in spring as they can’t or shouldn’t be returned in that condition. Last year due to the Labor Day storm, which anyone that was around knows the damage it caused, and how many additional docks where wiped out. With it being so close to storage time many of these docks ended up getting rafted into the storage without knowing the condition prior. This is the reason for the amount of docks you saw there this year. This was not a normal occurrence by any means, and with any luck we won’t see another storm like that for another 50 years. Also some of the docks and debris just appear there, and we have no idea where they come from. Some could be from home owners cleaning up there beach, or other contractors. Any logs or dead heads that are floating in the lake that get tied up there by other boaters is a great thing in my opinion. We are happy to help clean up the lake, but there also needs to be an understanding that it may take a bit to get out there and clean them up from time to time. In addition we actively clean debris on the lake to our best capability. Attached is a news article on the Labor Day storm, just so anyone who is not familiar with it can
understand why we had more damage this year. Also this why we need dock storage in certain areas as well. I wish I still had some video of this storm as it was a site to see.

HDB Marine’s Powderhorn Bay Activity, 6/8/1998
After storage season. A few docks or pieces of debris present on 0.44 acres of lake.
HDB Marine’s Powderhorn Bay Activity, 6/15/2004
After storage season. A few docks present on 0.38 acres of lake.
HDB Marine’s Powderhorn Bay Activity, 9/27/2005
Before storage season. A few docks present on 0.51 acres of lake.
HDB Marine’s Powderhorn Bay Activity, 6/22/2006
After storage season. A dock and possibly some debris present on 0.46 acres of lake.
HDB Marine’s Powderhorn Bay Activity, 4/30/2009
Near end of storage season. A few docks and some debris present on 0.71 acres of lake.
HDB Marine’s Powderhorn Bay Activity, 6/23/2009
After storage season. No visible docks or debris.
HDB Marine’s Powderhorn Bay Activity, 8/20/2011
Before storage season. A few docks and some debris present on 0.66 acres of lake.
HDB Marine’s Powderhorn Bay Activity, 7/14/2013
Before storage season. A few docks present on 0.43 acres of lake.
HDB Marine’s Powderhorn Bay Activity, 4/20/2015
During storage season. Many docks present on 5.08 acres of lake.
HDB Marine’s Powderhorn Bay Activity, 4/7/2016
During storage season. Many docks present on 5.36 acres of lake.
HDB Marine's Powderhorn Bay Activity, 6/20/2017
After storage season. One dock and some debris present on 0.50 acres of lake.
HDB Marine’s Powderhorn Bay Activity, 7/14/2018
Before storage season. A few docks and some debris present on 0.74 acres of lake.
Before storage season. One dock and a barge are present on 0.86 acres of lake.
Mr. Ahmer –

Attached are photos taken on 7/19/21 of the “dock storage area” in Powderhorn Bay Idaho. I have lived on Powderhorn Bay for more than 30 years and can tell you there are more residual docks, dock parts, and other debris from the dock companies in this area than I have ever seen after the 6/1 date required by the leases for removal of all docks.

Some of the dock and dock parts are not secured and/or the debris is unsecured on the shore or on a semi-submerged dock. This has resulted in docks and other debris drifting throughout the bay when disturbed by boat wakes and/or winds.

Also note there are now tugs and barges parked in this area, some for many weeks (not just overnight.) The tug/barges extend well into the Bay and waters commonly used by recreational boaters. While this area has been used for occasional overnight moorage of tugs and barges in the past as they are moving from one part of the lake to another, it appears this area is now being used as a “home base” for tugs, barges and other dock building equipment – which does not conform to the current leases or this area.

Please include this e-mail and the attached photos for the record for consideration of renewal of leases for dock storage in this area.

Jim Riley

63532 S Powderhorn Bay Road
Sent from my iPhone
Please see attached letter.
28 July 2021

Mr. Ahmer,

Please accept my comments below regarding the submerged lands lease application submitted by Marine Co. Harrison Dock Builders (HDB) for winter commercial dock storage on the waters of Powderhorn Bay, Coeur d'Alene Lake, ID. **My strong preference is that all Powderhorn Bay winter dock storage operations of HDB and any other commercial entity be moved to Harrison Slough or another location, ideally where the permittee currently possesses riparian/littoral rights via ownership of adjacent waterfront property. Alternatively, the State might provide those rights by granting a permit to store docks overwinter on waters adjacent to public land (for example, in Loff's Bay).**

I am owner of a lakefront property directly across from the current HDB winter dock storage area. We are fortunate to reside in a sheltered area where our docks (at least to date) need not be moved during winter. That said, I recognize the current need for commercial winter dock storage operations for others in more exposed reaches of the Lake. I also recognize that dock storage areas can on occasion serve the public good by functioning as a drop off point for drifting logs and other navigation hazards. Lastly, as a dock owner I appreciate the continued and valued services that HDB and similar companies provide to waterfront property owners. I write this letter in the hope that a reasonable resolution can be found that is satisfactory to all parties and holds HDB accountable for meeting its permit conditions.

The current application for a submerged lands lease asks permission to use public trust property of the State for commercial gain. The criteria for such use include that it will "aid navigation, commerce, or other trust purposes" and simultaneously not "substantially impair the public interest in the lands and waters remaining". I concede that, in general, winter dock storage does reduce the overall level of risk to navigation in the Lake from floating dock debris created during winter storms. **However, for the following reasons I believe these two criteria have not been met for this specific application for a lease in Powderhorn Bay:**

1. I have personally witnessed large rafts of derelict and/or half-sunken dock segments drifting loose from the dock storage area on Powderhorn Bay (see photo of large cluster of loose docks below from July 16, 2021, as a recent example). While free this low-profile debris is an extreme navigational hazard risking the safety of the many users of Powderhorn Bay. It also threatens to damage the property (docks, vessels, etc.) of the numerous nearby property owners. Powderhorn Bay is used year-round by residents and visitors, thus extending these dangers and conflicting uses of the Bay throughout the year. Were the company to relocate its storage adjacent to its other operations (such as Harrison Slough), it would be much better prepared to closely monitor the dock storage area to ensure safety of life and property. To their credit, HDB has to my knowledge quickly responded to at least the more recent summer 2021 requests to return this flotsam to the storage location. Storing docks adjacent to current HDB operations would also allow for a more rapid response to any safety issues.

2. My knowledge of the track record of HDB and other dock storage companies on Coeur d'Alene Lake suggests a history of disregard for the letter of past permits issued by IDL. For example, derelict docks, commercial barges, and other items including refuse are left at the facility and on nearby private shorelines well beyond the agreed upon date for their removal (again, see date of the photo below). Most but not all of HDB's remaining "winter" dock storage debris was removed by a tugboat on July 25, 2021; the permitted date for this action is April 30. **Furthermore, HDB in the current submerged lands lease application states that recent usage of Powderhorn Bay far exceeds the actual permitted area in scope.** These and other actions directly contradict the previously issued IDL permit conditions. As a
result, HDB’s actions impair the public interest in Powderhorn Bay, at least in part because the company’s actions violate the public’s trust (trust not used in the legal sense here). For a particularly egregious example by another company, see IDL’s recent decision regarding North Idaho Marine’s (NIM) **unpermitted** winter dock storage at Cougar Bay over at least the past 12 years (State of Idaho Lease B220168). In that case IDL decided that NIM owed the state backpay for the unpermitted usage; perhaps similar logic should apply retroactively to HDB’s unpermitted expansion of operations in Powderhorn Bay. Overall, I conclude that the current disincentives for violation of the stipulations in IDL’s winter dock storage permits are insufficient to safeguard the year-round public interest in Powderhorn Bay. **Going forward, any new permit for use of submerged lands must include enforceable consequences for violations of its conditions (see below).**

3. **Any dock storage area is frankly ugly and impairs the public interest in the natural beauty of the Bay.** Many of the users of HDB’s services and supporters of this application reside in other reaches of the Lake and are unaffected by this impairment, essentially transferring the “burden” to the property owners and recreationists on Powderhorn Bay. Particularly in the upper reaches of Powderhorn Bay, the presence of hundreds of docks as well as industrial equipment (it seems the barges and other items are left with the docks even in winter) detracts significantly from the backdrop of undeveloped wooded hills, marshland that supports an active year-round sportfishing community, wildflowers, bald eagles and ospreys, and other wildlife. It is presumably due to these natural attractions that so many boaters, kayakers, and paddleboarders come to this stretch of the Bay in summer. The area is equally beautiful in winter, if less widely appreciated. These impairments of natural beauty are admittedly difficult to quantify in terms of dollars, but it also seems likely that dock storage taking up much of the view from a waterfront property could negatively affect real property values.

4. **It appears from the Kootenai County GIS website that the current and proposed dock storage areas almost completely impede access to waterfront riparian holdings of a private property owner along the east shore of the Bay.** See screenshot below.

5. **The proposed “overflow” area would extend even further (300 feet) into the navigable waters of Powderhorn Bay, exaggerating the negative effects on natural aesthetic beauty, year-round recreation, and navigation.** This is roughly half the width of the Bay at the southern end of the proposed area. In addition, this storage area would appear to require new pilings installed roughly 75 feet from the shoreline. **These pilings have the potential to cause severe injury or death when boats collide with them, particularly if the company follows the current practice of not lighting pilings and connecting massive log booms to them that float in all directions** (these logs are still present in the water as of 7/26/2021, after the majority of the winter dock debris was removed on 7/25/2021). This reach of the Bay is frequently used by fast-moving vessels (many bass boats and those pulling tubes, skiers, etc.), and many of those vessel operators come from elsewhere and lack intimate knowledge of the Bay.

*It is also my strong opinion that any permit for winter dock storage in Powderhorn Bay or elsewhere on the Lake be accompanied by the following conditions and enforcement measures:*

1. **ALL materials of any kind (including but not limited to docks, floating and submerged refuse, ropes, floating logs, barges, workboats, partial or derelict docks), with the exception of a small number of permanent pilings installed within a reasonable and safe distance of the shoreline, will be removed annually no later than April 30. Winter storage areas will not be occupied to any extent before October 1** (as outlined in HDB’s 1999 permit).
2. Barges, tugs, and other commercial equipment may be parked at the storage location for no more than 48 consecutive hours in any one-week period. They should be lighted at night and secured (currently they are not lighted).

3. No float houses, boats, or materials other than docks will be stored at the location. In the past boats and other materials have been stored in this area, for example at least one sailboat in winter 2020-2021 (see photo below).

4. The permitted area should not expand beyond the previously permitted 1999 boundaries. Any further encroachment on the Bay's waters would impinge on navigation by the public and exaggerate the safety issues noted above.

5. HDB will ensure that dock ladders, solar lights, storage boxes, plastic drums, ramps, awning covers, ropes, and any other materials that are not permanently built into the dock structure are removed prior to winter storage and remain at the dock owners' properties. These loose materials are most likely to cause safety issues such as collisions with vessels or propellers. They are also unsightly and contribute to accumulation of a significant quantity of refuse in the Bay's waters, further impairing the public's interest in the area and the Lake as a whole.

6. Dock pilings and the active perimeter of the dock storage area will be lighted at night to ensure their visibility to boaters, throughout the year. The company's contact info should appear on any pilings.

7. First violation of conditions 1-6 to be followed by a written warning from IDL. Second violation to trigger a financial penalty, charged per business day by IDL until the condition is remedied. I do not have knowledge to offer advice on the amount of such a penalty, but it must be a sufficiently large fraction of the annual lease payment to act as a deterrent. The $1000 annual lease payment is trivial in my opinion.

8. IDL or another entity should regularly (at least monthly) patrol the storage area throughout the year to ensure compliance with the permit requirements.

These strike me as reasonable and fairly minimal requirements for the nearly free use of public trust lands for commercial gain. Again, residents of Powderhorn Bay are not opposed to the general idea of winter dock storage. We simply ask that all impacts be considered when determining a suitable NEW location for that storage and that HDB follow the permit conditions in good faith and as good stewards of our shared Lake resources, regardless of the location.

I trust that IDL will consider all possible perspectives in this matter. I have read the other comments posted primarily by HDB's customers on the IDL website, and the vast majority of those in favor of this permit's approval list avoiding costly damage to their own docks in winter as their primary justification. This is certainly understandable, but it is insufficient to justify continuing the current storage practices, much less expanding them on Powderhorn Bay. Few of those letters describe broader public benefits that would derive from the permit's approval, although some mention that the Lake would be safer if docks are not ruined by winter storms. Importantly, reduced risks to navigation from broken docks can be achieved by winter dock storage anywhere on the Lake, or by investment in improved, stormproof dock construction methods (something HDB mentions in the permit application). Not one of the supportive letters I have read considers the impacts on property owners and recreationists immediately affected by the Powderhorn Bay dock storage area.

Thank you for considering these comments in your deliberations.

Sincerely,

William Dowd
Photo of several loose, half-sunken docks drifting away from HDB's "winter" storage area, taken July 16, 2021, in Powderhorn Bay.
Screen shot of Powderhorn Bay winter dock storage area from Kootenai County's GIS website. The thin parcel stretching along the shoreline just east of the storage area has been selected, indicating the current owner. It is also clear from this aerial image that the perimeter in recent years has far exceeded the currently permitted storage area.
Photograph of Powderhorn Bay winter dock storage area taken in February 2021. Note the sailboat stored with the docks in the lower right.
KOOTENAI COUNTY, Idaho — Multiple boats sunk and several docks were destroyed in Monday’s wild wind storm on Lake Coeur d'Alene and others.

Video from Carlin Bay on Lake Coeur D'Alene showed at least one boat going under and property owners working together to try to save what they could.

“All the neighbors helped each other,” witness Tiffany Cydell said. “Some used tractors to fish out boats and and broken docks. Thank God for our amazing community of neighbors in Shorelines.”

Video captured what witnesses described as “humongous swells.”

Further down the lake, Jack Schoonover also was shocked to see the fury on Mother Nature.

“I haven’t seen a storm like that in 20 years,” he said.

Schoonover said his neighbor’s boat is among those that sunk.

“We looked over and it was [gone].” he said.

Tuesday will no doubt be a busy one filled with repairs.

“It’s calm now, a bit of a breeze,” he said. “Everyone is trying to clean up the carnage.”