

In the Matter of:

**Encroachment Permit Application
No. L-95-S-5567.**

**Lewis Dock Homeowners Association, Inc.,
Applicant.**

FINAL ORDER

I. NATURE OF PROCEEDINGS/ISSUES

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

Lewis Dock Homeowners Association, Inc. (Applicant), applied for an encroachment permit for two (2) community docks on November 12, 2013. IDL deemed the application complete on January 10, 2014.

A public hearing was held on April 24, 2014 at the IDL Coeur d'Alene staff office. Eric Wilson served as Hearing Coordinator. The Hearing Coordinator issued his Findings of Fact, Conclusions of Law, and Recommendation (Recommendation) on May 19, 2014.

My responsibility is to render a decision pursuant to Idaho Code § 58-1306(c) and IDAPA 20.03.04.030.07 on the behalf of the State Board of Land Commissioners based on the record reviewed in the context of my personal expertise gained through education, training, and experience. In making this determination I have relied on the record for this matter. Specifically,

- I have read the transcript of the public hearing conducted in Coeur d'Alene, Idaho on April 24, 2014.
- I have reviewed the record including all documents and exhibits.
- I have examined the Hearing Coordinator's Recommendation in light of the entire record.

II. FINDINGS OF FACT

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

III. CONCLUSIONS OF LAW

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

IV. FINAL ORDER

I conclude the Hearing Coordinator's Recommendation is based on substantial evidence in the record, and I adopt the Recommendation as my decision in this matter. The Recommendation is incorporated by reference herein and attached to this Final Order. The Applicant is qualified to make application for a community dock encroachment permit, and the proposed encroachment is in conformance with the applicable standards.

On the basis of the record, it is my order that Encroachment Permit No. L-95-S-5567 is approved by IDL with the following stipulations to ensure that Public Trust values are protected during the demolition of the existing docks and construction of the new docks:

1. Best management practices will be used as needed to control turbidity during demolition and installation.
2. The existing docks will be removed from the lake. Piling that will not be reused shall be, at a minimum, cut off flush with the lakebed.
3. Sound dampening devices will be used for driving piling.
4. Barges will not be grounded against the lake bed for stabilization.

This is a final order of the agency. Pursuant to Idaho Code § 58-1306(c) and IDAPA 20.30.04.030.09, the Applicant or any aggrieved party who appeared at the hearing shall have the right to have the proceedings and Final Order reviewed by the district court in the county in which the encroachment is proposed by filing a notice of appeal within thirty (30) days from the date of this Final Order.

DATED this 27th day of May, 2014.


THOMAS M. SCHULTZ, JR.
Director, Department of Lands

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that on this 27th day of May, 2014, I caused to be served a true and correct copy of the foregoing document, by the method indicated:

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May 19, 2014

Hearing Coordinator's Findings of Fact, Conclusions of Law, and Recommendation

TO: Tom Schultz, Director

FROM : Eric Wilson, Minerals Program Manager and Hearing Coordinator

SUBJECT: Lewis Dock Homeowner's Association, Inc.'s Application for Encroachment Permit No. L-95-S-5567

I. INTRODUCTION

The following document, which includes a recommendation for your consideration, was prepared following a public hearing conducted by the Idaho Department of Lands (IDL) in conjunction with the processing an application for an encroachment permit for community docks on Lake Coeur d'Alene, a navigable lake in Idaho. Jurisdiction in this matter rests with IDL pursuant to Idaho Code § 58-1303, which empowers the State Board of Land Commissioners to regulate, control, and permit encroachments on, in, or above the beds or waters of the navigable lakes of Idaho.

II. FINDINGS OF FACT

1. On November 12, 2013, Lewis Dock Homeowner's Association, Inc., (Applicant) submitted to IDL an encroachment permit application, identified as number L-95-S-5567, (Application) requesting approval to construct two (2) community docks on Lake Coeur d'Alene.
2. Applicant's proposed community docks contain 2,508 square feet and extend approximately eighty-five (85) feet waterward of the ordinary high water mark. The docks would be located forty-seven (47) feet from the northeast littoral right line and twenty-eight (28) feet from the southwest littoral right line. Two separate dock structures with six (6) slips each are proposed. The slips are twelve (12) feet by thirty (30) feet. The four parcels dedicated to the docks have a combined 360 feet of contiguous shoreline.
3. IDL initially reviewed the Application for completeness and on November 14, 2013, advised the Applicant of the following deficiencies:
 - a. The shoreline length calculations were incorrect.
 - b. IDL required additional information regarding the formation of the four parcels of land identified in the application.
 - c. Nine (9) of the twelve (12) memberships in the homeowner's association had not been identified.

4. On January 10, 2014, after receiving additional information from the Applicant, IDL determined that the Application was complete and initiated processing of the Application pursuant to Idaho Code § 58-1306 and the related administrative rules, IDAPA 20.03.04, Rules for the Regulation of the Beds, Waters, and Airspace Over Navigable Lakes in the State of Idaho.

5. In a letter dated January 10, 2014, IDL notified the following parties of the encroachment permit application submitted by Applicant and requested that the parties provide comments to IDL in accordance with IDAPA 20.03.04.030.03:

- US Army Corps of Engineers-CDA
- Idaho Department of Fish and Game
- Idaho Department of Environmental Quality
- Idaho Department of Water Resources
- Idaho Department of Transportation
- Kootenai County Parks & Waterways
- Kootenai County Marine Division
- Kootenai County Planning and Development
- Kootenai County Environmental Alliance
- Panhandle Health District -1 Kootenai County
- Lakes Commission
- Idaho Conservation League
- Tri-State Water Quality Control
- David and Jill Payton, adjacent landowner
- Doris Graham, adjacent landowner

6. On January 14 and 21, 2014, IDL published a Notice of Application in the *Coeur d'Alene Press* for L-95-S-5567 pursuant to Idaho Code § 58-1306(b) and IDAPA 20.03.04.030.01.

7. IDL received sixteen (16) letters from agencies, neighbors, and members of the public prior to February 11, 2014, the deadline for hearing requests. In addition to a hearing request, these letters generally covered the following topics:

- a. Safety on the water and land will diminish due to increased boat and vehicle traffic.
- b. Docks will increase congestion on the lake due to a 66% increase of docks in the immediate area.
- c. Waves from additional large boat traffic would cause damage to existing docks and produce higher levels of erosion.
- d. Change from single family use is not in character with the neighborhood, and will have a negative impact on recreation for existing neighborhood.
- e. The cabana was improperly approved and not analyzed adequately.
- f. The Applicant's lots were not created legally.
- g. This development is part of Black Rock, and should be required to use Black Rock frontage along Rockford Bay Road.

- h. Adverse impact on fish and wildlife due to fuel pollution, littering, etc.
 - i. Proposed community docks would only serve multiple upland owners that are not contiguous to the waterfront area, as stated in a real estate listing that referenced private lake frontage and a beachfront cabana.
 - j. Property values of existing littoral property owners will decline.
 - k. Noise pollution will increase with the larger boats anticipated.
 - l. Docks will be lit, have slip covers, and generally be incongruous with adjacent docks.
 - m. The sewer and water systems on the uplands are at capacity and cannot handle the additional usage associated with the cabana and the proposed community docks. The facilities should only be used by individual home owners.
 - n. The road easement granted in the 1960's clearly states that the easements were extended only to individual owners and not to anyone wishing to develop multiple properties for commercial purposes.
 - o. Insufficient room for thirty-foot long boats to enter their slips within the applicant's littoral right lines.
 - p. Approval would set a dangerous precedent for similar projects around the lake.
 - q. Application does not describe the steps that will be taken to minimize turbidity during piling removal and installation. In addition, methods to contain demolition and construction debris should be described.
8. In a letter dated January 30, 2014, the Idaho Department of Fish and Game (IDFG) expressed some concern over the lack of information on best management practices for demolition and construction that would address potential impacts to fisheries and water quality. Turbidity control, dock and waste removal, sound dampening during pile driving, and not grounding barges against the lake bed for stabilization were the specific items mentioned by IDFG.
9. Based on a February 7, 2014, request from Jill and David Payton, and in accordance with IDAPA 20.03.04.030, IDL initiated a public hearing process for the proposed community dock. On March 12 and 19, 2014 IDL published the required Notice of Hearing in the *Coeur d'Alene Press*. A Notice of Hearing was also sent on March 7, 2014 to the applicant, the party requesting the hearing, and the same agencies and individuals that received the prior notification of application dated January 10, 2014. The public hearing was scheduled for 3:00 pm on April 24, 2014, in the Sundance Room at the Idaho Department of Lands staff office located at 3284 W. Industrial Loop, Coeur d'Alene, Idaho.
10. IDL received a letter dated March 10, 2014, from the Applicant to IDL agreeing to the hearing date and waiving all objections to the timeliness of permit processing.
11. IDL received a letter dated April 11, 2014, from the Applicant relating to permit review and potential bias from the Hearing Coordinator.

12. In a letter dated April 14, 2014, IDL confirmed the appointment of a new Hearing Coordinator.

13. IDL received a letter dated April 18, 2014 from Kootenai County Community Development related to the application. The letter states that the development appears to meet the county's requirements for residential use. Other uses may require a conditional use permit. The letter is incorporated into this document by reference.

14. On April 24, 2014 IDL held a public hearing at 3:00 pm in IDL's Coeur d'Alene office. Mr. Eric Wilson, Minerals Program Manager, served as hearing coordinator. In attendance were Mr. Tom Fleer, IDL Area Manager; Mr. Jim Brady, IDL Resource Supervisor; Mr. Roger Johnson, IDL Resource Specialist Sr.; Mr. John Magnuson, representing Applicant; Mr. Roger Anderson, President of Lewis Dock Homeowners Association, Inc.; 12 members of the public who testified, and 23 members of the public who did not testify. The public hearing was digitally recorded and subsequently transcribed.

15. Mr. Magnuson provided an overview of the Applicant's project at the hearing. This application includes more than two (2) littoral owners, and it involves a homeowner's association, so the proposed dock meets the definition of a community dock. The total square footage of the docks is 2,508, and the front footage of the four (4) parcels is 360 feet, so the square footage standard for community docks is met. No part of the docks is wider than ten (10) feet, so that standard is also met. The required 25-foot setbacks from adjacent littoral right lines are also in compliance. All four parcels are buildable, and lot line adjustments were used to create the current lot boundaries. No plans exist for electricity and lighting on the docks, and slip covers and beach sand augmentation are not currently planned. Parcel 4 does have nine (9) memberships, some of which may be sold. This project is not associated with the Black Rock development. Mr. Magnuson submitted a number of letters and emails that document the correspondence between the Applicant, Kootenai County Community Development, and IDL.

16. Mr. Magnuson also presented information and exhibits related to eight (8) other recently permitted community docks. Many of these other docks were permitted in the last ten (10) years. At least two of these, the GVE dock and the White Sands Estates Association dock, had no platted littoral common area. A platted littoral common area is not required by the rules, only a littoral common area. This application provides a littoral common area through the leases of the littoral rights to the applicant. Lastly, Mr. Magnuson presented information on twenty (20) other community docks that purportedly met the standards of the Public Trust Doctrine and are present on the lake. Many of these exceed the seven (7) square foot per littoral front foot standard for community docks. The alternative to the proposed community dock is four single family docks which could contain a total of 2,800 square feet. This is a larger amount of dock than the proposed community dock.

17. The majority of the testimony presented by neighbors and members of the public was in opposition to the proposed dock. Many of the speakers also gave written materials. The main issues driving the opposition are as follows:

- a. The proposal will greatly increased large boat traffic in this area and vehicle traffic on the uplands, causing undue congestion in both places.
- b. The Public Trust lands should not be sacrificed for development.
- c. The proposed community dock is incongruous with the existing single family use, and will negatively impact the area's peace and quiet.

- d. Idaho Department of Fish and Game is uncertain of the impacts.
 - e. The neighbors will no longer be able to safely recreate at their docks due to the additional big boats.
 - f. More boats, especially ones for 30-foot slips, will mean more waves that increase erosion and wear and tear on other docks.
 - g. Approval would be precedent setting for additional community docks.
 - h. The lake is already in poor health, and this will not help the situation.
 - i. Additional boats will increase lake pollution.
 - j. The examples of other community docks presented by the applicant may have been ill-advised or politically driven, so they should not be used as examples to follow.
 - k. The rules state that a 25-foot setback for community docks from littoral right lines is presumed to eliminate conflicts, but the adequacy of this setback may be rebutted by specific facts. The proposed 28-foot setback being navigated by a 30-foot boat indicates that the setback is not adequate.
 - l. The publicly available sales information states that 24 memberships will be created, and not the 12 that are in the application.
 - m. The cabana constructed on the uplands will be for use by the members, and not the Lewis house occupants as claimed by the applicant. It will have lockers, and is therefore more commercial than residential.
 - n. This amounts to a commercial enterprise in a residential area.
 - o. This dock is not needed, as other options for mooring large boats exist at the Blackrock marina.
18. Jim Brady, IDL Resource Specialist Sr. submitted a staff report on this project. The report contained the following analysis:
- a. The Applicant is a non-profit corporation formed pursuant to Idaho Code § 30-3-1 *et seq.*, created on or about September 12, 2012. Article III of the Applicant's Articles of Incorporation states that the purpose of the Corporation "is to manage, oversee, and direct the use, operation, maintenance and perpetuation of a community dock system, in accordance with such permit as the Idaho Department of Lands may hereafter issue, on property owned by the Corporation." Such management by the Corporation is to be "for the benefit of the 'Membership' in the Corporation, as 'Membership' is defined herein." Article VII of the Articles of Amendment to the Articles of Incorporation (filed October 25, 2013) states that the Membership in the Association shall be defined in the Declaration and Establishment of Covenants, Conditions, Reservations of Easements for Lewis Dock Homeowners Association, Inc., located in Kootenai County, Idaho. Article II of the Covenants, Conditions, etc., states that "Membership is as defined in the Association's Articles (Exhibit A), as amended by the Articles of Amendment (Exhibit B)." Thus, there is no definition of "Membership" provided in these materials.
 - b. Article VII of the Applicants' Articles of Incorporation addresses membership in the Association. This version of Article VII states that there are seven (7) members of the corporation, with a chart identifying each of the seven (7) parcels involved in the Applicant's HOA. Below this, it is stated "[t]he foregoing seven (7) parcels shall be made Members in the Corporation"
 - c. Article VII was amended on or about October 23, 2013, stating "[t]here shall be twelve (12) Members of the Corporation. Those Memberships are appurtenant to the following described parcels of real property," Below this is a chart identifying four (4) "parcel descriptions" with the "number of memberships allocable to each parcel" in another column. In this chart, three (3) parcels receive one (1)

membership, while one (1) parcel received nine (9) memberships. Following this chart, it is stated "[t]he foregoing twelve (12) parcels shall be made Members in the Corporation" The location of twelve (12) parcels is not clear because there are only four (4) parcels identified in the application.

- d. The Applicants' Bylaws were adopted on October 23, 2013. Section 1 of Article III of the Bylaws addresses membership on the HOA, and recites that there are twelve (12) authorized memberships, and states as follows:

A Member shall have the right to use one (1) of the twelve (12) dock slips as are more specifically described in Exhibit A hereto and as are otherwise authorized under State of Idaho, Department of Lands Encroachment Permit No. _____ [space intentionally left blank in original]. Membership as defined herein and in the Articles of Incorporation (as amended by the Articles of Amendment) is appurtenant to the properties described in Article VII of the Articles of Amendment and may not be transferred separate from ownership of the qualifying parcels of real property as described in said Article VII of the Articles of Amendment.

- e. According to the Application, one (1) of the community docks (6 slips) will be appurtenant to Parcel 2 as described therein and the other community dock (6 slips) appurtenant to Parcel 3. Ownership of the four (4) parcels is as follows:
- i. Parcel 1 is owned by Christopher L. Anderson of Eagle, Idaho.
 - ii. Parcel 2 is owned by Sundance Investments LLLP, of Meridian, Idaho.
 - iii. Parcel 3 is owned by Spurwing Greens LLC of Boise, Idaho.
 - iv. Parcel 4 is owned by Cedar Tree Point, LLC, of 1250 Northwood Center Court, Suite A, Coeur d'Alene, Idaho.
- f. The Applicant does not own any littoral property. The Applicants have obtained littoral rights through a 30-year lease of the littoral rights with each of the parcel owners. The "Premises" described in each of these four (4) leases is defined as follows: "the littoral rights associated with the real property described on Exhibit A together with a non-exclusive right of access to said littoral rights over and across a twenty-five (25) foot strip of the property (as described on Exhibit A) lying upland of and adjacent and parallel to elevation 2128 feet (NGVD datum)." These leases include a rent requirement and a default provision. The twenty-five (25) foot strip of land is identified on an aerial photograph on which the proposed slips are also depicted.
- g. The four (4) parcels of land in the application have a total of 12 memberships, with 9 memberships coming from one of the parcels. There is no platted common area for the parcels involved in the Application.
- h. There are currently two (2) single family docks existing appurtenant to two (2) of the four (4) parcels subject to the instant application. Both docks extend approximately eighty (80) feet from the shoreline into Lake Coeur d'Alene. Neither of these permits for these docks is assigned to the current owners. The Applicant proposes removal of these existing docks and replacement with the proposed community docks.
- i. One single family dock is appurtenant to Parcel # 48N04W-03-6970, currently owned by Cedar Tree Point LLC. The original permit holder was Bernice Lewis, Permit ERL-95-S-541, issued July 7, 1976. This dock has had additions installed without a permit and is currently not in compliance with the permit.
 - ii. One single family dock is appurtenant to Parcel # 48N04W-03-6990, currently owned by Sundance Investments LLC. The original permit holder was Herschel Gustafson, ERL-95-S-0639. The current dock is the same as that originally permitted in 1977.

- i. Mr. Magnuson stated to Jim Brady when he hand-delivered the application the community dock was intended to serve the Anderson family, who now owns 4 lots.

19. Kootenai County Community Development stated in an email dated Monday, March 3, 2014, that the four parcels leased by the Applicant were legally created. This email was part of the correspondence submitted by Applicant at the hearing.

20. The four parcels leased by the Applicant are owned either by members of the Anderson family, or companies whose authorized signatories are members of the Anderson family. All of the lease agreements for the littoral rights are signed by members of the Anderson family as lessees. Roger Anderson signed as both lessor of the Cedar Tree Point parcel, and as lessee representing Lewis Dock Homeowners Association, Inc. The Hearing Coordinator asked if Mr. Magnuson knew of any other situations where a lease for littoral rights was signed by the same person as a signatory for the dock or home owner's association (lessee) and as a signatory for a parcel owner (lessor). Mr. Magnuson replied that he thought the White Sands community dock may have a similar arrangement, but he did not provide any lease materials related to the White Sands community dock that could be used to verify the lessee and lessor relationships.

21. Memberships in the Lewis Dock Homeowners Association Inc. are tied to parcel ownership, as stated in Article II of the Declaration and Establishment of Covenants, Conditions, Reservations of Easements for Lewis Dock Homeowners Association, Inc. The Amended Article VII of the Articles of Incorporation also states that memberships are appurtenant to the four parcels of land that comprise the homeowners association. Both documents state that Parcels 1 through 3 have one membership each, and Parcel 4 has nine (9) memberships. The Applicant has stated that some of the memberships in Parcel 4 may be sold, but Parcel 4 would not be subdivided. This may result in multiple owners, or fractional owners, of Parcel 4.

22. The information on the other allegedly permitted community docks discussed by the Applicant appears to have numerous errors. The information pertaining to other alleged community docks is so flawed as to throw doubt on all of the examples provided. Several of the docks appear to be within the Coeur d'Alene Indian Reservation and therefore outside the jurisdiction of the State of Idaho, and other docks greatly exceed the current square footage standards and therefore must have been permitted prior to the current standards. While providing examples of situations similar to the current Application would be valuable, information pertaining to structure of the entities is also lacking so this effort has fallen short of the Applicant's intent.

III. CONCLUSIONS OF LAW

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

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

3. Pursuant to Idaho Code § 58-1301, lake encroachments must be regulated to protect property, and the public trust values of navigation, fish and wildlife habitat, aquatic life, recreation, aesthetic beauty, and water quality. These values must be given due consideration and weighed against the navigational or economic necessity or justification for, or benefit to be derived from, the proposed encroachment.

4. No encroachments on, in, or above the waters of any navigable lake in Idaho shall be constructed until approval has been granted pursuant to the Idaho Lake Protection Act, Idaho Code § 58-1301 et seq (LPA).
5. IDL shall make decisions on proposed encroachments in accordance with the Public Trust Doctrine as set forth in Idaho Code § 58-1201 through 1203.
6. IDL shall also make decisions on proposed encroachments in accordance with the Public Trust Doctrine as set forth by the Idaho Supreme Court on *Kootenai Environmental Alliance, Inc. v. Panhandle Yacht Club, Inc.*, 105 Idaho 622, 671 P.2d 1085 (1983) (KEA), and subsequent cases. The court stated that mere compliance of IDL with its' legislative authority is not sufficient to determine if their actions comport with the requirements of the public trust doctrine. *Id.* at 632, 671 P.2d at 1095.
7. Pursuant to IDAPA 20.03.04.020.02, only persons who are littoral owners or the lessee of a littoral owner shall be eligible to apply for a lake encroachment permit.
8. A "community dock" is defined by IDAPA 20.03.04.010 as "[a] structure that provides private moorage for more than two (2) adjacent littoral owners, or other littoral owners possessing a littoral common area with littoral rights including, but not limited to homeowner's associations. No public access is required for a community dock."
9. The term "common area" is not defined in the LPA or the administrative rules, and the term is not defined in Kootenai County Ordinances. The term "common area" can be defined as "[a]n area owned and used in common by the residents of a condominium, subdivision, or planned unit development." *Black's Law Dictionary*, p. 291 (8th ed. 2004).
10. The Applicant's thirty (30) year lease of the littoral rights appears to create a "common area" for the members of the Lewis Dock Homeowners Association Inc.
11. The Applicant has a thirty (30) year lease of littoral rights from more than two (2) adjacent littoral owners and the Applicant is a homeowners association. While the current parcel owners, their designated signatories, and the Applicant's President are all members of one family, the Applicant is qualified to make application for a community dock encroachment permit. The familial relationships between the lessee and lessors are unusual for a community dock, and the Applicant could only provide one alleged similarity (White Sands community dock). These relationships, however, do not by themselves disqualify the applicant. If, however, the lease arrangement changes or the Applicant ceases to exist as a legal business entity, the permit could be subject to revocation.
12. Pursuant to IDAPA 20.03.04.015.02.b, a community dock may not exceed 10 feet in width, unless IDL approves a greater width. The proposed community docks do not exceed 10 feet in width and comply with this Rule.
13. Pursuant to IDAPA 20.03.04.015.02.c, a community dock must have at least fifty (50) feet of combined shoreline frontage, and the surface decking area is limited to seven (7) square feet per lineal foot of shoreline. The proposed community docks have 2,508 square feet on 360 feet of shoreline and comply with this Rule.

14. Pursuant to IDAPA 20.03.04.015.13.d, community docks must be within the normally accepted line of navigability unless additional length is authorized by permit or order by the director. The proposed dock is not longer than the existing docks, so it does not extend beyond the line of navigability.

15. Pursuant to IDAPA 20.03.04.015.13.e, it is presumed that community docks will have an adverse effect upon adjacent neighbors if located less than twenty-five (25) feet from adjacent littoral rights lines. The Applicants' docks will be located forty-seven (47) and twenty-eight (28) feet from adjacent littoral right lines. Thus, there is no presumption of adverse effect upon adjacent littoral property owners. The proposed docks will be approximately fifty (50) feet from the single family dock to the north, and seventy (70) feet from the single family dock to the south, so boats should have adequate space to enter and exit the slips.

16. Littoral rights include a littoral owner's right to construct docks. IDAPA 20.03.04.010.32. The purpose of littoral right lines is to establish where each littoral owner's littoral rights are located. IDAPA 20.03.04.010.32 and 20.03.04.010.34. The Applicant's neighbors suggested that the community docks' users will encroach on their littoral rights as they navigate in and out of the community docks. Littoral right lines, however, have no effect on boat navigation, as all boats on navigable lakes have the right to navigate where ever the water is located.

17. Pursuant to IDAPA 20.03.04.060.02, pilings, anchors, old docks, and other structures or waste at the site of the installation and not used as a part of the encroachment shall be removed from the water and lakebed at the time of the installation to a point above the ordinary high water mark. Demolition of encroachments shall be done in a manner that does not unnecessarily damage the lakebed or shoreline, and must comply with water quality standards administered by the Department of Environmental Quality. Applicant did not provide any details describing how demolition of the existing docks would be conducted, and the comments from IDFG suggest that fisheries and water quality could be impacted by demolition. Permit stipulations regarding demolition are needed to address the IDFG stated concerns.

18. Public comments addressed several issues that are outside the authority of IDL. These issues include:

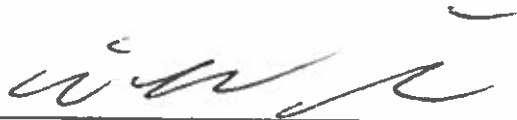
- a. Regulation of boat traffic. Any regulation of watercraft, their use, or consequences of their use is accomplished pursuant to Title 67, Chapter 70, Idaho Code, and through the adoption of local ordinances allowed by that statute.
- b. Roads and road safety related to encroachments. These issues must be addressed by the Worley Highway District and easement grantors.
- c. Upland residences, clubhouses, storm water runoff, utilities, and other development activities that occur above the ordinary high water on private land.
- d. Maintenance of past or current private uses of littoral areas. As properties change hands, new littoral owners may make application for any encroachment that may be legally allowed given the physical constraints of their littoral property. No official public beaches, swimming areas, or similar public trust resources are threatened by the proposed community dock.

IV. RECOMMENDATION

Based on the evidence in the record, I recommend that IDL approve the Application. In response to concerns raised by IDFG, and to help ensure compliance with IDAPA 20.03.04.060.02, the following issues shall be addressed through stipulations in the permit to ensure that Public Trust values are protected during the demolition of the existing docks and construction of the new docks:

1. Best management practices will be used as needed to control turbidity during demolition and installation.
2. The existing docks will be removed from the lake. Piling that will not be reused shall be, at a minimum, cut off flush with the lakebed.
3. Sound dampening devices will be used for driving piling.
4. Barges will not be grounded against the lake bed for stabilization.

DATED this 19th day of May, 2014



Eric Wilson
Hearing Coordinator
Minerals Program Manager
Idaho Department of Lands