**IDAPA 20**
**TITLE 03**
**CHAPTER 04**

# 20.03.04 - THE REGULATION OF BEDS, WATERS, AND AIRSPACE OVER NAVIGABLE LAKES IN THE STATE OF IDAHO

## 000. LEGAL AUTHORITY.

This Chapter is adopted under the legal authorities of Title 58, Chapter 1, Sections 58-104(6), 58-104(9), 58-105, and 58-127, Idaho Code; Title 58, Chapter 13, Idaho Code; and Title 67, Chapter 52, Idaho Code. (4-2-08)

## 001. TITLE AND SCOPE.

**01. Title**. These rules shall be cited as IDAPA 20.03.04, "Rules for the Regulation of Beds, Waters, and Airspace Over Navigable Lakes in the State of Idaho." (4-2-08)

**02. Scope**. These rules govern encroachments on, in, or above navigable lakes in the state of Idaho. (4-2-08)

## 002. WRITTEN INTERPRETATIONS.

The Idaho Department of Lands maintains written interpretations of its rules which may include, but may not be limited to, written procedures manuals and operations manuals, Attorney General formal and informal opinions, and other written guidance, which pertain to the interpretation of the rules of this chapter. Copies of the procedures manuals and operations manuals, Attorney General opinions, and other written interpretations, if applicable, are available for public inspection and copying at the director's office of the Idaho Department of Lands, Boise, Idaho, or are available on the internet at ⬚www.idl.idaho.gov. (4-2-08)

## 003. ADMINISTRATIVE APPEALS.

Any person aggrieved by any final decision or order of the board shall be entitled to judicial review pursuant to the provisions of Title 67, Chapter 52, Idaho Code, IDAPA 20.01.01, Title 58, Chapter 13, Sections 58-1305 and 58-1306, Idaho Code, and Sections 025, 030, and 080 of these rules. (4-2-08)

## 004. INCORPORATION BY REFERENCE.

The following documents are incorporated by reference into these rules: (4-2-08)

**01.** ~~**International Building Code**©, 2006 Edition published by the International Code Council© and available on the Internet at: http:// ⬚www.iccsafe.org.~~ 2008 National Electrical Code. This 2008 National Electrical Code is available at the office of the Division of Building Safety at 1090 E. Watertower St., Meridian, Idaho 83642.(~~4-2-08~~ )

02. 2003 Uniform Plumbing Code. The 2003 Uniform Plumbing Code is available at the Division of Building Safety, 1090 E. Watertower St., Meridian, Idaho 83642; and at the Division of Building Safety, 1250 Ironwood Dr., Ste. 220, Coeur d'Alene, Idaho 83814. ( )

**0~~2~~3. United States Aid to Navigation System**. Prepared by the United States Coast Guard and available on the Internet at: ⬚http://www.uscgboating.org/safety/aton/system.htm. (4-2-08)

## 005. OFFICE – OFFICE HOURS – MAILING ADDRESS AND STREET ADDRESS

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The principal place of business of the Department of Lands is in Boise, Idaho and it is open from 8 a.m. to 5 p.m. except Saturday, Sunday and legal holidays. The mailing address is: Idaho Department of Lands, P.O. Box 83720, Boise, Idaho 83720-0050. The telephone number of the office is (208) 334-0200. (4-2-08)

**006. PUBLIC RECORDS ACT COMPLIANCE**

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The rules contained herein have been promulgated according to the provisions of Title 67, Chapter 52, Idaho Code, and are public records. (4-2-08)

**007. -- 009. (RESERVED).**

**010. DEFINITIONS.**

**01. Adjacent**. Contiguous or touching, and with regard to land or land ownership having a common boundary. (7-1-98)

**02. Aids to Navigation**. Buoys, warning lights, and other encroachments in aid of navigation intended to improve waterways for navigation. (4-2-08)

**03. Artificial High Water Mark**. The high water elevation above the natural or ordinary high water mark resulting from construction of man-made dams or control works and impressing a new and higher vegetation line. (4-2-08)

**04. Beds of Navigable Lakes**. The lands lying under or below the "natural or ordinary high water mark" of a navigable lake and, for purposes of these rules only, the lands lying between the natural or ordinary high water mark and the artificial high water mark, if there be one. (9-13-90)

**05. Board**. The Idaho State Board of Land Commissioners or its designee. (4-2-08)

**06. Boat Garage**. A structure with one (1) or more slips that is completely enclosed with walls, roof, and doors, but no temporary or permanent residential area. (4-2-08)

**07. Boat Lift**. A mechanism for mooring boats partially or entirely out of the water. (4-2-08)

**08. Boat Ramp**. A structure or improved surface extending below the ordinary or artificial high water mark whereby watercraft or equipment are launched from land-based vehicles or trailers. (4-2-08)

**09. Commercial Marina**. A commercial navigational encroachment whose primary purpose is to provide moorage for rental or for free to the general public. (4-2-08)

**10. Commercial Navigational Encroachment**. A navigational encroachment used for commercial purposes. (4-2-08)

**11. Community Dock**. 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. (4-2-08)

**12. Covered Slip**. A slip, or group of slips, with a tubular frame, fabric canopy, and ~~no~~ eaves that do not extend beyond the underlying dock. (~~4-2-08~~ )

**13. Department**. The Idaho Department of Lands or its designee. (4-2-08)

**14. Director**. The head of the Idaho Department of Lands or his designee. (4-2-08)

**15. Encroachments in Aid of Navigation**. Includes docks, piers, jet ski and boat lifts, buoys, pilings, breakwaters, boat ramps, channels or basins, and other facilities used to support water craft and moorage on, in, or above the beds or waters of a navigable lake. The term "encroachments in aid of navigation" may be used interchangeably herein with the term "navigational encroachments." (4-2-08)

**16. Encroachments Not in Aid of Navigation**. Includes all other encroachments on, in, or above the beds or waters of a navigable lake, including landfills, bridges, utility and power lines, or other structures not constructed primarily for use in aid of navigation. It shall also include float homes and ~~floating toys~~boat garages. The term "encroachments not in aid of navigation" may be used interchangeably herein with the term "nonnavigational encroachments." (~~4-2-08~~____)

**17. Floating Home or Float Home**. A structure that is designed and built to be used, or is modified to be used, as a stationary waterborne residential dwelling and is not self-propelled. These structures are usually dependent for utilities upon a continuous utility linkage to a source originating on shore, and must have either a permanent continuous connection to a sewage system on shore, or an alternative method of sewage disposal that does not violate local, state, or federal water quality and sanitation regulations. (4-2-08)

**18. Floating Toys**. ~~Non-navigational encroachments including, but not limited to, trampolines, inflatable structures, water ski courses, and other recreational equipment not moored to a dock~~ Trampolines, inflatable structures, water ski courses, and other recreational equipment that are not permanently anchored to the lake bed or an encroachment and are either located between the shoreline and the line of navigability or are waterward of the line of navigability for less than 24 consecutive hours. (~~4-2-08~~____)

**19. Jet Ski Ramp, Port, or Lift**. A mechanism for mooring jet skis or other personal watercraft similar to a boat lift. The lifts may be free standing or attached to a dock or pier. (4-2-08)

**20. Line of Navigability**. A line located at such distance waterward of the low water mark established by the length of existing legally permitted encroachments, water depths waterward of the low water mark, and by other relevant criteria determined by the board when a line has not already been established for the body of water in question. (4-2-08)

**21. Low Water Mark**. That line or elevation on the bed of a 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. (4-2-08)

**22. Moorage**. A place to secure float homes and watercraft including, but not limited to, boats, personal watercraft, jet skis, etc. (4-2-08)

**23. Natural or Ordinary High Water Mark**. The high water elevation in a lake over a period of years, uninfluenced by man made dams or works, at which elevation the water impresses a line on the soil by covering it for sufficient periods to deprive the soil of its vegetation and destroy its value for agricultural purposes. (9-13-90)

**24. Navigable Lake**. Any permanent body of relatively still or slack water, including man-made reservoirs, not privately owned and not a mere marsh or stream eddy, and capable of accommodating boats or canoes. This definition does not include man-made reservoirs where the jurisdiction thereof is asserted and exclusively assumed by a federal agency. (4-2-08)

**25. Party**. Each person or agency named or admitted as a party, or ~~property~~ properly seeking and entitled as of right to be admitted as a party. ~~to a hearing on an application for an encroachment.~~ (~~9-13-90~~____)

**26. Person**. A partnership, association, corporation, natural person, or entity qualified to do business in the state of Idaho and any federal, state, tribal, or municipal unit of government. (4-2-08)

**27. Piling**. A metal, concrete, plastic, or wood post that is placed into the lakebed and used to secure floating docks and other structures. (4-2-08)

**28. Plans**. Maps, sketches, engineering drawings, aerial and other photographs, word descriptions, and specifications sufficient to describe the extent, nature and approximate location of the proposed encroachment and the proposed method of accomplishing the same. (9-13-90)

**29.** **Public Hearing**. The type of hearing where members of the public are allowed to comment, in written or oral form, on the record at a public meeting held at a set time and place and presided over by a designated representative of the Department who shall act as the hearing coordinator. This type of hearing is an informal opportunity for public comment and does not involve the presentation of witnesses, cross examination, oaths, or the rules of evidence. A record of any oral presentations at such hearings will be taken by the Department by tape recorder. The hearing coordinator shall exercise such control at hearings as necessary to maintain order, decorum and common courtesy among the participants. (4-2-08)

**30.** **Public Trust Doctrine**. The duty of the State to its people to ensure that the use of public trust resources is consistent with identified public trust values. This common law doctrine has been interpreted by decisions of the Idaho Appellate Courts and is codified at Title 58, Chapter 12, Idaho Code. (3-19-99)

**31.** **Pylon**. A metal, concrete, or wood post that is placed into the lakebed and used to support fixed piers. (4-2-08)

**32.** **Riparian or Littoral Rights**. 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 riparian or 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. (4-2-08)

**33.** **Riparian or Littoral Owner**. The fee owner of land immediately adjacent to a navigable lake, or his lessee, or the owner of riparian or littoral rights that have been segregated from the fee specifically by deed, lease, or other grant. ( )

**34.** **Riparian or Littoral Right Lines**. Lines that extend waterward of the intersection between the artificial or ordinary high water mark and an upland ownership boundary to the line of navigation. Riparian or littoral right lines will generally be at right angles to the shoreline. (4-2-08)

**35.** **Side Tie**. Moorage for watercraft where the dock or pier is on only one (1) side of the watercraft. (4-2-08)

**36.** **Single-Family Dock**. A structure providing noncommercial moorage that serves one (1) waterfront owner whose waterfront footage is no less than twenty-five (25) feet. (4-2-08)

**37.** **Slip**. Moorage for boats with pier or dock structures on at least two (2) sides of the moorage. (4-2-08)

**38.** **Submerged Lands**. The state-owned beds of navigable lakes, rivers and streams below the natural or ordinary high water marks. (9-13-90)

**39.** **Two-Family Dock**. A structure providing noncommercial moorage that serves two (2) adjacent waterfront owners having a combined waterfront footage of no less than fifty (50) feet. Usually the structure is located on the common littoral property line. (4-2-08)

**40.** **Upland**. The land bordering on navigable lakes, rivers, and streams. (4-2-08)

**011. ABBREVIATIONS.**

**01.** **IDAPA**. Idaho Administrative Procedure Act. (4-2-08)

**02.** **ATON**. Aids to Navigation. (4-2-08)

**03.** **HDPE.** High-Density Polyethylene ( )

**012. POLICY.**

**01. Environmental Protection and Navigational or Economic Necessity**. It is the express policy of the State of Idaho that the public health, interest, safety and welfare requires that all encroachments upon, in or above the beds or waters of navigable lakes of the state be regulated in order that the protection of property, navigation, fish and wildlife habitat, aquatic life, recreation, aesthetic beauty and water quality be given due consideration and weighed against the navigational or economic necessity or justification for, or benefit to be derived from the proposed encroachment. Moreover, it is the responsibility of the State Board of Land Commissioners to regulate and control the use or disposition of state-owned lake beds, so as to provide for their commercial, navigational, recreational or other public use. (9-13-90)

**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. (4-2-08)

**03. Permitting of Existing Encroachments**. (4-2-08)

**a.** The provisions of Title 58, Chapter 13, Section 58-1312, Idaho Code, shall apply. (4-2-08)

**b.** Any new encroachments, or any unpermitted encroachments constructed after January 1, 1975, shall be subject to these rules. (4-2-08)

**013. -- 014. (RESERVED).**

**015. ENCROACHMENT STANDARDS.**

**01. Single-Family and Two-Family Docks**. The following parameters govern the size and dimensions of single-family docks and two-family docks. (7-1-98)

**a.** No part of the structure waterward of the natural or ordinary high water mark or artificial high water mark shall exceed ten (10) feet in width, excluding the slip cut out. (4-2-08)

**b.** Total surface decking area waterward of the natural or ordinary or artificial high water mark shall not exceed seven hundred (700) square feet, including approach ramp and walkway for a single-family dock and shall not exceed one thousand one hundred (1,100) square feet, including approach ramp and walkway for a two-family dock. (4-2-08)

**c.** No portion of the docking facility shall extend beyond the line of navigability. Shorter docks are encouraged whenever practical and new docks normally will be installed within the waterward extent of existing docks or the line of ~~navigation~~ navigability. (~~4-2-08~~____)

**d.** A variance to the standards contained in Subsection 015.01 of these rules may be approved by the department where it can be justified by site specific considerations such as the distance to the established line of ~~navigation~~ navigability. (~~4-2-08~~____)

**02. Community Docks**. (7-1-98)

**a.** A community dock shall be considered a commercial navigational aid for purposes of processing the application. (4-2-08)

**b.** No part of the structure waterward of the natural or ordinary high water mark or artificial high water mark shall exceed ten (10) feet in width except breakwaters when justified by site specific conditions and approved by the department. (4-2-08)

**c.** A community dock shall not have less than fifty (50) feet combined shoreline frontage. Moorage facilities will be limited in size as a function of the length of shoreline dedicated to the community dock. The surface decking area of the community dock shall be limited to the product of the length of shoreline multiplied by seven (7)

square feet per lineal feet or a minimum of seven hundred (700) square feet. However, the Department, at its discretion, may limit the ultimate size when evaluating the proposal and public trust values. (4-2-08)

**d.** If a breakwater will be incorporated into the structure of a dock, and a need for the breakwater can be demonstrated, the department may allow the surface decking area to exceed the size limitations of Paragraph 015.02.c of these rules. (4-2-08)

**e.** A person with an existing community dock that desires to change the facility to a commercial marina must submit the following information to the department: (4-2-08)

i. A new application for an encroachment permit. (4-2-08)

ii. Text and drawings that describe which moorage will be public and which moorage will be private. (4-2-08)

**03. Commercial Marina**. (4-2-08)

**a.** Commercial marinas must have a minimum of fifty percent (50%) of their moorage available for use by the general public ~~. Such use may range from providing day moorage~~ on either a first come, first served basis for free or rent, ~~to renting~~ or ~~leasing moorage~~ a rent or lease agreement for a period of time up to one (1) year. Moorage contracts may be renewed annually, ~~but the~~ so long as a renewal term ~~may~~ does not exceed one (1) year. Moorage for use by the general public may not include conditions that result in a transfer of ownership of moorage or real property, or require membership in a club or organization. (~~4-2-08~~____)

**b.** Commercial marinas that ~~change~~ are converted to a community dock ~~use~~ must conform to all the community dock standards, including frontage requirements and square footage restrictions. This change of use must be approved by the department through a new encroachment permit prior to implementing the change.(~~4-2-08~~____)

**c.** In those cases where local city or county ordinances governing parking requirements for marinas have not been adopted, commercial marinas shall provide a minimum of upland vehicle parking equivalent to one (1) parking space per two (2) public watercraft or float home moorages, and one (1) parking space per ~~two (2) float home moorages.~~ one (1) private watercraft or float home moorage. In the case of conflict, the local standards shall prevail. ~~Local city or county ordinances governing parking requirements for marinas will apply if such have been enacted~~. (~~4-2-08~~____)

**d.** If a commercial marina can be accessed from a road, marina customers must be allowed access via that road. (4-2-08)

~~**e.** Commercial marinas must have a minimum of fifty percent (50%) of their boat moorage available for use by the general public. (4-2-08)~~

~~**f**~~**e.** Moorage that is not available for public use as described in Paragraph 015.03.a. of these rules is private moorage. (____)
~~Private moorage is created when one (1) of the following occurs: (4-2-08)~~

~~i. Moorage is rented or leased for longer than one (1) year without requiring a renewal. (4-2-08)~~

~~ii. Moorage is acquired only with a purchase of real property as described in Paragraph 015.03.a. of these rules. (4-2-08)~~

~~**g**~~**f.** When calculating the moorage percentage, the amount of public moorage shall be compared to the amount of private moorage. Commercial marinas with private float home moorage shall be required to provide either non-private float home moorage or two (2) public use boat moorages for every private float home moorage in addition to any other required public use boat moorages. (4-2-08)

~~**h**~~**g.** When private moorage is permitted, the public moorage must be of similar size and quality as

private moorage, except for float home moorage as provided in Paragraph 015.03.~~g~~f. of these rules. (~~4-2-08~~____)

~~i~~**h.** Commercial marinas with private moorage must form a condominium association, co-op, or other entity that owns and manages the marina, littoral rights, upland property sufficient to maintain and operate a marina, and private submerged land, if present. This entity is responsible for obtaining and maintaining an encroachment permit under these rules and a submerged lands lease under IDAPA 20.03.17, "Rules Governing Leases on State-Owned Submerged lands and Formerly Submerged Lands." (4-2-08)

~~j~~**i.** Existing commercial marinas that desire to change their operations and convert some of their moorage to private use must keep at least fifty percent (50%) of their moorage available for use by the general public. This change in operations must be approved by the department through a new encroachment permit prior to implementation of the change. The permit application shall describe, in text and in drawings, which moorage will be public and which moorage will be private. (4-2-08)

**04. Covered Slip**. (4-2-08)

**a.** Covered slips, regardless of when constructed, may not have a temporary or permanent residential area. (4-2-08)

**b.** Slip covers should have colors that blend with the natural surroundings and are approved by the department. (4-2-08)

**c.** ~~Covered slips~~ Slip covers with permanent roofs and up to three (3) walls may be maintained or replaced at their current size if they were previously permitted or if they were constructed prior to January 1, 1975. These structures may not be expanded nor converted to boat garages. (~~4-2-08~~____)

**d.** Fabric covered slips must be constructed as canopies without sides unless the following standards are followed: (4-2-08)

i. At least two (2) feet of open space is left between the bottom of the cover and the dock or pier surface; and (4-2-08)

ii. Fabric for canopy and sides will transmit at least seventy-five percent (75%) of the natural light. (4-2-08)

**05. Boat Garage**. (4-2-08)

**a.** Boat garages are considered nonnavigational encroachments. (4-2-08)

**b.** Applications for permits to construct new boat garages, or to expand the total square footage of the existing footprint, will not be accepted unless the application is to support local emergency services. (4-2-08)

**c.** Existing permitted boat garages may be maintained or replaced at their current size. (4-2-08)

**d.** Relocation of an existing boat garage will require a permit. (4-2-08)

**06. Breakwaters**. Breakwaters built upon the lake for use in aid of navigation will not be authorized below the level of normal low water without an extraordinary showing of need, provided, however that this shall not apply to floating breakwaters secured by piling and used to protect private property from recurring wind, wave, or ice damage, or used to control traffic in busy areas of lakes. The breakwater shall be designed to counter wave actions of known wave heights and wave lengths. (4-2-08)

**07. Seawalls**. Seawalls should be placed at or above the ordinary high water mark, or the artificial high water mark, if applicable. Seawalls are not an aid to navigation, and placement waterward of the ordinary or artificial high water mark will generally not be allowed. (4-2-08)

**08. Riprap**. (4-2-08)

**a.** Riprap used to stabilize shorelines will consist of rock that is appropriately sized to resist movement from anticipated wave heights or tractive forces of the water flow. The rock shall be sound, dense, durable, and angular rock resistant to weathering and free of fines. The riprap shall overlie a distinct filter layer which consists of sand, gravel, or nonwoven geotextile fabric. The riprap and filter layer shall be keyed into the bed below the ordinary or artificial high water mark, as applicable. If the applicant wishes to install riprap with different standards, they must submit a design that is signed and stamped for construction purposes by a professional engineer registered in the state of Idaho. (4-2-08)

**b.** Riprap used to protect the base of a seawall or other vertical walls may not need to be keyed into the bed and may not require a filter layer, at the department's discretion. (4-2-08)

**09. Mooring Buoys**. Buoys shall be installed a minimum of thirty (30) feet away from littoral right lines of adjacent littoral owners. One (1) mooring buoy per littoral owner shall be allowed. (4-2-08)

**10. Float Homes**. (4-2-08)

**a.** Applications for permits to construct new float homes, or to expand the total square footage of the existing footprint, will not be accepted. (4-2-08)

**b.** Applications for relocation of float homes within a lake or from one (1) lake to another shall be subject to the following requirements: (4-2-08)

i. Proof of ownership or long term lease of the uplands adjacent to the relocation site must be furnished to the Department. (7-1-98)

ii. The applicant must show that all wastes and waste water will be transported to shore disposal systems by a method approved by the Idaho Department of Environmental Quality or the appropriate local health authority. Applicant must either obtain a letter from the local sewer district stating that the district will serve the float home or demonstrate that sewage will be appropriately handled and treated. Applicant must also provide a statement from a professional plumber licensed in the state of Idaho that the plumbing was designed according to the ~~International Building Code~~2003 Uniform Plumbing Code, installed properly, and has been pressure tested.(~~4-2-08~~ )

**c.** Encroachment applications and approved local permits are required for replacement of, or adding another story to, a float home. (4-2-08)

**d.** All plumbing and electrical work on float homes must be done in accordance with the ~~International Building Code~~2003 Uniform Plumbing Code and the 2008 National Electrical Code. (~~4-2-08~~ )

~~**e.** All float homes that are hooked to upland sewer or septic systems must be inspected and certified every year by a professional plumber licensed in the state of Idaho. Permittees or their designee are responsible for providing this documentation to the department. (4-2-08)~~

e. All float homes in Idaho that connect with upland sewer or septic systems should implement the following standards by January 1, 2012: ( )

i. The holding tank with pump or grinder unit shall be adequately sealed to prevent material from escaping and to prevent lake water from entering. The tank lid shall have a gasket or seal, and the lid shall be securely fastened at all times unless the system is being repaired or maintained. An audible overflow alarm shall also be installed. ( )

ii. Grinders or solids handling pumps shall be used to move sewage from the float home to the upland system. ( )

iii. If solids handling pumps are used, they shall have a minimum two (2) inch interior diameter discharge, and the pipe to the shoreline shall also have a minimum two (2) inch interior diameter. Connectors used

on either end of this pipe shall not significantly reduce the interior diameter. ( )

iv The pipeline from the float home to the shoreline shall be a continuous line with no mechanical connections. Check valves and manual shutoff valves shall be installed at each end of the line. Butt fused HDPE, 200 psi black polyethylene pipe, or materials with similar properties shall be used. The pipeline shall contain sufficient slack to account for the maximum expected rise and fall of the lake or river level. The pipeline shall be buried in the lakebed for freeze protection where it will be exposed during periods of low water. Pipelines on the bed of the lake shall be appropriately located and anchored so they will not unduly interfere with navigation or other lake related uses. ( )

v. Manifolds below the ordinary, or artificial if applicable, high water mark that collect two (2) or more sewer lines and then route the discharge to the shore through a single pipe are not allowed. All float homes must have an individual sewer line from the float home to a facility on the shore. ( )

f. All float home permittees will have their float homes inspected by a professional plumber licensed in the State of Idaho by December 31, 2012. The inspection will be documented with a report prepared by the inspector. The report will document whether or not the float homes meet the standards in paragraph 015.10.e of these rules, and will be provided to the department before the above date. A float home permittee must request an extension, and give cause for the extension, if their float home does not meet these standards by December 31, 2012. Extensions beyond January 1, 2017 will not be allowed. Failure to meet these deadlines will be a violation of these rules and subject to the provisions of Section 080 of these rules. ( )

g. Construction or remodel work on a float home that costs 50% or more of its assessed value will require an encroachment application and construction drawings stamped by an engineer licensed in the State of Idaho. ( )

**11. Excavated or Dredged Channel**. (4-2-08)

**a.** Excavating, dredging, or redredging channels shall require an encroachment permit and shall be processed in accordance with Section 030 of these rules. (4-2-08)

**b.** An excavated or dredged channel or basin to provide access to navigable waters must have a clear environmental, economic, or social benefit to the people of the state, and shall not result in any appreciable environmental ~~degredation~~ degradation. A channel or basin shall not be approved if the cumulative effects of these features in the same navigable lake would be adverse to fisheries or water quality. (~~4-2-08~~ )

**c.** Whenever practical, such channels or basins shall be located to serve more than one (1) littoral owner or a commercial marina; provided, however, that no basin or channel will be approved that will provide access for watercraft to nonlittoral owners. (~~4-2-08~~ )

**12. ATONs**. Aids to Navigation will conform to the requirements established by the United States Aid to Navigation system. (4-2-08)

**13. General Encroachment Standards**. (4-2-08)

**a.** Square Footage. The square footage ~~requirements~~ limitations in Subsections 015.01 and 015.02 include all structures beyond the ordinary or artificial high water mark such as the approach, ramp, pier, dock, and all other floating or suspended structures that cover the lake surface, except for: (~~4-2-08~~ )

i. Boat lifts ~~that provide less shading than dock structures and as described in~~ allowed pursuant to Paragraph 015.13.b. (~~4-2-08~~ )

ii. Jet ski ramp, port, or lift ~~as described in~~ allowed pursuant to Paragraph 015.13.b. (~~4-2-08~~ )

iii. Slip covers. (4-2-08)

iv. Undecked portions of breakwaters. (4-2-08)

**b.** Boat Lifts and Jet Ski Lifts. (4-2-08)

i. Single-family docks are allowed a single boat lift and two (2) jet ski lifts, or two (2) boat lifts, without adding their footprint to the dock square footage. Additional lifts will require that fifty percent (50%) of the footprint of the largest lifts be included in the allowable square footage of the dock or pier as per Subsection 015.01. (4-2-08)

ii. Two-family docks are allowed two (2) boat lifts and four (4) jet ski lifts, or four (4) boat lifts, without adding their footprint to the dock square footage. Additional lifts will require that fifty percent (50%) of the footprint of the largest lifts be included in the allowable square footage of the dock or pier as per Subsection 015.01. (4-2-08)

iii. A boat lift or jet ski lift within lines drawn perpendicular from the shore to the outside dock edges will not require a separate permit if the lift is outside the 10 foot adjacent littoral owner setback, the lift does not extend beyond the line of navigability, and the lift does not count toward the square footage of the dock as outlined in subparagraph 015.13.b.i and ii above. The permittee shall send a revised permit drawing with the lift location as an application to the Department. If the lift meets the above conditions, it shall be approved as submitted. Future applications shall include the lift~~s~~. ( )

iv Community docks are allowed one (1) boat lift or two (2) jet ski lifts per moorage. Boat lifts placed outside of a slip shall be oriented with the long axis parallel to the dock structure. Additional lifts will require that fifty percent (50%) of their footprint be included in the allowable square footage of the dock or pier as per Subsection 015.02. (~~4-2-08~~ )

**c.** Angle from Shoreline. (4-2-08)

i. Where feasible, all docks, piers, or similar structures shall be constructed so as to protrude as nearly as possible at right angles to the general shoreline, lessening the potential for infringement on adjacent littoral rights. (4-2-08)

ii. Where it is not feasible to place docks at right angles to the general shoreline, the department shall work with the applicant to review and approve the applicant's proposed configuration and location of the dock and the dock's angle from shore. (4-2-08)

**d.** Length of Community Docks and Commercial Navigational Encroachments. Docks, piers, or other works may extend to a length that will provide access to a water depth that will afford sufficient draft for water craft customarily in use on the particular body of water, except that no structure may extend beyond the normal accepted line of navigability established through use unless additional length is authorized by permit or order of the director. If a normally accepted line of navigability has not been established through use, the director may from time to time as he deems necessary, designate a line of navigability for the purpose of effective administration of these rules. (4-2-08)

**e.** Presumed Adverse Effect. It will be presumed, subject to rebuttal, that single-family and two-family navigational encroachments will have an adverse effect upon adjacent littoral rights if located closer than ten (10) feet from adjacent littoral right lines, and that commercial navigational encroachments, community docks or nonnavigational encroachments will have a like adverse effect upon adjacent littoral rights if located closer than twenty-five (25) feet to adjacent littoral right lines. Written consent of the adjacent littoral owner or owners will automatically rebut the presumption. All boat lifts and other structures attached to the encroachments shall be subject to the above presumptions of adverse affects. (4-2-08)

**f.** Weather Conditions. Encroachments and their building materials shall be designed and installed to withstand normally anticipated weather conditions in the area. Docks, piers, and similar structures shall be adequately secured to pilings or anchors to prevent displacement due to ice, wind, and waves. Flotation devices for

docks, float homes, etc. shall be reasonably resistant to puncture and other damage. (4-2-08)

**g.** Markers. If the department determines that an encroachment is not of sufficient size to be readily seen or which poses a hazard to navigation, the permit shall specify that aids to navigation be used to clearly identify the potential hazard. (4-2-08)

**h.** Overhead Clearance. (4-2-08)

i. Overhead clearance between the natural or ordinary high water mark or the artificial high water mark, if there be one, and the structure or wires must be sufficient to pass the largest vessel which may reasonably be anticipated to use the subject waters in the vicinity of the encroachment. In no case will the clearance be required to exceed thirty (30) feet unless the department determines after public hearing that it is in the overall public interest that the clearance be in excess of thirty (30) feet. Irrespective of height above the water, approval of structures or wires presenting a hazard for boating or other water related activities may be conditioned upon adequate safety marking to show clearance and otherwise to warn the public of the hazard. The department shall specify in the permit the amount of overhead clearance and markings required. (4-2-08)

ii. When the permit provides for overhead clearance or safety markings under Paragraph 015.13.h., the department shall consider the applicable requirements of the United States Coast Guard, the Idaho Transportation Department, the Idaho Public Utilities Commission and any other applicable federal, state, or local regulations. (4-2-08)

**i.** Beaded Foam Flotation. Beaded foam flotation shall be completely encased in a manner that will maintain the structural integrity of the foam. The encasement shall be resistant to the entry of rodents. (4-2-08)

~~13~~14. Floating Toys. ( )

a. Encroachment permits are not required for floating toys, except where noted in paragraph b., below. Counties and cities may regulate floating toys for public safety and related concerns. ( )

b. A floating toy becomes a nonnavigational encroachment, and an encroachment permit is required, when one of the following occurs: ( )

i. It is anchored to the bed of the lake with a device that requires equipment to remove it from the bed of the lake, or; ( )

ii. It is located waterward of the line of navigability for more than 24 consecutive hours. ( )

15. Lake Specific Encroachment Permit Terms. ( )

a. The department may use encroachment permit conditions specific to individual lakes if the permit conditions are needed to protect public trust values and the permit condition is approved by the land board. ( )

b. Lake specific encroachment permit conditions may supplement, negate, or alter encroachment standards established in Section 015 of these rules. ( )

c. Lake specific encroachment permit conditions shall be used to assist with implementing lake management plans authorized by Title 39, Chapter 66, Idaho Code; Title 39, Chapter 85, Idaho Code; Title 67, Chapter 43, Idaho Code; and Title 70, Chapter 2, Idaho Code. The purpose for using such lake specific permit conditions is to address lake specific environmental concerns that require attention and create a need for a variance from what is allowed on other lakes. ( )

d. Lake specific encroachment permit terms may be read at the Idaho Department of Lands website: www.idl.idaho.gov. ( )

**016. -- 019. (RESERVED).**

**020. APPLICATIONS.**

**01. Encroachment Applications**. No person shall hereafter make or cause to be made any encroachment on, in or above the beds or waters of any navigable lake in the state of Idaho without first making application to and receiving written approval from the department. The placing of dredged or fill material, refuse or waste matter intended as or becoming fill material, on or in the beds or waters of any navigable lake in the state of Idaho shall be considered an encroachment and written approval by the department is required. If demolition is required prior to construction of the proposed encroachment, then the application must describe the demolition activities and the steps that will be taken to protect water quality and other public trust values. No demolition activities may proceed until the permit is issued. (4-2-08)

**02. Signature Requirement**. Only persons who are littoral owners or lessees of a littoral owner shall be eligible to apply for encroachment permits. A person who has been specifically granted littoral rights or dock rights from a littoral owner shall also be eligible for an encroachment permit; the grantor of such littoral rights, however, shall no longer be eligible to apply for an encroachment permit. Except for waterlines or utility lines, the possession of an easement to the shoreline does not qualify a person to be eligible for an encroachment permit. (4-2-08)

**03. Other Permits**. Nothing in these rules shall excuse a person seeking to make an encroachment from obtaining any additional approvals lawfully required by federal, local or other state agencies. (9-13-90)

**04. Repairs, Reinstallation of Structures**. No permit is required to clean, maintain, or repair an existing permitted encroachment, but a permit is required to completely replace, enlarge. or extend an existing encroachment. Reinstalling the top or deck of a dock, wharf or similar structure shall be considered a repair; reinstallation of winter damaged or wind and water damaged pilings, docks, or float logs shall be considered a repair. Repairs that adversely affect the bed of the lake will be considered a violation of these rules. (4-2-08)

**05. Dock ~~Reconfiguration~~Reconfiguration**. (~~4-2-08~~ )

**a.** Rearrangement of single-family and two-family docks will require a new application for an encroachment permit. (4-2-08)

**b.** Rearrangement of community docks and commercial navigational encroachments may not require a new application for an encroachment permit if the changes are only internal. The department shall be consulted prior to modifications being made, and shall use the following criteria to help determine if a new permit must be submitted: (4-2-08)

i. Overall footprint does not change in dimension or orientation; (4-2-08)

ii No increase in the square footage, as ~~per~~ described in the existing permit and in accordance with Paragraph 015.13.a., occurs. This only applies to community docks; (~~4-2-08~~ )

iii. The entrances and exits of the facility do not change. (4-2-08)

**06. Redredging**. Redredging a channel or basin shall be considered a new encroachment and a permit is required unless redredging is specifically authorized by the outstanding permit. Water quality certification from the Idaho Department of Environmental Quality is required regardless of how redredging is addressed in any existing or future permit. (4-2-08)

**07. Forms, Filing**. Applications must be in writing on forms provided by the Department or copies. Applications and plans shall be filed in the local office of the Department, whose location is available on the internet at www.idl.idaho.gov, or the director's office in Boise, together with filing fees and costs of publication when required by these rules. Costs of preparation of the application, including all necessary maps and drawings, shall be paid by the applicant. (4-2-08)

**a.** Plans shall include the following information on paper no larger than eight and one half by fourteen (8 1/2"x14") inches: (4-2-08)

i. Lakebed profile in relationship to the proposed encroachment. The lakebed profile shall show the summer and winter water levels. (4-2-08)

ii. Copy of most recent survey or county plat showing the full extent of the applicant's lot and the adjacent littoral lots. (4-2-08)

iii. Proof of current ownership or control of littoral property or littoral rights. (4-2-08)

iv. A general vicinity map. (4-2-08)

v. Scaled air photos or maps showing the lengths of adjacent docks as an indication of the line of navigability, distances to adjacent encroachments, and the location and orientation of the proposed encroachment in the lake. (4-2-08)

vi. Total square footage of proposed docks and other structures, excluding pilings, that cover the lake surface. (4-2-08)

vii. Names and current mailing addresses of adjacent littoral landowners. (4-2-08)

**b.** Applications must be submitted or approved by the littoral owner or, if the encroachment will lie over or upon private lands between the natural or ordinary high water mark and the artificial high water mark, the application must be submitted or approved by the owner of such lands. When the littoral owner is not the applicant, the application shall bear the owner's signature as approving the encroachment prior to filing. (4-2-08)

**c.** If more than one (1) littoral owner exists, the application must bear the signature of all littoral owners, or the signature of an authorized officer of a designated homeowner's or property management association. (4-2-08)

**d.** 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. Application fees are not required for these encroachments. (4-2-08)

**e.** ~~The following applications shall be accompanied by the respective nonrefundable filing fees together with a deposit toward the cost of newspaper publication, which deposit shall be determined by the director at the time of filing:~~All applications shall be accompanied by a nonrefundable filing fee in an amount set by the State Board of Land Commissioners. (~~4-2-08~~____)

~~i. Nonnavigational encroachments require a fee of one thousand dollars ($1,000); (4-2-08)~~

~~ii. Commercial navigational encroachments require a base fee of two thousand dollars ($2,000). If the costs of processing an application exceed this amount, then the applicant may be charged additional costs as allowed by Title 58, Chapter 13, Section 58-1307, Idaho Code; (4-2-08)~~

~~iii. Community navigational encroachments require a fee of two thousand dollars ($2,000); and (4-2-08)~~

~~iv. Navigational encroachments extending beyond the line of navigability require a fee of one thousand dollars ($1,000). (4-2-08)~~

**f.** Applicants shall pay any balance due on publication costs before written approval will be issued. The Department shall refund any excess at or before final action on the application. (9-13-90)

**g.** Application for a single-family or two-family dock not extending beyond the line of navigability

or a nonnavigational encroachment for bank stabilization and erosion control or for fisheries and wildlife habitat improvements shall be accompanied by a nonrefundable filing fee of two hundred fifty dollars ($250). (4-2-08)

**h.** No publication cost is required for application for noncommercial navigational encroachment not extending beyond the line of navigability or for application for installation of buried or submerged water intake lines and utility lines. (9-13-90)

**i.** Applications and plans shall be stamped with the date of filing. (7-1-98)

**j.** Applications that are incomplete, not in the proper form, not containing the required signature(s), or not accompanied by filing fees and costs of publication when required, shall not be accepted for filing. The department shall send the applicant a written notice of incompleteness with a listing of the application's deficiencies. The applicant will be given thirty (30) days from receipt of the notice of incompleteness to resubmit the required information. The deadline may be extended with written consent of the department. If the given deadline is not met, the department will notify the applicant that the application has been denied due to lack of sufficient information. The applicant may reapply at a later date, but will be required to pay another filing fee and publication fee, if applicable. (4-2-08)

**021. -- 024. (RESERVED).**

**025. PROCESSING OF APPLICATIONS FOR SINGLE-FAMILY AND TWO-FAMILY NAVIGATIONAL ENCROACHMENTS WITHIN LINE OF NAVIGABILITY.**

**01. Single-Family and Two-Family Navigational Encroachments**. Applications for single-family and two-family navigational encroachments not extending beyond the line of navigability will be processed with a minimum of procedural requirements and shall not be denied except in the most unusual of circumstances. No newspaper publication, formal appearance by the applicant, or hearing is contemplated. (4-2-08)

**02. Adjacent Littoral Owners**. If a proposed encroachment referred to in Subsection 025.01 may infringe upon the littoral right lines of an adjacent littoral owner, the department shall require the applicant to secure the written consent of the adjacent littoral owner. (4-2-08)

**03. Notification of Adjacent Littoral Owners**. If the signature of the adjacent littoral owner is not required, the Department shall provide a copy of such application to the littoral owners immediately adjacent to the applicant's property. If the applicant owns one (1) or more adjacent lots, the department shall notify the owner of the next adjacent lot. This notification will be sent by regular mail to the adjacent littoral owners' usual place of address, which, if not known, shall be the address shown on the records of the county treasurer or assessor. The applicant may submit the adjacent littoral owners' signatures as concurring with the application in lieu of the department's notification. (4-2-08)

**04. Written Objections**. (4-2-08)

**a.** If an adjacent littoral owner files written objections to the application with the department within ten (10) days from the date of service or receipt of notice of the completed application, the department shall fix a time and a place for a hearing. In computing the time to object, the day of service or receipt of notice of the application shall not be counted. Objections must be received within the ten (10) day period by mail or hand delivery in the local department office or the director's office in Boise. If the last day of the period is Saturday, Sunday or a legal holiday, the time within which to object shall run until the end of the first business day thereafter.(4-2-08)

**b.** The applicant and any objectors may agree to changes in the permit that result in the objections being withdrawn. Department employees may facilitate any such agreement. Participation by department personnel in this informal mediation shall not constitute a conflict of interest for participation in the hearing process. A withdrawal of objections must be in writing, completed prior to a scheduled hearing, and contain: (4-2-08)

i. Signatures of the applicant and the objecting party; (4-2-08)

ii. A description of the changes or clarifications to the permit that are acceptable to the applicant, the objecting party, and the department. (4-2-08)

**05. Unusual Circumstances**. Even though no objection is filed by an adjacent littoral owner to a noncommercial navigational encroachment, if the director deems it advisable because of the existence of unusual circumstances, he may require a hearing. (4-2-08)

**06. Hearings**. Hearings fixed by the director following an objection pursuant to Subsection 025.04 or the Director's own determination pursuant to Subsection 025.05 shall be fixed as to time and place, but no later than sixty (60) days from date of acceptance for filing of the application. At the hearing the applicant and any adjacent riparian owner filing timely objections may appear personally or through an authorized representative and present evidence. The department may also appear and present evidence at the hearing. In such hearings the hearing coordinator shall act as a fact finder and not a party. The Director, at his discretion, shall designate a Department representative to sit as the hearing coordinator. Provided, however, that the parties may agree to informal disposition of an application by stipulation, agreed settlement, consent order, or other informal means. (4-2-08)

**07. Decision Following a Hearing**. The director shall, within forty-five (45) days after close of the hearing provided for in Subsections 025.04 or 025.05 render a final decision and give notice thereof to the parties appearing before him either personally or by certified or registered mail. The final decision shall be in writing. (4-2-08)

**08. Disposition Without Hearing**. If a hearing is not held under Subsection 025.04 or Subsection 025.05, then the department shall act upon a complete application filed under Subsection 025.01 as expeditiously as possible but no later than sixty (60) days from acceptance of the application. Failure to act within this sixty (60) day timeframe shall constitute approval of the application. Applications determined to be incomplete under Subsection 020.07 are not subject to the sixty (60) day timeframe until the information requested by the department and required by the rules has been submitted. (4-2-08)

**09. Judicial Review**. Any applicant aggrieved by the Director's final decision, or an aggrieved party appearing at a hearing, shall have a right to have the proceedings and final decision 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. An adjacent littoral owner shall be required to deposit an appeal bond with the court, in an amount to be determined by the court but not less than five hundred dollars ($500) insuring payment to the applicant of damages caused by delay and costs and expenses, including reasonable attorney fees, incurred on the appeal in the event the district court sustains the action of the director. The applicant need post no bond with the court to prosecute an appeal. (4-2-08)

**026. -- 029. (RESERVED).**

**030. PROCESSING OF APPLICATIONS FOR ALL OTHER TYPES OF ENCROACHMENTS.**

**01. Nonnavigational, Community, and Commercial Navigational Encroachments**. ~~Upon receipt of~~Within ten (10) days of receiving a complete application for a nonnavigational encroachment, a community dock, ~~or~~ a commercial navigational encroachment, or ~~for~~ a navigational encroachment extending beyond the line of navigability, the department shall~~, within ten (10) days of receiving a complete application,~~ cause to be published a notice of application once a week for two (2) consecutive weeks in a newspaper of general circulation in the county in which the encroachment is proposed. If, however, the director orders a hearing on the application within the time for publication of the above notice, the department shall dispense with publication of the notice of the application and shall proceed instead to publish a notice of the public hearing as provided in Subsection 030.05. Applications for installation of buried or submerged water intake lines and utility lines shall be exempt from the newspaper publication process. (~~4-2-08~~ ____)

**02. Encroachments Not in Aid of Navigation**. Encroachments not in aid of navigation in navigable lakes will normally not be approved by the Department and will be considered only in cases involving major environmental, economic, or social benefits to the general public. Approval under these circumstances is authorized only when consistent with the public trust doctrine and when there is no other feasible alternative with less impact

on public trust values. (4-2-08)

**03. Notifications**. Upon request or when the department deems it appropriate, the department may furnish copies of the application and plans to federal, state and local agencies and to adjacent littoral owners, requesting comment on the likely effect of the proposed encroachment upon adjacent littoral property and public trust values such as navigation, fish and wildlife habitat, aquatic life, recreation, aesthetic beauty, water quality, etc. (4-2-08)

**04. Written Comments or Objections**. Within thirty (30) days of the first date of publication, an agency, adjacent littoral owner or lessee, or any resident of the state of Idaho may do one (1) of the following: (4-2-08)

**a.** Notify the department of their opinions and recommendation, if any, for alternate plans they believe will be economically feasible and will accomplish the purpose of the proposed encroachment without unreasonably adversely affecting adjacent littoral property or public trust values; or (4-2-08)

**b.** File with the Department written objections to the proposed encroachment and request a public hearing on the application. The hearing must be specifically requested in writing. Any person or agency requesting a hearing on the application shall deposit and pay to the department an amount sufficient to cover the cost of publishing notice of hearing provided in Subsection 030.05. (4-2-08)

**05. Hearing**. Notice of the time and place of public hearing on the application shall be published by the director once a week for two (2) consecutive weeks in a newspaper in the county in which the encroachment is proposed, which hearing shall be held within ninety (90) days from the date the application is accepted for filing. (7-1-98)

**06. Hearing Participants**. Any person may appear at the public hearing and present oral testimony. Written comments shall also be received by the Department. (7-1-98)

**07. Decision After Hearing**. The director shall render a final decision within thirty (30) days after close of the public hearing. A copy of his final decision shall be mailed to the applicant and to each person or agency appearing at the hearing and giving oral or written testimony in support of or in opposition to the proposed encroachment. (4-2-08)

**08. Decision Where No Hearing**. (4-2-08)

**a.** In the event no objection to the proposed encroachment is filed with the department and no public hearing is requested under Subsection 030.04, or ordered by the director under Subsection 030.01, the department, based upon its investigation and considering the economics of the navigational necessity, justification or benefit, public or private, of such proposed encroachment as well as its detrimental effects, if any, upon adjacent real property and public trust values such as navigation, fish and wildlife habitat, aquatic life, recreation, aesthetic beauty, water quality, etc. shall prepare and forward to the applicant its decision. (4-2-08)

**b.** The applicant, if dissatisfied with the director's decision, shall have twenty (20) days from the date of the director's decision to request reconsideration thereof. If reconsideration is required, the director shall set a time and place for a reconsideration hearing, not to exceed thirty (30) days from receipt of the request, at which time and place the applicant may appear in person or through an authorized representative and present briefing and oral argument. Upon conclusion of reconsideration, the director shall by personal service or by registered or certified mail notify the applicant of his final decision. (4-2-08)

**09. Judicial Review**. Any applicant aggrieved by the director's final decision, or an aggrieved party who appeared at a hearing, shall have the right to have the proceedings and final decision of the director reviewed by the district court in the county in which the encroachment is proposed by filing a notice of appeal within thirty (30) days from the date of the final decision. The applicant need post no bond with the court to prosecute an appeal. Any other aggrieved party shall be required to deposit an appeal bond with the court, in an amount to be determined by the court but not less than five hundred dollars ($500), insuring payment to the applicant of damages caused by

delay and costs and expenses, including reasonable attorney fees, incurred on the appeal in the event the district court sustains the action of the director. (4-2-08)

**10. Factors in Decision**. In recognition of continuing private property ownership of lands lying between the natural or ordinary high water mark and the artificial high water mark, if present, the department shall consider unreasonable adverse effect upon adjacent property and undue interference with navigation the most important factors to be considered in granting or denying an application for either a nonnavigational encroachment or a commercial navigational encroachment not extending below the natural or ordinary high water mark. If no objections have been filed to the application and no public hearing has been requested or ordered by the director, or, if upon reconsideration of a decision disallowing a permit, or following a public hearing, the department determines that the benefits, whether public or private, to be derived from allowing such encroachment exceed its detrimental effects, the permit shall be granted. (4-2-08)

**031. -- 034. (RESERVED).**

**035. TEMPORARY PERMITS.**

**01. Applicability**. Temporary permits are used for construction, temporary activities related to permitted encroachments, or other activities approved by the department. (4-2-08)

**02. Permit Term**. These permits are generally issued for less than one (1) year, but longer terms may be approved by the department and permits may be extended with department approval. (4-2-08)

**03. Bonding**. The department may require bonds for temporary permits. (4-2-08)

**04. Fee**. The board shall set fees for temporary permits.~~, but the fees shall be no greater than the amounts listed for the respective permit types in Subsection 020.07. Fee information is available on the Internet at www.idl.idaho.gov.~~ (~~4-2-08~~____)

**05. Processing**. These permits may be advertised if the department deems it appropriate, with the applicant paying the advertising fee as per Subsection 020.07. (4-2-08)

**036. -- 049. (RESERVED).**

**050. RECORDATION.**

Recordation of an issued permit in the records of the county in which an encroachment is located shall be a condition of issuance of a permit and proof of recordation shall be furnished to the Department by the permittee before a permit becomes valid. Such recordation shall be at the expense of the permittee. Recordation of an issued permit serves only to provide constructive notice of the permit to the public and subsequent purchasers and mortgagees, but conveys no other right, title, or interest on the permittee other than validation of said permit.(4-2-08)

**051. -- 054. (RESERVED).**

**055. LEASES AND EASEMENTS.**

**01. Lease or Easement Required**. As a condition of the encroachment permit, the department may require a submerged land lease or easement for use of any part of the state-owned bed of the lake where such lease or easement is required in accordance with "Rules Governing Leases on State-owned Submerged Lands and Formerly Submerged Lands," IDAPA 20.03.17, or "Rules For Easements On State-owned Submerged Lands And Formerly Submerged Lands," IDAPA 20.03.09. A lease or easement may be required for uses including, but not limited to, commercial uses. Construction of an encroachment authorized by permit without first obtaining the required lease or easement shall constitute a trespass upon state-owned public trust lands. This rule is intended to grant the state recompense for the use of the state-owned bed of a navigable lake where reasonable and it is not intended that the department withhold or refuse to grant such lease or easement if in all other respects the proposed encroachment would be permitted. (4-2-08)

**02. Seawalls, Breakwaters, Quays**. Seawalls, breakwaters, and quays on or over state-owned beds, designed primarily to create additional land surface, will be authorized, if at all, by an encroachment permit and submerged land lease or easement, upon determination by the department to be an appropriate use of submerged lands. (4-2-08)

**056. -- 059. (RESERVED).**

**060. INSTALLATION.**

**01. Installation Only After Permit Issued**. Installation or on site construction of an encroachment may commence only when the permit is issued or when the department notifies the applicant in writing that installation may be commenced or when the department has failed to act in accordance with Subsection 025.08. (4-2-08)

**02. Removal of Construction Waste**. (4-2-08)

**a.** Pilings, anchors, old docks, and other structures or waste at the site of the installation or reinstallation and not used as a part of the encroachment shall be removed from the water and lakebed at the time of the installation or reinstallation to a point above normal flood water levels; provided, however, that this shall not be construed to prevent the use of trash booms for the temporary control of floatable piling ends and other floatable materials in a securely maintained trash boom, but approval for a trash boom shall be required as part of a permit. (4-2-08)

**b.** Demolition of encroachments shall be done in a manner that does not unnecessarily damage the lakebed or shoreline. Demolition work must comply with water quality standards administered by the Department of Environmental Quality. (4-2-08)

**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. (7-1-98)

**04. Sunset Clause**. All activities authorized within the scope of the encroachment permit must be completed within three (3) years of issuance date. If the activities are not completed within three (3) years, the permit shall automatically expire unless it was previously revoked or extended by the department. The department may issue a permit with an initial sunset clause that exceeds three (3) years if the need is demonstrated by the applicant. (~~4-2-08~~ )

**061. -- 064. (RESERVED).**

**065. ASSIGNMENTS.**

**01. Assignment of Encroachment Permit**. Encroachment permits may be assigned upon approval of the department provided that the encroachment conforms with the approved permit. The assignor and assignee must complete a department assignment form and forward it to the appropriate area office. (4-2-08)

**02. Assignment Fee**. ~~The assignment fee shall be one hundred fifty dollars ($150). The fee shall be paid at the time the assignment is submitted to the department.~~ The assignment fee shall be determined by the board and shall be paid at the time the assignment is submitted to the department. (~~4-2-08~~ )

**03. Approval Required for Assignment**. An assignment is not valid until it has been approved by the department. (4-2-08)

**04. Assignment With New Permit**. Encroachments not in compliance with the approved permit may be assigned only if: (4-2-08)

**a.** An application for a new permit to correct the noncompliance is submitted at the same time. (4-2-08)

**b.** The assignee submits written consent to bring the encroachment permit into compliance. (4-2-08)

**066. -- 069. (RESERVED).**

**070. MISCELLANEOUS.**

**01. Water Resources Permit**. A permit to alter a navigable stream issued by the Department of Water Resources pursuant to Title 42, Chapter 38, Idaho Code, may, in appropriate circumstances, contain language stating the approval of the Department of Lands to occupy the state-owned bed of the navigable stream. (9-13-90)

**02. Dredge and Placer Mining**. Department authorization is required for dredge and placer mining in the lands, lakes and rivers within the state, whether or not the state owns the beds, pursuant to Title 47, Chapter 13, Idaho Code. (9-13-90)

**03. Mineral Leases**. Littoral rights do not include any right to remove bed materials from state-owned lakebeds. Applications to lease minerals, oil, gas and hydrocarbons, and geothermal resources within the state-owned beds of navigable lakes will be processed by the department pursuant to Title 47, Chapters 7, 8 and 16, Idaho Code, and rules promulgated thereunder. (4-2-08)

**04. Other Laws and Rules**. The permittee shall comply with all other applicable state, federal and local rules and laws insofar as they affect the use of public trust resources. (4-2-08)

**071. -- 079. (RESERVED).**

**080. VIOLATIONS - PENALTIES.**

**01. Cease and Desist Order**. When the department determines that a violation of these rules is occurring due to the ongoing construction of an unauthorized encroachment or an unauthorized modification of a permitted encroachment, it may provide the landowner, contractor, or permittee with a written cease and desist order that shall consist of a short and plain statement of what the violation is, the pertinent legal authority, and how the violation may be rectified. This order will be served by personal service or certified mail. The cease and desist order shall be used to maintain the status quo pending formal proceedings by the department to rectify the violation. (4-2-08)

**02. Notice of Noncompliance/Proposed Permit Revocation**. When the department determines that these rules have been violated, a cause exists for revocation of a lake encroachment permit, or both of these have occurred, it shall provide the permittee with a notice of noncompliance/proposed permit revocation that shall consist of a short and plain statement of the violation including any pertinent legal authority. This notice shall also inform the permittee of what steps are needed to either bring the encroachment into compliance, if possible, or avoid revocation, or both. (4-2-08)

**03. Noncompliance Resolution**. The department will attempt to resolve all noncompliance issues through conference with the permittee or other involved party. Any period set by the parties for correction of a violation shall be binding. If the department is unsuccessful in resolving the violations, then the department may pursue other remedies under Section 080 of these rules. (4-2-08)

**04. Violations**. The following acts or omissions shall subject a person to a civil penalty as allowed by Title 58, Chapter 13, Section 58-1308, Idaho Code: (4-2-08)

**a.** A violation of the provisions of Title 58, Chapter 13, Idaho Code, or of the rules and general orders adopted thereunder and applicable to navigable lakes; (4-2-08)

**b.** A violation of any special order of the director applicable to a navigable lake; or (4-2-08)

**c.** Refusal to cease and desist from any violation in regards to a navigable lake after having received a written cease and desist order from the department by personal service or certified mail, within the time provided

in the notice, or within thirty (30) days of service of such notice if no time is provided. (4-2-08)

**d.** Willfully and knowingly falsifying any records, plans, information, or other data required by these rules. (4-2-08)

**e.** Violating the terms of an encroachment permit. (4-2-08)

**05. Injunctions**, **Damages**. The Board expressly reserves the right, through the director, to seek injunctive relief under Title 58, Chapter 13, Section 58-1308, Idaho Code and mitigation of damages under Title 58, Chapter 13, Section 58-1309, Idaho Code, in addition to the civil penalties provided for in Subsection 080.04 of these rules. (4-2-08)

**06. Mitigation, Restoration**. The board expressly reserves the right, through the director, to require mitigation and restoration of damages under Title 58, Chapter 13, Section 58-1309, Idaho Code, in addition to the civil penalties and injunctive relief provided for in Subsections 080.04 and 080.05 of these rules. The department may consult with other state agencies to determine the appropriate type and amount of mitigation and restoration required. (4-2-08)

**07. Revocation of Lake Encroachment Permits**. (4-2-08)

**a.** The department may institute an administrative action to revoke a lake encroachment permit for violation of the conditions of a permit, or for any other reason authorized by law. All such proceedings shall be conducted as contested case hearings subject to the provisions of Title 67, Chapter 52, Idaho Code, and IDAPA 20.01.01, "Rules of Practice and Procedure before the State Board of Land Commissioners." (4-2-08)

**b.** A hearing officer appointed to conduct the revocation hearing shall prepare recommended findings of fact and conclusions of law and forward them to the director for final adoption or rejection. (4-2-08)

**c.** An aggrieved party who appeared and testified at a hearing shall have the right to have the proceedings and final decision of the director reviewed by the district court of the county in which the violation or revocation occurred by filing a notice of appeal within twenty-eight (28) days from the date of the final decision. (4-2-08)

**081. -- 999. (RESERVED).**