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**BEFORE THE STATE BOARD OF LAND COMMISSIONERS
STATE OF IDAHO**

IN THE MATTER OF

Encroachment Permit Application
No. L-96-S-0206I

Sourdough Point Homeowner's
Association, Sherrel Rhys, President,

Applicant.

Agency Case No. PH-2026-NAV-20-002

OAH Case No. 26-320-06

**IDAHO DEPARTMENT OF LANDS'
PREHEARING STATEMENT**

The Idaho Department of Lands (“IDL”), by and through its counsel of record, Kayleen Richter, submits the following Prehearing Statement in accordance with the *Scheduling Order* issued March 5, 2026. This matter is scheduled for a public hearing on April 7, 2026, at 4:00 p.m. Pacific Time at a location to be determined in Sandpoint, Idaho. IDL concurrently submits its disclosure of witnesses, exhibit list, and proposed exhibits for hearing.

I. BACKGROUND

A. Application

Sourdough Point Owners Association, by and through its President, Sherrel Rhys (“Applicant”) seeks an encroachment permit to expand a community dock on Lake Pend Oreille (“Application”). *See* IDL-01.¹

¹ The Articles of Amendment filed with the Idaho Secretary of State indicate the homeowner association is named Sourdough Point Owners Association, Inc., rather than “Sourdough Point Homeowner’s Association” as listed in the application. *Compare* IDL-03 *with* IDL-01 at 1. Accordingly, this prehearing statement refers to the applicant as “Sourdough Point Owners Association” or “SPOA.”

B. Procedural Background

On January 15, 2026, IDL received a complete application from Applicant. *See* IDL-01 at 15. On January 20, 2026, IDL contacted the Coeur d’Alene Press to publish public notice of the application and pending public hearing. *See* IDL-02. On that same date, IDL received from Applicant their Secretary of State Articles of Amendment. *See* IDL-03. On January 22, 2026, IDL sent a notice to Applicant’s adjacent neighbors (Badt Trust, Beresford, Corn, Cron, EPC Sourdough Enterprises LLC, Island Vista LLC, Legacy Properties LLC, and Safe Harbour Holdings Corp.) and provided them with a copy of the Application. IDL-04. On that same date, IDL sent a resource agency notice seeking comments on the Application and provided them with a copy of the Application. IDL-05. On January 23, 2026, and January 30, 2026, the Coeur d’Alene Press published a legal advertisement to notify the public of the Application and pending public hearing. *See* IDL-06. On January 30, 2026, IDL received a consent to the Application from adjacent neighbor Pamela Legg of Legacy Properties LLC. IDL-07. On February 13, 2026, Idaho Fish and Game responded to IDL that they do not have any comments on the Application. IDL-08. Pursuant to IDAPA 20.03.04.030.04(b), on February 20, 2026, neighbor Kevin Palmer with Safe Harbour Holdings Corp. objected to the Application and requested a public hearing. IDL-09.

On February 23, 2026, IDL contacted the Office of Administrative Hearings (“OAH”) to request a public hearing on the Application. Live Dkt. 001. On February 23, 2026, IDL received notice that OAH appointed a Hearing Officer for this matter. Live Dkt. 011. After a scheduling videoconference on March 3, 2026, the Hearing Officer issued a Scheduling Order setting the date to hold a public hearing for April 7, 2026, and setting associated prehearing deadlines. The hearing will take place at Sagle Elementary School, 550 Sagle Road, Sagle, Idaho 83860 and an onsite inspection is scheduled for April 8, 2026. Live Dkt. 014.

C. Comments

To date, IDL has received one (1) agency response from the Idaho Department of Fish and Game, which stated that the agency did not have any comments to submit. IDL-08. IDL has received approximately seven (7) public comments on the Application. *See* IDL-10.

II. LEGAL STANDARD

By virtue of the public trust doctrine, the State of Idaho owns in trust the beds and banks of navigable waters for the use and benefit of the public. *Byrd v. Idaho State Bd. of Land Commissioners*, 169 Idaho 922, 928, 505 P.3d 708, 714 (2022) (citing *Newton v. MJK/BJK, LLC*, 167 Idaho 236, 242, 469 P.3d 23, 29 (2020)). As administrator of the trust on behalf of the public, the state “has the right to regulate, control and utilize navigable waters for the protection of certain public uses, particularly navigation, commerce and fisheries.” *Kootenai Env't All., Inc. v. Panhandle Yacht Club, Inc.*, 105 Idaho 622, 625, 671 P.2d 1085, 1088 (1983) (quoting Roderick Walston, *The Public Trust Doctrine in the Water Rights Context: The Wrong Environmental Remedy*, 22 U. Santa Clara L. Rev. 62, 66 (1982)).

Accordingly, in 1974 the Idaho Legislature enacted the Lake Protection Act. Lake Protection Act, ch. 243, § 1 (Idaho 1974) (“LPA”). In the LPA, the Idaho Legislature proclaimed:

The legislature of the state of Idaho hereby declares 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. No encroachment on, in or above the beds or waters of any navigable lake in the state shall hereafter be made unless approval therefor has been given as provided in this act.

I.C. § 58-1301.

Pursuant to the LPA, the Idaho Board of Land Commissioners, through IDL as its administrative instrumentality, has the authority and duty to “regulate, control and may permit encroachments in aid of navigation or not in aid of navigation on, in or above the beds or waters

of navigable lakes as provided herein.” I.C. § 58-1303. *See also* I.C. §§ 58-101, 58-104(9), 58-119.

The LPA provides both procedural and substantive requirements that shape IDL’s authority and discretion to permit encroachments upon, in or above the state’s navigable waters. I.C. § 58-1301 *et seq.* For example, when IDL receives a permit application for an encroachment governed by Idaho Code § 58-1306, the LPA urges IDL to begin its substantive evaluation by seeking feedback from other interested agencies “to determine the opinion of such state agencies as to the likely effect of the proposed encroachment upon adjacent property and lake value factors of navigation, fish and wildlife habitat, aquatic life, recreation, aesthetic beauty or water quality.”² I.C. § 58-1306(b).

Additionally, when an application is uncontested, the LPA directs IDL to decide whether to grant a permit *without* holding a hearing. I.C. § 58-1306(d). In such an event, IDL’s ultimate decision is “based upon its own investigation and considering the economics of 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 lake value factors[.]” *Id.* Conversely, when an application is contested, the LPA requires IDL to hold a public hearing on the application, such that each person or agency appearing at the hearing may “giv[e] testimony in support of or in opposition to the proposed encroachment[.]”³ I.C. § 58-1306(c). IDL considers both public and agency testimony when IDL gives “due consideration” to the potential detriment

² Note that the LPA suggests IDL seek comment on the application from other interested *state* agencies, which the LPA Rules broadens to include “federal, state and local agencies and to adjacent littoral owners.” I.C. § 58-1306(b); IDAPA 20.03.04.030.03.

³ While the LPA does not define “public hearing,” the LPA Rules do:

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 acts 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 exercises such control at hearings as necessary to maintain order, decorum and common courtesy among the participants.

IDAPA 20.03.04.010.29. Thus, when a hearing is open for public comment it is only a limited opportunity for the public to provide testimony for the record, which IDL will consider when weighing the proposed encroachment’s potential detriments upon the lake value factors against its potential benefits.

on the lake value factors, which IDL weighs “against the navigational or economic necessity or justification for, or benefit to be derived from the proposed encroachment.” I.C. § 58-1301; I.C. § 58-1306; *Brett v. Eleventh St. Dockowner's Ass'n, Inc.*, 141 Idaho 517, 523, 112 P.3d 805, 811 (2005) (“IDL is required to balance the competing interests involved while determining whether to approve permits for navigational encroachments”). *See also Kootenai Env't All., Inc. v. Panhandle Yacht Club, Inc.*, 105 Idaho 622, 628, 671 P.2d 1085, 1091 (1983) (“[P]ublic trust resources may only be alienated or impaired through open and visible actions, where the public is *in fact* informed of the proposed action and has substantial opportunity to respond to the proposed action before a final decision is made thereon.”).

Further, “to effectuate the purposes and policy of [the LPA] within the limitations and standards set forth in [the LPA]” IDL promulgated “minimum standards to govern projects... and regulations governing procedures for processing applications and issuing permits under [the LPA].” I.C. § 58-1304. These minimum standards and regulations are titled “Rules for the Regulation of Beds, Waters and Airspace Over Navigable Lakes in the State of Idaho” and are commonly known as the LPA Rules. IDAPA 20.03.04. In particular, the LPA Rules define additional relevant terms, expand on IDL’s processing of applications, and prescribe detailed parameters governing the myriad encroachments IDL permits. IDAPA 20.03.04.010; IDAPA 20.03.04.015; IDAPA 20.03.04.030.

To summarize, when IDL processes and evaluates an encroachment permit application, the LPA requires IDL to determine (1) whether the proposed encroachment satisfies the applicable minimum standards prescribed in the LPA Rules, and (2) whether the proposed encroachment’s potential detrimental effects on the lake value factors outweigh the potential benefits.

As subject matter experts, IDL staff receive, process, and evaluate each application’s compliance with the applicable statutory and regulatory requirements and IDL’s Encroachments

Procedures.⁴ Rules. In contrast, it is the IDL Director—not IDL staff—who ultimately weighs the potential benefits and detriments of the proposed encroachment after considering the entire record, which includes IDL staff’s summary, any public or agency comment, and the Hearing Officer’s recommended order. *See* I.C. § 58-105; IDAPA 62.01.01.100–103. Accordingly, this prehearing statement constitutes IDL staff’s summary evaluation of the application and its compliance with the applicable requirements.

III. SUMMARY OF APPLICATION’S COMPLIANCE WITH THE STATUTORY AND REGULATORY REQUIREMENTS WITHIN IDL’S JURISDICTION

The Sourdough Point Owners Association (“SPOA”) seeks to expand its existing community dock located within a cove near Bottle Bay on Lake Pend Oreille in Sandpoint, Idaho. A community dock is a commercial navigational encroachment. I.C. § 58-1306; IDAPA 20.03.04.015.02.a; IDAPA 20.03.04.030. The Applicant is not proposing any other encroachments through this application.

Lake Pend Oreille is considered a navigable lake. *See Donovan-Hopka-Ninneman Co. v. Hope Lumber Mfg. Co.*, 194 F. 643, 647 (9th Cir. 1912) (identifying Lake Pend Oreille as “a fresh-water navigable lake, situated wholly within the state of Idaho[.]”); *Swanson v. United States*, 600 F. Supp. 802, 809 (D. Idaho 1985), *aff’d*, 789 F.2d 1368 (9th Cir. 1986) (finding that lands between the ordinary high water mark and the artificial high water mark on Lake Pend Oreille are included as navigable waters of the lake and are subject to regulation); *Gasman v. Wilcox*, 54 Idaho 700, 35 P.2d 265, 266 (1934) (recognizing the State’s title to the beds and banks of Lake Pend Oreille).

The water level of Lake Pend Oreille is controlled by the Albeni Falls Dam, which is a project constructed by the U.S. Army Corps of Engineers (“USACE”) between 1951 and 1955. USACE currently regulates the lake level between a high water level of 2,062.5 ft. mean sea level (“msl”) during the summer and a low water level of 2,051 ft msl during the winter. *Line of*

⁴ One can access IDL’s Encroachments Procedures on IDL’s website under Agency Guidance Documents (<https://www.idl.idaho.gov/agency-guidance-documents/>) > Protecting Natural Resources > Lakes and Rivers > Encroachments Procedures. The current Encroachments Procedures can be found here: <https://www.idl.idaho.gov/wp-content/uploads/sites/2/2026/01/EncroachmentsProceduresAndReferenceDocuments-Jan2026.pdf>

Navigability of Glengary Bay of Lake Pend Oreille, Dir.’s Finding on Line of Navigability at 7 – 8 (Idaho St. Bd. of Land Comm’rs April 14, 2014), https://www.idl.idaho.gov/wp-content/uploads/sites/2/2020/11/20140414_DirectorsFindingonLineofNavigability-Kaseburg.pdf. IDL considers the lake’s high water elevation (2,062.5 ft. msl) an artificial high water mark (“AHWM”) created by the Albeni Falls Dam. *Id.* IDL considers the normal low water elevation (2,051 ft msl) as the lake’s ordinary high water mark (“OHWM”) because IDL did not determine the ordinary high water mark before USACE constructed the dam. *Id.*

“The State has authority to regulate encroachments below either the ordinary or artificial high water marks.” *Byrd v. Idaho State Bd. of Land Commissioners*, 169 Idaho 922, 929, 505 P.3d 708, 715 (2022). Therefore, encroachments on Lake Pend Oreille are subject to the state’s regulatory authority under the LPA.

A. Type of Encroachment

The applicant is seeking an encroachment permit to expand its existing community dock with the addition of a floating “pontoon walkway” with two (2) fingers to accommodate four (4) additional slips, which totals 348 square feet. IDL-01 at 1, 2, 3, 11, 12, 15. SPOA’s current encroachment permit, L96S026H, authorizes a 7,085.25 square foot community dock. IDL-11 at 2. A community dock is a navigational encroachment. I.C. § 58-1306; IDAPA 20.03.04.015.02.a.

B. Littoral Ownership

The application and the Bonner County Assessor records indicate that the SPOA is the owner of real property adjacent to Lake Pend Oreille identified as Bonner County Parcel No. RP004300000RAO.⁵ IDL-01 at 7–10. The aerial imagery available on Bonner County’s Public Mapping Application supports that the parcel is a five (5) acre island, which is a waterfront parcel with littoral rights. The application refers to this parcel as “SPOA Island.” IDL-01 at 10.

⁵ The Bonner County Public Mapping Application identifies this five (5) acre parcel as RP004300000RAO. While the PIN differs between the two Bonner County websites, the legal description for both “RP004300000RAO” and “RP004300000RAO” is the same: “29-57N-1W SOURDOUGH POINT RECREATION AREA IN GOV LOTS 2 & 3.”

Between SPOA Island and the separately owned lots to the west, platted as Sourdough Point, is a cove that the SPOA refers to as “SPOA Lagoon.” IDL-1 at 5, 6, 10. The SPOA’s existing community dock is affixed to a peninsula that extends northward from the western shore of the SPOA Island within the SPOA Lagoon:



There do not appear to be any other parcels or roads between the SPOA Island parcel and the AHWM. Therefore, the applicant appears to be a littoral owner with littoral rights.

Additionally, the LPA Rules define a community dock 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.” IDAPA 20.03.04.010.11. IDL considers Applicant to be an “other littoral owner possessing a littoral common area with littoral rights including, but not limited to homeowner’s associations.” Therefore, the LPA Rules’ littoral ownership standard unique to community docks also appears to be met.

C. Shoreline Length

The existing community dock is affixed to the SPOA community parcel referred to as the “SPOA Island.” IDL-01 at 10. The application asserts that SPOA Island has approximately 4,365

feet of water frontage. IDL-01 at 10, 17. One can use the Bonner County Public Mapping Application's measurement tool to trace the shoreline and roughly calculate its approximate length.



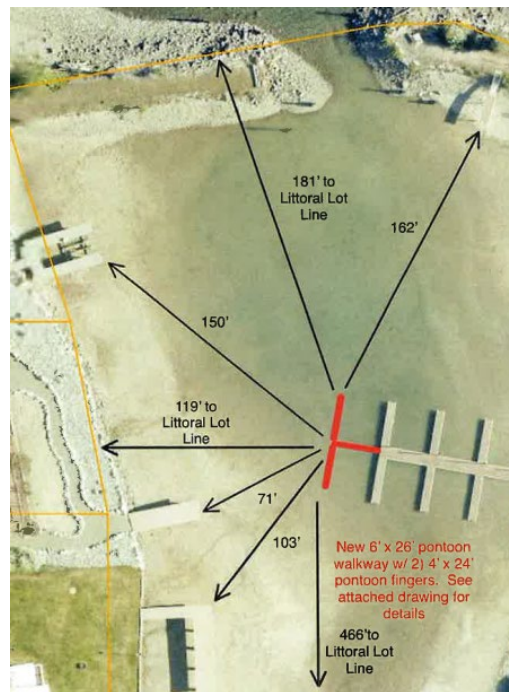
With around 4,300 feet of community water frontage, a community dock affixed to SPOA Island would be limited to a maximum of approximately 30,100 square feet of decking. IDAPA 20.03.04.015.02.c. In this application, SPOA proposes to construct a 348 square foot addition to its existing permitted 7,085 square-foot community dock. IDL-01 at 15. The existing and proposed additional square footage combined equal a total of 7,433.25 square feet of decking. IDL-01 at 15. This is well within the maximum square feet of decking allowed by IDAPA 20.03.04.015.02.c. Therefore, the application appears to meet the required 7:1 shoreline length to decking area ratio.

D. Line of Navigability

The SPOA Island, the SPOA Lagoon, and the placement of the community dock here present a unique situation that is unlikely to exist elsewhere in the state. The length of community encroachments will generally be limited to the line of normal accepted navigability established through use and should typically be oriented perpendicular to the generalized

shoreline. IDAPA 20.03.04.015.13.c, d. To recognize a historically established line of navigation in an area with no designated line of navigability, one can compare the lengths of encroachments on neighboring parcels. *IDL Encroachments Procedures* at 31. “Fluctuations in water depth along a shore may impact the length of neighboring encroachments.” *Id.*

The existing community dock in the SPOA Lagoon sets the line of navigability for the rest of the encroachments within the SPOA Lagoon. It is by far the largest encroachment in the SPOA Lagoon. With respect to navigability around the community dock within the SPOA Lagoon, the perimeter’s line of navigability would be determined by the lengths of the encroachments affixed to the perimeter surrounding the SPOA Lagoon. The applicant’s drawing depicting the distance to littoral lines shows the proposed addition to the existing community dock in relation to the neighboring encroachments. IDL-01 at 12.



The smallest distance from the proposed addition to an existing perimeter encroachment is 71 feet. An average boat is about 8 feet wide. Therefore, it is likely that 71 feet is a sufficient distance between encroachments to allow for two boats to pass one another safely. As boaters within the SPOA Lagoon must currently navigate around the community dock, the community

dock addition does not appear to significantly impact the historical navigability within the SPOA Lagoon.

E. Distance from Littoral Lines

The LPA Rule governing General Encroachment Standards provides a rebuttable presumption that nonnavigational encroachments will have an adverse effect upon adjacent littoral rights if located closer than twenty-five (25) feet to adjacent littoral right lines.

IDAPA 20.03.04.015.13.e.

Based on the application drawings, it appears the community dock will provide sufficient buffers to all littoral lines within the SPOA Lagoon. IDL-01 at 12. Therefore, there is no presumption of adverse effect upon adjacent littoral rights. The application appears to provide sufficient buffers to each littoral line, in compliance with the LPA Rules.

F. Signature Requirement

IDAPA 20.03.04.020.02 states that “[o]nly persons who are littoral owners or lessees of a littoral owner shall be eligible to apply for encroachment permits” and “[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.” In this matter, SPOA is the littoral owner with littoral rights within the lagoon and there are no other parcels between the SPOA Island parcel and the lake. Sherrel Rhys signed the application as the President of SPOA. IDL-01 at 4, IDL-03. Therefore, the application appears to meet the LPA Rules’ signature requirement.

G. Additional Minimum Standards for Community Docks

The LPA Rules for community docks state that “[n]o part of the structure waterward of the natural or ordinary high water mark... may exceed ten (10) feet in width except breakwaters when justified by site specific conditions and approved by the Department.”

IDAPA 20.03.04.015.02.b. Here, the Applicant proposes adding a new floating six (6) foot by twenty-six (26) foot access dock with two (2) new floating four (4) foot by twenty-four (24) foot


fingers to the existing permitted dock. IDL-01 at 2. Accordingly, the proposed dock appears to meet the maximum width standard in the LPA Rules.

IV. CONCLUSION

Given the information provided in the application and in the record at this time, the proposal appears to satisfy the minimum standards applicable to all encroachments and those specific to community docks under the LPA and LPA Rules. This prehearing statement does not opine whether the proposed encroachment's potential detrimental effects on the lake value factors outweigh the potential benefits. As the public comment period remains open and additional information may be presented at the public hearing, IDL respectfully reserves the right to supplement, clarify, or modify its statements herein based on the availability of new information.

DATED this 20th day of March 2025.

IDAHO DEPARTMENT OF LANDS

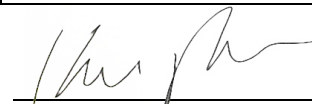


Kayleen Richter
Counsel for IDL

CERTIFICATE OF SERVICE

I hereby certify that on this ____ day of March, 2026, I caused to be served a true and correct copy of the foregoing by the method indicated below, and addressed to the following:

Sourdough Point Homeowner’s Association Sherrel Rhys, President P.O. Box 29 Sagel, ID 83860 (406) 431-8018 <i>Applicant</i>	<input type="checkbox"/> U.S. Mail <input checked="" type="checkbox"/> Email: sherrelrhys@gmail.com
Bob Presta Kramer Marine 46820 Highway 200 Hope, ID 83836 (208) 264-3021 <i>Agent for Applicant</i>	<input type="checkbox"/> U.S. Mail <input checked="" type="checkbox"/> Email: bob.cekramer3@me.com
Kevin Palmer Safe Harbour Holdings Corp. 3946 Edenstone Road NW Calgary AB, T3A 3Z6 Canada (403) 585-5588 <i>Objector</i>	<input type="checkbox"/> U.S. Mail <input checked="" type="checkbox"/> Email: kevin@palmermail.ca
Amidy Fuson Rachel King Marde Mensinger Idaho Department of Lands 300 N. 6 th Street Boise, ID 83720 (208) 334-0248 <i>IDL Navigable Waterways Program Contacts</i>	<input type="checkbox"/> U.S. Mail <input checked="" type="checkbox"/> Email: afuson@idl.idaho.gov rking@idl.idaho.gov mmensinger@idl.idaho.gov
Kourtney Romine Kayla Dawson <i>IDL Service Contacts</i>	<input type="checkbox"/> U.S. Mail <input checked="" type="checkbox"/> Email: kromine@idl.idaho.gov kdawson@idl.idaho.gov
OAH General Government Division P.O. Box 83720 Boise, ID 83720-0104 816 W. Bannock Street (208) 605-4300	<input type="checkbox"/> U.S. Mail <input checked="" type="checkbox"/> Email: filings@oah.idaho.gov leslie.hayes@oah.idaho.gov



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