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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'  
CLOSING STATEMENT**

The Idaho Department of Lands ("IDL"), by and through its counsel of record, Kayleen Richter, submits the following Closing Statement pursuant to Administrative Law Judge Hayes' instructions at the close of the public hearing on April 7, 2026.

**I. BACKGROUND**

On January 15, 2026, IDL received a complete application for permit from Sourdough Point Owners Association, by and through its President, Sherrel Rhys ("Applicant") to expand a community dock on Lake Pend Oreille ("Application"). *See* IDL-01 at 15.<sup>1</sup> On February 20, 2026, neighbor Kevin Palmer with Safe Harbour Holdings Corp. ("Objector") objected to the Application and requested a public hearing. IDL-09. Several people who identified themselves as homeowners within SPOA submitted comments to IDL and OAH regarding this application. All comments received are in the record and speak for themselves.

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<sup>1</sup> 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 brief refers to the applicant as "Sourdough Point Owners Association" or "SPOA."

On April 7, 2026, the ALJ Hayes held a public hearing on this application, which included an evidentiary hearing followed by public comment. The Applicant, IDL, and the Objector appeared at the hearing. IDL was represented by counsel. Chris Good and Tim Personius participated in the public hearing as representatives for the Applicant as authorized by SPOA President Sherrel Rhys. *See* Live Dkt. 042 and 055. Kevin Palmer participated in the public hearing as the representative for Objector.

Thirteen (13) people were present for the hearing in person and signed the hearing sign-in sheet. Nine (9) people viewed the hearing remotely. All in-person attendees were given the opportunity to provide public comment at the hearing. Six (6) people elected to speak, all of whom are members of the Sourdough Point community. To IDL's knowledge, in this proceeding there has been no public participation from anyone separate from the community.

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 sixteen (16) written comments on the Application. IDL-10; Live Dkt. 043, 044, 046, 047, 054, 059, 065, 068.

## II. LEGAL STANDARD

In 1974 the Idaho Legislature enacted the Lake Protection Act. ("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. As the instrumentality of the Land Board, IDL has the duty, authority, and discretion to "regulate, control and [ ] permit encroachments" within the limits of the LPA and the LPA Rules. I.C. § 58-1303. Put differently, IDL only has the authority to regulate and control what it is authorized to.

When an encroachment permit 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[.]” I.C. § 58-1306(c). A public hearing under the LPA is a limited opportunity for the public to provide testimony for the record.

IDL considers the entirety of the record, including both public and agency testimony, when IDL gives “due consideration” to the potential detriment 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.

To summarize and paraphrase, 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.

### III. ANALYSIS

#### A. Compliance with Applicable Minimum Standards

The first step in IDL’s evaluation of an encroachment permit application is to determine whether the proposed encroachment satisfies the applicable minimum standards prescribed by law. In IDL’s *Prehearing Statement*, IDL outlined its technical estimation of the application’s compliance with the applicable minimum standards. Live Dkt. 028. At hearing, IDL’s Resource Supervisor for the Navigable Waterways program, Mike Ahmer, testified to the uniqueness of the SPOA community dock system, which is located within an enclosed basin on the lake that accommodates a mix of individual community docks, a larger community dock, and individually owned docks. Live Dkt. 060 *Hr’g Recording* at 10:08 – 10:35. Mr. Ahmer also testified to the concept of the “line of navigability” and the difference between the line of navigability and the common or established path that boats take on waterways. *Id.* at 10:48 – 13:00. Mr. Ahmer opined that the proposed community dock extension did not present a line of navigability issue

given that it is contained in a basin, boaters must already navigate an ~65-foot wide channel (as measured on aerial photography) to enter and exit the basin, and the basin is deep enough for boats to access the existing private single-family docks to the west. *Id.* at 13:10 – 14:15. Finally, Mr. Ahmer explained that IDL does not regulate vessels and IDL does not have the authority to determine ownership of property including community dock slips. *Id.* at 12:20 – 12:23; 14:19 – 14:26; 15:38 – 16:40.

a. Dedicated Shoreline

To support his objection, Objector obtained a letter from Nicole Costello of Clearwater Engineering that argues in part that “the application is not compliant with IDAPA 20.03.04.c (sic) regarding allowable dock area based on shoreline frontage. SH-47, page 6. Ms. Costello asserts that the applicable frontage is only the shoreline within the lagoon. It is unclear what materials Ms. Costello reviewed to reach this conclusion. It is also unclear whether Ms. Costello has any experience with the Lake Protection Act and related rules or with IDL’s encroachments permitting process, requirements, or policies. However, Ms. Costello’s interpretations of the requirements for shoreline frontage and the line of navigability belie a lack of understanding that either speak to limited time and resources for the matter or a lack of experience on the subject.

IDAPA 20.03.04.015.02.c states:

A community dock may 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 is limited to the product of the length of shoreline multiplied by seven (7) square feet per lineal foot 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.

Ms. Costello’s opinion narrowly understands the phrase “length of shoreline dedicated to the community dock” to mean the “length of usable shoreline” to which the community dock is affixed. Ms. Costello’s interpretation is incorrect. In this situation, the length of the shoreline of the entire SPOA island is dedicated to the SPOA community dock system. SPOA may choose to apply for an encroachment permit to add a dock to the community system affixed to the eastern side of the island and outside of the lagoon. The surface decking area that of that dock outside of

the lagoon would then be added to the total surface decking area of the docks within the lagoon. All would count towards SPOA's 7:1 community dock square footage limit, all would be a part of the community dock system, and all would be permitted together in one encroachment permit. One can see an example of this calculation in SPOA's existing encroachment permit and in the current application materials. IDL-23, page 16; IDL-01, page 15. SPOA is the owner of the island, SPOA has dedicated the island's entire shoreline frontage to the community dock system, and any dock proposed to be affixed anywhere on the island will be considered part of the community dock system.

Accordingly, upon review of the application and the evidence presented at hearing, IDL maintains its evaluation that the application appears to comply with the applicable minimum standards that are within IDL's authority to regulate.

#### **B. Evaluation of Lake Value Factors**

The second step in IDL's evaluation of an encroachment permit application is to determine whether the proposed encroachment's potential detrimental effects on the lake value factors outweigh the potential benefits. The lake value factors to be given due consideration are the protection of property, navigation, fish and wildlife habitat, aquatic life, recreation, aesthetic beauty and water quality. The potential benefits may be public or private and include the navigational or economic necessity, or justification for, or benefit to be derived from the proposed encroachment.

The IDL Director's ultimate decision whether to approve or deny an encroachment permit application is based on his independent evaluation of the entire record in the proceeding. Put differently, the IDL Director's decision *is not* based on any facts/opinions outside the bounds of the record in a given proceeding. Further, the IDL Director's decision is constrained by his limited statutory and regulatory authority.

##### a. "Navigation"

Objector's concerns with the proposed community dock extension predominantly focus on his understanding of the lake value factor of navigation. Objector illustrated this concern in a

document lodged post-hearing titled “Small Craft Navigation and Community Recreation Corridor.” SH-37. Objector claims that there is some type of “navigation corridor” that begins at the northern entrance to the basin, proceeds through the basin, and exits underneath the bridge at the south side of the basin. Objector argues that “further encroachment into this corridor will create blind navigation corners along the stretch between the breach and the bridge.” SH-37, page 2.

The Application includes an aerial image that displays measurements of the distances between the proposed extension and the nearby littoral lines/encroachments. IDL-01, page 12. The shortest distance, 71 feet, is the distance between the end of the proposed extension and a private dock to the west. Mr. Ahmer measured the “breach” at ~65 feet wide using aerial photographs, however, Mr. Personius stated during the onsite inspection that the navigable portion of the breach was much narrower than Mr. Ahmer’s measurement by about half. The low level bridge spans 30 feet from the mainland across to the island with a clearance of only 3.25 feet from the bridge to the water when Lake Pend Oreille is at its summer pool level. IDL-23, pages 32-33.

While it is possible for some vessels to travel under the low level bridge to access the lake at times, it is unclear whether and how often vessels of any kind other than kayaks or paddleboards *actually* do so. Assuming they do for purposes of this brief, vessels would be required to navigate under a low lying and narrow (30’ end to end) bridge almost entirely “blind” because the bridge is a solid, 12-foot wide permanent structure that rises above the water and is bordered by landscaping. If vessels can navigate this bridge passageway and the ~35’ breach to the north, then navigating the 71-foot space between the end of the proposed extension to the floating dock and the closest dock to the west would be a significantly easier task. The proposed extension would be to the floating dock and would not be a structure that rises above the water and impedes visibility like the low level bridge. Further, as Mr. Ahmer noted at the hearing, the water is necessarily deep enough for those with docks to the west to navigate the area closer to the shoreline because that is where the existing private docks are.

The only potential impact to "navigation" this proposed extension may have would be to nudge the flow of traffic to the west. This change in flow does not impede any of the shoreline lot owners' littoral rights. The "lagoon" and the island are private, exclusive to SPOA members and their guests. Presumably, SPOA can regulate its members (and its members their guests) should such a step be necessary to manage any flow of mixed vessel recreation or "navigation" in the lagoon. IDL does not regulate vessels and does not have the authority to enforce boater safety laws.

b. Alternative Locations / Necessity

Objector claimed at hearing, at the onsite visit, and in a document lodged post-hearing titled "Alternatives to the current (sic) Encroachment Location", that SPOA could locate additional moorages elsewhere. While there may be alternatives, they may not be viable alternatives. At the onsite inspection the Applicant explained that SPOA did not pursue an application to expand the community dock system to many of the suggested alternate locations for reasons ranging from owner pushback to shallow water to lack of protection from the choppy waters in Bottle Bay.

Regardless, SPOA has not proposed an alternate location in this application. IDL can only evaluate the application that SPOA submitted. IDL does not have the authority to resolve internal disputes regarding the scope of a motion made by a member at an owners meeting, nor does it have the authority to determine the ownership or distribution of the moorages within SPOA's community dock system.

**C. Comparison of Moorages to SPOA Owners**

During the onsite inspection, ALJ Hayes asked for a comparison of the number of boat slips to the number of Sourdough Point homeowners. The below comparison of the maximum number of potential owners to the capacity of the community's moorages in the "lagoon" is based only on the information in the record. This comparison does not consider or evaluate the actual ways that SPOA and its members have designated the moorages be appropriated among themselves.

Currently, SPOA's encroachments are permitted by Encroachment Permit No. L96S0206H. IDL-23. The encroachments under this permit include the community dock system, the boat launch, the causeway breach, the bridge, rip rap, and a waterline. IDL-23, page 2. The community dock system consists, in relevant part, of one (1) 22-double slipped floating dock, twenty-three (23) shoreline docks within the lagoon, and one (1) dock outside of the lagoon. *Id.*; IDL-23, page 17. The floating dock appears to provide SPOA with moorage for forty-eight (48) vessels, and the shoreline docks appear to provide moorage for at least twenty-three (23) vessels (shoreline docks 6, 10, and 23 are marked with A and B slips) for a total of seventy-one (71) existing community slips/moorages within the lagoon. IDL-23 page 17.

The original Plat of Sourdough Point from 1961 depicts thirty-five (35) lots, nineteen (19) of which abut Lake Pend Oreille (twelve (12) within the "lagoon" and seven (7) south of the bridge). The Plat of the First Addition to Sourdough Point from 1966 depicts twenty-five (25) upland lots. And the Plat of the Second Addition to Sourdough Point from 1968 depicts fifty-one (51) upland lots. As platted, the community appears to consist of a total of 111 lots, which are entitled to membership in the Sourdough Point Owners Association Inc. *See* IDL-22, page 3. It is likely that the community is currently comprised of fewer than 111 lots.<sup>2</sup> Additionally, at the on-site inspection, representatives for the Applicant and Objector expressed that some SPOA members own more than one lot and that SPOA itself owns upland property.

If one excludes the nineteen (19) platted lots abutting Lake Pend Oreille from the total 111 platted lots, there are ninety-two (92) upland lots remaining with no independent littoral rights untethered to the community. As outlined above, the current SPOA community dock system provides approximately seventy-one (71) moorages/slips within the lagoon. Therefore, on paper the current community dock system could be short ~twenty-one (~21) moorages if the goal was 1:1 slips to upland lots within the "lagoon".

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<sup>2</sup> One of the written public comments claims each SPOA owner purportedly owns a 1/104 interest in the island (circa 1998). IDL-10, page 1. This suggests that perhaps by 1998 there were only 104 lots entitled to membership in the Sourdough Point Owners Association. If it is correct that there are now 104 total lots and one excludes the nineteen (19) lakefront lots, there are then eighty-five (85) upland lots remaining with no independent littoral rights untethered to the community.

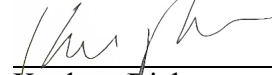
Again, this comparison does not consider or evaluate the actual ways that SPOA and its members have distributed or assigned the community’s slips. As Mr. Ahmer testified at the public hearing, IDL does not have the authority to regulate vessels or determine property ownership—either real or personal. *Byrd v. Idaho State Bd. of Land Commissioners*, 169 Idaho 922, 929, 505 P.3d 708, 715 (2022) (“The Department and the Board do not have the authority to determine property ownership; rather, the extent of the agency's powers lies in verifying littoral rights before issuing an encroachment permit.”).

#### IV. CONCLUSION

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. The record contains mention of both potential detrimental effects on the lake value factors and evidence of potential benefits. However, IDL’s ability to consider and remedy some of the concerns regarding potential detriments is constrained by IDL’s limited authority. The decision on this application must be made on the record before the Hearing Officer, on the merits of the application, consistent with the agency’s authority, and in compliance with the Public Trust Doctrine and the Lake Protection Act. Upon review of the record, IDL believes that the proposed encroachment satisfies the applicable minimum standards and its potential detrimental effects on the lake value factors do not outweigh the potential benefits.

DATED this 17th day of April 2026.

IDAHO DEPARTMENT OF LANDS



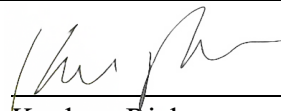
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Kayleen Richter  
Counsel for IDL

**CERTIFICATE OF SERVICE**

I hereby certify that on this 17th day of April, 2026, I caused to be served a true and correct copy of the foregoing by the method indicated below, and addressed to the following:

<p>Sourdough Point Homeowner’s Association                  Sherrel Rhys, President                  P.O. Box 29                  Sagel, ID 83860                  (406) 431-8018  <i>Applicant</i></p>	<p><input type="checkbox"/> U.S. Mail  <input checked="" type="checkbox"/> Email: sherrelrhys@gmail.com</p>
<p>Bob Presta                  Kramer Marine                  46820 Highway 200                  Hope, ID 83836                  (208) 264-3021  <i>Agent for Applicant</i></p>	<p><input type="checkbox"/> U.S. Mail  <input checked="" type="checkbox"/> Email: bob.cekramer3@me.com</p>
<p>Kevin Palmer                  Safe Harbour Holdings Corp.                  3946 Edenstone Road NW                  Calgary AB, T3A 3Z6 Canada                  (403) 585-5588  <i>Objector</i></p>	<p><input type="checkbox"/> U.S. Mail  <input checked="" type="checkbox"/> Email: kevin@palmermail.ca</p>
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