

BEFORE THE IDAHO DEPARTMENT OF LANDS

In the Matter of the Application for
Encroachment L96S0206I, to expand a
community dock on Lake Pend Oreille,

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

Applicant.

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

OAH Case No. 26-320-06

FINAL ORDER

Applicant Sherrel Rhys, President of the Sourdough Point Homeowner’s Association (“SPOA”) submitted a Joint Application for Permits (“Application”) to Idaho Department of Lands (“IDL”) on December 8, 2025, to expand an existing, permitted community dock on Lake Pend Oreille. IDL held a public hearing on April 7, 2026, conducted by the Office of Administrative Hearings (“OAH”). Administrative Law Judge Leslie Hayes (“ALJ Hayes”) presided over the hearing. On May 7, 2026, ALJ Hayes issued a Findings of Fact, Conclusions of Law, and Recommended Order (“Recommended Order”).

As Director of IDL, my responsibility is to render a Final Order pursuant to Idaho Code § 58-1306(c) and IDAPA 20.03.04.030.07, on behalf of the State Board of Land Commissioners (“Board”) based on the record reviewed in the context of my personal expertise gained through education, training, and experience. I relied on, and examined the entire record, including the Recommended Order. For the reasons set forth below, the Application is **APPROVED**.

I adopt ALJ Hayes’s evidentiary rulings as my rulings. Unless stated otherwise, the Findings of Fact and Conclusions of Law in this Order are substantially adopted from the Recommended Order.

FINDINGS OF FACT

1. On January 5, 2026, SPOA submitted a complete Joint Application for Permits (Application L96S0206I) to add four new slips to an existing community dock located on Sourdough Point on Lake Pend Oreille. IDL-01, p. 12.

2. Lake Pend Oreille is a navigable lake with an artificial high water mark (“AHWM”) created by the Albeni Falls Dam, which regulates the AHWM (summer pool level)

at 2062.5' NGVD, and a low water mark (winter pool level) at 2051'.

3. The existing community dock is located on a 5-acre parcel owned by SPOA that includes what is referred to as the SPOA "Lagoon" and SPOA "Island" and identified as Bonner County Parcel No. RP004300000RAO which is a waterfront parcel with littoral rights. SP-1b.



4. The Island, Lagoon, common areas, boat slips, and launch areas are private, and the entire Lagoon is a no-wake zone. Rec. 45:45; SH-48.

5. SPOA Island is unique as it is a "basin, fully enclosed with a narrow channel way" consisting of a mix of "individual community docks, and then a large community dock, and then private docks along the western shoreline[.]" April 7, 2026 Recording at 10:05-10:33.

6. The Island lies to the right of the mainland. The cove on the lakeside of the Island is the designated swimming area. Rec. at 53:20-53:29; IDL-23 p. 38. While swimming is not prohibited in the SPOA lagoon, it is not a designated swimming area. Rec. at 52:28-52:36.

7. Boats enter the Lagoon from the north through a 35-foot wide opening known as the "causeway." A bridge to the south allows non-motorized traffic and very small boats to pass under, providing a 30-foot span from the mainland to the Island. April 8, 2026 Onsite Recording 48:30.

8. In 1982, IDL granted SPOA the original encroachment permit number L96S206 to construct 20 floating docks in the Lagoon. IDL-19, p. 1. This expansion would be the ninth

seven oppose the expansion (PC-1, 3, 4, 13, 21, 23, 25). One comment was submitted after the record closed (PC-26) and one referenced Hayden Lake (PC-20).

19. Generally, the comments objecting to the expansion opined about ownership issues and safety concerns for swimmers while comments in support believe that all SPOA members should have access to a slip.

20. Steve Lowry, the owner of the dock closest to the community dock, submitted comment in support of the expansion. PC-14.

21. A public hearing was held on April 7, 2026, at the Sagle Elementary School in Sagle, Idaho. No agencies or members of the public outside of Sourdough Point appeared.

22. A majority of the SPOA community supports the expansion. Rec. 34:01. One of the overarching principles of SPOA is that all members should have equal rights to a boat slip in the Lagoon, which supports access to navigation and recreation. Rec. 39:22.

23. The SPOA does not prohibit swimming in the Lagoon, but “it’s rarely actually used that way” because the SPOA has designated swimming areas where boats are not allowed. Rec. 52:44.

24. Objector presented 90 minutes of testimony objecting to the location of the expansion because it encroaches into his “line of navigation” which he alleges is different from the line of navigability. Rec. 1:13:35; 2:05:13.

25. Objector testified that he built his dock to line up with the entrance to the causeway. Rec. 2:00:30. Objector presented an AI-generated photograph looking at his dock from the causeway at night, showing that the expansion will still provide a 71’ wide channel through which to navigate to his dock through the no-wake zone. Rec. 2:01.

26. Objector’s dock extends 60’ into the Lagoon. SP-4.

27. A video of Objector’s boat idling from his dock to the causeway shows the channel is wide enough for multiple boats to pass around the current dock and the expansion in the no-wake zone. Rec. 2:05:00-2:07:00.

CONCLUSIONS OF LAW

The Idaho Legislature enacted the Lake Protection Act (“LPA”), Title 58, Chapter 13, Idaho Code, in 1974 stating that:

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 of 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 weighted 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 (emphasis added).

The LPA mandates that IDL weigh the economic benefits and detriments of a proposed navigational encroachment, along with environmental, navigational, recreational, and other impacts that may be associated. IDL, based on its experience and expertise, is in the best position to weigh the competing interests involved. *Brett v. Eleventh St. Dockowner's Ass'n, Inc.*, 141 Idaho 517, 523, 112 P.3d 805, 811 (2005).

However, the statute recognizes that some submerged lands lying between the artificial high water mark and the natural or ordinary high water mark may be privately owned. I.C. § 58-1306(e). When considering these applications, “the board 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 a community navigational encroachment . . .” *Id.*

The State Board of Land Commissioners (“Board”) is authorized to “regulate and control the use or disposition of lands in the beds of navigable lakes, rivers and streams, to the natural or ordinary high water mark thereof, so as to provide for their commercial, navigational, recreational or other public use. . .” I.C. § 58-104(9)(a).

The LPA provides that the Board “shall regulate, control and may permit encroachments in aid of navigation or not in aid of navigation on, in or above the beds of waters of navigable lakes.” I.C. §§ 58-1303. IDL is granted power to exercise the Board’s rights, powers and duties under the LPA. I.C. § 58-119(1); *Newton v. MJK/BJK, LLC*, 167 Idaho 236, 242 (2020).

Through its statutory authority, the Board promulgated the Rules for the Regulation of Beds, Waters and Airspace Over Navigable Lakes in the State of Idaho (“LPA Rules”), which provide “minimum standards to govern projects or activities for which a permit or permits have been received” under the LPA. I.C. § 58-1304; IDAPA 20.03.04.

Lake Pend Oreille is a navigable lake and is within IDL's authority to regulate encroachment permits. Although the community dock is located on private submerged lands, IDL has authority to regulate any encroachment below the AHWM. *Wilson v. Idaho State Bd. of Land Comm'rs*, 576 P.3d 291, 299 (Idaho 2025) (citing *State v. Hudson*, 162 Idaho 888, 889, 407 P.3d 202, 203 (2017)).

The Application meets the Requirements of Idaho Code § 58-1306(a) and LPA Rules.

Applications for construction of community navigational encroachments shall be submitted upon approved forms and “accompanied by plans of the proposed encroachment containing information required by section 58-1302(k), Idaho Code, and such other information as the board may by rule require in conformance with the intent and purpose of this chapter.”

I.C. § 58-1306(a). Applications must be submitted or approved by the riparian or littoral owner.

Id. Plans shall include:

- Lakebed profile in relationship to the proposed encroachment and show the summer and winter water levels.
- Copy of most recent survey or county plat showing the full extent of the applicant's lot and the adjacent littoral lots.
- Proof of current ownership or control of littoral property or littoral rights.
- A general vicinity map.
- 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.
- Total square footage of proposed docks and other structures, excluding pilings, that cover the lake surface.
- Names and current mailing addresses of adjacent littoral owners.

IDAPA 20.03.04.020.07.a. The Application was signed by the President of SPOA. The SPOA is a littoral owner with littoral rights. The Application meets the requirements of I.C. § 58-1306(a), 58-1302(k), and IDAPA 20.03.04.020.07.a.

The Application meets the standards required for a community dock.

The LPA Rules provide the following definition of a Community Dock:

A structure that provides 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.

IDAPA 20.03.04.010.11.

The LPA Rules provide the following standards for Community Docks:

b. No part of the structure waterward of the natural or ordinary high water mark or artificial high water mark may exceed ten (10) feet in width . . .

c. 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.

IDAPA 20.03.04.015.02.b, c.

In this case, the Community Dock meets the definition of Community Dock. The SPOA is an “other littoral owner possessing a littoral common area with littoral rights” and is a homeowner’s association consistent with the standards for community docks. IDAPA 20.03.04.010.11. No part of the existing dock or expansion will exceed 10’ in width, which is within the standards of the LPA Rules. SPOA seeks to add two slips to the community dock, which will add 348 square feet to the existing 7,085 square feet. Based on the length of water frontage, the LPA Rules would allow 30,555 square feet of community dock. The existing dock and expansion fall well within the standards set forth in the LPA Rules.

The line of navigability

The LPA Rules contemplate that community docks may extend beyond the line of navigability, if one is established, and the Director may designate a line of navigability for the purpose of effective administration of these rules. IDAPA 20.03.04.015.13.d; Rec. 11:30. The LPA Rules define the Line of Navigability as:

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.

IDAPA 20.03.04.010.20.

“The line of navigability must be measured from the low water mark. It is not measured from the AHWM.” *Kaseburg v. State, Bd. of Land Comm'rs*, 154 Idaho 570, 579, 300 P.3d 1058, 1067. Lake Pend Oreille has a judicially noticed AHWM. In the early 1950s, the United States Army Corps of Engineers constructed the Albeni Falls dam on Lake Pend Oreille, thereby creating an AHWM approximately eleven and a half feet above the natural high water

mark. *Id* at 572.

Here, the record does not identify an established line of navigability but recognizes the AHWM as 2062.5' and the low water mark as 2051'. SP-1b; IDL Prehearing Statement, pp. 6-7. Although it is not clear from the record whether the bottom of the lagoon is lower than 2051', the pictures from the site visit clearly depict the community dock lying on the floor of the Lagoon, which is presumably above 2051' winter pool level and recognized low water mark. The SPOA Island and Lagoon are included in the 5-acre parcel. The SPOA guidelines indicate the entire Lagoon as private and members of the public do not travel in and out of the Lagoon.

At hearing it was determined that when Objector references the "line of navigability" his real meaning is the "line of navigation," which he describes as the logical line of travel that his boat would take in and out of the Lagoon. The path that a boat navigates in and out of the Lagoon is not within IDL's regulatory authority and does not establish a line of navigability. The entire Lagoon is a private, no wake zone. Even if the public regularly travels through the wakeless Lagoon, the expansion will still provide approximately 71' between docks, which is sufficient space for boats to navigate around safely.

Adverse impact to adjacent littoral owners

IDAPA 20.03.04.015.13.e provides that community docks will be presumed to have an adverse effect on adjacent littoral rights if located closer than 25' to the adjacent littoral right lines. Nothing in the application or evidence shows that any part of the community dock is located within 25' of the adjacent littoral right lines.

The uniqueness of the SPOA lagoon demonstrates that there are no adjacent littoral neighbors. However, even if the docks to the west of the community dock are considered "adjacent littoral neighbors," there is more than a 25-foot buffer between the westward docks and the expanded community dock. See IDL-01, p. 12. The dock owner closest to the expansion expressed support of the expansion. PC-14.

Navigational necessity or justification and benefit

The record establishes that SPOA has more residents than boat slips and the expansion will provide four more residents with access to navigation and recreation. While there was some testimony during the onsite inspection that the individuals that will benefit from these additional slips already have slips, there are still more parcels than slips in Sourdough Point.

The record shows that most dock owners in Sourdough Point support the expansion so that each member can have a slip as originally intended. SPOA is free to determine how it will distribute the new slips to residents and how it chooses to do so is outside the scope of this decision. Additional slips will provide additional access to the waterways and recreation.

Objector raised concerns that the expansion will impact navigation by narrowing the channel of travel in the lagoon. However, and as noted above, the evidence in the record shows that the expansion will have minimal impact on the navigability of the channel, which is private and rarely accessed by the public. AI-generated photographs depicting the expansion and videos of Objector's own boat navigating the channel show more than enough room to easily navigate through.

The entire Lagoon is a private, no-wake zone. The Lagoon entrance is approximately 35 feet wide. The narrowest width from the Eastern end of the community dock to an existing dock on the Island is 45'. Even with the expansion, the width of the main corridor will still be 71 feet wide—almost twice the width of the causeway. The expanded community dock will have little to no adverse impact on navigability and will provide a navigational benefit to SPOA.

Fish and wildlife habitat and aquatic life

There is no evidence in the record that the expanded community dock will pose a detriment to fish and wildlife habitat or aquatic life. IDFG was invited to comment and declined to do so.

Recreation

Objector raised concerns that the expansion of the community dock would impact swimmers within the Lagoon, but it is not clear how it would impact swimmers. Good testified that although swimming is not prohibited in the Lagoon, it is not a designated swimming area and is rarely used for that purpose. Rec. at 52:19-53:02. The SPOA provides designated roped-off swimming areas outside of the Lagoon and away from boat traffic. Designated swimming areas do not allow boat traffic.

Some SPOA members utilize the Lagoon for paddleboarding and kayaking around the Island. However, concerns about safety and lack of access to recreation were speculative and generalized. There is no evidence in the record that SPOA boats have impacted any swimmer, paddleboarder, or kayaker from recreating or enjoying the Lagoon or designated swimming

areas.

The expansion will not adversely impact recreation, and in fact, will benefit recreation in that it will increase navigational access to Lake Pend Oreille.

Aesthetic beauty

Objector raised concerns about aesthetic beauty relying on AI-generated photos of the view from his dock and how it will be obstructed from the expansion of the community dock. Unfortunately, “nothing in the LPA’s definition of littoral rights confers the right to a particular view.” *Newton v. MJK/BJK, LLC*, 167 Idaho 236, 243 (2020).

Water quality

There is no evidence or testimony in the record that the expansion of the community dock would be detrimental to water quality.

Safety

The concerns that this extension renders navigation unsafe or forces boats into shallow water is also unavailing. As noted above, the narrowest space between the single-family docks to the west of the expansion is 71-feet, and boats entering and exiting the Lagoon navigate the causeway opening which is only 30-35 feet wide. Additionally, the presence of the single-family dock 71 feet to the west of the proposed expansion demonstrates that the water depth in the Lagoon is sufficient for a boat to moor there, making the navigable depth sufficient for other boat traffic as well. Rec. at 13:17-13:37.

Objector provided pictures of his own family and friends swimming in the water. Good testified that although swimming in the Lagoon isn’t prohibited, swimming in the Lagoon is not common because SPOA provides a designated swimming area roped off with buoys and markers. No evidence was presented that there has ever been an accident, near-miss, or other unsafe encounter with another SPOA member’s boat in the Lagoon, which is a no-wake zone.

Private submerged land factors

Idaho Code § 58-1306(e) provides:

In recognition of continuing private property ownership of lands lying between the natural or ordinary high water mark and the artificial high water mark, the board 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 a nonnavigational encroachment, a commercial navigational encroachment, or a community navigational encroachment not extending below the natural or ordinary high water mark.

IDAPA 20.03.04.030.10 provides language identical to the statute.

From the record, the SPOA parcel appears to be private submerged lands between the AHWM and the low water mark. IDL-023, pp. 15, 18 . . . According to the SPOA Lagoon Lakebed Profile, the lagoon floor sits well above the winter pool level of 2052. *Id.* As private submerged lands between the AHWM and low water mark, the statute provides that IDL consider unreasonable adverse effect upon adjacent property and undue interference with navigation the most important factors among the other factors identified above.

IDAPA 20.03.04.015.13.e provides that community docks will be presumed to have an adverse effect on adjacent littoral rights if located closer than 25' to the adjacent littoral right lines. Nothing in the application or evidence shows that any part of the community dock is located within 25' of the adjacent littoral right lines.

Further, nothing in the Application, record, or evidence shows that the expansion would present undue interference with navigation. The expansion will increase access to navigation. The most important factors as provided in statute and rule have been met.

Request for review

The Recommended Order was filed on May 7, 2026 stating that either party may request review pursuant to Idaho Code § 67-5244. On May 8, Objector submitted a six-page Request for Review and Brief of the recommended order. IDL submitted a response to Objector's Request on May 11.

As a threshold matter, the LPA does not contemplate such requests and as the more specific statute regarding final orders issued pursuant to the LPA, it controls.

Further, as pointed out by IDL, Objector is not a party to the matter as defined by the LPA Rules and the Administrative Procedures Act and did not seek to be admitted as a party.

Even if the LPA allowed such requests from parties, Objector's request is unavailing and presents only summarized, conclusory allegations without citation to the record. Objector alleges that the Recommended Order may not fully address substantial evidence in the record, but fails to state *which* substantial evidence was not addressed. Objector alleges that the Recommended Order oversimplifies the evidence regarding navigation, but fails to state *which* evidence was oversimplified or insufficiently addressed. Objector alleges that the Recommended Order minimizes or insufficiently addresses substantial evidence relating to recreation, swimmer and

boat safety, shoreline recreational use and other safety impacts, but fails to state *which* evidence was insufficiently addressed.

The hearing officer's decision in recommended orders is advisory. *N. Frontiers, Inc. v. State ex rel. Cade*, 129 Idaho 437, 440, 926 P.2d 213, 216 (Ct. App. 1996). It is the agency's function, not hearing officer's, to make findings of fact and conclusions of law, and where there is substantial evidence supporting each result, the final order of the agency head governs. *Id.*

Because the LPA does not allow requests for review of recommended orders, Objector's request is DENIED.

ORDER

Based on the foregoing Findings of Fact and Conclusions of Law, IT IS HEREBY ORDERED that the Encroachment Permit Application L-96-S-0206I is APPROVED.

This is a final order of the agency. Pursuant to Idaho Code § 58-1306(c) and IDAPA 20.03.04.030.09, the Applicant or any aggrieved party who appeared at the hearing has a right to have the proceedings and Final Order reviewed by the district court in the county where the encroachment is proposed by filing a notice of appeal within thirty (30) days from the date of this Final Order. The filing of a petition for judicial review does not itself stay the effectiveness or enforcement of this Final Order under appeal pursuant to Idaho Code § 67-5274.

IT IS SO ORDERED.

DATED this 15th day of May, 2026.

IDAHO DEPARTMENT OF LANDS



BILL HAAGENSON
Deputy Director

CERTIFICATE OF MAILING

I hereby certify that on this 15th day of May, 2026, I caused to be served a true and correct copy of the foregoing by the method indicated below, and addressed to the following:

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