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

In the Matter of Application for
Replacement of an Existing Seawall on
Hayden Lake, Encroachment NP220096

GREGORY SCHNEIDER,

Applicant.

Agency Case No. PH-2026-NAV-22-004

OAH Case No. 26-320-11

**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 *Second Amended Scheduling Order* issued October 13, 2026. This matter is scheduled for a public hearing on November 5, 2026, at 4:30 p.m. Pacific Time at North Idaho College, 1000 W. Garden Avenue, Coeur d’Alene, Idaho 83814, in the Todd Lecture Hall located in the Molstead Library Building. IDL concurrently submits its disclosure of witnesses, exhibit list, and proposed exhibits for hearing.

I. BACKGROUND

A. Application

Gregory Schneider, by and through his agent, John McKervery, P.E. with JM Engineering (“Applicant”) seeks an encroachment permit to replace an existing seawall on Hayden Lake. IDL-002.

B. Procedural Background

On July 29, 2026, IDL received a complete application from the Applicant. IDL-2. On August 14, 2026, IDL contacted the Coeur d’Alene Press (“CDA Press”) to publish public notice

of the application. IDL-3. Concurrently, IDL sent a notice to Applicant's adjacent neighbors (L&M Olson LLC and Douglas & Philana McInnis Family Trust) and provided them with a copy of the application. IDL-5. On August 19, 2026, and August 26, 2026, the CDA Press published a legal advertisement to notify the public of the application and the opportunity to object.

See IDL-3. Pursuant to IDAPA 20.03.04.030.04(b), on September 11, 2026, neighbor Douglas McInnis formally objected to the Application, requested a public hearing, and paid the requisite publication fee. IDL-6.

On September 15, 2026, IDL contacted the Office of Administrative Hearings ("OAH") to request a public hearing on the Application. Live Dkt. 001. On September 17, 2026, IDL received notice that OAH appointed a Hearing Officer for this matter. Live Dkt. 008. After a scheduling videoconference on September 28, 2026, the Hearing Officer issued a *Scheduling Order* setting the date to hold a public hearing for October 21, 2026, and setting associated prehearing deadlines. Live Dkt. 013. On September 29, 2026, the Hearing Officer issued the *Order Re: Participant Status*, allowing Applicant's adjacent neighbor, Lance Olson, to participate in this proceeding as a public witness pursuant to IDAPA 62.01.01.207. Live Dkt. 012. On September 30, 2026, the Hearing Officer issued an *Amended Scheduling Order* revising the prehearing deadlines and providing the location of the in-person evidentiary hearing. Live Dkt. 014. On October 13, 2026, the Hearing Officer issued a *Second Amended Scheduling Order* revising the prehearing deadlines, setting a remote Prehearing Conference, and rescheduling the in-person evidentiary hearing for November 5, 2026. Live Dkt. 017. The in-person evidentiary hearing will take place at North Idaho College, 1000 W. Garden Avenue, Coeur d'Alene, Idaho, in the Todd Lecture Hall located in the Molstead Library Building. *Id.*

Finally, on October 15, 2026, IDL again contacted the Coeur d'Alene Press to publish public notice of the details of the public hearing. IDL-7. The Coeur d'Alene Press will publish a legal advertisement to notify the public of the details of the public hearing on October 17, 2026, and October 24, 2026. *Id.*

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. Accordingly, 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.*

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 Encroachments on Navigable Lakes” 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.

When IDL receives an application to permit an encroachment governed by Idaho Code § 58-1306, the LPA requires IDL to cause notice of the application to be published in a newspaper of general circulation in the applicable county within ten (10) days of receipt of the application. I.C. § 58-1306(b). Notice of the application must describe the proposed encroachment and its general location. *Id.* Section 58-1306 also directs 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.”¹ I.C. § 58-1306(b). Once the paper publishes the first notice of the application, “[a]ny resident of the state of Idaho, or a nonresident owner or lessee of real property adjacent to the lake, or any state or federal agency may... file with the board an objection to the proposed encroachment and a request for a hearing on the application.” I.C. § 58-1306(c).

If an application is uncontested, the LPA directs IDL to decide whether to grant a permit without holding a hearing. I.C. § 58-1306(d). IDL’s decision must be “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

¹ 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.

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 where each person or agency appearing at the hearing may “giv[e] testimony in support of or in opposition to the proposed encroachment[.]”² I.C. § 58-1306(c). IDL considers all 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; *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.”).

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.

² While the LPA does not define “public hearing,” the LPA Rules do:

The type of hearing where members of the public and other interested parties or agencies 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 hearing officer. **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 recording of any oral presentations at these hearings will be taken.

IDAPA 20.03.04.010.26. 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.

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

The proposed encroachment for consideration in this proceeding is the partial replacement and relocation of an existing, unpermitted seawall located on Hayden Lake in Hayden, Idaho. A seawall is a nonnavigational encroachment. I.C. § 58-1306; IDAPA 20.03.04.015.07. Hayden Lake is considered a navigable lake. *See Idaho Forest Industries, Inc. v. Hayden Lake Watershed Imp. Dist.*, 135 Idaho 316, 17 P.3d 260 (2000) (establishing that the Ordinary High Water Mark "OHWM" is the line the water impresses on the soil and that the Hayden Lake OHWM is 2239ft above sea level). *See also Idaho Forest Indus., Inc. v. Hayden Lake Watershed Imp. Dist.*, 112 Idaho 512, 733 P.2d 733 (1987). "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 Hayden Lake are subject to the state's regulatory authority under the LPA.

A. Littoral Ownership

The Applicant appears to be a littoral owner that owns one (1) parcel adjacent to Hayden Lake identified as Kootenai County Parcel No. 51N03W144020 (15053 E. Hayden Lake Road, Hayden, ID 83835). IDL-2 at 1. The parcel appears to be a waterfront parcel with littoral rights. There are no other parcels or roads between the parcel and the OHWM.

B. Type of Encroachment

The Applicant is seeking an encroachment permit to partially replace and relocate an existing seawall. *See IDL-2*, at 12. A seawall is a "nonnavigational encroachment constructed to prevent erosion to an area of land." IDAPA 20.03.04.010.30.

C. Shoreline Length

According to Kootenai County's Public Mapping Application Webpage, the Applicant's Parcel appears to contain approximately 207 feet of water frontage.³ Applicant asserts in the application that the Parcel has 141 feet of littoral frontage. IDL-2 at 6. Regardless, there is no

³ The Kootenai County Public Mapping Application is accessible online at <https://gis.kcgov.us/app/kcearth/>.

minimum linear feet of shoreline required for a seawall under the LPA Rules. *Compare* IDAPA 20.03.04.015.01.a *with* IDAPA 20.03.04.015.07.

D. Line of Navigability

The line of navigability is defined 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[.]” IDAPA 20.03.04.010.17. The seawall proposed in this application is within the length of existing legally permitted encroachments in the area and, therefore, does not appear to extend beyond the line of navigability.

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. When applicants seek a permit for encroachments such as riprap and seawalls, it is typical that applications do not provide a 25-foot buffer from adjacent littoral right lines as applicants endeavor to protect their entire shoreline from erosion.

Based on the application drawings, it appears that the seawall that is proposed to remain as it currently exists and the proposed relocated wall will provide more than a twenty-five-foot (25) buffer to the littoral line to the southeast property (McInnis); though, it is difficult to determine a littoral line on the shared property boundary between the Applicant and the McInnis property due to the curvature of the narrow bay. IDL-2, at 9–10. Conversely, the application drawings appear to indicate that the seawall will likely not provide the twenty-five (25) foot buffer to the property to the west (Olson). *Id.* However, the Applicant’s permitted dock currently separates the seawall from the western property line. *Id.* Given the location of the Applicant’s existing and permitted dock between the seawall and the property to the west, and that more than twenty-five feet is being provided to the property to the southeast, there is no presumption of adverse effect upon adjacent littoral rights.

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, Applicant appears to be a littoral owner and there are no other parcels between the Applicant’s parcel and the lake. *See* IDL-2, at 7. Thus, the application appears to meet the LPA Rules’ signature requirement.

G. Minimum Standards for Seawalls

The LPA Rules define a seawall as: “[a] nonnavigational encroachment constructed to prevent erosion to an area of land.” IDAPA 20.03.04.010.30. The encroachment standards for seawalls in the LPA Rules state: “[s]eawalls should be placed at or above the O/AHWM, if possible. Seawalls are nonnavigational and placement waterward of the O/AHWM will generally not be allowed.” IDAPA 20.03.04.015.07. Similarly, IDL’s Encroachments Procedures provides that “[s] Seawalls, bulkheads and other vertical walls will not be permitted waterward of the OHWM or AHW, except in unusual circumstances[.]” Encroachments Procedures, page 54.⁴

On review of the application, it appears that the proposed seawall may be located waterward of the OHWM, which is generally not allowed. *See* IDL-8, at 2. However, the LPA Rules direct seawalls to be placed at or above the OHWM *if possible*. IDAPA 20.03.04.015.07. Accordingly, if an applicant proposes to place a seawall below the OHWM, they may have the opportunity to show why it is not possible to place the seawall at or above the OHWM. At hearing, Applicant should be prepared to provide support for the necessity of the proposed placement of the seawall with respect to the OHWM.

⁴ One can access IDL’s Encroachments Procedures via IDL’s website here: <https://www.idl.idaho.gov/wp-content/uploads/2026/08/EncroachmentsProceduresAndReferencDocuments-July2026.pdf>

IV. ANALYSIS OF COMMENTS

To date, IDL has not received comments from agencies or the public regarding this application.

V. ADDITIONAL CONTEXT

Following calls from the adjacent neighbors about the installation of an unpermitted seawall, IDL researched contact information for the Applicant to make them aware of the potential issues. It appeared, at a minimum, that the seawall required an Encroachment Permit, and if it was installed well below the OHWM, it would likely need to be relocated. On July 15, 2025, IDL Resource Supervisor, Mike Ahmer, visited the site and met with the Applicant to discuss the permitting of the seawall. The Applicant and his two sons were present for the site visit. Unfortunately, the photos from that site visit were lost. However, Mr. Ahmer remembers observing water behind the seawall on the eastern half of the existing wall, which coincides with the aerial imagery available on KC Earth. The Applicant acknowledged that the eastern half of the seawall was not placed along the shoreline and that he would be applying to resolve the non-compliance issue. Mr. Ahmer worked with the Applicant on getting a complete application submitted.

Based on the topographic survey provided by the adjacent neighbor to the west, Mr. Olson, the western half of the seawall currently appears to be placed a few feet below the OHWM. IDL-8, at 2. Additionally, photos provided by the Applicant show that the new/existing wall was placed a few feet in front of an old failing seawall that was on the property. *See* IDL-9 and IDL-10. Some of the photos submitted by the Applicant to Mr. Ahmer via email show that there was some sort of landslide or mudslide that may have resulted in the failure of the old seawall. *Id.*

Per the LPA Rules, seawalls are to be installed in such a way that the OHWM just touches the base of the wall. IDAPA 20.03.04.010.30 and IDAPA 20.03.04.015.07. However, as Mr. Ahmer will testify, it is not uncommon for IDL to receive applications and ultimately issue Encroachment Permits for seawalls below the OHWM due to specific site conditions, such as

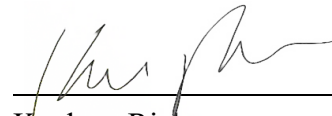
bank height, proximity of the house to the bank, proximity of large trees to the bank, and failing seawalls that were leaning out into the lake or river. The Applicant should explain why the western half of the wall was placed below the OHWM and why it could not be installed in such a way to comply with the LPA Rules. Based on the language of the LPA Rules, it is permissible to permit seawalls below the OHWM when warranted.

VI. CONCLUSION

Given the reasons described above, the application appears to satisfy the encroachment standards applicable to seawalls, provided the Applicant can justify the necessity for the proposed location of the seawall. However, 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 based on the availability of new information.

DATED this 26th day of October 2026.

IDAHO DEPARTMENT OF LANDS



Kayleen Richter
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CERTIFICATE OF SERVICE

I hereby certify that on this 26th day of October 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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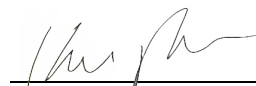
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