

Stacey L. Beaumont, ISB No. 10520
Hart Parr Dal Pra, ISB No. 12812
HAWLEY TROXELL ENNIS & HAWLEY LLP
704 E. Sherman Avenue
Coeur d'Alene, ID 83814
Telephone: 208.444.4170
Facsimile: 208 954 5212
Email: sbeaumont@hawleytroxell.com
hparrdalpra@hawleytroxell.com

Attorneys for Applicant Gregory Schneider

IN THE DISTRICT COURT OF THE FOURTH JUDICIAL DISTRICT
OF THE STATE OF IDAHO, IN AND FOR THE COUNTY OF ADA

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

APPLICANT'S PRE-HEARING
STATEMENT

Pursuant to the Presiding Officer's Second Amended Scheduling Order entered October 13, 2026, Applicants Gregory Schneider and Sheree DiBiase ("Applicants"), by and through their undersigned counsel of record Hawley Troxell Ennis & Hawley LLP, submit this Pre-Hearing Statement in support of Encroachment Application NP220096 for the bank-stabilization wall on their Hayden Lake waterfront parcel. Applicants respectfully ask the Presiding Officer to recommend, and the Board to grant, the permit.

I. INTRODUCTION

The new wall was constructed to reinforce the old wall which had showed significant signs of failing and caused erosion to the land. The parcel's original poured-in-place concrete retaining wall had deteriorated and, if left unaddressed, would have collapsed into the lake,

carrying a portion of the bank with it. The objectors do not genuinely dispute that the old wall was failing; in fact, the objectors concede this critical fact. Because the old retaining wall could not be removed or left unsupported without risking a collapse of soil into Hayden Lake, Applicants constructed a new wall engineered by a licensed structural engineer and built to prevent that failure and to support and protect the bank.

Measured against the benefit-detriment balance that governs a nonnavigational encroachment, the wall's protective benefits to the bank, the shoreline, and the lakebed exceed any detriment, and the record does not establish the adverse effects the objectors assert. A failing retaining wall, left in place could have easily collapsed and carried the retained soil with it into the lake — the very harm to the lakebed and water quality that the public trust standard exists to prevent. Applicants undertook the work to prevent exactly that outcome: to support the failing structure and the bank behind it, and to keep the land from sliding into Hayden Lake.

II. STATEMENT OF FACTS

Applicants own a waterfront parcel at 15053 E. Hayden Lake Road, Hayden, Idaho, adjacent to Hayden Lake. For decades the shoreline was improved with a poured-in-place concrete retaining wall that held the bank and prevented the upland soil from shifting and sliding into the lake. By the spring of 2022, that wall had begun to crack and fail significantly.

Applicant consulted Kootenai County Planning and Building, through Ben Tarbutton, and — on the recommendation of Wilbert Precast — retained John E. McKervery, P.E., of JM Engineering (“JM Engineering”) to assess the wall's condition and recommend a remedy. Following a site inspection, Mr. Tarbutton and Mr. McKervery confirmed that the wall was failing and would have to be replaced or reinforced to prevent the failure and protect the bank.

JM Engineering determined that the sound solution was to construct a new engineered gravity retaining wall to support the bank where the failing concrete wall stood. JM Engineering prepared stamped plans designed to National Concrete Masonry Association standards, specifying Redi-Rock block, filter fabric, and subsurface drainage, together with a site-disturbance plan and an erosion-and-sediment-control plan requiring installation of silt fencing before construction, protection of adjacent properties from sediment deposition, and preservation of the vegetated buffer between the wall and the lake.

Applicant received the engineered plans in September 2023. Silt fencing was installed around the waterfront before work began. Because the original contractor lacked crew availability, the work proceeded with Applicant's crew in reliance on the engineered plans; during construction, the engineer revised the foundation depth so the wall could be keyed to bedrock. Work continued through the fall of 2023 amid heavy rainfall and was substantially completed by late 2023, with riprap placed at the base of the wall as the final step to protect the toe.

In August 2024, Applicant discovered that JM Engineering had not acquired an Idaho Department of Lands ("IDL") encroachment permit. Applicant promptly worked with Garret Kenny, a Front Counter Planner Supervisor at Kootenai County Community Development, and Mike Ahmer, Resource Supervisor for Navigable Waters at IDL, to correct the oversight. In August 2026, Applicant submitted Encroachment Application NP220096 for the as-built wall.

IDL first published notice of the application on August 19, 2026. On August 22, 2026, adjoining neighbor Douglas P. McInnis ("McInnis") filed an objection and paid the required \$75 publication fee, and he participates as a party. Similarly, on September 13, 2026, Lance Olson

(“Olson”) on behalf of L&M Olson LLC submitted an objection, but did not pay the \$75 publication fee.

III. DECISION STANDARD

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.” Idaho Code § 58-1306(e). “Encroachments not in aid of navigation will normally not be approved by the Department *except in cases involving major environmental, economic, or social benefits that exceed the detrimental effects of the proposed encroachment* to public trust values and adjacent real property, if any.”

I.D.A.P.A 20.03.04.030 (emphasis added). If the board “***determines that the benefits, whether public or private, to be derived from allowing such encroachment exceed its detrimental effects, it shall grant the permit.***” Idaho Code § 58-1306(e). (emphasis added).

IV. ARGUMENT

A. The New Retaining Wall’s Benefits Exceed the Alleged Detrimental Effects.

The governing question is whether the benefits of the encroachment exceed its detrimental effects; and the record establishes that the benefits plainly do. As explained above, the existing retaining wall was failing and risked causing damage not only to Applicant’s property, but to the lake as a whole; Applicant’s engineer confirmed that the wall would collapse, carrying the bank with it, if not replaced. Additionally, both objectors agree and concede that this is true. The engineered wall stabilizes a failing bank, prevents the loss of upland soil into Hayden Lake, and protects the lakebed and water quality. On this record, the benefits of preventing the bank failure exceed any alleged detrimental effects.

Therefore, the permit should be granted.

B. No Feasible Alternative Existed.

Approval of a nonnavigational encroachment requires that “there is no other feasible alternative with less impact on public trust values.” (Idaho Admin. Code r. 20.03.04.030) The failing prior concrete wall could not safely be left in place, nor simply removed, without risking collapse of the retained soil into the lake. An engineered gravity wall supporting the bank at the toe of the slope was the minimum necessary measure to arrest the failure. The engineering record establishes both the necessity of the work and that it was designed to limit impact, including erosion-and-sediment controls and preservation of the vegetated buffer between the wall and the lake.

C. There is no Unreasonable Adverse Effect on the Adjacent Properties.

As set forth above, 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. Idaho Code § 58-1306(e). McInnis raises two objections: that the application contains factual inaccuracies, and that a “vast plume of sediment and silt moving southeast towards [his] dock” has impaired his ability to use his boat. The record does not bear out either neighbor’s claim of adverse effect, and neither establishes undue interference with navigation or unreasonable adverse effect on adjacent property.

As to the issue raised by McInnis, Applicants have already acknowledged the two matters the record squarely presents — that the base of the wall extends below the ordinary high water mark, and that the application’s description of the pre-existing wall must be reconciled with the as-built condition — and neither alters the Section 58-1306(e) benefit-detriment balance.

McInnis's remaining objection is that the application describes replacing a failing concrete wall that had in fact already been removed. That is a drafting discrepancy to be corrected and reconciled against the as-built condition; it does not change the condition of the bank, the engineering basis for the wall, or the absence of any proven adverse effect.

Regarding McInnis' issue with access to his dock, Applicants have shown that McInnis has accessed his dock without obstruction, including throughout the 2026 season, and the wall does not impede maneuvering to or from McInnis's dock. McInnis's own asserted harm is not obstruction by the wall but a claimed loss of water depth under his dock, which he estimates at "approximately 4 to 6 inches." That figure is his own rough approximation — by his own account, "it's difficult to measure accurately" — and it is not shown to be caused by the wall. The documents provided by Applicants show them measuring McInnis' dock from the lake and show that it rests over four feet above the lakebed. On this record, the adverse-effect evidence is contested at best and does not establish undue interference with navigation or unreasonable adverse effect on adjacent property.

V. CONCLUSION

The benefits of the wall — stabilizing a failing bank and protecting the shoreline, the lakebed, and water quality — exceed any detrimental effect, and the adverse effects the objectors assert are not established on this record. Applicant respectfully requests that the Presiding Officer recommend, and the Department grant, Encroachment Application NP220096.

Dated: October 26, 2026

HAWLEY TROXELL ENNIS & HAWLEY LLP

By 
Hart Parr Dal Pra, ISB No. 12812
Attorneys for Applicant Gregory Schneider

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that I caused to be served a true copy of the foregoing APPLICANT'S PRE-HEARING STATEMENT by the method indicated below, and addressed to each of the following:

Douglas P. McInnis
15050 E. Hayden Lake Rd.
Hayden, ID 83835
Objector

- ☐ U.S. Mail, Postage Prepaid
- ☐ Hand Delivered
- ☐ Overnight Mail
- ☒ E-mail: dpmcinnis@yahoo.com
- ☐ Facsimile
- ☐ iCourt

Lindsey Morgan
Fennemore Craig, PC
233 Harrison Ave.
Coeur d'Alene, ID 83814
Counsel for Objector Douglas P. McInnis

- ☐ U.S. Mail, Postage Prepaid
- ☐ Hand Delivered
- ☐ Overnight Mail
- ☒ E-mail: lmorgan@fennemorelaw.com
- ☐ Facsimile
- ☐ iCourt

Lance Olson
5403 Quail Ridge Cir.
Spokane, WA 99223
Public Witness

- ☐ U.S. Mail, Postage Prepaid
- ☐ Hand Delivered
- ☐ Overnight Mail
- ☒ E-mail: lanceols@msn.com
- ☐ Facsimile
- ☐ iCourt

Idaho Department of Lands
Kayleen Richter
300 N. 6th Street, Ste. 103
Boise, ID 83702
Counsel for IDL

- ☐ U.S. Mail, Postage Prepaid
- ☐ Hand Delivered
- ☐ Overnight Mail
- ☒ E-mail: krichter@idl.idaho.gov
- ☐ Facsimile
- ☐ iCourt

Idaho Department of Lands
Mike Ahmer
Resource Supervisor for Navigable Waters
Marde Mensinger
Program Manager of Navigable Waters

- ☐ U.S. Mail, Postage Prepaid
- ☐ Hand Delivered
- ☐ Overnight Mail
- ☒ E-mail: mahmer@idl.idaho.gov
mmensinger@idl.idaho.gov
- ☐ Facsimile
- ☐ iCourt

Kayla Dawson
Idaho Department of Lands
300 N. 6th Street, Suite 103
Boise, ID 83702
Service Contacts for IDL

- ☐ U.S. Mail, Postage Prepaid
- ☐ Hand Delivered
- ☐ Overnight Mail
- ☒ E-mail: kdawson@idl.idaho.gov
- ☐ Facsimile
- ☐ iCourt

OAH
General Government Division
P.O. Box 83720
Boise, ID 83720-0104

- ☐ U.S. Mail, Postage Prepaid
- ☐ Hand Delivered
- ☐ Overnight Mail
- ☒ E-mail: filings@oah.idaho.gov
- ☐ Facsimile
- ☐ iCourt

Dated: October 26, 20226



Hart Parr Dal Pra, ISB No. 12812