

IDAHO DEPARTMENT OF LANDS

HEARING STATEMENT

CASE NO. CC-2020-PUB-20-001

**ENCROACHMENT PERMIT APPLICATION
L-96-S-2571**

Good Afternoon, my name is Justin Eshelman, and I am a Resource Specialist, Sr. – Public Trust with the Idaho Department of Lands (IDL). My purpose in being here today is to provide you with information regarding IDL’s assessment of Application for Encroachment Permit No. L-96-S-2571, filed by Ron Shaffer. As shown on the application in the record, the applicants are seeking an encroachment permit for the installation of a single-family dock and boat lift.

Existing Permits

There are no existing permits for the littoral parcel.

Application

The applicant is seeking an encroachment permit for the installation of a 6’x60’ single-family dock and boat lift.

Timeline

- March 20, 2020, the applicant Ron Shaffer submitted an encroachment application for the single-family dock and boat lift. William Felten of Felten Enterprises is Mr. Shaffer’s agent in this matter.
- On March 23, 2020, IDL mailed courtesy notifications of the application for encroachment to adjacent property owners: Lissa Wentner, representing Wentner Family LLC, who owns the adjacent property northwest of the applicant, and Siele Trusts, John Siele, Trustee, who owns the adjacent property southeast of the applicant.
- On March 30, 2020, IDL emailed courtesy notification for encroachment to one of the adjacent property owners as requested in a phone call.
- On March 31, 2021, IDL received an objection letter dated March 28, 2020 from Ms. Wentner.
- On March 31, 2020, IDL received an objection letter via email from Siele Trusts.
- On April 2, 2020, IDL received a letter from Mr. Felten.
- On May 8, 2020, IDL inspected the site. A copy of that inspection report is attached as Exhibit A to this statement.

Applicable Lake Protection Act Provisions Pertaining to Subject Application

I.C. § 58-1301: ENCROACHMENT ON NAVIGABLE LAKES — LEGISLATIVE INTENT. 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. § 58-1303: ENCROACHMENT ON NAVIGABLE LAKES — POWERS OF STATE LAND BOARD. The board of land commissioners shall 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.

(See also IDAPA 20.03.04.012.01 and .02.)

I.C. § 58-1302(f): "Riparian or littoral rights" means only the rights of owners or lessees of land adjacent to navigable waters of the lake to maintain their adjacency to the lake and to make use of their rights as riparian or littoral owners or lessees in building or using aids to navigation but does not include any right to make any consumptive use of the waters of the lake. (See also IDAPA 20.03.04.010.32).

I.C. § 58-1302(h): "Encroachments in aid of navigation" means and includes docks, piers, floats, pilings, breakwaters, boat ramps, channels or basins, and other such aids to the navigability of the lake, on, in or above the beds or waters of a navigable lake. The term "encroachments in aid of navigation" may be used interchangeably herein with the term "navigational encroachments." (See also IDAPA 20.03.04.010.15)

IDAPA Rules Pertaining to Subject Application

IDAPA 20.03.04.010.07. Boat Lift. A mechanism for mooring boats partially or entirely out of the water.

IDAPA 20.03.04.010.34. Riparian or Littoral Rights Lines. Lines that extend waterward of the intersection between the artificial or ordinary high water mark and an upland ownership boundary to the line of navigation. Riparian or littoral right lines will generally be at right angles to the shoreline.

IDAPA 20.03.04.010.36. Single-Family Dock. A structure providing noncommercial moorage that serves one (1) waterfront owner whose waterfront footage is no less than twenty-five (25) feet.

IDAPA 20.03.04.015.01. Single-Family and Two-Family Docks. The following parameters govern the size and dimensions of single-family docks and two-family docks.

a. 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, excluding the slip cut out.

b. Total surface decking area waterward of the natural or ordinary or artificial high water mark may not exceed seven hundred (700) square feet, including approach ramp and walkway

for a single-family dock and may not exceed one thousand one hundred (1,100) square feet, including approach ramp and walkway for a two-family dock.

c. No portion of the docking facility may extend beyond the line of navigability. Shorter docks are encouraged whenever practical and new docks normally will be installed within the waterward extent of existing docks or the line of navigability.

d. A variance to the standards in this Subsection 015.01 may be approved by the Department when justified by site specific considerations, such as the distance to the established line of navigability.

IDAPA 20.03.04.015.13. General Encroachment Standards.

a. Square footage. The square footage limitations in Subsections 015.01 and 015.02 include all structured beyond the ordinary or artificial high water mark such as the approach, ramp, pier, dock, . . . except for:

i. Boat lifts as allowed pursuant to Paragraph 015.13.b.

b. Boat Lifts and Jet Ski Lifts.

i. Single-family docks are allowed a single boat lift and two (2) jet ski lifts, or two (2) boat lifts, without adding their footprint to the dock square footage

...

e. Presumed Adverse Effect. It will be presumed, subject to rebuttal, that single-family and two-family navigational encroachments will have an adverse effect upon adjacent littoral rights if located closer than ten (10) feet from adjacent littoral right lines, and that commercial navigational encroachments, community docks or nonnavigational encroachments will have a like adverse effect upon adjacent littoral rights if located closer than twenty-five (25) feet to adjacent littoral right lines. Written consent of the adjacent littoral owner or owners will automatically rebut the presumption. All boat lifts and other structures attached to the encroachments shall be subject to the above presumptions of adverse affects [sic].

IDL's Interpretation of Compliance with IDAPA Rules Pertaining to Subject Application

- IDL recognizes that the Ron Shaffer is a littoral owner, whose lot has a frontage of approximately 25 lineal feet. As a littoral owner he has littoral rights and is eligible to make application for an encroachment permit.
- Based on the submitted application for encroachment, the proposed dock meets the encroachment standards for single-family docks as set forth in IDAPA 20.03.04.015.01:
 - The proposed encroachment does not exceed 10 feet in width
 - The proposed encroachment is 360 square feet, well within the 700 square feet limitation
 - The proposed encroachment does not extend beyond the line of navigability
- Based on the submitted application for encroachment, the proposed dock meets the encroachment standards set forth in IDAPA 20.03.04.015.13.a and .b, because this is a single family dock that is allowed to have a boat lift without increasing the square footage calculation.

- Based on the submitted application for encroachment and the May 8, 2020 site inspection conducted by IDL, the proposed dock and boat lift do not meet the general encroachment standards set forth in IDAPA 20.03.04.015.13.e, and there is a presumed adverse effect upon adjacent littoral rights, because the encroachments are located closer than ten (10) feet from adjacent littoral right lines. Mr. Shaffer bears the burden of rebutting that presumption.
- Mr. Shaffer and Mr. Felten have clarified what activities will take place at the site as well as what the defined/specific footprint for the site would be if approved.

Conclusion

IDL concludes that the proposed dock meets the standards for a single-family dock including no portion exceeding 10' in width, total surface decking area not exceeding 700 square feet, and no portion of the docking facility extending past the line of navigability. IDL concludes that the proposed encroachments do not meet the setback requirement on the west side but do meet the set back requirement on the east side. IDL concludes that the application does not meet all the applicable IDAPA rules, and that there will be a presumed adverse effect upon adjacent littoral rights if the encroachments are located closer than ten (10) feet from adjacent littoral right lines.