

**From:** [Mike Ahmer](#)  
**To:** [Amy Anderson](#)  
**Subject:** RE: KEA request fro physical public hearing  
**Date:** Wednesday, June 17, 2020 7:30:00 AM

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Dear Ms. Anderson:

IDL received your correspondence regarding Encroachment Permit Application ERL-95-S01378B, Case No. PH-2020-PUB-22-002. In your correspondence, you request a “physical public hearing” regarding the Application, rather than a hearing held using Zoom. You raised concerns about the large number of people who may wish to participate, as well as the ability for people without internet access to participate in the hearing.

Some legal background may be useful. Idaho Code § 58-1306(c) provides, in pertinent part, that a member of the public may request a public hearing regarding an encroachment permit application, or IDL may order a hearing, which is what occurred here. In either case, “[a]ll such hearings shall be public and held under rules promulgated by the board under the provisions of chapter 52, title 67 of the Idaho Code.” I.C. § 58-1306(c). IDL has promulgated two sets of rules that are applicable to the hearing. First, IDL and the Land Board have promulgated the Rules of Practice and Procedure Before the State Board of Land Commissioners, IDAPA 20.01.01.000 *et seq.* (“Rules of Procedure”). Rule 552 of the Rules of Procedure provides that “[h]earings may be held in person or by telephone or television or other electronic means, if each participant in the hearing has an opportunity to participate in the entire proceeding while it is taking place.” IDAPA 20.01.01.552. *See also* IDAPA 04.11.01.552 (Idaho Rules of Procedure of the Attorney General). Those rules provide for a variety of methods for a hearing to be conducted, so long as each participant has the chance to participate in the entire hearing at the time it is taking place.

In addition, IDL and the Land Board have promulgated the Rules for the Regulation of Beds, Waters & Airspace over Navigable Lakes in Idaho, IDAPA 20.03.04.000 (“LPA Rules”). Rule 030.06 provides that “[a]ny person may appear at the public hearing and present oral testimony. Written comments will also be received by the Department.”

IDL understands your concern that some people may not have internet access. That is why IDL has provided three alternative means of participation: (1) people may submit written comments; (2) people may call in to the hearing and participate by phone; or (3) people may go to the IDL offices in Coeur d’Alene and participate in the conference (via Zoom) in that manner. As provided in the Notice of Appointment of Hearing Coordinator and Public Hearing, “written comments, submitted as set forth [in the Notice], and oral comments, will be given the same weight and consideration.”

You have also noted that a large number of people are likely to attend the hearing, and that Idaho is working through the phases of reopening. Idaho is currently in Phase 4, which allows “gatherings, both public and private, of more than 50 people, where appropriate physical distancing and precautionary measures are observed can occur.” Even after the end of Phase 4, the recommendation is that individuals continue to engage in physical distancing, and take other measures. IDL also recognizes that people may have varying levels of comfort with public gatherings, or may have concerns which would limit or preclude their in-person attendance at a

large gathering.

Given the legal authorities set forth above, as well as the risks and uncertainties regarding COVID-19, IDL has provided for people to participate in this public hearing via Zoom (whether from their home, place of business, etc. or from IDL's Coeur d'Alene offices), telephone, or written comment. All comments will be given equal weight and consideration, and providing these options will allow members of the public to participate in the hearing in a way that will be most comfortable for each person.

Thank you for your correspondence, and please let me know if you have additional questions.

**Mike Ahmer**

Resource Supervisor – Lands and Waterways  
Idaho Department of Lands  
3258 W Industrial Loop  
Coeur d'Alene, ID 83815

**From:** Amy Anderson <amy@kealliance.org>  
**Sent:** Wednesday, June 10, 2020 12:30 PM  
**To:** Mike Ahmer <mahmer@idl.idaho.gov>  
**Subject:** Re: KEA request fro physical public hearing

Thank you Mr.Ahmer!

On Wed, Jun 10, 2020 at 11:55 AM Mike Ahmer <[mahmer@idl.idaho.gov](mailto:mahmer@idl.idaho.gov)> wrote:

Hello Amy,  
I will pass this on to my Program Manager and Bureau Chief down in Boise and keep you posted.

Thanks,  
Mike

**From:** Amy Anderson <[amy@kealliance.org](mailto:amy@kealliance.org)>  
**Sent:** Wednesday, June 10, 2020 10:56 AM  
**To:** Mike Ahmer <[mahmer@idl.idaho.gov](mailto:mahmer@idl.idaho.gov)>  
**Subject:** KEA request fro physical public hearing

Hi Mike,

KEA would like to **submit a formal request to call for an in-person public hearing** on North Idaho Maritimes application for a commercial navigational encroachment permit and development of a commercial work station on CdA Lake in Wolf Lodge Bay **ERL95S1378B – North Idaho**

## **Maritime/ John Condon.**

A public hearing is defined as “an OPEN gathering of officials and citizens.....” The main purpose of holding a public hearing/public participation is that it allows for the public’s values to be identified and incorporated into decisions that ultimately affect them. Public participation is an integral component of natural resource protection and management and public input should be used in the development and evaluation of effective solutions and alternatives. Community engagement helps governments and agencies like IDL improve the efficiency, legitimacy and transparency of their decision making.

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KEA feels that it is very important for this public hearing to be physically open to the public for several reasons.

- Based on historic community member turnout for public hearings relating to the preservation of Wolf Lodge Bay (hundreds of community members, January 2020) a virtual public hearing would not be a just public hearing process that would accommodate the large number of community members that are likely to want to participate.
- Many affected community members live in rural areas and do not have access to the internet/cell phone service and would not be able to participate in a “virtual/zoom” public hearing.

**Further, KEA feels that during this time the community should be consulted about the public participation design and process before IDL finalizes its approach. Sufficient time must be allowed for the process (if hearing needs to be held later in the year) and a genuine effort made to incorporate the comments and concerns of the public via the public hearing process.**

**Based on Idaho covid19 restriction phase lifting orders (Phase 4) a physical public hearing under the appropriate physical distancing protocols would be allowed.**

**Phase 4 beginning June 14th:**

- **Gatherings, both public and private, of more than 50 people, where appropriate physical distancing and precautionary measures are observed can occur**
- Resume unrestricted staffing of worksites, but continue to practice physical distancing, personal protections and sanitation for protection of workers.
- Visits to senior living facilities and congregate facilities (e.g. jails and corrections) can resume.
- Bars and nightclubs may operate with diminished standing-room occupancy, where applicable and appropriate.
- Large venues (e.g., movie theaters and sporting venues) can operate under limited physical distancing protocols.

Thank you so much for your valuable time and energy and please let me know if I need to send this request to another individual(s) and or it needs to be submitted via another format.

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**Amy Anderson**

Environmental Programs Director at Kootenai Environmental Alliance

**Phone** [208-667-9093](tel:208-667-9093)

**Email** [amy@kealliance.com](mailto:amy@kealliance.com)

**Website** <https://kealliance.org>

**Mission** Conserve - Protect - Restore

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