

BEFORE THE STATE BOARD OF LAND COMMISSIONERS
STATE OF IDAHO

In the matter of:) Docket No. 2014-PUB-22-003
Encroachment Permit Application)
No. L-95-S-5567A)
Lewis Dock Homeowners Association, Inc.,) **FINAL ORDER**
Applicant.)

DEPT. OF LANDS

JAN 02 2015

BOISE, IDAHO

I. NATURE OF PROCEEDINGS/ISSUES

Encroachments, including docks, placed on navigable waters require a permit issued by the Idaho Department of Lands (IDL) pursuant to the requirements of the Lake Protection Act, Title 58, Chapter 13, Idaho Code, and the corresponding administrative rules promulgated by the State Board of Land Commissioners, IDAPA 20.03.04, Rules for the Regulation of Beds, Waters and Airspace over Navigable Lakes in the State of Idaho.

Lewis Dock Homeowners Association, Inc. (Applicant), applied for an encroachment permit for two (2) community docks on November 12, 2013. IDL deemed the application complete on January 10, 2014. A public hearing was held on April 24, 2014 at the IDL Coeur d'Alene staff office. On May 19, 2014, the hearing coordinator recommended approving the application with permit conditions. On May 27, 2014, the Director of IDL approved the issuance of the permit. On June 17, 2014, the permit was issued.

On September 5, 2014, Lewis Dock Homeowners Association, Inc., applied to amend the approved permit in the following two (2) ways:

1. Modify the encroachment design to include a floating dock system rather than the previous approved pier system; and
2. Include electrical conduit, receptacles, and electricity on the encroachment, for non-illumination purposes.

My responsibility is to render a decision pursuant to Idaho Code § 58-1306(c) and IDAPA 20.03.04.030.07 on the behalf of the State Board of Land Commissioners. In issuing this order, I have relied on the record for this matter. Specifically,

1. I have read the transcript of the public hearing conducted in Coeur d'Alene, Idaho on December 2, 2014.
2. I have reviewed the record including all documents and exhibits.
3. I have examined the Hearing Coordinator's Recommendation in light of the entire record.

II. FINDINGS OF FACT

I concur with the Findings of Fact presented by the Hearing Coordinator.

III. ANALYSIS

I concur with the Analysis presented by the Hearing Coordinator.

IV. RECOMMENDATION

I concur with the Recommendation presented by the Hearing Coordinator.

V. FINAL ORDER

I conclude that the Hearing Coordinator's Recommendation is based on substantial evidence in the record, and I adopt the Recommendation as my decision in this matter. The Recommendation is incorporated by reference herein and attached to this Final Order. The Applicant is qualified to make application to amend a community dock encroachment permit, and the proposed amendment is in conformance with the applicable standards. On the basis of the record, it is my order that Encroachment Permit No. L-95-S- 5567 is amended by IDL with no additional permit conditions.

This is a final order of the agency. Pursuant to Idaho Code § 58-1306(c) and IDAPA 20.30.04.030.09, the Applicant or any aggrieved party who appeared at the hearing shall have the right to have the proceedings and Final Order reviewed by the district court in the county in which the encroachment is proposed by filing a notice of appeal within thirty (30) days from the date of this Final Order.

DATED this 31st day of December, 2014



Patrick Hodges
IDL Deputy Director

CERTIFICATE OF SERVICE

I hereby certify that on this 2 day of January 2015, I caused to be served a true and correct copy of the foregoing by the method indicated below and addressed to the following:

John F. Magnuson
P O Box 2350
Coeur d'Alene, ID 83816

- U.S. Mail, postage prepaid
- Hand Delivery
- Overnight Mail
- Facsimile:
- Email:

Patti and Dave Petersen
6925 S. Waneta Rd
Spokane, WA 99223-1942

- U.S. Mail, postage prepaid
- Hand Delivery
- Overnight Mail
- Facsimile:
- Email:

Glenn E. McDonald
4525 Shinke Rd.
Greenacres, WA 99016

- U.S. Mail, postage prepaid
- Hand Delivery
- Overnight Mail
- Facsimile:
- Email:

Mike Wilson
2005 W. Canyon Drive
Coeur d'Alene ID, 83816

- U.S. Mail, postage prepaid
- Hand Delivery
- Overnight Mail
- Facsimile:
- Email:

Jill Payton
25810 NE 9th St
Sammamish, WA 98074-7345

- U.S. Mail, postage prepaid
- Hand Delivery
- Overnight Mail
- Facsimile:
- Email:

John and Jeri Sahlin
PO Box 194
Coeur d'Alene, ID 83816

- U.S. Mail, postage prepaid
- Hand Delivery
- Overnight Mail
- Facsimile:
- Email:

Robbie L. Dennie
4714 S Glenrose Road
Spokane, WA 99223-1350


- U.S. Mail, postage prepaid
- Hand Delivery
- Overnight Mail
- Facsimile:
- Email:

Scott L. Schmidtman
PO Box 19227
Spokane, WA 99219

- U.S. Mail, postage prepaid
- Hand Delivery
- Overnight Mail
- Facsimile:
- Email:

Carolyn M. Schmidtman
4201 S. Grove Rd.
Spokane, WA 99219

- U.S. Mail, postage prepaid
- Hand Delivery
- Overnight Mail
- Facsimile:
- Email:



Kourtney Romine
Administrative Assistant
Idaho Department of Lands

TO: Patrick Hodges, Deputy Director
FROM: Brandon Lamb, Hearing Officer/Resource Protection & Assistance Bureau Chief
SUBJECT: Lewis Dock Homeowners Association, Inc, Application for Encroachment Permit No. L-95-S-5567A

I. INTRODUCTION

The following document, which includes a recommendation for your consideration, was prepared following a public hearing conducted by the Idaho Department of Lands (IDL) in conjunction with the processing of an application for amendments to an encroachment permit for a community dock on Lake Coeur d'Alene, a navigable lake in Idaho. Jurisdiction in this matter rests with IDL pursuant to Idaho Code § 58-1303, which empowers the State Board of Land Commissioners to regulate, control, and permit encroachments on, in, or above the beds or waters of the navigable lakes of Idaho.

II. FINDINGS OF FACT

- 1) On June 17, 2014, IDL granted Lewis Dock Homeowners Association Encroachment Permit No. L-95-S-5567 for a community dock. (Exhibit A at 6).
- 2) That encroachment permit includes permit condition Number 16 which prohibits any oil sheen on the water from handling, using or storing petroleum products. In addition, condition Number 16 requires that petroleum absorbent pads and Emergency Response Team phone number to be on-site at all times. (Id. at 8).
- 3) Lewis Dock Homeowners Association possesses littoral rights through the lease of four contiguous parcels totaling approximately 420 feet of shoreline. (Id. at 11 - 12).
- 4) The proposed encroachments authorized by the permit will be approximately 47 feet from the northern adjacent littoral right line and 28 feet from the southern littoral right line. (Id. at 18).
- 5) The proposed encroachments will have approximately 30 foot slips. (Id. at 22).

- 6) On September 5, 2014, Lewis Dock Homeowners Association, Inc, (Applicant) submitted a Joint Application for Permits. The application seeks to amend permit L-95-S-5567 in the following two ways. (Id. at 1):
 - a) Modify the encroachment design to include a floating dock system rather than the previous approved pier system; and
 - b) Include electrical conduit, receptacles, and electricity on the encroachment, for non-illumination purposes.

- 7) On September 8, 2014, IDL notified the following parties of the Applicants Joint Application for Permits and requested that the parties provide any comments to IDL by October 9, 2014. (Exhibit D at 1):
 - a) Idaho Department of Fish and Game
 - b) Idaho Department of Environmental Quality
 - c) Idaho Department of Water Resources
 - d) Idaho Department of Transportation
 - e) U.S. Army Corps of Engineers - CDA
 - f) Panhandle Health District 1
 - g) Kootenai County Parks and Waterways
 - h) Kootenai County Marine Division
 - i) Kootenai County Building, Planning and Zoning
 - j) Kootenai Environment Alliance
 - k) Tri State Water Quality Council
 - l) Lakes Commission
 - m) Idaho Conservation League
 - n) Adjacent neighbors

- 8) On September 12th and 19th, 2014, a legal advertisement noticing the application was published in the Coeur d'Alene Press for two consecutive weeks. (Exhibit B at 3).

- 9) On September 16, 2014, IDL received an objection from Ms. Doris Graham. The objection focused on increased vessel traffic, aesthetics, electrical power, potential littering, decreased property values, increased property damage and parking. (Exhibit H). On the same day, Ms. Graham also requested a public hearing and paid the required fee of \$78.25. (Id. at 5-6).
- 10) On October 5, 2014, IDL received an objection from Mr. Dave and Ms. Patti Petersen. The objection also incorporated a February 2, 2014 objection, from the previous Joint Application for Permits. The objection focused on increased vessel traffic, noise pollution, erosion, property damage, and safety. The objection also focused on negative impacts to recreation, wildlife, and on the presence of electrical power. (Exhibit J at 1-4).
- 11) No objections were received from the governmental agencies identified in Number 7 of this Section.
- 12) On October 23, 2014, IDL Director Schultz called for a public hearing on the matter of *Lewis Dock Homeowner's Association, Inc, Encroachment Application L-95-S-5567A*, (and appointed Mr. Brandon Lamb as the Hearing Coordinator. (Exhibit M; Exhibit L).
- 13) On October 24, 2014, IDL issued a Notice of Public Hearing for Application L-95-S-5567A to the parties listed above in Number 2 of this Section. (Exhibit P).
- 14) On October 29th and November 5th, 2014, a legal advertisement noticing the public hearing was published in the Coeur d'Alene Press for two consecutive weeks. (Exhibit N).
- 15) On October 31, 2014, Director Schultz issued an order titled *Notice of Appointment of Hearing Coordinator and Public Hearing*. The order was issued to the Applicant's attorney, John Magnuson, and the Objector, Ms. Doris Graham. (Exhibit Q at 1-2).
- 16) On November 13, 2014, Mr. Glenn McDonald requested that his previous letter of objection be incorporated into Lewis Dock Homeowners Association's application to amend the existing permit. (Exhibit R).

- 17) On November 19, 2014, IDL received an objection from Mr. Wayne Attwood. The objection focused on increased vessel traffic, aesthetics, electrical power, noise, and willingness of the Applicant to comply with permit conditions. (Exhibit S).
- 18) On November 26, 2014, IDL received an objection from Ms. Jess McMackin. The objection focused on the presence of electrical power, increased vessel traffic, noise, and negative impacts to recreation. (Exhibit T).
- 19) On December 2, 2014, the following members of the public submitted written objections; several of which incorporated letters of objection from the previous public hearing. (Exhibit W):
- a) Glenn McDonald;
 - b) John and Jeri Sahlin;
 - c) Robbie Dennie;
 - d) Pattie Petersen; and
 - e) David and Jill Payton.
- 20) On December 2, 2014, IDL held a public hearing at 5:30 pm in IDL's Coeur d'Alene office. Mr. Brandon Lamb, Resource Protection & Assistance Bureau Chief, served as hearing coordinator. In attendance were Mr. Tom Fleer, IDL Area Manager; Mr. Jim Brady, IDL Resource Supervisor; Mr. Roger Johnson, IDL Resource Specialist, Sr., Andrew Smyth, IDL Public Trust Program Manager, Mr. Eric Wilson, IDL Minerals Regulatory Program Manager, Mr. John Magnuson, representing Lewis Dock Homeowner's Association, LLC; four (4) members of the public who testified, and six (6) members of the public who did not testify. The public hearing was digitally recorded and subsequently transcribed. (Exhibit V).
- 21) Out of the five (5) members of the public who testified during the public hearing, five (5) were in opposition to IDL amending the encroachment permit.

22) No objections were received regarding modifying the encroachment design to include a floating dock system rather than the previously approved pier system. In fact, one member of the public who testified during the hearing supported the modification. (Exhibit V at 7 and 13).

III. Applicable Law

- 1) The Idaho Board of Land Commissioners (Board) is authorized by Idaho Code § 58-104(9) and Idaho Code § 58-1303 to regulate, control and permit encroachments on, in, or above the beds of navigable lakes in the state of Idaho. IDL is the administrative agency of the Board, as per Idaho Code § 58-119.
- 2) Idaho Code § 58-1303 states that “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.”
- 3) Idaho Code § 58-1302(b) defines "Beds of navigable lakes" as, “[T]he lands lying under or below the ‘natural or ordinary high water mark’ of a navigable lake and, for purposes of this act only, the lands lying between the natural or ordinary high water mark and the artificial high water mark, if there be one.”
- 4) Lake Coeur d'Alene is a navigable lake as defined by Idaho Code § 58-1302(a).
- 5) Idaho Code § 58-1306(e) states in part, “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 non-navigational encroachment, a commercial navigational encroachment, or a community navigational encroachment not extending below the natural or ordinary high water mark. If no objections have been filed to the application

and no hearing has been requested or ordered by the board, or, if upon reconsideration of a decision disallowing a permit, or following a hearing, 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.”

- 6) Pursuant to Idaho Code § 58-1301, lake encroachments must 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.
- 7) IDL shall also make decisions on proposed encroachments in accordance with the Public Trust Doctrine as set forth in Idaho Code § 58-1201 through 1203.

IV. Analysis

1) Introduction

Many of the objections raised by objectors related to the size, location, and number of slips of the permitted encroachment. These factors, however, are not at issue here, as they are already authorized by the existing permit. No appeal was taken from the Director’s decision to issue the existing permit. The application to amend the permit raises only two new issues, not authorized by the existing permit: (1) the proposed floating dock system, and (2) the proposed electrical conduit. No objections were raised concerning the floating dock system. The only issue under consideration, therefore, is the existence of electricity on the encroachment for non-illumination purposes. Nonetheless, I will briefly summarize each of the objections below.

Idaho Code Sections 58-1301 and 58-1306(e) require, in summary, that the benefits of the proposed amendments be weighed against the negative impacts to adjacent

property and to public trust values enumerated in the statute. During the public hearing and comment period, the Applicant did not provide an explanation as to what, if any, benefit is derived from on-shore electricity. However, several objectors pointed out that the presence of non-illumination electricity can allow for cooking, listening to music, and other recreational activities taking place on the vessel below the ordinary or artificial high water mark. Though the presence of power on the proposed encroachment may not be required to run a galley, watch TV, or play music, because vessels presumably have battery power, a secondary power source at the dock can be clearly seen as a benefit. Thus, there is a benefit for the availability of electricity, however slight. I must weigh this benefit against the objections raised by objectors in the record.

2) Objections

a) Increased Vessel Traffic, Size of Slips, and Safety

- i) During the comment period and public hearing, objectors argued that an increase in number of boats, or size of the slips, negatively impact public trust values.

Objector's number one complaint, in this aspect, was that large boats navigating in and around the proposed community dock would be a hazard to recreationalists.

- ii) The issue of the size of the encroachment and the number of slips is not properly before me at this time, because the size has been authorized by the current permit. Further, any regulation of watercraft, use, or consequences of use is accomplished pursuant to Title 67, Chapter 70, Idaho Code, and through the adoption of local ordinances allowed by that statute, not by IDL.

b) Aesthetics

- i) Next, objectors argue that any community dock in the cove violates the public trust value of aesthetic beauty. Objectors provided little specifics or evidence for how

the encroachment would violate aesthetic beauty. One objector stated that a community dock does not belong in a small residential cove because it is not compatible. (Exhibit V at 7). The location of the dock within the cove is not at issue in this proceeding however, because, the location of the dock is authorized by the existing permit.

c) Electricity

i) During the comment period and public hearing, the use of electricity on the docks was one of the most prevalent objections. Objectors raised the following concerns regarding electricity on the docks:

(1) Long term habitation;

(a) Objectors voiced concerns that the presence of electricity would allow for boaters to stay onboard for extended periods of time. (Exhibit V at 11).

Objectors voiced concern that long term habitation would result in the following:

(i) Septic;

1. Objectors voiced concern that no septic is required because it is a community dock. (Id. at 11). One objector stated that one of the biggest concerns was the effect of an illegal discharge of waste into such a small, shallow bay. (Id. at 15). However, it is inappropriate to give this objection significant weight since objectors are asking me to assume that the availability of electricity at the dock will result in habitation, and further, that it will lead to illegal discharges of wastewater. This level of speculation is not persuasive. Illegal discharges can occur regardless of the availability of electricity at the

dock, and the record does not support a finding that availability of electricity makes it anymore likely than if electricity is not available. Moreover, any such discharges, if they occur, can presumably be addressed through the appropriate regulatory authority.

(ii) Refuse;

1. Objectors also voiced concerns that no refuse dump would be required for a community dock. (Id. at 11). Again, objectors argue that the presence of electricity results in long term habitation and thus issues with refuse disposal. Objectors described concerns over trash and other debris building up on the 4 lots leased by the Lewis Dock Homeowners Association. However, this concern occurs above the ordinary or artificial high water mark, which is beyond IDL's authority. Therefore, it cannot be considered in this matter.

(2) Light pollution;

- (a) Objectors stated that lighting would be problematic or a nuisance and would have a negative effect on public trust values. (Id. at 10, 11, 12). One objector argued that the lights from the moored vessels could drown out the view of the stars. (Id. at 10). However, the objector did not relate the lights from the boats to the availability of electricity on the encroachment. In other words, the current absence of electricity on the dock does not guarantee that the cove will remain dark, because other power and light sources, such as battery operated lanterns, are available to the members of the community dock. Thus, the potential for light pollution exists regardless of the proposed amendment under consideration. The record does not suggest that the potential for light

pollution is increased because of the presence of electrical conduit on the dock. Accordingly, I do not find this objection persuasive.

(3) Noise pollution from all-night social gatherings;

(a) Objectors argued that the presence of electricity would allow for sound systems, televisions, galleys, and thus all night parties. (Id. at 15, 19).

Objectors were not persuasive in relating noise from social gatherings with negative impacts to public trust values. Instead, many of the objections were related to the noise affecting upland properties. Objectors were not persuasive on how or why a community dock with electricity available would have significantly more noise from social events than any other residential neighbor. Again, the threat of all-night social events and noise is already present in the way of neighboring residential properties as well as the cabana and other facilities provided by the Lewis Dock Homeowners Association. Thus, the potential for noisy social gatherings exists regardless of the proposed amendment under consideration. The record does not suggest that the potential for noisy social gatherings is increased because of the presence of electrical conduit on the dock. Accordingly, I do not find this objection persuasive.

(4) Electrolysis;

(a) One objector raised the concern for electrolysis as a result of power being present on the proposed community dock. Based on the literature submitted in Exhibit W at 52;

Electrolysis happens when two dissimilar metals are immersed in an electrolyte and connected together. As a result, current flows through the connecting wire one direction and through

the water in the other direction. As the current leaves one metal to travel to the other, it causes metal to come off one surface and be deposited on the other so the higher voltage metal suffers electrolysis.

- ii) The objector raised concerns that electrolysis from on-shore power would cause damage, in the form of corrosion, to vessels moored within the community dock as well as nearby adjacent encroachments. (Exhibit W at 32). The objector argued that, if the amendment were allowed, there would be no oversight, ongoing inspections, testing, compliance, or required maintenance of the electrical system present on the proposed encroachment. (Id. at 32). Two online publications addressing electrolysis were submitted into the record: (1) *Electrolysis 101*; and (2) *Electrolysis, Stray Current, Galvanic Corrosion on boats explained*. (Exhibit W at 52-55). The two publications appear to be from non-academic sources and the author's level of expertise is unknown. The articles discuss the potential for corrosion of docked vessels and electrocution hazards for near-by swimmers due to connection with on-shore power, both of which can be considered pursuant to I.C. §58-1301 under the values of navigation and recreation. The articles did not address the prevalence or probability of corrosion or electrocution from electrolysis. As a result, the record does not establish how likely electrolysis is in and around community docks with electricity available.
- iii) As explained above, the availability of electricity at the dock provides a benefit to the dock users. In contrast, based upon the record, electrolysis is a factor that cannot be given a great deal of weight because the evidence of its impacts is minimal. I conclude that the potential risk to adjacent property and public trust values resulting

from electrolysis does not tip the scale against the known benefits of power on the encroachment.

- iv) Objectors recognize that the perceived threats presented by electricity already exist, even without having electrical conduit attached to the dock. As one objector noted during the public hearing:

So, if you prohibit power, then you would think that the only power they could have there is batteries. But, that doesn't mean that they can't bring 2500 watt generators down there and start that up. And, as you probably know, that could be a lot louder than a whole group of people...But, yes, I mean if it it's batteries, it's generators. If it isn't generators, it's windmills. If it isn't windmills, it's solar power.

(Exhibit V; pg. 14):

- v) The Application seeks to amend the current encroachment permit to include power for non-illumination only. Many of the objections ask me to assume that the Applicant will not honor the proposed prohibition on illumination. Objectors ask that IDL reject the application on the basis of this assumption. This, I cannot do. Any violations, if they occur, will be addressed through IDL's enforcement authority.
- vi) As a result, I find that the record establishes that some benefits exist to having electricity at the dock for non-illumination purposes. On the other hand, the objections regarding the presence of electricity are speculative at this point. Further, the bases for the objections already exist, even without this amendment, making those objections unpersuasive. For these reasons, I conclude that, based upon the evidence in the record, the benefits of the availability of electricity outweigh any unreasonable adverse effect upon adjacent property and on lake protection values. I.C. § 58-1306(e); I.C. § 58-1301.

d) Objections Relating to Upland Concerns

- i) The following objections were given little weight because they occur above the artificial high watermark, which IDL does not have authority to regulate:
- ii) Upland cabana;
- iii) Upland fire pit;
- iv) Upland parking;
- v) Decreased property values; and
- vi) Lifestyle change for nearby residents.

(1) This objection was not persuasive because no specifics were submitted into the record to demonstrate how the proposed amendment to the encroachment would cause a lifestyle change, nor how such a change impacts public trust values. However, many comments were submitted into the record expressing concern over parking, traffic, and lakefront views. Though these objections are understandable, the purpose of the Lake Protection Act is not to maintain the status quo of adjacent properties in perpetuity. Accordingly, I will not consider this issue further.

e) Legitimacy of Lewis Dock Homeowners' Association's Littoral Rights

- i) During the public hearing and comment period objectors questioned the qualification of Lewis Dock Homeowners Association to make application because the Homeowners Association did not own lakefront property and thus did not have littoral rights. The issue of littoral rights is not part of this proceeding, as it has already been decided as part of the issuance of the existing permit. (Exhibit A at 7-10). Accordingly, I will not consider it further.

f) Property Damage

i) Objectors raised concerns over property damage caused by excessive wake and by acts of God. Objectors expressed concern that twelve (12) thirty (30) foot slips would result in large vessels persistently causing damaging wake to neighboring property and encroachments. Objectors also raised concerns over the permanency of the community dock during the winter months causing debris to be funneled towards adjacent properties. These objections relate to the size and location of the encroachment, both of which are authorized by the existing permit. Additionally, as stated in Number 1 of this Section; IDL does not regulate wake from vessels.

g) Spills and Water Pollution

i) Several objectors expressed concern that the addition of 12 slips would increase the potential risk of fuel spills and degradation of water quality (Exhibit W at 16). Permit Condition Number 16 of the current permit addresses concerns regarding spills. Thus, this concern appears to be adequately addressed by the Department.

h) Negative Impacts to Fish and Wildlife

i) Many of the concerns raised by objectors regarding fish and wildlife focused on upland issues above the artificial high water mark, which IDL does not have the authority to regulate. One objector raised the issue that vegetation had been removed near the shoreline where wildlife had been previously observed. The objector also stated that the noise from the community beach would permanently remove the wildlife habitat. (Exhibit W at 17). These issues are not at issue in this proceeding, however, as they are not related to the requested amendment to the existing permit. Rather, they relate to the location and size of the encroachments, which are authorized by the current permit. In addition, as many of these concerns were

focused on activities that occur above the ordinary or artificial high water mark. IDL does not have regulatory authority over such activities pursuant to I.C. §58-1303.

ii) Additionally, concerns were raised regarding the increased coverage of the bay by the proposed encroachment, as well as any affixed slip covers, and the potential for increased algal blooms which could negatively affect fish habitat. These issues are not at issue in this proceeding, however, as they are not related to the requested amendment to the existing permit. Rather, they relate to the location and size of the encroachments, which are authorized by the current permit.

i) Objection Summary

i) As the objectors recognized, IDL does not have authority to regulate habitation, septic, refuse, or noise from social events. Although these factors might be seen as impacting aesthetic values, I find that the benefit from the availability of electricity on the docks outweighs the speculative burden that it might place on the adjacent property and public trust values.

Recommendation

The only issue in this matter is whether IDL should deny the requested permit amendments that would allow a floating piling system and electrical service to the docks. No objections were received regarding the floating piling system. Many objections related to the location and size of the encroachment permits that Applicant seeks to amend. Because the existing encroachment permit is not at issue in this proceeding, although I acknowledge and discuss these objections, they cannot be a basis to deny the proposed amendments. Based upon the evidence presented, I find that the benefits of these amendments outweigh the potential unreasonable adverse effect upon adjacent property. I.C. §58-1306(e). Further, I find that protection of property, navigation, fish and wildlife habitat, aquatic life, recreation, aesthetic beauty, and water quality is

outweighed by the navigational or economic necessity or justification for, or benefit to be derived from, the proposed encroachment. I.C. §58-1301. Based on the evidence in the record, I recommend that IDL approve the Application to amend encroachment permit No. L-95-S-5567 in the following two ways without further permit conditions:

- a) Modify the encroachment design to include a floating dock system rather than the previous approved pier system; and
- b) Include electrical conduit, receptacles, and electricity on the encroachment, for non-illumination purposes.

DATED this 31st day of December, 2014


Brandon Lamb
Hearing Coordinator