

BEFORE THE IDAHO STATE BOARD OF LAND COMMISSIONERS

In the Matter of Encroachment Permit) Case No. CC-2019-PUB-22-002
Application No. ERL-95-S-1971D)
Jeff Dieckman and Rebecca Reeves,) **FINAL ORDER**
Applicants.)
_____)

I. NATURE OF PROCEEDINGS

Encroachments, including single-family docks, placed in or on the beds of navigable lakes 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.”

On or around June 19, 2019, IDL received an encroachment permit application filed by Jeff Dieckman and Rebecca Reeves. A contested case hearing was held on August 13, 2019. Andrew Smyth served as duly appointed hearing officer. On September 5, 2019, the hearing officer issued his Preliminary Order, which contains Findings of Fact and Conclusions of Law.

As Director of IDL, my responsibility is to render a decision pursuant to Idaho Code § 58-1305(c) and IDAPA 20.03.04.025.07 on behalf of the State Board of Land Commissioners and based on the record, which I have reviewed in the context of my personal expertise gained through education, training, and experience. I relied on the record for this matter, including

examining the hearing officer's Preliminary Order in light of the entire record in this contested case.

II. FINDINGS OF FACT

I concur with the Preliminary Order's Procedural Background and Findings of Fact.

III. CONCLUSIONS OF LAW

I concur with the Preliminary Order's Conclusions of Law, except to delete a typographical error that includes the word "is" in the first sentence of "Section d. Recreation" on page 10. The amended sentence shall now read: "d. Recreation: The record contains ample evidence that Ms. Wicht and numerous relatives have enjoyed recreating on Twin Lakes near their property for decades."

IV. ORDER

I conclude that the hearing officer's Findings of Fact and Conclusions of Law presented in the Preliminary Order are based on substantial evidence in the record, and I adopt those Finding of Fact and Conclusions of Law as my decision in this matter. I hereby incorporate by reference the Preliminary Order's Procedural Background, Findings of Fact, and Conclusions of Law into this Final Order except as specifically set forth herein. I have enclosed and served the Preliminary Order along with this Final Order.

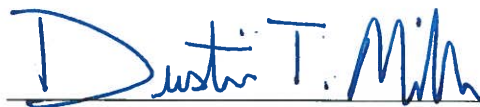
Based on the adopted Findings of Fact and Conclusions of Law, I HEREBY ORDER that Encroachment Permit Application L-95-S-1971D is **CONDITIONALLY APPROVED**.

Ms. Reeves and Mr. Dieckman shall provide written evidence that Mr. Dieckman was and is authorized to act on behalf of Ms. Reeves regarding the Application, including representing her at the hearing in this matter. That written evidence shall be provided no later than thirty (30) days after the issuance of this Final Order. If the required written evidence is not provided within

thirty (30) days after the issuance of this Final Order, then the conditional approval of the permit application shall expire.

This is a final order of the agency. Pursuant to Idaho Code § 58-1305(c), Idaho Code § 58-1306(c), and IDAPA 20.03.04.025.09, the Applicant and any aggrieved party appearing at a hearing have a right to have the proceedings and Final Order reviewed by the district court in the county where the encroachment is proposed by filing a notice of appeal within thirty (30) days from the date of the final decision. Pursuant to Idaho Code § 58-1305(c), Idaho Code § 58-1306(c), and IDAPA 20.03.04.025.09, an adjacent littoral owner shall be required to deposit an appeal bond with the court in an amount to be determined by the court but not less than five hundred dollars (\$500) insuring payment to the applicant of damages caused by delay and costs and expenses, including reasonable attorney fees, incurred on the appeal in the event the district court sustains the Final Order. The Applicant does not need to post a bond with the district court for an appeal. The filing of the petition for review to the district court does not itself stay the effectiveness or enforcement of the order under appeal. Idaho Code § 67-5274.

Dated this 27th day of September, 2019.



DUSTIN T. MILLER

Director, Idaho Department of Lands

CERTIFICATE OF SERVICE

I hereby certify that on this 21st day of September 2019, I caused to be served a true and correct copy of the foregoing by the method indicated below and addressed to the following:

Jeff Dieckman and Rebecca Reeves 24351 N. Lakeview Blvd Rathdrum ID 83858	<input checked="" type="checkbox"/> U.S. Mail, postage prepaid <input type="checkbox"/> Hand Delivery <input checked="" type="checkbox"/> Email: jeffdieck@msn.com
Tom Frey Frey Dock and Barge Inc. 10364 Morris Rd Hayden Lake ID 83835	<input checked="" type="checkbox"/> U.S. Mail, postage prepaid <input type="checkbox"/> Hand Delivery <input checked="" type="checkbox"/> Email: freydock@gmail.com
Frances Wicht 948 E 43rd Ave Spokane WA 99203	<input checked="" type="checkbox"/> U.S. Mail, postage prepaid <input type="checkbox"/> Hand Delivery <input checked="" type="checkbox"/> Email: franwicht@yahoo.com
Dorothy Klix 10605 169th Ave SE Renton WA 98059	<input checked="" type="checkbox"/> U.S. Mail, postage prepaid <input type="checkbox"/> Hand Delivery <input checked="" type="checkbox"/> Email: dakoma1@comcast.net
Lowry Bennett 4663 159th Ave SE Bellevue WA 98006	<input checked="" type="checkbox"/> U.S. Mail, postage prepaid <input type="checkbox"/> Hand Delivery <input type="checkbox"/> Email:
Sue Lani Madsen PO Box 107 50475 Cloverdale Road E Edwall WA 99008	<input checked="" type="checkbox"/> U.S. Mail, postage prepaid <input type="checkbox"/> Hand Delivery <input checked="" type="checkbox"/> Email: suelani.madsen@gmail.com
Jeremy & Amanda Meier 1121 23rd St NW Minot ND 58703	<input checked="" type="checkbox"/> U.S. Mail, postage prepaid <input type="checkbox"/> Hand Delivery <input type="checkbox"/> Email:
Joy Vega P.O. Box 83720 Boise, ID 83720-0010	<input checked="" type="checkbox"/> Statehouse Mail <input type="checkbox"/> Hand Delivery <input checked="" type="checkbox"/> Email: joy.vega@ag.idaho.gov



 Kourtney Romine
 Administrative Assistant

BEFORE THE STATE BOARD OF LAND COMMISSIONERS
STATE OF IDAHO

In the Matter of Encroachment Permit)	
Application No. L-95-S-1971D)	Case No. CC-2019-PUB-22-002
)	
Jeff Dieckman and Rebecca Reeves,)	PRELIMINARY ORDER
)	
Applicants.)	
)	
)	
)	

I. PROCEDURAL BACKGROUND

On or around June 19, 2019, the Idaho Department of Lands (“IDL”) received an encroachment permit application (“Application”) filed by Mr. Jeff Dieckman and Ms. Rebecca Reeves (“Applicants”). Agency Record (“AR”) pp. Dieckman/Reeves 00001 – 00009.¹ IDL assigned application number L-95-S-1971D to the Application. In the Application, the Applicants seek authorization to replace a single-family dock on Twin Lakes. AR pp. 1 – 9.

IDL processed the Application for a single-family dock pursuant to Idaho Code § 58-1305 and IDAPA 20.03.04.025.

1. On June 19, 2019, IDL provided notices of the Application to the two adjacent littoral owners, Frances Wicht and Terry Thompson.² AR pp. 10-13.
2. On or around June 25, 2019, IDL received an objection from Frances Wicht. AR pp. 14-15.
3. On June 25, 2019, IDL received an objection from Dorothy A. Klix. AR pp. 18-21.

¹ All citations to the AR are hereinafter designated by using the Bates numbers only, not the preceding “Dieckman 0000.”

² While the notice was sent to Frances Wicht, this property is owned jointly by Ms. Wicht, her sister Ms. Dorothy Klix, and her brother Mr. Larry Bennett. Rec, 3:13.

4. On or around June 28, 2019, IDL received an objection from Lowry M. Bennett. AR p. 22.
5. On or around June 28, 2019, IDL received an objection from Sue Lani W. Madsen. AR pp. 23-25.
6. On or around July 16, 2019, IDL received an objection from Jeremy and Amanda Meier. AR p. 26.
7. Terry Thompson did not file an objection.
8. Pursuant to Idaho Code § 58-1305(c), IDL ordered a hearing in this contested case. On July 22, 2019, Mr. Dustin T. Miller, IDL Director, appointed Mr. Andrew Smyth to be the Hearing Officer to preside over the contested case proceedings, and further designated 9 a.m. on August 13, 2019 as the hearing date and time. AR pp. 34-38.
9. Pursuant to Idaho Code § 58-1305(c), a contested case hearing regarding the Application was held on August 13, 2019. The participants appearing at the hearing were as follows: Mr. Dieckman; the Applicants' agent Mr. Tommy Frey; Ms. Frances Wicht; Ms. Wicht's daughter Ms. Sue Lani Madsen; Ms. Dorothy Klix; Ms. Amidy Fuson, IDL Resource Specialist, Sr.; Mr. Mike Ahmer, IDL Resource Supervisor; and Ms. Joy Vega, Deputy Attorney General, counsel for IDL. AR p. 39 and Hearing Recording.³

Evidence admitted into the administrative record during the hearing consisted of sworn witness testimony and a photograph provided by Ms. Wicht. Ex. 1. Following the close of the hearing, Ms. Madsen, IDL, and Mr. Dieckman exchanged various emails including the hearing

³ The hearing was recorded pursuant to IDAPA 20.01.01.651. A hearing transcript has not been prepared. The agency or any party may have a transcript prepared at its own expense. All references to the hearing recording in this Preliminary Order will be described by reference to the minute(s) and second(s) location on that recording. For example: Rec, mm:ss.

officer. Since these emails were received after the close of the hearing, they were not considered in this decision.

II. FINDINGS OF FACT

1. Ms. Rebecca Reeves owns Kootenai County parcel 0-2040-001-004-A, AIN 135917 in Kootenai County, Idaho, and is therefore a littoral owner. AR pp. 1 and 6.
2. Ms. Reeves' property is located adjacent to Twin Lakes and consists of 115 feet of waterfront footage. AR p. 8 and Rec, 6:59.
3. Jeff Dieckman is a co-applicant on the Application, and testified in favor of the Application at hearing.
4. Ms. Reeves did not appear at the hearing, and there is nothing in the hearing record specifying that Mr. Dieckman was authorized to file and pursue the Application on Ms. Reeves' behalf. However, neither the various objectors nor IDL objected to Mr. Dieckman's participation on behalf of Ms. Reeves.
5. IDL encroachment permit ERL-95-S-1971C, assigned to Ms. Reeves on March 18, 2019, authorizes a single-family dock consisting of a four-foot by twenty-four foot (4' x 24') ramp, eight-foot by twenty-four foot (8' x 24') approach, and a sixteen-foot by twenty-four-foot (16' x 24') single-slip dock. Rec 38:19. The permitted length of the existing dock at this location is seventy-two feet (72').⁴
6. Wakes are damaging Ms. Reeves' boat and existing dock. Rec, 7:36 and 17:08.

⁴ Section 30, of the Program Procedure Manual states, "The written permit description shall provide the waterward dimensions and total square footage of the encroachment being permitted. The measurements paralleling the shoreline are stated first (width), the measurements extending waterward are stated second (length), such as "A 700 square foot single-family dock consisting of 3'x13' ramp, 6'x20' approach, and 30'x25' floating single-slip dock or pier." From the example, the length of encroachment is fifty-eight (58) feet waterward and less than seven hundred (700) square feet of deck surface area." Looking at the second figure for each dock component, the total length of the dock would be 24 + 24 + 24 = 72.

7. If approved, Ms. Reeves' dock would have 692 square feet of surface decking area and extend 60 feet beyond the OHWM. The dock would consist of a three-foot (3') by sixteen-foot (16') ramp, a four-foot (4') by twenty-foot (20') approach, and a thirty two-foot (32') by twenty four-foot (24') single-slip dock. AR p. 1, 2, 6, and 9 and Rec 38:49.

8. The widest portion of the dock would be ten feet (10') in width. AR p. 5.

9. The proposed dock would be located thirty-six feet (36') from the Thompson littoral right line and fifty-one feet (51') from the Wicht littoral right line. AR, p. 5 and Rec 39:40.

10. Ms. Wichts' family, including her siblings and their families, recreate in Twin Lakes in front of their property, which is located adjacent to the Applicants' property. AR, pp. 14, 18, 22, 23, and 26 and Rec, 25:34 and 28:16.

III. CONCLUSIONS OF LAW

A. IDL Has Jurisdiction Over Twin Lakes.

1. The State of Idaho Board of Land Commissioners ("Land Board") is authorized to regulate, control, and permit encroachments in, on or above the beds of navigable lakes in the state of Idaho. I.C. §§ 58-104(9)(a) and 58-1303.

2. The Land Board exercises its authority through the instrumentality of IDL. *See* I.C. §§ 58-101 and 58-119. As a result, "the duty of administering the Lake Protection Act falls upon the IDL." *Kaseburg v. State, Bd. of Land Comm'rs*, 154 Idaho 570, 578, 300 P.3d 1058, 1066 (2013).

3. The Hearing Officer is authorized by the Director to issue this Preliminary Order. AR p. 34; I.C. § 67-5245. The hearing in this matter began at 9:00 a.m. PST and concluded at approximately 9:50 a.m. PST on August 13, 2019. With all evidence submitted, the matter is fully before the Hearing Officer.

4. In accordance with Idaho Code § 67-5206 and the Lake Protection Act, Title 58, Chapter 13, Idaho Code (“LPA”), IDL has promulgated rules for navigable waters encroachment permits – the Rules for the Regulation of Beds, Waters and Airspace Over Navigable Lakes in the state of Idaho (“Rules”). IDAPA 20.03.04.000 *et seq.*

5. Also under the LPA, IDL is authorized to adopt, revise and rescind regulations necessary to effectuate the purposes and policy of the LPA. I.C. § 58-1304; IDAPA 20.03.04.002. IDL has maintained written interpretations of the Rules, which includes a written procedures manual entitled, Navigable Waters Procedure Manual (“Manual”). *See* IDL, Navigable Waters Procedure Manual, <https://www.idl.idaho.gov/lakes-rivers/procedures-manual/>.

6. In enacting the LPA, the Idaho Legislature declared its intent that:

[T]he 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. “IDL is required to balance the competing interests involved while determining whether to approve permits for navigational encroachments.” *Brett v. Eleventh St. Dockowner’s Ass’n Inc.*, 141 Idaho 517, 523, 112 P.3d 805, 810 (2005); IDAPA 20.03.04.012.

7. Under the LPA and Rules, a navigable lake is defined as:

any permanent body of relatively still or slack water, including man-made reservoirs, not privately owned and not a mere marsh or stream eddy, and capable of accommodating boats or canoes. This definition does not include man-made reservoirs where the jurisdiction thereof is asserted and exclusively assumed by a federal agency.

I.C. § 58-1302(a); IDAPA 20.03.04.010.024. Twin Lakes is a navigable lake under the LPA and therefore, IDL has jurisdiction to regulate the proposed encroachments. *See State v. Hudson*, 162 Idaho 888, 407 P.3d 202 (2017).

B. Ms. Reeves is qualified to make application

1. IDAPA 20.03.04.010.033 states in part, “[o]nly persons who are littoral owners or lessees of a littoral owner shall be eligible to apply for encroachment permits. I find that Ms. Reeves, as owner of property adjacent to Twin Lakes, is a littoral owner, as defined in IDAPA 20.03.04.010.33, and is qualified to make application for an encroachment permit.

2. While Mr. Dieckman is a co-Applicant, there is nothing in the record demonstrating that he is a littoral owner, or a co-owner of Ms. Reeves’ property.

3. Rule 202.01 of the Rules of Practice & Procedure Before the State Board of Land Commissioners provides, in pertinent part:

To the extent authorized or required by law, appearances and representation of parties or other persons at formal hearing or prehearing conference must be as follows:

a. Natural person. A natural person may represent himself or herself or by represented by a duly authorized employee, attorney, family member or next friend.

IDAPA 20.01.01.202.01.a.

4. While no one, including IDL, objected to Mr. Dieckman’s appearance at and participation in the hearing in this matter, it is important that the record is clear regarding his authority. Therefore, I am directing Ms. Reeves and Mr. Dieckman to provide written evidence of Mr. Dieckman’s authorization to represent Ms. Reeves regarding the Application, as set forth in more detail in Section IV, below.

C. The Burden of Proof Is With the Applicant.

1. The Applicant generally bears the burden of proof in this matter. “The customary common law rule that the moving party has the burden of proof – including not only the burden of going forward but also the burden of persuasion – is generally observed in administrative hearings.” *Intermountain Health Care, Inc. v. Bd. of County Comm’rs of Blaine County*, 107 Idaho 248, 251, 688 P.2d 260, 263 (Ct. App. 1984) *rev’d on other grounds* 109 Idaho 299, 707 P.2d 410 (1985).

2. Under Idaho law, “preponderance of the evidence” is generally the applicable standard for administrative proceedings, unless the Idaho Supreme Court or legislature has said otherwise. *N. Frontiers, Inc. v. State ex rel. Cade*, 129 Idaho 437, 439, 926 P.2d 213, 215 (Ct. App. 1996). “A preponderance of the evidence means that when weighing all of the evidence in the record, the evidence on which the finder of fact relies is more probably true than not.” *Oxley v. Medicine Rock Specialties, Inc.*, 139 Idaho 476, 481, 80 P.3d 1077, 1082 (2003).

D. The Application is Conditionally Approved.

1. Applicant Has Proven Compliance with the Rules:

a. IDAPA 20.03.04.010.36 defines a Single-Family Dock as “[a] structure providing noncommercial moorage that serves one (1) waterfront owner whose waterfront footage is no less than twenty-five (25) feet.” I find that the proposed dock meets the definition of a single-family dock given that the dock will be used for private purposes at Ms. Reeves’ property, which consists of 115 feet of waterfront footage.

b. IDAPA 20.03.04.015.01.a provides the following parameters governing the size and dimension of single-family docks, “No part of the structure waterward of the natural or ordinary high water mark or artificial high water mark shall exceed ten (10) feet in width, excluding the slip cut out.” I find that Ms. Reeves’ dock meets this requirement, as the widest portion of the dock is ten feet (10’) wide.

c. IDAPA 20.03.04.015.01.b states, “Total surface decking area waterward of the natural or ordinary or artificial high water mark shall not exceed seven hundred (700) square feet, including approach ramp and walkway for a single-family dock . . .” I find that Ms. Reeves’ dock meets this requirement, as the total surface decking area is 692 square feet.

d. Regarding single-family docks, IDAPA 20.03.04.015.01.c states, “No portion of the docking facility shall 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.” Ms. Fuson testified that the proposed dock would not extend beyond the line of navigability. Rec, 39:30. The proposed dock, which would extend sixty feet (60’) beyond the OHWM, would be twelve feet (12’) shorter than the existing seventy-two foot dock. I find that the proposed dock will not extend beyond the line of navigability.

e. IDAPA 20.03.04.015.13.e, states, in applicable part, “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 . . . All boat lifts and other structures attached to the encroachments shall be subject to the above presumptions of adverse affects.” The proposed dock would be located thirty-six feet (36’) from the Thompson littoral right line and fifty-one feet (51’) from the Wicht littoral right line. I find that the proposed dock would meet this standard.

2. The littoral rights of an upland owner adjacent to navigable waters include the right “to maintain their adjacency to the lake and make us of their rights” as littoral owners by “building or using aids to navigation,” such as a single-family dock. I.C § 58-1302(f). However, the

proposed encroachment must be weighed against the other Lake Values itemized in Idaho Code § 58-1301:

[A]ll 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.

3. As to the economic necessity or justification for or benefit derived from the proposed encroachment, Mr. Dieckman testified that boats moored at Ms. Reeves' dock, and the dock itself, are being damaged by the wakes, and that the proposed configuration of the dock would provide better protection. Rec, 7:36 and 17:08. Mr. Fry testified that most of the docks are oriented like this [referring to the slip entrance parallel to the shoreline] to protect the dock and the boat. Rec, 15:08 and 31:19. I find that the Applicant has established the economic justification for or benefit derived from the proposed encroachment.

4. The economic necessity or justification or benefit derived must be weighed against the protection of property, navigation, fish and wildlife habitat, aquatic life, recreation, aesthetic beauty and water quality, i.e., the "Lake Values".

a. Protection of property: Mr. Dieckman testified that the purpose of the new orientation of the dock with the slip parallel to the shoreline was to protect boats moored at the dock, and the dock. Rec, 7:36 and 17:08. Mr. Fry testified that most docks are installed this way for boat protection. Rec, 15:08 and 31:19. Ms. Wicht acknowledged that the number of docks oriented parallel to the shore is increasing. Rec, 31:29.

Ms. Madsen testified that the change in orientation could potentially impact their shore with increased wakes generated parallel to the shore closer to shore. Rec, 40:50. Other than

Ms. Madsen's conclusory testimony, the record does not contain any evidence that the proposed single-family dock will, in fact, cause additional destruction to the shoreline adjacent to the objectors' property.

b. Navigation: There is no evidence that the proposed dock would impede navigation on the lake. In fact, the proposed dock will extend into the water twelve feet (12') less than the existing dock.

c. Fish and wildlife habitat and aquatic life: The record does not contain any evidence showing that the proposed boat dock could or would impact fish and wildlife habitat or aquatic life.

d. Recreation: The record is contains ample evidence that Ms. Wicht and numerous relatives have enjoyed recreating on Twin Lakes near their property for decades. AR, pp. 14, 18, 22, 23, and 26 and Rec, 25:34 and 28:16. While the proposed orientation of the dock may impact these activities to a certain extent, the fact remains that the Applicants, and the public as a whole, have the right to navigate over the beds of navigable lakes, including the area in front of Ms. Wicht's property. Boaters could potentially disrupt the above-listed activities, with or without the proposed dock in the proposed location. While rules allow docks to be located as near as ten feet (10') from littoral right lines, Mr. Dieckman stated that the plan is to locate the dock near the middle of Ms. Reeves' 115 feet of shoreline, fifty-one feet (51') from the Wicht littoral right line. Rec, p. 5 and AR, 7:15 and 39:40.

e. Aesthetic beauty: The record does not contain any evidence showing that the proposed boat dock would impact aesthetic beauty.

f. Water quality: There is no evidence that the proposed dock would negatively impact water quality.

5. I find that the proposed single-family dock complies with Rules and the economic justification for or benefit of the proposed dock, with its design to protect the Applicants' boat and dock in a manner that is common among many lakefront owners, is not outweighed by the Lake Values.

6. I conclude that the Application for this single-family dock is conditionally approved, as set forth below with the condition that Ms. Reeves and Mr. Dieckman provide written evidence of Mr. Dieckman's authority to act on Ms. Reeves behalf regarding the Application and this hearing no later than thirty (30) days after issuance of the Final Order.

IV. ORDER

Based upon the foregoing findings of fact and conclusions of law, IT IS HEREBY ORDERED that Encroachment Permit Application No. L-95-S-1971D is **CONDITIONALLY APPROVED**. Ms. Reeves and Mr. Dieckman shall provide written evidence that Mr. Dieckman was and is authorized to act on Ms. Reeves behalf regarding the Application, including representing her at the hearing in this matter. That written evidence shall be provided no later than thirty (30) days after the issuance of the Final Order in this matter.

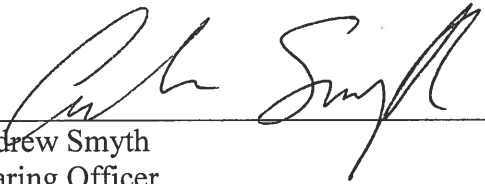
IT IS FURTHER ORDERED that the order issued herein is a Preliminary Order, pursuant to Idaho Code § 58-1306(c) and the Notice of Appointment of Hearing Officer issued on July 22, 2019, which states as follows:

The Hearing Officer shall submit a preliminary order to the Director of the Idaho Department of Lands within thirty (30) days after the close of the hearing. After receiving the preliminary order the Director shall issue a Final Order no more than forty-five (45) days after the conclusion of the hearing, or allow the preliminary order to become final forty-five (45) days after the conclusion of the hearing. As provided in Idaho Code § 67-5240, the contested case provisions of the Administrative Procedure Act do not apply where the legislature has directed the use of alternative procedures. Because the Legislature has enacted specific alternative procedures in Idaho

Code § 58-1305 that require a final order to be issued within forty-five (45) days of the hearing, and leave insufficient time to consider petitions for review of the preliminary order, the procedures of Idaho Code § 67-5245 addressing petitions for review of preliminary orders are not applicable.

IT IS FURTHER ORDERED that if the Director allows this Preliminary Order to become final, or if the Director issues a Final Order, pursuant to Idaho Code § 58-1305(c), any applicant or other aggrieved party has the right to have this decision reviewed by the district court in the county where the encroachment is proposed by filing notice of appeal within thirty (30) days from the date of the final decision. The filing of an appeal to the district court does not itself stay the effectiveness or enforcement of the order under appeal. Idaho Code § 67-5274.

DATED this 5th day of September, 2019.



Andrew Smyth
Hearing Officer