

BEFORE THE IDAHO STATE BOARD OF LAND COMMISSIONERS

In the Matter of Encroachment Permit ) Case No. CC-2019-PUB-20-002  
Application No. L-96-S-2100C )  
) **FINAL ORDER**  
Bruce Allen, )  
)  
Applicant. )  
)  
\_\_\_\_\_ )

**I. NATURE OF PROCEEDINGS**

Encroachments, including boat lifts added to 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 August 19, 2019, IDL received an updated encroachment permit application filed by Bruce Allen. A contested case hearing was held on October 9, 2019. Andrew Smyth served as duly appointed hearing officer. On October 30, 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 and IDAPA 20.03.04.025 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, except for the following amendment:

On page 2 in paragraph 3, I removed the word "seventy" from that paragraph and replaced it with the word "seventy-five" based on the information in Exhibit 3 (Encroachment Permit L-96-2100A). The paragraph now reads:

3. IDL encroachment permit L-96-S-2100A, issued to Mr. Allen on April 11, 2011, authorized a ten-foot by fifty-foot pier and mooring buoy seventy-five feet waterward of the Artificial High Water Mark (AHWM) on Lake Pend Oreille.

## **III. CONCLUSIONS OF LAW**

I concur with the Preliminary Order's Conclusions of Law, except for the following amendment:

On page 4 in paragraph B.1, the first citation to IDAPA 20.03.04.010.033 is removed and replaced with IDAPA 20.03.04.020.02. Paragraph B.1 now reads:

1 IDAPA 20.03.04.020.02 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 Mr. Allen, as owner of property adjacent to Lake Pend Oreille, is a littoral owner, as defined in IDAPA 20.03.04.010.33, and is therefore qualified to make application for an encroachment permit.

## **IV. ORDER**

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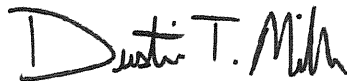
I conclude that the hearing officer's Findings of Fact and Conclusions of Law presented in the Preliminary Order are based on substantial evidence in the record, and I adopt those

Findings of Fact and Conclusions of Law with the amendments set forth herein 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-96-S-2100C is APPROVED.

This is a final order of the agency. Pursuant to Idaho Code § 58-1305(c) and Idaho Code § 58-1306(c), the Applicant or any aggrieved party who appeared at the 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) and Idaho Code § 58-1306(c), an adjacent littoral owner or other aggrieved party 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 22nd day of November, 2019.



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DUSTIN T. MILLER

Director, Idaho Department of Lands

**CERTIFICATE OF SERVICE**

I hereby certify that on this 22<sup>nd</sup> day of November, 2019. I caused to be served a true and correct copy of the foregoing by the method indicated below, and addressed to the following:

Bruce Allen  
979 Naches Heights Road  
Yakima, WA 98908

- U.S. Mail, postage prepaid
- Hand Delivery
- Federal Express
- Email: bruce@columbiareach.com

Jeff Hein  
PO Box 401  
Hope, ID 83836

- U.S. Mail, postage prepaid
- Hand Delivery
- Federal Express
- Email:

Angela Kaufmann  
P.O. Box 83720  
Boise, ID 83720-0010

- Statehouse Mail
- Hand Delivery
- Federal Express
- Email: angela.kaufmann@ag.idaho.gov

Kourtney Romine  
Kourtney Romine  
Administrative Assistant

BEFORE THE STATE BOARD OF LAND COMMISSIONERS  
STATE OF IDAHO

In the Matter of Encroachment Permit	)	
Application No. L-96-S-2100C	)	Case No. CC-2019-PUB-20-002
	)	
Bruce Allen,	)	<b>PRELIMINARY ORDER</b>
	)	
Applicant.	)	
	)	
	)	
	)	

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**I. PROCEDURAL BACKGROUND**

On or around August 19, 2019, the Idaho Department of Lands (“IDL”) received an encroachment permit application (“Application”) filed by Mr. Bruce Allen (“Applicant” or “Mr. Allen”). Agency Record (“AR”) pp. Allen 000025 – 000042.<sup>1</sup> IDL assigned application number L-96-S-2100C to the Application. In the Application, the Applicant seeks authorization, after-the-fact, to add a boatlift to his single-family dock on Lake Pend Oreille. AR p. 25.

IDL processed the Application pursuant to Idaho Code § 58-1305 and IDAPA 20.03.04.025.

1. On or around August 20, 2019, IDL provided notice of the Application to Steve and Darlene Reimer and Jeff Hein, adjacent littoral owners. AR pp. 43 – 44.
2. On August 30, 2019, IDL received an objection to the Application from Mr. Hein. AR p. 45.
3. Pursuant to Idaho Code §§ 58-1305(c), IDL ordered a hearing in this contested case. On September 13, 2019, Mr. Dustin T. Miller, IDL Director, appointed Mr. Andrew Smyth to be the Hearing Officer to preside over the contested case proceedings scheduled to be held on October 9, 2019, at the IDL Office located in Sandpoint, Idaho. AR pp. 46 – 49.

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<sup>1</sup> All citations to the AR are hereinafter designated by using the Bates numbers only, not the preceding “Allen 0000.”

4. Pursuant to Idaho Code § 58-1305(c), a contested case hearing regarding the Application was held on October 9, 2019. The participants appearing at the hearing were as follows: Mr. Bruce Allen and his wife Mrs. Julie Allen; Mr. Jeffrey Hein and his next friend, Mr. Paul Dukes; Mr. Mike Ahmer, IDL Resource Supervisor; Mr. Justin Eshelman, IDL Resource Specialist, Sr.; Tom Fleer, Pend Oreille Supervisory Area Manager; and Ms. Angela Kaufmann, Deputy Attorney General, counsel for IDL. AR, p. 50 and Hearing Recording.<sup>2</sup>
5. Evidence admitted into the administrative record during the hearing consisted of sworn witness testimony, an update to Mr. Hein's July 8, 2019 drawing (Exhibit 1), Mr. Eshelman's written testimony (Exhibit 2), encroachment permit L-96-S-2100A (Exhibit 3), an aerial image (Exhibit 4), and the April 13, 2018 IDL Notice of Incomplete Encroachment Application for application L-96-S-2100B (Exhibit 5).

## **II. FINDINGS OF FACT**

1. Mr. and Mrs. Allen own Bonner County parcel RPP005450010040A in Bonner County, Idaho. AR pp. 26, 33, and 36.
2. The Allen's property is located adjacent to Lake Pend Oreille and consists of 100 feet of waterfront footage. AR pp. 30 and 32.
3. IDL encroachment permit L-96-S-2100A, issued to Mr. Allen on April 11, 2011, authorized a ten-foot by fifty-foot pier and mooring buoy seventy feet waterward of the Artificial High Water Mark (AHWM) on Lake Pend Oreille. AR, pp. 55 – 64.

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<sup>2</sup> 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.

4. If approved, the pending Application for Mr. Allen's dock would permit one boat lift and consist of 500 square feet of surface decking area. AR pp. 3, 30, and 51.

5. The boat lift is twelve and a half feet (12.5') long and eleven feet (11') wide. AR, p. 42.

6. Mr. Hein owns littoral property adjacent to the Applicant's property, which shares the littoral right line that roughly parallels the Applicant's encroachments. AR, pp. 5, 26, and 30.

7. Mr. Hein objects to the Application; in particular, the location of the existing boat lift. AR, pp. 45.

### III. CONCLUSIONS OF LAW

#### A. IDL Has Jurisdiction Over Lake Pend Oreille.

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. 94; I.C. § 67-5245. The hearing in this matter began shortly after 3:00 p.m. PST and concluded at approximately 4:00 p.m. PST on October 9, 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.

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:

[A]ny 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. Lake Pend Oreille 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. Mr. Allen 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 Mr. Allen,



as owner of property adjacent to Lake Pend Oreille, is a littoral owner, as defined in IDAPA 20.03.04.010.33, and is therefore qualified to make application for an encroachment permit.

**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 Approved.**

1. The 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 existing dock with the boat lift meets the definition of a single-family dock. The dock will be used for private purposes at the Allen’s property, which consists of 100 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 Mr. Allen’ dock meets this requirement, as the widest portion of the dock is ten feet (10’) wide, excluding the lift.

c. IDAPA 20.03.04.015.01.b states that: “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 Mr. Allen’s dock meets this requirement, as the total surface decking area is 500 square feet. The addition of the boat lift does not add to the surface decking area pursuant to IDAPA 20.03.04.015.13.b.i, which provides that “[s]ingle-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. Additional lifts will require that fifty percent (50%) of the footprint of the largest lifts be included in the allowable square footage of the dock or pier as per Subsection 015.01.”

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.” The Applicant’s existing, permitted dock extends fifty feet (50’) waterward of the high water mark. The dock is not being lengthened. And, the boat lift does not extend beyond the dock, but instead is located eighty-two inches (82”) short of the end of the dock. AR, p. 38. I find that the dock with the lift are located within 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.”

i. IDAPA 20.03.04.010.34 defines littoral right lines as “[l]ines 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.”

ii. Accompanying the Application was a survey completed by Mark Duffner of James A. Sewell and Associates, LLC, dated April 30, 2019. AR, pp. 34 and 41. The stamp on this survey shows Mr. Duffner as a professional land surveyor in the State of Idaho. The survey includes Mr. Allen’s property; the existing dock; and the shared littoral right line between the Allen and Hein properties, drawn approximately perpendicular from the generalized shoreline. This survey shows that the dock is located 18.8’ feet from the upland Allen/Hein property line at the shoreline, and 22.5’ from the surveyor’s proposed littoral right line at the end of the dock. The boat lift and the distance between the boat lift and the littoral right line were omitted from the survey.

iii. Also accompanying the Application is a document with the various dimensions of the dock, boat lift, distance between the dock and the proposed littoral right line, and calculations showing the boat lift is located between 122.17 inches (10.18 feet) and 131.69 inches (10.97 feet) from the littoral right line. AR, p. 38

iv. Mr. Hein disagrees with the littoral right line drawn by Mr. Duffner. Mr. Hein claims that the boat lift encroaches between three to five feet into Mr. Allen’s ten-foot setback. AR, p.45 and Rec, 19:18.

v. Mr. Dukes asserted that the survey does not accurately depict the littoral right line. He testified that Mr. Duffner located the littoral right line extending seven and a half degrees ( $7.5^\circ$ ) towards Mr. Hein's property from the extension of the property line, but contends it should be located three degrees ( $3^\circ$ ). Rec, 23:50, 25:55. Mr. Dukes makes this claim based on a map and aerial image obtained from the county. He testified

We can compare Mr. Sewells' map drawing to the photograph from the county . . . If you were to take the lot line between the two lots, and extend it out, at the tip of the dock, it . . . actually gets closer to that line. But, we still have to allow them another let's say three degrees, which is generous, away from that dock, but the survey has the dock parallel to the property of the Allen's or perpendicular to it, whereas the visual map from the county shows it as protruding over towards Mr. Hein's.

Rec, 24:47. Mr. Dukes also testified that he is not a licensed surveyor. Rec, 27:03.

vi. IDL staff testified that the boat lift is not located closer than ten feet ( $10'$ ) to the proposed littoral right line. This testimony was based, in part, on the information provided in the Application, including the Sewell survey, an onsite inspection, and review of aerial imagery and plat maps. AR, p. 53 and Rec, 34:55 and 43:01. Mr. Ahmer testified, "It is fairly common for us to receive applications where an encroachment is located within 10 feet of littoral line, and again, we would analyze the application material along with aerial photographs to see if it jives with the application." Rec, 35:33. However, regarding property line depictions on county aerial maps, Mr. Ahmer, based on his five and a half years employed by IDL, testified:

They are more for graphical purposes as opposed to data purposes. They are skewed. It's a two-dimensional parcel layer on top of a globe and because they have to pull coordinates from different locations they can be extremely off. There are several locations where you see a parcel line cutting right over someone's house and you know the parcel line does not cut over the house; it needs to be shifted over. . . We do not do survey work based on those parcel lines.

Rec, 46:55.

vii. The Idaho Supreme Court has held that “[t]he Department, based on its experience and expertise, is in the best position to determine the proper placement of docks based on the requirements of the Act and the parties’ respective littoral rights. Under the [LPA], the Department may determine whether a proposed dock infringes upon a neighbor’s littoral right.” *Lovitt v. Robideaux*, 139 Idaho 322, 327, 78 P.3d 389, 394 (2003).

viii. IDL staff acknowledged that they did not conduct their own, independent analysis of the littoral right line and did not determine the actual angle that the littoral right line extends from the intersection of the property line with the contours of the shoreline. Rec, 34:00 and 38:52. However, based on IDL staffs’ review of the Application, including the survey, they believe Mr. Duffner’s depiction of the littoral right line is “not unreasonable.” Rec, 42:22.

ix. Other than Mr. Dukes’ non-expert testimony, Mr. Hein did not present any evidence tending to disprove the accuracy of the location of the proposed littoral right line as depicted in the survey by Mr. Duffner.

x. Appropriate weight must be given to the testimony and documentary evidence in the record. Mr. Dukes is not a licensed surveyor, and while he may know how to use a protractor, his experience with surveys and littoral right lines was not established during the hearing. Rec, 27:03. Furthermore, as Mr. Ahmer testified, the documents utilized by Mr. Hein or Mr. Duke to support their proposed bearing of the littoral right line are inexact and more appropriate for depictive or demonstrable purposes – the documents being a county plat which did not include the boat dock and lift, the shoreline, or littoral right line; and an aerial image with two-dimensional parcel overlays. In comparison, as the Idaho Supreme Court has stated, IDL staff are trained and experienced, and in the best position to determine the location of littoral right lines.

One component of IDL's acceptance of the Applicant's proposed location of the littoral right line was the survey prepared by Mr. Duffner, a licensed surveyor. To give more weight to the testimony of Mr. Hein and Mr. Dukes than to the testimony of Mr. Ahmer, Mr. Eshelman, and Mr. Duffner's survey would be inappropriate.

xi. Based on the preponderance of the evidence, I find that the boat lift is located at least ten feet (10') from the littoral right line, as depicted in the survey and accepted by IDL.

2. The littoral rights of an upland owner adjacent to navigable waters include the right "to maintain their adjacency to the lake and make use of their rights" as littoral owners by "building or using aids to navigation," such as a single-family dock with a boat lift. 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.

a. The record does not contain any evidence showing the impact of the boat lift on property, navigation, fish and wildlife habitat, aquatic life, recreation or water quality.

b. The record does contain testimony that the boat lift negatively impacts the aesthetic beauty enjoyed by Mr. Hein from his property. Mr. Hein, from his bedroom window, can see Memaloose Island, Schweitzer Mountain, and Baldy Mountain. Mr. Allen's boat lift, which Mr. Hein does not wish to see, is also now part of this view. Rec, 53:40 and 58:54.

c. As frustrating as it may be to Mr. Hein to lose such a beautiful view, the fact remains, as a littoral owner, Mr. Allen has the right to build and use aids to navigation. *See* IDAPA 20.03.04.010.32. The boat lift is located wholly within Mr. Allen's littoral right area and at least ten feet (10') from the edge of Mr. Hein's littoral area.

3. I find that the boat lift complies with Rules and the economic justification for or benefit of the boat lift, is not outweighed by the Lake Values.

4. I conclude that the Application for this boat lift is approved.

#### **IV. ORDER**

Based upon the foregoing findings of fact and conclusions of law, IT IS HEREBY ORDERED that Encroachment Permit Application No. L-96-S-2100C is APPROVED, subject to any conditions imposed by the Director of the Idaho Department of Lands.

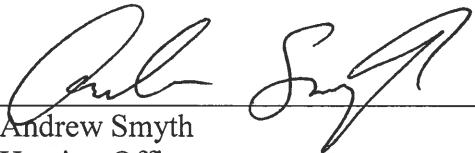
IT IS FURTHER ORDERED that the order issued herein is a Preliminary Order, pursuant to Idaho Code § 67-5245 and the Notice of Appointment of Hearing Officer and Hearing issued on September 13, 2019, which states as follows:

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 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. Idaho Code § 58-1306(c). Because the final decision would be for approval of an encroachment permit, any aggrieved party, other than the Applicant, appealing this final decision must file a bond with the district court in accordance with Idaho Code § 58-1306(c). 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 30<sup>th</sup> day of October, 2019.

  
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Andrew Smyth  
Hearing Officer