November 9, 2021

Outlet Bay Owners Association
PO Box 9943
Spokane WA 99209

Re: Courtesy Notification of Application for Encroachment L97S1210

This letter is to inform you as a courtesy that your neighbor Bonner County Park and Waterways has applied for Encroachment permit on Priest Lake. The enclosed site diagram shows location and indicates dimensions and distances to your mutual property boundary. The boat launch is proposed within the 25’ setback that is recommended by IDAPA. IDAPA Section 20.03.04.015.13.e states that “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 twenty five (25) feet from adjacent littoral right lines…Written consent of the adjacent littoral owner or owners will automatically rebut the presumption. Boat Ramp and other structures attached to the encroachments are subject to the above presumptions of adverse affects.”

Please contact the Department within 10 days from the date of this letter to comment in writing on this proposal. This should include a phone number and/or email address that you can be reached at; and can be submitted by mail or email to Rzandhuisen@idl.idaho.gov. It would be helpful if your comments addressed effects on navigation, fish and wildlife habitat, aquatic life, recreation, water quality, aesthetic beauty, and/or protection of property. Please include facts or documents that support your position. If you have no comments, please sign the enclosed form and return as soon as possible to expedite the processing of the applicant’s permit.

If the Department does not hear from you by November 30, 2021 (approximately 10 days from receipt of this letter), no response will be considered as consent.

If you have questions concerning the application, it is suggested you contact the applicant. If the applicant is unable to answer your questions, please contact us.

Sincerely,

Ryan Zandhuisen, Lands Resource Specialist,
Lands & Waterways
STATE OF IDAHO  
DEPARTMENT OF LANDS  
ATTACHMENT FOR ENCROACHMENT  

Required When Applying for an Idaho Dept. of Lands Lake Encroachment Permit

"Joint COE-IDL Applications* for encroachment must be signed by the riparian or littoral property owner or his lessee. A riparian or littoral owner is the person whose upland property interfaces the ordinary or average highwater mark of a given waterway. A complete application must include the legal description of the upland property; a vicinity map showing the location of the proposal; design plans showing the adjacent boundary lines, encroachment dimensions, water depth, and a lakebed profile, all relative to the ordinary or artificial high water mark; and name and address of the adjacent property owner(s).

DOCK REQUIREMENTS AND SET BACKS

General requirements are as follows:
1)  Encroachment installed perpendicular to the general shoreline.
2)  Encroachment not to extend beyond a depth necessary for customary navigation nor beyond the established line of navigation.
3)  Dock encroachment is not to exceed 700 square feet in size nor 10 feet in width, excluding a slip cutout.
4)  Approach ramp is not to exceed 6 feet in width. ONLY 4 PILINGS ALLOWED.
5)  Structure may not be closer than 10 feet to adjacent property and/or riparian boundary lines without written consent from the adjacent property owner, as riparian lines extend into the water perpendicular from the general shoreline.
6)  Commercial encroachments are required to maintain 25 feet from adjacent property and/or riparian boundary lines.

CONSENT OF ADJACENT RIPARIAN OR LITTORAL PROPERTY OWNERS

Navigational and nonnavigational encroachments located adjacent to an upland property may infringe upon the adjacent property owner. Signature of the owner(s) will automatically rebut this presumption. The owner's signature below and initials per applicant's drawing will complete the permit requirement process.

I, _______________________, am the owner of riparian or littoral property adjacent to the riparian or littoral area listed in this application. I am familiar with the scope and location of the proposed encroachment as evidenced by accompanying plans which I have initialed. I offer no objection to the encroachment.

________________________________________  
Signature  

________________________________________  
Date  

________________________________________  
Name  

________________________________________  
Address  

________________________________________  
Phone  

________________________________________  
Email  

________________________________________  
Signature  

________________________________________  
Date  

________________________________________  
Name  

________________________________________  
Address
## JOINT APPLICATION FOR PERMITS

**U.S. ARMY CORPS OF ENGINEERS - IDAHO DEPARTMENT OF WATER RESOURCES - IDAHO DEPARTMENT OF LANDS**

Authorities: The Department of Army Corps of Engineers (Corps), Idaho Department of Water Resources (IDWR), and Idaho Department of Lands (IDL) established a joint process for activities impacting jurisdictional waterways that require review and/or approval of both the Corps and State of Idaho. Department of Army permits are required by Section 10 of the Rivers & Harbors Act of 1829 for any structure(s) or work in or affecting navigable waters of the United States and by Section 404 of the Clean Water Act for the discharge of dredged or fill materials into waters of the United States, including adjacent wetlands. State permits are required under the State of Idaho, Stream Protection Act (Title 42, Chapter 38, Idaho Code and Lake Protection Act (Section 58, Chapter 13 et seq., Idaho Code). In addition, the information will be used to determine compliance with Section 401 of the Clean Water Act by the appropriate State, Tribal, or Federal entity.

**Joint Application:** Information provided on this application will be used in evaluating the proposed activities. Disclosure of requested information is voluntary. Failure to supply the requested information may delay processing and issuance of the appropriate permit or authorization. Applicant will need to send a completed application, along with one (1) set of legible, black and white (8½''x11''), reproducible drawings that illustrate the location and character of the proposed project / activities to both the Corps and the State of Idaho.

See **Instruction Guide** for assistance with Application. Accurate submission of requested information can prevent delays in reviewing and permitting your application. Drawings including vicinity maps, plan-view and section-view drawings must be submitted on 8-1/2 x 11 papers.

Do not start work until you have received all required permits from both the Corps and the State of Idaho.

### FOR AGENCY USE ONLY

<table>
<thead>
<tr>
<th>Agency</th>
<th>Date Received</th>
<th>Date Returned</th>
<th>Incomplete Application Returned</th>
<th>Fee Received</th>
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<tr>
<td>Idaho Department of Lands</td>
<td>Nov 03 2021</td>
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<tr>
<td>Idaho Department of Lands</td>
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### INCOMPLETE APPLICATIONS MAY NOT BE PROCESSED

#### 1. CONTACT INFORMATION - APPLICANT Required:

Name: Jeff Connolly
Company: Bonner County Parks and Waterways
Mailing Address: 1500 Hwy 2, Suite 101
City: Sandpoint
State: ID
Zip Code: 83864
Phone Number: 208-265-1438
E-mail: jeff.connolly@bonnerountyid.gov

#### 2. CONTACT INFORMATION - AGENT:

Name: Pete Hughes
Company: Bonner County Roads and Recreation
Mailing Address: 1500 Hwy 2, Suite 101
City: Sandpoint
State: ID
Zip Code: 83864
Phone Number: 208-255-5681
E-mail: pete.hughes@bonnerountyid.gov

#### 3. PROJECT NAME or TITLE: Outlet Bay Boat Ramp

#### 4. PROJECT STREET ADDRESS: End of Outlet Bay Rd.

#### 5. PROJECT COUNTY: Bonner County

#### 6. PROJECT CITY: Priest Lake

#### 7. PROJECT ZIP CODE: 83821

#### 8. NEAREST WATERWAY/WATERBODY: Priest Lake

#### 9. TAX PARCEL ID#: NA

#### 10. LATITUDE: 48°29'39.31"N

#### 11. LONGITUDE: 116°53'27.45"W

#### 12a. ESTIMATED START DATE: Nov 1, 2021

#### 12b. ESTIMATED END DATE: 12/31/2025

#### 13a. IS PROJECT LOCATED WITHIN ESTABLISHED TRIBAL RESERVATION BOUNDARIES? NO YES Tribe:

#### 13b. IS PROJECT LOCATED IN LISTED E&A AREA? NO YES

#### 13c. IS PROJECT LOCATED ON/NEAR HISTORICAL SITE? NO YES

#### 14. DIRECTIONS TO PROJECT SITE: Include vicinity map with legible crossroads, street numbers, names, landmarks.

From Priest River, Head North on Hwy 57 towards Priest Lake, Id for 26 miles. Take a right on Outlet Bay Rd. and drive to the end of the road. The boat ramp is located on the end of the road.

#### 15. PURPOSE and NEED: Public

Describe the reason or purpose of your project; include a brief description of the overall project. Continue to Block 16 to detail each work activity and overall project.

On July 14, 2021, Judge Berecz in the District Court of the First Judicial District of Bonner County, ruled that Bonner County has littoral rights to the Outlet Bay Boat Ramp. In the interest of maintaining safe lake access that will benefit public recreation and promote water quality, Bonner County is requesting to acquire an encroachment permit for the Outlet Bay boat ramp, concrete pier, and water hydrant.
The Outlet Bay boat ramp is approximately 87 linear feet, with 34 ft below OHWM and a width of 15 feet. The concrete pier is approximately 32 linear feet from the OHWM (Ordinary High-Water Mark) and a width of 8 feet. The water hydrant sits just below the OHWM on the south side of the ramp. Two sections of the ramp have been recently fixed to correct safety issues of the degrading ramp.
Bonner County requests to acquire a permit to maintain existing structure and adjacent soil erosion protection materials.

This permit would continue to provide safe, public access for the boating public and would help protect lake access and recreational opportunities. The benefit to public interest, safety, and water quality outweighs the minimal impact this access would have to Priest Lake.

The mitigation plan to prevent environmental impact will include but not be limited to:
- Routine inspections throughout the year by Bonner County Recreation employees
- Maintenance of soil and erosion protection materials
- Removal of foreign debris from concrete surfaces
- Signage outlining proper boat launch usage

19. TYPE and QUANTITY of MATERIAL(S) to be discharged below the ordinary high water mark and/or wetlands:

<table>
<thead>
<tr>
<th>Material Type</th>
<th>Quantity</th>
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<tbody>
<tr>
<td>Dirt or Topsoil</td>
<td>_____ cubic yards</td>
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<td>Dredged Material</td>
<td>_____ cubic yards</td>
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<td>Clean Sand</td>
<td>_____ cubic yards</td>
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<td>Clay</td>
<td>_____ cubic yards</td>
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<td>Gravel, Rock, or Stone</td>
<td>_____ cubic yards</td>
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<tr>
<td>Concrete</td>
<td>_____ cubic yards</td>
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<tr>
<td>Other (describe)</td>
<td>_____ cubic yards</td>
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</tbody>
</table>

TOTAL: _____ cubic yards

20. TYPE and QUANTITY of impacts to waters of the United States, including wetlands:

<table>
<thead>
<tr>
<th>Impact Type</th>
<th>Acres</th>
<th>Sq Ft</th>
<th>Cubic Yards</th>
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<tbody>
<tr>
<td>Filling</td>
<td>_____</td>
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<tr>
<td>Backfill &amp; Bedding</td>
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<td>Land Clearing</td>
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<td>Other (describe)</td>
<td>_____</td>
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TOTALS: _____ acres _____ sq ft _____ cubic yards
21. HAVE ANY WORK ACTIVITIES STARTED ON THIS PROJECT?  X NO  □ YES  If yes, describe ALL work that has occurred including dates.

All repairs on the ramp were completed on 11/20/2019.

22. LIST ALL PREVIOUSLY ISSUED PERMIT AUTHORIZATIONS:

Emergency Land Use Permit LU100103

23.  □ YES, Alteration(s) are located on Public Trust Lands, Administered by Idaho Department of Lands

24. SIZE AND FLOW CAPACITY OF BRIDGE/CULVERT and DRAINAGE AREA SERVED: ______ Square Mites

25. IS PROJECT LOCATED IN A MAPPED FLOODWAY?  X NO  □ YES  If yes, contact the floodplain administrator in the local government jurisdiction in which the project is located. A Floodplain Development permit and a No-rise Certification may be required.

26a. WATER QUALITY CERTIFICATION: Pursuant to the Clean Water Act, anyone who wishes to discharge dredge or fill material into the waters of the United States, either on private or public property, must obtain a Section 401 Water Quality Certification (WQC) from the appropriate water quality certifying government entity. See Instruction Guide for further clarification and all contact information.

The following information is requested by IDEQ and/or EPA concerning the proposed impacts to water quality and anti-degradation:

□ NO  □ YES Is applicant willing to assume that the affected waterbody is high quality?
□ NO  □ YES Does applicant have water quality data relevant to determining whether the affected waterbody is high quality or not?
□ NO  □ YES Is the applicant willing to collect the data needed to determine whether the affected waterbody is high quality or not?

26b. BEST MANAGEMENT PRACTICES (BMP's): List the Best Management Practices and describe these practices that you will use to minimize impacts on water quality and anti-degradation of water quality. All feasible alternatives should be considered - treatment or otherwise. Select an alternative which will minimize degrading water quality.

BMP’s will shadow the Mitigation Plan outlined in box 11.

Idaho Department of Lands
Received

NOV 03 2021

Priest Lake
Supervisory Area

Through the 401 Certification process, water quality certification will stipulate minimum management practices needed to prevent degradation.

27. LIST EACH IMPACT to stream, river, lake, reservoir, including shoreline: Attach site map with each impact location.

<table>
<thead>
<tr>
<th>Activity</th>
<th>Name of Water Body</th>
<th>Intermittent Parrenial</th>
<th>Description of Impact and Dimensions</th>
<th>Impact Length (Linear Feet)</th>
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<tbody>
<tr>
<td>Maintain Existing Boat Ramp</td>
<td>Priest Lake</td>
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TOTAL STREAM IMPACTS (Linear Feet): 34

28. LIST EACH WETLAND IMPACT include mechanized clearing, fill, excavation, flood, drainage, etc. Attach site map with each impact location.

<table>
<thead>
<tr>
<th>Activity</th>
<th>Wetland Type: Emergent, Forested, Scrub/Shrub</th>
<th>Distance to Water Body (linear ft)</th>
<th>Description of Impact Purpose: road crossing, compound, culvert, etc.</th>
<th>Impact Length (acres, square ft)</th>
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TOTAL WETLAND IMPACTS (Square Feet):
29. ADJACENT PROPERTY OWNERS NOTIFICATION REQUIREMENT: Provide contact information of ALL adjacent property owners below.

<table>
<thead>
<tr>
<th>Name: Outlet Bay Owners Association</th>
<th>Name:</th>
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<tbody>
<tr>
<td>Mailing Address: Po Box 9943</td>
<td>Mailing Address:</td>
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<tr>
<td>City: Spokane</td>
<td>State: Wa</td>
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<tr>
<td>Zip Code: 99209</td>
<td>Zip Code:</td>
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<tr>
<td>Phone Number (include area code):</td>
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30. SIGNATURES: STATEMENT OF AUTHORIZATATION / CERTIFICATION OF AGENT / ACCESS

Application is hereby made for permit, or permits, to authorize the work described in this application and all supporting documentation. I certify that the information in this application is complete and accurate. I further certify that I possess the authority to undertake the work described herein; or am acting as the duly authorized agent of the applicant (Block 2). I hereby grant the agencies to which this application is made, the right to access/come upon the above-described location(s) to inspect the proposed and completed work/activities.

Signature of Applicant: __________________________ Date: 10-25-21

Signature of Agent: __________________________ Date: 10-25-21

This application must be signed by the person who desires to undertake the proposed activity AND signed by a duly authorized agent (see Block 1, 2, 30). Further, 18 USC Section 1001 provides that: "Whoever, in any manner within the jurisdiction of any department of the United States knowingly and with full knowledge falsifies, conceals, or covers up any trick, scheme, or disguises a material fact or makes any false, fictitious, or fraudulent statements or representations or makes or uses any false writing or document knowing same to contain any false, fictitious or fraudulent statements or entry, shall be fined not more than $10,000 or imprisoned not more than five years or both".
This information sheet and checklist must be completed when submitting an encroachment permit application. Incomplete applications will be returned without processing.

**ENCROACHMENT TYPE:**
- Community dock
- Commercial marina
- Bank stabilization
- Float home
- Boat garage
- Mooring buoy(s)
- Other - describe: Concrete Boat Launch

**Applicant’s Littoral Rights Are:**
- Owned, fee simple title holder
- Leased
- Other - describe: Public Property

Provide a Black/White Copy of Each Required Document on 8½”x14” or Smaller Paper:
- County plat map showing both neighboring littoral lots.
- Tax record identifying the owner of the upland parcel(s)
- Lakebed profile with encroachment and water levels of winter and summer
- General vicinity map that allows Department to find the encroachment
- Scaled air photo or map showing lengths of nearby encroachments, distances to adjacent encroachments, and location and orientation of the proposed encroachment.

**Are Existing Docks or Other Encroachment(s) Permitted On This Parcel(s)?**
- No
- Yes Please attach a current photograph and a “to scale” drawing (see Document Requirements Above)

Permit # LU100203 Date of Construction: 11/20/2019

What will happen to the existing dock or encroachment if this permit application is approved?
- Remain unchanged
- Complete removal
- Modification
- Other: Maintenance

(Please note that old dock materials must be removed from the lake. Discarding these materials creates serious boating safety issues and offenders will be subject to prosecution and penalties.)

**How Many Feet Does the Proposed Encroachment Extend Beyond the Ordinary (or Artificial) High Water Mark?** 34 feet

**The Proposed Dock Length Is:**
- The same or shorter than the two adjacent docks
- Longer than the two adjacent docks
- Longer than the two adjacent docks, but within the line of navigability established by the majority of existing docks in the area.

Feet and not located near any other docks or other encroachments.

**For Community Docks, Does the Proposed Dock Exceed the Maximum Square Footage of 7 ft² per Littoral Front Foot?**
- No
- Yes Total square footage: ______ ft²

**For Community Docks, Does the Property Have at Least 50 Feet of Littoral Frontage?**
- Yes Total front footage: ______ feet
- No
Will the Proposed Encroachment Exceed the Maximum Width of 10 Feet?
☐ - No
☒ - Yes  If yes, explain why: Boat Ramp 15 ft, Concrete Pier 8 ft

Will the Proposed Encroachment Be Located Closer Than 25 Feet to the Riparian/Littoral Right Lines Established With Your Neighbors?
☐ - No
☒ - Yes  If yes, what are the proposed distances? _____ feet
☐ - Consent of affected neighbor was obtained

Determining Riparian/Littoral Right Lines
Littoral right lines are not simple extensions of the upland property lines. Littoral right lines are generally perpendicular, or at right angles, to the shoreline. Curved shorelines or unusual circumstances may require Department Staff, or other professionals, to closely examine littoral right lines and assess the potential for infringement on adjacent littoral property owners.

Pete Hughes  10/27/2021
Printed Name  Date

Signature of Applicant or Agent

Idaho Department of Lands
Received

NOV 03 2021
Priest Lake
Supervisory Area

Commercial/Community/Non-navigational Application
Page 2 of 2
IN THE DISTRICT COURT OF THE FIRST JUDICIAL DISTRICT OF THE STATE OF IDAHO, IN AND FOR THE COUNTY OF BONNER

OUTLET BAY OWNERS ASSOCIATION, INC., an Idaho non-profit corporation, Plaintiff,

vs.

BONNER COUNTY, of the State of Idaho, and the STATE OF IDAHO, acting through the Idaho Department of Lands, Defendant.

Case No. CV09-20-0969

MEMORANDUM ORDER AND DECISION ON MOTIONS FOR SUMMARY JUDGMENT

This matter came before the court on June 9, 2021, for a hearing on State of Idaho’s Motion for Summary Judgment, filed on March 10, 2021, Plaintiff Outlet Bay Owners Association’s (OBOA) Motion for Partial Summary Judgment, filed on May 12, 2021, and Bonner County’s (the County) Motion for Summary Judgment, filed on May 12, 2021. John F. Magnuson represented Plaintiff Outlet Bay Owners Association. Darrin L. Murphey and Mauricio Cardona, of Davillier Law Group, LLC, represented Defendant Bonner County. Angela Schaefer Kaufman, with the Attorney General’s Office, represented Defendant State of Idaho, Department of Lands. Counsel for all parties were present via Zoom.

I. PROCEDURAL HISTORY

OBOA filed a Complaint on July 29, 2020, requesting declaratory relief against the County and the State of Idaho. OBOA further asserted, against the County, causes of action for declaratory relief, quiet title, equitable estoppel, and civil contempt. OBOA also asserted a claim for breach of contract against the State of Idaho and Idaho Department of Lands (IDL). The County filed an Amended Answer, Counterclaims, and Cross Claims on October 14, 2020. The State of Idaho
filed an Amended Answer on February 4, 2021. This matter is set for a two day Court Trial on October 18, 2021.

II. LEGAL STANDARD

Pursuant to Idaho Rule of Civil Procedure 56, "[t]he court must grant summary judgment if the movant shows that there is no genuine dispute as to any material fact and the movant is entitled to judgment as a matter of law." I.R.C.P 56(a). In determining whether an issue of material fact exists, all disputed facts are liberally construed and all reasonable inferences made in favor of the non-moving party. *G&M Farms v. Funk Irrigation Co.*, 119 Idaho 514, 517, 808 P.2d 851, 854 (1991). The moving party has the burden of proving the absence of material fact. *Id.* However, when all parties move for summary judgment “based on the same evidentiary facts and on the same theories and issues, the parties effectively stipulate that there is no genuine issue of material fact, and summary judgment is appropriate.” *Volco, Inc. v. Lickley*, 126 Idaho 709, 710, 889 P.2d 1099, 1100 (1995).

Moreover, where the trial court rather than a jury will be the trier of fact, the trial court “is entitled to arrive at the most probable inferences based upon the undisputed evidence properly before it and grant the summary judgment despite the possibility of conflicting inferences.” *P.O. Ventures, Inc. v. Loucks Fam. Irrevocable Tr.*, 144 Idaho 233, 237, 159 P.3d 870, 874 (2007). As such, summary judgment is appropriate despite the possibility of conflicting inferences, because the court alone will be responsible for resolving the conflict between those inferences. *State of Idaho Dept. of Finance v. Resource Service Co., Inc.*, 130 Idaho 877, 880, 950 P.2d 249 (1998) (citing *Riverside Development Co. v. Ritchie*, 103 Idaho 515, 519, 650 P.2d 657, 661 (1982)); see also *Hoffer v. Callister*, 137 Idaho 291, 293, 47 P.3d 1261, 1263 (2002).
III. UNDISPUTED FACTS

At issue in this case is the boat ramp located at the end of Outlet Bay Road which extends into Priest Lake. Specifically, who owns the littoral rights associated with the boat ramp, OBOA or the County? Except for the fact of ownership of the boat ramp, the facts in this case are undisputed. That is, outside of the legal determination of the littoral rights associated with the boat ramp, the parties agree on the historical and current facts. Thus, the following facts are drawn from the parties’ submitted statements of fact. Likewise, the parties’ exhibits to their respective motions and briefing are accepted by the Court without objection. Together, they show the following:

In 1936, the plat of “Outlet Beach” was recorded in Book 1 of Plats, page 169, Records of Bonner County, Idaho. The Outlet Beach plat created multiple lots, each fronting on Priest Lake. The plat also dedicated River Drive, now known as Outlet Bay Road, which runs east-west along the southern boundary of the platted property and intersects with the high water mark of Priest Lake. The plat “dedicate[d] the streets as set forth on this Plat to the public use.” Outlet Beach lots were subsequently sold or otherwise conveyed by instruments that refer to the plat. The plat is shown below:
In the 1950s, the public launched canoes and small boats into Priest Lake from the end of River Drive (now Outlet Bay Road). The road's gradual slope into Priest Lake made for a natural location to launch canoes or small boats into Priest Lake. In approximately 1960 or 1961, Richard and Oliver Barnes, the then-owners of the Outlet Bay resort, constructed a boat ramp at that location.
location. Specifically, the boat launch was constructed where Outlet Bay Road meets Priest Lake, and out over the submerged beds of Priest Lake. The boat ramp has been used by the public since its construction.

Across Priest Lake lie lots to which there is no constructed road access. Thus, these lots are accessible only from the waterfront. The Outlet Bay Road boat ramp is one such access. However, during and around the winter months, the lake’s water levels drop, revealing an unnavigable sandbar east of the boat ramp. That sandbar results in the Outlet Bay Road boat ramp being the sole ingress to the cross-lake waterfront lots. That sole public access condition has been in effect for more than seventy years.

Starting in 1978, the Outlet Bay Resort, through its owners (first, the Barneses, then, Donald Stratton, and now, OBOA), obtained four encroachment permits and two land leases from IDL related to their waterfront on Priest Lake. The 1978 encroachment permit authorized the construction and maintenance of “pilings and moorage slips.” An encroachment permit issued in 1981 authorized “a 90’ x 21’ L-shaped dock and three (3) pilings.” In 1989, an encroachment permit was issued for the replacement of 37 existing slips, construction of 30 new slips, and maintenance of an existing gas dock and breakwater. Finally, in 2009, OBOA applied for and received an encroachment permit, which authorized removal of the “C Dock” system, and authorized the “A Dock” and “B Dock” systems. That 2009 permit, L-97-S-747B (hereinafter “747B”) is the permit that remains in force today.

OBOA also obtained two submerged lands leases from IDL relating to OBOA’s property on the lakeshore. The first lease ran from January 1, 2009 through December 31, 2018. The second lease’s term is from January 1, 2019 through December 31, 2029.

Never has an encroachment permit been issued to OBOA allowing for the boat ramp. Nor
have the submerged land leases encompassed the boat ramp. The only mention of the boat ramp is in the current encroachment permit 747B wherein it discusses the boat ramp in terms that recognize it as a public boat ramp. In 747B it is required by IDL that: “Bonner County’s boat launch is to be maintained in a manner that allows for unencumbered public access. The launch area and pier are to be kept clean and safe during all project related work.” Notably, 747B has never been amended to add the boat ramp.

Both OBOA (and its predecessor) and the County have claimed ownership of the boat ramp and sought encroachment permits for the ramp in the past. However, IDL has not issued a permit for the boat ramp to either entity as neither party established ownership to IDL’s satisfaction. The owners of the OBOA property, at times, claimed ownership of the boat ramp. The County has had fluctuating positions on who owns the boat ramp. At times the County asserted ownership, and at other times, various County officials (and even State officials) have opined that the boat ramp was private.

The following facts are an instructive example on the uncertainty of the boat ramp’s ownership:

In 1997, Mr. Stratton placed a gate at or near the point at which Outlet Bay Road ends and the boat ramp begins, and partially below (waterward) of the ordinary high water mark (“OHWM”) on Priest Lake. After meeting with Mr. Stratton, IDL Administrator Will Pitman sent a letter to Mr. Stratton, ordering him to remove the portion of the gate below the OHWM. That letter further provides that “[t]he gate does not have an encroachment permit and therefore is in violation of the [LPA].” Shortly thereafter, Mr. Stratton filed an “after the fact” application for encroachment permit for the gate. IDL denied the application, and its related Findings of Fact, Conclusions of Law and Order” made the following findings and conclusions, among others:

- “A launch ramp for boats is located waterward of the OHWM and has been used for launching boats from the street, River Drive. The public claims to have been using the launch ramp for more than the last 50 years.”
- “Outlet Beach subdivision was platted in 1936. The streets associated
with the subdivision were dedicated to public use. River View Street is included in the subdivision.

- "The closed gate prevents launching of boats but does not prevent pedestrian access to the lake."
- "IDL has never granted an encroachment permit for a gate waterward of the OHWM. Granting such encroachment would impair the public’s right to access public submerged trust lands."
- "It is not clear that Donald Stratton owns the riparian rights abutting River View street. It is arguable that the public street has gained the riparian rights through over 50 years of usage as a launch ramp."
- "IDL concludes, based upon pertinent factual and legal considerations, that subject after-the-fact encroachment permit application must be denied for the following reasons:
  a) The general public opposes gating off of public submerged trust lands by place a gate waterward of the OHWM.
  b) IDL has never granted a gate waterward of the OHWM. There is no support for IDL to grant such an unusual encroachment permit.
  c) The historic usage by the public of the ramp may impair Donald Stratton’s riparian right at the end of River View. Donald Stratton may not be qualified to apply for the subject encroachment permit. The granting of such encroachment permit may violate the riparian right to the public.

Mr. Stratton then filed a request for reconsideration, which IDL denied. IDL made the following findings of fact and conclusions of law, among others:

- "The record also shows that in its current location, the gate impairs the public’s use of the boat launch and lake. Pedestrians wishing to access the Lake by the public street, River Drive, find themselves confronted by a locked gate which indicates that access to the Lake is not available."
- "The gate is located at the end of River Drive. River Drive is a county road, which provides access to developed lots and to Priest Lake. The road provides access to residential lots, as well as to the lake."
- "Ownership of River Drive and the associated riparian rights are in dispute. There is conflicting evidence in the record regarding whether Stratton holds an ownership interest and riparian rights in the upland property adjacent to the encroachment. There is an unresolved question as to whether the boat launch is public or owned by Stratton. Testimony and written documentation indicate that the public has used this launch site for several years, perhaps dating back to when it was constructed. The public has also traditionally paid a fee to the marina operation(s) for that use."
- "IDL does not have authority to adjudicate disputed property interests in upland property, such as River Drive. The question of ownership and riparian rights is a matter between the [sic] Stratton and third parties and
must be resolved separately from this reconsideration proceeding, possibly by a court of law.”

- “Stratton has failed to demonstrate conclusively that he has riparian rights entitling him to obtain an encroachment permit.”

In 2000 or 2001, Bonner County applied for an encroachment permit for the boat ramp. IDL’s files no longer contain a copy of that application. However, IDL’s files contain a letter from IDL to Bonner County Commissioner Tom Suttmeier dated November 29, 2001, which provides in pertinent part: “On March 6, 2000, Mr. Pitman then Administration Idaho Lake Protection Act sent a letter requesting information concerning the riparian right ownership . . . To date [IDL] has not received the above-stated information proving the county owns the riparian right in the subject area of Outlet Bay.” Because IDL had not received the requested information, it returned the application and drawings, and refunded the associated fees.¹

In 2002, OBOA brought a lawsuit against the County that sought, among other things, a declaration that the County did not have the right to own or maintain the boat launch. In 2004, the District Court entered a stipulated Order of Dismissal that did not resolve the issue of littoral rights. The dismissal order resolved a conditional use permit dispute between OBOA and the County without determining ownership of the boat ramp (or more specifically, ownership of the littoral rights associated with the boat ramp). As to that issue, the stipulated order provided:

Outlet Bay Owners Association, Inc. will remove any signs on its property referring to the boat launch as private. Neither party shall erect any sign in the vicinity of the boat launch ramp concerning its status or use.

Neither party shall interfere with the lawful use of the boat launch ramp; however, this decision shall not derogate or abridge the rights of Outlet Bay Owners Association, Inc. or its members to protect their private property rights.

Thus, that lawsuit left the ownership of littoral rights associated with the boat launch unsettled.

The ownership of littoral rights associated with the boat launch became an issue again several years later. In October 2019, after receiving complaints from the public regarding the boat ramp at the terminus of Outlet Bay Road needing repairs, the County began repairs on the boat


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ramp above the OHWM to avoid an accident or injury to the public. However, staff inadvertently began making repairs below the OHWM. Therefore, on November 6, 2019, the County requested an emergency Land Use Permit from IDL authorizing urgent and necessary repairs on the boat ramp below the OHWM.

On November 14, 2019, IDL issued Land Use Permit No. LU10013. IDL issued the permit “to protect the health, safety and welfare of the public,” pursuant to IDAPA 20.03.04.035. Additionally, IDL ensured the permit was limited in scope and duration. The permit specifically did not authorize any repair, construction, or maintenance activities above the OHWM, or on any structures below the OHWM other than the boat ramp, and required the owner of the littoral rights to submit an application for an encroachment permit for the boat ramp no later than November 14, 2020. Neither the County nor OBOA submitted an application by that date. The permit was also clear that it did not constitute a determination of who owned the littoral rights.

In a variety of communications with the State and the County, OBOA objected to the issuance of the temporary permit and to any work done by the County. Nonetheless, the County moved forward. The County undertook the boat ramp repair work during the winter when the boat ramp, the docks, and the boat slips were not in use. It completed the repairs and has no further work to do under the temporary permit. In response, OBOA filed this lawsuit.

IV. DISCUSSION

The parties in this case filed cross motions for summary judgment. The main issue in this case is ownership of the littoral rights associated with the boat ramp at the end of Outlet Bay Road. As such, that issue will be addressed first, followed by an analysis on the remaining claims.
A. Ownership of the littoral rights

The pivotal issue that resolves all of the claims in this case is ownership of the littoral rights associated with the boat ramp. A littoral property owner generally possesses particular littoral rights, which include "the right of access to the water, and, subject to state regulation, the right to build wharves and piers in aid of navigation." *Newton v. MJK/BJK, LLC*, 167 Idaho 236, 243, 469 P.3d 23, 30 (2020) (quoting *West v. Smith*, 95 Idaho 550, 554, 511 P.2d 1326, 1330 (1973)) (internal quotation marks omitted). The Lake Protection Act (LPA) defines littoral rights as:

[O]nly the rights of owners or lessees of land adjacent to navigable waters of the lake to maintain their adjacency to the lake and to make use of their rights as riparian or littoral owners or lessees in building or using aids to navigation but does not include any right to make any consumptive use of the waters of the lake

I.C. § 58-1302(f).

This issue of ownership of the littoral rights hinges on whether the dedication of Outlet Bay Road for public use granted the County an easement or a deed in fee simple. If the County has only an easement, then OBOA owns the littoral rights. *See Lake CDA Invs., LLC v. Idaho Dep't of Lands*, 149 Idaho 274, 283, 233 P.3d 721, 730 (2010) (where the landowner granted State a highway easement, and the Court found the easement does not terminate the littoral rights of the landowner whose property is subject to the easement). If OBOA owns the littoral rights, OBOA is the only one with the right to seek encroachment permits. *See IDAPA 20.03.04.020. However,

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2 While *Lake CDA Invs., LLC* is instructive on this issue of whether an easement owner obtains littoral rights (they do not), this Court disagrees with OBOA that the case is dispositive to this litigation. *In Lake CDA Invs., LLC*, there was never a dispute about whether the highway land was deeded in fee simple. *Lake CDA Invs., LLC*, 149 Idaho at 281–82, 233 P.3d at 729. Rather, only an easement was deeded in that case. *Id.* As noted in the decision: "When the 1940 Deed was granted, the State took only an easement... No party has challenged on appeal the district court's finding that the 1940 Deed granted only an easement." *Id.* at 274, 278 n.1, 223 P.3d at 725 n. 1. Thus, the Court's holding that the landowners maintained their littoral rights becomes applicable to OBOA's situation only if the County received only an easement in Outlet Bay Road as opposed to receiving the land in fee simple. *Id.*

3 Even so, as discussed below further, assuming, *arguendo*, OBOA is the owner of the littoral rights, it has no encroachment permit or lease to the boat ramp.

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if the County owns the littoral rights, OBOA has no standing or other grounds to complain about
the County's or the State's actions regarding the boat ramp.

1. Easement or Fee Simple

In deciding whether the County was granted an easement or a deed in fee simple, the Court
analyzes what type of dedication occurred when the landowner recorded the plat in 1936. When
property is dedicated, the owner is setting aside the property for the use or ownership of others.
dedicated to the public by common law or statute. Id.

a. Common Law Dedication

Under the common law, a dedication to the public must meet a two-prong test: (1) "the
landowner must clearly and unequivocally indicate intent to dedicate the land to the public" (offer);
and (2) "the public must accept the offer" (acceptance). Id. The offer to dedicate may be made
by recording or filing a plat depicting the specific areas subject to dedication." Ponderosa Home
(Ponderosa). To determine a landowner's intent, the Court must not only examine the plat, but
also "the surrounding circumstances and conditions of the development and sale of lots." Id.;
Rowley, 156 Idaho at 278, 322 P.3d at 1011. Moreover, the Court should "examine a plat like a
deed, applying the plain language if it is unambiguous." Rowley, 156 Idaho at 278, 322 P.3d at
1011. In the absence of clear language, a plat dedication may be found if it is possible to infer the
landowner's intention from the plat's layout or from other surrounding circumstances. Smylie v.
Pearsall, 93 Idaho 188, 191, 457 P.2d 427, 430 (1969). As stated by that Court:

We do not view the absence of a written designation in specific spaces on the plat
as always foreclosing the possibility of a public dedication of the areas so
represented. It has been recognized that the original owner's intent to accomplish
such a dedication may be inferred from other circumstances.
Conversely, if the landowner’s intention to dedicate property to the public is unclear, a dedication may not have occurred. For example, in *Ponderosa*, a 1961 plat showed a small, lakeshore property between two lots connecting with the public road as “lake access.” 139 Idaho at 700, 85 P.3d at 676. The “lake access” was not mentioned in the dedication and no other documents stated who owned the “lake access.” *Id.* In reviewing the plat, the Court determined that the “lake access” intersected the public road similarly to the other lots. *Id.* at 702, 85 P.3d at 678. As such, the Court distinguished the “lake access” in *Ponderosa* from the parcel in another case (*Smylie*) because the “lake access” in *Ponderosa* was not a continuation of the dedicated public road as was the *Smylie* parcel. *Id.* Thus, because the *Ponderosa* lake access was unremarkable in relation to other properties and no intention could be inferred from the plat, no dedication was made.


In this case, the plat map explicitly states that “... to the place of beginning, and do hereby dedicate the streets as set forth on this plat to public use.” *See* Murphey Decl. Ex. A, filed May

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4 Similar to this case, the *Smylie* case involved public access to Priest Lake via the end of a driveway. In *Smylie*, the parcel at issue abutted to the terminus of a driveway between lots and was not labeled on the plat. *Id.* at 189, 191, 457 P.2d at 428, 430. The Court determined that it appeared that the parcel was a continuation of the driveway providing natural access to the lake. *Id.* at 192, 457 P.2d at 431. Thus, the Idaho Supreme Court found that the plat at issue was a common law dedication to the public for the benefit of not only the lot owners, but the public generally. *Id.* at 193, 457 P.2d at 433.

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12, 2021. There are only two streets on the plat, “Lake Street” and “River Drive.” There can be no ambiguity or confusion regarding the landowner’s intent to dedicate River Drive (or what is now called Outlet Bay Road) to the public. That intention is explicitly and unequivocally stated on the plat map.

Intent to dedicate to the public is further demonstrated by “the surrounding circumstances and conditions of the development and sale of lots.” Home Site Lot Owners, 139 Idaho at 701, 85 P.3d at 677. The area at issue in this case is where the dedicated road intersects with the lake. The dedicated road gradually slopes and continues into the lake, providing natural access to the lake. Thus, the physical condition of the road itself lends to an inference that the road was dedicated as public lake access. As noted earlier, the public has used Outlet Bay Road slope into Priest Lake as a public boat launch continuously since the 1950s. This use continued unabated, notwithstanding the development and sale of the Outlet Bay Resort lots. Such use before, during, and after the development and sale of the surrounding lots is a compelling factor in determining the intent behind the dedication. See Smylie, 93 Idaho at 190, 457 P.2d at 429 (observing that: “As a matter of geography, the court found that the disputed parcel forms a natural boat launching and landing area at the terminus of the driveway which was marked on the plat. Moreover, several of the Paradise Point lot owners used the parcel as such.”).

Thus, as in Smylie, the “surrounding circumstances” also support a finding that the landowner intended to provide public access to the lake via Outlet Bay Road (which now includes the later added boat ramp).

As for the acceptance prong, there is no dispute the County accepted the dedication. As just discussed, the public used the area where the dedicated road intersects with the lake to launch
canoes and small boats, both prior to and subsequent to the installation of the boat ramp, for decades. Accordingly, the two-prongs for a common law dedication are met.

b. Statutory Dedication

Although the common law dedication prongs above are met, the stronger reasoning lies in a statutory dedication analysis.

"Statutory dedication is based on the statutes in effect when the owner dedicated the land." Rowley, 156 Idaho at 281, 322 P.3d at 1014. In 1936, the time of the River Drive dedication via plat, two potentially applicable statutes were in effect. One of those statutes regarding the taking of land for a highway, read:

Public acquires only an easement.—By taking or accepting land for a highway, the public acquires only the right of way and the incidents necessary to enjoying and maintaining it. All trees within the highway, except only such as are requisite to make or repair the road or bridges on the same land are for the use of the owner or occupant of the land.

I.C. § 39-301 (1932). The second statute in place in 1936 was specific to plat dedications and read:

Effect of acknowledging and recording plat.—The acknowledgment and recording of such plat is equivalent to a deed in fee simple of such portion of the premises platted as is on such plat set apart for streets or other public use; or as is thereon dedicated to charitable, religious or educational purposes.

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5 The legislature amended this statute several times and it currently reads, in pertinent part, as follows:

Public acquires fee simple title. By taking or accepting land for a highway, the public acquires the fee simple title to said property. Providing that the person or persons having jurisdiction of such highway may take or accept such lesser estate as they may deem requisite for their purposes.

I.C. § 40-2302.
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I.C. § 49-2205 (1932). An owner’s intent to dedicate land for streets or other public use must be stated in the plat’s designation. See Idaho Code § 49-2205, Rowley, 156 Idaho at 281, 322 P.3d at 1014 ("…owners must provide a statement of their intent to include land in their plat and that land is dedicated when it is ‘set apart for streets or other public use.’"). As with common law dedications, statutory dedications must be clear and unequivocal. Id. at 282, 322 P.3d at 1015.

Where, as here, two statutes cover the same subject matter, those statutes “are to be construed together to the end that legislative intent will be effected.” State v. Horejs, 143 Idaho 260, 266, 141 P.3d 1129, 1135 (Ct. App. 2006). Id. Further, a specific statute addressing an issue controls over a more general statute that addresses the same issue. Valiant Idaho, LLC v. J.V. L.L.C., 164 Idaho 280, 289, 429 P.3d 168, 177 (2018); see also City of Sandpoint v. Sandpoint Indep. Highway Dist., 126 Idaho 145, 149, 879 P.2d 1078, 1082 (1994); Walker v. Shoshone Cty., 112 Idaho 991, 994, 739 P.2d 290, 293 (1987). In interpreting statutes, the Court is bound by the principles of statutory construction. See City of Sandpoint, 126 Idaho at 150, 879 P.2d at 1083 (1994). The Court construes statutes “under the assumption that the legislature was aware of all other statutes and legal precedence at the time the statute was passed.” Pioneer Irr. Dist. v. City of Caldwell, 153 Idaho 593, 600, 288 P.3d 810, 817 (2012); City of Sandpoint, 126 Idaho at 150, 879 P.2d at 1083. Additionally, the Court has an obligation, where possible, “to adopt a

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6 The legislature later amended that statute to read:

The acknowledgment and recording of such plat is equivalent to a deed in fee simple of such portion of the premises platted as is on such plat set apart for public streets or other public use, or as is thereon dedicated to charitable, religious or educational purposes; provided, however, that in a county where a highway district exists and is in operation no such plat shall be accepted for recording by the county recorder unless the acceptance of said plat by the commissioners of the highway district is endorsed thereon in writing.

I.C. § 50-1312.

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construction that will harmonize and reconcile statutory provisions and to avoid an interpretation
that will render a statute a nullity.” *Horejs*, 143 Idaho at 266, 141 P.3d at 1135.

The Court must, therefore, apply the above principles to Idaho Code §§ 39-301 (1932) &
49-2205 (1932). Idaho Code § 39-301 (1932) generally states that an easement is acquired when
land is taken for a highway by the State. This statute does not address the variety of ways in which
the State may have acquired the highway. In contrast, Idaho Code § 49-2205 (1932) specifically
addresses the single way land is dedicated for public use via a plat. That is, Idaho Code § 49-2205
(1932) more narrowly, or specifically, addresses what happens when a road is dedicated to public
use via a plat dedication. In that specific or unique situation, the State (or County in this instance)
receives the property in fee simple.

The above statutes were both passed in the same year. Court must presume the Legislature
was aware of both statutes and intended them to be read in harmony. Harmonious reading can
only be achieved by recognizing Idaho Code § 49-2205 as applicable only in the specific situation
when a street or roadway is dedicated to the public via a plat. In all other scenarios by which the
State may acquire a highway, Idaho Code § 39-301 applies. Put another way, Idaho Code § 49-
2205 (1932) is the more specific statute while Idaho Code § 39-301 is the general statute.

There is a logic to such a reading as well. As the State can exercise its power to take land
from a landowner for a highway in a variety of ways, the Legislature may well have been balancing
the public’s need for a highway against the rights of a landowner whose property has been taken.
In such a scenario, the public only received an easement, thus reserving in the landowner all
attendant rights, superior to the public.7 In contrast, where a developer or landowner, dedicates a

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7 In its latest amendment to this statute, I.C. § 40-2302, whereby the Legislature provides the State may take
property for a highway in fee simple, the Legislature still maintains this possibility that a lesser title can be
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street to the public, the public receives it in fee simple, and the landowner reserves no interest. Contrary to some situations where the State takes land, there is no lack of voluntariness on the part of the landowner dedicating the streets in a plat. Thus, the voluntary dedication results in a greater property interest than that realized via the involuntary act of government usurpation.

The County acquired its interest when the plat of Outlet Beach was recorded and River Drive was dedicated to the public. Accordingly, the Court will apply Idaho Code § 49-2205 (1932) as the more specific, plat-derivative statute governing the County’s ownership interest.

Having determined which statute applies, the Court turns back to the issue of whether a statutory dedication occurred. As discussed earlier, the River Drive landowner’s dedication intent is clearly and unequivocally stated on the plat. Again, acceptance is demonstrated in the same manner as previously discussed. Thus, the Court finds that a statutory dedication, pursuant to Idaho Code § 49-2205 (1932), occurred. Therefore, under that statute, the County received a deed in fee simple to River Drive (now Outlet Bay Road). As the owner in fee simple, the County owns the littoral rights associated with the road and boat ramp.

2. **Doctrines of Estoppel**

Relating to the issue of who owns the littoral rights, OBOA requests declaratory relief stating that the County is estopped from denying OBOA’s ownership of the littoral rights. The Idaho Supreme Court has held that the doctrine of estoppel may be used to prevent an entity from taking a position inconsistent with previous actions. *City of Sandpoint*, 126 Idaho at 150, 879 P.2d at 1083. The doctrine of quasi-estoppel requires the following:

> [T]he offending party must have gained some advantage or caused a disadvantage to the party seeking estoppel; induced the party seeking estoppel to change its position to its detriment; and, it must be unconscionable to allow the offending

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taken: “Providing that the person or persons having jurisdiction of such highway may take or accept such lesser estate as they may deem requisite for their purposes.”

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party to maintain a position which is inconsistent from a position from which it has already derived a benefit.

Id. at 151, 879 P.2d at 1084. Likewise, a party asserting a claim of equitable estoppel must demonstrate:

(1) a false representation or concealment of a material fact with actual or constructive knowledge of the truth;
(2) that the party asserting estoppel did not know or could not discover the truth;
(3) that the false representation or concealment was made with the intent that it be relied upon; and
(4) that the person to whom the representation was made, or from whom the facts were concealed, relied and acted upon the representation or concealment to his prejudice.


Here, OBOA has identified no material facts which would prevent the County from asserting ownership of the littoral rights. While there have been changing positions over time,⁸ the County officials cannot change public land ownership just by asserting an opinion. OBOA has not identified a single element of quasi-estoppel, let alone all the required elements. No evidence shows that the County has gained an advantage over OBOA regarding the boat ramp or that the County induced OBOA to change a position. No facts support a finding of unconscionability in the County now asserting public ownership of the boat ramp as the County never derived a benefit from a previous contrasting position. Similarly, none of the elements of equitable estoppel are met. To begin with, there is no showing of a false representation or concealment of a material fact with actual or constructive knowledge of the truth by the County. Without that fundamental first element, OBOA is unable to show the remaining three elements cited above.

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⁸ See, e.g., McEachern Decl. Ex. F, filed May 12, 2021 (providing a news article that states: “The dispute has gone on for more than seven years, with commissioners changing their minds on what access the county has claim to several times in that period.”)

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OBOA argues that the boat ramp was initially constructed with private funds. The Court accepts this to be true. Nonetheless, that fact alone is not dispositive on the issue of ownership of littoral rights. OBOA cites no case law or statutory law for the proposition that a private person’s construction on public land results in that individual’s ownership of the public land on which the improvement was made. One can imagine the mischief that could result if a private party could “take” public land merely by using private funds to put a structure on the land or to improve that structure.

B. Claim 1 – Declaratory Relief Against the County and State

As the littoral rights owner, the County was within their rights to ask for permission to work on the boat ramp. Likewise, the State was within its rights to grant the temporary permit. Both the County and State are entitled to summary judgment on this claim.

Moreover, even if OBOA had owned the littoral rights associated with the boat ramp, the State owns the lakebed below the ordinary high water mark. Thus, the State had the authority to authorize temporary work to the lakebed and did so appropriately in this case according to their regulations.

Finally, even if OBOA had owned the littoral rights associated with the boat ramp, and if the State’s IDAPA regulations do not allow temporary work by a non-owner of littoral rights, this claim is now moot. The County completed the work to the boat ramp and the State did not authorize any additional work under the permit. Deciding more on this claim would constitute an advisory opinion.

C. Claims 2 & 3 – Declaratory Relief and Quiet Title Against the County / the County’s Counterclaim for Declaratory Relief

Based on the finding above that the County owns the littoral rights, this Court enters summary judgment on Plaintiff’s claims 2 and 3 in favor of the County. Likewise, this Court
enters summary judgment in favor of the County on its counterclaim seeking declaratory relief as to the legal status of the property. Title to Outlet Bay Road and the littoral rights associated with the boat ramp at the end of the road is quieted in the County.

D. Claim 4 – Equitable Estoppel Against the County

Based on the findings above that the County owns the littoral rights associated with the boat ramp, the Court enters summary judgment on this claim in favor of the County. Additionally, the record contains no factual support for the elements of equitable estoppel, as discussed in Section A.2.

E. Claim 5 – Civil Contempt Against the County

Given the Court’s findings above and its order quieting title in the County, the County could not be in contempt for its actions in repairing the boat ramp. As the littoral rights owner, the County did not interfere with OBOA’s “lawful use of the boat ramp.” In the same vein, the County’s actions in repairing the boat ramp could not be in derogation of OBOA’s right to protect its private property. Accordingly, summary judgment is appropriate for the County on this claim.  

F. Claim 6 – Breach of Contract Against the State

OBOA never had an encroachment permit for the boat ramp. Their permits have allowed them encroachments for docks, boat slips, and maintaining the gas dock and breakwater. The submerged land lease does not include the boat ramp. In fact, to the extent the boat ramp is referenced, the permit provides that OBOA cannot interfere with or damage “Bonner County’s boat launch.” See Anderson Decl. Ex. H, at 3, filed March 10, 2021. Therefore, it is not possible

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9Also, this Court is skeptical that the 2004 dismissal order, which purports to order compliance with various terms, could provide jurisdiction for a later contempt claim. That order was not a final judgment. It was simply an order of dismissal, divesting the court of jurisdiction over the claims asserted.

MEMORANDUM ORDER AND DECISION ON MOTIONS FOR SUMMARY JUDGMENT, PAGE - 20
for the State to breach the lease regarding the boat ramp because it is not part of the lease. Nor could it be. The State cannot lease the County’s land or littoral rights to OBOA.

Alternatively, even if OBOA owned the littoral rights associated with the boat ramp, OBOA cannot show that the State violated the contract term of quiet use and enjoyment. There was no actual or constructive ouster or eviction of OBOA pertaining to the boat ramp. See McCullough v. Cuthbert, 46 Idaho 294, 267 P. 828, 829 (1928) ("It is generally held that a covenant for quiet enjoyment is implied in a contract of lease, but to effect a breach of such covenant there must be an eviction either actual or constructive."). Here, the County repaired the boat ramp during the winter season when the boat ramp was not in use. No facts in the record suggest that any member of OBOA was prevented from the use or enjoyment of the boat ramp.\(^\text{10}\) Similarly, OBOA has not presented facts which demonstrate it suffered damage from the alleged breach of contract—the issuance of the temporary permit. If anything, the facts suggest the State conferred a benefit, the repair of the boat ramp, on the littoral rights owner.

V. CONCLUSION AND ORDER

Now, therefore, based on the foregoing, it is hereby ordered that Defendant State of Idaho’s Motion for Summary Judgment is GRANTED.

It is further ordered that Plaintiff’s Motion for Partial Summary Judgment is DENIED.

\(^{10}\) See, e.g., McEachern Decl. Exs. J–L, filed May 12, 2021 (images showing the docks were empty during the repair work).
It is also further ordered that Defendant Bonner County’s Motion for Summary Judgment is GRANTED.

A judgment in accordance with this decision will be entered.

Dated this 1st day of July, 2021.

Hon. Lamont C. Berecz
District Judge

CERTIFICATE OF SERVICE

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Michael W. Rosedale
Clerk of the Court

Dated: 07/14/2021

By: Sandra Rasor
Deputy Clerk
Outlet Bay Boat Ramp

Top View

Existing Slab

New Slab

Rip Rap

Erosion Control

SECTION VIEW

Scale 1" = 1'

Side View

Scale 1/8" = 1'

Front View

Plan View

Outlet Bay Rd.

Priest Lake

Boat Ramp Maintenance

- Routine Inspections
- Soil and Erosion Protection
- Removal of Foreign Debris
- Regulatory Signage

NOT TO SCALE

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