From:	greg@wilsonlaw.us
То:	Kourtney Romine; hearing.officer@ag.idaho.gov; Angela Kaufmann; mischelle@fulghamlawpllc.com
Subject:	Revised Wilson Declaration PH-2022-NAV-10-001
Date:	Tuesday, December 13, 2022 08:00:21 AM
Attachments:	Wilson Declaration 1081C Rev. 12.13.22.pdf

CAUTION: This email originated outside the State of Idaho network. Verify links and attachments BEFORE you click or open, even if you recognize and/or trust the sender. Contact your agency service desk with any concerns.

Ms. Romine and Others:

Please find attached the revised Wilson Declaration which corrected a typographic error on page 4.

The name "Mr.Rouse" was incorrectly used instead of "Mr. England". England is the correct word.

Please substitute this corrected Declaration for the one submitted yesterday.

Sincerely,

Gregory Wilson

From:	greg@wilsonlaw.us
To:	hearing.officer@ag.idaho.gov; Kourtney Romine; Angela Kaufmann; mischelle@fulghamlawpllc.com
Subject:	IDL Hearing Document Submission Case No. PH-2022-NAV-10-001
Date:	Monday, December 12, 2022 05:08:28 PM
Attachments:	Memo Authorities Log Crib 12.12.22.pdf
	Wilson Declaration 1081C 12.12.22.pdf
	Index & Exhibits 1081C.pdf

CAUTION: This email originated outside the State of Idaho network. Verify links and attachments BEFORE you click or open, even if you recognize and/or trust the sender. Contact your agency service desk with any concerns.

Ms. Romine and others:

Please find attached Applicant's submissions for Encroachment Application L-97-S-1081C. If there is a transmission error with the Exhibits due to file size I will work to get them transferred by alternate means.

Greg Wilson

BEFORE THE STATE BOARD OF LAND COMMISSIONERS STATE OF IDAHO

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In the Matter of: Encroachment Permit Application No. L-97-S-1081C

Gregory M. Wilson,

Applicant.

Case No. PH-2022-NAV-10-002

DECLARATION OF GREGORY M. WILSON

I, Gregory M. Wilson, hereby declare and state the following:

1. I am over the age of eighteen and make this Declaration based upon my personal knowledge.

2. I, together with my spouse, Debra B. Wilson, owns Lots 16A and 17A in the Diamond Park Subdivision located on Priest Lake in Bonner County, State of Idaho.

3. I am the applicant of Encroachment Permit Application L-97-S-1081C.

4. In late 2018, William Faloon, Wilson's adjacent littoral neighbor, initiated demolition activities in his lakebed without a permit. He demolished an unpermitted large concrete pier which was located about twenty (20) feet from the Faloon-Wilson boundary line.
(Exhibit A) Faloon had been warned by Wilson of impending shoreline erosion if he removed the pier. However, Faloon proceeded to remove the pier from the lakebed.

5. Following the demolition activities, during the 2019 and 2020 seasons, Faloon's beachfront experienced substantial shoreline erosion. Late in the Summer of 2020, Faloon sent Wilson a demand letter. He demanded Wilson remove his cobblestone and two-log crib structure (the "Riprap") located just north of the Faloon-Wilson boundary. Faloon blamed Wilson for his shoreline erosion. Although later Faloon admitted that his concrete pier had protected his beach from shoreline erosion. (**Exhibit B**-2020 Hearing Transcript page 39 lines

14-15) The prior 15 years Faloon and Wilson experienced no significant shoreline erosion along their common littoral boundary north of his concrete pier. (**Exhibit C**- 2020 Hearing Transcript at page 13, lines 19-21)

6. In response to Faloon's demand Wilson contacted Trevor Anderson, IDL Resource Specialist, at the Priest Lake Cavanaugh Bay office of the Idaho Department of Lands. Wilson met with Anderson and asked Anderson for guidance. Anderson suggested Wilson file an encroachment permit application for a "Riprap structure" for his cobblestone log crib structure. Wilson hired a professional Civil Engineer to draft the Riprap structure and on October 1, 2020, he filed the Encroachment Permit Application L-97-S-1081B known as the "Riprap" application. Riprap is a barrier line of rock designed to mitigate shoreline erosion. On October 6, 2020, Trevor Anderson informed Wilson that his Riprap Permit would be issued on or after November 5, 2020, so long as no objections were received. (Exhibit D) The Application had been approved by the IDL staff and presumably Mike Ahmer, IDL Resource Supervisor, who supervised Trevor Anderson's encroachment application work. On October 26, 2020, William Faloon objected to the Application and a hearing was held on December 3, 2020. On November 30, 2020, IDL served Wilson with its Hearing Statement. (Exhibit E) IDL Position Smt.) The Hearing Statement was prepared by Mike Ahmer. Ahmer's Statement reversed IDL's Riprap Application approval and arguing that the "Riprap" did not comply with the Riprap standards. Wilson was shocked by this reversal particularly since the IDL Staff had originally recommended the Riprap solution, approved the application and then reversed its approval upon the receipt of Faloon's objection.

7. On January 4, 2021, the Final Order numbered PH-2020-PUB-10-001 (the "Order") was issued on Encroachment Permit Application L-97-S-1081B hearing. The

Application had been denied. In April 2020, in response to the Order, Applicant removed the "Riprap" stones from his lakefront lot but left the underlying Pre-Lake Protection Act ("LPA") wooden crib structure in place. The Riprap stone structure was comprised of cobblestones placed over a log crib structure embedded in the lakebed. The Order had encouraged the Applicant to file an encroachment permit on the pre-existing log crib structure under the Pre-LPA statute I.C. 58-1312(1). (**Exhibit F**)

8. On April 30, 2021, three IDL staff members, Mike Ahmer, Trevor Anderson and Jennifer Barker, traveled to Priest Lake and conducted a site inspection of Applicant's two Priest Lake frontage lots for Order and encroachment compliance. They reviewed all of Applicant's encroachments. On May 6, 2021, IDL issued a Public Trust Program Inspection Report. The Report stated that the Applicant had complied with the Order and no other issues of concern were noted. (**Exhibit G**)

9. On May 24, 2021, Trevor Anderson contacted Wilson regarding the Pre-LPA encroachment permit application. Mr. Anderson instructed Wilson to prepare the Pre-LPA Application and return it to IDL on or before June 23, 2021 or be subject to a formal non-compliance letter. (**Exhibit H**) Applicant filed and IDL accepted the Pre-LPA encroachment Application on June 15, 2021.

10. IDL took no action on the Pre-LPA Application during the ninety (90) day period following June 15, 2021. On July 8, 2022, thirteen (13) months later, IDL sent the Applicant a denial letter stating that Applicant had failed to comply with Pre-LPA statute I.C. 58-1312(1). (**Exhibit I**) The letter demanded that the Applicant demolish and remove the Pre-LPA log structure from the lakebed within 30 days. Most of the log crib structure was submerged under water. (**Exhibit J**) Applicant objected to conducting demolition activities in the lakebed while submerged. Applicant insisted that all demolition activities required a permit. Mike Ahmer disagreed and stated no demolition permit was required. Applicant disagreed citing IDAPA 20.03.04.020.01. Applicant thereafter requested an opportunity to have his case heard before the Land Board to avoid a non-compliance letter, an enforcement action and to gain access to the exclusive means of the judicial review processes of Idaho Code 58-1306(c).

11. Wilson searched the aerial photograph archives of IDL's offices at Priest Lake with the assistance of Trevor Anderson. IDL had no archived or current aerial photographs of sufficient resolution to show the submerged log crib.

12. Wilson sought photographic evidence and testimony from the original Lot 17 owner whose name was Red Rouse. However, Mr. Rouse was deceased. So, Wilson contacted Rouse's daughter, Joanne England. He spoke with Joanne and her husband discussing the log crib matter. Wilson met with Mr. England. He stated that he recalled discussing the log crib structure with Red Rouse but could not recall the decade in which he had the discussion. He recalled that Rouse had constructed the log crib to reduce shoreline erosion. Mr. England did not wish to get involved in the matter beyond discussing the matter with the Applicant.

I certify under penalty of perjury under Idaho law that the foregoing Declaration is true and correct to my best recollection and knowledge.

DATED this 12th day of December 2022.

Manilon

Gregory M. Wilson Applicant

BEFORE THE STATE BOARD OF LAND COMMISSIONERS STATE OF IDAHO

In the Matter of:) Encroachment Permit Application) No. L-97-S-1081C) Gregory M. Wilson,) Applicant.)

Case No. PH-2022-NAV-10-001

APPLICANT'S MEMORANDUM OF AUTHORITIES DISPUTING IDL'S JURISIDICTION

I. INTRODUCTION

This Memorandum of Authorities challenges and disputes the Idaho Department of Land's ("IDL") legal authority and jurisdiction to Appoint a Hearing Coordinator, initiate a contested case and conduct a public hearing on Gregory M. Wilson's ("Wilson or Applicant") June 15, 2021, Pre-Lake Protection Act ("LPA") Encroachment Permit Application L-97-S-1081C (the "Application"). This public hearing is untimely. It violates Idaho Code 58-1306, 58-1312, and IDAPA 20.03.04.030. IDL has no legal authority to hold this contested case hearing after the expiration of the 90-day time limit as set forth in I.C. 58-1306(c) and IDAPA 20.03.04.030.05. This hearing is being held on Day **552** after the Application filing date.

II. FACTUAL BACKGROUND

A. <u>The Drama</u>

In late 2018, William Faloon, Wilson's adjacent littoral neighbor, initiated demolition activities in his lakebed without a permit. He demolished an unpermitted large concrete pier which was located about twenty (20) feet from the Faloon-Wilson boundary line. (**Exhibit A**) Faloon had been warned by Wilson of impending shoreline erosion if he removed the pier. However, Faloon proceeded to remove the pier from the lakebed. Following the demolition activities, during the 2019 and 2020 seasons, Faloon's beachfront experienced substantial shoreline erosion. Late in the Summer of 2020, Faloon sent Wilson a demand letter. He demanded Wilson remove his cobblestone and two-log crib structure (the "Riprap") located just north of the Faloon-Wilson boundary. Faloon blamed Wilson for his shoreline erosion. Although later Faloon admitted that his concrete pier had protected his beach from shoreline erosion. (**Exhibit B**-2020 Hearing Transcript page 39 lines 14-15) The prior 15 years Faloon and Wilson experienced no significant shoreline erosion along their common littoral boundary north of his concrete pier. (**Exhibit C**- 2020 Hearing Transcript at page 13, lines 19-21)

B. The 2020 Riprap Application

In response to Faloon's demand Wilson contacted Trevor Anderson, IDL Resource Specialist, at the Priest Lake Cavanaugh Bay office of the Idaho Department of Lands. Wilson met with Anderson and asked Anderson for guidance. Anderson suggested Wilson file an encroachment permit application for a "Riprap structure" for his cobblestone log crib structure. Wilson hired a professional Civil Engineer to draft the Riprap structure and on October 1, 2020, he filed the Encroachment Permit Application L-97-S-1081B known as the "Riprap" application. Riprap is a barrier line of rock designed to mitigate shoreline erosion. On October 6, 2020, Trevor Anderson informed Wilson that his Riprap Permit would be issued on or after November 5, 2020, so long as no objections were received. (**Exhibit D**) The Application had been approved by the IDL staff and presumably Mike Ahmer, IDL Resource Supervisor, who supervised Trevor Anderson's encroachment application work. On October 26, 2020, William Faloon objected to the Application and a hearing was held on December 3, 2020. On November 30, 2020, IDL served Wilson with its Hearing Statement. (**Exhibit E**) IDL Position Smt.) The Hearing Statement was prepared by Mike Ahmer. Ahmer's Statement reversed IDL's Riprap Application approval and arguing that the "Riprap" did not comply with the Riprap standards. Wilson was shocked by this reversal particularly since the IDL Staff had originally recommended the Riprap solution, approved the application and then reversed its approval upon the receipt of Faloon's objection.

C. The Final Order

On January 4, 2021, the Final Order numbered PH-2020-PUB-10-001 (the "Order") was issued on Encroachment Permit Application L-97-S-1081B hearing. The Application had been denied. In April 2020, in response to the Order, Applicant removed the "Riprap" stones from his lakefront lot but left the underlying Pre-Lake Protection Act ("LPA") wooden crib structure in place. The Riprap stone structure was comprised of cobblestones placed over a log crib structure embedded in the lakebed. The Order had encouraged the Applicant to file an encroachment permit on the pre-existing log crib structure under the Pre-LPA statute I.C. 58-1312(1). (Exhibit F)

D. The IDL Site Inspection

On April 30, 2021, three IDL staff members, Mike Ahmer, Trevor Anderson and Jennifer Barker, traveled to Priest Lake and conducted a site inspection of Applicant's two Priest Lake frontage lots for Order and encroachment compliance. They reviewed all of Applicant's encroachments. On May 6, 2021, IDL issued a Public Trust Program Inspection Report. The Report stated that the Applicant had complied with the Order and no other issues of concern were noted. (**Exhibit G**)

E. Wilson Files a Second IDL Recommended Encroachment Application

APPLICANT'S MEMORANDUM OF AUTHORITIES: Page 3 of 8

On May 24, 2021, Trevor Anderson contacted Wilson regarding the Pre-LPA encroachment permit application. Mr. Anderson instructed Wilson to prepare the Pre-LPA Application and return it to IDL on or before June 23, 2021 or be subject to a formal non-compliance letter. (**Exhibit H**) Applicant filed and IDL accepted the Pre-LPA encroachment Application on June 15, 2021.

F. IDL Fails to Act and Denies the Application

IDL took no action on the Pre-LPA Application during the ninety (90) day period following June 15, 2021. On July 8, 2022, thirteen (13) months later, IDL sent the Applicant a denial letter stating that Applicant had failed to comply with Pre-LPA statute I.C. 58-1312(1). (Exhibit I) The letter demanded that the Applicant demolish and remove the Pre-LPA log structure from the lakebed within 30 days. Most of the log crib structure was submerged under water. (Exhibit J) Applicant objected to conducting demolition activities in the lakebed while submerged. Applicant insisted that all demolition activities required a permit. Mike Ahmer disagreed and stated no demolition permit was required. Applicant disagreed citing IDAPA 20.03.04.020.01. Applicant thereafter requested an opportunity to have his case heard before the Land Board to avoid a non-compliance letter, an enforcement action and to gain access to the exclusive means of the judicial review processes of Idaho Code 58-1306(c).

III. DISCUSSION

The Lake Protection Act was established on January 1, 1975. Idaho Code 58-1312 It states in part: "…every person seeking a permit for a navigational or nonnavigational encroachment constructed prior to January 1, 1975, shall provide the board with substantive documentation of the age of the encroachment and documentation that the encroachment has not been modified since 1974. Persons providing such documentation shall receive an encroachment

permit and shall not be required to pay the application and publication fees established in this chapter. Such substantive documentation shall include dated aerial photographs, tax records, or other historical information deemed reliable by the board." IDL demanded that Wilson either demolished the Pre-LPA log crib or file for an encroachment permit under I.C. 58-1312. Wilson filed the Application on June 15, 2021.

A. <u>IDAPA 20.03.04.030 Controls the Processing of Applicant's Pre-LPA</u> <u>Application.</u>

IDAPA 20.03.04.030 mandates the processing procedures for an Idaho Code 58-1312 Pre-LPA encroachment application. This regulation is titled, "Processing of Applications for All Other Encroachments". A Pre-LPA encroachment application under I.C. 58-1312 is an "other type of encroachment". This IDAPA regulation is a "catch all" processing provision for all other types of encroachments. A Pre-LPA encroachment application under I.C. 58-1312 must be processed according to this administrative regulation. IDL must adhere to the processing procedures. They are mandatory, not optional. This regulation, in subsection 20.03.04.030.05 titled Hearing, mandates the time and place of public hearing on the Application and a time limitation within which to hold the public hearing. The public hearing must be held within ninety (90) days from the date the application was accepted for filing. This public hearing on the Application is being held 552 days after the Application acceptance date of June 15, 2021.

B. <u>IDL Failed to Follow the Procedural Processing Requirements of 58-1306(c) and</u> <u>IDAPA 20.03.04.030.</u>

During the ninety (90) day period following the June 15, 2021, Application date, IDL took no action on the Wilson's Pre-LPA Application. No Notice of Application was published, as in this current hearing matter. No hearing was held. This failure to act within the procedural due process period relieved IDL of its legal and jurisdictional authority to appoint a Hearing

Coordinator, initiate a contested case and conduct a public hearing on this Application. IDL has no legal basis upon which to legally hold this hearing.

C. <u>The Director Misstates the Facts in His Notice of Appointment of Hearing</u> <u>Coordinator and Scheduling Conference.</u>

The Notice of Appointment of Hearing Coordinator and Scheduling Conference incorrectly states that this contested case is being held within the requisite ninety (90) days. It states that:

"The provisions of Idaho Code 58-1306 and IDAPA 20.03.04.030 apply to the above captioned matter and require that a hearing on the application be held within ninety (90) days of the application date. Idaho Code 58-1306(c) and IDAPA 20.03.04.030.05. <u>In order to comply with this deadline</u>, I delegate initial decision-making authority to the Hearing Coordinator." [Emphasis Added]

On October 3, 2022, the date of Appointment, it had been 475 days since the Application had been accepted. Clearly, the deadline was missed. The Director had no legal authority to initiate this contested case due to the failure to comply with the statute and APA regulations.

D. Wilson's Application Satisfied the Requirements for Permitting an Existing

Encroachment

Idaho Code 58-1312 requires an applicant to provide IDL with "substantive

documentation" about the encroachment. An applicant must document (1) the age of the

encroachment and (2) document that it had not been modified since 1974. Substantive

documentation shall include aerial photographs, tax records, or other historical information

deemed reliable by the board.

What is the meaning of "substantive documentation"? Is it a vague term without a common meaning? It is not a defined term in the LPA. The Idaho Supreme Court has held that a statute will not be held void for vagueness when "such terms can be interpreted as taking their

ordinary, contemporary or common meaning." *Olsen v. J.A. Freeman Co.*, <u>117 Idaho 706 at 717</u>, <u>791 P.2d 1285 at 1296</u> (1990). Webster's Dictionary defines the term "substantive" as (1) having substance, (2) belonging to the substance of a thing, (3) expressing existence, and (4) being a totally independent entity. Webster's defines the term "documentation" as (1) the act of furnishing or authenticating with documents, (2) the use of historical documents, and (3) conformity to historical or objective facts. The phrase "substantive documentation" has a plain and ordinary meaning in the context of proving the existence, substance, existence of authenticating historical documents.

In this Application, Wilson provided the Fievez letter which corroborated the existence of two cedar logs on the beach at some unknown date in the past. (**Exhibit K**) Mr. Phillips, Wilson's other adjacent neighbor, described the log crib structure having two cedar logs embedded in the lakebed in 1966. (**Exhibit L**) Mr. Phillips provided the two letters in Exhibit L attesting to the age and unmodified nature of the log crib structure. He recalls seeing the log crib structure in 1966 which provides documentation of the age of the structure. He also stated that the log crib which he inspected in 2021 did not appear modified since his 1966 recollection. Mr. Phillips has offered an affidavit attesting to these facts. (**Exhibit M**) This sworn affidavit authenticates Mr. Phillips' testimony as reliable under the statute. Taken together these documents represent reliable evidence of historical events having substance in truth, expressing the existence of the log crib as it existed in 1966 and today in its present location. These letters satisfy the reliable historical documentation requirement of I.C. 58-1312.

Wilson searched the aerial photograph archives of IDL's offices at Priest Lake with the assistance of Trevor Anderson. IDL had no archived or current aerial photographs of sufficient resolution to show the submerged log crib. IDL does not even have an index record of ever having issued an I.C. 58-1312 encroachment permit. (**Exhibit N**)

Tax records are not relevant to the matter. Wilson sought photographic evidence and testimony from the original Lot 17 owner whose name was Red Rouse. However, Mr. Rouse was deceased. So, Wilson contacted Rouse's daughter, Joanne England. He spoke with Joanne and her husband discussing the log crib matter. Wilson met with Mr. England. He stated that he recalled discussing the log crib structure with Red Rouse but could not recall the decade in which he had the discussion. He recalled that Rouse had constructed the log crib to reduce shoreline erosion. Mr. England did not wish to get involved in the matter beyond discussing the matter with the Applicant.

IV. CONCLUSION

Wilson filed this Application on June 15, 2021, at the specific request of IDL staff. The Application was accepted. Wilson satisfied the historical documentary information requirement of the Pre-LPA statute.

For some unknown reason, IDL simply failed to follow their processing procedures for Wilson's Pre-LPA Application by failing to take any action during the 90-day period following the June 15, 2021, Application. This public hearing is untimely. It violates Idaho Code 58-1306, 58-1312, and IDAPA 20.03.04.030. IDL has no legal authority to hold this contested case hearing after the expiration of the 90-day time limit as set forth in I.C. 58-1306(c) and IDAPA 20.03.04.030.05. This hearing is being held on Day **552** after the Application filing date. DATED this 12th day of December 2022.

Maulism

Gregory M. Wilson, Applicant

BEFORE THE STATE BOARD OF LAND COMMISSIONERS STATE OF IDAHO

In the Matter of:)
Encroachment Permit Application No. L-97-S-1081C))
)
Gregory M. Wilson, Applicant.)

Case No. PH-2022-NAV-10-001

APPLICANT'S EXHIBITS

EXHIBIT	DESCRIPTION
А	Photograph of Concrete Pier (monolith)
В	2020 Hearing Transcript page 39
С	2020 Hearing Transcript page 13
D	Email Trevor Anderson to Wilson
E	IDL Hearing Statement November 30, 2020
F	Final Order in 2020 Hearing
G	IDL Public Trust Inspection Report
Н	Email re: filing Pre-LPA Application
Ι	IDL-Ahmer July 8, 2022 Letter
J	Photo Log Crib Structure 2022
Κ	Gary Fievez Letter
L	Patrick Phillips letters
М	Patrick Phillips Affidavit
Ν	Email Ahmer states no Pre-LPA index records





Audio Transcription

INO.	L-97-S-1081B, Gregory M. Wilson and Debra B. Wilson		December 5, 2020
	Page 38		Page 40
1	of Tyler when he was younger. There's the new cabin.	1	see his barrier there under his approach and ramp and
	And you can see a little if you look at the property		the property line. So anything you put there is going
	line close, it's kind of you can see some rocks		to be beneficial to the property to the north and
			detrimental to the south.
	there. You can see, you know, right there. So		
	there's there is some it's different there than it	5	5
	was previously.	6	······································
7	Then that's now that's 2000-what? Five,		Picture or, well, anyway, this picture shows this was
8	was that?		taken in 2000 August of 2020.
9	UNIDENTIFIED SPEAKER: 2006 or 7.	9	
10	BILL FALOON: 2006 or 7.	10	8
11	Now, Greg was right. And I you know, I		much closer to his retaining wall, now a few feet, so I
12	show this. The cement blocks, monoliths, whatever you	12	assumed that because it was closer and the wall or
13	want to call it, was there. And since I moved my dock,	13	barrier or whatever you want to call it is now further
14	they were not functional. And actually they were an	14	up the beach lakeside or, I mean, excuse me, land
15	impedence to my using the beach, and they were ugly.	15	side, that had been built up. And, in addition, he had
16	And I told Greg, and we talked about it, that I was	16	put the sandbags that are seen there in what he referred
17	going to remove them, because basically I wanted to	17	to. But you can see that the erosion of my beach, it's
18	use they impeded the use of my beach.	18	obvious there.
19	Tyler says we discussed that. I don't	19	So you can go to the next picture.
20	remember speaking with Tyler. But maybe we did. I	20	
	don't I don't recall that.	21	the erosion, which we can just scan through that there.
22	So Greg said so I chopped those up with a		And it's about okay, stop right there.
23	I rented a jackhammer and jacked it up, broke it all	23	
	up. The reason I took this is to show Shelly what I was		between my beach and their beach. Theirs looks like
	doing that weekend.		Maui. Mine looks like Maine. But, anyway, it's a
	6		
	Page 39		Page 41
1		1	-
1	But you can see that there's the there's		significant difference, which is obvious there.
2	But you can see that there's the there's the retaining there are rocks there at the property	2	significant difference, which is obvious there. If you go to the next page, it shows the depth
2 3	But you can see that there's the there's the retaining there are rocks there at the property line, and the log, which Greg says floated up.	2 3	significant difference, which is obvious there. If you go to the next page, it shows the depth of it. It's approximately 6 to 8 inches. This was a
2 3 4	But you can see that there's the there's the retaining there are rocks there at the property line, and the log, which Greg says floated up. And go toward our cabin more.	2 3 4	significant difference, which is obvious there. If you go to the next page, it shows the depth of it. It's approximately 6 to 8 inches. This was a concern of mine, is that when I the previous pictures
2 3 4 5	But you can see that there's the there's the retaining there are rocks there at the property line, and the log, which Greg says floated up. And go toward our cabin more. You can see the distance between the log and	2 3 4 5	significant difference, which is obvious there. If you go to the next page, it shows the depth of it. It's approximately 6 to 8 inches. This was a concern of mine, is that when I the previous pictures were taken in August. And then when I was there in
2 3 4 5 6	But you can see that there's the there's the retaining there are rocks there at the property line, and the log, which Greg says floated up. And go toward our cabin more. You can see the distance between the log and the retaining wall is about, I don't know, I estimate	2 3 4 5 6	significant difference, which is obvious there. If you go to the next page, it shows the depth of it. It's approximately 6 to 8 inches. This was a concern of mine, is that when I the previous pictures were taken in August. And then when I was there in September we were up there in September I noticed
2 3 4 5 6 7	But you can see that there's the there's the retaining there are rocks there at the property line, and the log, which Greg says floated up. And go toward our cabin more. You can see the distance between the log and the retaining wall is about, I don't know, I estimate I estimate 15 to 20 feet. I'm not really sure. 10 to	2 3 4 5 6 7	significant difference, which is obvious there. If you go to the next page, it shows the depth of it. It's approximately 6 to 8 inches. This was a concern of mine, is that when I the previous pictures were taken in August. And then when I was there in September we were up there in September I noticed that the now there's an 11th bag of sand there, which
2 3 4 5 6 7 8	But you can see that there's the there's the retaining there are rocks there at the property line, and the log, which Greg says floated up. And go toward our cabin more. You can see the distance between the log and the retaining wall is about, I don't know, I estimate I estimate 15 to 20 feet. I'm not really sure. 10 to 20 feet approximately.	2 3 4 5 6 7 8	significant difference, which is obvious there. If you go to the next page, it shows the depth of it. It's approximately 6 to 8 inches. This was a concern of mine, is that when I the previous pictures were taken in August. And then when I was there in September we were up there in September I noticed that the now there's an 11th bag of sand there, which I said, "Why is that there?"
2 3 4 5 6 7 8 9	But you can see that there's the there's the retaining there are rocks there at the property line, and the log, which Greg says floated up. And go toward our cabin more. You can see the distance between the log and the retaining wall is about, I don't know, I estimate I estimate 15 to 20 feet. I'm not really sure. 10 to 20 feet approximately. Scan out.	2 3 4 5 6 7 8 9	significant difference, which is obvious there. If you go to the next page, it shows the depth of it. It's approximately 6 to 8 inches. This was a concern of mine, is that when I the previous pictures were taken in August. And then when I was there in September we were up there in September I noticed that the now there's an 11th bag of sand there, which I said, "Why is that there?" You can't really see much there. But the next
2 3 4 5 6 7 8 9	But you can see that there's the there's the retaining there are rocks there at the property line, and the log, which Greg says floated up. And go toward our cabin more. You can see the distance between the log and the retaining wall is about, I don't know, I estimate I estimate 15 to 20 feet. I'm not really sure. 10 to 20 feet approximately. Scan out. So I then hired a few guys, younger guys. We	2 3 6 7 8 9	significant difference, which is obvious there. If you go to the next page, it shows the depth of it. It's approximately 6 to 8 inches. This was a concern of mine, is that when I the previous pictures were taken in August. And then when I was there in September we were up there in September I noticed that the now there's an 11th bag of sand there, which I said, "Why is that there?" You can't really see much there. But the next morning when the water is calm, you can see that sand
2 3 4 5 6 7 8 9 10	But you can see that there's the there's the retaining there are rocks there at the property line, and the log, which Greg says floated up. And go toward our cabin more. You can see the distance between the log and the retaining wall is about, I don't know, I estimate I estimate 15 to 20 feet. I'm not really sure. 10 to 20 feet approximately. Scan out. So I then hired a few guys, younger guys. We removed all that, took it all to the dump. We carried	2 3 4 5 7 8 9 10 11	significant difference, which is obvious there. If you go to the next page, it shows the depth of it. It's approximately 6 to 8 inches. This was a concern of mine, is that when I the previous pictures were taken in August. And then when I was there in September we were up there in September I noticed that the now there's an 11th bag of sand there, which I said, "Why is that there?" You can't really see much there. But the next morning when the water is calm, you can see that sand had come through the barrier. To be honest, that kind
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2 3 4 5 6 7 8 9 10 11 12 13 14 15 16 17 18	But you can see that there's the there's the retaining there are rocks there at the property line, and the log, which Greg says floated up. And go toward our cabin more. You can see the distance between the log and the retaining wall is about, I don't know, I estimate I estimate 15 to 20 feet. I'm not really sure. 10 to 20 feet approximately. Scan out. So I then hired a few guys, younger guys. We removed all that, took it all to the dump. We carried it up the stairs. But, anyway, be that as it may, we removed it. Yes, Greg is correct that that monolith, whatever, did protect the beach. Any beach any barrier you put in the lake, such as what we see here at the property line or under their dock and approach, and their other property to the north, which was previously	2 3 4 5 6 7 8 9 10 11 12 13 14 15 16 17 18	significant difference, which is obvious there. If you go to the next page, it shows the depth of it. It's approximately 6 to 8 inches. This was a concern of mine, is that when I the previous pictures were taken in August. And then when I was there in September we were up there in September I noticed that the now there's an 11th bag of sand there, which I said, "Why is that there?" You can't really see much there. But the next morning when the water is calm, you can see that sand had come through the barrier. To be honest, that kind of irritated me. I said, "What the heck?" Any sand that comes through is going to be blocked, so that was a concern. So I guess so you can just see the difference in what has transpired. Also, if you go back to that picture for a second. In reference to what Greg says, again, I would
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2 3 4 5 6 7 8 9 10 11 12 13 14 15 16 17 18 19 20 21	But you can see that there's the there's the retaining there are rocks there at the property line, and the log, which Greg says floated up. And go toward our cabin more. You can see the distance between the log and the retaining wall is about, I don't know, I estimate I estimate 15 to 20 feet. I'm not really sure. 10 to 20 feet approximately. Scan out. So I then hired a few guys, younger guys. We removed all that, took it all to the dump. We carried it up the stairs. But, anyway, be that as it may, we removed it. Yes, Greg is correct that that monolith, whatever, did protect the beach. Any beach any barrier you put in the lake, such as what we see here at the property line or under their dock and approach, and their other property to the north, which was previously owned by the Brophys, you can see that in the background. I spoke with Mike Brophy. You know, anything that you put into the lake, because of the flow	2 3 4 5 6 7 8 9 10 11 12 13 14 15 16 17 18 19 20 21	significant difference, which is obvious there. If you go to the next page, it shows the depth of it. It's approximately 6 to 8 inches. This was a concern of mine, is that when I the previous pictures were taken in August. And then when I was there in September we were up there in September I noticed that the now there's an 11th bag of sand there, which I said, "Why is that there?" You can't really see much there. But the next morning when the water is calm, you can see that sand had come through the barrier. To be honest, that kind of irritated me. I said, "What the heck?" Any sand that comes through is going to be blocked, so that was a concern. So I guess so you can just see the difference in what has transpired. Also, if you go back to that picture for a second. In reference to what Greg says, again, I would like to resolve this amicably and wish we weren't in this meeting today. But I don't think there's much difference between the orientation of my property and
2 3 4 5 6 7 8 9 10 11 12 13 14 15 16 17 18 19 20 21 22	But you can see that there's the there's the retaining there are rocks there at the property line, and the log, which Greg says floated up. And go toward our cabin more. You can see the distance between the log and the retaining wall is about, I don't know, I estimate I estimate 15 to 20 feet. I'm not really sure. 10 to 20 feet approximately. Scan out. So I then hired a few guys, younger guys. We removed all that, took it all to the dump. We carried it up the stairs. But, anyway, be that as it may, we removed it. Yes, Greg is correct that that monolith, whatever, did protect the beach. Any beach any barrier you put in the lake, such as what we see here at the property line or under their dock and approach, and their other property to the north, which was previously owned by the Brophys, you can see that in the background. I spoke with Mike Brophy. You know, anything that you put into the lake, because of the flow of the lake, will accumulate sand on the north side.	2 3 4 5 6 7 8 9 10 11 12 13 14 15 16 17 18 19 20 21 22	significant difference, which is obvious there. If you go to the next page, it shows the depth of it. It's approximately 6 to 8 inches. This was a concern of mine, is that when I the previous pictures were taken in August. And then when I was there in September we were up there in September I noticed that the now there's an 11th bag of sand there, which I said, "Why is that there?" You can't really see much there. But the next morning when the water is calm, you can see that sand had come through the barrier. To be honest, that kind of irritated me. I said, "What the heck?" Any sand that comes through is going to be blocked, so that was a concern. So I guess so you can just see the difference in what has transpired. Also, if you go back to that picture for a second. In reference to what Greg says, again, I would like to resolve this amicably and wish we weren't in this meeting today. But I don't think there's much difference between the orientation of my property and the Wilsons' property, or we don't have a picture of it,
2 3 4 5 6 7 8 9 10 11 12 13 14 15 16 17 18 19 20 21 22	But you can see that there's the there's the retaining there are rocks there at the property line, and the log, which Greg says floated up. And go toward our cabin more. You can see the distance between the log and the retaining wall is about, I don't know, I estimate I estimate 15 to 20 feet. I'm not really sure. 10 to 20 feet approximately. Scan out. So I then hired a few guys, younger guys. We removed all that, took it all to the dump. We carried it up the stairs. But, anyway, be that as it may, we removed it. Yes, Greg is correct that that monolith, whatever, did protect the beach. Any beach any barrier you put in the lake, such as what we see here at the property line or under their dock and approach, and their other property to the north, which was previously owned by the Brophys, you can see that in the background. I spoke with Mike Brophy. You know, anything that you put into the lake, because of the flow of the lake, will accumulate sand on the north side. And that's what happened to that.	2 3 4 5 6 7 8 9 10 11 12 13 14 15 16 17 18 19 20 21 22 23	significant difference, which is obvious there. If you go to the next page, it shows the depth of it. It's approximately 6 to 8 inches. This was a concern of mine, is that when I the previous pictures were taken in August. And then when I was there in September we were up there in September I noticed that the now there's an 11th bag of sand there, which I said, "Why is that there?" You can't really see much there. But the next morning when the water is calm, you can see that sand had come through the barrier. To be honest, that kind of irritated me. I said, "What the heck?" Any sand that comes through is going to be blocked, so that was a concern. So I guess so you can just see the difference in what has transpired. Also, if you go back to that picture for a second. In reference to what Greg says, again, I would like to resolve this amicably and wish we weren't in this meeting today. But I don't think there's much difference between the orientation of my property and the Wilsons' property, or we don't have a picture of it, the property to my south, which is the Aspens. They're
2 2 3 4 5 6 7 7 8 9 100 111 122 133 144 155 166 177 188 199 200 211 222 233 24	But you can see that there's the there's the retaining there are rocks there at the property line, and the log, which Greg says floated up. And go toward our cabin more. You can see the distance between the log and the retaining wall is about, I don't know, I estimate I estimate 15 to 20 feet. I'm not really sure. 10 to 20 feet approximately. Scan out. So I then hired a few guys, younger guys. We removed all that, took it all to the dump. We carried it up the stairs. But, anyway, be that as it may, we removed it. Yes, Greg is correct that that monolith, whatever, did protect the beach. Any beach any barrier you put in the lake, such as what we see here at the property line or under their dock and approach, and their other property to the north, which was previously owned by the Brophys, you can see that in the background. I spoke with Mike Brophy. You know, anything that you put into the lake, because of the flow of the lake, will accumulate sand on the north side. And that's what happened to that. You can see that this is Greg's other lot,	2 3 4 5 6 7 8 9 10 11 12 13 14 15 16 17 18 19 20 21 22 23 24	significant difference, which is obvious there. If you go to the next page, it shows the depth of it. It's approximately 6 to 8 inches. This was a concern of mine, is that when I the previous pictures were taken in August. And then when I was there in September we were up there in September I noticed that the now there's an 11th bag of sand there, which I said, "Why is that there?" You can't really see much there. But the next morning when the water is calm, you can see that sand had come through the barrier. To be honest, that kind of irritated me. I said, "What the heck?" Any sand that comes through is going to be blocked, so that was a concern. So I guess so you can just see the difference in what has transpired. Also, if you go back to that picture for a second. In reference to what Greg says, again, I would like to resolve this amicably and wish we weren't in this meeting today. But I don't think there's much difference between the orientation of my property and the Wilsons' property, or we don't have a picture of it, the property to my south, which is the Aspens. They're all kind of parallel. So I don't think waves affect my
2 2 3 4 5 6 7 7 8 9 100 111 122 133 144 155 166 177 188 199 200 211 222 233 24	But you can see that there's the there's the retaining there are rocks there at the property line, and the log, which Greg says floated up. And go toward our cabin more. You can see the distance between the log and the retaining wall is about, I don't know, I estimate I estimate 15 to 20 feet. I'm not really sure. 10 to 20 feet approximately. Scan out. So I then hired a few guys, younger guys. We removed all that, took it all to the dump. We carried it up the stairs. But, anyway, be that as it may, we removed it. Yes, Greg is correct that that monolith, whatever, did protect the beach. Any beach any barrier you put in the lake, such as what we see here at the property line or under their dock and approach, and their other property to the north, which was previously owned by the Brophys, you can see that in the background. I spoke with Mike Brophy. You know, anything that you put into the lake, because of the flow of the lake, will accumulate sand on the north side. And that's what happened to that.	2 3 4 5 6 7 8 9 10 11 12 13 14 15 16 17 18 19 20 21 22 23 24	significant difference, which is obvious there. If you go to the next page, it shows the depth of it. It's approximately 6 to 8 inches. This was a concern of mine, is that when I the previous pictures were taken in August. And then when I was there in September we were up there in September I noticed that the now there's an 11th bag of sand there, which I said, "Why is that there?" You can't really see much there. But the next morning when the water is calm, you can see that sand had come through the barrier. To be honest, that kind of irritated me. I said, "What the heck?" Any sand that comes through is going to be blocked, so that was a concern. So I guess so you can just see the difference in what has transpired. Also, if you go back to that picture for a second. In reference to what Greg says, again, I would like to resolve this amicably and wish we weren't in this meeting today. But I don't think there's much difference between the orientation of my property and the Wilsons' property, or we don't have a picture of it, the property to my south, which is the Aspens. They're

190.	L-97-S-1081B, Gregory M. Wilson and Debra B. Wilson		December 3, 202
	Page 10		Page 12
1	that was a historic dock approach for an event for a	1	There was a log that floated up onto Bill's
	dock that he ultimately moved south.		beach, but it was too heavy for me to lift. It ended up
3	The concrete monolith provided shore break and		on my property. It's actually not part of the riprap.
	stability. So between the monolith and my rock		It's just something that was being that needed to be
	little ripraps, he had a sandy beach, and there was		cut up for firewood.
	really no erosion problems, except during seasonal high	6	
	water.		terms of weather. We had a number of storms from the
8	Every spring at Priest Lake we get some amount		north, which were kind of unusual, because the
-	of high water, which, together with wave action, moves		prevailing wind is southwest. The prevailing wave
	sand around either south or north, basically in both		action's from the southwest. But we had tremendous boat
	directions, just depending on the prevailing the		action's nom the southwest. But we had tremendous boat action. I've never seen that much boat traffic on the
	prevailing waves. Additionally, boat traffic waves make		north side of our lake.
	a difference, too.		
		13	8
14	So I had placed sandbags along that boundary,		they're pushing a 2-foot wake, it makes a huge
	temporarily, to really keep things stable and not moving hadk and forth. I didn't really want any cond from him		difference on the shoreline. And I had actually gone
	back and forth. I didn't really want any sand from him.		out a couple of times in August and noted, particularly
	I didn't want him to have my sand. So and then,		when they had this huge Trump flotilla go by, 200 boats
	seasonally, I would remove those and we'd stack them up		at least, that was really taking some serious bites out
	and cover them with a tarp.		of out of his beach. It was also undercutting my
20	So in 2018, Bill Bill removed this		rocks, my riprap, which had firmly been upland of the
	monolith. He had a couple of gentlemen come in with		ordinary high water mark. So I threw some sandbags
	jackhammers and take it out. I knew that he was going		along the banks to try and stabilize things, realizing
	to do this. I just didn't know when.		that something really had to be done about it.
24	And a couple of years before that, I said,	24	
25	"Bill, you know, if you're going to move this, you're	25	accusations from counsel that, you know, I fortified
	Page 11		Page 13
			-
	probably going to suffer some erosion." Because he had		this thing with a log and that it it was
2	probably going to suffer some erosion." Because he had a he had a kind of a seawall about 3 feet up from	2	this thing with a log and that it it was essentially most of my upland rocks had had so much
2 3	probably going to suffer some erosion." Because he had a he had a kind of a seawall about 3 feet up from there on the high water mark, which got horribly eroded	2 3	this thing with a log and that it it was essentially most of my upland rocks had had so much erosion that they that it now became a southern
2 3 4	probably going to suffer some erosion." Because he had a he had a kind of a seawall about 3 feet up from there on the high water mark, which got horribly eroded and ultimately was ready to fall down. It was merely	2 3 4	this thing with a log and that it it was essentially most of my upland rocks had had so much erosion that they that it now became a southern boundary of my beach front. So I have this beautiful
2 3 4 5	probably going to suffer some erosion." Because he had a he had a kind of a seawall about 3 feet up from there on the high water mark, which got horribly eroded and ultimately was ready to fall down. It was merely standing on three-quarter-inch rebar. Even the south	2 3 4 5	this thing with a log and that it it was essentially most of my upland rocks had had so much erosion that they that it now became a southern boundary of my beach front. So I have this beautiful western boundary, which has very little erosion, except
2 3 4 5 6	probably going to suffer some erosion." Because he had a he had a kind of a seawall about 3 feet up from there on the high water mark, which got horribly eroded and ultimately was ready to fall down. It was merely standing on three-quarter-inch rebar. Even the south side of his monolith had severe wave erosion.	2 3 4 5 6	this thing with a log and that it it was essentially most of my upland rocks had had so much erosion that they that it now became a southern boundary of my beach front. So I have this beautiful western boundary, which has very little erosion, except at high water, and now but now I have a south
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Hi Greg,

At one point you mentioned wanting to have your encroachment file for your Lot 16A lot. Attached, please find this file.

I wanted to update you on your rip-rap permit: At this point, I will be able to issue you your rip-rap permit on or after November 5th (as long as I do not receive an objection to your application).

Trevor

BEFORE THE STATE BOARD OF LAND COMMISSIONERS STATE OF IDAHO

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In the Matter of:

Encroachment Permit Application No. L-97-S-1081B

Gregory M. and Debra B. Wilson, Applicants. Case No. PH-2020-PUB-10-001

NOTICE OF FILING AND SERVICE

The Idaho Department of Lands ("IDL"), by and through its counsel Angela Schaer

Kaufmann, Deputy Attorney General, and in accordance with the Notice of Appointment of

Hearing Coordinator and Public Hearing ("Notice of Appointment") hereby files the following

Exhibit for the hearing in this matter, set for December 3, 2020:

• IDL-1: Idaho Department of Lands Hearing Statement

Also pursuant to the Notice of Appointment, IDL has served a copy of the above-referenced documents on the parties hereto.

DATED this 30th day of November, 2020.

<u>/s/ Angela Schaer Kaufmann</u> ANGELA SCHAER KAUFMANN Deputy Attorney General

CERTIFICATE OF SERVICE

I hereby certify that on this 30th day of November 2020, I caused to be served a true and correct copy of the foregoing by the method indicated below, and addressed to the following:

Gregory M. and Debra B. Wilson 32 Blackcap Ln Coolin, ID 83821

Tri-State Consulting Engineers, Inc Steven W. Syrcle, P.E. 1859 N. Lakewood Dr, Suite 103 Coeur d'Alene, ID 83814

William Faloon 6618 South Tomaker Lane Spokane, WA 99223

Kourtney Romine *on behalf of* Andrew Smyth, Hearing Coordinator

- □ U.S. Mail, postage prepaid
- □ Hand Delivery
- Email: greg@wilsonlaw.us
- □ U.S. Mail, postage prepaid
- □ Hand Delivery
- Email: <u>ssyrcle@tristateid.com</u>
- □ U.S. Mail, postage prepaid
- □ Hand Delivery
- Email: <u>billofspok@aol.com</u>
- □ U.S. Mail, postage prepaid
- □ Hand Delivery
- Email: <u>kromine@idl.idaho.gov</u>

/s/ Angela Schaer Kaufmann

Angela Schaer Kaufmann Deputy Attorney General

IDAHO DEPARTMENT OF LANDS

HEARING STATEMENT

CASE NO. PH-2020-PUB-10-001-Greg and Debra Wilson

ENCROACHMENT PERMIT APPLICATION L-97-S-1081B

Good afternoon, my name is Mike Ahmer, and I am the Lands Resource Supervisor for the Public Trust program at the Idaho Department of Lands ("IDL"). My purpose in being here today is to provide you with information regarding IDL's assessment of Application for Encroachment Permit No. L-97-S-1081B, filed by Gregory & Debra Wilson (the "Wilsons").

I. BACKGROUND

A. <u>Application</u>

The Wilsons are seeking an encroachment permit to place between 3 and 8 feet of rip-rap along their shoreline at their mutual property corner/line shared with Mr. Bill Faloon on Priest Lake.

B. <u>Timeline</u>

- 08/24/2020 Bill Faloon sends IDL an email in which he complains that his adjacent neighbor, Greg Wilson, has an unpermitted rock "barb" which extends 20-30 feet into the lake, and that Mr. Wilson has unpermitted rip-rap on his shoreline.
- As a result of this complaint, shortly after 08/24/2020, IDL contacted Mr. Wilson by phone to discuss the unpermitted rock barb and rip-rap. IDL informed Mr. Wilson during this conversation that IDL did not have any record of a rock barb or rip-rap being permitted for his waterfront (under his existing Encroachment Permit No. L-97-S-1081).
- 10/01/2020 -- Greg and Debra Wilson (the "Wilsons") submit an encroachment permit application to rip-rap their shoreline ("Application").
- 10/02/2020 IDL sends notification of the Application via mail to the Wilsons' adjacent neighbors and to certain state and county resource agencies and community organizations. In the notification, those individuals and entities are notified about the 30-day review/comment period regarding the Application.
- 10/06/2020 10/13/2020 Bonner County Daily Bee runs public notices regarding the Application.
- 10/26/2020 Mr. Faloon submits his objection letter to IDL.
- 11/09/2020 -- Mr. Faloon submits additional information in support of his objection letter.
- 11/10/2020 -- The public hearing is scheduled for 12/3/2020.
- 11/13/2020 through 11/20/2020 -- Bonner County Daily Bee runs public notices regarding the public hearing.

II. APPLICABLE LEGAL PRINCIPLES

A. <u>The Lake Protection Act, Title 58, Chapter 13, Idaho Code</u>

1. I.C. § 58-1301 (see also IDAPA 20.03.04.012):

The legislature of the state of Idaho hereby declares that the 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.

2. I.C. § 58-1302:

(f) "Riparian or littoral rights" means only 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. (*See also* IDAPA 20.03.04.010.32)

(i) "Encroachments not in aid of navigation" means and includes all other encroachments on, in or above the beds or waters of a navigable lake, including landfills or other structures not constructed primarily for use in aid of the navigability of the lake. The term "encroachments not in aid of navigation" may be used interchangeably herein with the term "nonnavigational encroachments." (*See also* IDAPA 20.03.04.010.16)

B. <u>Applicable Provisions of IDAPA 20.03.04, Rules for the Regulation of Beds, Waters, and</u> <u>Airspace over Navigable Lakes in the State of Idaho.</u>

1. IDAPA 20.03.04.010 DEFINITIONS

• **33. Riparian or Littoral Owner**. The fee owner of land immediately adjacent to a navigable lake, or his lessee, or the owner of riparian or littoral rights that have been segregated from the fee specifically by deed, lease, or other grant.

2. IDAPA 20.03.04.015. ENCROACHMENT STANDARDS

• 08. Riprap.

a. Riprap used to stabilize shorelines will consist of rock that is appropriately sized to resist movement from anticipated wave heights or tractive forces of the water flow. The rock must be sound, dense, durable, and angular rock resistant to weathering and free of fines. The riprap must overlie a distinct filter layer which consists of sand, gravel, or nonwoven geotextile fabric. The riprap and filter layer must be keyed into the bed below the ordinary or artificial high water mark, as applicable. If the applicant wishes to install riprap with different standards, they must submit a design

IDL-1

that is signed and stamped for construction purposes by a professional engineer registered in the state of Idaho.

b. Riprap used to protect the base of a seawall or other vertical walls may not need to be keyed into the bed and may not require a filter layer, at the Department's discretion.

• 13. General Encroachment Standards...

e. Presumed Adverse Effect. It will be presumed, subject to rebuttal, . . . that commercial navigational encroachments, community docks or nonnavigational encroachments will have a like adverse effect upon adjacent littoral rights if located closer than twenty-five (25) feet to adjacent littoral right lines. Written consent of the adjacent littoral owner or owners will automatically rebut the presumption. All boat lifts and other structures attached to the encroachments are subject to the above presumptions of adverse affects [sic].

3. IDAPA 20.03.04.020. APPLICATIONS.

• **02. Signature Requirement**. Only persons who are littoral owners or lessees of a littoral owner shall be eligible to apply for encroachment permits. A person who has been specifically granted littoral rights or dock rights from a littoral owner shall also be eligible for an encroachment permit; the grantor of such littoral rights, however, shall no longer be eligible to apply for an encroachment permit. Except for waterlines or utility lines, the possession of an easement to the shoreline does not qualify a person to be eligible for an encroachment permit.

C. <u>Idaho Department of Lands Procedures - ENC-Section 25: Encroachment Standards &</u> <u>Requirements</u>

L. Riprap, Seawall, and Bulkheads Standards and Requirements

The following standards and requirements apply for riprap, seawalls, and bulkheads:

1. Near Shore Construction

Riprap material shall be placed along the present contour of the shoreline and no riprap material shall be placed in excess of that necessary to stop erosion, except when in conformity with the Idaho Department of Fish and Game's recommended methods for enhancing near-shore fish habitats.

2. Construction Standards

a) Riprap used to stabilize shorelines will consist of rock that is appropriately sized to resist movement from anticipated wave heights or tractive forces of the water flow. The rock shall be sound, dense, durable, and angular rock resistant to weathering and free of fines (IDAPA 20.03.04.015.08.a). The length of the stone should be less than three (3) times its width or thickness. The riprap shall overlie a distinct filter layer which consists of sand, gravel, or nonwoven geotextile fabric (IDAPA 20.03.04.015.08.a). Such filters will always be required within the Coeur d'Alene basin. The riprap and filter layer shall be keyed into the bed below the

ordinary or artificial high water mark, as applicable (IDAPA 20.03.04.015.08.a). Riprap used to protect the base of a seawall or other vertical walls may not need to be keyed into the bed and may not require a filter layer, at the Area's discretion (IDAPA 20.03.04.015.08.b). If the applicant wishes to install riprap with different standards, they must submit with their application a design that is signed and stamped for construction purposes by a professional engineer registered in the state of Idaho (IDAPA 20.03.04.015.08.a).

b) Riprap should be placed on a slope no steeper than 1.5H:1V to aid in wave energy dissipation. Where possible, cutbanks shall be sloped landward and rip rap placed on this slope to minimize encroachment onto the lakebed or riverbed.

c) Permits to repair or replace existing unpermitted seawalls, bulkheads or other vertical walls shall be stipulated to require riprap material be placed at the toe along the entire wall face. It is important to get these structures under permit for inventory and historic purposes.

. . .

3. Jetties and Barbs

Jetties and bank barbs shall generally not be permitted as a method of controlling erosion on lakes and slack waters of reservoirs administered by the Department for trust purposes. These types of encroachment can have adverse impacts to navigation and recreation.

III. IDL'S ANALYSIS OF THE APPLICATION'S COMPLIANCE WITH THE LAKE PROTECTION ACT AND RULES

Greg and Debra Wilson are littoral owners and their property has approximately 75 feet of waterfront, making them eligible to submit an application for encroachment.

The Wilsons' encroachment application is unique, in that they are requesting to rip-rap a small section of their shoreline, specifically the corner of their waterfront property, at a width of 3-feet. Most rip-rap applications that IDL receives are from applicants seeking to protect their entire shoreline, or where erosion is taking place and property is being lost. IDL's procedures for rip-rap recommend that rip-rap "be placed along the present contour of the shoreline" to prevent erosion. The Wilsons' application does not comply with that standard.

Given the location and orientation of the requested encroachment, it is IDL's opinion that the Wilsons' encroachment application more closely resembles an application to permit a "bank barb." As IDL's procedures state, "Jetties and bank barbs shall generally not be permitted as a method of controlling erosion on lakes."

The photos submitted to IDL from Mr. Faloon show that the Wilsons' shoreline is not steep, there is not a bank to protect from erosive forces, no property is in jeopardy, and that the existing bank barb is already causing inconsistent sedimentation issues between the Faloon and Wilson properties.

IDL recently permitted a bank barb at Priest Lake at the beginning of 2020 and required that the applicant hire a geomorphologist to conduct a study on the effects that a bank barb would have on the waterfront, specifically the bank barb's effect on sedimentation. If the Hearing Officer's decision is to grant the Application, IDL would recommend that the same requirement be placed upon the Wilsons as a condition of their encroachment permit.

BEFORE THE STATE BOARD OF LAND COMMISSIONERS STATE OF IDAHO

In the Matter of Encroachment Permit Application No.) Case No. PH-2020-PUB-10-001 L-97-S-1081B

FINAL ORDER

Gregory M. and Debra B. Wilson,

Applicants.

I. **NATURE OF PROCEEDINGS**

The Idaho Department of Lands ("IDL"), through the State Board of Land Commissioners, "shall regulate, control and may permit encroachments in aid of navigation or not in aid of navigation on, in or above the beds or waters of navigable lakes" as provided in the Lake Protection Act, title 58, chapter 13, Idaho Code. Idaho Code § 58-1303. The corresponding administrative rules promulgated by the State Board of Land Commissioners are IDAPA 20.03.04, "Rules for the Regulation of Beds, Waters, and Airspace over Navigable Lakes in the State of Idaho."

On or around October 1, 2020, IDL received an encroachment permit application filed by Gregory M. and Debra B. Wilson. A public hearing was held on December 3, 2020. Andrew Smyth served as duly appointed hearing coordinator. On December 23, 2020, the hearing coordinator issued his Preliminary Order, which contains a Procedural Background, Findings of Fact, and Conclusions of Law.

As Director of IDL, my responsibility is to render a decision pursuant to Idaho Code § 58-1306(c) and IDAPA 20.03.04.030 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 coordinator's Preliminary Order in light of the entire record in this matter.

II. FINDINGS OF FACT

I adopt the Preliminary Order's Procedural Background and Findings of Fact as my Findings of Fact, except that I make the following amendments:

- In the Procedural Background, I delete paragraph 9 on page 2 and replace it with the following new paragraph 9:
 - 9. On November 20, 2020, IDL included in the record additional comments from Dr. Faloon, which were sent in an e-mail to IDL's Trevor Anderson on August 24, 2020.
- In the Findings of Fact, I delete paragraph 6 on page 4, and replace it with the following new paragraph 6:

6. If approved, the Applicants would be authorized to place 0.8 cubic yards of new material (cobble stones ranging in size from six to ten inches in diameter cemented together) within an area that is thirteen (13) feet long, and three (3) feet wide on the landward end and narrowing down to one foot wide on the waterward end. AR, pp. 2 and 5; Rec. 29:15 and 1:42:26.

III. CONCLUSIONS OF LAW

I adopt the Preliminary Order's Conclusions of Law as my Conclusions of Law, except for the following amendments:

 In Section A, I add the following sentence to the end of paragraph 5 on page 6: Section 25 can be found on IDL's website within IDL's Encroachments Procedures policy document. See Encroachments Procedures Agency Guidance Document at https://www.idl.idaho.gov/wp-content/uploads/sites/116/2020/11/PublicTrustProgram-Encroachments-Procedures-111920.pdf (Section 25 is at pp. 22-42; Riprap, Seawall, and Bulkheads Standards and Requirements is at pp. 38-39).

- In Section D, Paragraph 3.a on page 11, I amend the citation at the end of the paragraph from I.C. § 58-102(h) to I.C. § 58-1302(h).
- In Section D, I delete Paragraph 6 and 7 on page 14 and replace them with the following new paragraphs 6 and 7:

6. Testimony at hearing indicated that a wooden crib existed prior to fill being added to and on top of the pre-existing crib. The Application did not request a permit to authorize that wooden crib. Applicants are encouraged to submit a permit application for the pre-existing crib, which may be a pre-LPA encroachment pursuant to I.C. § 58-1312(1).

7. As to the existing fill in the area, whether natural or man-made, the matter is referred to the IDL Public Trust Program for further investigation into the status of the fill, its compliance with the LPA, and whether any additional compliance or other action is warranted.

IV. ORDER

I conclude that the hearing coordinator's Preliminary Order is based on substantial evidence in the record, and I adopt the Preliminary Order's Procedural Background, 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-97-S-1081B is DENIED.

This is a final order of the agency. Pursuant to Idaho Code § 58-1306(c) and IDAPA 20.03.04.30.09, the Applicant or any aggrieved party who appeared at the hearing has 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. 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 4^{th} day of January 2021.

DUSTIN T. MILLER Director, Idaho Department of Lands



Inspection Data	Inspectio	n Time (hrs)	Related instrument(s)
Body of water: Priest Lake	Preparation	: .25	(include instrument type & number)
Inspection date: 04/30/2021	Travel:	1.75	L97S1081B
Type: 🛛 Quality Assurance	Inspection:	.25	PH-2020-PUB-10-001
🔀 Complaint	Report:	.5	
Application Review, #:	Total:	2.75 hr	
Name of Instrument Holder/Responsible Gregory and Debra Wilson Location of Inspection:			
Gregory and Debra Wilson			
Gregory and Debra Wilson Location of Inspection: 32 Black Cap Lane			
Gregory and Debra Wilson Location of Inspection: 32 Black Cap Lane RP0008700017A0A		Name:	
Gregory and Debra Wilson Location of Inspection: 32 Black Cap Lane RP0008700017A0A On-site representative(s):		Name: Title:	
Gregory and Debra Wilson Location of Inspection: 32 Black Cap Lane RP0008700017A0A On-site representative(s): Name: Greg and Debra Wilson			

Narrative (Describe who, what, when, where, why, and how):

Mike Ahmer (Resource Supervisor), Trevor Anderson (Resource Specialist, Sr - Priest Lake) and Jennifer Barker (Resource Specialist - Mica) visited the site on April 30, 2021 to perform an inspection to review the fill material the Wilson's were required to remove following the Final Order for PH-2020-PUB-10-001.

On October 1, 2020, IDL received an application from Gregory and Debra Wilson for riprap on their property. Both an adjacent neighbor and IDL objected to the application and a Public Hearing was held on December 3, 2020. During the hearing IDL stated the riprap more closely resembled a bank barb or jetty as it was protruding perpindicular to shore as opposed to along the shoreline like typical riprap projects. The Final Order on the Public Hearing was for the application to be denied, to remove all fill, whether natural or man-made that has been placed on top of the lakebed (with the exception of the pre-existing crib as it existed before 1975).

On April 29, 2021, Mike and Trevor had a Zoom meeting with the Wilson's to discuss the Final Order. The Wilson's indicated they would start removing the existing rock/fill material the following weekend (5/1+5/2), but requested to have until December 1, 2021 to complete the work due to rising lake levels and having a hard time finding help/labor for the work. A meeting was set for April 30, 2021 for both IDL and the Wilsons to meet on site and be on the same page as it related to the material that needed to be removed in order to comply with the Final Order.

On April 30, 2021, Mike, Trevor and Jennifer met Greg and Debra Wilson at the Wilson property. When IDL arrived the fill material had already been removed all the way down to the existing logs that were part of the pre-existing crib that was allowed to remain. Sand bags and rocks appeared to have been moved above the ordinary high water mark (OHWM) on the Wilson property. Mr. Wilson has agreed to move the sand bags and rocks further upshore in the event that they are still located below the OHWM once the lake reaches its summer pool elevation. IDL has determined that the Wilson's complied with the Final Order.



Summary of Findings:

No issues of concern identified.

The following issue(s) of concern were identified (include citation and brief description):

Attachments:

Photos Final Order PH-2020-PUB-10-001

Inspector's Signature: Name: Mike Ahmer Mike Ahmer	Title/Office: Resource Supervisor	Date: 05/06/2021
--	--------------------------------------	---------------------









Trevor Anderson
Gregory Wilson
Mike Ahmer
RE: Incomplete Application -Drawing Update Needed
Monday, May 24, 2021 1:10:59 PM

If you delete the logs from your permit application drawing, I can issue you your boat rail system. But, please note, that we will need to pursue the log permitting in a timely manner. Because at some point in the near future, we will have to begin the formal non-compliance process with the logs, which will begin with us sending you a formal non-compliance letter. My hope would be that you submit an application for the logs, so that we do not have to send you a non-compliance letter.

The due date for submitting the log permit application is still the same (in 30 days, by June 23rd). Please confirm that you will meet this deadline requirement to make application for the logs.

IDL will evaluate your evidence once the application is submitted. Again, please read the statute that I sent you. As stated before, there is no application fee for submitting your "Pre-LPA" log application.

Again, please confirm that you understand the due date for your log application to be submitted to IDL.

Thank you.

Trevor

CC: Mike Ahmer

From: Gregory Wilson <greg@wilsonlaw.us>
Sent: Monday, May 24, 2021 12:49 PM
To: Trevor Anderson <tranderson@idl.idaho.gov>
Cc: Mike Ahmer <mahmer@idl.idaho.gov>
Subject: Re: Incomplete Application -Drawing Update Needed

Trevor: I will delete the two logs from drawing so rail launch can be permitted. As mentioned on site and in email, I will make a permit application for logs later after discussing my evidence with IDL staff

Greg

Sent from my iPhone

On May 24, 2021, at 12:00 PM, Trevor Anderson <<u>tranderson@idl.idaho.gov</u>> wrote:

Hi Greg,
Thank you for your updated drawing (attached with this email). I see that the drawing now lists two "6 inch logs" which extend below the Ordinary High Water mark.

Through your discussions with IDL, you've indicated that you believe that these 6 inch logs are Pre-LPA (Pre-Lake Protection Act) structures that are "grandfathered." As you may know, <u>Pre-LPA structures still need to be permitted</u>. Thus, please update your boat rail system application to now include the two 6 inch log structures that you have added to your new drawing. Specifically, update questions 15 and 16 on the application, and include the 6 inch log structures as additional structures that you would like to permit along with your boat rail system. You will need to include documentation in your application which shows evidence that the logs are Pre-LPA encroachments.

Attached with this email, please see the attached statute which explains the permitting process for Pre-LPA encroachments and the types of documentation that can prove that an encroachment is Pre-LPA. Please read this statute in its entirety.

As mentioned, Pre-LPA structures are required to be permitted, however there is no fee associated with making application for a Pre-LPA encroachment. Thus, you will not need to pay an additional fee to add your log encroachments onto your existing application.

Please confirm that you will be submitting application to permit your two "6 inch logs" which extend below the OHWM.

Due to the policies that I must follow, I must inform you that **your current "boat rail launch" application is incomplete**. I cannot process your application further because you have listed encroachments (two "6 inch logs") on your boat rail system application drawing which are not permitted, and which you have not made application for. Please correct this issue by making application for these mentioned items.

In the next 30 days (by June 23rd) Please submit to both myself and Mike Ahmer, an updated application which includes the two "6 inch logs," with proper documentation which demonstrates that these encroachments are Pre-LPA.

If we do not receive these items in the next 30 days, your boat rail system application will be automatically denied.

As an alternative option, you can remove the two 6 inch logs from your waterfront and from your application drawing and simply make application for your boat rail system, and then your boat rail system could be permitted right away. I would need to travel onsite to your waterfront to verify that the two 6 inch logs had been removed before issuing the boat rail system permit.

As you may guess, your neighbor Dr. Faloon is concerned about the two 6 inch logs on

your waterfront and Dr. Faloon has made a complaint against these encroachments. We are following our procedures and we are requiring you to make application for these logs.

Thank you for your attention to this.

Trevor

CC: Mike Ahmer

From: greg@wilsonlaw.us <greg@wilsonlaw.us>
Sent: Monday, May 24, 2021 9:50 AM
To: Trevor Anderson <<u>tranderson@idl.idaho.gov</u>>
Cc: Mike Ahmer <<u>mahmer@idl.idaho.gov</u>>
Subject: RE: Incomplete Application -Drawing Update Needed

Trevor and Mike:

I have revised the drawing deleting the rock type jetty. I have left the two 6" cedar logs in place which were mentioned in the Order.

Greg

From: Trevor Anderson <<u>tranderson@idl.idaho.gov</u>>
Sent: Thursday, May 20, 2021 4:22 PM
To: Gregory Wilson <<u>greg@wilsonlaw.us</u>>
Cc: Mike Ahmer <<u>mahmer@idl.idaho.gov</u>>
Subject: RE: Incomplete Application -Drawing Update Needed

Excellent. Thank you.

Trevor

From: Gregory Wilson <greg@wilsonlaw.us>
Sent: Thursday, May 20, 2021 4:22 PM
To: Trevor Anderson <<u>tranderson@idl.idaho.gov</u>>
Cc: Mike Ahmer <<u>mahmer@idl.idaho.gov</u>>
Subject: Re: Incomplete Application -Drawing Update Needed

Trevor: That jetty was removed. I will revise the drawing Greg

Sent from my iPhone

On May 20, 2021, at 4:18 PM, Trevor Anderson <<u>tranderson@idl.idaho.gov</u>> wrote:

Hi Greg,

Your boat rail system permit is ready to be issued. However, the IDL legal team is concerned about the rock jetty that you drew on the permit application drawing that you submitted.

Attached is the drawing that you submitted with your application. You drew a rock jetty next to the Lot 18 property line.

Please "white out" this jetty on the drawing and then scan and resend me the drawing with the whited out jetty.

Or, put an "X" mark through the jetty and write the words, "removed" next to the X.

Once I have this updated drawing I can issue you your permit.

Due to the formalities that I must follow, I must inform you that your application is "Incomplete" at present time, because of the jetty in the drawing. Please send me this updated drawing in the next two weeks (by June 3rd).

Thank you.

Trevor

CC: Mike Ahmer <DOC111.pdf>

<L97S1081B Application.pdf> <Rail Launch Drawing rev1.pdf> <https legislature.idaho.pdf> MICA SUPERVISORY AREA

3258 West Industrial Loop Coeur d'Alene ID 83815 Phone (208) 769-1577 Fax (208) 769-1597



DUSTIN T. MILLER, DIRECTOR EQUAL OPPORTUNITY EMPLOYER STATE BOARD OF LAND COMMISSIONERS Brad Little, Governor Lawerence E. Denney, Secretary of State Lawrence G. Wasden, Attorney General Brandon D Woolf, State Controller Sherri Ybarra, Sup't of Public Instruction

July 8, 2022

Greg Wilson PO Box 494 Greenacres, WA 99016

Re: Encroachment Permit Application L97S1081B

Dear Mr. Wilson:

Idaho Department of Lands (IDL) is in receipt of your application submitted on June 15, 2021 (attached), along with supplemental letters submitted on March 23, 2022 (attached) to permit an existing log structure located on your southern property boundary at and below the ordinary high-water mark (OHWM). IDL has determined that the information you have provided does not satisfy I.C. § 58-1312's requirement of substantive documentation of the age of the encroachment and documentation that the encroachment has not been modified since 1974. If you disagree or are dissatisfied with this determination, you may request a contested case hearing. If you do so, a hearing officer will be appointed and a hearing held in accordance with the Idaho Administrative Procedures Act, Title 67, Chapter 52, Idaho Code.

As an alternative to requesting a Contested Case Hearing you could remove the portions of the log structure that are below the OHWM, in order to comply with all of IDL's rules and regulations. IDL does not have any jurisdiction over the lands located above the OHWM.

Please submit a request for a Contested Case Hearing or remove the portions of the log structure below the OHWM within 30 days of receipt of this letter, approximately August 12, 2022.

Additionally, rocks and presumably concrete have been added underneath your pier and approach ramp/dock. These rocks have not been permitted or applied for and would constitute a non-navigational encroachment that would need to provide a significant benefit to the public of Idaho via economic, social or environmental purposes. Please remove the rocks within 30 days of receipt of this letter, approximately August 12, 2022.

If you have any questions regarding this matter, please feel free to contact me at (208) 769-1577.

Thank you for your cooperation.

Sincerely,

Mil Al 7.8.22 MIKE AHMER, Resource Supervisor, Lands & Waterways

Mica Area

Enclosures: Joint 404 Application Supplemental Letters

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 1899 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									
USACE NWW-	Date Received:			linco	mplete App	lication Returned	eturned		
Idaho Department of Water Resources No.	Date Received:				Fee Received Receipt No.: DATE:				
Idaho Department of Lands No.	Date Received:			DA1	Received E:		Receipt No.:		
	1	NCOMPLET	TE APPLICATION	IS MAY NOT BE PROCESSED					
1. CONTACT INFORMATION - APPLICA	NT Requi	red:		2. CONTACT INFORMATION - AGENT:					
Name: Gregory M. Wilson				Name:					
Company:				Company:					
Mailing Address: P.O. Box 494				Mailing Address:					
City: Greenacres			Zip Code: 99016	City: State:			State:	Zip Code:	
Phone Number (include area code): 509-991-8575	E-mail: greg@wilsonlaw.us			Phone Number (include area code): E-mai			E-mail:	iil:	
3. PROJECT NAME or TITLE: Submerge	d Log struc	ture		4. PROJECT STREET ADDRESS: 32 Blackcap Lane					
5. PROJECT COUNTY: Bonner	6. PROJECT CITY: Coolin			7. PROJECT ZIP CODE: 83821			8. NEAREST WATERWAY/WATERBODY: Priest Lake		
9. TAX PARCEL ID#: RP0008700017A0A		LATITUDE: 48.6560 11a. 1/4: 11b. 1/4: 11c. SECTION: 11d. TOWNSHIP: LONGITUDE: -116.8521 SE NE 9 61N			11e. RANGE: 4W				
12a. ESTIMATED START DATE: June 2021	12b. ESTIMATED END DATE: August 1, 2022			13a. IS PROJECT LOCATED WITHIN ESTABLISHED TRIBAL RESERVATION BOUNDARIES?					
13b. IS PROJECT LOCATED IN LISTED ESA AREA? X NO YES 13c. IS PROJECT LOCATED ON/NEAR HISTORICAL SITE? X NO YES							YES		
14. DIRECTIONS TO PROJECT SITE: Include vicinity map with legible crossroads, street numbers, names, landmarks.									
From Coolin proceed north on East Shore Rd turning left onto Diamond Park Rd, then turning left onto Black Cap Lane									
15. PURPOSE and NEED: Commercial Industrial Public 🔀 Private I Other									
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.									
To permit a pre-Lake Protection Act ("LPA") submerged log structure located near the southern boundary of applicant's Lot 17A. Applicant submits two letters as supporting evidence of the pre-LPA log structure. Exhibits attached are: (1) Gary Fievez letter dated 11/20/20, and (2) Pat Phillips letter dated June 15, 2021.									

16. DETAILED DESCRIPTION OF EACH ACTIVITY WITHIN OVERALL PROJECT. Specifically indicate portions that take place within waters of the United States, including wetlands: Include dimensions; equipment, construction, methods; erosion, sediment and turbidity controls; hydrological changes: general stream/surface water flows, estimated winter/summer flows; borrow sources, disposal locations etc.:						
Applicant believes the submerged log structure was constructed by the original Lot 17 owner, Herman "Red" Rouse in the early 1960's. The log structure is approximately 20 feet long composed of two 20 feet, 6 inch diameter cedar logs and some buried supporting dimensional lumber joining the logs by steel spikes.						
	2					
3						
· · · · · · · · · · · · · · · · · · ·						
17. DESCRIBE ALTERNATIVES CONSIDERED to AVOID or MEASURES TAKEN to MI	NIMIZE and/ or COMPENSATE for IMPACTS to WATERS of the UNITED STATES, INCLUDING					
WETLANDS: See Instruction Guide for specific details.						
No work will be performed since this permit seeks to permit a Pre-LPA	structure					
No work will be performed since and permit seeks to permit a rie-bra	Su dotti o.					
	3					
	4					
18. PROPOSED MITIGATION STATEMENT or PLAN: If you believe a mitigation plan is copy of your proposed mitigation plan.	not needed, provide a statement and your reasoning why a mitigation plan is NOT required. Or, attach a					
We do not believe a mitigation plan is needed.						
 TYPE and QUANTITY of MATERIAL(S) to be discharged below the ordinary high wate mark and/or wetlands; 	20. TYPE and QUANTITY of impacts to waters of the United States, including wetlands:					
Dirt or Topsoil: cubic yards	Filling: acres sq ft cubic yards					
Dredged Material: cubic yards	Backfill & Bedding: acres sq ft cubic yards					
Clean Sand: cubic yards	Land Clearing: acres sq ft cubic yards					
Clay: cubic yards						
	Flooding: acres sq ft cubic yards					
Concrete: cubic yards	Excavation: acres sq ft cubic yards					
Other (describe): cubic yards	Draining: acres sq ft cubic yards					
Other (describe: cubic yards	Other: sq ft cubic yards					
TOTAL	707110					
TOTAL: cubic yards	TOTALS: acres sq ft cubic yards					
NWW Form 1145-1/IDWR 3804-B	Page 2 of 4					

21. HAVE ANY WORK AC	TIVITIES STARTED ON THIS PROJECT?	NO YES IF	ves, describe ALL work that has occurred including dates.	
		to		
	Y ISSUED PERMIT AUTHORIZATIONS:			
L-97-S-1081B Wilson				
			÷)	
) are located on Public Trust Lands, Administered by			
	ACITY OF BRIDGE/CULVERT and DRAINAGE AR		_ Square Miles	
	D IN A MAPPED FLOODWAY? NO lopment permit and a No-rise Certification may be re	YES If yes, contact th equired.	e floodplain administrator in the local government isrisdiction ir	which the project is
26a WATER QUALITY CE property, must obtain a Sec	RTIFICATION: Pursuant to the Clean Water Act, and tion 401 Water Quality Certification (WQC) from the rther clarification and all contact information.	nvone who wishes to dischar	ge dredge or fill material into the waters of the United States, i tifying government entity.	either on private or p
The following information is	requested by IDEQ and/or EPA concerning the prop	oosed impacts to water qualit	y and anti-degradation:	
X NO YES Do	applicant willing to assume that the affected waterbo es applicant have water quality data relevant to dete the applicant willing to collect the data needed to det	ermining whether the affected	waterbody is high quality or not? waterbody is high quality or not?	
26b. BEST MANAGEMENT of water quality. All feasible	FPRACTICTES (BMP's): List the Best Managemen alternatives should be considered - treatment or of	t Practices and describe thes herwise. Select an alternativ	e practices that you will use to minimize impacts on water qual e which will minimize degrading water quality	ity and anti-degrada
We believe that there wil	Il be no impact on water quality.			
	a			
hrough the 401 Certificatio	n process, water quality certification will stipulate mi	nimum management practice	c pooled to prove t descelation	
	stream, river, lake, reservoir, including shoreline: At			
Activity	Name of Water Body	Intermittent	Description of Impact	Impact Lengt
· · · · · · · · · · · · · · · · · · ·	Name of Water Body	Perennial	and Dimensions	Linear Feet
A				
			TOTAL STREAM IMPACTS (Linear Feel	i) :
LIST EACH WETLAND I	MPACT include mechanized clearing, filL excavation		site map with each impact location.	
Activity	Wetland Type: Emergent, Forested, Scrub/Shrub	Distance to Water Body (linear ft)	Description of Impact Purpose: road crossing, compound, culvert, etc.	Impact Lengt (acres, square linear ft
				-
				-
			TOTAL WETLAND IMPACTS (Square Feel	:):
W Form 1145-1/ID	WR 3804-B			Page 3 of

29. ADJACENT PROPERTY OWNERS NO	TIFICATION F	Requirem: P	rovide contact informal	ion of ALL adjacent property owners below.			
Name: William Faloon				Name: Phillips Keystone Inheritance Trust			
Mailing Address: S. 6618 Tomaker Ln.				Mailing Address: 2292 Tanglewood Lane			
City: Spokane		State: WA	Zip Code: 99223	City: Emmett		State: ID	Zip Code: 83617
Phone Number (include area code): 509-869-8652	E-mail: billofsp	ook@aol.cor	n	Phone Number (include area code): 208-369-0483	E-mail: Imhaur	18@msn.con	n
Name:				Name:			
Mailing Address:				Mailing Address:			
City:		State:	Zip Code:	City:		State:	Zip Code:
Phone Number (include area code):	E-mail:			Phone Number (include area code).	E-mail:		
Name:			54	Name:			
Mailing Address:				Mailing Address:			
City:		State:	Zip Code:	City:		State:	Zip Code:
Phone Number (include area code):	E-mail:			Phone Number (include area code).	E-mail:		
Name:				Name:			
Mailing Address:				Mailing Address:			
City:		State:	Zip Code:	City:		State:	Zip Code:
Phone Number (include area code):	E-mail:			Phone Number (include area code):	E-mail:		

30. SIGNATURES: STATEMENT OF AUTHORIAZATION / 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:

Milton

Date: 6-15-2

Signature of Agent: _

Date:

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 willfully 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".



a.



11/24/20

To: Idaho Dept. of Lands From: Gary Fievez

My family purchased lot 18 in Diamond Park Addition on Priest Lake in June, 1965. We sold our cabin and lot to Bill Faloon in 2002.

When we owned the lot and the cabin that we built, Lot 17 and the cabin on it were owned by Red Rouse and later by the Ellingsons. During some of this time, two cedar logs that were approximately 4-6 inches in diameter and 20 feet long were placed on the beach at the property line by the Rouses. However, there was no rock barrier or rock structure that extended from the beach into the lake. In addition, there was no erosion of our beach.

Gary Fievez bany fierry

June 15, 2021

To: Idaho Department of Lands From: Pat Phillips

My family purchased Lot 15 in the Diamond Park subdivision in the early 1960's. Our family, through a family trust, continues to own Lot 15 adjacent to Greg and Debra Wilson's two lots. Recently, Greg Wilson asked me if I had any recollection of the two cedar logs which had been placed near the south boundary of his Lot 17. I recently walked over and looked at the exposed logs.

My dad and I built our lake cabin in 1966. Then as a teenager, I recall walking the beach front from our cabin to a small creek where I would catch frogs. I recall stepping over logs on the "Red" Rouse lot 17 beach. I believe that Red may have tied up his fishing dingy to the logs.

Pat Phillips

ih M. Philip

February 22, 2022

To: Idaho Department of Lands

Subject: Supplemental letter

From: PATRICK M. PHILLIPS

I, Patrick M. Phillips, offer this supplemental letter in connection with Greg Wilson's permit application for a Pre-Lake Protection Act shoreline and lakebed encroachment located on the south boundary of their Priest Lake Diamond Park Addition Lot 17A.

In June 2021, I had presented the Wilson's with a letter providing my recollection facts concerning the log structure on their southern lake front boundary area and their permit application.

The exposed log structure which I inspected in the summer of 2021 is the same log structure which I recall seeing on the south side of Lot 17 and extending into the lake, although now much older and weathered. The logs' configuration at their current location has not changed since the late 1960's. The timeframe for my recollection begins in 1966 and continues. In 1966 I was 14 years old. Additionally, I recall seeing a dingy up to a log at times at the location of the log structure.

I have reviewed the Gary Fievez letter dated November 24, 2020. The logs which I recall seeing on the beach and extending into the lake were small logs as described by Fievez. I agree with Mr. Fievez's description of the logs and their south boundary location although I recall the log structure on the upland beach and extending into the lake just as they are now. Again, the timeframe for this recollection begins in 1966 and continues today.

Patinh M. Phillip

11/24/20

To: Idaho Dept. of Lands From: Gary Fievez

My family purchased lot 18 in Diamond Park Addition on Priest Lake in June, 1965. We sold our cabin and lot to Bill Faloon in 2002.

When we owned the lot and the cabin that we built, Lot 17 and the cabin on it were owned by Red Rouse and later by the Ellingsons. During some of this time, two cedar logs that were approximately 4-6 inches in diameter and 20 feet long were placed on the beach at the property line by the Rouses. However, there was no rock barrier or rock structure that extended from the beach into the lake. In addition, there was no erosion of our beach.

Gary Fievez

bay fierez



11/24/20

To: Idaho Dept. of Lands From: Gary Fievez

My family purchased lot 18 in Diamond Park Addition on Priest Lake in June, 1965. We sold our cabin and lot to Bill Faloon in 2002.

When we owned the lot and the cabin that we built, Lot 17 and the cabin on it were owned by Red Rouse and later by the Ellingsons. During some of this time, two cedar logs that were approximately 4-6 inches in diameter and 20 feet long were placed on the beach at the property line by the Rouses. However, there was no rock barrier or rock structure that extended from the beach into the lake. In addition, there was no erosion of our beach.

Gary Fievez

your fierey

June 15, 2021

To: Idaho Department of Lands From: Pat Phillips

My family purchased Lot 15 in the Diamond Park subdivision in the early 1960's. Our family, through a family trust, continues to own Lot 15 adjacent to Greg and Debra Wilson's two lots. Recently, Greg Wilson asked me if I had any recollection of the two cedar logs which had been placed near the south boundary of his Lot 17. I recently walked over and looked at the exposed logs.

My dad and I built our lake cabin in 1966. Then as a teenager, I recall walking the beach front from our cabin to a small creek where I would catch frogs. I recall stepping over logs on the "Red" Rouse lot 17 beach. I believe that Red may have tied up his fishing dingy to the logs.

Pat Phillips

Patrick M. Philips

February 22, 2022

To: Idaho Department of Lands

Subject: Supplemental letter

From: PATRICK M. PHILLIPS

I, Patrick M. Phillips, offer this supplemental letter in connection with Greg Wilson's permit application for a Pre-Lake Protection Act shoreline and lakebed encroachment located on the south boundary of their Priest Lake Diamond Park Addition Lot 17A.

In June 2021, I had presented the Wilson's with a letter providing my recollection facts concerning the log structure on their southern lake front boundary area and their permit application.

The exposed log structure which I inspected in the summer of 2021 is the same log structure which I recall seeing on the south side of Lot 17 and extending into the lake, although now much older and weathered. The logs' configuration at their current location has not changed since the late 1960's. The timeframe for my recollection begins in 1966 and continues. In 1966 I was 14 years old. Additionally, I recall seeing a dingy up to a log at times at the location of the log structure.

I have reviewed the Gary Fievez letter dated November 24, 2020. The logs which I recall seeing on the beach and extending into the lake were small logs as described by Fievez. I agree with Mr. Fievez's description of the logs and their south boundary location although I recall the log structure on the upland beach and extending into the lake just as they are now. Again, the timeframe for this recollection begins in 1966 and continues today.

Patinh M. Phillip

AFFIDAVIT OF PATRICK M. PHILLIPS

STATE OF <u>Wasning to</u>)) ss: County of <u>Pend Opeille</u>)

Patrick M. Phillips, being first duly sworn on oath deposes and says:

 My family purchased Lot 15 of the Diamond Park Subdivision located Bonner County, Idaho in the early 1960's. The Phillips family continues to own this Lot.

2. Greg Wilson, the owner of Lot 17 in the Diamond Park Subdivision, asked me if I had any present recollection of a log and timber crib located near the southern boundary of his Lot 17.

3. I have firsthand knowledge of the log crib being located on Lot 17 in 1966 and subsequent Location receipting the content of the log crib being located on Lot 17 in 1966 and subsequent years. In 1966 my father and I built our cabin on Priest Lake. I was fourteen years old when we content in the second source capital to the second source capital to began construction.

4. I recall two cedar logs bound together with timbers and fashioned as a crib. It contained rocks. The logs were about 4-6 inches in diameter and about 20 feet long. (Exhibits "A" and "B")

5. I reviewed the Gary Fievez letter addressed to the Idaho Department of Lands dated November 24, 2020 (Exhibit "C") and agree with his description of the logs and their location on the south boundary of Lot 17, however I recall the log crib structure lakeward of the beach as it appears in the photos in Exhibits "A" and "B".

6. Specifically, I recall walking south on the beach from our cabin to a small creek where I have a population of the state of the stat

AFFIDAVIT OF PATRICK M. PHILLIPS -Page 1 of 2

6. I inspected the log crib in the Summer of 2021. This weathered log crib is the same structure I recall in the 1960's. (Exhibits "A" and "B") The log and timber structure has not changed since my first recollection in 1966 and subsequent years with the exception of weathered aging. Greg Wilson informed me that his family had placed rocks alongside one of the timbers but has since removed them. The 1966 log structure shown in the Exhibit A and B photos has not been altered. The logs and timber are fixed together with timber spikes. These spikes are visible in Exhibit "B."

M. Phil

Patrick M. Phillips

SUBSCRIBED AND SWORN to before me this \underline{H}^{H} day of August 2022.



NOTARY PUBLIC in and for the State of Washington, residing at Pend Oreille

My commission expires: 10/11/25







11/24/20

To: Idaho Dept. of Lands From: Gary Fievez

My family purchased lot 18 in Diamond Park Addition on Priest Lake in June, 1965. We sold our cabin and lot to Bill Faloon in 2002.

When we owned the lot and the cabin that we built, Lot 17 and the cabin on it were owned by Red Rouse and later by the Ellingsons. During some of this time, two cedar logs that were approximately 4-6 inches in diameter and 20 feet long were placed on the beach at the property line by the Rouses. However, there was no rock barrier or rock structure that extended from the beach into the lake. In addition, there was no erosion of our beach.

Gary Fievez fierez

From:	Mike Ahmer
To:	Gregory M. Wilson
Cc:	"Erik A. Kukuk"; "Tyler Wilson"
Subject:	RE: For the recordCorrection of IDL error
Date:	Thursday, August 25, 2022 10:46:00 AM
Attachments:	image001.png

Term #3 in your encroachment permit L-97-S-1081A states "Acceptance of this permit constitutes permission by the Permittee for representatives of the Idaho Department of Lands to come upon Permittee's lands at all reasonable times to inspect the encroachment authorized by this permit". We were not trying to deny you constitutional property rights, we were trying to just get the inspection done so we could try and move forward. This issue has taken up our time for over two years now.

To my knowledge there is no index of pre-LPA encroachment permits. As you are likely aware, not every encroachment in the lake is properly permitted. We do the best job we can with the resources that are available to us. Typically, we issue notices of non-compliance following neighbor complaints/disputes or when properties sell. We have made an effort the past few years to inspect encroachments that recently ended their sunset period to ensure they are being built to the standards submitted with their applications.

If you would like to request all Faloon emails that contain attachments, I can fulfill that request for you.

Thanks,



Mike Ahmer Resource Supervisor – Navigable Waters Idaho Department of Lands 3258 Industrial Loop, Coeur d'Alene, ID 83815 Office: (208) 769-1577 Email: mahmer@idl.idaho.gov https://www.idl.idaho.gov

From: Gregory M. Wilson <greg@wilsonlaw.us>
Sent: Thursday, August 25, 2022 10:25 AM
To: Mike Ahmer <mahmer@idl.idaho.gov>
Cc: 'Erik A. Kukuk' <eak@painehamblen.com>; 'Tyler Wilson' <tyler@wilsonlaw.pro>
Subject: For the record...Correction of IDL error

CAUTION: This email originated outside the State of Idaho network. Verify links and attachments BEFORE you click or open, even if you recognize and/or trust the sender. Contact your agency service desk with any concerns.

Mike:

I just received a copy of your offices June 29, 2022 inspection report as a result of my formal public document request. I should have been notified that IDL intended to make an administrative search of my property. I should have been permitted to attend the inspection. Why was I denied this right? Why was this report, with its errors, withheld from me? Am I the bad guy here trying to protect my constitutional property rights?

I was fully prepared to defend the placement of the tarp which is the subject of apparent undisclosed Faloon complaint generated report. This complaint was not included in my public records request even though it was crystal clear that I was looking for all Faloon related correspondence.

I placed the tarp over the beach on May 27, 2022 as you can see from the above Adobe file. Note the date stamp May 27, 2022. At the time of the placement, the lake level was 2,438 ft above MSL, or above IDL's jurisdictional threshold. I took a photograph of the beach tarp placement on May 27 showing the USGS Priest lake data on the day of placement. Note the date on the USGS Adobe file above May 27. You will observe that the "redline" on the USGS document is "summer pool" (3.0) which existed only on May 27, 2022. In fact this is the only day in 2022 when the lake was at 2,438 (3.0). The lake has been held at 3.2 most of the Summer in order to maintain the requisite Priest River flow rate.

Ryan Zandhuisen's report is wrong. The tarp and rocks were above 2,438ft on May 27. Between May 27 and June 29 the lake rose 6 inches and covered the tarp and rocks. When covered on June 29 they were not below 2,438.

I am going to make another public records request. I would ask for your cooperation. Does IDL index lake encroachment permits issued for Pre-LPA encroachments, or do I need to inspect every lake permit on Priest Lake? In Diamond Park alone there are at least 26 so called jetties or barbs similar to or larger than mine. Have any of these been given Pre-LPA approval?

Sincerely, Greg Wilson

Gregory M. Wilson Attorney at Law <u>Mailing Address</u>: P.O. Box 494 Spokane Valley, WA 99016 Tel. (509) 991-8575 Email: greg@wilsonlaw.us

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BEFORE THE IDAHO DEPARTMENT OF LANDS

IN THE MATTER OF ENCROACHMENT PERMIT) Case No.
APPLICATION NO. L-97-S-1081B,) PH-2020-PUB-10-001
GREGORY M. WILSON and)
DEBRA B. WILSON, APPLICANTS)
	_)

BEFORE

HEARING COORDINATOR ANDREW SMYTH

Thursday, December 3, 2020

1:00 p.m., Pacific Time, via Zoom

TRANSCRIBED BY: KAMRA TOALSON, CSR No. 756 Notary Public