

BEFORE THE IDAHO STATE BOARD OF LAND COMMISSIONERS

In the Matter of Encroachment Permit Application No. ) Case No. CC-2022-NAV-22-003  
L-95-S-0478B, )  
) **FINAL ORDER**  
John J. Condon – John and Gaila Condon Living )  
Trust, )  
)  
)  
Applicant. )

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**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 July 13, 2022, IDL received an encroachment permit application filed by John Condon on behalf of the John and Gaila Condon Living Trust. A hearing was held on September 14, 2022. Lincoln Strawhun served as duly appointed hearing officer. On October 12, 2022, the hearing officer issued his Preliminary Order, which contains Issue, Findings of Fact, Discussion, and Conclusion of Law sections.

As Director of IDL, my responsibility is to render a decision pursuant to Idaho Code § 58-1305 and IDAPA 20.03.04.025 on behalf of the State Board of Land Commissioners and based on the record, which I have reviewed in the context of my personal expertise gained

through education, training, and experience. I relied on the record for this matter, including examining the hearing officer's Preliminary Order in light of the entire record.

## **II. ISSUE**

I adopt the Preliminary Order's Issue.

## **III. FINDINGS OF FACT**

I adopt the Preliminary Order's Findings of Fact as my Findings of Fact with the following amendments:

As to Findings of Fact paragraph 1, I adopt the first sentence of paragraph 1. I delete subparagraphs 1.a and 1.b and replace them with the following subparagraphs 1.a, 1.b, 1.c, and 1.d:

- a. Applicant's proposed single-family dock would be located adjacent to a vacant property Applicant owns. Applicant's vacant property is described as parcel ID # 0-3520-000-138-0, AIN 107344, Lot 138, Block 1 of HL Honeysuckle Hills Building Sites (hereinafter "vacant property").
- b. Applicant is the littoral owner of the vacant property.
- c. Applicant also owns the next two adjacent properties on the west side of the vacant property. John Condon operates a dock building business, North Idaho Maritime, and that business operates a commercial navigational encroachment on those two additional properties.
- d. Encroachment permit L-95-S-0478A was issued in February 2002 to transfer the original permit to new owners of the vacant property. Permit L-95-S-0478A was for a single-family dock consisting of a 6' x 20' ramp and a 20' x 30' single slip dock. The dock permitted by Permit L-95-S-0478A has since

been removed. Applicant's proposed dock has a different footprint from the dock permitted by L-95-S-0478A.

I delete paragraph 2 of the Findings of Fact and replace it with the following new paragraph 2:

2. On July 13, 2022, IDL sent adjacent neighbor notices to Dalton Gardens Irrigation District and to 2387 East Hayden Lake Road LLC. The 2387 East Hayden Lake Road LLC owns the property immediately adjacent to the east of Applicant's vacant property. On the west side of Applicant's vacant property, Applicant owns two additional properties. Dalton Gardens Irrigation District owns the property adjacent to Applicant's third property. Pursuant to IDAPA 20.03.04.025.02, IDL noticed the next adjacent owner to the vacant property's west who was not Applicant, which was Dalton Gardens Irrigation District.

I amend paragraph 6 of the Findings of Fact by deleting the words "commercial marina" and replacing it with the words "single family dock."

#### **IV. DISCUSSION**

I adopt the Preliminary Order's Discussion as my Discussion.

#### **V. CONCLUSION OF LAW**

I adopt the Preliminary Order's Conclusion of Law.

#### **VI. ORDER**

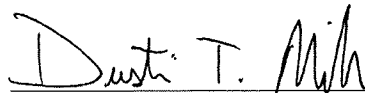
I conclude that the hearing officer's Preliminary Order as amended herein is based on substantial evidence in the record, and I adopt the Preliminary Order's Issue, Findings of Fact, Discussion, and Conclusion of Law with the amendments set forth herein as my decision in this matter. I have enclosed and served the Preliminary Order along with this Final Order.

Based on the adopted Issue, Findings of Fact, Discussion, and Conclusions of Law with the amendments herein, I HEREBY ORDER that Encroachment Permit Application L-95-S-0478B is APPROVED, subject to the following additional condition:

Dock is permitted as a single-family dock. There shall be no commercial activity at the dock, including but not limited to loading and unloading commercial materials, dock construction or dock repair within the littoral space; storage of docks or piling within the littoral space; and storing or parking commercial vessels at the dock.

This is a final order of the agency. Pursuant to Idaho Code § 58-1305(c), Idaho Code § 58-1306(c), and IDAPA 20.03.04.25.08, 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. Pursuant to Idaho Code § 58-1305(c), Idaho Code § 58-1306(c), and IDAPA 20.03.04.25.08, an adjacent littoral owner or other aggrieved party shall be required to deposit an appeal bond with the court in an amount to be determined by the court but not less than five hundred dollars (\$500) insuring payment to the Applicant of damages caused by delay and costs and expenses, including reasonable attorney fees, incurred on the appeal in the event the district court sustains the Final Order. The Applicant does not need to post a bond with the district court for an appeal. The filing of the petition for review to the district court does not itself stay the effectiveness or enforcement of the order under appeal. Idaho Code § 67-5274.

Dated this 28th day of October 2022.



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DUSTIN T. MILLER  
Director, Idaho Department of Lands

**CERTIFICATE OF MAILING**

I hereby certify that on this 28<sup>th</sup> day of October 2022, I caused to be served a true and correct copy of the foregoing by the method indicated below, and addressed to the following:

John J Condon  
John and Gaila Condon Living Trust  
8207 N. Sally St  
Hayden, ID 83835  
*Applicant*

- U.S. Mail, postage prepaid
- Hand Delivery
- Email: [john@northidahomaritime.com](mailto:john@northidahomaritime.com)

Ward Crawford  
North Idaho Maritime  
4020 N. Huetter Rd  
Coeur d'Alene, ID 83814  
*Contractor for Applicant*

- U.S. Mail, postage prepaid
- Hand Delivery
- Email: [w.crawford@northidahomaritime.com](mailto:w.crawford@northidahomaritime.com)

William Eric Snowden II  
13688 N. Ness Rd  
Worley, ID 83876  
*Objector*

- U.S. Mail, postage prepaid
- Hand Delivery
- Email: [wessnowden@gmail.com](mailto:wessnowden@gmail.com)

Dalton Gardens Irrigation District  
c/o Lue Franklin  
6360 N 4<sup>th</sup> Street  
Dalton Gardens, ID 83815  
*Objector*

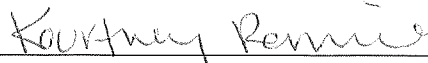
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Angela Schaer Kaufmann  
P.O. Box 83720  
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*Counsel for IDL*

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- Email: [angela.kaufmann@ag.idaho.gov](mailto:angela.kaufmann@ag.idaho.gov)

Kourtney Romine *on behalf of*  
Lincoln Strawhun, Hearing Officer

- U.S. Mail, postage prepaid
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\_\_\_\_\_  
Kourtney Romine, Workflow Coordinator

**BEFORE THE IDAHO STATE BOARD OF LAND COMMISSIONERS**

In the Matter of: )  
 ) Case No. CC-2022-NAV-22-003  
ENCROACHMENT PERMIT APPLICATION )  
No. L-95-S-0478B, )  
 ) **PRELIMINARY ORDER**  
John J. Condon – John and Gaila Condon Living )  
Trust, )  
 )  
 )  
Applicant. )  
\_\_\_\_\_ )

After a hearing on this matter, held September 14, 2022, the hearing officer recommends to the Director of the Idaho Department of Lands (“IDL”) to approve Encroachment Permit Application No. L-95-S-0478B (“Application”) because the proposed dock meets the legal requirements for single-family docks.

In summary, Applicant applied for an encroachment permit for a single-family dock located adjacent to a vacant parcel, and next to two adjacent properties with commercial navigation encroachments—owned and operated by Applicant (North Idaho Maritime, a dock building business).

Upon receiving the application, IDL sent Applicant a questionnaire to determine if the proposed dock would be used as a single-family dock or as a commercial navigation encroachment. IDL received a response from Applicant and determined that the application for a single-family dock was complete. IDL received several objections to Applicant’s proposed dock.

On August 16, 2022, IDL sent *Notice of Appointment of Hearing Officer and Hearing* to schedule a public hearing in accordance with Idaho Code § 58-1306(c) to the interested parties—the Applicant, Objectors, and IDL. The parties submitted comments and exhibits before hearing and

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provided testimony at hearing. All exhibits and testimony are accepted as evidence and part of the record in this matter. The hearing was held via Zoom videoconference.

After considering the written and testimonial evidence, this Preliminary Order is issued per Idaho Code § 67-5245 and IDAPA 20.01.01.730.02, and is organized by the following sections: *Issue, Findings of Fact, Discussion, Conclusion of Law, and Preliminary Order.*

### **ISSUE**

Whether Applicant's Encroachment Permit Application complies with the Lake Protection Act, Idaho Code § 58-13 and the *Rules for the Regulation of Beds, Waters, and Airspace Over Navigable Lakes in the State of Idaho*, IDAPA 20.03.04.

### **FINDINGS OF FACT**

The hearing officer finds the following facts:

1. On July 13, 2022, Applicant applied for a single-family dock consisting of a 4' x 10' pier, 3' x 15' ramp, 6' x 21' approach and 28' x 24' single-slip dock, comprising 699 square feet (encroachment permit application L-95-S-0478B).
  - a. Encroachment permit L-95-S-0478A was issued February 8, 2022, to transfer the original permit to the new owners of the property. The original permit was for a single-family dock consisting of a 6' x 20' ramp and a 20' x 30' single slip dock. That permitted dock has since been removed from the property owned by Applicant.
  - b. Applicant is a littoral owner.
2. On July 13, 2022, IDL sent adjacent neighbor notices to Dalton Gardens Irrigation District and to 2387 East Hayden Lake Road LLC—adjacent neighbors located past Applicant's property and the owner of the vacant parcel.
3. On July 25, 2022, IDL sent Applicant a questionnaire to determine if the proposed dock would be used as a single-family dock or as a commercial navigation encroachment. IDL received a response, on the same day, from Applicant and determined that the application for a single-family dock was complete.
4. On July 27, 2022, IDL received an objection from Mr. Snowden representing 2387 East Hayden Lake Road LLC, who stated: "*I object to this project because it is an effort to expand applicant's commercial dock building facility adjacent to the proposed*

*'residential dock.' The facility and project are an eyesore and present a danger to the non-motorized users of Honeysuckle Bay. Additionally, the facility discharges construction material into the lake and the area includes storage of old and junk docks all to the detriment of the water quality, fish and aquatic habitat."*

5. On August 1, 2022, IDL received an objection from Dalton Gardens Irrigation District, who stated: "*1) no public access, 2) not safe.*"
6. Applicant's drawings, submitted with the application, meet commercial marina dock standards as defined by IDAPA 20.03.04.015.
7. As an exhibit for hearing, and in testimony at hearing, IDL recommended approval of application NO. L-95-S-0478B because the proposed dock meets the applicable legal requirements, but recommended the following language be included in the permit: "*Dock is permitted as a single-family dock. There shall be no commercial activity at the dock, including but not limited to loading and unloading commercial materials, dock construction or dock repair within the littoral space, storage of docks or piling within the littoral space, and storing or parking commercial vessels at the dock.*"
8. Objector Mr. Snowden did not show up to participate in the hearing. Objector Dalton Gardens Irrigation District's office manager—owners of the vacant parcel adjacent to Applicant's proposed dock—participated in the hearing but only expressed concerns about a lack of parking and safe access from the road for people to get to the dock (not about the proposed dock itself).

## **DISCUSSION**

Applicant's position. Applicant asserted that he owns three lots; that the objectors should be liable for the cost of the Applicant having to defend his application; that he wants to put a private single-family dock on his private property.

Objector's position. Objector Mr. Snowden did not show up to participate in the hearing. His written objection did not identify any legal requirements violated by Applicant's proposed dock. Objector Dalton Gardens Irrigation District's office manager participated in the hearing but only expressed concerns about a lack of parking and safe access from the road for people to get to the dock (not about the proposed dock itself).



IDL's position. IDL's representatives explained that the Applicant is the littoral owner; that IDL acknowledges that Applicant is the owner and operator of North Idaho Marine, a dock building business in North Idaho; that North Idaho Marine operates a commercial navigation encroachment on the two adjacent properties to the west of the parcel for which he now seeks a permit for a single-family dock; that the commercial navigational encroachments are permitted (L-95-S-5696B) following a public hearing and Final Order approving that application.

That IDL was concerned that the current application would be an extension of Applicant's commercial activities; however, that after sending questions, and receiving responses from Applicant—which are part of the application—IDL's concerns are satisfied; that the Applicant's proposed dock appears to meet the applicable legal requirements.

That IDL recommends approval with the suggested language on the permit regarding Applicant not using the dock for commercial purposes; that when an applicant owns the adjacent lot next to the lot with the proposed dock, the notice of the application jumps over to the next owner (because it would not make sense for an applicant to consent or object to their own application); that the rules give no authority regarding costs for an applicant to go through the application and hearing process.

Analysis and reasoning supporting recommendation. The Objectors' arguments against the application lack merit as to issues within IDL's purview—there are no assertions that Applicant's proposed dock violate legal requirements (and have more do with concerns about parking and limited access from the road to reach the proposed dock). The hearing officer agrees with IDL's recommendation for approval and finds no basis to deny the application because the proposed dock meets the applicable legal requirements of Idaho Code § 58-13 and IDAPA 20.03.04.

Applicant owns approximately 75 feet of water frontage, which is sufficient water frontage for a single-family dock per IDAPA 20.03.04.010.36. Applicant's proposed dock would be 699 square feet in size (which complies with IDAPA 20.03.04.015.01.b, that requires that a single-family dock not exceed 700 square feet of total surface decking.)

Applicant's proposed dock would extend outward into the lake 70 feet, which would be within the line of navigability due to the contours of the shoreline. The proposed dock provides a 15 foot buffer to the west and a 24 foot buffer to the east, which meets and exceeds the minimum recommended by IDAPA 20.03.04.015.13.e. No portion of the dock is wider than 10 feet (which complies with IDAPA 20.03.04.015.01).

In summary, Applicant's proposed dock meets all legal requirements for a single-family dock.

#### **CONCLUSION OF LAW**

Applicant's Encroachment Permit Application for a single-family dock complies with the Lake Protection Act, Idaho Code § 58-13 and the *Rules for the Regulation of Beds, Waters, and Airspace Over Navigable Lakes in the State of Idaho*, IDAPA 20.03.04.

#### **PRELIMINARY ORDER**

The hearing officer recommends that the Director of the Idaho Department of Lands issue a Final Order approving Applicant's encroachment application No. L-95-S-0478B and include IDL's suggested terms in the permit: *"Dock is permitted as a single-family dock. There shall be no commercial activity at the dock, including but not limited to loading and unloading commercial materials, dock construction or dock repair within the littoral space, storage of docks or piling within the littoral space, and storing or parking commercial vessels at the dock."*

DATED: October 12, 2022.

STATE OF IDAHO  
OFFICE OF THE ATTORNEY GENERAL

By: Lincoln Strawhun  
LINCOLN STRAWHUN  
Hearing Officer

\* \* \* \* \*

Idaho Code § 67-5245 and IDAPA 20.01.01.730.02 addressing petitions for review of preliminary orders are not applicable per the *Notice of Appointment of Hearing Officer and Hearing, August 15, 2022*, and Idaho Code § 58-1306, which requires a final order to be issued within 30 days of the hearing date.

\* \* \* \* \*