

BEFORE THE STATE BOARD OF LAND COMMISSIONERS
STATE OF IDAHO

In the matter of Application for Two Family
Dock, Stanford Guesthouse, LLC and
Stanford, LLC, through David Black,

APPLICANTS,

Agency Case No. CC-2023-NAV-22-003

OAH Case No. 23-320-06

FINAL ORDER

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, 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 § 58-103. 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 June 13, 2023, IDL received an encroachment permit application for a two-family dock on Rockford Bay in Lake Coeur d’Alene. A hearing was held on July 27, 2023. Scott Zanzig served as duly appointed hearing officer. On August 31, 2023, the hearing officer issued his Recommended Order, which contains the following sections: Findings of Fact and Conclusions of Law.

As Director of IDL, my responsibility is to render a decision pursuant to Idaho Code § 58-1305 and IDAPA 20.03.04.025, on behalf of the State Board of Land Commissioners and based on the record, which I have reviewed in the context of my personal expertise gained through education, training, and experience. I relied on the available record for this matter, including examining the hearing coordinator's Preliminary Order in light of the entire available record in this matter.

II. FINDINGS OF FACT

I adopt the Preliminary Order's Findings of Fact as my Findings of Fact.

III. CONCLUSIONS OF LAW

I adopt the Preliminary Order's Conclusion of Law as my Conclusions of Law.

IV. ORDER

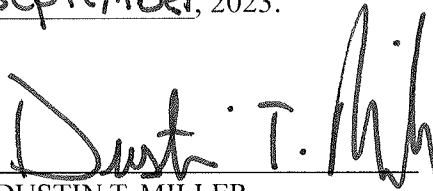
I conclude that the hearing officer's Preliminary Order is based on substantial evidence in the record, and I adopt the Preliminary Order's Findings of Fact and Conclusion of Law as my decision in this matter. I hereby incorporate by reference the Preliminary Order's Background, Findings of Fact, and Conclusions of Law into this Final Order. 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 the Encroachment Permit Application CC-2023-NAV-22-003 is APPROVED.

This is a final order of the agency. Pursuant to Idaho Code § 58-1305(c) and IDAPA 20.03.04.025.08, 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) and IDAPA 20.03.04.025.08, 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 18th day of September, 2023.


DUSTIN T. MILLER
Director, Idaho Department of Lands

CERTIFICATE OF MAILING

I hereby certify that on this 18th day of September 2023, I caused to be served a true and correct copy of the foregoing by the method indicated below, and addressed to the following:

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Stanford LLC
c/o David Black
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Applicants

- U.S. Mail, postage prepaid
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Gordon and Raeann Decker
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Spokane, WA 99203
Objectors

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Kourtney Romine, Workflow Coordinator

BEFORE THE IDAHO DEPARTMENT OF LANDS

In the Matter of)	
)	AGENCY Case No. CC-2023-NAV-22-003
Application for Two-Family Dock,)	
)	OAH Case No. 23-320-06
Stanford Guesthouse, LLC and Stanford,)	
LLC, through David Black,)	FINDINGS OF FACT, CONCLUSIONS
)	OF LAW, AND RECOMMENDED
Applicants.)	ORDER
_____)	

This matter was assigned to Hearing Officer Scott Zanzig on July 5, 2023. An in-person administrative hearing was set for July 27, 2023. A prehearing status conference was held on July 25, 2023. This prehearing status conference was recorded and discussed rules of procedure for this proceeding, stipulations/objections to any prehearing filings, remote attendance at the hearing, and the burden of proof pursuant to Idaho Code section 58-1305.

The hearing was held on July 27, 2023, at North Idaho College, Coeur d'Alene, Idaho in classroom 107 at the DeArmond Building. Present at the hearing were Hearing Officer, Scott Zanzig; Applicants, Stanford Guesthouse, LLC and Stanford, LLC, through their representative, Dave Black; Objectors, Gordon and Raeann Decker, and their spokesperson, Geoff Kellogg; and Lead Deputy Attorney General Angela Schaer Kauffman, representing the Idaho Department of Lands (IDL). Also present for IDL were Resource Specialists Jennifer Barker and Amidy Fuson. Deputy Chief Administrative Hearing Officer Leslie Hayes was present as an observer. Jim Black, Chris Bell, Paul Decker, Melissa Kellogg, and IDL Deputy Attorney General Robert Follett attended via Zoom.

The hearing was recorded via Zoom, and that recording was provided to all parties. The hearing also was reported by Mindi Pettit, who will prepare a transcript if any party requests it.

No witnesses were excluded from the proceedings. All parties stipulated to the admission of each participant's exhibits, reserving the right to object on the grounds of relevance at the hearing. IDL offered one exhibit, IDL-1. Applicants offered four exhibits, S-1 through S-4. Objectors offered 12 exhibits, D-1 through D-12.

The following witnesses testified at the hearing: Jennifer Barker¹; Geoff Kellogg; Paul Decker; Raeann Decker; and Dave Black.

Following the hearing, Objectors filed a written closing statement August 2, 2023. Applicants filed their written closing statement August 4, 2023, at which time the hearing record was closed.

The Hearing Officer, having considered the evidence and arguments offered at the hearing, the documents in the administrative record, and the other papers and pleadings on file, makes the following Findings of Fact and Conclusions of Law pursuant to Idaho Code section 58-1305 and IDAPA 04.11.01.413.01.d. and 20.01.01. 413.01.d.

FINDINGS OF FACT

1. On June 13, 2023, IDL received Application for Encroachment Permit No. L-95-S-5569A (Application) from Applicants, Stanford Guesthouse, LLC and Stanford, LLC, through their representative, Dave Black. (IDL-1, p. 1)
2. Stanford Guesthouse, LLC owns a property identified as Parcel 48N04W-16-3960; Stanford, LLC owns property identified as 48N04W-16-3950. The properties are adjacent to one another on the north shore of Rockford Bay on Lake Coeur d'Alene. There are no parcels waterward of Applicants' parcels. (IDL-1, p.6)
3. The combined water frontage of the two parcels is approximately 187 feet. (IDL-1, p. 7)

¹ Prior to the hearing, IDL disclosed Mike Ahmer as its witness. Ms. Barker was substituted for Mr. Ahmer due to his unavailability the day of the hearing. No party objected to this substitution.
FINDINGS OF FACT, CONCLUSIONS OF LAW, AND RECOMMENDED ORDER
(AGENCY Case No. CC-2023-NAV-22-003; OAH Case No. 23-320-06) - 2

4. The Application seeks an encroachment permit to convert an existing dock adjacent to the Stanford, LLC property into a larger, two-family dock by adding a second boat slip. (Application, p. 2; Testimony of Dave Black)
5. Applicants' proposed two-family dock would not change location from the existing dock location, adjacent to Stanford, LLC parcel number 48N04W-16-3950, which has a physical address of 18424 S. Thirsty Beach Lane. But the proposed dock would convert the dock into a two-family dock with a second boat slip on the west side of the existing dock. (Application, pp. 1, 7; D-3)
6. Stanford, LLC has an existing permit for the existing dock, Encroachment Permit No. L-95-S-5569. (Application, p. 3)
7. Applicants' proposed two-family dock would comprise 1,098 square feet. No portion of the dock would be wider than 10 feet. (D-10; IDL-1, pp. 7-8)
8. The proposed two-family dock would extend into the lake 85 feet, which is approximately the same length as the neighboring docks and within the line of navigability. (IDL-1, p. 7)
9. The proposed two-family dock would provide a buffer of 13 feet from the west littoral line and 136 feet from the east littoral line. (IDL-1, p. 7; Application, p. 7; D-3; Testimony of Dave Black)
10. IDL sent notice of the Application to adjacent property owners on June 13, 2023. (IDL-1, p. 1)
11. On June 22, 2023, Objectors, Gordon and Raeanne Decker, objected to the Application. (IDL-1, p. 1)
12. The Deckers own the lakefront property immediately to the west of Stanford, LLC's property. (Testimony of Raeann Decker, Geoff Kellogg, and Paul Decker)

13. The Deckers have expressed four concerns about the Application: (a) the two-family dock will obstruct the Deckers' view of the lake; (b) fairness dictates that the two-family dock should be moved away from the Deckers' property, to the shared littoral line between Applicants' lots; (c) the two-family dock will be larger than 1,100 square feet; and (d) the two-family dock will present safety issues in the area the Deckers use for swimming.

14. IDL staff recommend approval of the Application because it meets the legal requirements for two-family docks. (IDL-1, p. 8)

CONCLUSIONS OF LAW

1. The Idaho legislature enacted the Lake Protection Act ("LPA"), Title 58, Chapter 13, Idaho Code, in 1974, stating:

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 of 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 weighted against the navigational or economic necessity or justification for, or benefit to be derived from the proposed encroachment. No encroachment on, in or above the beds or waters of any navigable lake in the state shall hereafter be made unless approval therefor has been given as provided in this act.

I.C. § 58-1301.

2. 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 of waters of navigable lakes[.]" I.C. § 58-1303; I.C. § 58-119(1); *see also Newton v. MJK/BJK, LLC*, 167 Idaho 236, 242 (2020).

3. Through its statutory authority, IDL has promulgated Rules for the Regulation of Beds, Waters and Airspace Over Navigable Lakes in the State of Idaho located at IDAPA 20.03.04.000 *et. seq.*

4. Lake Coeur d'Alene is a navigable lake and is within IDL's authority to regulate encroachment permits. *Lake CDA Investments, LLC v. Idaho Dep't of Lands*, 149 Idaho 274, 277 (2010).

5. Applicants own property adjacent to Lake Coeur d'Alene. They are littoral owners as defined in Idaho Code section 58-1302 and IDAPA 20.03.04.020.02, qualified to submit their Application.

6. The Deckers are adjacent littoral owners to the Applicants' property.

7. Idaho Code section 58-1305(a) provides:

Applications for construction or enlargement of navigational encroachments not extending beyond the line of navigability nor intended primarily for commercial or community use shall be processed by the board with a minimum of procedural requirements and shall not be denied nor appearance required except in the most unusual of circumstances or if the proposed encroachment infringes upon or it appears it may infringe upon the riparian or littoral rights of an adjacent property owner.

See also IDAPA 20.03.04.25 ("Applications for single-family and two-family navigational encroachments not extending beyond the line of navigability will be processed with a minimum of procedural requirements and shall not be denied except in the most unusual of circumstances").

8. "Generally, the [B]oard should approve a permit application [under section 58-1305(a)] unless the proposed encroachment infringes, or may infringe, upon the littoral rights of an adjacent property owner." *Byrd v. Idaho State Board of Land Commissioners*, 169 Idaho 922, 929 (2022) (citation omitted).

9. Encroachments in aid of navigation include docks. IDAPA 20.03.04.010.15.

10. The "line of navigability" may be "established by the length of existing legally permitted encroachments" IDAPA 20.03.04.010.20.

11. The Application seeks permission to convert an existing single-family dock into a two-family dock. The proposed two-family dock would remain within the line of navigability established by the adjacent docks. Therefore, the Application seeks approval for construction of a “navigational encroachmen[t] not extending beyond the line of navigability nor intended primarily for commercial or community use.” I.C. § 58-1305(a).

12. The burden of proof is on Applicants to demonstrate that IDL should grant the encroachment permit because the Application complies with IDL regulations. *See generally* I.C. §§ 58-1303, -1305(a). The “standard of proof is akin to the preponderance of the evidence standard generally applied in administrative hearings.” *Northern Frontiers, Inc. v. State*, 129 Idaho 437, 439 (Ct. App. 1996).

13. The State Board of Land Commissioners has promulgated rules (IDL rules) governing permits for encroachments in aid of navigation on navigable waters. *See* IDAPA 20.03.04.012.02 (no encroachments without a permit), 20.03.04.015 (encroachment standards), 20.03.04.020 (permit application requirements). These IDL rules include a definition and specific requirements for two-family docks. IDAPA 20.03.04.010.39, 20.03.04.015.01.

14. A two-family dock is defined in rule as “[a] structure providing noncommercial moorage that serves two (2) adjacent waterfront owners having a combined waterfront footage of no less than fifty (50) feet. Usually, the structure is located on the common littoral property line.” IDAPA 20.03.04.010.39.

15. IDL rules impose the following limits on two-family docks:

a. No part of the structure waterward of the natural or ordinary high water mark or artificial high water mark may exceed ten (10) feet in width, excluding the slip cut out.

b. Total surface decking area waterward of the natural or ordinary or artificial high water mark may not exceed seven hundred (700) square feet, including approach ramp and walkway for a single-family dock and may

not exceed one thousand one hundred (1,100) square feet, including approach ramp and walkway for a two-family dock.

c. No portion of the docking facility may extend beyond the line of navigability. . . .

IDAPA 20.03.04.015.01.a. – c.

16. In addition, IDAPA 20.03.04.015.13.e. provides a rebuttable presumption that “two-family navigational encroachments will have an adverse effect upon adjacent littoral rights if located closer than ten (10) feet from adjacent littoral right lines.”

17. Applicants have met their burden of demonstrating that their Application for an encroachment permit meets all IDL rule requirements for a two-family dock. Their combined adjacent lots’ water frontage of 187 feet easily meets the 50-foot requirement in IDAPA 20.03.04.010.39. Their proposed two-family dock is less than ten feet wide; its total surface area is less than 1,100 square feet; and it is within the line of navigability. And the dock would be more than ten feet from the shared littoral line with the Deckers.

18. The Hearing Officer finds the Deckers’ concerns to be sincere, but the Deckers have failed to establish that the Application violates IDL regulations or impermissibly “infringe[s] upon the riparian or littoral rights” of the Deckers as adjacent property owners.

19. Even if the two-family dock obstructs the Deckers’ view, that fact does not justify denying the Application. Lakefront owners’ littoral rights do not include a right to a particular view. *Newton v. MJK/BJK, LLC*, 167 Idaho 236, 243 (2020).

20. The Hearing Officer understands the Deckers’ preference that the two-family dock be moved farther away from their property. But the law does not require Applicants to do so. The definition of a two-family dock in IDL rules does state that the dock “[u]sually” is located on the common littoral line. But IDL rules do not require that two-family docks be placed on the common littoral line. As stated in IDL’s Hearing Statement and Ms. Barker’s testimony, IDL has permitted

two-family docks that are not located on the common littoral line. The fact that Applicants' proposed two-family dock is not located on their common littoral line does not mean the dock rises to the level of "the most unusual of circumstances" as meant by Idaho Code section 58-1305(a).

21. The Deckers' concern that the two-family dock will exceed 1,100 square feet is not supported by the evidence. The Application seeks permission for a two-family dock whose total surface area is 1,098 square feet, and Dave Black testified that the existing dock will be modified to meet this limit. The dimensions in the drawing of the proposed dock at page 5 of the Application (also reproduced as Exhibit D-10) are consistent with Mr. Black's testimony. The Deckers' argument is based on the assumption that the dock will not be modified as reflected in the Application and Mr. Black's testimony. But there is no evidence to support this assumption. If the dock were not built to permitted specifications, it would be subject to compliance proceedings, but neither the Hearing Officer nor IDL can speculate that Applicants might deviate from their intentions specified in their Application.

22. The Deckers have failed to establish that the two-family dock would impermissibly interfere with their littoral or riparian rights. Their concerns about safety due to Applicants' additional slip dock and plans to moor an additional boat at the dock may be sincere. But IDL does not have authority to regulate safe boating issues, and there is no evidence establishing that Applicants will moor boats at their dock in an unsafe manner. To the contrary, Mr. Black testified that he will be mindful of swimmers in the area and will walk his boat into the new slip if necessary.

RECOMMENDED ORDER

Based on the foregoing Findings of Fact and Conclusions of Law, the Hearing Officer recommends that Applicants' request for an encroachment permit be **GRANTED**.

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CERTIFICATE OF SERVICE

I hereby certify that on this 31st day of August, 2023, I caused to be served a true and correct copy of the foregoing by the following method to:

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Stanford LLC
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/s/ W. Scott Zanzig
W. Scott Zanzig