

JOINT APPLICATION FOR PERMITS

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

Authorities: The Department of Army Corps of Engineers (Corps), Idaho Department of Water Resources (IDWR), and Idaho Department of Lands (IDL) established a joint process for activities impacting jurisdictional waterways that require review and/or approval of both the Corps and State of Idaho. Department of Army permits are required by Section 10 of the Rivers & Harbors Act of 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 (8 1/2"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:	<input type="checkbox"/> Incomplete Application Returned		Date Returned:			
Idaho Department of Water Resources No.	Date Received:	<input type="checkbox"/> Fee Received DATE:		Receipt No.:			
Idaho Department of Lands No.	Date Received:	<input type="checkbox"/> Fee Received DATE:		Receipt No.:			
1. CONTACT INFORMATION - APPLICANT Required:				2. CONTACT INFORMATION - AGENT:			
Name: BRIAN HIRSCHI				Name: BRYCE A CONTOR			
Company: BLH PROPERTIES LLC & BRIAN HIRSCHI				Company: ROCKY MNT. ENV. ASSOC. INC.			
Mailing Address: 1217 S. BEAR LAKE BLVD.				Mailing Address: 482 CONSTITUTION WAY STE 303			
City: GARDEN CITY	State: UT	Zip Code: 84028	City: IDAHO FALLS	State: ID	Zip Code: 83402		
Phone Number (include area code): 435-757-4399	E-mail: brianhirschi@hotmail.com		Phone Number (include area code): 208-524-2353 xt 109	E-mail: bryce.rmea@gmail.com			
3. PROJECT NAME or TITLE: BLH PROPERTIES LLC				4. PROJECT STREET ADDRESS: 535 EAST SHORE RD			
5. PROJECT COUNTY: BEAR LAKE		6. PROJECT CITY: ST CHARLES		7. PROJECT ZIP CODE: 83272		8. NEAREST WATERWAY/WATERBODY: BEAR LAKE	
9. TAX PARCEL ID#: RP15S44E245850	10. LATITUDE: 42.10	10. LONGITUDE: -111.26	11a. 1/4: NE	11b. 1/4: SW	11c. SECTION: 24	11d. TOWNSHIP: 15S	11e. RANGE: 44E
12a. ESTIMATED START DATE: 3/1/2023	12b. ESTIMATED END DATE: (ongoing)		13a. IS PROJECT LOCATED WITHIN ESTABLISHED TRIBAL RESERVATION BOUNDARIES? <input checked="" type="checkbox"/> NO <input type="checkbox"/> YES Tribe:				
13b. IS PROJECT LOCATED IN LISTED ESA AREA? <input checked="" type="checkbox"/> NO <input type="checkbox"/> YES			13c. IS PROJECT LOCATED ON/NEAR HISTORICAL SITE? <input checked="" type="checkbox"/> NO <input type="checkbox"/> YES				
14. DIRECTIONS TO PROJECT SITE: Include vicinity map with legible crossroads, street numbers, names, landmarks. From St. Charles Idaho proceed east, following signs to Bear Lake State Park. Beyond the causeway and North Beach area of the State Park, turn south on East Shore Road at the T intersection and travel approximately 3/8 to 1/2 mile to 535 East Shore Road, located on the west (lakeward) side of the road.							
15. PURPOSE and NEED: <input checked="" type="checkbox"/> Commercial <input type="checkbox"/> Industrial <input type="checkbox"/> Public <input type="checkbox"/> Private <input type="checkbox"/> 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. The project is for activities below the OHWM associated with rental and launching of watercraft. Applicant delivers rental equipment to water's edge, which may be upwards of 2,000 horizontal feet from OHWM. Clients access water's edge in their own passenger vehicles. Temporary infrastructure is deployed for safety and to facilitate provided services.							

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RECEIVED
MAR 30 2023
IDL-EAI
ck # 21931 # 1075.0
03/30/2023 TRD

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.:

Attached.

17. DESCRIBE ALTERNATIVES CONSIDERED to AVOID or MEASURES TAKEN to MINIMIZE and/ or COMPENSATE for IMPACTS to WATERS of the UNITED STATES, INCLUDING WETLANDS: See Instruction Guide for specific details.

Attached.

18. PROPOSED MITIGATION STATEMENT or PLAN: If you believe a mitigation plan is not needed, provide a statement and your reasoning why a mitigation plan is NOT required. Or, attach a copy of your proposed mitigation plan.

The proposed vehicle track requires no mitigation plan because it is a temporary activity whose effects will quickly be reworked by natural wind and wave action. It neither imports nor removes materials and provides no impact to or loss of Waters of the United States. This lack of impact is reflected in the quantification under Item 20.

While the quantities of materials described in Item 19 exceed the quantities described in various Nationwide Permits, those permit quantities all are defined in terms of loss of Waters of the United States, and as described above, there is no loss from the proposed track.

The other activities place objects or activities on the beach or in the water of the lake, but do not structurally modify the bed or the beach or move substrate materials. Their cumulative impacts are included in Item 20, with calculation explained in the attachment.

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

Dirt or Topsoil: _____ cubic yards
 Dredged Material: _____ cubic yards
 Clean Sand: _____ cubic yards
 Clay: _____ cubic yards
 Gravel, Rock, or Stone: _____ cubic yards
 Concrete: _____ cubic yards
 Other (describe): Clean sand fr. adjacent : 985 cubic yards
 Other (describe: _____ : _____ cubic yards

TOTAL: _____ 985 cubic yards

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

Filling: _____ 0 acres _____ 0 sq ft. _____ 0 cubic yards
 Backfill & Bedding: _____ 0 acres _____ 0 sq ft. _____ 0 cubic yards
 Land Clearing: _____ 0 acres _____ 0 sq ft. _____ 0 cubic yards
 Dredging: _____ 0 acres _____ 0 sq ft. _____ 0 cubic yards
 Flooding: _____ 0 acres _____ 0 sq ft. _____ 0 cubic yards
 Excavation: _____ 0 acres _____ 0 sq ft. _____ 0 cubic yards
 Draining: _____ 0 acres _____ 0 sq ft. _____ 0 cubic yards
 Other: Per attached list : 0.00076 acres _____ 33 sq ft. _____ 0 cubic yards

TOTALS: 0.00076 acres _____ 33 sq ft. _____ 0 cubic yards

21. HAVE ANY WORK ACTIVITIES STARTED ON THIS PROJECT? NO YES If yes, describe ALL work that has occurred including dates.

Similar activities were conducted in 2021 and 2022 at this location based on Applicant's understanding from verbal and email interaction with Idaho Department of Lands personnel that permits were not required. Nothing has been started for 2023

22. LIST ALL PREVIOUSLY ISSUED PERMIT AUTHORIZATIONS:

No prior Army Corps of Engineers permits.

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

24. SIZE AND FLOW CAPACITY OF BRIDGE/CULVERT and DRAINAGE AREA SERVED: N/A Square Miles

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

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

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

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

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

- 1) Moving of sand to create or maintain track, and tillage to control invasive plant species, will be postponed if strong winds are blowing.
- 2) Track will end where natural capillary action provides a firm sand base, typically in the range of ~ 50 feet landward from water's edge.
- 3) Hydration flows for track maintenance will be controlled so that surface flow does not reach water's edge.
- 4) Pickup trucks used for refueling will adhere to the National Fire Code and to the following practices:
 - a) No more than three pickup trucks with fuel tanks will be deployed at one time below the OHWM.
 - b) Pickup fuel tanks will be commercially-manufactured, double-walled tanks of 119 gallons capacity or less.
 - c) Fuel transfer to the pickup fuel tanks will occur above OHWM.
 - d) Fuel will be transferred to watercraft using an automatic-shutoff nozzle that responds to the presence of fuel in the watercraft filler neck.
 - e) Tanks will not be "topped off" or "burped;" fuel transfer will stop when triggered by the automatic shutoff.
 - f) Latches that could facilitate unattended fuel transfer will be removed from nozzles.
 - g) Each pickup truck will carry a fire extinguisher, spill kit including a flexible floating boom and absorbent pads, and secondary containment for nozzle & hose.
 - h) Each tank/pump/hose assembly will be inspected daily by Applicant's personnel. A written log will be maintained at the site office.
 - i) Each tank/pump/hose assembly will be supplied by a qualified distributor of petroleum dispensing equipment.
 - j) To the extent practical given the confines of littoral extension lines, fueling will occur away from guests and other personnel.

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

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

Activity	Name of Water Body	Intermittent Perennial	Description of Impact and Dimensions	Impact Length Linear Feet
Buoys and Mooring	Bear Lake	Perennial	22 anchor weights 0.8 ft x 0.8 ft	18
Mooring chains	Bear Lake	Perennial	2 chains x 50 ft long	100
Water toys	Bear Lake	Perennial	12 anchor weights 0.8 ft x 0.8 ft	10
Picnic table in water	Bear Lake	Perennial	4 tire prints 0.8 ft x 0.4 ft plus 1 jack-pad print 0.25 ft x 0.25 ft	3.5
TOTAL STREAM IMPACTS (Linear Feet):				131.5

28. LIST EACH WETLAND IMPACT include mechanized clearing, fill excavation, flood, drainage, etc. Attach 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 Length (acres, square ft linear ft)
(none)				
TOTAL WETLAND IMPACTS (Square Feet):				

29. ADJACENT PROPERTY OWNERS NOTIFICATION REQUIREM: Provide contact information of ALL adjacent property owners below.

Name: JONES LAKE FRONT LLC Mailing Address: 1455 WEBB LN City: KAYSVILLE State: UT Zip Code: 84037 Phone Number (include area code): E-mail:	Name: HEMMERT DWIGHT ETAL Mailing Address: PO BOX 84 City: ST CHARLES State: ID Zip Code: 83272 Phone Number (include area code): E-mail:
Name: HEMMERT HOT SPRINGS INC Mailing Address: 1309 E 2100 N City: LOGAN State: UT Zip Code: 84341 Phone Number (include area code): E-mail:	Name: Mailing Address: City: State: Zip Code: Phone Number (include area code): E-mail:
Name: Mailing Address: City: State: Zip Code: Phone Number (include area code): E-mail:	Name: Mailing Address: City: State: Zip Code: Phone Number (include area code): E-mail:
Name: Mailing Address: City: State: Zip Code: Phone Number (include area code): E-mail:	Name: Mailing Address: City: State: Zip Code: Phone Number (include area code): E-mail:

30. SIGNATURES: STATEMENT OF AUTHORIZATION / 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.

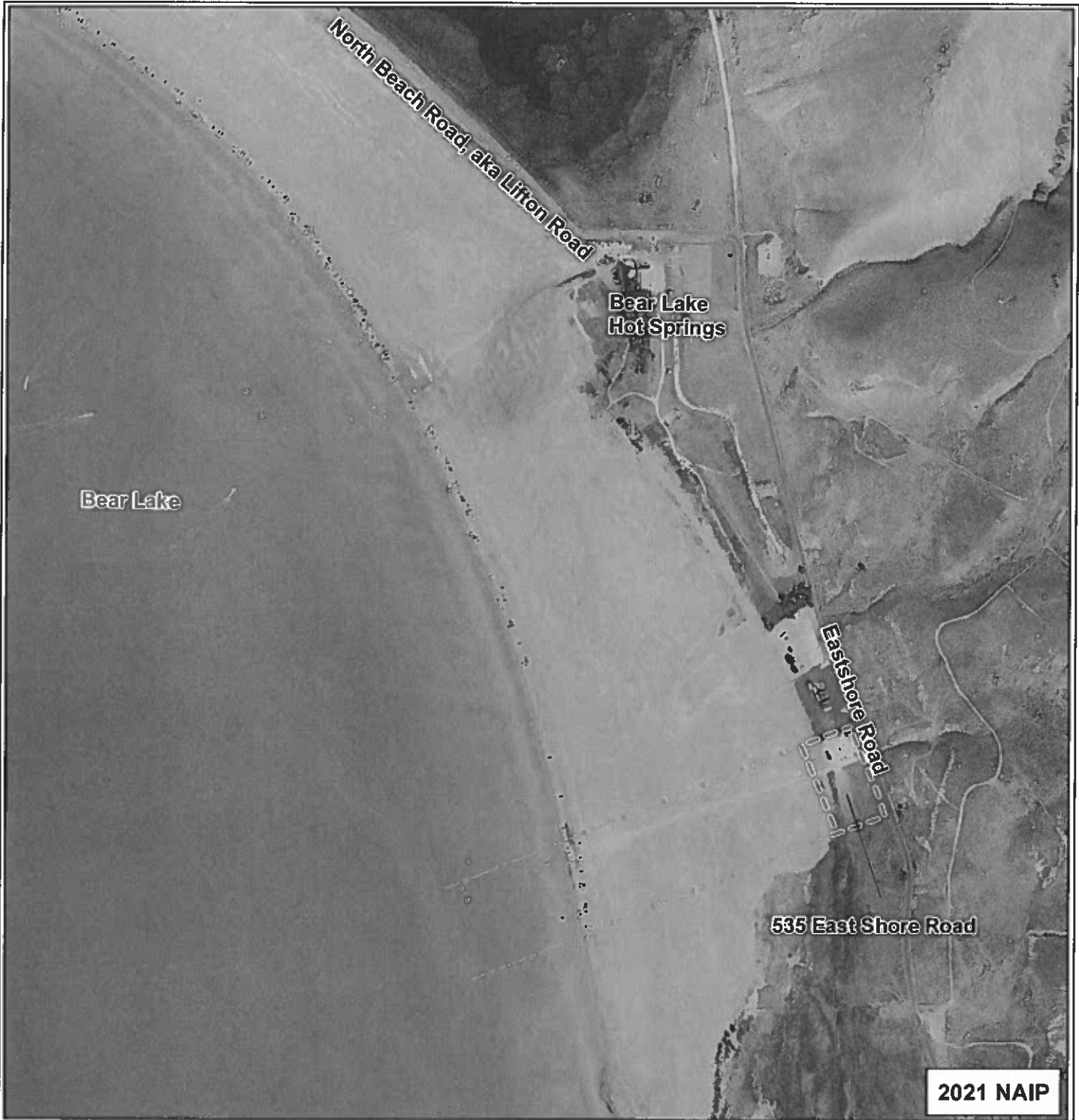
Signature of Applicant: Brian Nunn Date: 3/28/2023

Signature of Agent: Ernie A. Connor Date: 15 Mar 2023

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".

Attachments to Joint Application for Permits

1. Map. 1 page.
2. Email from US Fish and Wildlife Service. 2 Pages.
3. Additional responses for Joint Application for Permits. 11 Pages.
4. Area calculation summary. 1 Page.
5. Narrative for volume calculations, including profile figures. 8 Pages.



 Property
 Littoral Line



Required Document 4: General vicinity map that allows Department to find the encroachment



Varin Thomas
 Property Located
 In Bear Lake County, Idaho

Date: 3/15/2023
Project #: 22-0158
Drawn by: TK



Alyssa DeSmit <alyssa.rmea@gmail.com>

535 East Shore Road - Technical Assistance

3 messages

Slaugh, Cody E <cody_slaugh@fws.gov>
To: "alyssa.rmea@gmail.com" <alyssa.rmea@gmail.com>
Cc: "Berglund, Laura G" <laura_berglund@fws.gov>

Mon, Oct 24, 2022 at 12:50 PM

The U.S. Fish and Wildlife Service received your 10/13/22 letter regarding the 1.2 acre parcel of land located at 535 East Shore Road, St Charles, ID 83272. Based on our understanding of the nature and location of the project, we have not identified any conflicts with any species federally listed as threatened or endangered under the Endangered Species Act.

Thank you for your interest in the conservation of threatened and endangered species. Please contact me if you have any questions or require further information.

Cody Slaugh
Fish & Wildlife Biologist,
U.S. Fish & Wildlife Service
4425 Burley Drive, Suite A
Chubbuck, ID 83202
(970)396-2051

Alyssa DeSmit <alyssa.rmea@gmail.com>
To: Bryce Contor <bryce.rmea@gmail.com>

Mon, Oct 24, 2022 at 1:12 PM

Hi Bryce,
I just received this email from the USFWS!
[Quoted text hidden]

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Alyssa DeSmit
Staff Geologist
482 Constitution Way, Ste 303, Idaho Falls, ID 83402
E-Mail: alyssa.rmea@gmail.com
VOICE: 208-524-2353 ||| FAX: 208-524-1795



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Bryce Contor <bryce.rmea@gmail.com>
To: Alyssa DeSmit <alyssa.rmea@gmail.com>

Mon, Oct 24, 2022 at 3:35 PM

Excelente!

Will you plz file this in the folder :)

Bryce A. Contor
Principal Hydrologist
Rocky Mountain Environmental Associates, Inc.
Idaho Falls, Idaho

208-524-2353 extension 109

(After hours or texts) 208-681-9100

[Quoted text hidden]

Additional Responses for Joint Application for Permits

Item 13b: Is project located in listed ESA area?

No endangered species per US Fish and Wildlife Service. E-mail attached.

Item 13c: Is project located on/near historical site?

Not on or near a historical site per telephone call to State Historical Preservation Office.

Item 16: Detailed description of each activity

The activities that would occur below the OWHM all are temporary in nature and include:

- A. Vehicle Track and Associated Features/Activities
 - a) Loose sand would be seasonally graded to the sides of a vehicle track, to expose a firm base of packed sand for passenger vehicles to access the shoreline band of firm, moist sand that typically is present within approximately 50 feet of water's edge, where passenger vehicles can traverse the sand in its natural condition. At high water levels, the track would be very short or not even needed. At low water levels, its length could approach 2,000 feet or more. The planned track width is 20 feet, with the sand deposited in bands approximately 25 feet wide on either side of the track. Depth of cut would predominantly be in the range of 0.25 feet, with a few sand drifts requiring a cut as deep as approximately two feet.
 - b) No material would be removed or imported, and at the end of the season the material would be pushed back approximately to its original location to be reworked by wave and/or wind action.
 - c) If requested by regulators, the track could be marked by flexible posts and/or orange traffic cones or pylons, with or without ropes.
 - d) A shallow ditch would be constructed at the side of the vehicle track for hydration purposes. The ditch would be approximately 0.5 feet deeper than the track.
 - e) Including material excavated from the ditch, depth of deposit predominantly would be in the 0.34 foot range, with deeper cuts requiring deposits up to approximately 2.3 feet.
 - f) Total volume at a hypothetical length of 2,190 feet would be approximately 1,120 cubic yards of cut, with the entire volume deposited adjacent to the sand track. In most years the length and therefore volume would be less.
 - g) No permanent dredge, fill or reconfiguration of the beds of Waters of the US is contemplated.

- h) The track and shallow ditch would be maintained a few times per year, to remove drifted loose sand that would interfere with passenger-vehicle traffic and delivery of hydration water.
- i) Approximately 2,500 gallons per day of clean, potable well water would be applied to the shallow ditch to keep the track hydrated and firm. At lower lake levels, evaporation is great enough that the flow of water in the ditch cannot reach water's edge. At higher lake levels, flow would be reduced to prevent well-water flow from reaching water's edge. At very high lake levels, natural capillary action would keep the sand hydrated and the hydration flows would be unnecessary.

B Buoy and Mooring.

- j) Up to 10 safety buoys 10 inches in diameter would be placed to mark water depths for safety of boaters, including clients of applicant. These would be anchored with metal weights retrievable without equipment and removed within 30 days after use is discontinued in the fall of each year. The farthest waterward buoys would be placed in approximately six feet of water depth.
- k) Up to eight mooring buoys for watercraft would be placed, anchored with weights removable without equipment and removed within 30 days after use is discontinued in the fall of each year. Water depth at the mooring locations would depend on the configuration of craft to be moored but typically would be less than six feet.
- l) Two chains with short ropes would be placed to secure personal watercraft. These would be placed in water approximately 18" deep, secured with metal weights removable without equipment and removed within 30 days after use is discontinued in the fall of the year. Ends of the chains would be marked with buoys. Chains would be approximately 50 feet long.

C. Water Toys

Three water trampolines would be anchored in approximately 8 feet of water, with metal weights that can be removed without use of equipment. The toys and anchor weights would be retrieved nightly and stored above the OHWM.

D. Overnight Storage Near OHWM.

Watercraft on trailers, tractor(s) and pickup truck(s) would be stored as near as practicable to, or above, the OHWM, adjacent to or on the applicant's property as mapped by Bear Lake County. Depending on surface conditions and the ability to park vehicles in soft sand, some equipment may be below the OHWM and some may be beyond applicant's property.

E. Water's edge activities:

- m) A staging area would be established for safety and convenience of clients and personnel. The enclosed area would be 100 feet by 200 feet. The items would be retrieved within 30 days of the end of use at the end of each season. Staging-area items would be below the OHWM and above the water line. These items include:
 - i) Flexible posts and/or traffic cones or pylons, possibly with ropes, to delineate the staging area.
 - ii) Enclosed trailer.
 - iii) Picnic table.
 - iv) Shade canopy anchored with weights.
 - v) Placement of trailer(s) for storage of non-motorized watercraft during the daytime.
- n) The following temporary activities would be conducted in the water or near water's edge, removed nightly to the overnight storage area described above:
 - i) Launching of water craft from trailers towed by tractors to the minimum depth necessary for a safe launch.
 - ii) Fueling of watercraft compliant with National Fire Code regulations for commercial marinas. This would be accomplished with portable fuel tanks in pickup trucks, with spill kits carried in the vehicles.
 - iii) Daytime placement of a picnic table on a trailer in shallow waters (approximately three feet deep), as a place to stage personnel in close proximity to boats and activities for the safety of clients.

F. Mechanical tillage would be used to control invasive plant species and maintain a clean beach. A secondary effect of this activity would be to reduce the depth and extent of dunes, thereby reducing the volume of material that must be removed to establish a track for passenger vehicles.

Additional activities on private land above the OHWM are not part of the Joint Application for Permits. The following descriptions are provided in order to fully characterize the Overall Project:

- G. Rental transactions and collection of payment would occur at the facility:
 - o) Watercraft to be deployed from littoral adjacent to Applicant's property as described above;
 - p) Watercraft to be transported by clients to other locations for launch and use elsewhere.
- H. Sale of snacks, drinks and small items.
- K. Client parking would be provided.
- L. Restrooms would be provided for clients.
- M. Bulk storage of fuel would occur within secondary containment.

Nationwide Permits Considered for the Above Activities Include

A. Vehicle Track and Associated Features/Activities

NWP-14 Linear Transportation Projects. This Permit can authorize "roads, highways, trails, driveways, airport runways and taxiways." The proposed activity is most like a trail or a road. The Permit has a limit of 1/2 acre of loss of the Waters of the United States. While the area of temporary disturbance exceeds 1/2 acre, there is no loss because there is no permanent effect and no removal or importation of materials, and no change in lakebed elevation after recovery.

NWP-18 Minor Discharges. This Permit is not applicable because the proposed volumes exceed the limit of the Permit.

NWP-19 Minor Dredging. This Permit is not applicable because it requires removal of the dredged materials to upland areas, which would be more impactful than the proposed activity.

NWP-36 Boat Ramps. This Permit is not applicable because it requires importation of "crushed stone, gravel or other suitable material," because the proposed track would not reach water's edge, and because it would not be used for launching boats.

NWP-39 Commercial and Institutional Developments. This Permit appears to authorize activities associated with permanent structures, which are not contemplated for the proposed project.

No Nationwide Permit was identified for application of hydration water to the track. Because the hydration water would not reach the lake and because it would be clean, potable well water, it has no resource impact and therefore it is presumed that a specific Nationwide Permit is not needed.

B. Buoys and Mooring

NWP-11 Temporary Recreational Structures. This Permit can authorize temporary buoys for seasonal use, which must be removed within 30 days after use has been discontinued.

C. Water Toys

NWP-11 Temporary Recreational Structures. This Permit can authorize small floating docks and similar structures placed for recreational use, which must be removed within 30 days after use has been discontinued.

D. Overnight Storage Near OHWM.

Because this activity would occur distant from the water's edge, with no surface

disturbance except for tire tracks, it is presumed that a specific Nationwide Permit is not needed.

E. Water's edge activities

Those activities that would place anchors, a canopy, trailers or posts/cones/pylons on the surface appear to be compatible with NWP-11 Temporary Recreational Structures, including its specific authorization for markers, to be removed within 30 days after use has been discontinued.

F. Mechanical tillage to control invasive plant species.

NWP-27 Aquatic Habitat Restoration. This Permit authorizes mechanized land clearing to remove non-native, invasive, exotic, or nuisance vegetation. There is not a listed acreage limitation.

Item 17: Alternatives considered or measures taken to minimize or compensate for impacts

A. Vehicle Track and Associated Features/Activities

a) No-Action Alternative

Field reconnaissance in October 2022 confirmed that beach access would be impossible in a passenger vehicle; even in a large four-wheel drive pickup truck with oversize tires, access was difficult in areas of the deepest wind-blown dunes. The no-action option is rejected because it would work a hardship on guests, especially those with disabilities, by requiring them to walk up to approximately 2,000 feet, depending on lake water levels. Some of this walking would be in loose, soft sand.

An additional disadvantage to this alternative is that it would limit access by emergency personnel.

b) Permanent-Construction Alternative

October 2022 field reconnaissance at a nearby site confirmed that permanent roadways constructed of road base and gravel do allow access to the capillary-wetted sand near water's edge with a two-wheel drive car-based crossover vehicle, and that the near-water sand can be traversed in a passenger car even without grooming or construction.

Nevertheless, the option of a permanent road is rejected because it would create permanent and unnecessary impacts to the Waters of the United States.

c) Measures Taken

Terminating the track away from water's edge would minimize the potential of release of sediments into the water and would minimize the total area of disturbance. Limiting track maintenance and shaping activities to times of low wind would minimize dust problems for adjoining areas.

The proposed profile of the track provides topographic relief that is less abrupt than naturally-occurring wave- and wind-formed dunes, and therefore minimizes potential effects to persons recreating with wheeled vehicles.

The proposed mechanical control of invasive vegetation would reduce the number, extent and depth of dunes that would need to be treated in shaping the track. Limiting control to times of low wind would minimize potential effects of dust.

The use of clean, potable well water for track hydration minimizes the potential for water-quality impacts to the lake.

d) No-Posts/Marking Alternative

Because the topographic relief of the proposed track is less abrupt than nearby naturally-occurring topographic relief, a regulatory decision not to require marking of the track would be acceptable.

e) No-Hydration Alternative

The alternative of not hydrating the track is rejected because it would require more frequent reshaping of the track, deeper cuts, and larger placement volumes of moved sand.

B Buoy and Mooring

The alternative of not placing safety buoys is rejected for safety reasons. A primary concern is injury of persons in boats that run aground. A secondary concern is the release of debris and potentially of fluids from damaged watercraft.

The alternative to mooring is to significantly increase the number of launching and retrieval excursions into the water. This alternative is rejected because it appears to be more impactful to the resource than the proposed action.

C. Water Toys

The alternative of providing permanently-constructed or affixed water toys is rejected as it is more impactful to the resource than the proposed action.

The No-Water-Toys alternative is rejected because the proposed activity provides only *de minimis* impact to the resource.

D. Overnight Storage Near OHWM.

The alternative of storing equipment overnight near water's edge is rejected for safety reasons; equipment not seen by operators could be a collision hazard for wheeled vehicles operating in the dark.

The alternative of storing equipment above the OHWM also is rejected for safety reasons; the last few feet of the path to the alternate storage area is steep, and traversing it with a tow vehicle with wet brakes is unsafe.

E. Water's edge activities:

- f) The alternative of not delineating a staging area is rejected for safety reasons; clients or members of the public who are not clients could inadvertently walk or drive into harm's way if the area were not delineated and clearly marked. Additionally, vehicles entering

the staging area would threaten the safety of clients and personnel within the area.

- g) The alternative of having no storage trailer, shelter or on-shore picnic table is rejected because of impacts to the comfort and health of clients and personnel.
- h) The alternative of fueling watercraft with hand-carried portable gasoline cans is rejected due to the awkwardness of handling and operating the cans. This would increase the likelihood of a spill, with its attendant water-quality and fire-hazard hazards.
- i) The alternative of transporting watercraft to uplands for refueling is rejected for the following reasons:
 - i) It would increase the traffic across the beach and therefore opportunities for both accidents and impact to the resource.
 - ii) It would require repeated navigation of the steep section of path discussed above, with vehicles with wet brakes. This would be an additional unnecessary safety hazard.
 - iii) Because of the time required to transport watercraft to the uplands and back from water's edge multiple times per day, the overnight storage area and perhaps mooring areas would need to be larger to accommodate the greater number of watercraft needed to provide service to clients.
- j) The alternative to launching watercraft with a tractor is a constructed, hard-surfaced boat ramp that would allow launching with a highway vehicle. Given the gentle slope of the beach and the length of structure that would be required to accommodate changing water levels, this alternative is rejected as too impactful to the lakebed.
- k) The alternative to placing a picnic table in shallow water is to keep personnel farther from clients and boats. This is rejected for safety reasons; personnel would not be able to be effective in monitoring, coaching and assisting clients.

F. Mechanical tillage

- l) One alternative to mechanical tillage is to spray invasive plant species with herbicides. This is rejected because of potential impacts to water quality and to terrestrial, avian and aquatic animal species.
- m) The No-Action alternative is rejected because it would fail to control invasive plant species, and because it would cause an increase in the amount of sand to be moved to create and maintain the track for passenger vehicles. The No-Action alternative also is rejected because it would allow hummocks, rough topography and visibility-blocking vegetative screens to develop as observed on adjacent beach areas, negatively impacting the safety of wheeled-vehicle recreationalists.

Item 20: Type and Quantity of Impacts

Table 1 lists the activities that would not result in disturbance waterward of water's edge, or would not result in objects remaining in the water for more than a few minutes. Table 2 describes activities that could result in disturbance or placement of objects in the water.

Table 1: Activities not resulting in waterward disturbance or in objects remaining in the water for more than a few minutes.										
Letter Code	Activity	No.	Length (ft)	Width (ft)	Total Area (ft²)	Area (acres)	Volume (cubic yards)	Impact?	Loss?	Discussion/Rationale
A	Cumulative cut volume for track and ditch.	1					-1,120	N	N	No impact or loss because all activity is well above and distant from water line, and sand will be reworked by natural wind and wave action after end-of-season regrading.
A	Cumulative fill volume in adjacent deposit areas.	1					1,120	N	N	"
A	Deposit sand pushed from track	1	2,190	50	109,500	2.5		N	N	Widths include slopes to adjacent surfaces. Track itself is 20 feet wide. No impact or loss because all activity is well above and distant from water line, and sand will be reworked by natural wind and wave action after end-of-season regrading.
A	Shallow ditch & adjacent work area	1	2,190	15	32,850	0.75		N	N	"
A	Track for client passenger vehicles	1	2,190	25	54,750	1.3		N	N	"
D	Overnight storage above or near OHWM	1	35	488	17,080	0.39		N	N	No impact or loss because all activity is well above and distant from water line, and there will be no excavation, grading or manipulation of surface other than tire tracks. Width is property width less 15' buffer on each side.

Table 1: Activities not resulting in waterward disturbance or in objects remaining in the water for more than a few minutes.										
Letter Code	Activity	No.	Length (ft)	Width (ft)	Total Area (ft ²)	Area (acres)	Volume (cubic yards)	Impact?	Loss?	Discussion/Rationale
E.m	Staging area	1	200	100	20,000	0.46		N	N	No impact or loss because all activity is above water's edge, and there will be no excavation, grading or manipulation of surface other than tire tracks, object footprints and placement of weights to secure canopy.
E.n.i	Launching of watercraft							N	N	Trailers will enter and exit the water during launching but will not remain in the water or be parked in water.
E.n.ii	Fueling of watercraft							N	N	Fueling vehicles will not remain in the water.
F	Mechanical Tillage	1	2,190	488	1,068,720	25		N	N	No impact or loss because all activity is above water's edge, and because natural wind and wave action will rework the surface. Width is property width less 25' buffer on each side.

Table 2: Activities that could result in waterward disturbance or in objects remaining in the water for more than a few minutes.

Letter Code	Activity	No.	Length (ft)	Width (ft)	Total Area (ft ²)	Area (acres)	Volume (cubic yards)	Impact?	Loss?	Discussion/Rationale
B	Anchors for safety bouys	10	0.8	0.8	6.4	0.00015		Y	N	Considered an impact because of presence in the water. Not a loss because it is non-permanent and has only de mimimis effect.
B	Bouys for chains	4	0.8	0.8	2.6	0.000059		Y	N	"
B	Chains	2	50	0.1	10.0	0.00023		Y	N	"
B	Mooring bouys	8	0.8	0.8	5.1	0.00012		Y	N	"
C	Water-toy anchors	12	0.8	0.8	7.7	0.00018		Y	N	"
E.n.iii	Picnic-table trailer tire prints	4	0.8	0.4	1.3	0.000029		Y	N	"
E.n.iii	Jack-post print for picnic-table trailer	1	0.25	0.25	0.06	0.0000014		Y	N	"
Total impacts					33	0.00076				

Narrative for Volume Calculations

Volume calculations were based on two leveling surveys conducted on October 13, 2022, and on the location of the 2004 water line scaled from the 2004 USDA NAIP aerial image. Its elevation was taken to be 5,906 feet.

The leveling surveys used an elevation of 5,910 feet corresponding to water's edge on October 13th. One leveling survey was taken along the approximate alignment of the proposed sand track, with care only to place the rod at locations not affected by dunes. It was designated the "Base" profile. The "Dune Surface" leveling survey was conducted a few tens of feet south of the "Base" profile location, with an attempt to place the rod at high points, low points and inflection points, in order to characterize the nature of the dunes. It was run far enough south of the "Base" profile to avoid influence of prior human action along that alignment. This did put the east end of the profile in an area of exaggerated dunes due to the presence of invasive vegetation, but an adjustment was made to avoid biasing the results, as explained below.

Profile Figure 1 (attached) shows the two measured profiles, with approximately 20:1 vertical exaggeration. No adjustment is reflected in Profile Figure 1 except for the line of asterisks showing where the adjustment was applied. The winter to summer changes in water level are small relative to year-to-year variations, so Profile Figure 1 approximately shows the 2004 elevation as the low elevation and the administrative OHWM elevation as the high elevation.

Profile Figure 02 and Profile Figure 3 respectively illustrate the "Typical" cross-sectional profile with a proposed 0.25-foot cut, a more aggressive "Moderate" profile with a 1.0-foot cut, and an "Extreme" profile with a 2.0-foot cut. Table 1, Table 2 and Table 3 correspond to Profile Figure 2 and Profile Figure 3, and provide the cross-sectional area calculations for each cross-section option. These use a rectangular calculation at each point.

For each option, the height of fill was adjusted to accommodate the material developed by the cut, within rounding error, so that the net cross sectional area of each option approached zero. This implies lateral transport of material only, with no longitudinal transport. The slight differences in cut and fill cross sectional areas are artifacts of calculation; in reality, they would be exactly equal.

Table 1: Cross-sectional Calculations for Typical Cut

Distance from Left (ft)	Depth (ft)	Width	Cut Area (ft ²)	Fill Area (ft ²)
0	0	2.5		0
5	-0.17	5		-0.85
10	-0.34	5		-1.7
15	-0.34	5		-1.7
20	-0.34	5		-1.7
25	-0.045	5		-0.225
30	0.25	5	1.25	
35	0.25	5	1.25	
50	0.25	5	1.25	
55	0.75	5	3.75	

Distance from Left (ft)	Depth (ft)	Width	Cut Area (ft ²)	Fill Area (ft ²)
60	0.25	5	1.25	
65	0.25	5	1.25	
70	-0.045	5		-0.45
75	-0.34	5		-3.4
80	-0.34	5		-3.4
85	-0.34	5		-3.4
90	-0.17	5		6.8
95	0	0.25		0
	Sum		10	-10.025

Table 2: Cross-sectional Calculations for Moderate Cut

Distance from Left (ft)	Depth (ft)	Width	Cut Area (ft ²)	Fill Area (ft ²)
0	0	2.5		0
5	-0.575	5		-2.875
10	-1.15	5		-5.75
15	-1.15	5		-5.75
20	-1.15	5		-5.75
25	-0.075	5		-0.375
30	1	5	5	
35	1	5	5	
50	1	5	5	
55	1.5	5	7.5	
60	1	5	5	
65	1	5	5	
70	-0.075	5		-0.75
75	-1.15	5		-11.5
80	-1.15	5		-11.5
85	-1.15	5		-11.5
90	-0.575	5		23
95	0	0.25		0
	Sum		32.5	-32.75

Table 3: Cross-sectional Calculations for Extreme Cut

Distance from Left (ft)	Depth (ft)	Width	Cut Area (ft ²)	Fill Area (ft ²)
0	0	2.5		0
5	-1.15	5		-5.75
10	-2.3	5		-11.5
15	-2.3	5		-11.5
20	-2.3	5		-11.5
25	-0.15	5		-0.75
30	2	5	10	
35	2	5	10	
50	2	5	10	
55	2.5	5	12.5	
60	2	5	10	

Distance from Left (ft)	Depth (ft)	Width	Cut Area (ft ²)	Fill Area (ft ²)
65	2	5	10	
70	-0.15	5		-1.5
75	-2.3	5		-23
80	-2.3	5		-23
85	-2.3	5		-23
90	-1.15	5		46
95	0	0.25		0
	Sum		62.5	-65.5

Using the data underlying Profile Figure 1, at twenty foot increments the difference between the "Base" and "Dune Surface" profiles was assessed, and a determination made of which cross-sectional profile to use. Using the cross-sectional area of the selected profile, the volume for the increment was calculated by multiplying the cross-sectional area by 20 feet. For the range of points flagged with a horizontal line of asterisks in Figure P1, the calculations did not rely on the full measured height of the dunes. This is because the dunes at that location, south of the proposed track, appeared to be enhanced by the presence of invasive vegetation. This is not expected to occur at the proposed track location. Table 4 shows the determinations and volume calculations for the proposed track.

None of the selected points fell at a location where an Extreme cut would be anticipated. This does not mean that such would never occur, but only that it would be rare. Because the intervals were regular, at a spatial increment not expected to correspond to any natural lateral-distance frequency of dune forms, they should be statistically representative and produce a good estimate of total volume.

The volumes of cut or fill individually sum to approximately 26,600 cubic feet or 985 cubic yards. Because material only would be moved laterally, with neither importation nor exportation, the net volume would be zero.

Table 4: Volume Calculations

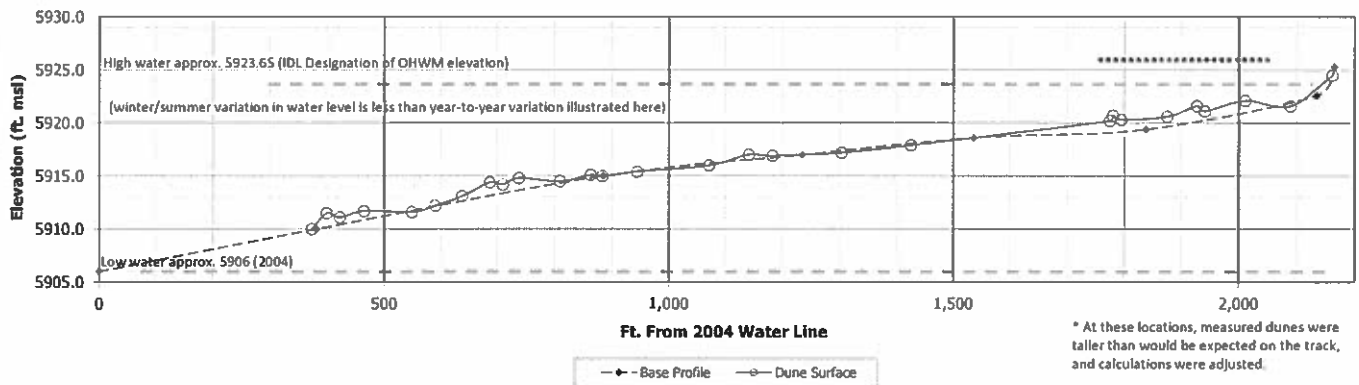
Distance from 2004 Water's Edge (ft)	Estimate of Cut/Fill Depth (ft, to nearest 0.25)	Use This Lateral Profile	Volume of Cut/Fill (cu ft)
360	0	(none)	0
380	0.25	Typical	225.2
400	1	Moderate	752
420	0.75	Moderate	752
440	0.75	Moderate	752
460	0.75	Moderate	752
480	0.5	Typical	225.2
500	0.25	Typical	225.2
520	0.25	Typical	225.2
540	0	Typical	225.2
560	-0.25	Typical	225.2
580	0	Typical	225.2
600	0.25	Typical	225.2

Distance from 2004 Water's Edge (ft)	Estimate of Cut/Fill Depth (ft, to nearest 0.25)	Use This Lateral Profile	Volume of Cut/Fill (cu ft)
620	0.25	Typical	225.2
640	0.5	Typical	225.2
660	1	Moderate	752
680	1.25	Moderate	752
700	1	Moderate	752
720	1	Moderate	752
740	1	Moderate	752
760	0.75	Moderate	752
780	0.5	Typical	225.2
800	0.25	Typical	225.2
820	0	Typical	225.2
840	0.25	Typical	225.2
860	0.25	Typical	225.2
880	0	Typical	225.2
900	0	Typical	225.2
920	0.25	Typical	225.2
940	0.5	Typical	225.2
960	0.5	Typical	225.2
980	0.5	Typical	225.2
1,000	0.75	Moderate	752
1,020	0.25	Moderate	752
1,040	0.25	Moderate	752
1,060	0.25	Moderate	752
1,080	0.25	Moderate	752
1,100	0	Typical	225.2
1,120	0.25	Typical	225.2
1,140	0.5	Typical	225.2
1,160	0.25	Typical	225.2
1,180	0.25	Typical	225.2
1,200	0.25	Typical	225.2
1,220	0	Typical	225.2
1,240	0	Typical	225.2
1,260	0	Typical	225.2
1,280	0.25	Typical	225.2
1,300	0.25	Typical	225.2
1,320	0.25	Typical	225.2
1,340	0.25	Typical	225.2
1,360	0.25	Typical	225.2
1,380	0.25	Typical	225.2
1,400	0.25	Typical	225.2
1,420	0.25	Typical	225.2
1,440	0.25	Typical	225.2
1,460	0.25	Typical	225.2
1,480	0	Typical	225.2
1,500	0	Typical	225.2
1,520	0	Typical	225.2
1,540	0	Typical	225.2
1,560	0	Typical	225.2
1,580	0.25	Typical	225.2
1,600	0.25	Typical	225.2
1,620	0.25	Typical	225.2

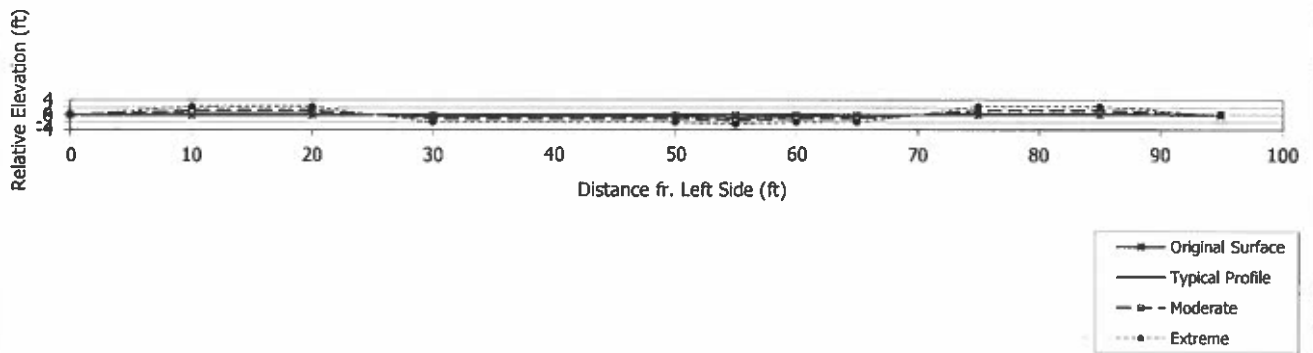
Distance from 2004 Water's Edge (ft)	Estimate of Cut/Fill Depth (ft, to nearest 0.25)	Use This Lateral Profile	Volume of Cut/Fill (cu ft)
1,640	0.25	Typical	225.2
1,660	0.25	Typical	225.2
1,680	0.25	Typical	225.2
1,700	0.25	Typical	225.2
1,720	0.25	Typical	225.2
1,740	0.5	Typical	225.2
1,760	0.5	Typical	225.2
1,780	1	Moderate	752
1,800	0.5	Typical	225.2
1,820	0.25	Typical	225.2
1,840	0.25	Typical	225.2
1,860	0.25	Typical	225.2
1,880	0.25	Typical	225.2
1,900	0.5	Typical	225.2
1,920	0.75	Moderate	752
1,940	0.5	Typical	225.2
1,960	0.25	Typical	225.2
1,980	0.25	Typical	225.2
2,000	0.5	Typical	225.2
2,020	0.5	Typical	225.2
2,040	0.25	Typical	225.2
2,060	0	Typical	225.2
2,080	-0.25	Typical	225.2
2,100	-0.25	Typical	225.2
2,120	0.25	Typical	225.2
2,140	1	Moderate	752
2,160	1	Moderate	752
2,180	0	(none)	0

This illustrates the case that would occur when water level was low and a long track was needed. At times of higher water levels, the track would be shorter or perhaps not even needed.

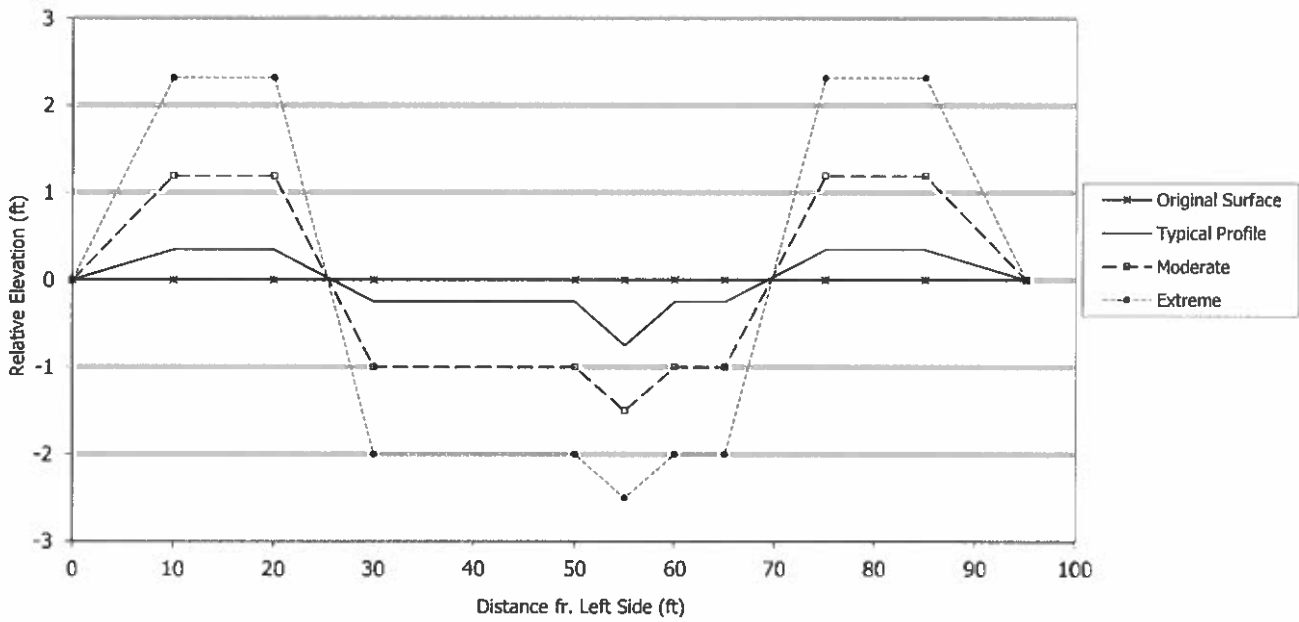
**Profile Figure 1. Longitudinal Profile
(Vertical Exaggeration Approx. 20:1)**



**Profile Figure 2: Proposed Lateral Profile
(Approximately no Vertical Exaggeration)**



**Profile Figure 3: Proposed Lateral Profile
(Vertical Exaggeration Approx. 10:1)**





June 21, 2023

RMEA Project No. 22-0158

Patrick A. Brown
Area Manager
Eastern Supervisory Area
Idaho Falls Office
3563 E. Ririe Highway
Idaho Falls, ID 83401

Re: Revised application for Commercial Non-Navigational Encroachment Permit and accompanying Lease and Easement applications.

Dear Mr. Brown:

I have enclosed with this letter revised and updated application materials on behalf of BLH Properties and Brian Hirschi, in response to your letter dated May 26, 2023. Here is a summary of our updates and changes:

- The maps now depict the IDL-designated OHWM of 5,923.65 feet, based upon a survey we found.
- We have removed the specific reference to mechanical tillage, instead referring generally to "weed control." Our understanding is that weed control is to be performed according to recommendations of one of the other entities you have referenced in earlier communication.
- The narrative more explicitly states that overnight parking and storage will occur only on the privately owned upland parcel.
- Descriptions of other littoral landowners' use of the bed of the lake, as well as references to permits issued by Idaho Department of Lands to others for similar or related activities, are no longer part of the narrative. We do believe that such could have been useful for IDL review, both to provide context and to inform IDL precedent, but per request we have removed them.
- I am providing copies of all of the relevant application materials, including the previously-submitted lease and easement applications, so that you do not have to reference prior submissions. The intent is for this package to be comprehensive.

Rocky Mountain Environmental Associates, Inc.
482 Constitution Way, Suite 303, Idaho Falls, Idaho 83402
rockymountainenvironmental.com

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I acknowledge that there are a couple of ways in which these materials do not strictly conform to all of the requests in your May 26 letter. First, the application materials still include references to modifying the lake of the bed mechanically. Second, as previously referenced, they still include an easement application.

Please understand, we are not including these items in order to be recalcitrant or difficult. As I understand, Mr. Hirschi's attorneys have been in contact with the DAGs for IDL on these issues. We understand that IDL may feel like there are certain items it cannot authorize, but we would like the benefit of a formal decision on those items, rather than removing them from the application materials altogether. We believe there is enough ambiguity in the Lake Protection Act that the Department's analysis of those items will be helpful.

Also, as to your comment regarding fueling, we believe a condition of approval that generally references the requirements of the International Fire Code as adopted by the State of Idaho is appropriate. Since that issue is more the purview of the Department of Insurance and local fire authorities, we do not believe more detail on that issue is necessary in the approvals issued by IDL. In the revised narrative accompanying the Encroachment application, we have retained our earlier clarification that Mr. Hirschi does not intend to ask IDL to issue approvals beyond its jurisdiction, but we have tried to be transparent in discussion of proposed activities.

I believe this constitutes a complete application package. If you feel like there is still information missing that is needed in order to process the applications, please let me know.

Thank you,



Bryce A. Contor
Principal Hydrologist

Attachments: Revised Encroachment Application with supporting materials
Copy of previously-submitted Lease Application
Copy of previously-submitted Easement Application
Copies of Idaho Department of Lands receipts for Lease Application fees,
Easement Application fees, and additional Easement Application fees



COMMERCIAL/COMMUNITY/NON-NAVIGATIONAL ENCROACHMENT PERMIT APPLICATION

This information sheet and checklist must be completed when submitting an encroachment permit application. Incomplete applications will be returned without processing.

- ENCROACHMENT TYPE:** (Check all that apply)
- Community dock
 - Commercial marina
 - Bank stabilization
 - Other – describe: Description attached.
 - Float home
 - Boat garage
 - Mooring buoy(s)

Applicant's Littoral Rights Are:

- Signature of littoral rights owner is obtained if applicant is not the owner of the riparian/littoral rights
- Owned, fee simple title holder
- Leased
- Other – describe: _____

Provide a Black/White Copy of Each Required Document on 8½"x14" or Smaller Paper:

- County plat map showing both neighboring littoral lots.
- Tax record identifying the owner of the upland parcel(s)
- Lakebed profile with encroachment and water levels of winter and summer
- General vicinity map that allows Department to find the encroachment
- Scaled air photo or map showing lengths of nearby encroachments, distances to adjacent encroachments, and location and orientation of the proposed encroachment.

Are Existing Docks or Other Encroachment(s) Permitted On This Parcel(s)?

- No
- Yes Please attach a current photograph and a "to scale" drawing (see Document Requirements Above)

Permit # _____ Date of Construction: _____

What will happen to the existing dock or encroachment if this permit application is approved?

- N/A - no existing dock
- Remain unchanged
- Complete removal
- Modification
- Other: _____

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

How Many Feet Does the Proposed Encroachment Extend Beyond the Ordinary (or Artificial) High Water Mark? _____ feet Proposal is for use approximately 200' into water, plus necessary distance to access water's edge depending on lake levels.

The Proposed Dock Length Is:

- N/A - no dock proposed
- The same or shorter** than the two adjacent docks
- Longer** than the two adjacent docks
- Longer** than the two adjacent docks, but within the line of navigability established by the majority of existing docks in the area.
- _____ feet and not located near any other docks or other encroachments.

For Community Docks, Does the Proposed Dock Exceed the Maximum Square Footage of 7 ft² per Littoral Front Foot?

- N/A - no dock proposed
- No Total square footage: _____ ft²
- Yes

For Community Docks, Does the Property Have at Least 50 Feet of Littoral Frontage?

- Yes Total front footage: _____ feet
- No

N/A - No dock proposed. However, littoral frontage is approx. 538 feet for applicant, greater than 538 feet if adjacent community users of Encroachment are considered.

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Will the Proposed Encroachment Exceed the Maximum Width of 10 Feet?

- No

- Yes

If yes, explain why: Necessary for two vehicles to meet traveling opposite directions.

Will the Proposed Encroachment Be Located Closer Than 25 Feet to the Riparian/Littoral Right Lines Established With Your Neighbors?

- No

- Yes

If yes, what are the proposed distances? _____ feet

- Consent of affected neighbor was obtained

Determining Riparian/Littoral Right Lines

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

Brian Hirschi

Printed Name

3/28/2023

Date

Brian Hirschi

Signature of Applicant or Agent

Attachment to Application for Commercial Non-Navigational Encroachment Permit Modified Per Idaho Department of Land Comments

This attachment provides additional information regarding entries in the application form, proposed activities listed in the attachment to the Joint Application for Permits, and a discussion of State of Idaho considerations related to the proposed activities.

All additions made in response to Idaho Department of lands comments are in underline format for clarity. Many materials have been removed completely. Some smaller removals are marked in strikeout format, particularly where it may be helpful to clarify responsiveness to comments.

Information related to required documents

Required Document 1: County plat map showing both neighboring littoral lots.

Five pages are ~~used~~ presented from the original application, ~~to~~ which allow identification of parcel information for the subject littoral lots and the two neighboring lots. The first page shows a map that shows both the Bear Lake County's parcel viewer on March 15, 2023 and the results of a recent sale. The following pages include the county's legal descriptions of the parcels and a recent deed that shows the change in boundary between the Applicant's lot and the south neighboring lot. Though county records are not updated, the deed indicates that no new parcels are made by this sale; it was handled by the county as a change in boundary.

The original five pages are followed by 11 pages from the first revision, which attempt to clarify the information that was presented in the original application.

Including intermediate cover pages, Required Document 1 is comprised of 18 pages in this amended application.

Required Document 2: Tax record identifying the owner of the upland parcel(s).

~~No comment~~ As described above, the online county records do not yet show the actual parcel configuration, so a recorded survey also is provided to show the actual configuration.

Required Document 3: Lakebed profile with encroachment and water levels of winter and summer.

Required Document 3 has three pages. The first page is a longitudinal profile, and the final two pages are lateral profiles of the proposed track construction.

Water levels vary year to year more than they do between winter and summer. Therefore, the first page of Document 3 maps general high and low water levels rather than winter and summer levels.

Required Document 4: General vicinity map that allows Department to find encroachment.

No comment Per IDL request, approximate location of the 5923.65 foot elevation, indicated to be IDL's interpretation of OHWM, has been added. The small gap in the linear feature represents a section of the surveyed line that was obscured by labeling in the source document.

Required Document 5: Scaled air photo or map showing lengths of nearby encroachments, distances to adjacent encroachments, and location and orientation of the proposed encroachment.

No docks or other physical-structure encroachments are nearby.

No nearby formal Permitted encroachments were identified by Idaho Department of Lands (IDL). Similar activities to the requested actions occur at the location marked "A" on the map.

Except for a turn in boundary at the south end, the lakeward parcel boundaries shown in Required Document 1 are essentially in a straight line parallel to the OHWM. Because the purpose of littoral lines is to provide adjacent littoral owners equitable access to the beach and shoreline, the littoral lines were projected perpendicular to the majority lakeward parcel boundary and parallel to each other.

Per IDL request, approximate location of the 5923.65 foot elevation, indicated to be IDL's interpretation of OHWM, has been added. The small gap in the linear feature represents a section of the surveyed line that was obscured by labeling in the source document

Supplemental Documents per IDL Request

An additional map has been provided per IDL request, to show conceptually how the staging area would be aligned relative to the littoral lines, water's edge and 5923.65 elevation. It is attached following Required Document 5.

Also per IDL request, an edited version of the original response letter is attached following the map of the staging area.

Information related to the extent of the encroachment beyond the ordinary (or artificial) high water mark.

The activity most distant from shore would be the proposed water trampolines. These need to be in about eight feet of water, which would be approximately 600 feet waterward from water's edge. The distance from the OHWM depends on water levels in the lake and the distance from the OHMW to water's edge. Required Document 3, Page 1 shows the range of extents that could occur between the IDL designation of OHWM and the lowest levels observed since 2004.

Description of proposed activities from Joint Application for Permits

The activities that would occur below the OWHM all are temporary in nature and include:

- A. Vehicle Track and Associated Features/Activities
 - a) Loose sand would be seasonally graded to the sides of a vehicle track, to expose a firm base of packed sand for passenger vehicles to access the shoreline band of firm, moist sand that typically is present within approximately 50 feet of water's edge, where passenger vehicles can traverse the sand in its natural condition. At high water levels, the track would be very short or not even needed. At low water levels, its length could approach 2,000 feet or more. The planned track width is 20 feet, with the sand deposited in bands approximately 25 feet wide on either side of the track. Depth of cut would predominantly be in the range of 0.25 feet, with a few sand drifts requiring a cut as deep as approximately two feet.
 - b) No material would be removed or imported, and at the end of the season the material would be pushed back approximately to its original location to be reworked by wave or wind action.
 - c) If requested by regulators, the track could be marked by flexible posts and/or orange traffic cones or pylons, with or without ropes.
 - d) A shallow ditch would be constructed at the side of the vehicle track for hydration purposes. The ditch would be approximately 0.5 feet deeper than the track.
 - e) Including material excavated from the ditch, depth of deposit predominantly would be in the 0.34 foot range, with deeper cuts requiring deposits up to approximately 2.3 feet.
 - f) Total cut volume at a hypothetical length of 2,190 feet would be approximately 985 cubic yards, with the entire volume deposited adjacent to the sand track. Net export/import of material would be zero.
 - g) No permanent dredge, fill or reconfiguration of the beds of Waters of the US or Idaho Trust Lands is contemplated.

- h) The track and shallow ditch would be maintained a few times per year, to remove drifted loose sand that would interfere with passenger-vehicle traffic and delivery of hydration water.
- i) Approximately 2,500 gallons per day of clean, potable well water would be applied to the shallow ditch to keep the track hydrated and firm. At lower lake levels, evaporation is great enough that the flow of water in the ditch cannot reach water's edge. At higher lake levels, flow would be reduced to prevent well-water flow from reaching water's edge. At very high lake levels, natural capillary action would keep the sand hydrated and the hydration flows would be unnecessary.

B Buoy and Mooring.

- j) Up to 10 safety buoys 10 inches in diameter would be placed to mark water depths for safety of boaters, including clients of applicant. These would be anchored with metal weights attached to the buoys with as short a line as possible, retrievable without equipment, and removed within 30 days after use is discontinued in the fall of each year. The farthest waterward buoys would be placed in approximately six feet of water depth. Line lengths would range from approximately three feet to approximately six feet.
- k) Up to eight mooring buoys for watercraft would be placed, anchored with weights attached to the buoys with as short a line as possible, removable without equipment, and removed within 30 days after use is discontinued in the fall of each year. Water depth at the mooring locations would depend on the configuration of craft to be moored but typically would be less than six feet. Line lengths would typically be less than six feet.
- l) Two chains with short ropes would be placed to secure personal watercraft. These would be placed in water approximately 18" deep, secured with metal weights removable without equipment and removed within 30 days after use is discontinued in the fall of the year. Ends of the chains would be marked with buoys. Chains would be approximately 50 feet long. The short ropes would be approximately 1.5 feet long.

C. Water Toys

Three water trampolines would be anchored in approximately 8 feet of water, with metal weights, attached to the trampolines with as short a line as possible, that can be removed without use of equipment. The lines would be approximately eight feet long. The toys and anchor weights would be retrieved nightly and stored above the OHWM to both avoid potential hazard to night-time boaters and recreationalists and to protect against vandalism or theft.

D. Overnight Storage Near OHWM.

Watercraft on trailers, tractor(s) and pickup truck(s) would not be stored below the OHWM. -as near as practicable to, or above, the OHWM, adjacent to or on the applicant's property as mapped by Bear Lake County. Depending on surface conditions

~~and the ability to park vehicles in soft sand, some equipment may be below the OHWM and some may be waterward of applicant's property.~~

E. Water's edge activities:

- m) A staging area would be established for safety and convenience of clients and personnel. The enclosed area would be 100 feet by 200 feet. The staging area would be located immediately adjacent to water's edge and oriented landward from the water. The staging area would be moved periodically in response to changing water levels. Laterally, its location would be adjusted to honor 25-foot buffers to adjoining littoral areas and in general be approximately centered in the littoral area. The items would be retrieved within 30 days of the end of use at the end of each season. Staging-area items would be below the OHWM and above the water line. These items include:
- i) Flexible posts and/or traffic cones or pylons, possibly with ropes, to delineate the staging area.
 - ii) Enclosed trailer.
 - iii) Picnic table.
 - iv) Shade canopy anchored with weights.
 - v) Placement of trailer(s) for storage of non-motorized watercraft during the daytime. A map showing the conceptual relationship between the staging area, water's edge and littoral lines is provided following Required Document 5.
- n) The following temporary activities would be conducted in the water or near water's edge, removed nightly to the overnight storage area described above:
- i) Launching of water craft from trailers towed by tractors to the minimum depth necessary for a safe launch.
 - ii) Fueling of watercraft compliant with National Fire Code regulations for commercial marinas. This would be accomplished with portable fuel tanks in pickup trucks, with spill kits carried in the vehicles.
 - iii) Daytime placement of a picnic table on a trailer in shallow waters (approximately three feet deep), as a place to stage personnel in close proximity to boats and activities for the safety of clients.

F. ~~Mechanical tillage~~ Weed control using methods determined following consultation with Idaho Department of Agriculture, Bear Lake County Weed Superintendent or Bear Lake Watch would be used to control invasive plant species and maintain a clean beach. ~~A secondary effect of this activity would be to reduce the depth and extent of dunes, thereby reducing the volume of material that must be removed to establish a track for passenger vehicles.~~

Additional activities on private land above the OHWM are not part of the Joint Application for Permits. The following descriptions are provided in order to ~~fully-characterize~~ and clarify activities that would not take place within the permitted Encroachment below the OHWM-the Overall Project:

G. Rental transactions and collection of payment would occur at the upland facility:

- o) Watercraft Rental of watercraft to be deployed from littoral adjacent to Applicant's property as described above;
- p) Watercraft Rental of watercraft to be transported by clients to other locations for launch and use elsewhere.

H. Sale of snacks, drinks and small items may occur.

KI. Client parking would be provided.

J. Overnight parking of boats, tractors, trailers and vehicles would occur on privately-owned uplands above the OHWL and not below it.

Narrative

The following discussion is specific to the following State of Idaho considerations:

1. Idaho Department of Lands (IDL) Encroachment Rules and Easement Rules (*Rules*);
2. Prior permits issued by IDL to Applicant (*Prior Permits*);
 - a. State of Idaho Temporary Permit No. TP-80-0419, May 11, 2009. Referred to in this narrative as "2009 Permit."
 - b. State of Idaho Land Use Permit No. LUP800558, August 14, 2014. Referred to in this narrative as "2014/2015 Permit." Expiration date is listed as November 30, 2016 with an option of extension at IDL discretion.
 - c. State of Idaho Land Use Permit No. LUP800588, December 12, 2015. It also lists an expiration date of November 30, 2016 with option for renewal. This Permit and the 2017 document together are referred to in this narrative as "2016/2017 Authorization."
 - d. Land Use Permit LU800559 Extension, April 17, 2017. This extended the prior authorizations until November 30, 2017. It and the December 2015 document together are referred to as "2016/2017 Authorization."
3. Observations from field reconnaissance on October 13, 2022 by Applicant's consultant Bryce A. Contor of Rocky Mountain Environmental Associates, Inc. (*Reconnaissance*);
4. Additional discussion of proposed activity, for clarification (*Clarification*).

It is acknowledged that some of these representations are different from the interpretations expressed by IDL personnel in a meeting in Idaho Falls in October 2022 with applicant's consultant.

Materials are presented to provide context for the Application, and are not intended to request IDL to grant approval(s) beyond its jurisdiction.

Discussion Relative to State of Idaho Considerations

A. Vehicle Track and Associated Features/Activities

Rules

Encroachment Rule 030.10 states that the two most important factors in considering a Nonnavigational Encroachment are (1) unreasonable adverse effect upon adjacent property, and (2) undue interference with navigation.

The track and associated features and activities will be no closer than 25 feet to the littoral lines of adjacent properties and will have no adverse effect upon them. Because all of the proposed track will be well landward of water's edge, there is no interference with navigation.

Encroachment Rule 010.15 refers to "boat ramps" and Encroachment Rule 010.16 refers to "landfills." Neither of these seem to fit the proposed activity, and no direct references to "roads," "trails" or "tracks" were identified in the Encroachment Rules.

Easement Rule 001.03 clarifies that a lease is usual and customary for features such as marinas, docks, float homes, and similar facilities (emphasis added). Because the proposed track is not similar to any of the provided examples, a lease may not be the appropriate vehicle to authorize the Proposed track, but rather an easement would apply.

Easement Rule 030 indicates that an easement with a term of 10 to 55 years will be issued for uses and structures not permanent in nature. The proposed track would be a temporary feature renewed every spring and removed every fall, and not permanent in nature.

Lease rule 020.05 indicates that an exception to leases is features that customarily are authorized by temporary permits or easements, such as "roads." The proposed track is similar to a road, adding additional suggestion that an easement and not a lease is the appropriate mechanism. This also clarifies that there is a mechanism for authorizing a road-like activity.

Prior Permits

Authorization for a track was not identified in the prior permits issued to Applicant.

Reconnaissance

During the October 13, 2022 reconnaissance, RMEA successfully used a two-wheel-drive passenger vehicle to access firm, hydrated sands near the water, via a constructed track of imported materials at another location. Traveling in a large four-wheel-drive pickup truck with oversize tires at the location of the proposed Encroachment, RMEA confirmed the ease of navigating the firm, hydrated sands near water's edge and the difficulty of

crossing soft dune sand distant from water's edge where a track was not present. Loose dune sand was observed to be laterally extensive in several locations between the OHWM and the hydrated, firm sand near water's edge at the location of the proposed Encroachment. It would not have been possible to access water's edge from OHWM at that location in a two-wheel-drive passenger vehicle.

Clarification

The proposed track would be temporary, using no imported materials and with no materials removed. It would not extend to water's edge and would be regraded at the end of the season, to allow sands to be reworked by natural wind and wave action. Its length would depend on water levels; in years of high water levels, the track would be very short or not even needed. It would be a community track available to the applicant and to adjoining property owners.

The proposed ditch's only function would be to keep the track hydrated; the proposed ditch would not be used to dispose of water from any facility or use.

B. Buoys and Mooring

Rules

Encroachment Rules 010.02 and 010.15 define "Encroachments in Aid of Navigation" to include buoys generally, without differentiating by purpose.

Prior Permits

The 2009 Permit, page 2, item 10, states: "The Permittee is, by this permit, authorized to install four (4) buoys for the purpose of marking a wake-less zone. These buoys will be installed not more than 100 feet from the lake shore. Buoys will be installed at the beginning of the operating season and removed at the end of the operating season."

Similar authorization is repeated in the 2014/2015 Permit and the 2016/2017 Authorization.

Clarification

The buoys and associated features and activities will be no closer than 25 feet to the littoral lines of adjacent properties and will have no adverse effect upon them. The safety buoys will notify all boaters of unsafe shallow waters and will enhance navigation rather than interfering with it. The mooring buoys will be in water too shallow to constitute interference with navigation.

The Applicant does not need to mark a wake-less zone; rather, the safety buoys are to notify the boating public of shallow depths that could cause watercraft to run aground,

damaging the watercraft, potentially causing the release of fluids and/or debris, and/or causing injury to boaters.

C. Water Toys

Rules

Encroachment Rule 010.18 defines “floating toys” to include trampolines that are waterward of the line of navigability for less than 24 hours.

Encroachment Rule 015.14 states the general rule that an encroachment permit is not required for a floating toy if it is not anchored to the bed of the lake with a device that requires “equipment” to remove it and is not located waterward of the line of navigability for more than 24 hours.

Prior Permits

2014/2015 Permit page 3, item 11: "This permit will allow up to four (4) floating trampolines, which must be beached nightly."

The 2016/2017 Authorization includes a similar provision.

Clarification

The water toys would be removed from the water nightly and stored above the OHWM. They would be anchored with weights not requiring equipment for removal. The benefit is two-fold; first, it provides a measure of safety for after-dark motorized recreation that might occur from users accessing the beach from other locations; second, it provides additional protection from theft and/or vandalism.

The water toys mark the farthest waterward extent of the Encroachment and Easement or Lease, and would be placed in eight feet of water. Eight feet of water is approximately 600 feet from water's edge.

D. Overnight Storage Near OHWM.

Clarification

Overnight storage would occur only on Applicant's deeded property above the OHWM.

E. Water's edge activities

Rules

It appears that most of the water's edge activities are Encroachments Not in Aid of Navigation per Encroachment Rule 010.16.

The picnic table in the water may fall under Encroachment Rule 030.02 governing encroachments "in navigable lakes." If so, the "benefits to the general public" and "consisten[cy] with the public trust doctrine" of the activity arise from the safety needs of clients and personnel. Because of the very small footprint and temporary nature of the effect, the impact on public trust value is *de minimis* and there are no alternates except to expose the public to additional danger, which is not a reasonable alternative.

Prior Permits

The 2014/2015 Permit page 4 item 13 states: "This permit will allow for a temporary fence around the working and launching area along the lake. Post[s] must be made of flexible fiberglass or comparable, fence post with flagging and a barrier that is also flexible. This must be visible to those on the beach from a 100 foot distance. This must be removed at the close of the season."

The 2016/2017 Authorization includes similar provisions.

2009 Permit page 2, item 13: "The Permittee shall develop and submit for approval, prior to annual operations, a detailed plan for the containment of spills or leaks and disposal of any hazardous substances spilled or leaked into Bear Lake or upon the associated beach front.

2009 Permit page 2, item 14: "Storage of fuels, lubricating oils, and other toxicants within the riparian area is strictly prohibited." There are additional reporting & spill-kit requirements.

The 2014/2015 Permit includes similar provisions.

The 2014/2015 Permit page 5, item 20 requires fuel storage in a secondary containment system "near the main building structure," interpreted here to mean above the OHWM. It requires that "vehicles should have some type of secondary containment within the beds to prevent spills onto public trust lands."

2014/2015 Permit page 5, item 21: "All motorized watercraft will be beach [sic] during the fueling process, were [sic] applicable."

The 2016/2017 Authorization includes similar provisions.

The 2016/2017 Authorization page 5 Item 22 of the 2016 document repeats the secondary containment requirement and requires that it be "above the high water elevation 5923.65." This confirms the assumption that the 2014-2015 fuel-storage provision was for an activity above the OHWM.

The 2016/2017 Authorization page 5 Item 23 of the 2016 document refines the requirements, clarifying that the containment system be "for the placement of hose and

nozzle when not actively fueling water craft to prevent spills onto public trust lands. Nozzle(s) will not be placed or hung within the lake and the hose(s) shall not be left on the lake bed for any longer than fifteen (15) minutes between fueling, and at no time shall the hose, or nozzle, be unattended while out of the containment system."

The 2016/2017 Authorization page 5 Item 24 of the 2016 document states: "Permittee may use a pick up below the high water elevation. Pick up may be used in the water for fueling only, but no deeper than mid axle. Pick up will be not left in the water for any longer than fifteen (15) minutes, during fueling; and at no time will the truck be unattended."

The 2014/2015 Permit page 4 Item 12 states: The Permit allows a shade canopy for employees working "along the water's edge." It must be removed at the close of the season.

The 2016/2017 Authorization renews provision for the shade canopy.

Clarification

Applicant is requesting approval for activities that appear to be general practice in the area.

F. ~~Mechanical tillage to control~~ Control of invasive plant species.

Rules

It is presumed that this is an Encroachment Not in Aid of Navigation under Encroachment Rule 010.16.

Prior Permits

Prior authorization for ~~mechanical~~ weed control was not identified in prior permits. However, prior permits do underscore the resource concern. The 2009 Permit, page 3, item 22a requires the permittee to "Notify the Idaho Department of Lands if any noxious weeds are observed on the site." Subsequent IDL permits repeat the requirement.

G through K.



No discussion is provided, as these activities will not occur below the OHWM.

Required Document #1: Original Application Materials

Six pages including cover



2021 NAIP

-  Property after purchase is complete
-  Property parcel and adjacent parcels as of March 15, 2022



Required Document 1: County Parcels showing both neighboring littoral lots.




Varin Thomas
Property Located
In Bear Lake County, Idaho

Date: 3/15/2023
Project #: 22-0158
Drawn by: TK

Required Document 1 Page 2

Parcel information Obtained from Bear Lake County Parcel Viewer
(<https://maps.idahoparcels.us/geomoose/mobile/bearlake.html>) on March 15, 2023 at 1400.

A

[Details](#) [Improvements](#) [Assess](#) [Taxes](#) [Photo](#) [Taxing Districts](#) [Print Page](#)

PIN: 05553.03

Site Address: 499 EAST SHORE RD

Site Zipcode: 83272

Homeowner Name 1: JONES LAKE FRONT LLC

Homeowner Name 2:

Homeowner Address: 1455 WEBB LN

Homeowner City: KAYSVILLE

Homeowner State/ZIP: UT, 84037

Land Categories:

Lat and Long of center: 42.1019596664466, -111.26205353261

Deed(s): 228971, 228971, 220093, ,

IMPV TYPE: DETGAR

YEAR BUILT: 2018

FLOORS: 0

VALUE: 43870

FINISHED AREA: 0

KITCHEN: 0

LIVING ROOM: 0

GREAT ROOM: 0

DINING ROOM: 0

BATHROOM(S): 0

BEDROOM(S): 0

OTHER ROOM(S): 0

FIRE PLACE(S): N

Required Document 1 Page 3

B

[Details](#) [Improvements](#) [Assess](#) [Taxes](#) [Photo](#) [Taxing Districts](#) [Print Page](#)

PIN:

Site Address: 535 EAST SHORE RD

Site Zipcode: 83272

Homeowner Name 1: BLH PROPERTIES LLC

Homeowner Name 2:

Homeowner Address: 1217 S BEAR LAKE BLVD

Homeowner City: GARDEN CITY

Homeowner State/ZIP: UT, 84028

Land Categories:

Lat and Long of center: 42.1014810173751, -111.261814221244

Deed(s): 229195, , , ,

C

[Details](#) [Improvements](#) [Assess](#) [Taxes](#) [Photo](#) [Taxing Districts](#) [Print Page](#)

PIN:

Site Address: 567 EAST SHORE RD

Site Zipcode: 83272

Homeowner Name 1: HEMMERT HOT SPRINGS INC

Homeowner Name 2: HEMMERT HOT SPRINGS @

Homeowner Address: 1309 E 2100 N

Homeowner City: LOGAN

Homeowner State/ZIP: UT, 84341

Land Categories:

Lat and Long of center: 42.0993464491433, -111.261185273791

Deed(s): , , , ,

Required Document 1 Page 4 through Page 9:

The attached deed shows the recent purchase that changes the configuration of Applicant's upland parcel.

Instrument # 240539

BEAR LAKE COUNTY

03-24-2023 02:21:33 No. of Pages: 5

Recorded for: FLYING S TITLE AND ESCROW - MONTPELIER

Amy Bishop Fee: \$16.00

Ex-Officio Recorder Deputy: AB

Index to: WARRANTY DEED

AFTER RECORDING MAIL TO:

Brian Hirschi
1910 E 3025 N
North Logan, UT 84341

CORPORATE WARRANTY DEED

File No.: **1083455-MON (ab)**

Date: **March 22, 2023**

For Value Received, **Hemmert Hot Springs, Inc., an Idaho corporation**, a corporation duly organized and existing under the laws of the State of Idaho, Grantor, does hereby grant, bargain, sell and convey unto **Brian Hirschi, a married man as his sole and separate property**, Grantee, whose address is **1910 E 3025 N, North Logan, UT 84341**, the following described real estate, to wit: **Legal Description attached hereto as Exhibit A, and by this referenced incorporated herein.**

SUBJECT TO current years taxes, irrigation district assessments, public utility easements, subdivision and U.S. patent reservations.

TO HAVE AND TO HOLD the said premises, with their appurtenances, unto said Grantee, and to the Grantee's heirs and assigns forever. And the said Grantor does hereby covenant to and with the said Grantee, that the Grantor is the owner in fee simple of said premises; that said premises are free from all encumbrances, and that Grantor will warrant and defend the same from all claims whatsoever.

IN WITNESS WHEREOF, the Grantor, pursuant to a resolution of its Board of Directors has caused its corporate name to be hereunto subscribed by its President and Secretary this 24 day of MARCH, 2023.

Hemmert Hot Springs, Inc., an Idaho corporation

By: *Diane Midkiff*
Name: Diane Midkiff
Title: President

By: _____
Name: Ellen Hardman
Title: Secretary

AFTER RECORDING MAIL TO:

Brian Hirschi
1910 E 3025 N
North Logan, UT 84341

CORPORATE WARRANTY DEED

File No.: **1083455-MON (ab)**

Date: **March 22, 2023**

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SUBJECT TO current years taxes, irrigation district assessments, public utility easements, subdivision and U.S. patent reservations.

TO HAVE AND TO HOLD the said premises, with their appurtenances, unto said Grantee, and to the Grantee's heirs and assigns forever. And the said Grantor does hereby covenant to and with the said Grantee, that the Grantor is the owner in fee simple of said premises; that said premises are free from all encumbrances, and that Grantor will warrant and defend the same from all claims whatsoever.

IN WITNESS WHEREOF, the Grantor, pursuant to a resolution of its Board of Directors has caused its corporate name to be hereunto subscribed by its President and Secretary this 23 day of March, 2023.

Hemmert Hot Springs, Inc., an Idaho corporation

By: _____
Name: Diane Midkiff
Title: President

By: Ellen Hardman
Name: Ellen Hardman
Title: Secretary

APN: 05553.04

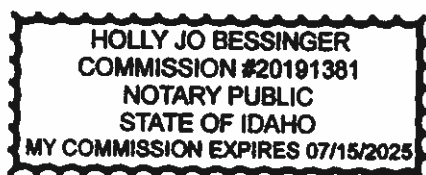
Warranty Deed
- continued

File No.: 1083455-MON (ab)
Date: 03/22/2023

STATE OF Idaho)
)
COUNTY OF Franklin)

On this Twenty-fourth day of March, 2023, before me, a Notary Public in and for said State, personally appeared **Diane Midkiff**, known or identified to me to be the **President** of the corporation that executed the within instrument or the person who executed the instrument on behalf of said corporation, and acknowledged to me that such corporation executed the same.

In witness whereof, I have hereunto set my hand and affixed my official seal the day and year in this certificate first above written.



Holly Jo Bessinger

Notary Public for the State of Idaho
Residing at: **Preston**
My Commission Expires: **7.15.25**

STATE OF Utah)
)
COUNTY OF _____)

On this _____ day of March, 2023, before me, a Notary Public in and for said State, personally appeared **Ellen Hardman**, known or identified to me to be the **Secretary** of the corporation that executed the within instrument or the person who executed the instrument on behalf of said corporation, and acknowledged to me that such corporation executed the same.

In witness whereof, I have hereunto set my hand and affixed my official seal the day and year in this certificate first above written.

Notary Public for the State of Utah
Residing at:
My Commission Expires:

APN: 05553.04

Warranty Deed
- continuedFile No.: 1083455-MON (nb)
Date: 03/22/2023**EXHIBIT A**

A parcel of land located in Section 24, Township 15 South, Range 44 East, Boise Meridian, Bear Lake County, Idaho and more particularly described as follows:

Commencing at the East quarter corner of said Section 24 and running thence South 00° 27' 44" East 223.83 feet along the East line of said Section 24;

Thence West 3910.02 feet to a point on the West right of way line of East Shore Road;

Thence along the said West right of way line the following 3 courses as surveyed on the Survey recorded as Instrument # 164004 in the official records of Bear Lake County:

Thence South 17° 09' 03" East 206.53 feet;

Thence South 21° 20' 27" East 515.40 feet;

Thence South 23° 02' 28" East 178.00 feet to a found 5/8" rebar with aluminum cap labeled, "PLS 4735", the True Point of Beginning;

Thence continuing along the said West right of way line the following 2 courses:

Thence South 23° 02' 28" East 212.62 feet;

Thence South 18° 57' 36" East 146.66 feet to a 5/8" rebar with aluminum cap labeled, "A.A. Hudson, PLS 13173";

Thence South 71° 02' 24" West 262.05 feet to a 5/8" rebar with aluminum cap set on the Meander Line of Bear Lake;

Thence along said Meander Line the following 2 courses:

Thence North 05° 45' 00" East 45.43 feet to a 5/8" rebar with aluminum cap;

Thence North 22° 45' 00" West 300.44 feet to a 5/8" rebar with aluminum cap;

Thence North 66° 57' 31" East 248.42 feet to the True Point of Beginning.

Required Document #1: Additional Response Materials

Twelve pages including cover

"Response Attachment 1: Additional Parcel Information" contains the following:

- Cover sheet.
- Narrative (this sheet).
- Copy of the first page of Required Document 1 from the original application, with annotation with letters "A," "B" and "C" added for clarity in this response.

Letter "A" designates the adjoining parcel to the north, which was mapped by Bear Lake County on March 15, 2022 with the boundary between it and the Applicant's property in the correct location.



Letter "B" designates the Applicant's property. The heavy dashed line indicates the actual location of Applicant's property at the time of the original application and currently, per the Record of Survey map included in the original application. The solid black line is where the county mapped the southern boundary of Applicant's property as of March 15, 2022.

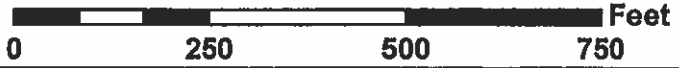
Letter "C" designates the adjoining property to the south at the time of the original application and currently. The solid black lines show the boundaries that were unaffected by the recent change described in the Application and the heavy dashed line indicates the updated boundary reflected in the documentation included with the Application but which had not yet been mapped by the County.

- Three hand-annotated screenshots from the Bear Lake County online parcel viewer as of April 21, 2023. On the left of each is the parcel number and partial parcel data, with a hand-written letter circled to indicate which of the parcels show in the annotated map from the original Application are referred to. The maps themselves have circles drawn to show the approximate locations of the actual parcels as they existed at the time of the Application and currently, superimposed on the County's mapping which still has not been updated.
- Four pages showing the detail printed from the County website for the parcel designated as "A" for this narrative. This is the adjacent property to the north.
- Four pages showing the detail printed from the County website for the parcel designated as "B" for this narrative. This is the applicant's property.
- Four pages showing the detail printed from the County website for the parcel designated as "C" for this narrative. This is the adjacent property to the south.



2021 NAIP

 Property after purchase is complete
 Property parcel and adjacent parcels as of March 16, 2022



Required Document 1: County Parcels showing both neighboring littoral lots.



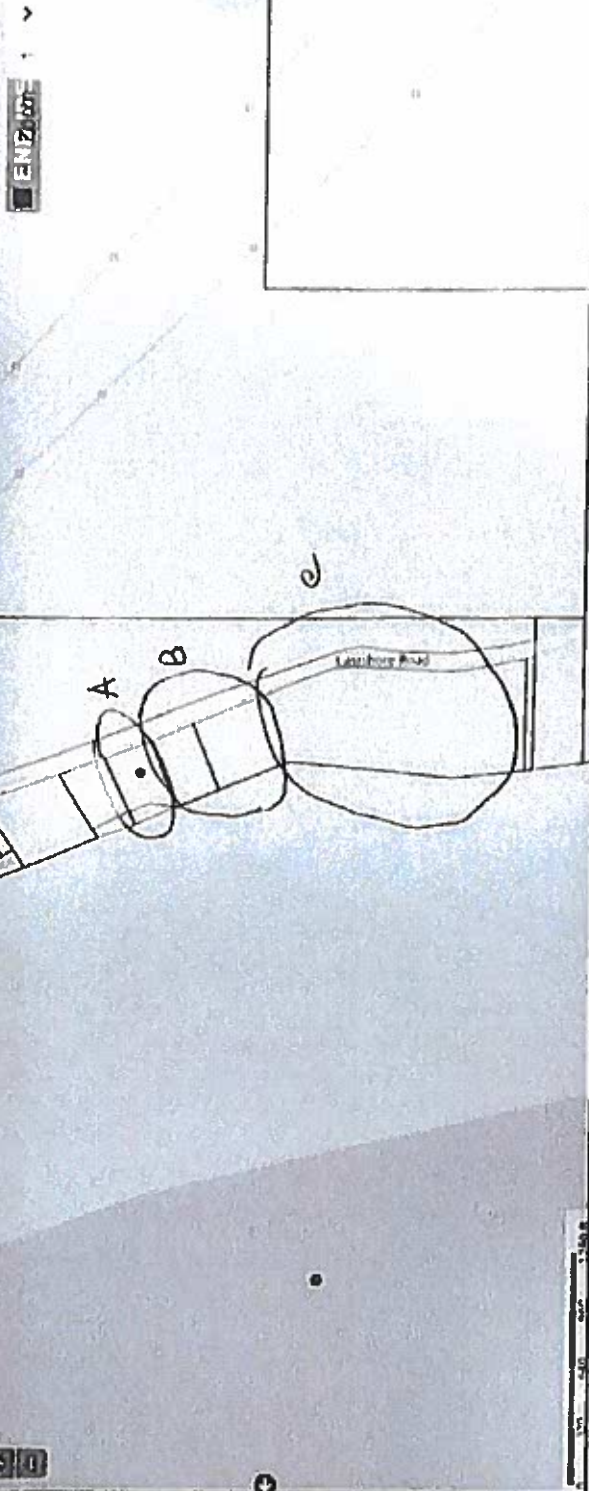
Varin Thomas
 Property Located
 In Bear Lake County, Idaho

Date: 3/15/2023

Project #: 22-0158

Drawn by: TK

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Parcel Number: RP15S44E24S840

Details **A**

Order 1:	JONES LAKE FRONT LLC
Order 2:	
Site Address:	499 EAST SHORE RD, ST CHARLES, 83272
Escheatment Address:	ESCH. DISTRICT
Tax Code Area:	ESCH. DISTRICT
Parcel Address:	499 EAST SHORE RD, ST CHARLES, 83272
Deed:	11071 2287 22207
Area:	0.2400

3.6.2 IDAHO The parcel was last recorded on March 03, 2009 11:46:47

Labeled A in Required Document 1

Identify Results

Features 1	Layers 2	Zoom to results 
---------------	-------------	--

[Details](#) [Improvements](#) [Assess](#) [Taxes](#) [Photo](#) [Taxing Districts](#) [Print Page](#)

PIN: 05553.03

Site Address: 499 EAST SHORE RD

Site Zipcode: 83272

Homeowner Name 1: JONES LAKE FRONT LLC

Homeowner Name 2:

Homeowner Address: 1455 WEBB LN

Homeowner City: KAYSVILLE

Homeowner State/ZIP: UT, 84037

Land Categories:

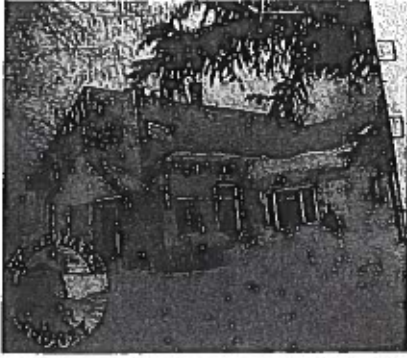
Lat and Long of center: 42.1019596664466, -111.26205353261

Deed(s): 228971, 228971, 220093,,

IMPV TYPE: DETGAR
YEAR BUILT: 2018
FLOORS: 0
VALUE: 43870
FINISHED AREA: 0
KITCHEN: 0
LIVING ROOM: 0
GREAT ROOM: 0
DINING ROOM: 0
BATHROOM(S): 0
BEDROOM(S): 0
OTHER ROOM(S): 0
FIRE PLACE(S): N

<p>Tax Year: 2022 Total Charges: 2996.14 Taxes Paid: -1498.07 Taxes Balance: 1498.07 Tax Penalties: Total Interest: NULL</p>
<p>Tax Year: 2021 Total Charges: 2408.80 Taxes Paid: -2408.80 Taxes Balance: .00 Tax Penalties: Total Interest: NULL</p>
<p>Tax Year: 2020 Total Charges: 2403.86 Taxes Paid: -2403.86 Taxes Balance: .00 Tax Penalties: .00 Total Interest: NULL</p>
<p>Tax Year: 2019 Total Charges: 2091.22 Taxes Paid: -2091.22 Taxes Balance: .00 Tax Penalties: Total Interest: NULL</p>
<p>Tax Year: 2018 Total Charge: 2075.90 Taxes Paid: -2075.90 Taxes Balance: .00 Tax Penalties: Total Interest: NULL</p>
<p>Tax Year: 2017 Total Charge: 2138.56 Taxes Paid: -2138.56 Taxes Balance: .00 Tax Penalties: Total Interest: NULL</p>





Cemetery:ST CHARLES CEMETERY

City:

Fire: BEAR LAKE CNTY FIRE PROT

Highway: BEAR LAKE COUNTY ROAD & BRIDGE

Library: BEAR LAKE CNTY FREE LIBR

Mosquito Abatement: BEAR RIVER MSQ ABATEMENT

School: BEAR LAKE SCHOOL #33

Water:

Watershed:

Weed Control:

Weather Modification:

Sorry no detail data for this parcel

Labeled B in Required Document 1



Identify Results

Features 1	Layers 2	Zoom to results 
---------------	-------------	--

- Details
- Improvements
- Assess
- Taxes
- Photo
- Taxing Districts
- Print Page

PIN:

Site Address: 535 EAST SHORE RD

Site Zipcode: 83272

Homeowner Name 1: BLH PROPERTIES LLC

Homeowner Name 2:

Homeowner Address: 1217 S BEAR LAKE BLVD

Homeowner City: GARDEN CITY

Homeowner State/ZIP: UT, 84028

Land Categories:

Lat and Long of center: 42.1014810173751, -111.261814221244

Deed(s): 229195, , ,

Tax Year: 2022 Total Charges: 3930.40 Taxes Paid: -3930.40 Taxes Balance: .00 Tax Penalties: Total Interest: NULL
Tax Year: 2021 Total Charges: 3295.38 Taxes Paid: -3295.38 Taxes Balance: .00 Tax Penalties: Total Interest: NULL
Tax Year: 2020 Total Charges: 3210.48 Taxes Paid: -3210.48 Taxes Balance: .00 Tax Penalties: Total Interest: NULL



Cemetery:ST CHARLES CEMETERY

City:

Fire: BEAR LAKE CNTY FIRE PROT

Highway: BEAR LAKE COUNTY ROAD & BRIDGE

Library: BEAR LAKE CNTY FREE LIBR

Mosquito Abatement: BEAR RIVER MSQ ABATEMENT

School: BEAR LAKE SCHOOL #33

Water:

Watershed:

Weed Control:

Weather Modification:

Sorry no detail data for this parcel

Labeled C in Required Document 1



Identify Results

Features 1	Layers 2	Zoom to results
---------------	-------------	---------------------

- Details
- Improvements
- Assess
- Taxes
- Photo
- Taxing Districts
- Print Page

PIN:

Site Address: 567 EAST SHORE RD

Site Zipcode: 83272

Homeowner Name 1: HEMMERT HOT SPRINGS INC

Homeowner Name 2: HEMMERT HOT SPRINGS @

Homeowner Address: 1309 E 2100 N

Homeowner City: LOGAN

Homeowner State/ZIP: UT, 84341

Land Categories:

Lat and Long of center: 42.0993464491433, -111.261185273791

Deed(s):

<p> Tax Year: 2022 Total Charges: 9186.52 Taxes Paid: -9186.52 Taxes Balance: .00 Tax Penalties: Total Interest: NULL </p>
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<p> Tax Year: 2020 Total Charges: 4622.74 Taxes Paid: -4622.74 Taxes Balance: .00 Tax Penalties: Total Interest: NULL </p>
<p> Tax Year: 2019 Total Charges: 5079.88 Taxes Paid: -5079.88 Taxes Balance: .00 Tax Penalties: .00 Total Interest: .00 </p>



Cemetery:ST CHARLES CEMETERY

City:

Fire: BEAR LAKE CNTY FIRE PROT

Highway: BEAR LAKE COUNTY ROAD & BRIDGE

Library: BEAR LAKE CNTY FREE LIBR

Mosquito Abatement: BEAR RIVER MSQ ABATEMENT

School: BEAR LAKE SCHOOL #33

Water:

Watershed:

Weed Control:

Weather Modification:

Sorry no detail data for this parcel

Required Document #2: Tax Record

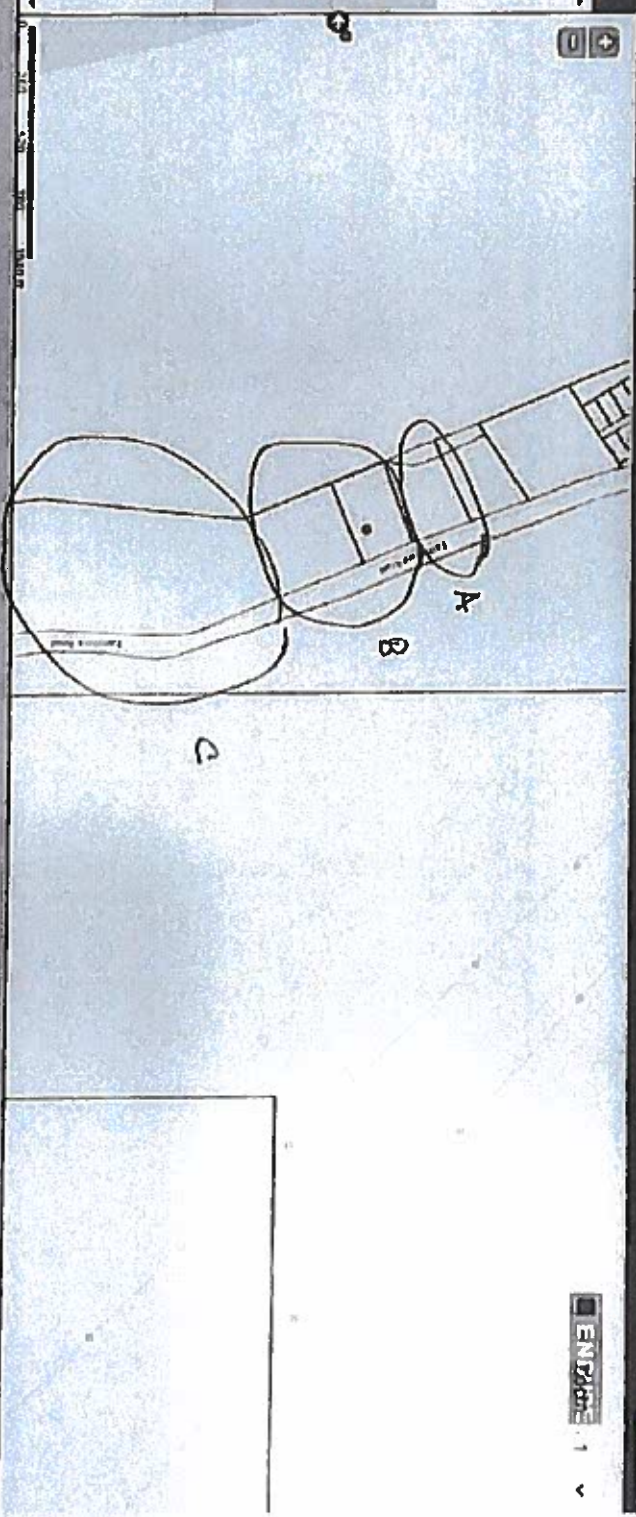
Six pages including cover

[Home](#) | [About](#) | [Contact Us](#) | [Privacy Policy](#) | [Terms of Service](#) | [Feedback](#) | [Help](#)

Parcel Number: RP15544E245850

Details B

Owner 1	HIRSCH BRUN DUNIT
Owner 2	
Street Address	533 EAST SEORE RD ST CHARLES 53772
Homeowner Address	533 EAST SEORE RD ST CHARLES 53772
Tax Code Area	
Legal Address	533 EAST SEORE RD ST CHARLES 53772
Deeds	



3.62 IDAHO The growth you've achieved. More.

XY: 12988088.3, 51761502 USNG 12T VM 77 872 61046 Lantlon 42-1072-411 2576

Zoom to Extent

3573573-1581660.jpg Utah_Co_V_Cent_Sr.pdf

Show All 3573573-1581660.jpg Utah_Co_V_Cent_Sr.pdf

Labeled B in Required Document 1



Identify Results

Features 1	Layers 2	Zoom to results
---------------	-------------	---------------------

- Details
- Improvements
- Assess
- Taxes
- Photo
- Taxing Districts
- Print Page

PIN:

Site Address: 535 EAST SHORE RD

Site Zipcode: 83272

Homeowner Name 1: BLH PROPERTIES LLC

Homeowner Name 2:

Homeowner Address: 1217 S BEAR LAKE BLVD

Homeowner City: GARDEN CITY

Homeowner State/ZIP: UT, 84028

Land Categories:

Lat and Long of center: 42.1014810173751, -111.261814221244

Deed(s): 229195, ...

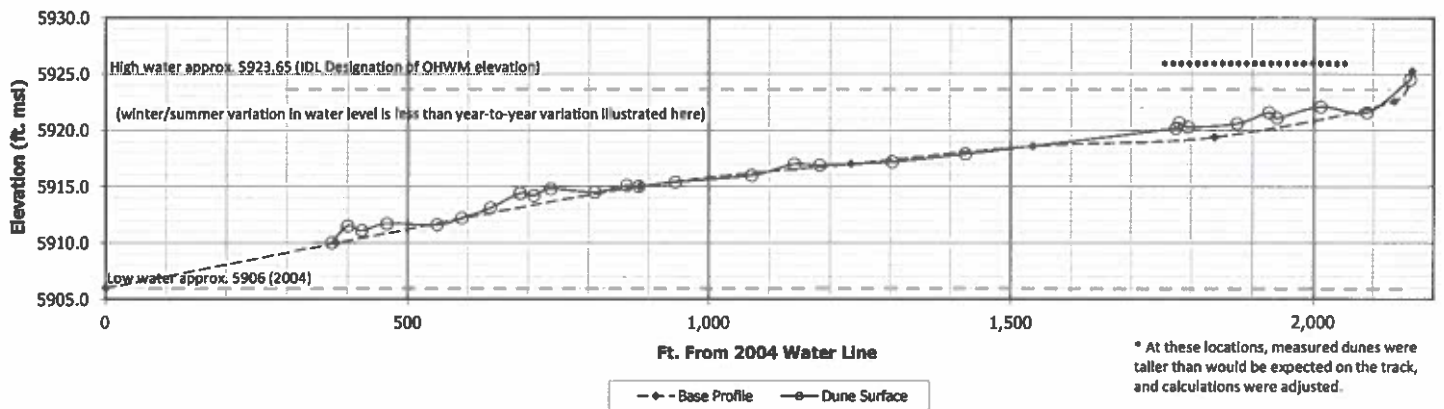
Tax Year: 2022 Total Charges: 3930.40 Taxes Paid: -3930.40 Taxes Balance: .00 Tax Penalties: Total Interest: NULL
Tax Year: 2021 Total Charges: 3295.38 Taxes Paid: -3295.38 Taxes Balance: .00 Tax Penalties: Total Interest: NULL
Tax Year: 2020 Total Charges: 3210.48 Taxes Paid: -3210.48 Taxes Balance: .00 Tax Penalties: Total Interest: NULL



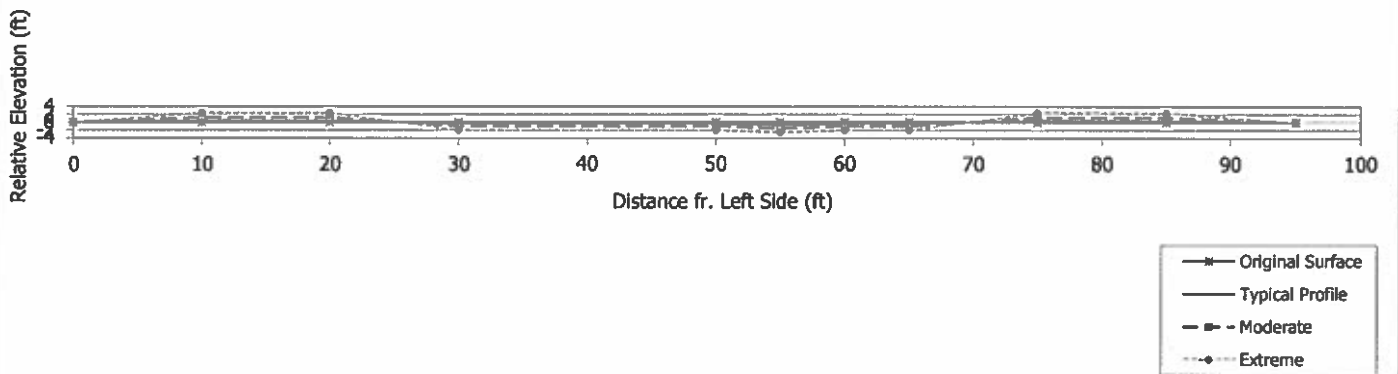
Required Document #3: Lakebed Profile

Four pages including cover

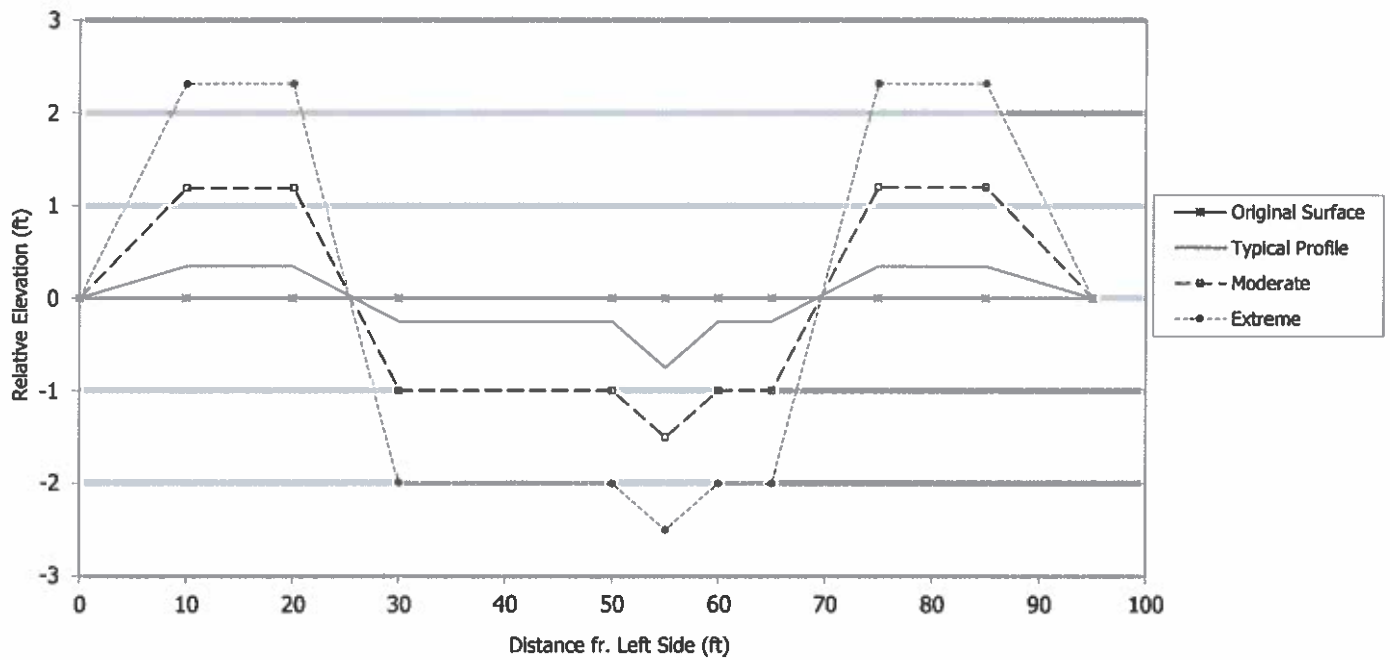
**Required Document 3 Page 1. Longitudinal Profile
(Vertical Exaggeration Approx. 20:1)**



**Required Document 3 Page 2: Proposed Lateral Profile
(Approximately no Vertical Exaggeration)**

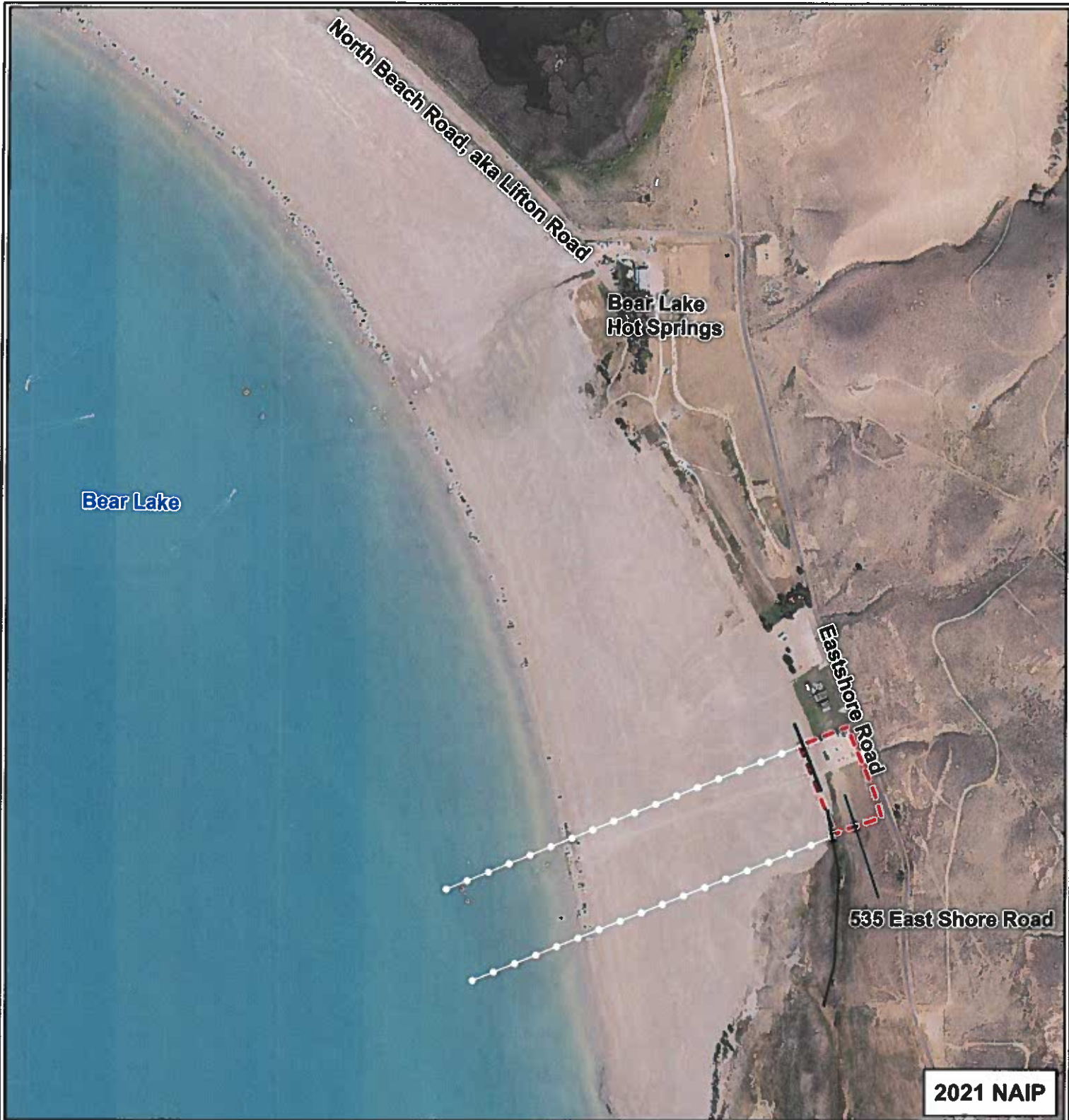


Required Document 3 Page 3: Proposed Lateral Profile
(Vertical Exaggeration Approx. 10:1)



Required Document #4: General Vicinity Map

Three pages including cover. Color and black and white versions of the map are provided.



Litoral Line
 Property
 5923.65 ft Above Sea Level
 (Land Survey, March 2023)






Required Document 4: General vicinity map that allows Department to find the encroachment

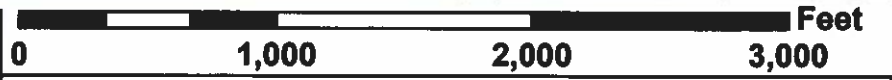


Varin Thomas
 Property Located
 in Bear Lake County, Idaho

Revised: 6/5/2023
 Project #: 22-0158
 Drawn by: TK



-  Litoral Line
-  Property
-  5923.65 ft Above Sea Level
(Land Survey, March 2023)



Required Document 4: General vicinity map that allows Department to find the encroachment







Varin Thomas
Property Located
In Bear Lake County, Idaho

Revised: 6/5/2023
Project #: 22-0158
Drawn by: TK

Required Document #5: Scaled Air Photo Map

Three pages including cover. Color and black and white versions of the map are provided.



 **Property**
 **5923.65 ft Above Sea Level (Land Survey, March 2023)**
 **Litoral Line**
One presumed nearby encroachment at "A" approx. 3,000 ft NNE of proposed encroach.






Required Document 5: Scaled air photo showing lengths of nearby encroachments, distances to adjacent encroachments, and location and orientation of the proposed encroachment.

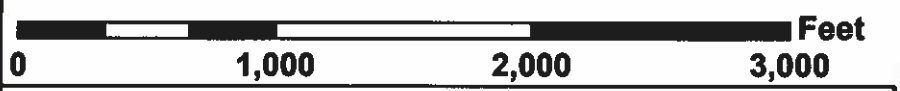


Varin Thomas
Property Located
In Bear Lake County, Idaho

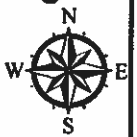
Revised: 6/5/2023
Project #: 22-0158
Drawn by: TK



 Property
 5923.65 ft Above Sea Level
 (Land Survey, March 2023)
 Litoral Line
 One presumed nearby
 encroachment at "A" approx.
 3,000 ft NNE of proposed encroach.



Required Document 5: Scaled air photo showing lengths of nearby encroachments, distances to adjacent encroachments, and location and orientation of the proposed encroachment.

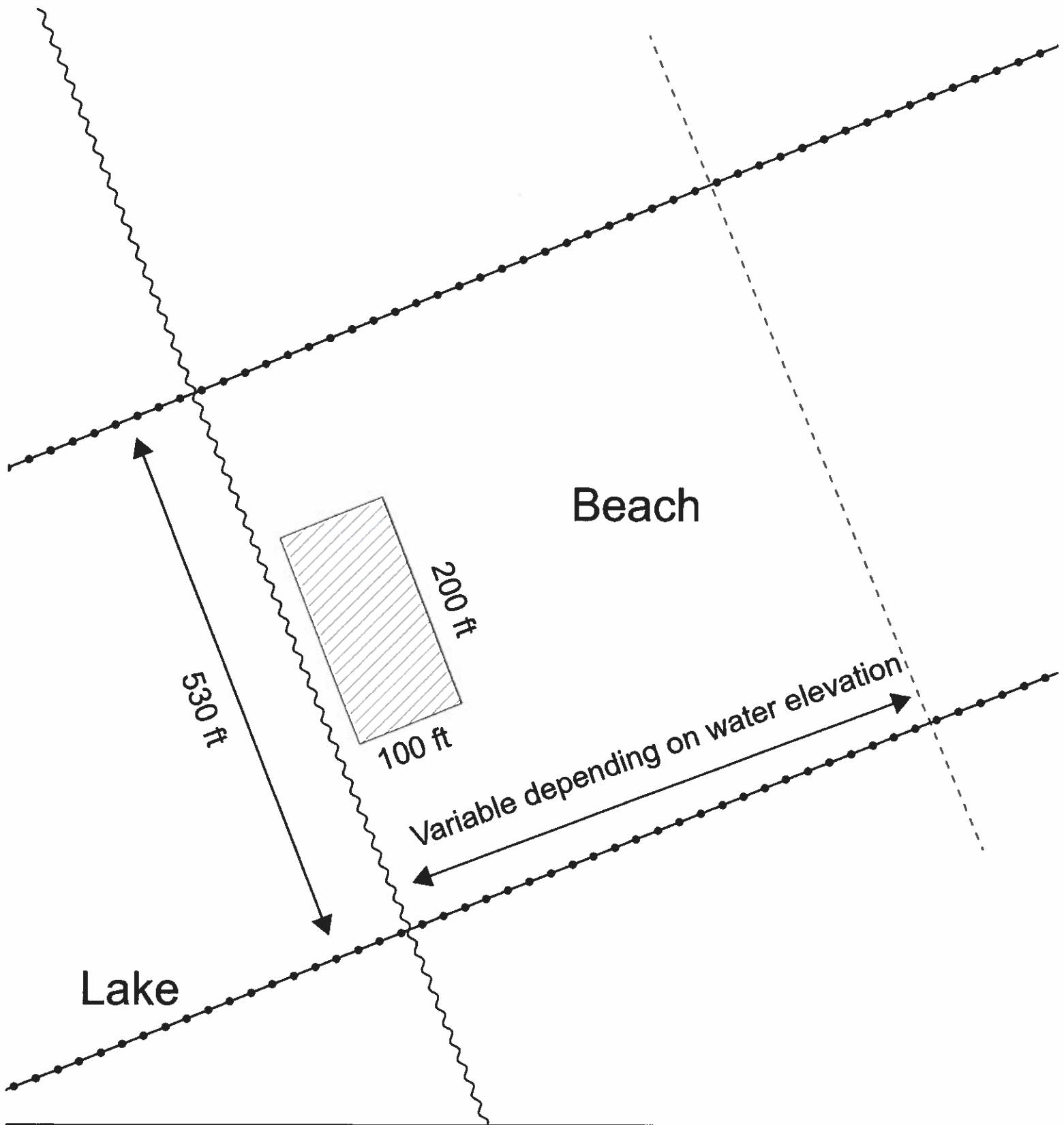






Varin Thomas
 Property Located
 In Bear Lake County, Idaho

Revised: 6/5/2023
 Project #: 22-0158
 Drawn by: TK

Additional Requested Documents:

Cover page	1 page
Conceptual map of proposed staging area	1 page
Edited version of original response letter	5 pages



-  Litoral Line
-  Staging Area
-  Water's Edge
-  5923.65 ft



**Additional Requested Document:
Conceptual Map of Staging Area**



Varin Thomas
Property Located
In Bear Lake County, Idaho

Date: 6/16/2023
Project #: 22-0158
Drawn by: TK



Bac

April 27, 2023 *EDITED JUN 16, 2023* RMEA Project No. 22-0158

Patrick A. Brown
Area Manager
Eastern Supervisory Area
Idaho Falls Office
3563 E. Ririe Highway
Idaho Falls, ID 83401

Re: Additional materials in support of Application for Commercial Non-Navigational Encroachment Permit

Mr. Brown:

Thank you for the letter clarifying Idaho Department of Lands' (IDL's) description of what is needed to complete the Encroachment Permit Application (Application) for Brian Hirschi d/b/a: BLH Properties LLC. This response is prepared by Rocky Mountain Environmental Associates, Inc. (RMEA) in Mr. Hirschi's behalf and at his request. Please accept this letter and all attachments as amendments to the Application and as a response to your request.

The first attachment to this letter is a copy of your letter, annotated in marker to allow clear reference in responses. Responses below refer to the hand-written numbers in circles to the left of each of the comments in your letter.

Responses to Comment 1

A check for the additional \$2,000 fee is attached.

Response to Comment 2

We attempted to provide the requested information in the attachments to the original Application as *Required Document 1* (All references to *Required Documents* are to attachments to the original Application). The first page shows the county-mapped parcels with a solid line, which as explained in the narrative do not comport to a recent transaction that changes the parcels as shown by the dashed line. Page 2 of *Required*

Rocky Mountain Environmental Associates, Inc.
482 Constitution Way, Suite 303, Idaho Falls, Idaho 83402
rockymountainenvironmental.com

Document 1 shows the parcel information for the parcel north of the applicant's littoral property and Page 3 shows the parcel information for the applicant's property and for the parcel immediately south. Pages 4 through 9 document the recent change that had not yet been updated on the County's parcel data. In addition, Page 1 of *Required Document 2* is a survey of the applicant's parcel that shows the instrument numbers of surveys of record for all three parcels and the names of the owners. The Joint Application for Permits that accompanied the Application also provided much of this information.

Response Attachment 1 (all references to *Response Attachments* are for new documents provided with this letter) provides annotated copies of maps from the Application and from current (April 20, 2023) printouts of the County's parcel data, which still does not reflect the recent change documented in the Application. It is unfortunate that the County's parcel viewer does not provide full information for all parcels but we believe that the information is adequate for IDL to know where the proposed activities will occur and who the affected adjacent owners are.

Response to Comment 3

Required Document 3 Page one includes the indication "High water approx. 5923.65 (IDL Designation of OHWM elevation)," which we believe acknowledges IDL's position in the difference of opinion between IDL and Bear Lake County. It may be that IDL's concern with the application rather is the way that *Required Document 4* and *Required Document 5* were drawn. It is true that these do not explicitly show where the 5923.65-foot elevation line is, and it is unfortunate that the County's property-line indications obscure parts of the littoral lines that may coincide with the property line. *Response Attachment 2* corrects these figures by showing the littoral lines projected far enough in the upland direction to intersect the 5923.65 foot line and displayed so that the County's property lines do not obscure the littoral lines.

The primary reason for omission of the 5293.65 line is that we do not know its precise location, nor did we understand that a precise location was required. In early discussions, Mr. Billman of IDL informed RMEA that IDL is in possession of detailed Geographical Information System (GIS) data showing where the line is, but declined RMEA's request for a copy of these data.

Without intending or needing to take a position on the difference of opinion between IDL and Bear Lake County on this issue, we point out that legal counsel informs us that the *Erickson* case cited was not in reference to Bear Lake, and we are not otherwise aware that the specific line impressed by the water upon the soil as of 1890 has ever been determined for Bear Lake, as the *Erickson* case requires.

Regardless, the intention is and was that the littoral lines extend from the Ordinary High Water Mark (OHWM) far enough lakeward to encompass all activities authorized by the

Encroachment Permit. Therefore, determining the precise location of the OHWM is not necessary for this application.

Response to Comment 4 and Comment 9

The attached *Response Attachment 3* includes revisions for the weed-control narrative that reflect IDL's comments.

The original reason to specify tillage only is twofold; first, as shown in Figure 18 of the original narrative attachment to the Application, tillage has been a successful control practice in the near vicinity of the proposed activities. Second, we assumed that IDL would prefer the use of non-toxic methods of control below the OHWM.

Response to Comment 5 and Comment 6

The lines connecting the various objects to their anchor points will be as short as possible, given the depth of water. The primary reason is for watercraft safety; too long a line becomes an entanglement hazard for motorized watercraft and potentially for swimmers. *Response Attachment 3* is edited to clarify the proposed lengths of lines.

Regarding the practicality of removing water toys nightly, we believe the utility in removing a potential hazard to night-time boaters and recreationalists, as well as the utility in protection against vandalism or theft, justify the effort required.

Response to Comment 7

With the additional land purchased, ^{OVERNIGHT} parking now ^{WILL} occur on uplands. *Response Attachment 3* removes the request for approval of this activity. This does not address the safety concerns that were part of the original request, but the change is made in hopes that the proposal can be more acceptable to IDL. ^{NO OVERNIGHT PARKING WILL OCCUR BELOW OHWM.} *BAC*

Response to Comment 8

We apologize that the description for Activity E, item m) on page 4 of the narrative attached to the Application was insufficient. It has been edited as follows, with new material indicated by underlining:

- m) *A staging area would be established for safety and convenience of clients and personnel. The enclosed area would be 100 feet by 200 feet. The staging area would be located immediately adjacent to water's edge and oriented landward from the water. The staging area would be moved*

periodically in response to changing water levels. Laterally, its location would be adjusted to honor 25-foot buffers to adjoining littoral areas and in general be approximately centered in the littoral area.

Additionally, a conceptual map of the proposed staging area is provided as *Response Attachment 4*. The map has been drafted relative to water's edge, which will change from year to year and within a given year.

Response to Comment 9

Response to Comment 9 is included with the response to Comment 4, presented earlier in this letter.

Response to Comment 10

We apologize for RMEA's misunderstanding of the discussion with IDL personnel in Idaho Falls. RMEA understood IDL's indication that a lease would be required, and believed that the terms of a lease would be a function of the activities authorized in an Encroachment Permit. Hence, a sequential application process was understood. In addition, as you know, part of the context for this application is the judicial action IDL has filed against Mr. Hirschi. Somewhat confusingly, the complaint several times asserts the need to obtain an Encroachment Permit, but never says anything about a lease. Further, as indicated in the original narrative attachment on page 6, Easement Rule 001.03 and Lease Rule 020.05 indicate that an easement rather than a lease is the appropriate vehicle for the proposed activities. It seemed therefore that the lease or easement application would be timely once the Encroachment Permit was defined and the easement/lease question was resolved.

Though both issues still are outstanding, we have prepared and attached both lease and easement applications.

Previously-submitted Lease Application:

Six pages including cover



April 27, 2023

RMEA Project No. 22-0158

Patrick A. Brown
Area Manager
Eastern Supervisory Area
Idaho Falls Office
3563 E. Ririe Highway
Idaho Falls, ID 83401

Mr. Brown,

Attached to this letter is the Submerged Lands Lease Application for Mr. Brian Hirschi as per the *Response to Comment 10* in the response letter submitted in conjunction with this application. It is the understanding of Rocky Mountain Environmental Associates (RMEA) that an Easement Application, not a Submerged Lands Lease Application is required by Easement Rule 001.03 and Lease Rule 020.05 for the sand track activity. However, to comply with the request of Idaho Department of Lands (IDL) and expedite the approval process, RMEA submits the Submerged Lands Lease in conjunction with an Encroachment Application.

There are two points, both in *Section 3: Encroachment Description*, in this application that need to be addressed. First, as the Encroachment Application has not yet been approved, no permit number has been assigned and cannot be provided in the application. Similarly, the Encroachment Application and associated Required Documents are not attached to this application, but are submitted concurrently. Second, one proposed activity is to build a "track" or "trail" to the current shoreline. As these are not options in the application, "boat ramp" was deemed to be the most similar. "Swim area" was also selected as a use to expedite the approval process, as it may best apply to the other activity on Mr. Hirschi's property.

On the topic of rental rates, the \$250 flat rent for a boat ramp appears to be appropriate. If IDL determines that rental based on Gross Receipts is appropriate, we refer to the applicant's Utah operation, cited by IDL as precedent. Under that lease as in this proposed lease, the commercial activity occurring on State lands is restricted to boat launching; all other transactions take place on private, upland property. Some watercraft are transported elsewhere by clients and some would be launched within the Encroachment Permit area in clients' behalf by applicant. In the Utah lease, a proxy value typical of launching fees at public and private boat ramps is used as the

Rocky Mountain Environmental Associates, Inc.
482 Constitution Way, Suite 303, Idaho Falls, Idaho 83402
rockymountainenvironmental.com

Gross Receipts value for the basis of calculation of the lease fee. We propose the same for this lease, if it is determined that the boat-ramp lease fee is not appropriate.

Cordially,



Thane Kindred
Staff Geologist, Rocky Mountain Environmental Associates, Inc.,



Brian Hirschi
Applicant

Attachments: \$150 nonrefundable filing fee
Secretary of State Certificate of Existence



Application for Use Submerged Land Lease

For Area Office Use Only
Instrument No.: _____

Instructions: This form is used by persons seeking to lease state owned submerged and formerly submerged lands pursuant to IDAPA 20.03.17. Please complete this form and submit it, along with the non-refundable filing fee of \$150 and required attachments to your local Idaho Department of Lands Supervisory Area Office.

Section 1: Applicant Information

Full legal name of applicant: **Brian Hirschi**

Legal status:

- | | |
|--|---|
| <input type="checkbox"/> Individual | <input type="checkbox"/> Trust or non-profit (attach Affidavit of Existence) |
| <input type="checkbox"/> State government | <input checked="" type="checkbox"/> Business (attach Secretary of State Certificate of Existence) |
| <input type="checkbox"/> City, County, or Federal government | <input type="checkbox"/> Other: |

Name of primary contact: **Thane Kindred**

Mailing address: **482 Constitution Way Suite 303**

City: **Idaho Falls Idaho**

State: **ID**

Zip: **83402**

Contact phone number: **208-524-2353**

Phone number type: Work Home Cell

Email address: **bryce.rmea@gmail.com**

Do you currently hold a lease with the Idaho Department of Lands? No Yes
If yes, provide lease number(s): **NA**

Are you require you to obtain worker compensation insurance? No Yes

Are there multiple applicants? No Yes
If yes, please complete and attach Attachment A – Multiple Applicants.

Section 2: Description of Associated Upland Property

Facility name: **North Beach Rentals**

Physical Address: **535 East Shore Road**

City: **St. Charels**

State: **Idaho**

Zip: **83272**

County: **Bear Lake**

AIN/Parcel ID: **RP15S44E245850**

Government Lot: **6**

Section: **24**

Township: **15S**

Range: **44E**

Body of water: **Bear Lake**

Section 3: Encroachment Description

Encroachment or Stream Channel Alteration Permit Number: **Not yet assigned**
Please, attach a copy of the recorded permit.

Identify all encroachments/uses to be under lease:

- | | | |
|---|---|---|
| <input type="checkbox"/> Single-family dock | <input type="checkbox"/> Two-family dock | <input type="checkbox"/> Community dock |
| <input type="checkbox"/> Commercial marina | <input type="checkbox"/> Store | <input checked="" type="checkbox"/> Boat ramp |
| <input type="checkbox"/> Restaurant | <input checked="" type="checkbox"/> Swim area | <input type="checkbox"/> Fill |
| <input type="checkbox"/> Other(s): | | |

Section 4: Discounts

If a commercial marina, you may qualify for a discount on your annual lease payment. Select one of the following that best describes the marina facilities:

- 25% discount: All marina facilities are made available to the public on a first come, first served basis.
- 50% discount: All marina facilities are made available to the public on a first come, first served basis AND fifty percent (50%) or more of the boat slips are set aside for day use only.
- None of the above.



Application for Use Submerged Land Lease

Section 6: Attachments

Please attach all of the following required attachments, as applicable:

- \$150 nonrefundable filing fee
- Encroachment or Stream Channel Alteration Permit *Submitted Concurrently*
- A scale drawing of the proposed lease area with plans detailing all intended improvements, including reference to the nearest known property corner(s) (Only required if not included in encroachment/stream channel alteration permit)
- Secretary of State Certificate of Existence (Only required if applicant is a business)
- Affidavit of Existence (Only required if applicant is a trust or non-profit)
- Attachment A – Multiple Applicants (Only required if multiple applicants)

Section 6: Affidavit

I hereby certify that I am the applicant or authorized representative of the applicant and that the information contained in this application is true and correct to the best of my knowledge and further acknowledge that falsification or misrepresentation of any information contained herein, or provided herewith, will be grounds for denial of the application.

Brian Hirsch
Applicant Signature

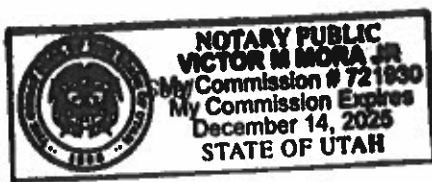
Brian Hirsch
Applicant Name

4/26/2023
Date

Applicant Title (if applicable)

State of UTAH)
County of CACHE) ss.

On this 26 day of April, in the year 2023, personally appeared Brian Hirsch, known or identified to me to be the person whose name is subscribed to the within instrument, and acknowledged to me that he/she/they executed the same.



[Signature]
Notary Public

My Commission Expires: Dec, 14, 2025



STATE OF IDAHO

Phil McGrane | Secretary of State
Business Office
450 North 4th Street
PO Box 83720
Boise, ID 83720

April 26, 2023

Request Type: Certificate of Existence/Filing
Request #: 0005211874
Receipt #: 000815955

Issuance Date: 04/26/2023
Copies Requested: 0

Regarding: **BLH PROPERTIES, LLC**
Filing Type: Limited Liability Company (D)
Formation/Qualification Date: 02/11/2010
Status: Active-Existing
Duration Term: Perpetual

File #: 281304
Formation Locale: IDAHO
Inactive Date:

Certificate of Existence

I, Phil McGrane, Secretary of State of the State of Idaho, do hereby certify that effective as of the issuance date noted above

BLH PROPERTIES, LLC

is a Limited Liability Company duly formed under the law of this State with a date of incorporation and duration as given above.

A handwritten signature in black ink, enclosed in an oval shape.

Phil McGrane
Idaho Secretary of State

Processed By: Business Division

Verification #: 023431828

Previously-submitted Easement Application:

Seven pages including cover



April 27, 2023

RMEA Project No. 22-0158

Patrick A. Brown
Area Manager
Eastern Supervisory Area
Idaho Falls Office
3563 E. Ririe Highway
Idaho Falls, ID 83401

Mr. Brown,

Attached to this letter is the Navigable Waterways Easement Application (Application) for Mr. Brian Hirschi as per the *Response to Comment 10* in the response letter submitted in conjunction with this application. It is the understanding of Rocky Mountain Environmental Associates (RMEA) that an Easement Application, not a Submerged Lands Lease Application, is required for the sand track by Easement Rule 001.03 and Lease Rule 020.05. Therefore, this Application is attached as the primary request for authorization to accompany the underlying Encroachment Application. A separate lease application also is provided to expedite processing, though it appears to be the wrong vehicle to authorize the requested activities.

Clarifying points for the Application include the following:

- The purpose of the requested Easement is to accompany the Encroachment Permit, if issued, per the accompanying application for Encroachment Permit.
- A small part of the Encroachment Activity may take place between the ordinary high water mark (OHWM) and the Public Land Survey System (PLSS) meander line. This is the part referenced by Lot number in the legal description on the application.
- Part of the Encroachment Activity would take place waterward of the meander line, where no formal PLSS designation exists but Idaho Department of Water Resources has extrapolated these to the quarter-quarter section designations in the legal description of the application.

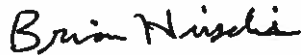
Rocky Mountain Environmental Associates, Inc.
482 Constitution Way, Suite 303, Idaho Falls, Idaho 83402
rockymountainenvironmental.com

- Part of the Encroachment Activity would take place waterward of IDWR's extrapolation, and no PLSS approximation is available.
- When Idaho Department of Lands issues an Encroachment Permit and confirms that an Easement is the appropriate administrative vehicle to accompany it, the requested survey will be commissioned and the appropriate documents provided.
- The acreage on the application a placeholder is intended to be replaced with a precise value obtained by survey at the appropriate time.

Sincerely,



Bryce A. Contor
Principal Hydrologist
Rocky Mountain Environmental Associates, Inc.



Brian Hirschi
Applicant

Attachments: Fee
Easement Application



IDAHO DEPARTMENT OF LANDS
NAVIGABLE WATERWAYS EASEMENT APPLICATION and INSTRUCTIONS
 (Not for use on Endowment Lands)

Navigable Waterways Easement applications must be completed and submitted to the appropriate Idaho Department of Lands (IDL) Supervisory Area Office. Incomplete applications and those requiring further information may take longer to process.

APPLICANT INFORMATION

Application must include the exact name(s) and address(s) to appear on the navigable waterways easement. Provide the full legal name of the Applicant or the entity name on file with the Idaho Secretary of State.

Applicant Name: BLH PROPERTIES LLC & BRIAN HIRSCH	Authorized Representative (if applicable) BRIAN HIRSCH
Street Address 1217 S BEAR LAKE BLVD. GARDEN CITY, UTAH 84028	Mailing Address (if different from Street Address)
Email Address(es) brianhirschi@hotmail.com	Phone: (435) 757 4399
Website Address(es)	Cell/Mobile: ()

LOCATION OF PROPOSED USE

Township	Range	Section	Description <small>(to the quarter-quarter or Government Lot, if applicable)</small>	County	Water Body	Acres
15S	44E	24	LOT 6, LOT 7, NE5W & SE5W	BEAR LAKE	BEAR LAKE	18

(IDL Fund for Navigable Waterways is ND)

PROPOSED USE (list specific purpose, associated activities, and time frame(s); attach additional pages if necessary)

PER ACCOMPANYING JOINT APPLICATION FOR PERMITS AND ENCROACHMENT PERMIT APPLICATION.

NOTE:

This is not to be considered a complete summary of all the information IDL may require. Additional information may be required as needed on a case-by-case basis. Costs for supporting documents are the responsibility of the applicant. IDL staff will request supporting documentation when they deem it necessary.

I HEREBY REQUEST A NAVIGABLE WATERWAYS EASEMENT FROM THE STATE OF IDAHO AND ACKNOWLEDGE THAT I UNDERSTAND MY OBLIGATIONS DESCRIBED HEREIN.

APPLICANT(S) SIGNATURE: Brian Nuvich

DATE: 4/26/23

DATE: _____

.....
***** Idaho Department of Lands Administrative Use Only *****

RECEIVED BY: _____ DATE: _____

\$500 Fee Submitted with Application

APPROVED or REJECTED BY AREA: _____ DATE: _____

Processing note: Upon complete application acceptance, the Area will drop Easement Application and "Attachment A" form into Lands and Waterways Processing Center (LWPC) Document Exchange via the LWPC In-Box into appropriate folder to obtain navigable waterways easement number.

Navigable Waterways Easement Number: _____

Prior Land Board approval required? >\$25K or unusual/complex? Yes No

Approval Checklist

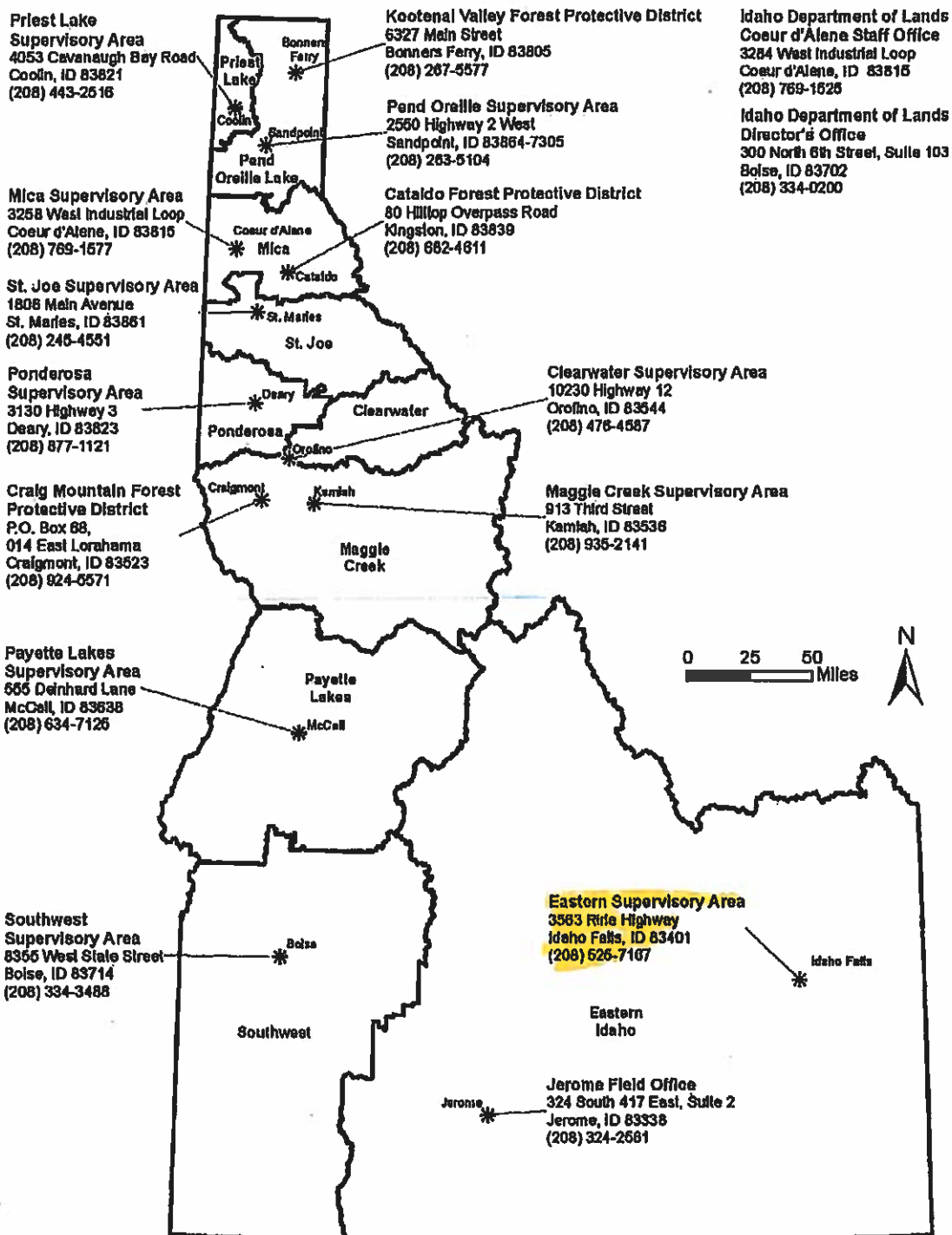
1) _____
Land Records Staff Name (approval of legal description and exhibit map) _____
Date approved

2) _____
Area Navigable Waterways Resource Specialist or Area Manager _____
Date approved

3) _____
Navigable Waterways Program Manager/RPA Bureau Chief _____
Date approved

Approvals must be obtained prior to obtaining applicant and Land Board signatures

Idaho Department of Lands Management Areas



WHEN REQUIRED

Uses above, across, over, in, through, upon, and under the beds of state-owned navigable waterways may require a navigable waterways easement. Exceptions include those uses that are typically covered by leases, through a short duration permit, or involve small water delivery structures that draw less than five (5) cubic feet per second of water.

Uses that require a navigable waterways easement are dams, bridges, road fills, power lines, fiber optic cables, pipelines, boat ramps, and other infrastructure that is essentially permanent.

Navigable waterways easement rules- <https://adminrules.idaho.gov/rules/current/20/200309.pdf>

PROCEDURE

The procedure for acquiring a navigable waterways easement across state-owned navigable waterways is as follows:

1. Contact the appropriate IDL Supervisory Area Office to discuss the need and location of the proposed use. If the Supervisory Area Office determines that a navigable waterways easement is needed for the proposed use, the applicant may complete the application form and send in the \$500 application fee with the information required under item 3.

2. Checks for the \$500 application fee should be made out to IDAHO DEPARTMENT OF LANDS. Supplemental compensation may be required at a later date for dams and for uses that substitute state-owned navigable waterways over the adjacent uplands. See item 6 below.

3. Submit a letter of request stating the purpose of the navigable waterways easement with a **Record of Survey showing the easement and a written description of the centerline or metes and bounds survey of the easement.** The entry and exit points of the use in and out of the state-owned navigable waterway should each be tied to at least one legal corner. A digital copy of each of the following will speed the processing of the application:

- The legal description as an MS Word file
- A .pdf of the legal description signed and stamped by a Licensed Surveyor
- Record of survey or exhibit as a .pdf
- ESRI shapefiles of the easement (see CAD Drawing Standards for GIS Submittals)

(Note: Other methods may be considered after consultation with IDL staff for guidance.)

4. Term easements for hydroelectric facilities are typically coordinated with the Federal Energy Regulatory Commission (FERC) license renewal.

5. General Liability Insurance may be required to protect the Grantee and the state from liabilities incurred through the use of state property. If required, proof of insurance must be submitted before the final documents are issued. The State of Idaho and Idaho Department of Lands must be listed as additional insured in the certificate of insurance.

6. Supplemental compensation, when required, will be due upon signature by the Applicant.

a. Navigable waterways easements for all hydroelectric dams and any dam in excess of ten (10) feet in height require supplemental compensation of one thousand dollars (\$1,000.00) plus five dollars (\$5.00) per megawatt of the nameplate rating for hydroelectric dams.

b. Navigable waterways easements for uses that substitute state-owned navigable waters over the use of uplands will require supplemental compensation based on the market value of the adjacent uplands.

THESE WILL BE
OBTAINED AND
PROVIDED WHEN
IDL CONFIRMS
THAT AN EASEMENT
IS THE CORRECT
VEHICLE TO
ACCOMPANY
ENCROACH.
PMT.

Receipts for Previously-submitted documents:

Receipt 10545: Additional fee for Encroachment Application

Receipt 10546: Lease Application fee

Receipt 10547: Easement Application fee

Two pages including cover sheet

Idaho Department of Lands
Miscellaneous Cash Receipt

10545

Date 04/27/2023

Received from Rocky Mountain Environmental
two thousand dollars w/ 00/100 Dollars

FOR: IDL Encroachment App Fee

\$ 2,000.00 BY: Tommy Brooks

WHITE COPY - Payee

YELLOW COPY - Director's Office

PINK COPY - Local Office

Idaho Department of Lands
Miscellaneous Cash Receipt

10546

Date 04/27/2023

Received from Rocky Mountain Environmental
one hundred and fifty dollars w/ 00/100 Dollars

FOR: IDL Lease Application Fee

\$ 150.00 BY: Tommy Brooks

WHITE COPY - Payee

YELLOW COPY - Director's Office

PINK COPY - Local Office

Idaho Department of Lands
Miscellaneous Cash Receipt

10547

Date 04/27/2023

Received from Rocky Mountain Environmental
five hundred dollars w/ 00/100 Dollars

FOR: IDL Easement Application

\$ 500.00 BY: Tommy Brooks

WHITE COPY - Payee

YELLOW COPY - Director's Office

PINK COPY - Local Office