

BEFORE THE IDAHO DEPARTMENT OF LANDS

In the Matter of,

Encroachment Permit Application No.
L96S2798A

Valiant Idaho, LLC & Valiant Idaho II, LLC
Applicants

Agency Case No. PH-2024-NAV-20-002

OAH Case No. 24-320-05

APPLICANT PRE-HEARING STATEMENT

This Pre-Hearing Statement of Applicant is being provided by William Haberman, Managing Member of Valiant Idaho, LLC, and, Manager of Valiant Idaho II, LLC (collectively, Applicant).

STATEMENT IN RESPONSE TO IDL PRE-HEARING STATEMENT

Applicant carefully designed the submitted plans to specifically meet the required criteria for a commercial marina, as defined by Idaho Department of Lands (IDL), and as acknowledged by IDL in its Pre-Hearing Statement dated September 20, 2024 (IDL Pre-Hearing Statement). Applicant has repeatedly, throughout its application process, as have their predecessors in interest, in ALL iterations of various plans by various applicants since 2007, acknowledged and embraced the value and responsibility to protect Trestle Creek and its significant contribution to the viability of Bull Trout and other fish species in Lake Pend Oreille. This has been an ongoing process and progression from the original plans for a full service marina with significant number of multifamily residential units upland, to a recent proposal for a community dock that was approved by IDL, to the present proposal that includes a greatly reduced, much less impactful, proposed project.

From the original property owner planning, as well as throughout our project planning, Applicant has made significant adjustments to the proposed project to avoid, minimize and mitigate potential impacts from both upland and waterward development. Such proposed adjustments include, but are not limited to, the following:

1. Using translucent dock materials that reduce shading and hiding opportunities for predator fish;

2. Removing existing dilapidated and hazardous structures that presently provide abundant aquatic predator habitat and are significant safety hazards to upland enjoyment and use of the property, and which are an ongoing hazard to navigation on the waters of the United States currently under State control;
3. Constructing a public commercial marina, rather than a private community dock, based in part on public comments;
4. Removing an existing and usable boat launch at the mouth of Trestle Creek;
5. Preserving nearly all of the manmade island that previously was to be removed;
6. Preserving and restoring the manmade slack water channel that previously was to be filled;
7. Facilitating and completing the transfer for permanent conservation of the 5.79-acre parcel immediately adjacent to and representing 100% of the direct frontage along the Northern boundary of the Main Branch of Trestle Creek, to The Kalispel Indian Community of The Kalispel Reservation; and,
8. Perhaps most importantly, committing to the significant cost of removing a major fish passage barrier - a hanging culvert through which the North Branch of Trestle Creek is currently directed - by reverting the North Branch stream back to the Main Branch of Trestle Creek, and restoring that stream per the plans Applicant developed under a contract with River Design Group. As a direct result of this proposed mitigation effort:
 - A. The main channel will have more water for a longer time of the year for better fish passage;
 - B. The existing kill zone below the North Branch culvert, where out-migrating juvenile salmonids are dumped into predator-rich slack water, will be eliminated;
 - C. The existing North Branch hanging culvert - the only direct connection to the Main Branch of Trestle Creek that currently exists — where returning spawning fish are blocked and as a result subject to increase predation, will be eliminated; and
 - D. Direct potential dock, boat and fish interaction will be significantly reduced by isolating the vast majority of boat traffic around the proposed commercial marina, with a significant buffer between and away from the Main Branch of Trestle Creek, the only remaining outlet to the lake.

Applicant has repeatedly acknowledged and embraces the responsibility of owning and responsibly developing the property given that it is adjacent to a high value natural asset such as Trestle Creek. All plans submitted recognize that fact, address it in a manner that attempts to not only avoid and

reduce the proposed development impacts, but provides the funding mechanism to do what has been obviously needed for many years - to eliminate the only direct connection of the properties being developed to Trestle Creek via the existing North Branch artificial culvert passage barrier and to restore the North Branch to a more functional fish passage stream. This commitment will include directly working with River Design Group, Idaho Fish & Game (IDFG); United States Army Corps of Engineers (USACE) and United States Fish & Wildlife Service (USFW) to ensure that the work is performed correctly and sensitive to the setting, and it is maintained and adjusted as needed while the system adjusts and comes to a stable equilibrium.

Applicant submitted an application for an Encroachment Permit on May 13, 2024, which IDL stated that it believes was complete on June 27, 2024. Below are Applicant's direct responses to the IDL Pre-Hearing Statement dated September 20, 2024:

I. Factual Background: Applicant acknowledges and agrees that the Factual Background outlined by IDL is an accurate summary of the history and proposed project scope.

II. Legal Background: Applicant acknowledges and agrees that the Legal Background outlined by IDL is an accurate summary of relevant Idaho law that governs the proposed project.

III. Statement: Applicant's responses to each of the subsections of Section III are as follows:

A. Littoral Ownership and Signature Requirement: Applicant concurs that IDL's requirement that approval from the relevant littoral owners be obtained has been met.

B. Distance from Littoral Lines: Applicant concurs that IDL's minimum distance requirement from the adjacent littoral rights lines has been met.

C. Type of Encroachment: Applicant acknowledges and agrees that certain components of the proposed project meet the statutory definition of Encroachments in Aid of Navigation, notably the proposed docks, piers, pilings, breakwater and channel restoration. Further, Applicant acknowledges and agrees that certain components of the proposed project meet the statutory definition of

Encroachments Not in Aid of Navigation, notably the proposed pedestrian bridge, rip-rap and excavated channel.

Below is a further breakdown of each type of encroachment, as detailed in the IDL Pre-Hearing Statement:

C (a). Encroachment Standards - Encroachments in Aid of Navigation:

C (a) (i). Commercial Marinas: Applicant concurs that the minimum requirement of a public to private moorage ratio of fifty percent (50%) has been met.

To clarify, Applicant plans to offer at least fifty percent (50%) of the moorage to the general public subject to leases with terms not to exceed one (1) year. None of the moorage within the commercial marina will require membership in any private club, including The Idaho Club.

Regarding the relevant parking requirements, Applicant plans to provide a total of forty-six (46) parking spaces, including thirty-three (33) parking spaces designated as Marina User Parking and thirteen (13) larger parking spaces designated as Boat Trailer Parking, as shown on the Encroachment Permit, Attachment B.b.3. Any additional parking requirements for the seven (7) shore-affixed private docks will be easily satisfied on the individual private homesites. As a result, Applicant believes that this will meet the parking requirements of Bonner County.

Finally, Applicant concurs that the requirement that a commercial marina be accessible from a road has been met.

C (a) (ii). Breakwater: Applicant concurs that the requirements that the proposed breakwater be secured by pilings and be used to protect private property from potential wind and wave damage, and that the plans be completed by a licensed engineer, have been met.

C (b). Encroachments Standards - Encroachments Not in Aid of Navigation: Applicant concurs that encroachments not in aid of navigation will be considered “only in cases involving major environmental, economic, or social benefits to the general public.” Applicant concurs with IDL’s statements that: “[T]he economic benefit to the general public is heightened as the operation and existence of a marina will provide revenue streams for workers and the community in

general”, and, that “[T]he social benefits are also heightened as the public will have additional places to moor and recreate.”

C (b) (i). Riprap: Applicant concurs that the standard requirements for riprap installation have been met, that the riprap installation has been designed and stamped by a professional engineer, and that vegetative riprap will be used as much as is practical.

C (b) (ii). Pedestrian Bridge: Applicant concurs that the applicable IDL requirements for a pedestrian bridge have been met and that the proposed pedestrian bridge does not require a separate bridge permit from the U. S. Coast Guard. It is also important to note that the purpose of the proposed pedestrian bridge is to reduce the amount of fill required as it will provide pedestrian access to the marina without the need for additional fill in the area directly below the bridge.

C (b) (iii). Excavated or Dredged Channel: Given that IDL, as well as USACE, USFW and Idaho Department of Environmental Quality (IDEQ) all have previously approved projects on this specific site that were much more development intensive and potentially impactful, and that would have required much more excavation, Applicant hereby asserts this issue will be properly addressed and resolved by the requirement of Applicant to secure the appropriate permits from USACE in consultation with USFW, and from IDEQ.

C (c). Applicable Considerations: Applicant concurs that there will be minimal, if any, unreasonable adverse effects upon adjacent property owners and that the proposed project will improve navigation. While Applicant acknowledges that a commercial marina is likely to have anthropogenic impacts, Applicant concurs that IDL may not have the knowledge nor expertise to independently assess such impacts and challenges any assumption that such impacts will be negative in the absence of any actual empirical evidence of the same. Applicant concurs that any such impacts will be properly considered and addressed during the permitting process by the agencies with subject matter jurisdiction that do possess such knowledge and expertise, notably USACE, USFW and IDEQ, as well as by the Water Quality Management Plan.

IV. Conclusion: Applicant concurs that the proposal complies with the applicable IDL encroachment standards. Further, Applicant hereby asserts that the parking requirements of Bonner County have been met, and that the excavation and dredging standards will be more appropriately fall under the jurisdiction of USACE and IDEQ, and thus have or will be addressed.

CONCLUSION

Given that IDL recognizes that the proposed commercial marina meets the following: the standards and requirements for littoral ownership and littoral setbacks; standards for encroachments in aid of navigation including commercial marinas and breakwaters; and, standards for encroachments not in aid of navigation including riprap, bridges and excavation; and, that the few questions IDL noted in its Pre-Hearing Statement have been properly addressed or will be during the permitting processes of USACE and IDEQ, Applicant respectfully requests that the Hearing Officer recommend approval of Applicant's application for an IDL encroachment permit.

DATED this 30th day of September 2024.

APPLICANT

VALIANT IDAHO, LLC & VALIANT IDAHO II, LLC

A handwritten signature in black ink, appearing to read "William Haberman", with a long horizontal flourish extending to the right.

William Haberman
Managing Member & Manager

CERTIFICATE OF SERVICE

I hereby certify that on the 30th day of September, 2024, I caused the foregoing to be served upon the following via the delivery method noted below:

Idaho Department of Lands Allison Olson 300 N. 6th Street, Suite 103 Boise, ID 83702 (208) 334-2400 In-House Counsel for Idaho Department of Lands	<input type="checkbox"/> U.S. Mail <input checked="" type="checkbox"/> Email: aolson@idl.idaho.gov
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William Haberman, On Behalf of Applicant

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