

John Richards, ISB #10670
General Counsel
Idaho Department of Lands
300 N. 6th St., Suite 103
Boise, ID 83702
(208) 334-0200
jrichards@idl.idaho.gov

Attorney for Idaho Department of Lands, Navigable Waterways Program

BEFORE THE STATE BOARD OF LAND COMMISSIONERS
STATE OF IDAHO

IN THE MATTER OF

Encroachment Permit Application No.
L95S6105A

Rivelle, LLC, dba StanCraft Companies

Applicants.

Agcy Case No. PH-2024-NAV-22-002
OAH

OAH Case No. 24-320-06

**IDAHO DEPARTMENT OF LANDS’
PRE-HEARING STATEMENT**

The Idaho Department of Lands (IDL), by and through its counsel of record John Richards, and in accordance with the *Scheduling Order* issued October 7, 2024, submits the following Pre-hearing Statement for the above-entitled matter, which has a public hearing set for November 8, 2024, at 4:00 p.m. PST. The Department also concurrently submits an Exhibit List and Witness List.

I. BACKGROUND

A. Application

Rivelle LLC, dba as StanCraft Companies (Applicant) seeks an encroachment permit to install a boat launch, dredge/excavate, place riprap and seawall, install a commercial work dock, install containers on top of the work dock, and have a year-round work construction area within Cougar Bay on Lake Coeur d’Alene. IDL-002

B. Procedural Background

On August, 19, 2024, IDL received a complete application from the Applicant. IDL-002. On September 19, 2024, IDL sent resource agency notice and contacted the Coeur D’Alene Press to publish public notice of the application and that a public hearing date would be forthcoming. IDL-004, 006-007. On September 10, 2024, IDL sent out notices to landowners immediately adjacent to the Applicant’s parcel and to those landowners immediately shoreward of the L-shaped portion of the Applicant’s proposed encroachment. IDL-005. On September 19th, 2024, notice was received that a Hearing Officer had been appointed for this matter. IDL-09. A scheduling order was issued on October 7, 2024, setting the date public hearing for November 8, 2024 and setting other associated deadlines. IDL-011. On October 18th and 25th a follow up public notice with the public hearing time, date, and location were published in the Coeur D’Alene Press.

C. Comments

To date, IDL has received agency responses from the Panhandle Health District, Idaho Department of Environmental Quality (IDEQ) and Kootenai County Parks and Waterways Department (KCPW). IDL-003, IDL-012. IDL has also received approximately 10 public comments, many from adjacent landowners who were given notice of the application. IDL-13. In addition to the public hearing scheduled for November 8, 2024, public comment for this matter is to remain open until November 11, 2024, so additional agency and public comments may be forthcoming.

II. APPLICABLE LEGAL PROVISIONS

A. Lake Protection Act, Title 58, Chapter 13, Idaho Code

The Lake Protection Act (LPA), Title 58, Chapter 13, Idaho Code, governs encroachments upon Idaho's navigable lakes, and provides in pertinent part that "[n]o encroachment on, in or above the beds or waters of any navigable lake in the state shall hereafter be made unless approval therefor has been given as provided in this act." I.C. § 58-1301. IDL, acting on behalf of the State of Idaho Board of Land Commissioners (Board) has the power to "regulate, control and [] permit encroachments in aid of navigation or not in aid of navigation on, in or above the beds or waters of navigable lakes as provided herein." I.C. § 58-1303.

The following provisions of the Lake Protection Act, Title 58, Chapter 13, Idaho Code ("LPA") are applicable to the Application, and helpful to understanding IDL's analysis of the Application:

I.C. § 58-1301 – Legislative Intent (*see also* IDAPA 20.03.04.012):

The legislature of the state of Idaho hereby declares that the public health, interest, safety and welfare requires that all encroachments upon, in or above the beds or waters of navigable lakes of the state be regulated in order that the protection of property, navigation, fish and wildlife habitat, aquatic life, recreation, aesthetic beauty and water quality be given due consideration and weighed against the navigational or economic necessity or justification for, or benefit to be derived from the proposed encroachment. No encroachment on, in or above the beds or waters of any navigable lake in the state shall hereafter be made unless approval therefor has been given as provided in this act.

I.C. § 58-1302 - Definitions:

(b) "Beds of navigable lakes" means the lands lying under or below the "natural or ordinary high water mark" of a navigable lake and, for purposes of this act only, the lands lying between the natural or ordinary high water mark and the artificial high water mark, if there be one.

(c) "Natural or ordinary high water mark" means the high water elevation in a lake over a period of years, uninfluenced by man-made dams or works, at which elevation the water impresses a line on the soil by covering it for sufficient periods to deprive the soil of its vegetation and destroy its value for agricultural purposes.

(d) "Artificial high water mark" means the high water elevation above the natural or ordinary high water mark resulting from construction of man-made dams or control works and impressing a new and higher vegetation line.

(f) "Riparian or littoral rights" means only the rights of owners or lessees of land adjacent to navigable waters of the lake to maintain their adjacency to the lake and to make use of their rights as riparian or littoral owners or lessees in building or using aids to navigation but does not include any right to make any consumptive use of the waters of the lake. (*See also* IDAPA 20.03.04.010.32).

(h) "Encroachments in aid of navigation" means and includes docks, piers, floats, pilings, breakwaters, boat ramps, channels or basins, and other such aids to the navigability of the lake, on, in or above the beds or waters of a navigable lake. The term "encroachments in aid of navigation" may be used interchangeably herein with the term "navigational encroachments." (*See also* IDAPA 20.03.04.010.15).

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

(k) "Plans" means maps, sketches, engineering drawings, aerial and other photographs, word descriptions, and specifications sufficient to describe the extent, nature and approximate location of the proposed encroachment and the proposed method of accomplishing the same

I.C. § 58-1306:

(a) Applications for construction, enlargement or replacement of a nonnavigational encroachment, a commercial navigational encroachment, a community navigational encroachment, or for a navigational encroachment extending beyond the line of navigability shall be submitted upon forms to be furnished by the board and accompanied by plans of the proposed encroachment containing information required by section [58-1302\(k\)](#), Idaho Code, and such other information as the board may by rule require in conformance with the intent and purpose of this chapter. Applications for nonnavigational, community navigational, or commercial navigational encroachments must be submitted or approved by the riparian or littoral owner.

(b) Within ten (10) days of receipt of an application submitted under subsection (a) of this section, the board shall cause to be published . . . a notice advising of the application and describing the proposed encroachment and general location thereof. Applications for installation of buried or submerged water intake lines and utility lines shall be exempt from the newspaper publication process. The board may also furnish copies of the application and accompanying plans to other state agencies having an interest in the lake to determine the opinion of such state agencies as to the likely effect of the proposed encroachment upon adjacent property and lake value factors of navigation, fish and wildlife habitat, aquatic life,

recreation, aesthetic beauty or water quality. Within thirty (30) days following receipt of such copy of the application and plans from the board, such other state agency shall notify the board of its opinion and recommendations, if any, for alternate plans determined by such agency to be economically feasible to accomplish the purpose of the proposed encroachment without adversely affecting unreasonably adjacent property or other lake value factors.

(e) In recognition of continuing private property ownership of lands lying between the natural or ordinary high water mark and the artificial high water mark, the board shall consider unreasonable adverse effect upon adjacent property and undue interference with navigation the most important factors to be considered in granting or denying an application for a nonnavigational encroachment, a commercial navigational encroachment, or a community navigational encroachment not extending below the natural or ordinary high water mark. If . . . following a hearing, the board determines that the benefits, whether public or private, to be derived from allowing such encroachment exceed its detrimental effects, it shall grant the permit.

B. Applicable IDAPA Rules Pertaining to Subject Application

The following provisions of the Rules For the Regulation of Beds, Waters and Airspace Over Navigable Lakes in the State of Idaho, IDAPA 20.03.04 (“LPA Rules”) are applicable to this Application, and helpful in understanding IDL’s analysis of the Application.

IDAPA 20.03.04.010 DEFINITIONS

04. Beds of Navigable Lakes. The lands lying under or below the “natural or ordinary high water mark” of a navigable lake and, for purposes of these rules only, the lands lying between the natural or ordinary high water mark and the artificial high water mark, if there be one.

08. Boat Ramp. A structure or improved surface extending below the ordinary or artificial high water mark whereby watercraft or equipment are launched from land-based vehicles or trailers

10. Commercial Navigational Encroachment. A navigational encroachment used for commercial purposes

15. Encroachments in Aid of Navigation. Includes docks, piers, jet ski and boat lifts, buoys, pilings, breakwaters, boat ramps, channels or basins, and other facilities used to support water craft and moorage on, in, or above the beds or waters of a navigable lake. The term “encroachments in aid of navigation” is used interchangeably with the term “navigational encroachments.”

16. Encroachments Not in Aid of Navigation. Includes all other encroachments on, in, or above the beds or waters of a navigable lake, including landfills, bridges, utility

and power lines, or other structures not constructed primarily for use in aid of navigation, such as float homes and boat garages. The term “encroachments not in aid of navigation” is used interchangeably with the term “nonnavigational encroachments.”

20. Line of Navigability. A line located at such distance waterward of the low water mark established by the length of existing legally permitted encroachments, water depths waterward of the low water mark, and by other relevant criteria determined by the board when a line has not already been established for the body of water in question

23. Natural or Ordinary High Water Mark. The high water elevation in a lake over a period of years, uninfluenced by man-made dams or works, at which elevation the water impresses a line on the soil by covering it for sufficient periods to deprive the soil of its vegetation and destroy its value for agricultural purposes.

29. Public Hearing. The type of hearing where members of the public are allowed to comment, in written or oral form, on the record at a public meeting held at a set time and place and presided over by a designated representative of the Department who acts as the hearing coordinator. This type of hearing is an informal opportunity for public comment and does not involve the presentation of witnesses, cross examination, oaths, or the rules of evidence. A record of any oral presentations at such hearings will be taken by the Department by tape recorder. The hearing coordinator exercises such control at hearings as necessary to maintain order, decorum and common courtesy among the participants.

32. Riparian or Littoral Rights. The rights of owners or lessees of land adjacent to navigable waters of the lake to maintain their adjacency to the lake and to make use of their rights as riparian or littoral owners or lessees in building or using aids to navigation but does not include any right to make any consumptive use of the waters of the lake.

40. Upland. The land bordering on navigable lakes, rivers, and streams.

IDAPA 20.03.04.012. POLICY.

01. Environmental Protection and Navigational or Economic Necessity. It is the express policy of the State of Idaho that the public health, interest, safety and welfare requires that all encroachments upon, in or above the beds or waters of navigable lakes of the state be regulated in order that the protection of property, navigation, fish and wildlife habitat, aquatic life, recreation, aesthetic beauty and water quality be given due consideration and weighed against the navigational or economic necessity or justification for, or benefit to be derived from the proposed encroachment. Moreover, it is the responsibility of the State Board of Land Commissioners to regulate and control the use or disposition of state-owned lake beds, so as to provide for their commercial, navigational, recreational or other public use.

02. No Encroachments Without Permit. No encroachment on, in or above the beds or waters of any navigable lake in the state may be made unless approval has been

given as provided in these rules. An encroachment permit does not guarantee the use of public trust lands without appropriate compensation to the state of Idaho.

IDAPA 20.03.04.015. ENCROACHMENT STANDARDS.

07. Seawalls. Seawalls should be placed at or above the ordinary high water mark, or the artificial high water mark, if applicable. Seawalls are not an aid to navigation, and placement waterward of the ordinary or artificial high water mark will generally not be allowed.

08. Riprap. a. Riprap used to stabilize shorelines will consist of rock that is appropriately sized to resist movement from anticipated wave heights or tractive forces of the water flow. The rock must be sound, dense, durable, and angular rock resistant to weathering and free of fines. The riprap must overlie a distinct filter layer which consists of sand, gravel, or nonwoven geotextile fabric. The riprap and filter layer must be keyed into the bed below the ordinary or artificial high water mark, as applicable. If the applicant wishes to install riprap with different standards, they must submit a design that is signed and stamped for construction purposes by a professional engineer registered in the state of Idaho. b. Riprap used to protect the base of a seawall or other vertical walls may not need to be keyed into the bed and may not require a filter layer, at the Department's discretion.

11. Excavated or Dredged Channel. a. Excavating, dredging, or redredging channels require an encroachment permit and are processed in accordance with Section 030 of these rules. b. An excavated or dredged channel or basin to provide access to navigable waters must have a clear environmental, economic, or social benefit to the people of the state, and must not result in any appreciable environmental degradation. A channel or basin will not be approved if the cumulative effects of these features in the same navigable lake would be adverse to fisheries or water quality. c. Whenever practical, such channels or basins must be located to serve more than one (1) littoral owner or a commercial marina; provided, however, that no basin or channel will be approved that will provide access for watercraft to nonlittoral owners

13. General Encroachment Standards

d. Length of Community Docks and Commercial Navigational Encroachments. Docks, piers, or other works may extend to a length that will provide access to a water depth that will afford sufficient draft for water craft customarily in use on the particular body of water, except that no structure may extend beyond the normal accepted line of navigability established through use unless additional length is authorized by permit or order of the Director. If a normally accepted line of navigability has not been established through use, the Director may from time to time as he deems necessary, designate a line of navigability for the purpose of effective administration of these rules.

e. Presumed Adverse Effect. It will be presumed, subject to rebuttal . . . that commercial navigational encroachments, community docks or nonnavigational encroachments will have a like adverse effect upon adjacent littoral rights if located closer than twenty-five (25) feet to adjacent littoral right lines.

f. Weather Conditions. Encroachments and their building materials must be designed and installed to withstand normally anticipated weather conditions in the area. Docks, piers, and similar structures must be adequately secured to pilings or anchors to prevent displacement due to ice, wind, and waves. Flotation devices for docks, float homes, etc. must be reasonably resistant to puncture and other damage.

IDAPA 20.03.04.020. APPLICATIONS

01. Encroachment Applications. No person shall hereafter make or cause to be made any encroachment on, in or above the beds or waters of any navigable lake in the state of Idaho without first making application to and receiving written approval from the department. The placing of dredged or fill material, refuse or waste matter intended as or becoming fill material, on or in the beds or waters of any navigable lake in the state of Idaho shall be considered an is required prior to construction of the proposed encroachment, then the application must describe the demolition activities and the steps that will be taken to protect water quality and other public trust values. No demolition activities may proceed until the permit is issued.

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

03. Other Permits. Nothing in these rules shall excuse a person seeking to make an encroachment from obtaining any additional approvals lawfully required by federal, local or other state agencies.

IDAPA 20.03.04.030. PROCESSING OF APPLICATIONS FOR ALL OTHER TYPES OF ENCROACHMENTS.

01. Nonnavigational, Community, and Commercial Navigational Encroachments. Within ten (10) days of receiving a complete application for a nonnavigational encroachment, a community dock, a commercial navigational encroachment, or a navigational encroachment extending beyond the line of navigability, the Department will cause to be published a notice of application once a week for two (2) consecutive weeks in a newspaper of general circulation in the county in which the encroachment is proposed.

02. Encroachments Not in Aid of Navigation. Encroachments not in aid of navigation in navigable lakes will normally not be approved by the Department and will be considered only in cases involving major environmental, economic, or social benefits to the general public. Approval under these circumstances is authorized only when

consistent with the public trust doctrine and when there is no other feasible alternative with less impact on public trust values.

03. Notifications. Upon request or when the Department deems it appropriate, the Department may furnish copies of the application and plans to federal, state and local agencies and to adjacent littoral owners, requesting comment on the likely effect of the proposed encroachment upon adjacent littoral property and public trust values such as navigation, fish and wildlife habitat, aquatic life, recreation, aesthetic beauty, water quality, etc.

04. Written Comments or Objections. Within thirty (30) days of the first date of publication, an agency, adjacent littoral owner or lessee, or any resident of the state of Idaho may do one (1) of the following:

- a. Notify the Department of their opinions and recommendation, if any, for alternate plans they believe will be economically feasible and will accomplish the purpose of the proposed encroachment without unreasonably adversely affecting adjacent littoral property or public trust values; or
- b. File with the Department written objections to the proposed encroachment and request a public hearing on the application. The hearing must be specifically requested in writing. Any person or agency requesting a hearing on the application must deposit and pay to the Department an amount sufficient to cover the cost of publishing notice of hearing provided in Subsection 030.05.

05. Hearing. Notice of the time and place of public hearing on the application will be published by the Director once a week for two (2) consecutive weeks in a newspaper in the county in which the encroachment is proposed, which hearing will be held within ninety (90) days from the date the application is accepted for filing.

06. Hearing Participants. Any person may appear at the public hearing and present oral testimony. Written comments will also be received by the Department.

10. Factors in Decision. In recognition of continuing private property ownership of lands lying between the natural or ordinary high water mark and the artificial high water mark, if present, the Department will consider unreasonable adverse effect upon adjacent property and undue interference with navigation the most important factors to be considered in granting or denying an application for either a nonnavigational encroachment or a commercial navigational encroachment not extending below the natural or ordinary high water mark. If . . . following a public hearing, the Department determines that the benefits, whether public or private, to be derived from allowing such encroachment exceed its detrimental effects, the permit will be granted.

III. IDL'S ANALYSIS OF COMPLIANCE WITH THE LPA AND RULES - GENERAL

A. Littoral Ownership.

The Applicant is a littoral owner and owns a parcel adjacent to Lake Coeur d'Alene identified as Kootenai County Parcel Index No. 50N04W157675, AIN 130748, and with a common address of 1742 W Blackwell Mill Road. This parcel appears to be a lakefront parcel with littoral rights. There are no other parcels or roads between the parcel and the OHWM.

B. Type of Encroachment.

The Applicant is seeking an encroachment permit to install a commercial work dock, dredging/excavation, and a boat launch, which are Navigational Encroachments; along with riprap/seawall, a container on top of the work dock and a year-round work construction area, which are Non-Navigational Encroachments.

C. Shoreline Length.

The Applicant's parcel contains approximately 140 feet of water frontage. IDL-002.

D. Line of Navigability.

The boat launch, the dredging/excavation work, and the riprap seawall will not extend beyond the Line of Navigability (LON). However, the proposed commercial work dock and year-round work area appear to exceed the LON. As described above in the definition of LON in IDAPA, the LON is based on the current length of permitted encroachments in the area. The difficulty in determining the LON for the project site is that there are single-family docks to the west and two commercial marinas to the east, one of which contains a year-round dock construction area beyond the marina footprint. Additionally, Cougar Bay was historically used as

a log holding site for the numerous sawmills in the area. Given the nature of the area and the existing encroachments, IDL generally agrees with the location of the LON depicted in the Application but notes that, in certain areas, the LON may be closer to shore than what is depicted in the Application. IDL-002 at 6.

It is typical for commercial encroachments to extend beyond the LON. However, such encroachments may only extend beyond the LON if authorized to do so by IDL. *See* IDAPA 20.03.04.015.13(d). Community docks and commercial facilities typically extend much farther out into the lake than a residential dock. Additionally, a long commercial facility typically does not set the LON. The littoral area for the residential lots to the west of the proposed project only extends to the LON. The large L-portion of the work dock and the majority of the work area are beyond the LON, are outside of the shoreward littoral owners' respective littoral areas, and provide more than a twenty-five (25) foot buffer from the LON/littoral areas.

E. Distance from Littoral Lines.

IDAPA 20.03.04.015.13.e provides a rebuttable presumption that commercial navigational encroachments will have a like adverse effect upon adjacent littoral rights if located closer than twenty-five (25) feet to adjacent littoral right lines.

Based on the application drawings, it appears that the commercial work dock and the boat launch both provide at least a twenty-five (25) foot buffer to both the western and eastern littoral right lines. The riprap and seawall will likely not provide a twenty-five (25) foot buffer to the eastern littoral right line, however, erosion control measures typically do not provide the twenty-five (25) foot buffer as property owners always choose to protect their entire frontage. Erosion control measures, when installed according to standards outlined in IDAPA 20.03.04, typically do

not adversely impact the adjacent littoral rights of neighbors because riprap and seawalls are placed at or above the OHWM.

The structure placed on the commercial work dock, the year-round work area, and the waterward most section of the commercial work dock are beyond the LON. As described herein, littoral rights extend to the LON but not beyond. IDAPA 20.03.04.010.32. The portions of the commercial work dock, year round work area that extend beyond the LON provide more than a twenty-five (25) foot buffer LON west of the project area, exceeding one hundred (100) in most cases.

F. Signature Requirement.

IDAPA 20.03.04.020.02 states that “[o]nly persons who are littoral owners or lessees of a littoral owner shall be eligible to apply for encroachment permits.” Applicant is the littoral owner. “A person who has been specifically granted littoral rights or dock rights from a littoral owner shall also be eligible for an encroachment permit; the grantor of such littoral rights, however, shall no longer be eligible to apply for an encroachment permit.” Applicant owns the parcel in question and there are no other parcels between the subject parcel and the lake. While Rivelle LLC is the owner of the parcel and Applicant, it is IDL’s understanding that the facility will be used by StanCraft Marine Construction (StanCraft).

IV. IDL’S ANALYSIS OF COMPLIANCE WITH THE LPA AND RULES - SPECIFIC

The application can be broken down into six (6) aspects: boat launch, riprap/seawall, dredging/excavation, commercial work dock, shed or structure on top of commercial work dock, and a year-round work construction zone. Each encroachment will be broken down below for further discussion.

Boat Launch or Ramp

Based on the application materials, it appears the Applicant is proposing to install a twenty (20) foot wide by eighty (80) foot long concrete panel boat launch. Other than the definition of a boat ramp, there are no specific standards listed in IDAPA 20.03.04 for boat ramps or launches beyond the standard requirements for “Encroachments in Aid of Navigation”. IDL’s procedures states that “boat ramps should only be issued to city, county, state, or federal agencies with parks and recreational facilities, except in the most unusual of circumstances.” IDL typically does not permit or allow boat launches for private non-commercial individuals, such as for single-family or two-family docks, or for community docks. However, IDL has historically permitted and allowed boat launches for commercial facilities or county facilities. The two commercial properties immediately to the east of the project site both contain a boat launch. It can be reasonably assumed that there will be a social public benefit from a dock building company having their own boat ramp, as it will take pressure off of public boat ramps when they launch their work boats and dock components. If there additional benefits to be derived from the boat launch, Applicant ought to provide such information.

Riprap/Seawall

Based on the application materials, the Applicant has proposed to install 48 cubic yards (cy) of “Gravel, Rock, or Stone”. It appears that 1 cy riprap will be used to stabilize the shoreline to the west of the proposed fixed pier portion of the commercial work dock, 8 cy will be used as part of their fixed concrete pier, and 39 cy will be used to the east of the proposed boat launch to protect and stabilize the concrete panels used for the boat launch. The applicant has proposed a seawall or retaining wall, however, it appears that the retaining wall will be placed on the upland portion of the parcel above the OHWM and thus outside of IDL’s jurisdiction.

The 1 cy of riprap proposed to stabilize the shoreline to the west of the commercial work dock, and the 39 cy of riprap proposed to stabilize and protect the boat launch, both appear to be consistent with IDL standards and with other riprap applications and projects that IDL has permitted in the past. However, the 8 cy proposed to be installed to help stabilize the fixed concrete pier appears to be fill, used to help fill in the existing shoreline so that a rectangular concrete fixed pier can be installed. Fill is classified as a non-navigational encroachment that is typically not approved and only considered “in cases involving major environmental, economic, or social benefits to the general public. Approval under these circumstances is authorized only when consistent with the public trust doctrine and when there is no other feasible alternative with less impact on public trust values.” IDL was not able to locate reasoning or a justification for the fill for the fixed pier in the application documents. Presumably it is so that vehicles can drive out onto the commercial work dock to load equipment, people, and tools to the work area at the end of the dock and onto barges. However, more information is needed from the Applicant regarding the reason for and applicable benefits from allowing the fill to determine if it is consistent with the applicable encroachment standards.

Dredging/Excavation

The Applicant is proposing to dredge or excavate 805 cy of material for the proposed Boat Launch and to create deeper water access for boats and barges that can be loaded from a pad placed above the proposed seawall. *See* IDAPA 20.03.04.015.11.b states that dredging or excavation work “must have a clear environmental, economic, or social benefit to the people of the state, and must not result in any appreciable environmental degradation. A channel or basin will not be approved if the cumulative effects of these features in the same navigable lake would be adverse to fisheries or water quality.”

Lake Coeur d'Alene contains heavy metal sediments that are typically not dredged or excavated due to environmental concerns. If approved by IDL, the Applicant will also need to obtain the necessary permits from permits from the U.S. Army Corps of Engineers and Idaho Department of Environmental Quality that will specifically deal with water quality. *See* IDAPA 20.03.04.020.03. IDEQ has provided comments on this application. *See* IDL-012. A representative from Panhandle Health district commented on the project and noted "I am pleased to see the plans to include measures to handle any contaminated sedimented they may encounter". *See* IDL-003.

The dredging or excavation work is primarily linked to the proposed Boat Launch. If the boat launch is approved (in part) due to providing a public benefit, it is reasonable to assume that the same public benefit would apply to the dredging work necessary for the boat launch to be installed. The Applicant should clarify the extent of any environmental, economic, or social benefit of the dredging or excavation work in relation to the area in front of the proposed seawall so that it may be determined if dredging/excavation is warranted under the encroachment standards.

Shed or Conex Structures on the Commercial Work Dock

The sheds, conex structures, or any other building placed on top of the commercial work dock would be classified as a non-navigational encroachment. *See* IDAPA 20.03.04.010.16. As stated herein, non-navigational encroachments can only be approved when there is a major environmental, economic, or social benefit to the general public. IDAPA 20.03.04.030.02 There is no justification or reasoning provided in the application materials describing any benefit derived from the structures on top of the commercial work dock. The Applicant ought to provide more information regarding any environmental, economic, or social benefit to the general public from the conex containers to determine if the structures warrant approval under the applicable rules.

Commercial Work Dock

The Applicant is proposing a 14'x120' fixed pier, 10'x425' floating dock, a L-shaped 475'10' work dock and a 40'x100' work dock located inside the cove the L-shape. *See* IDL-002. There are no specific IDAPA 20.03.04 requirements for a commercial work dock beyond those requirements for all commercial navigational encroachments. The proposed dock extends out into the lake to an existing, unpermitted log raft, which is also roughly the same distance out into the lake as the adjacent commercial facility to the east. The length of the proposed work dock extends out beyond the LON, and thus is outside of the littoral right area to the neighbors to the west. IDAPA 20.03.04.010.32. If approved, the proposed work dock does not prohibit any of the neighboring landowners west of the proposed work dock from wharfing out and exercising their littoral rights. If approved as proposed, construction of the dock would eliminate one of the current paths adjacent neighbors could take to reach the Spokane River or the east side of Lake Coeur d'Alene. However, adjacent neighbors and the general public can still access the Spokane River, the east side of Lake Coeur d'Alene, as well as Cougar Bay by going around the work dock to the west. Due to the prevalence of deadheads (sunken or barely submerged logs) and piling within Cougar Bay, the entire bay has been deemed a No Wake Zone, wherein boats can only operate at a slow, no wake speed as they move through the bay. As previously noted herein, the proposed commercial work dock is immediately adjacent to two other commercial facilities, one of which is a public marina and the other being a public marina with a dock construction area waterward of the marina slips.

If approved, the proposed L-shaped dock will replace the unpermitted log raft, with all of the log debris being removed from the lake. The removal of the unpermitted log raft would be a major public benefit as the current unpermitted log raft poses an impediment to navigability and a

hazard to general boating safety. The L-shaped work dock also would contain wave attenuation components that would help protect the shoreline to the west from storm waves as well as debris.

The proposed work dock would provide more than a twenty-five (25) foot buffer to both the easterly and westerly adjacent neighbors and the portion that extends out beyond the LON would provide more than a twenty-five (25) buffer from any littoral right areas. Thus, this portion of the project does not raise the presumption that it will have an adverse effect on any neighboring properties. IDAPA 20.03.04.015.13(e). Lastly, commercial facilities typically do not have a size requirement or limitation as it relates to overall square footage or width like the limitations placed on family docks.

Year-Round Work Area

The Applicant is proposing a 1.34 acre work area surrounding the commercial work dock. *See* IDL-002 There are no specific IDAPA 20.03.04 standards or criteria for a year-round dock construction area beyond the general requirements for encroachments not in aid of navigation. *See* IDAPA 20.03.04.030.02, 20.03.04.015.13. There are also not any more specific requirements for commercial work docks in IDL Procedures. The only applicable IDAPA rule would be that a twenty-five (25) foot buffer be provided to the adjacent littoral right lines. Within the LON, the work area is only located on the eastern side of the commercial work dock. It appears that a sixty-two (62) foot buffer would be provided from the eastern edge of the work area to the littoral right line on the eastern side of the property, thus, the presumption of adverse effect on adjacent littoral rights does not arise. IDAPA 20.03.04.015.13(e).

A year-round work area was previously proposed by StanCraft's predecessor, North Idaho Maritime, when they were also applying for a winter dock storage area within Cougar Bay. IDL did not believe that storing docks during the winter months (October-May) in the middle of Cougar

Bay would negatively impact the general public, as there is not much boat or paddle traffic during the winter months. The winter dock storage area was approved under a lease, but the year-round work area was denied, primarily because it was proposed for the middle of Cougar Bay when there was more public traffic. The current year-round work area being proposed by StanCraft is located much closer to shore and would be connected to the proposed commercial work dock and thus will not have the same effects as the previously proposed year-round work area. Additionally, as mentioned herein, the proposed year-round work area would be located immediately to the west of a previously permitted work construction area for Murphy Marine Construction. Because this portion of the proposed project is non-navigational in nature, Applicant ought to provide additional information on any environmental, economic, or social benefits to the general public so that the full scope of benefits may be assessed.

V. CONCLUSION

In general, it appears that the proposed encroachment complies with the technical encroachment standards. Regarding the non-navigational encroachments, the assessment will largely be whether the proposed benefits are such that such encroachments are allowable under IDAPA 20.03.04.030.02. The Applicant ought to provide additional information on specific aspects of the project to determine the full scope of potential benefits to be weighed, particularly in regard to the fill to stabilize concrete pier, dredging and excavation, Conex structures, and year-round work area. Save for the specific requirements applicable to dredging and excavation, the navigational encroachments appear to comply with the encroachment standards and the thus their benefit, public and private, ought to be weighed against the detrimental effects in making the final decision. I.C. 58-1306(e).

Because the record for this matter remains open, the full potential impacts of this application may have not yet been fully determined and additional information may be forthcoming. IDL respectfully reserves the right to supplement, clarify, or modify its statements based on the availability of new information.

DATED this 28th day of October, 2024.

IDAHO DEPARTMENT OF LANDS

/s/John Richards
John Richards
Counsel for IDL

CERTIFICATE OF SERVICE

I hereby certify that on this 28th day of October, 2024, I caused to be served a true and correct copy of the foregoing by the method indicated below, and addressed to the following:

Scott Hislop Nelson Erickson 2936 W. Dakota Ave. Hayden, ID 83835 <i>Applicant</i>	<input checked="" type="checkbox"/> Email: scott.h@stancraft.com nelson@stancraft.com
Marde Mensinger Idaho Department of Lands 300 N. 6 th St. Boise, ID 83720 (208) 334-0248 <i>IDL Program Manager for Navigable Waters</i>	<input checked="" type="checkbox"/> Email: mmensinger@idl.idaho.gov
Kourtney Romine Kayla Dawson <i>Service Contact for IDL</i>	<input checked="" type="checkbox"/> Email: kromine@idl.idaho.gov kdawson@idl.idaho.gov
OAH General Government Division P.O. Box 83720 Boise, ID 83720-0104 816 W. Bannock St. (208) 605-4300	<input checked="" type="checkbox"/> Email: filings@oah.idaho.gov Merritt.dublin@oah.idaho.gov

/s/John Richards

John Richards
Counsel for IDL