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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’
CLOSING STATEMENT**

The Idaho Department of Lands (IDL), by and through its counsel of record John Richards, and in accordance with the Hearing Officer’s request, submits the following Closing Statement for the above-entitled matter.

I. BACKGROUND

IDL incorporates by reference the factual background in its Pre-Hearing Statement into this Closing Statement. *See IDL Pre-Hearing Statement* at 1-2. Additionally, since the record remained open after the Pre-hearing Statement was filed, IDL notes the following additional facts that have been incorporated into the record since that time.

On November 8, 2024, a public hearing was held at Northern Idaho College. After IDL and the Applicant presented their material, the public was invited to testify. Three members of the

public with interests in neighboring properties provided public testimony at the hearing, including Frank Jessick, Ron Jessick, and William Chapman. Additional members of the public were present but declined to provide testimony at the hearing. Written comment remained open until November 11, 2024. IDL received no additional written comment subsequent to the public hearing.

II. APPLICABLE LEGAL PROVISIONS

IDL incorporates by reference the *Applicable Legal Provisions* in its *Pre-hearing Statement*.

See IDL Prehearing Statement at 2-9.

III. STANDARDS FOR DECISION

In general, the operative standard for a decision on the Application will be “[i]f . . . 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. IDAPA 20.03.04.30.10.

At public hearing, one member of the public quoted a portion of the relevant statute which reads:

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.

IDAPA 20.03.04.30.10. However, in this circumstance, the project is not being proposed on lands lying between the ordinary high water mark and an artificial high water mark. Therefore, unreasonable adverse effect on adjacent property and undue interference with navigation will not be the most important factors to consider in granting or denying the Application.

Additionally, regarding encroachments not in aid of navigation, IDAPA Rules provide

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.

IDAPA 20.03.04.30.02. Thus, the proposed encroachments not in aid of navigation (fill, shed or Connex structures, year round work area) will need to demonstrate some major environmental, economic, or social benefit, in addition to their benefits outweighing the detrimental effects, in order to be granted.

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

IDL incorporates by reference the Analysis of Compliance With the LPA and Rules - General in its Pre-Hearing Statement into this Closing Statement. *See IDL Pre-Hearing Statement* at 10-12. In addition to that analysis, IDL offers the following additional analysis on specific aspects of the project.

A. Littoral Ownership.

See IDL Pre-Hearing Statement at 10-12.

B. Type of Encroachment.

See IDL Pre-Hearing Statement at 10-12

C. Shoreline Length.

See IDL Pre-Hearing Statement at 10-12

D. Line of Navigability and Distance from Littoral Lines

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. IDL-002 at 7.

During the public hearing testimony from Mr. William Chapman stated that the current dock on Applicant's property already encroaches upon the littoral area of the property owned by the Jessick Maack Family Trust (Jessick Trust Property) immediately west of the Applicant's property. *See Testimony of William Chapman*. As part of his presentation Mr. Chapman described

his calculations and provided aerial photographs with overlays depicting where he calculated the littoral line between the Applicant's property and the Jessick Family Trust. *See Exhibits 1-4 to Testimony of William Chapman*. For reasons set forth below, Mr. Chapman's depiction of the littoral line is not an accurate representation of the location of the littoral line between the Applicant's property and the Jessick Family Trust.

Typically, littoral right lines extend waterward of the intersection lines between the artificial or ordinary high water mark and an upland ownership boundary to the line of navigation and will generally be at right angles to the shoreline. IDAPA 20.03.04.010.34. However, Idaho Courts have recognized that there is no hard-and-fast rule for determining littoral lines. *See Brett v. Eleventh St. Dockowner's Ass'n, Inc.*, 141 Idaho 517, 522, 112 P.3d 805, 810 (2005) ("It is realized that due to the numerous variations of the shore line formations, such as a convex or a concave, or otherwise irregular shore line of a lake or other large body of water, no one rule or formula could be invoked to determine the littoral boundaries which would apply in all cases..."). the Idaho Supreme Court has recognized some fundamental rules, holding:

It seems quite firmly established that there are a few general and fundamental rules which in most instances may be applied with reference to the apportionment of littoral rights: If the shore line is straight or substantially so, the littoral lines are to be extended from the divisional lines on shore into the water perpendicular to the shore line; in the event the shore line is concave, converging lines shall be run from the divisional shore lines to the line of navigability; again, if the shore lines are convex, the lines will be divergent to the line of navigability (citation omitted).

Id. Ultimately, "the controlling thought in every case is to treat each case in an equitable manner so that, so far as it is possible, all property owners on such a body of water have access to the water." *Id.* The Court's strive "to see that each shoreline owner shall have his *proportionate share* of the deep water frontage and all of the rules which have been adopted and applied throughout the years by the courts in relation to this problem have had that end in view." *Id.* (emphasis added).

To that end, in determining littoral lines IDL does so in a manner that is appropriate for the specific area, and which represents a fair and equitable allocation of the littoral area. Courts have rejected the argument that a determination of littoral lines requires an examination and determination of the configuration of the shoreline as a necessary prerequisite for IDL to make a determination of littoral lines and have held that IDL may make such determination based on relevant information contained within the record. *Id.* at 809-10.

As described above, the general rule for determining littoral lines is subject to modification when dealing with unique shoreline formations. In the case at hand, the shoreline is slightly convex, and the formation is further complicated by unique manner in which the shoreline ends on the eastern boundary of the Applicant's property, due to commercial marinas. In such circumstances, it is appropriate to determine the location of the littoral lines in such a manner that is proportionate to shoreline ownership and in a manner that represents a fair and equitable allocation of the littoral area. *Id.*

The line depicted by Mr. Chapman does not represent a fair and equitable allocation of the littoral area and would be disproportionately favorable to the Jessick Trust Property, given the length of shoreline of the of the Jessick Trust Property and the Applicant's property and given the specific makeup of the shoreline. *Exhibit 01 to Testimony of William Chapman*. The survey submitted by Mr. Chapman as well as the aerial photos in the record depicting property lines show that the Jessick Trust Property consists of a narrow piece of shoreline adjacent to the Applicant's property. *See Exhibit Survey and 01 to Testimony of William Chapman; IDL-002* at 5-11, 17-18. Therefore, the littoral area must for the Jessick Trust Property and the Applicant's property must be proportionate to their shoreline ownership. Further, as described herein, in the circumstance in which the shoreline is convex, typically the littoral lines will extend waterward

to the line of navigability in a manner in which they will **converge**. *Eleventh St. Dockowner's Ass'n, Inc.*, 141 Idaho at 810 (emphasis added). The littoral line proposed by Mr. Chapman follows such a path that it would result in diverging littoral lines for the Jessick Trust Property which is not typically appropriate for a convex shoreline. *Id.* Such diverging lines would create a sort of “wide mouthed” littoral area for the Jessick Trust Property that would be disproportionate to their shoreline ownership. Further, given the unique makeup of the shoreline formation, the diverging line proposed by Mr. Chapman cuts fairly drastically toward the Applicant’s property and would disproportionately disfavor Applicant’s littoral area, particularly given the unique formation of the shoreline in this area. Such a line is neither proportionate nor does it represent a fair and equitable division of the littoral area.

Based on the depictions of property lines within and the formation of the shoreline within the record, IDL believes that the littoral line depicted in the Application is an accurate representation of where the littoral line between the two properties is located. *See IDL-002* at 6. This location of the littoral line represents a proportionate, fair, and equitable allocation of the littoral area in light of the shoreline formation. It should also be reiterated that these littoral lines only extend to the line of navigability to define a property’s littoral area. IDAPA 20.03.04.010.34. Given the location of the littoral line between the two properties and the line of navigability, IDL maintains the position in its *Pre-hearing Statement* that the proposed encroachment would be more than twenty-five (25) feet to the adjacent littoral lines and the presumption under IDAPA 20.03.04.015.13.e that the encroachment will have an adverse effect upon adjacent littoral rights does not arise.

E. Signature Requirement.

See IDL Pre-Hearing Statement at 10-12

V. 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. As discussed in IDL's Pre-Hearing Statement, the project appears to comply with the technical aspects of the encroachment standards and that that a decision will largely be based on whether benefits of each specific encroachment outweigh the detrimental effects. *See IDL Pre-Hearing Statement* at 18-19. IDL incorporates by reference the analysis provided in its Pre-Hearing Statement and offers the following further analysis on each proposed encroachment. *See IDL Pre-Hearing Statement* at 12-19.

Boat Launch or Ramp

As discussed in IDL's Pre-Hearing Statement a boat ramp is defined as an encroachment in aid of navigation. IDAPA 20.03.04.010.15. 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". As an encroachment in aid of navigation, the boat launch is not subject to the requirement to show a major social, economic, or environmental benefit to the public under IDAPA 20.03.04.010.16. Instead, this proposed encroachment is subject to the general standard of IDAPA 20.03.04.030.10 which states that if "following a public hearing, the Department determines that the benefits, *public or private*, to be derived from allowing such encroachment exceed its detrimental effects, the permit will be granted." IDL has historically permitted and allowed boat launches for commercial facilities or public facilities. The two commercial properties immediately to the east of the project site both contain a boat launch. *Applicant Exhibit-01* at 27-28. The boat ramp appears to provide some significant benefits, including

- Alleviation of pressure of public boat ramps when Applicant launches its work boat and dock components. Applicant Prehearing Statement at 3-4
- Provide a location for a rapid response site to respond to needs on the water; *Id.*
- Provide a rapid response site to deploy response services; *Id.*
- Aid in fulfillment of MOU with Kootenai County to provide emergency services including the waterborne transportation services, and debris removal services. *Id.*

Thus, the boat ramp not only appears to provide private benefit to the Applicant but major benefit to the public as well.

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.

As discussed in IDL’s Pre-Hearing Statement, 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, rather than riprap, 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.”

IDAPA 20.03.04.30.02. The Applicant did provide some additional information regarding proposed benefits from allowing the 8 cy of fill which included allowing vehicle traffic to the boat ramp, ability to transfer material to and from boats, and a reduction to the negative impact on water, environment, fish and wildlife. Applicant Ex-001 at 29-31. Applicant also stated that it is foreseeable that such material will be used in furtherance of the MOU between Kootenai County and StanCraft Marine Construction. Applicant Pre-Hearing Statement at 4-5. While there will certainly be some benefits to the Applicant from allowing the fill, it does not appear that the 8 cy of fill will independently provide a *major* economic, social, or environmental benefit to the public. While it appears that the 8 cy of fill would allow vehicular traffic on the dock but the major benefits to the public do not seem dependent on such vehicular access to the dock. It does not appear that such traffic is an essential element to fulfillment of the MOU with Kootenai County and that the benefits of access for emergency services and alleviation of congestion seem to be accomplished by the boat ramp. Therefore, it does not appear that the 8 cy of fill independently provides a major public benefit. In the absence of a finding of a major public benefit from the 8 cy of fill, this aspect of the application ought to be denied.

Dredging/Excavation

“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.” IDAPA 20.03.04.015.11. 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. As described above, it appears that installation of a functioning boat ramp would provide major social benefits to the public including:

- Alleviation of pressure of public boat ramps when Applicant launches its work boat and dock components. Applicant Prehearing Statement at 3-4
- Provide a location for a rapid response site to respond to needs on the water; *Id.*
- Provide a rapid response site to deploy response services; *Id.*
- Aid in fulfillment of MOU with Kootenai County to provide emergency services including the waterborne transportation services, and debris removal services. *Id.*

In addition to a major public benefit, the dredging must also not result in any appreciable environmental degradation. IDAPA 20.03.04.015.11. In this circumstance, environmental degradation is likely to be limited due to the fact that the proposed area has been previously dredged. Applicant Exhibit-001 at 33. Additionally, if IDL issues a permit, the Applicant will still be required to secure the necessary permits from Idaho DEQ and the U.S. Army Corps of Engineers for dredge and fill activities associated with the project prior to conducting and dredge and fill activities. IDL-012 at 1-2. Such required additional permitting will ensure protection of water quality and address environmental concerns. Applicant has drafted the proposed activity to comply with DEQ guidelines and comments from Panhandle Health District indicated that they are pleased to see measures to handle contaminated sediments that the applicant may encounter. Applicant Exhibit-001 at 33; IDL-003 at 1.

Therefore, because the proposed application will result in significant social benefits to the public, it qualifies to be approved as part of the permit.

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. 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 (emphasis added). Notably, this standard requires more than just some benefit from a proposed encroachment. Instead, it requires demonstration of a **major** environmental, economic, or social benefit to the public before IDL can consider approval of the non-navigational encroachment. As part of IDL's prehearing statement, IDL stated that the Applicant ought to provide additional information regarding any environmental, economic or social benefit to the general public from this particular encroachment. *See IDL Pre-Hearing Statement* at 15. In its Pre-Hearing Statement and at the public hearing, Applicant did provide additional information regarding proposed economic, environmental, and social benefits the proposed structures may provide to the public. *See Applicant Pre-Hearing Statement* at 7; *Applicant Exhibit -01* at 35. Applicant described the economic benefit to the public as being the fact that the Applicant would not be operating at a competitive disadvantage with a neighboring commercial facility that has non-navigational storage structures. *Id.* The Applicant described the environmental benefit to the public as the fact that tools and equipment will be stored inside providing a dry, contained, and secure location close to the work zone to prevent interaction with the environment. *Id.* The Applicant described the social benefit to the public as providing on-water storage space for emergency response equipment for both KC Parks and Waterways. *Id.*

While the Applicant has described some potential benefits to the public from allowing these structures, there does not appear to be any **major** environmental, economic, or social benefit to the general public from this particular encroachment.

While applicant states generally that the lack of structures would make them have a competitive disadvantage with competing commercial facilities, there is little information on how or the extent to which this would directly affect the public. Testimony at public hearing indicated that there is already adequate competition for Applicant's profession within the area. *See recording of public hearing*. Because there is insufficient information as to the extent that this would affect Applicant's competitive advantage or the general public, IDL does not find that the structures provide a major economic benefit to the public.

Similarly, while the Applicant speaks generally about the environmental and social benefit there is little information as to the extent that the structures themselves would affect environmental or social factors. It appears that the structures are not essential to implementation of the Applicant's MOU with Kootenai County nor is there information to show that there would be specific significant environmental impacts without them. While it appears that the structures would likely provide benefit to the Applicant, the record does not appear to demonstrate that the structures will independently provide any major benefit to the public. In the absence of a finding of a major public benefit from the 8 cy of fill, this aspect of the application ought to be denied.

Commercial Work Dock and Year Round Work Area

The Applicant is proposing a 14'x120' fixed pier, 10'x425' floating dock, a L-shaped 475'10' work dock, a 40'x100' work dock located inside the cove the L-shape, and a 1.34 acre work area surrounding the commercial work dock. *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. Similarly, 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. The proposed commercial dock

and work area 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 and work area 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. The proposed commercial work dock is proposed in an area that already has significant commercial development. *Applicant Exhibit 001* at 22-33, 27-28, 34. *Applicant Testimony at Public Hearing*.

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. Testimony was raised at the public hearing that elimination of the narrow east path toward the Spokane River would result in hazard to kayakers and paddleboarders who use that route. *See testimony of William Chapman*. However, the record also demonstrates that Kootenai County Parks and Waterways considered this issue and concluded that they could not find that the proposed encroachment would have any adverse impact on public access to the waterway or negatively impact recreational opportunities within Cougar Bay. *IDL-012* at 3-4. Moreover, testimony at the public hearing showed that the existing path eastward is extremely narrow, would require going between the unpermitted log raft and a commercial dock, and would require navigating through the neighboring commercial facility. *See Public Hearing Recording*. Thus, information in the record demonstrates that the proposed encroachment is not likely to significantly impact navigability, public recreation,

or littoral owners' ability to wharf out by eliminating the narrow access point to the east side of the Applicant's property.

If approved, the proposed L-shaped dock and work area will replace the existing 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 navigational 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 and replace the function that the current unpermitted log raft is currently performing. A concern was raised at public hearing that the work dock and work area would not be any different than the log raft. However, from a safety perspective, the unpermitted structure poses significantly more danger in the fact that it is currently not maintained by any party and is not constructed to any sort of specifications to ensure safety to navigability. Replacement of the unpermitted structure with a permitted structure that is designed to accomplish much of the same benefits that the current unpermitted structure is providing would be a major social public benefit for this area and improve the navigability. Additionally, upon completion of the project, the completed work dock and work area would provide more space for the shoreline owners' littoral areas than the current unpermitted log raft. Applicant Exhibit-001 at 36-38. Additional benefits of the year round work area associated with the dock include annual revenue from a required submerged land lease and a decrease of commercial traffic on the lake. *Id.* at 39.

Overall, IDL believes the proposed commercial work dock and associated work area will result in significant social benefits to the public. As such it qualifies to be approved as part of the permit.

VI. JURISDICTIONAL MATTERS

A few matters were raised at public hearing that require some discussion on IDL's jurisdictional authority under the Lake Protection Act (LPA) and what it may consider when assessing applications for encroachments. Generally, IDL's jurisdiction to permit encroachments lies below the ordinary or artificial high water mark and its authority does not extend to upland issues above the high water mark or to issues not contemplated by the LPA.

The LPA grants IDL the authority 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." I.C. § 58-1303. The underlying authority for the LPA is the public trust doctrine, which vested title to the beds and banks of navigable waters to the individual states upon statehood. The common law doctrine of the public trust has been interpreted by decisions of the Idaho Appellate Court and is codified at Title 58, Chapter 12, Idaho Code. IDAPA 20.03.04.010.30. A stated purpose of the codified public trust doctrine was to clarify the application of the doctrine in the State of Idaho and to expressly declare the limits of the doctrine in accordance with the authority recognized in each state to define the extent of common law. I.C. § 58-1201(6). As codified, "[t]he public trust doctrine as it is applied in the state of Idaho is solely a limitation on the power of the state to alienate or encumber the title to the beds of navigable waters as defined in this chapter." I.C. § 58-1203(1). For the codified public trust doctrine, "[b]eds of navigable waters' means those lands lying under or below the 'natural or ordinary high water mark' of navigable waters." I.C. § 58-1202(1). The codified public trust doctrine recognizes that "private property rights" means "the property rights located above the beds of navigable waters." *Id.* at (4). The "Natural or ordinary high water mark", which determines ownership, is statutorily

defined in the LPA for a lake as:

[T]he 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.

I.C. § 58-1302(c). Of note, the ordinary high water mark (OHWM) differs from an “artificial high water mark” (AHWM). An “AHWM” is “the high water elevation above the natural or ordinary high water mark resulting from construction of manmade dams or control works and impressing a new and higher vegetation line.” I.C. § 58-1302(d).

Concern was raised by the public at the public hearing that the property owned by Applicant is not currently zoned for commercial use. The zoning of property is within IDL’s jurisdiction to regulate under the LPA and thus the zoning does not weigh into the decision of whether a proposed encroachment satisfies the encroachment criteria. However, any permit issued by IDL would not relieve the Applicant from obtaining the necessary additional approvals/permits from other local, state, and federal entities with regulatory authority over other aspects of the application nor would it relieve the Applicant from complying with other local, state, or federal laws prior to beginning construction. This is true for zoning as well as obtaining relevant permits from DEQ and the Army Corps of Engineers for dredge and fill activities. Thus, even if the Application is granted, the Applicant will still have to obtain the necessary additional permits/approvals for those matters outside of IDL’s jurisdiction. However, it is ultimately the Applicant’s responsibility to comply with the law and obtain the necessary permits and it is the Applicants decision in what order they seek permits and when. Similarly, issues such as upland wildlife management, such as the potential increased prevalence of geese raised at public hearing, falls outside of IDL’s regulatory jurisdiction.

VII. CONCLUSION

In general, it appears that the proposed encroachment complies with the technical encroachment standards of IDAPA 20.03.04. 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. It appears that both the dredging and year round work area associated with the commercial dock, will provide major social benefits to the public, including but not limited to the use of the facilities for services that benefit the public and elimination of the current unpermitted log raft that poses a significant safety hazard. If the encroachment is approved, it is suggested that it be conditioned on the complete removal of the unpermitted log raft to ensure that the public fully receives the major public benefit from the encroachment. The Connex/shed structures do not appear to independently provide any major benefit to the public. Similarly, while the proposed 8cy of fill seems to provide benefit to the Applicant, it does not appear to provide any major public benefit to the public. In the absence of a finding of a major public benefit from these structures and fill, they likely do not qualify for approval and these portions of the application ought to be denied.

Save for the 8 cy of fill and the on-dock structures stated herein, the navigational encroachments appear to comply with the technical encroachment standards. Therefore, in making the final determination, the benefit, public and private, of the qualifying encroachments ought to be weighed against the detrimental effects in making the final decision of whether to approve each aspect of the permit. I.C. 58-1306(e). If granted, any permit should include a condition that requires the applicant to obtain a lease for all encroachments that require a lease pursuant to IDAPA 20.03.17.

DATED this 19th day of November, 2024.

IDAHO DEPARTMENT OF LANDS

/s/John Richards

John Richards
Counsel for IDL

CERTIFICATE OF SERVICE

I hereby certify that on this 19th day of November, 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
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