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BEFORE THE STATE BOARD OF LAND COMMISSIONERS
STATE OF IDAHO

IN THE MATTER OF

Encroachment Permit Application No.
L95S3036N

414 PF Hospitality, LLC

Applicants.

Agcy Case No. PH-2024-NAV-22-004
OAH

OAH Case No. 24-320-09

**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 *Amended Scheduling Order* issued November 25, 2024, submits the following Pre-hearing Statement for the above-entitled matter, which has a public hearing set for December 19, 2024, at 4:00 p.m. PST. IDL also concurrently submits an Exhibit List and Witness List.

I. BACKGROUND

A. Application

414 PF Hospitality, LLC (Applicant) seeks an encroachment permit to enlarge an existing commercial marina with one hundred (100) additional slips, rebuild a fuel station ship store, relocate the Marine Sheriff’s boat garage, and to provide 99 private slips and 185 public slips on the Spokane River, just east of the Spokane Street bridge. IDL-002

B. Procedural Background

On September 23, 2024, IDL received a complete application from the Applicant. IDL-002. On September 25, 2024, IDL sent resource agency notice and contacted the CDA Press to publish public notice of the application and that a public hearing date would be forthcoming. IDL-003, 005. On September 25, 2024, IDL sent out notices to landowners immediately adjacent to the Applicant's parcel. IDL-004. On October 28, 2024, IDL received a formal objection, request for hearing, and necessary fee from landowners nearby the proposed project. IDL-007. In response to the request for hearing, IDL contacted the Office of Administrative Hearings for appointment of a Hearing Officer to oversee the hearing. On November 18, 2024, notice was received that a Hearing Officer had been appointed for this matter. IDL-012. A scheduling conference was held November 21, 2024 and a Scheduling Order and an Amended Scheduling Order were issued on November 25, 2024, setting the date public hearing for December 19, 2024 at Coeur d'Alene High School, and setting other associated deadlines. IDL-013-015. On November 30th and December 7th follow up public notices with the public hearing time, date, and location were published in the CDA Press.

C. Comments

To date, IDL has received agency responses from Idaho Department of Environmental Quality (IDEQ) and Idaho Department of Fish and Game (IDFG). IDL-010, 011. IDL has also received several comments from nearby landowners. IDL-007, 009. The application also includes a letter of support from the Post Falls Mayor. IDL-002 at 34. The public will have opportunity to provide comment at the December 19th hearing and written public comment for this matter is to remain open until December 27, 2024, so additional agency and public comments may be forthcoming. *See* IDL-015.

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.

09. Commercial Marina. A commercial navigational encroachment whose primary purpose is to provide moorage for rental or for free to the general public.

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.

003. Commercial Marina.

a. Commercial marinas must have a minimum of fifty percent (50%) of their moorage available for use by the general public on either a first come, first served basis for free or rent, or a rent or lease agreement for a period of time up to one (1) year. Moorage contracts may be renewed annually, so long as a renewal term does not exceed one (1) year. Moorage for use by the general public may not include conditions that result in a transfer of ownership of moorage or real property, or require membership in a club or organization.

b. Commercial marinas that are converted to a community dock must conform to all the community dock standards, including frontage requirements and square footage restrictions. This change of use must be approved by the Department through a new encroachment permit prior to implementing the change.

c. If local city or county ordinances governing parking requirements for marinas have not been adopted, commercial marinas must provide a minimum of upland vehicle parking equivalent to one (1) parking space per two (2) public watercraft or float home moorages. If private moorage is tied to specific parking spaces or designated parking areas, then one (1) parking space per one (1) private watercraft or float home moorage must be provided. In the event of conflict, the local ordinances prevail.

d. If a commercial marina can be accessed from a road, marina customers must be allowed access via that road.

e. Moorage that is not available for public use as described in Paragraph 015.03.a. of these rules is private moorage.

f. When calculating the moorage percentage, the amount of public moorage is to be compared to the amount of private moorage. Commercial marinas with private float home moorage are required to provide either nonprivate float home moorage or two (2) public use boat moorages for every private float home moorage in addition to any other required public use boat moorages.

g. When private moorage is permitted, the public moorage must be of similar size and quality as private moorage, except for float home moorage as provided in Paragraph 015.03.f.

h. Commercial marinas with private moorage must form a condominium association, co-op, or other entity that owns and manages the marina, littoral rights, upland property sufficient to maintain and operate a marina, and private submerged land, if present. This entity is responsible for obtaining and maintaining an encroachment permit under these rules and a submerged lands lease under IDAPA 20.03.17, "Rules Governing Leases on State-Owned Submerged lands and Formerly Submerged Lands."

i. Existing commercial marinas that desire to change their operations and convert some of their moorage to private use must keep at least fifty percent (50%) of their moorage available for use by the general public. This change in operations must be approved by the Department through a new encroachment permit prior to implementation of the change. The permit application must describe, in text and in drawings, which moorage will be public and which moorage will be private.

05. Boat Garage.

a. Boat garages are considered nonnavigational encroachments.

b. Applications for permits to construct new boat garages, expand the total square footage of the existing footprint, or raise the height will not be accepted unless the application is to support local emergency services.

c. Existing permitted boat garages may be maintained or replaced with the current square footage of their existing footprint and height.

d. Relocation of an existing boat garage will require a permit

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.

05. Dock Reconfiguration.

a. Rearrangement of single-family and two-family docks will require a new application for an encroachment permit.

b. Rearrangement of community docks and commercial navigational encroachments may not require a new application for an encroachment permit if the changes are only internal. The department shall be consulted prior to modifications being made, and shall use the following criteria to help determine if a new permit must be submitted:

- i.** Overall footprint does not change in dimension or orientation;
- ii.** No increase in the square footage, as described in the existing permit and in accordance with Paragraph 015.13.a., occurs. This only applies to community docks;
- iii.** The entrances and exits of the facility do not change

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 two (2) parcels adjacent to the Spokane River identified as Kootenai County Parcel Index No. P42000008001A - AIN 109323, and P42000008002A - AIN 135604, with a common address of 414 E 1st Ave, Post Falls. Both parcels appear to be waterfront parcels 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 enlarge a commercial marina, rebuild a fuel station building, re-install fuel lines and dispenser, relocate an existing Marine Sheriff boat garage, and convert some of the moorage to private use. The commercial marina expansion and conversion of private moorage are Navigational Encroachments; while the relocation of the boat garage, the fuel station building, and fuel lines and dispensers are Non-Navigational Encroachments.

C. Shoreline Length.

The Applicant's parcel contains approximately 1280 feet of water frontage. IDL-002.

D. Line of Navigability.

The proposed commercial marina expansion will extend farther out into the river than the current/existing marina. As described above in the definition of Line of Navigability ("LON"), 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 east, the site contains an existing commercial marina, and there is a community dock to the west.

Commercial encroachments may 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 and often extend beyond the LON. However, a long commercial facility typically does not set the LON. Given the nature of the area and the existing encroachments, it appears that the proposed encroachment would extend beyond the LON.

There is an existing log boom waterward of the existing/current marina that has remained from the days of the sawmills on the river which serves as an impediment to navigability. The proposed marina expansion extends out to, but not beyond, the old log boom, which will be removed by the Applicant as part of this project. Thus, the proposed encroachment will not extend out further than an existing navigational impediment. Additionally, the proposed (and current) marina sits within a No-Wake Zone that extends from the Spokane Street bridge located west of the marina, all the way past the eastern edge of the marina approximately 550 feet.

IDAPA 20.03.04.015.13(d) does not impose additional encroachment requirements beyond IDL approval for a proposed encroachment to extend beyond the LON. If the project satisfies the relevant encroachment standards and is approved, such approval would include authorization from IDL for the proposed encroachment to extend out beyond the LON pursuant to *See* IDAPA 20.03.04.015.13(d).

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 marina will provide a twenty-five (25) foot buffer to the western littoral right lines and a 250-foot buffer to the eastern littoral right lines. The Marine Sheriff's boat garage is proposed to be placed approximately in the middle of the marina, so it will provide more than a twenty-five (25) foot buffer to each littoral right line. Thus, it appears that that none of the proposed encroachments will be within (25) feet from the adjacent littoral lines and the presumption of adverse effect under IDAPA 20.03.04.015.13.e does not arise. To date, IDL has received no comments from adjacent landowners indicating that the proposed project will adversely affect on their littoral rights.

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" and "[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." In this matter, Applicant is the littoral owner of the parcels in question and there are no other parcels between the subject parcels and the river. Thus, Applicant satisfies IDAPA 20.03.04.020.02.

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

The application can be broken down into three (3) aspects: commercial marina expansion with private moorage, fuel station building with fuel lines and dispensers, and the relocation of a Marine Sheriff boat garage. Each encroachment will be broken down below for further discussion.

Commercial Marina Expansion with Private Moorage

As described herein, applications for commercial marinas must satisfy the specific requirements of IDAPA 20.03.04.15.03. Based on the application materials, the Applicant is proposing to install an additional one hundred (100) boat moorages, of which, 99 will be for private use. IDL-002 at 8. There will be 185 public boat moorages available to the general public. *Id.* The public moorage looks to be of similar size and quality as private moorage, satisfying 20.03.04.15.03(g). IDL-002 at 7-8. Furthermore, the ratio of private to public moorage spaces satisfies the 50/50 ratio requirement of IDAPA 20.03.04.15.03(a). According to the application, there currently exists 228 parking spaces available for the moorage. IDL-002 at 25. This number of existing spaces is sufficient to satisfy the parking to moorage ratio required of IDAPA 20.03.04.15.03(c), should the expansion be approved. It appears from the application that the marina will be accessible via road and that marina customers will be allowed access via that road, satisfying IDAPA 20.03.04.15.03(d). IDL-002 at 25, 29

It is unclear from the Application and current record whether IDAPA 20.03.04.015.03(h) has been satisfied, which requires a commercial marina with private moorage to form a condominium association, co-op, or other entity that owns and manages the marina, littoral rights, and upland property sufficient to maintain and operate a marina. The Applicant ought to provide additional information to affirm that this requirement is satisfied.

The proposed marina expansion appears to satisfy all the requirements under IDAPA 20.03.04.015.03 for a commercial marina save that there is currently insufficient information in the record to determine whether the proposed expansion satisfies the requirements of IDAPA 20.03.04.015.03(h). The Applicant ought to provide additional information to affirm that the requirements of IDAPA 20.03.04.015.03(h) are met.

Fuel Station Building with Fuel Lines and Dispensers

The existing commercial marina already contains a fuel station building, fuel lines and dispensers, also commonly referred to as a “Ship Store”. The Application proposes to rebuild the fuel station building and reconnect fuel lines and dispensers. The fuel station building, fuel lines and dispensers are considered Non-Navigational Encroachments. Pursuant to IDAPA 20.03.04.030.02, encroachments not in aid to navigation are generally not approved and only considered in cases involving major environmental, economic, and social benefits to the general public. Ship Stores, fuel lines and dispensers have often been found to provide a major benefit to the general public through economic and social factors and are regularly approved as part of commercial marina encroachments. However, the application and record at this time contain insufficient evidence of the specific major benefits the general public would be provided by this particular fuel station, fuel lines, and dispensers. There are no type-specific encroachment standards applicable to a Ship Store beyond the general requirements for non-navigational encroachments. The Applicant ought to provide additional information regarding the major benefits the public will be provided by these proposed encroachments so that it can be determined if they satisfy the requirements of IDAPA 20.03.04.030.02.

Marine Sheriff Boat Garage Relocation

The Applicant is proposing to relocate the Marine Sheriff Boat Garage within the existing footprint of the current marina. IDL-002 at 5-6, 19. In review of the application IDL has determined that this aspect of the project would be considered a reconfiguration under IDAPA 20.03.04.020.05.b and therefore does not require a new encroachment permit. Therefore, no new permit need be issued in these proceedings to relocate the Marine Sheriff Boat Garage.

V. IDL’S ANALYSIS OF COMMENTS

Based on the objection letter and comments, the main concerns with the proposed project appear to be related to lighting and additional boat slips. *See* IDL-007, 009. There are no rules, regulations, or standards for IDL to enforce or require when it comes to lighting for a marina. Upland lighting for the hotel and upland property above the Ordinary High Water Mark is outside of IDL's jurisdiction. IDL's regulatory authority is limited to only those areas specifically identified in 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 LPA does not grant IDL authority to regulate upland encroachments and provides no specific authority to regulate lighting. Thus, any concerns over upland lighting or marine lighting are likely outside the regulatory authority of IDL. Moreover, while comments have raised concerns about lighting, there is currently insufficient evidence in the record showing that lighting is likely to cause issues.

Additionally, there are also no rules, regulations, or standards for IDL to enforce or require when it comes to additional boat slips being provided on the Spokane River or relating to potentially increased boat traffic. While objectors have raised concerns regarding carrying capacity of the Spokane River and potential associated safety risks, there is currently no information in the record to show that these effects are likely to occur. IDL relies on our resource partners for their expertise. While IDL can appreciate the objectors concerns about additional boat traffic, IDL has not received any comments from the County or Marine Sheriff or other agency with relevant expertise regarding boater safety being jeopardized by additional boat slips. Without additional information in the record, IDL cannot assume impacts of a proposed project.

In sum, IDL must assess proposed encroachments based on IDL's regulatory authority, compliance with specific encroachment standards, and based on information within the record. With there currently being insufficient evidence in the record regarding any likely adverse

impacts of lighting or increased boat traffic in addition to there being no specific encroachment standards relating to these impacts for IDL to enforce, these concerns, as presently stated in the record, are likely not sufficient grounds for denial of the application.

VI. CONCLUSION

Given the reasons described above, the application satisfies the encroachment standards applicable to the proposed expansion, save for the additional information required to demonstrate: (1) compliance with IDAPA 20.03.04.015.03(h); and (2) the major public benefits from the fuel station building, fuel lines, and distributaries. At this time, IDL recommends the Applicant provide additional information that demonstrates: (1) the Applicant satisfies IDAPA 20.03.04.015.03(h); and (2) that the fuel station building and its components, will provide a major public benefit. As described herein, the reconfiguration of the Marine Sheriff's Boat Garage does not require a new encroachment permit.

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 9th day of December, 2024.

IDAHO DEPARTMENT OF LANDS

/s/John Richards

John Richards
Counsel for IDL

CERTIFICATE OF SERVICE

I hereby certify that on this 9th day of December, 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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/s/John Richards

John Richards
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