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BEFORE THE IDAHO DEPARTMENT OF LANDS

In the Matter of,

Encroachment Permit Application No.
L95S3036N

414 PF Hospitality, LLC
Applicant

Agency Case No. PH-2024-NAV-22-004

OAH CASE NO. 24-320-09

PRE-HEARING STATEMENT

This Pre-Hearing Statement of Applicant is being provided by William Scott Hislop, Counsel for Project 414, LLC, a StanCraft affiliate and member of 414 PF Hospitality, LLC.

I. BACKGROUND

A. Applicant

Applicant provided its application for a commercial marina encroachment permit as defined in the Idaho Administrative Procedures Act (IDAPA) and paid its application fee to the Idaho Department of Lands (IDL). The application was formally received September 13, 2024. (App - 001) Throughout its pre-application and application process, Applicant sought input and considered the interests of neighboring land and littoral rights owners as well as the community.

Applicant understands and embraces the responsibility of owning and developing commercial property on the Spokane River given the impact on private property owners and citizenry of Kootenai County and the State of Idaho. The application and plans submitted

contemplate and adhere to the IDL's Rules for the Regulation of Beds, Waters, and Airspace over Navigable Lakes in the State of Idaho, Idaho Administrative Procedures Act (IDAPA 20.03.04) and mitigate adverse impacts of the commercial marina encroachment permit.

B. Factual Background.

414 PF Hospitality, LLC (Applicant) is the assignee of the encroachment permit No. L-95-S-3036L (App – 002). Applicant seeks an encroachment permit to extend the existing dock within the current encroachment to the log boom identified in the encroachment definition, southwest of the commercial marina, to renovate the commercial marina to a commercial marina with private moorage, relocate the Kootenai County Sherriff existing boat garage, and move the existing ship store south, keeping it at the end of the commercial dock encroachment.

C. Procedural Background.

Applicant signed its Joint Application for its encroachment permit on July 31, 2024 (App – 001 at 4). The requisite application fee was paid and received August 27, 2024 (App – 001 at 10; and the completed application was stamped received by IDL on September 13, 2024 (App – 001 at 1). On September 25, 2024, IDL mailed a request for publication to the Coeur d'Alene Press requesting publication of the notice for two (2) consecutive weeks (App-003). Any objection to the application must be made and the requisite fee paid by the objecting party within 30 days of the first publication of the notice in a paper of local circulation. I.C 58-1306(c), IDAPA 20.03.04.030.04.b. On Monday, October 28, 2024, the first Monday following the thirtieth day (which fell on a Sunday) Mr. & Mrs. Scott and Sheryl Scofield, Mr. Jose Jara, and Mr. Dick Telch, filed an objection and paid the requisite fee to pay for the publication of the hearing. A Notice of Appointment of Hearing Examiner, was sent to the parties and those objecting to the application on November 18, 2024. (App-004). Notice of Scheduling Order was sent to all parties and those objecting the application on 20th of November 2024. (App-

005). The Scheduling Hearing was timely held and both parties and Mr. & Mrs. Scofield participated. This Pre-Hearing Statement is made and provided consistent with the deadlines set at the Scheduling hearing.

D. Legal Background and Authority.

1. Lake Protection Act, Title 58, Chapter 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:

a. 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.

b. 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 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.

(e) "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).

(g) “Line of navigability” means the 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. (*See also* IDAPA 20.03.04.0101.20)

(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

c. 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 in a newspaper having general circulating in the county in which the encroachment is proposed, once a week for two (2) consecutive weeks 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.

(f) 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.

(g) A permit shall not be required for repair of an existing nonnavigational encroachment, commercial navigational encroachment, or commercial navigational encroachment.

2. Applicable IDAPA Rules Pertaining to 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.

a. IDAPA 20.03.04.010 DEFINITIONS

01. Adjacent. Contiguous or touching, and with regard to land or land ownership having a common boundary.

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.

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 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.

30. Public Trust Doctrine. The duty of the State to its people to ensure that the use of the public trust resources is consistent with identified public trust values. This common law doctrine has been interpreted by decisions of the Idaho Appellate Courts and is codified at Title 58, Chapter 12, Idaho Code.

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.

3. 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 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.

4. Applicable General Encroachment Standards under IDAPA 20.03.04.015.13 by Subsection

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. IDAPA 20.03.04.015.13.d

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. IDAPA 20.03.04.015.13.e

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 20.03.04.015.13.f.

5. Encroachment Standards – Commercial Marinas IDAPA 20.30.40.015.03

a. Commercial marinas must have a minimum of fifty percent (50%) of their moorage available for use by the general public wither 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 contacts 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 a transfer of ownership of moorage or real property, or require membership in a club or organization.

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 ordinance prevails.

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

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

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". IDAPA 20.30.40.015.03.h.

6. 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.

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.

7. Processing of Applications for All Other Types of Encroachments. IDAPA 20.03.04.030

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, social benefits to the general public. Approval under these circumstances is authorized only when consistent with the public trust doctrine and when this is no other feasible alternative with less impact on public trust values.

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.

8. Public Trust Doctrine. The underlying rule guiding the Board of

Commissioners in approval of an encroachment permit is the Public Trust Doctrine found at I.C. § 58-1201 et. seq. The Public Trust Doctrine places the beds of navigable waters of the state in the state's control with the right to dispose of the beds of navigable waters in a way it deems proper subject only to the paramount right of navigation and commerce. I.C. § 58-1201(1). The state may authorize private use, encumbrances or alienation of title to navigational waters held in public trust for such purposes as navigation, commerce, recreation, agriculture mining, forestry or other uses, "if in the judgment of the state board of land commissioners, the grant for such use is made in accordance with the statutes...of the state of Idaho". I.C. § 58-1203(3).

9. Burden of Proof - Standard of Proof.

a. Burden of Proof. Customarily in administrative hearings, it is the moving party that has the burden of proof and persuasion. *Intermountain HealthCare, Inc. v Bd of County Comm'rs of Blain County*, 107 Idaho 248, 251 P.2d 260, 263 (Ct. App. 1984) *rev'd on other grounds* 109 Idaho 299, 707 P.2d 410 (1984).

b. Standard of Proof. The standard of proof in administrative hearings in Idaho is the preponderance of the evidence standard *N. Frontiers, Inc v. State ex rel. Cade* 129 Idaho 437, 439, 926 P.2d 213, 215 (Ct. App. 1996). Preponderance of the evidence means when weighing the applicable evidence, the evidence on which the finder of fact relies is more probably true than not. *Oxley v Medicine Rock Specialties, Inc.*, 139 Idaho 476, 481, 80 P.3d 1077, 1082 (2003).

II. APPLICATION OF STANDARDS AND AUTHORITY TO APPLICANT'S APPLICATION REQUEST

Applicant's encroachment permit requests approval of four (4) modifications to its existing

permit, namely 1) Conversion of a commercial marina to commercial marina with private moorage, 2) Commercial Marina (with private moorage) reconfiguration, 3) Relocate Sherriff boat house, and 4) Relocate ship store. (App - 001)

1. Standing and Littoral Rights Holder

1.1. Applicant is the owner of the upland property, tax parcel numbers AIN 135604 and 109323. (App – 001 at 1). Applicant is the current littoral rights owner and is the holder of an existing commercial marina encroachment permit. (App – 002). The existing commercial marina encroachment permit has a permit area identified as:

“Bulkhead at 2128’ leading to 3’x15’ ramp to 9’x160’ walkway with 808’x8 dock enclosing 7 wings have 168 slips; 60’ x 24’ cruise boat landing; 24’x 38’ ship store with fuel system including a sealed sump and liquid sensors over the fuel line and dispensers; swim area to the east of marina; log boom/piling southwest of marina; Kootenai County Sherriff Department attached dock, see L-95-S-5320”. App – 002 at 1).

1.2. The application was signed by the authorized signor of the applicant, Mitch Alhedef.

1.3. All requests in the application are located below the ordinary high watermark and are within the jurisdiction of IDL.

1.4. Applicant is the proper party to bring the application. The application was properly made to or filed with IDL with the requisite application fee.

2. Conversion Of Applicant’s Existing Commercial Marina to a Commercial Marina with Some Private Moorage.

2.1. **Encroachment Standards.** For the Board to find in favor of the Applicant and grant the encroachment permit converting the commercia marina to a commercial marina with some private moorage, there must be a preponderance of the evidence showing elements of the

encroachment standards found in IDAPA 20.03.04.015.03.

2.1.1. Here the applicant shows that through the conversion, when coupled with the commercial marina reconfiguration, not more than fifty percent (50%) of the slips will be available for private moorage and at least fifty percent (50%) will be available for public use. App – 001 at 1 and 8. Any lease for public use will not be greater than in length than one (1) year. Any renewals of a public moorage lease will not exceed one (1) year.

2.1.2. The City of Post Falls does not have a parking requirement that is in conflict with IDAPA and as such parking requirements in IDAPA 20.03.04.015.03.c apply. The parking ratio provided by the Applicant is such that there is sufficient parking. Parking is provided through an ingress/egress and parking agreement. The easement provides 228 parking spaces for the marina. App -001 at 25. Upon reconfiguration the commercial marina will have 284 slips App – 001 at 8. There are projected to be 99 private slips requiring 99 parking spaces; and 185 public slips requiring 93 parking spaces. Total parking needed for the projected conversion of commercial marina is one hundred ninety-two (192). There are sufficient parking stalls for the conversion. The size and quality of the public slips will be of similar quality and size as the private slips. App – 001 at 8 & 9.

2.1.3. The ingress/egress easement provides marina users access to the public road.
IDAPA 20.03.04.015.03.d

2.1.4. The Applicant currently owns the upland property, the littoral rights, and is the responsible party on the submerged land lease. The Applicant manages the marina such that the property and the marina can is being maintained satisfying IDAPA

20.03.04.015.03.h. App – 007.

2.1.5. The applicable elements under IDAPA 20.03.04.015.03 are satisfied beyond a preponderance of the evidence.

2.2. Application of the Public Trust Doctrine. Once the encroachment standards are met, the board will need to evaluate the approval in the light of the Public Trust Doctrine. I.C. 58-1201. The Public Trust Doctrine places the beds of navigable waters of the state in the state's control with the right to dispose of the beds of navigable waters in a way it deems proper subject only to the paramount right of navigation and commerce.

2.2.1. Navigation is the right to use the navigable water of the state by its citizenry. I.C. 36-1601(b). Idaho legislature has defined public navigable waterways as a “*public highway for travel and passage, up or down stream, for business or pleasure, and to exercise the incidents of navigation – boating, swimming, fishing, hunting and all recreational purposes.*” I.C. 36-1601(b), *emphasis added*.

2.2.2. This application asks the board to approve a request to conduct commercial activity that directly benefits the citizenry's right and ability to access the State's water ways. The approval of this application will promote navigation as defined by the legislature. It will not hinder the navigability of the Spokane river, instead it will provide access to the water for boating, swimming, fishing, hunting and all other recreations purposes. App – 001 at 34.

2.2.3. The objection filed, precipitating the current public hearing, makes the assertion that providing opportunity for the people of Post Falls and the neighboring community with access to the navigable river will create a danger. The area surrounding the existing marina is in a no wake zone, where all boaters are required

to be underway at speeds that do not create a wake. If the assertion is that no additional members of the public (boaters) should be allowed to use the river or thereby Coeur d'Alene Lake, their comments are in direct conflict with the Public Trust Doctrine and the mandate provided by Idaho's legislature.

2.2.4. Approval of the conversion of the commercial marina to commercial marina with some private moorage is consistent with the Public Trust Doctrine.

3. Commercial Marina (with private moorage) Reconfiguration

3.1. The reconfiguration of the commercial marina, buy itself, does not require completion of the application process. IDAPA 20.03.04.020.05.b. There the administrative code says, the rearrangement of a community and commercial navigational encroachment may not require a new application for an encroachment permit if the changes are only internal. In consultation with IDL, the plan should be reviewed to see if the "overall footprint" changes in dimension or orientation. IDAPA 20.03.04.020.05.b.i, and if the entry or exits of the facility change. IDAPA 30.02.04.020.05.b.iii. Here the "overall footprint" is not changing. The encroachment permit identifies the area as running from the "Bulkhead at 2128' leading to 3'x 15' ramp to 9'x160' walkway with 808'x8 dock enclosing 7 wings have 168 slips; 60' x 24' cruise boat landing; 24' x 38' ship store with fuel system including a sealed sump and liquid sensors over the fuel line and dispensers; swim area to the east of marina; [log boom/piling] southwest of marina; Kootenai County Sherriiff Department attached dock, see L-95-S-5320". App – 002 at 1).

3.1.1. The reconfigured commercial marina with some private moorage will fit within the "overall footprint" of the existing commercial marina. App – 001 at 5. Public dock space and the ship store dock will not extend past the log boom.

3.1.2. The proposed dock reconfiguration provides for a twenty-five-foot (25') buffer to the littoral line to the adjacent property to the southwest and three hundred ninety feet (390') to the littoral line to the property to the northeast. The General Encroachment Standards rule that imposes a rebuttable presumed adverse effect of a commercial navigational encroachment that is closer the twenty-five feet (25') to an adjacent littoral rights line will not apply here.

3.2. Economic benefit resulting from the reconfiguration. There is an increased economic benefit to be had for all parties involved (IDL, Applicant and the public) after the proposed reconfiguration of the marina.

3.2.1. The current submerged land lease has a base rental amount payable by Applicant to IDL. In addition to the base rent the Applicant is required to pay 1% of the gross receipts from the Ship Store, and 3.75% of the gross receipts of the commercial marina. An increase in the size of the marina operation will provide benefits to IDL, the public and the Applicant. APP-006 at 4

3.2.2. IDL will receive increased rental payment based on marina operations revenue.

3.2.3. The public will have greater access to the water of Idaho from the increased offering of moorage slips, which are in limited supply on Lake Coeur d'Alene.

3.2.4. The Applicant benefits from economic opportunity of operating the marina business with increased capacity.

3.3. An application for a commercial marina reconfiguration is required where the reconfiguration includes the conversion of the commercial marina to a commercial marina with some private moorage.

3.4. The burden of proof and standard of proof for a reconfiguration of a commercial dock, in

and of itself is satisfied.

- 3.5. An application for a commercial marina reconfiguration is required where one or more nonnavigational aids will be moved. See application requests 3 and 4 moving the nonnavigational aids, namely Sherriff's boat garage and Applicants ship store below.

4. Relocate Sherriff boat house

- 4.1. An application for commercial marina reconfiguration is required where one or more nonnavigational aids will be moved. A boat garage is considered a nonnavigational encroachment. Applicant currently has an existing, permitted boat garage that is used by the Kootenai County Sheriff's Department for the storage of emergency vessels and quick access to the Spokane River and Lake Coeur d'Alene. The previously permitted boat garage is maintaining its existing footprint and will be relocated inside of the marina (App – 001 at 5).

- 4.2. Standard for Approval of Nonnavigational Aid. 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 public. Approval under these circumstances is authorized only when consistent with the public trust doctrine and when this is no other feasible alternative with less impact on public trust values.

- 4.2.1. The Sherriff's boat house clearly provides a major social benefit. Quick, reliable access to the water for emergency services is a major social benefit. Reconfiguration of the commercial marina is an economic and social benefit. The reconfiguration will displace the Sherriff's dock and boat house from its current location and will necessitate the relocation of the boat house. These circumstances are consistent with

the Public Trust Doctrine.

4.2.2. StanCraft entered a memorandum of understanding with the Kootenai County to assist in providing emergency services. App – 001 at 35 – 38. Placing the Sheriff's boat Garage at the Applicant's marina (a StanCraft affiliated marina) at the west end of the Spokane River helps fulfill the obligation under the memorandum of understanding, and promotes safety on the water ways.

5. Relocate ship store.

5.1. Movement of the ship store is directly related the reconfiguration of the commercial marina. App – 001 at 5, 6, 8, 9, 10, and 11. The ship store is a nonnavigational aid and the standard for its approval will be considered in situations involving major environmental, economic, or social benefit to the general public, and when the approval is consistent with the Public Trust Doctrine. IDAPA 20.03.04.030.02

5.1.1. The request by Applicant is to keep the ship store in the same position, relative to the end of the commercial marina. The ship store is currently on the end of the commercial marina dock with easy access to boaters and helps create flow of boating traffic.

5.1.2. The area in which the marina is located on the river is a no wake zone at the far west end of the Spokane River. Just to the east of the marina and the future location of the ship store are buoys marking the end of the no wake zone. Boats often fail to slow as they enter the no wake zone coming from upriver. Reconfiguring the commercial dock and relocating the ship store to the corner of the commercial dock will provide a visual cue and reminder of the no wake zone. Having this visual cue will improve safety for the inhabitants of the area around the marina and within the

no wake zone.

5.1.3. Moving the ship store to the end of the newly reconfigured dock will provide better flow for the boating public after mooring their boat at the public slip space.

5.1.4. The size of the ship store will increase with the reconfiguration allowing StanCraft to provide more services, employ more people and increase revenue from added customers. The increase revenue for marina operations increases rent payable to the state base on the terms of the current lease. App – 007.

5.1.5. Location of the reconfigured dock, extending to current overall footprint, out to the log boom, is consistent with the current line of navigability. The log boom is a defined boundary of the existing encroachment permit. The line of navigability is established to the south of the log boom. Moving the ship store and the reconfigured commercial marina out to the encroachment boundary, the line of navigability maximizes the already encumbered submerged land, and increases revenue to the state of Idaho without having to expend any additional resources. The Public Trust Doctrine balance test is satisfied.

CONCLUSION

Given that the standards set out in IDAPA 20.03.04 as outlined above are satisfied, Applicant respectfully requests that the Hearing Officer recommend approval of Applicant's application for an IDL encroachment permit.

Because the record for this matter remains open, Applicant respectfully reserves the right to supplement, clarify, or modify its statements based on the availability of information.

DATED this 9th of December, 2024.

APPLICANT

414 PF Hospitality, LLC

A handwritten signature in blue ink, appearing to read "W. S. Hislop", with a long horizontal stroke extending to the right.

Wm. Scott Hislop
Legal Counsel, Project 414, LLC