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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’  
CLOSING STATEMENT**

The Idaho Department of Lands (IDL), by and through its counsel of record, John Richards, and in accordance with the *Final Scheduling Order* issued December 23, 2024, submits the following Closing Statement for the above-entitled matter.

**I. BACKGROUND**

IDL incorporates by reference the factual and procedural background in its Pre-Hearing Statement into this Closing Statement. *See* IDL-019 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 December 19, 2024, a public hearing was held at Coeur d’Alene High School. After the Applicant and IDL presented their material, the public was invited to testify. Numerous members of the public with interests in neighboring properties along the Spokane River provided

public testimony at the hearing. The public hearing was recorded via Zoom and via stenographic means. A site visit of the proposed project area was conducted on December 20, 2024 Which was attended by the Hearing Officer, John Richards representing IDL, Scott Hislop representing the Applicant, and objectors Scott Scofield, Sheryl Scofield, and Jose Jara. The Hearing Officer audio recorded the site visit and took pictures as the Applicant showed the existing encroachment and explained the proposed encroachment in the Application. Written comment remained open until December 27, 2024 and IDL received numerous written comments subsequent to the public hearing.

IDL would like to make one factual correction to the record regarding the number of slips in the proposed encroachment. At the public hearing, the Hearing Officer requested clarification on the number of slips the proposed project would add to the currently permitted commercial marina. Public Hearing Transcript at 98-100. Based on review of the information in the record, the Applicant is proposing to add an additional **127** slips for a total of **295** slips for the proposed project. The current permit authorizes 168 slips. App-002-03. The Application contains a summary of the number of proposed slips and a breakdown of which will be private and public. IDL-002 at 8. This summary proposes 99 private slips and 185 public slips for a total of 284 slips. *Id.* However, this summary fails to account for 11 slips on the R Dock adjacent to the proposed boat store. Thus, including the 11 slips on the R dock the application calls for 110 private slips and 185 public slips for a total of 295 slips. *See* IDL-037 Supplemental Map. This number lines up with the total slips depicted in the application. IDL-002 at 9. Thus, the proposed project proposes to add 127 slips to what is currently authorized for a total of 295 slips.

## **II. APPLICABLE LEGAL PROVISIONS AND JURISDICTION**

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

See IDL-019 Pre-Hearing Statement at 3-10.

In addition to the substantive provisions identified in IDL's Pre-Hearing Statement, it is of paramount importance to understand the scope of IDL's jurisdiction and authority regarding applications for encroachments over navigable waters. Idaho Courts have recognized that "[a]n agency must exercise any authority granted by statute within the framework of that statutory grant. . . . It may not exercise its sub-legislative powers to modify, alter, enlarge or diminish the provisions of the legislative act which is being administered." *Roberts v. Transportation Dep't*, 121 Idaho 727, 731–32, 827 P.2d 1178, 1182–83 (Ct. App. 1991), *aff'd*, 121 Idaho 723, 827 P.2d 1174 (1992)(internal citations omitted). Through the Lake Protection Act, IDL, acting on behalf of the State of Idaho Board of Land Commissioners, has the specific power through the Lake Protection Act (LPA) 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. Thus, all considerations and actions taken by IDL in this application process must be derived from authority granted in the LPA. As discussed in more detail herein, some matters have been raised in this application process that fall outside of the authority granted to IDL and would not be appropriate for IDL to address. Lastly, the final decision must be based on information contained within the record. *Kaseburg v. State, Bd. of Land Comm'rs*, 154 Idaho 570, 577, 300 P.3d 1058, 1065 (2013)

### **III. STANDARDS FOR DECISION**

The LPA states that the operative standard for a decision on the encroachment application shall 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 Department] shall grant the permit." IDAPA 20.03.04.30.10; *See also* I.C. § 58-1306(d). The proposed project must also comply with all general requirements for applications

for encroachments and applicable specific requirements for a commercial marina. *See* IDAPA 20.03.04. These requirements are identified in IDL's Prehearing Statement and are discussed in more detail here, as necessary.

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 (fuel station building, and fuel lines and dispensers) 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**

##### **A. Littoral Ownership.**

*See IDL-019 Pre-Hearing Statement* at 11.

##### **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/Square Footage Ratio.**

*See* IDL-019 Pre-Hearing Statement at 11.

IDL was asked at the public hearing to address a comment to clarify whether the proposed encroachment is subject to square footage limitation under the IDAPA Rules in relation to the shoreline length of their littoral parcel. Public Hearing Transcript 62. In this circumstance there is no applicable limitation on square footage for the proposed project. The only square footage limitation under the applicable IDAPA rules applies only to community docks and limits the square footage to “the product of the length of the shoreline multiplied by seven (7) square feet per lineal feet or a minimum of seven hundred (700) square feet.” IDAPA 20.03.04.015.02. Since the proposed project is a commercial marina and not a community dock, the square footage ratio limitation does not apply. Rather, the standards specific to commercial marinas under IDAPA 20.03.04.015.03 apply. Commercial marinas are subject to specific ratios regarding public-to-private moorage and available parking-to-moorage, but are not subject to a ratio of square footage-to-shoreline length. IDAPA 20.03.04.015.03(a),(c).

### **D. Line of Navigability.**

*See* IDL-019 Pre-Hearing Statement at 11-12.

During the public hearing, some questions arose as to whether the commercial marina would affect the location of the line of navigability (LON). Public Hearing Transcript at 62-63. As mentioned in IDL’s Pre-Hearing statement, commercial navigational encroachments do not set the LON. *See* IDL-019 Pre-Hearing Statement at 11-12. This is evident from the fact that the IDAPA Rules allow commercial navigational encroachments and community docks to extend *beyond* the LON *only* if authorized by IDL to do so. *See* IDAPA 20.03.04.015.13(d). If commercial encroachments set the LON, then there would be no need for them to receive approval to extend

beyond it. Community docks and commercial facilities typically extend much farther out into the lake than a residential dock and often extend beyond the LON. However, long commercial facilities and community docks typically do not set the LON. In these circumstances, the LON is typically set by the existing permitted non-commercial and non-community encroachments and, while commercial encroachments may be permitted to extend beyond that established LON, they do not alter it.

In this specific area, the best evidence of the LON are the single-family docks located east of the proposed project, and which are visible in aerial photographs. *IDL-002* at 30; App-008-11. The LON is set by the waterward ends of these permitted encroachments and remains generally the same distance from shore as you move westward towards the project. *Id.* There is a community dock located westward of the proposed project in front of the Greenview Condominium property. Public Hearing Transcript at 164-65; IDL-002 at 30. However, like commercial navigational encroachments, community docks must also receive approval pursuant to IDAPA 20.03.04.015.13(d) to extend beyond the LON and they do not alter or otherwise set the LON. Given the nature of the area and the existing encroachments, it appears that the existing commercial marina extends beyond the LON and the proposed project would also extend beyond the LON. *Id.*

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 IDAPA 20.03.04.015.13(d).

#### **E. Distance from Littoral Lines.**

See IDL-019 Pre-Hearing Statement at 12-13.

As described in IDL's Pre-Hearing Statement, the Application shows at least a 25 foot buffer between the westernmost dock and the littoral line and therefore no presumption of adverse effect to littoral rights arises under IDAPA 20.03.04.015.13.e. *Id.* Concerns were raised at public hearing and in written comments that the proposed encroachment may adversely affect the littoral rights of Greenview Condominiums to the west of the proposed project. Public Hearing Transcript at 101-103; *e.g.* PC-022, 35,47, 50-51, 66, 72, 74-78. Before analyzing whether littoral rights may be impacted, it's important to first define what littoral rights are. Littoral Rights are:

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.

IDAPA 20.03.04.010.32. These littoral rights are associated with the littoral zone which is defined by littoral lines which are:

Lines that extend waterward of the intersection between the artificial or ordinary high water mark and an upland ownership boundary to the line of navigation. Riparian or littoral right lines will generally be at right angles to the shoreline.

*Id.* at .34. The Idaho Supreme Court has described littoral rights more plainly as "the right of access to the water, and, subject to state regulation, the right to build wharves and piers in aid of navigation. *Newton v. MJK/BJK, LLC*, 167 Idaho 236, 243, 469 P.3d 23, 30 (2020). Therefore, impacts to littoral rights must be impacts to a neighboring littoral rightsholder's littoral zone and their ability to access the water or to build or use navigational aids.

In this matter, public comments raised concerns that the proposed project would place docks in front of shoreline belonging to Greenview. *e.g.* PC-0036, 47, 50, 66. However, the Application and materials within the record show that the westernmost docks will be maintain a 25 foot buffer from the littoral line of Greenview and thus would not be constructed on shoreline belonging to Greenview. IDL-002 at 5-6. Additionally, it appears that the depicted littoral line in

the Application property extends at a right angle from the shoreline waterward. *Id.* If the application is approved, the Applicant will be required to construct the docks in accordance with the application and any construction that does not maintain the 25 foot buffer or crosses over the littoral line would be a violation. However, the project as proposed does not appear to include any construction on or in front of shoreline belonging to Greenview nor does it appear to encroach into Greenview's littoral area. There does not appear to be evidence in the record demonstrating that the proposed project will adversely impact Greenview's ability to access the water within their littoral area or their ability to construct navigational aids within their littoral area. It does not appear from the record that the proposed project would adversely affect any neighboring littoral rights.

**F. Signature Requirement.**

*See IDL-019 Pre-Hearing Statement at 13.*

**V. 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.

IDL's Pre-Hearing statement analyzed the requirements for a commercial marina based on the summary in the application of 99 private slips and 185 public slips. IDL-002 at 8. IDL-

019 at 14. While those numbers did not reflect the 11 R Dock slips, the analysis remains the same when those slips are considered. IDL-019 Pre-Hearing Statement at 13-14. As mentioned hereinabove, the correct number of slips, including the R Dock, is 110 private slips and 185 public slips for a total of 295 slips. IDL-002 at 9; IDL-037 Supplemental Map. With 110 private slips and 185 public slips, the application still satisfies the 50/50 ratio for private to public moorage spaces of IDAPA 20.03.04.15.03(a). Additionally, the application states there are currently 228 upland parking spaces available for the moorage in the marina, which is still sufficient to satisfy the parking to moorage ratio required under IDAPA 20.03.04.15.03(c) when considering the additional 11 private slips of Dock R. See IDL-02 at 25. Pursuant to IDAPA 20.03.04.15.03(c), the proposed project requires 110 parking spaces for the 110 private slips and 93 parking spaces for the 185 public slips for a total of 203 required parking spaces. According to the application, there currently exists 228 parking spaces available for the moorage. IDL-002 at 25. Therefore, the proposed project satisfies the parking to moorage ratio required of IDAPA 20.03.04.15.03(c).

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 still satisfies the 50/50 ratio requirement of IDAPA 20.03.04.15.03(a) when considering the additional 11 private slips on Dock R. 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

In it's Pre-Hearing Statement, IDL requested that the Applicant provide additional information to affirm that the proposed commercial marina would be owned by an entity that would manage the marina, littoral rights, and upland property to determine whether the Applicant

satisfies the requirements of IDAPA 20.03.04.015.03(h). IDL-019 Pre-Hearing Statement at 15. At the public hearing, Applicant addressed this matter and stated that LLC that submitted the application will own the land, be attached to any relevant lease, currently manages the upland property, and would manage the commercial marina and littoral rights. Public Hearing Transcript at 37-39. Thus, it appears that the Applicant satisfies the requirements of IDAPA 20.03.04.015.03(h).

With the additional information regarding compliance with IDAPA 20.03.04.015.03(h), the proposed marina expansion appears to satisfy all the technical requirements under IDAPA 20.03.04.015.03 for a commercial marina.

**Fuel Station Building with Fuel Lines and Dispensers**

As mentioned in IDL's Pre-Hearing Statement, 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, or 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 in conjunction with commercial marina encroachments. In its Pre-Hearing Statement, IDL stated that the Applicant ought to provide additional information regarding the major benefits the public will be provided by these proposed encroachments so that it may be determined whether they satisfy the requirements of IDAPA 20.03.04.030.02. IDL. At the public hearing, the Applicant provided additional information regarding social, economic, and environmental benefits of the Ship Store, including that it clearly and visually signals a No-Wake zone; it provides improved safety and general flow for customers and public getting gas and recreational items; it provides easier and quicker access for recreating public to access food, recreational items, beverage, etc., on the water than on the

upland; increased revenue for the state from increased gross receipts; increased revenue for the Applicant and Post Falls; it will allow for more efficient service of customers; it has been and will continue to be a pipeline for young talent providing jobs and exposure to business to younger people in North Idaho for 15 years; and utilizing existing connections to fuel lines to minimize unnecessary impact and risk. App-008-22; Public Hearing Transcript at 29, 32-35. Thus the applicant has provided information regarding benefits specific to this proposed Ship Store which seem to align with the general benefits provided by Ship Stores attached to commercial marinas. As mentioned, Ship Stores, fuel lines and dispensers are often found to provide a major benefit to the general public through economic and social factors and are regularly approved in conjunction with commercial marina encroachments.

**Marine Sheriff Boat Garage Relocation**

*See IDL-019 Pre-Hearing Statement at 15.*

**VI. IDL'S ANALYSIS OF COMMENTS**

*See IDL-019 Pre-Hearing Statement at 16-17.* In addition to the comments addressed in IDL's Pre-Hearing Statement, additional matters were raised in subsequent written comments submitted to IDL and in public testimony at the public hearing. These specific matters are addressed in more detail below.

**Reconfiguration**

At public hearing, a question arose as to whether the proposed project constituted a reconfiguration under IDAPA 20.03.04.020.05(b). Public Hearing Transcript at 64-66. Applicant has characterized the project as a "reconfiguration." Public Hearing Transcript at 24,25-26,29-30, 35; App-008-19; IDL-023 at 14-15. IDL does not consider the entirety of the project to be a reconfiguration. As identified in IDL's Prehearing Statement, the only aspect of the project that

IDL considers a “reconfiguration” is the relocation of the Sherriff’s boat garage. IDL-019 Pre-Hearing Statement at 15.

Regarding reconfiguration, IDAPA Rules provide that a “[r]earrangement of ... commercial navigational encroachments may not require a new application for an encroachment permit if the changes are only internal.” IDAPA 20.03.04.020.05(b). In considering whether a proposed change in a commercial marina is a reconfiguration, IDL is required to consider factors such as: “[o]verall footprint does not change in dimension or orientation;” and “[t]he entrances and exits of the facility do not change.” Id. at b(i),(iii).

The Applicant has argued that “overall footprint” of the existing encroachment extends out to the log boom/piling southwest of the marina. IDL-023 Applicant Pre-Hearing Statement at 14. However, the reconfiguration rule applies to a commercial navigational encroachment individually and not collectively to the area encompassed by all encroachments authorized under the permit. In this circumstance, the applicable footprint for reconfiguration of the commercial marina is the physical area which the current 168 slip commercial marina occupies. Because the proposed project exceeds the physical footprint of the current commercial marina, it does not qualify as a reconfiguration and will require a permit to proceed. As addressed by IDL during the public hearing, Department of Lands has not historically considered a freestanding log boom or breakwater to set the footprint for a marina for the reconfiguration rules. Public Hearing Transcript at 65-66. Additionally, the proposed project seeks to change the location of the entrance/exit to the marina which also independently disqualify the project as a reconfiguration under IDAPA 20.03.04.020.05(b)(iii).

Thus, as indicated in IDL’s Prehearing Statement, the only portion of this project that qualifies as a “reconfiguration” is the relocation of the Sherriff’s boat garage. However, the fact

that the proposed project does not qualify as a reconfiguration in no way renders the application insufficient. All this means is that the Applicant must receive a new permit from IDL in order to move forward with the proposed project. If all relevant criteria are met and a permit is warranted, IDL may issue a permit in its final decision which would authorize the applicant to proceed with the proposed project.

### **Notice**

There were many comments presented at the public hearing and submitted to IDL that raised concerns about notice. Public Hearing Transcript at 77-78, 87, 96, 109, 152-53, 163-164, 167; *e.g.* PC-033-42, 46-47, 50-55, 58-60, 62-72, 74-80, 81, 83-84, 87. Some concern was raised regarding notice to adjacent landowner and other concerns raised regarding notice to other littoral owners along the Spokane River. *Id.* See also Public Hearing Transcript at 152-53.

It is important to understand the notice requirements for applications for commercial navigational encroachments and other encroachments under the LPA and its implementing rules. The applicable provision here for the initial notice of the application is IDAPA 20.03.04.030.01 governing Nonnavigational, Community, and Commercial Navigational Encroachments. Pursuant to this provision, “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.” IDAPA 20.03.04.030.01. This requirement was satisfied by publishing notice of the application in the Coeur d’Alene Press, a paper of general circulation in Kootenai County, Idaho, on September 27th and October 4th, 2024. IDL-003. In addition to the initial notice, if a public hearing is requested, IDL is required to publish of the time and place of the public hearing once a week for two (2) consecutive weeks in a newspaper in the county in which the encroachment is proposed. IDAPA 20.03.04.030.05. This requirement was also met by

publishing notice for 2 consecutive weeks in the Coeur d'Alene Press. Neither the LPA nor the implementing rules mandate additional notice beyond publishing notice of the application and hearing in a qualified newspaper. While IDL may elect to notify adjacent landowners, failure to notice an adjacent landowner is not a violation of the IDAPA rules and does not otherwise invalidate proper notice published in a qualifying paper. Additionally, neither the LPA or its implementing rules require IDL to notice all landowners along a water body or all landowners within a certain distance of the project. To do so would be a significant administrative burden on the agency. Rather, notice of the application and of the public hearing is issued more broadly to the entire public, including the other littoral owners on the water body.

Therefore, the record demonstrates that the notice requirements of the LPA and IDAPA were met for this application.

#### **Bottleneck/Chokepoint**

Concerns were raised that approval of the application will result in a 320-foot chokepoint that will negatively impact navigation. PC-058, Public Hearing Transcript at 81, 85, 91-92, 137. It is uncontroverted that the proposed project would narrow the current channel to 320 feet in width. IDL-002 at 38. However, 320 feet is sufficient to still allow safe boat passage and the impacts to navigation and safety ought to be mitigated by the fact the entire area is a No Wake Zone which limits speeds to under 5 miles per hour. Public Hearing Transcript at 19, 24; App-008-12. These impacts to navigation and mitigating factors ought to be considered when weighing the final benefits and detrimental effects of the application.

#### **Regulation of boat traffic/impacts**

Many of the comments provided at the public hearing and submitted to IDL expressed concerns regarding impacts from heavy boat traffic, boat/water safety, dock safety, disregard of boating

regulations, lack of enforcement of boating laws and regulations, and damage to private shoreline property. Public Hearing Transcript at 70-73, 86, 91 93-94, 102-04, 116-117, 134-138, 148-49, 160. *e.g.* PC 016-23, 28-32, 72, 81-83, 86-87.. Moreover, the question was raised at public hearing as to who has jurisdiction to regulate/enforce such impacts. Public Hearing Transcript at 148-49.

Laws do exist in Idaho to protect such values, but they do not fall within the jurisdiction of IDL. The authority to regulate for boating safety is vested in the Idaho Department of Parks and Recreation pursuant to the Idaho Safe Boating Act. See I.C. § 67-7001 et. seq. See also IDAPA 26.01.20.203.05. Primary authority to enforce the Idaho Safe Boating Act rests with the sheriffs and deputy sheriffs of the respective counties in which covered waterways exist. I.C. § 67-7028. The Idaho Safe Boating Act addresses many of the concerns raised in public comment regarding safety and property damage. Examples of such provision include the following:

It shall be unlawful for any person to operate a vessel on the waters of the state of Idaho at a speed or under conditions that *cause any damage to or affects the safety of other vessels, docks, shoreline installations or any other property or person.*

I.C. § 67-7019(emphasis added);

(1) It shall be unlawful for any person to operate any vessel on the waters of the state of Idaho *in a careless or heedless manner so as to be indifferent to any person or property of other persons*, or at a rate of speed greater than will permit him in the exercise of reasonable care to bring the vessel to a stop within the assured clear distance ahead, and whosoever shall do so is guilty of the crime of negligent operation and shall be punished as provided in this chapter.

(2) Negligent operation includes but is not limited to becoming airborne or completely leaving the water while crossing the wake of another vessel at an unsafe distance from the vessel creating the wake; *weaving through congested traffic*; and operating at such a speed and proximity to another vessel, a person, or property of other persons so as to require the operator to swerve at the last moment to avoid collision.

I.C. 67-7017 (emphasis added);

All vessels having in tow or otherwise assisting a person on water skis, aquaplane

*or similar contrivance shall be operated in a careful and prudent manner and at a reasonable distance from persons and property so as not to endanger the life or property of any person or create excessive wake.*

I.C. 67-7024(4)(emphasis added).

It shall be unlawful for any person to operate any vessel on the water of this state in a manner that shall unreasonably or unnecessarily interfere with other vessels or with free and proper navigation on the waterways of the state. Violation of the rules of the road shall constitute interference. I.C. 67-7025.

Thus, laws and authority appear to already exist to address many of the concerns raised in public comment. However, IDL does not have the authority to compel enforcement or compliance with these laws by the general public through IDL's permitting program. Neither the LPA nor its implementing rules provide IDL such authority.

### **Extension**

Numerous comments requested an extension of the application timeline and a second public hearing so that additional members of the public could provide testimony. Public Hearing Transcript at 155-58; *e.g.* PC-033-35, 37-42, 46, 51-55, 59-60, 62-67, 79, 80, 83. As described herein, IDL may only exercise authority within the framework of the statutory grant. *Roberts v. Transportation Dep't*, 121 Idaho 727, 731–32, 827 P.2d 1178, 1182–83 (Ct. App. 1991), *aff'd*, 121 Idaho 723, 827 P.2d 1174 (1992)(internal citations omitted). Once an application is submitted, IDL is bound by statutory deadlines in which it must publish notice, hold a public hearing, and in which it must make a final decision on an application. I.C. § 1306(b),(c). Additionally, IDL does not have power “to modify, alter, enlarge, or diminish the provision of the [LPA]” *Id.* No provision within the LPA or administrative rule provides IDL the authority to unilaterally modify the deadlines within the LPA. Additionally, the rules implementing the LPA require that IDL accept written comments in these application proceedings. IDAPA

20.03.04.030.06. This requirement ensures that members of the public who cannot attend the public hearing in person, still have opportunity to submit their comments to IDL and have them considered as part of the record for the case. While some members of the public felt that more time was necessary for them to consider the impacts of the application, IDL does not have the authority to unilaterally grant requests for a second public hearing or for an extension of time that goes beyond the statutory deadlines mandated by the LPA. Thus, in this instance, the application process must proceed within the timelines required by the LPA.

## **VII. CONCLUSION**

In general, it appears that the proposed encroachment complies with the applicable technical encroachment standards of IDAPA 20.03.04. Regarding the non-navigational encroachments (Ship Store), the assessment will largely be whether the proposed benefits are such that such encroachments are allowable under IDAPA 20.03.04.030.02. The applicant has provided information regarding benefits specific to this proposed Ship Store which seem to align with the general benefits provided by Ship Stores attached to commercial marinas. As mentioned, Ship Stores, fuel lines and dispensers are often found to provide a major benefit to the general public through economic and social benefits.

Since the proposed project complies with the applicable technical requirements of IDAPA 20.03.04, the final decision will largely rest on weighing the benefits of the proposed projects against the detrimental effects. In making the final determination, the benefit, both 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 14<sup>th</sup> day of January, 2025.

IDAHO DEPARTMENT OF LANDS

/s/John Richards

John Richards  
Counsel for IDL

### CERTIFICATE OF SERVICE

I hereby certify that on this 14th 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  <a href="mailto:nelson@stancraft.com">nelson@stancraft.com</a>
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