

Wm. Scott Hislop
Legal Counsel
StanCraft Companies
2936 W Dakota Ave.
Hayden, ID 83835
(208)457-8000
Scott.h@stancraft.com

BEFORE THE IDAHO DEPARTMENT OF LANDS

In the Matter of,

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

Encroachment Permit Application No.
L95S3036N

OAH Case No. 24-320-09

414 PF Hospitality, LLC
Applicant

APPLICANT CLOSING STATEMENT

414 PF Hospitality, LLC, an affiliate of StanCraft Companies (“414 PF Hospitality” or “Applicant”) affirms its Pre-Hearing Statement, its evidence admitted to the record during the hearing and incorporates the Idaho Department of Lands (“IDL”) Pre-Hearing Statement, evidence admitted during the hearing and the testimony provided by Mr. Mike Ahmer, IDL’s regional manager. Based on the Application submitted along with evidence submitted by 414 PF Hospitality, LLC and IDL, the Applicant met the required criteria for application approval as defined by the Lake Protection Act in the Idaho Code and the Idaho Administrative Procedures Act (“IDAPA”).

IV. STATEMENT OF REQUESTED ACTION

414 PF Hospitality, LLC requests the approval of Encroachment Permit Application Number L95S3036N. The encroachment permit application seeks approval of three (3) requested modifications to the existing commercial marina permit (L95S3036M) including 1) Conversion and reconfiguration of a commercial marina to commercial marina with private moorage (IDAPA 20.03.04.015.13 c., d, and IDAPA 20.03.04.015.03), 2) Relocation of Sherriff boat garage (IDAPA 20.03.04.05), and 3) relocation of ship store (IDAPA 20.03.04.030.02). (App – 001)

V. STATEMENT OF LAW AND PROCEDURE

414 PF Hospitality, LLC is the owner of the parcel adjacent to the Spokane River, known as Kootenai County parcel number P4200008001A, commonly known as 414 E 1st Avenue, Post Falls, ID 83854. 414 PF Hospitality, LLC is the littoral rights holder.

A. Authority.

1. The Lake Protection Act (LPA) vests in Idaho Department of Lands (IDL) 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 waters. I.C. § 58-1303. IDL exercised that authority and promulgated a set of rules, including standards by which to approve encroachment permits. IDAPA 20.03.04 et seq. The beds of navigable lakes are the lands lying under or below the natural or ordinary high-water (OHWM) mark of a navigable waterbody. I.C. § 58-1302(b); IDAPA 20.03.04.010.04. All encroachment permits in this matter relate to the lands above the beds or waters of the Spokane River, which flows out of Lake Coeur d’Alene, a navigable lake; and are below the OHWM. Public comment, written or oral, referencing impacts on land or restrictions

to the use the of property landward of the OHWM are not applicable or appropriate for consideration by the hearing examiner.

a. 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). 414 PF Hospitality seeks uses of the beds of navigable waters for a commercial use that will benefit the public and is in compliance with the statutes of the State of Idaho.

b. 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, 251 688 P.2d 260, 263 (Ct. App. 1984) *rev'd on other grounds* 109 Idaho 299, 707 P.2d 410 (1984).

c. 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). 414 PF Hospitality, through its application, the testimony of IDL, the testimony of other government

agencies, the lack of objection by other state agencies, and the presentment of evidence satisfies the standard of proof required to grant the encroachment permits requested.

d. Procedure. Applicant adopts and incorporates the Procedural Background provided by IDL in its Pre-Hearing Statement, section I.B. at page 2. A Prehearing Conference was held via Zoom on December 13, 2024, at 9:00 am PST and 10:00 am MTN. The Prehearing Conference was attended by IDL, the Applicant and a member of the public that objected and requested a public hearing. The public hearing was held on December 19, 2024, attended by IDL, the Applicant and a few of the members of the public, some who provided comment and others that remained silent. A site visit was held, consistent with the scheduling order on December 20, 2024, at 10:00 am PST. The site visit was attended by a representative of IDL, the Applicant, and the public objecting and requesting the public hearing. On December 23, 2024, the final scheduling order was entered setting a date for submittal of public comment, December 27, 2024, filing of closing statements from IDL and the Applicant, January 14, 2025, the recommended order due date, February 7, 2024, and final order due date, February 14, 2024.

B. Concurrence Littoral Lines and Line of Navigability (LON)

1. 414 PF Hospitality concurs with IDL; 414 Hospitality complied with the LPA and general rules of IDAPA in its application. 414 PF Hospitality is the littoral rights owner of the subject parcel and there are no other parcels between 414 PF Hospitality's land and the waterfront. 414 PF Hospitality has sufficient waterfront for the application submitted. The encroachment permit sought requests both navigational and non-navigational aids. The proposed navigational and non-navigational aids extend past the current LON and out to a navigational impediment (an existing log boom). The proposed encroachment will not extend further than an existing navigational impediment.

2. 414 PF Hospitality's commercial marina is in conformance with and in harmony with the LON. IDL states the LON is set by length of the permitted encroachments in the area, but a long commercial dock does not set the LON. IDL Pre-Hearing Statement at 11 and 12. IDL goes on to say that it is typical for commercial encroachments to go beyond the LON and "the 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." *Id.* 414 PF Hospitality's request for reconfiguration places the marina 25 feet away from the littoral lines of the neighboring property to the west, and 390 feet from the littoral lines to the east. There are no unmet or unsatisfied encroachment requirements imposed by IDAPA 20.03.04.015.13(d) for approval of 414 PF Hospitality's marina reconfiguration to extend beyond the LON.

III. 414 PF HOSPITALITY, LLC SATISFIED THE BURDEN OF PROOF FOR EACH ENCROACHMENT REQUESTED

IDAPA 20.03.04.015 provides the encroachment standards, general and specific, for the encroachments requested by 414 PF Hospitality, LLC, in its application. IDAPA 20.03.04.030.10 lays on and directs a balance test between private property rights whereby when, as in this case, the benefits, public and/or private, derived from allowing the applied for encroachments exceed the detrimental effects, the permit will be granted.

414 PF Hospitality's application is in conformance with the Public Trust Doctrine, satisfies the standards set out in IDAPA 20.03.04.015.07, .08, .11, .13, and IDAPA 20.03.04.030.02 overcoming the preponderance of the evidence, burden of proof and persuasion of the balance test in IDAPA 20.03.04.030.10 through its application, testimony and evidence in the record, both generally as a packaged application and specifically for each encroachment requested. As a

completed permit application, 414 PF Hospitality's application and evidence showed it is mindful of the Public Trust Doctrine, balancing the economic responsibilities of owning and operating a commercial marina and the rule that ensures all citizens of the state can use the waterways for boating, swimming, fishing and all recreational purposes. See I.C. § 36-1601(b), § 58.1203(3). The primary concern from neighbors, potentially relevant to this application, is the increased traffic generated from additional boat slips and the impact on their ability to enjoy their riverfront property.

414 PF Marina's 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 the application will promote navigation as defined by the legislature, the right of Idaho's citizens to enjoy, recreate and use the navigable water owned and managed by the state. I.C. § 36-1601(b). The commercial marina reconfiguration will allow for citizenry, not just those wealthy enough own waterfront property, to access the water for boating, swimming, fishing, and all other recreational purposes. APP – 001 at 34. Those living on the water will also benefit by additional day slips for boaters to tie up to and amenities at the ship store for all, waterfront property owners and those visiting the water from other parts of the community.

414 PF Hospitality met its burden of proof for the standards required for each of the three (3) requests in the encroachment permit.

A. Reconfiguration of a Commercial Marina to Commercial Marina with Private Moorage.

1. The Board can find in favor of 414 PF Hospitality and grant the encroachment permit converting the commercial marina to a commercial marina with some private moorage, because all applicable elements of the standard in IDAPA 20.03.04.015.03 are in the record.

a. IDAPA 20.03.04.015.03.a requires that where a commercial marina has some private moorage, at least fifty (50%) percent of the total slips must be available for public rental (for a period up to a year and renewals not to exceed 1 year) or public use without cost. The Applicant shows that the conversion of the marina from a commercial marina to a commercial marina with private moorage, in conjunction with the marina reconfiguration, provides more than fifty percent (50%) of the slips will be available for the public. IDL – 037. See also public record document 037. All leases for moorage will not be greater than one (1) year and any renewals will not exceed one (1) year. The size and quantity of boat slips available for the public will be of similar quantity and size as the private slips. IDL – 037.

b. The parking requirements set out in IDAPA 20.03.04.015.03.c apply to the Applicant's proposal as Post Falls does not have a parking requirement in conflict. 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-008 at 20. Upon reconfiguration, the marina will have 295 slips. IDL – 037. There are projected to be 110 private slips, requiring 110 parking spots; and 185 public slips requiring 93 parking spaces. The total parking needed for the conversion is 203 parking spaces, which means there are 25 excess parking spots available. See also public record document 037.

c. The ingress/egress easement provides public access to the marina via a public road satisfying the requirement set to allow marina guests to access the marina via a public road. IDAPA 20.03.04.015.03.d and APP - 001 at 25.

d. 414 PF Hospitality, the Applicant, owns the upland property, littoral rights, and is the responsible party on the submerged land lease. The Applicant manages the marina such that the property and the marina is being maintained satisfying IDAPA 20.03.04.015.03.h. APP – 007.

414 PF Hospitality, LLC, or an affiliate entity will manage the private moorage if the proposed conversion is approved.

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

4. Commercial Marina (with Private Moorage) Reconfiguration. The reconfiguration of the commercial marina, by 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. The proposed reconfiguration does not change the “overall footprint” when compared to the current encroachment permit (L95S3036M). The encroachment permit area, the “overall footprint” is described to include a. the “Log Boom/piling southwest of the marina”, b. 3’x15’ ramp, 9’x160’ walkway with 808’x8’ dock enclosing seven wings, c. 24’x38’ ship store, fuel system including a sealed sump liquid sensors over the fuel line and dispensers, d. 280’bulkhead/seawall, and e. swim area. App – 008-04.

- a. The reconfigured commercial marina with some private moorage will fit within the “overall footprint” of the existing commercial marina. App – 001-05. Public dock space and the ship store dock will not extend past the log boom.

- b. 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. App – 001-05. 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.

c. After consultation with IDL, the request by IDL and with agreement by 414 PF Hospitality, application was made to cover and include contemplation of change of dimension or orientation. Additionally, request is made to modify the commercial marina to a commercial marina with some private moorage, the latter request does require an application. IDAPA 20.03.04.015.03. Additionally, while making the application for conversion of a commercial marina to a commercial marina with some private moorage, 414 PF Hospitality included the reconfiguration and movement of two non-navigational aids, the sheriff's boat garage and the ship store.

3. 414 PF Hospitality's Application For Reconfiguration And Expansion Complies With IDAPA Applicable Encroachment Standards And Should Be Approved By The Director.

a. 414 PF Hospitality's application is complete. 414 PF Hospitality is the owner of two (2) parcels of land adjacent to the Spokane River, is the holder of an existing encroachment permit, and signed the application which was accepted and stamped complete by IDL. APP 001-01.

b. 414 PF Hospitality provided evidence that the reconfiguration and expansion of the marina is supported by the IDAPA policy, and all elements of the applicable encroachment standards are met. The policy statement gives guidance as what areas should be protected when looking out for the public's health, interest, safety and welfare when considering encroachments. The code draws the Board's attention to protecting property, navigation (the use of the waterway), fish and wildlife, habitat, aquatic life, recreation, aesthetic beauty and water

quality, balanced against the public or private navigational or economic benefit for the encroachment. IDAPA 20.03.04.012.01. The code charges the Board with the obligation to control the use of the lakes and rivers to provide for their commercial, navigational, recreational or other public use. *Id.* The waters are supposed to be used maximizing the public's benefit either through public or private interaction.

1. Here, 414 PF Hospitality has an existing encroachment, and the relevant considerations are for what modifications are proposed and how those modifications are filtered through Idaho's policy. The existing marina footprint includes a large log boom that is a holdover from the commercial use of the logging industry and former log mills on the river. IDL Prehearing Statement at 12. Additionally, the log boom is not maintained by anyone, including the state or any of the parties objecting the application. The existing log boom is therefore an uncontrolled and unmaintained impediment to navigation on the river. IDL Prehearing Statement at 12. Approval of 414 PF Hospitality's application will not allow the extension of an encroachment into the river or the LON beyond the existing impediment. IDL Prehearing statement at 12. It will however, clean up the river, remove dead and decaying logs left over from the logging industry and sawmills. It will provide order to the traffic pattern in the area encumbered by the existing encroachment and the impediment to navigability.

2. The existing marina sits at the west end of the Spoken River, in an area that has been designated as a no wake zone. Meaning boat traffic in this area shall not exceed 5 mph. Public comment was given that the public, boaters presumably from up and down the river as well as from the lake are not obeying the rules of the water. There was no public comment or testimony from IDL, 414 PF Marian, the Sherriff or other sources that infractions were primarily from Marina 33 moorage customers.

3. There was public comment that many people, from up and down the river, anchor in the no wake zone in the bay waterward of the marina, trying to get away from those speeding up and down the river. Anchoring in the bay frustrates the homeowners across the river from the marina, because the boats play music, float, swim and obstruct their view of the bay. Public Comment. An expanded marina with additional day moorage space will provide a place for those anchoring to tie up and provide access to the beach east of the marina. Giving an alternative to anchoring in front of the waterfront homeowners property.

4. Approval of the encroachment permit application cleans up this area of the river, provides recreational opportunities for people up and down the river as well and those that are not fortunate enough to have a house on the river or a lake. It is using the state's resources for the benefit of all the people of the state of Idaho.

5. There is an economic benefit to the state of Idaho in the approval of the encroachment application. 414 PF Hospitality currently has a submerged land lease for the area above which the marina sits. The revenue is based on a flat rate plus a percentage of revenue generated. The increased square footage of the proposed marina reconfiguration for the submerged land lease will increase the base rent and the increased number of slips and ship store will increase the percentage rents received by the state. Approval of the application follows IDAPA policy.

6. There is an everyday citizen public benefit to approving the reconfiguration and expansion application. Currently land on the river or on the lake is very expensive and only a limited number of people can afford to live on the water and have regular access to the water. By increasing the number of slips available under this application more everyday citizens of Idaho have access to the water. They have access to boating, fishing, recreating, enjoying the aesthetic beauty of the lands around the waterbody. There is a need on the

Spokane River for additional boat slips. IDL 025-00008. Even more specific the City of Post Falls is in favor of the application stating that the approval will provide greater access to the people of Post Falls. APP 001-34.

c. 414 PF Hospitality concurs with IDL's analysis of the application's compliance with the LPA rules and standards for commercial marina expansion with private moorage. See IDL Prehearing Statement at 13 and 14. IDL provided specific references to the application and the state code. The 414 PF Hospitality application satisfies above the applicable section of IDAPA 20.03.04.15.03 a-g. Request was made that 414 PF Hospitality provide additional evidence that IDAPA 20.03.04.15.03 h is or can be satisfied. IDL Prehearing Statement at 14. 414 PF Hospitality is the owner of the marina. Prior to approval of the encroachment forming a separate entity to manage and run the private moorage portion of the marina is not warranted. As the owner of the marina, when the encroachment is approved and private moorage is ready for, 414 PF Hospitality will manage and be responsible or will create a special entity for that purpose. APP-008-20. 414 PF Hospitality satisfies the required elements of IDAPA 20.03.04.15.03 a-h.

4. Relocation of Sherriff Boat Garage. In their pre-hearing statement, IDL states that "no new permit need be issued in these proceedings to relocate the Marine Sheriff Boat Garage." IDL Pre-Hearing Statement at 15. The relocation of the boat garage is considered reconfiguration under IDAPA 20.03.04.020.05.b.

5. Relocation of Ship Store. The Applicant proposes to move the ship store due to the reconfiguration of the marina to allow for better traffic flow and service to customers. APP – 001 at 5, 6, 8, 9, 10 and 11. The ship store is a non-navigational aid. The standard for its approval will

be considered in situations involving major environmental, economic, or social benefit to the general public consistent with the Public Trust Doctrine. IDAPA 20.03.04.030.02.

a. The Applicant proposes to keep the ship store in the same location relative to the rest of the marina. The ship store is currently at the end of the commercial marina dock to allow for traffic flow and access to boaters. The ship store is connected to the gas pumps, allowing for the service of boats to fill their gas tanks. The area of the river in which the ship store is located is in a No Wake zone at the far west end of the Spokane River. No Wake zone buoys mark the beginning of the No Wake zone and are located near to the desired location of the ship store. Boats often fail to slow down and adhere to the No Wake zone rules when they are coming from upriver. Public comments indicates that the No Wake buoys east of the marina are not adhered to. Relocating the ship store at the corner of the commercial dock will provide a clear visual cue to slow down as any structure in the water signals boaters to slow down. This additional reminder or visual cue will be installed at no expense to the State or Kootenai County. Adherence to boating rules is a boat driver issue, not a number of boats issue. Having this visual cue will improve safety for the inhabitants of the area around the marina within the No Wake zone.

b. The size of the ship store will increase with the reconfiguration allowing the marina operations to provide more services, employ more people and increase revenue from added customers and offerings. The increase in jobs for local teens, increase in offerings to boaters on the river and increase in revenue for marina operations, increases rent payable to the State based on the terms of the current lease. APP – 007. The ship store's relocation will be located at the end of a commercial dock that is connected to a boardwalk. The proposed boardwalk will replace the current navigational impediment, the log boom. The ship store will not be located further into the lake than the historical log boom. APP- 008 at 23. The location of the ship store in the

reconfiguration will provide better accessibility to gas pumps, visual cues for employees to notice needs of day visitors and provide a spot for visitors, moorage customers and visitors from up and down the river to sit, gather and interact, without mooring in the bay offshore from the neighbors across the river. IDAPA 20.03.04.030.02 allows for the consideration of a non-navigational aid when there is a major environmental, economic or social benefit to the general public.

c. Approval is authorized when consistent with the public trust doctrine and there is no other feasible alternative with less impact on public trust values. There is major social benefit to having a ship store located at the marina for customers and recreators. The ship store with the fuel dispensers allows for recreators to get gas conveniently on the water as well as pick up many recreational items for their safety and enjoyment of the water. The location of the ship store at the edge of the marina allows for the flow of traffic for boaters not in need of any items or fuel as well as those purchasing items and fuel. The convenient location allows for customers to access items and fuel on the water versus having to visit the upland store after parking their boat, securing it and walking down the boardwalk. In addition, there is significant social benefit to the employees of the ship store to be in a covered, air-conditioned building in the hot summer months. This provides much improved working conditions.

d. The revenue generated by the ship store is of major economic benefit to the State of Idaho and the Applicant. The State of Idaho will receive increased rent paid by the Applicant for operational revenue generated from the fuel dispensers and ship store. In addition, the added space in the ship store will allow the Applicant to generate more economic success by offering more to consumers in a convenient location.

e. The public trust doctrine protects the state's natural resources for the use of the public "subject only to the paramount right of navigation and commerce". I.C. § 58-1201(1). The

relocation of the ship store with fuel dispensers provides easier access of fuel for recreators on the river, allowing them to quickly refuel and continue enjoying the resource on the lake. The ship store allows for the navigation of the public on the lake by fueling their vessels and providing any additional equipment they may need for recreation on the lake. The operation of the ship store is commerce, thus satisfying the public trust doctrine.

IV. PUBLIC COMMENT

The participation of the public in a public hearing, through public testimony, is important to help understand the potential impact of a project. The Applicant is grateful of the public's care for the Spokane River and their feedback. The Applicant reminds the Hearing Examiner that the scope of authority for IDL is important when weighing the public's testimony. A few items were brought up in public comment or testimony that can be considered.

The primary concern that precipitated the need for the public hearing, asserts that providing additional opportunity for the people of Post Falls and the neighboring community with access to the navigable river will create a safety danger along the 7 miles upriver and create a choke point accessing the river east of the marina. The area surrounding the existing marina is a No Wake zone, where boaters are required to navigate at speeds that do not create a wake or less than five (5) miles per hour. The Applicant's proposed encroachments allow for additional boaters to enjoy the waterways, but do not, in any way, override the No Wake zone regulation. It is difficult to deduce that additional boats, traveling at speeds that do not create a wake, would pose a greater danger than the existing number of boats. If the assertion is that the addition of boaters to the river through the marina will cause safety issues with boaters upriver and not in the area of the marina then the assertion is misinformed and misplaced. Taking the public comment's assertion that additional boats at the marina will be an unreasonable safety concern takes the position that no future boats

should be allowed on the river. Essentially the river should be closed to any that are not already in a slip (owned or rented) or don't own property on the river. Those objecting based on the number of boats are asking the hearing examiner and the board to place waterfront property owners above the public without considering reasonable alternatives. This argument or reasoning is in direct conflict with the Public Trust Doctrine and the mandate provided by Idaho's legislature.

The public is concerned with the traffic that occurs on the Spokane River testifying to the heavy use of the Spokane River and Lake Coeur d'Alene. This testified traffic indicates that the river is being used by the public, which is the express role of IDL outlined in IDAPA 20.03.04.012.01 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**". *Emphasis added.* The private landowners that live along the lake are not in favor of increased use of the resource they live on, a public resource that belongs to the residents of the State of Idaho. Traffic on the water increases the need for safe boat drivers and requires patience to navigate busy parts of the lake, which can be understandably inconvenient to those who are used to a less trafficked portion of the lake.

The public also consistently mentioned the negative impact of boat wakes on the river and their personal property. The Applicant concurs that wave action can have a negative impact on natural resources and personal property. Kootenai County is also aware of the need for alternatives that will allow boaters to enjoy the lakes and rivers. It is aware of the potential harm that can be done by the operation of boats in a certain way. On July 13, 2021, Kootenai County passed an ordinance relating to county parks and waterways. Therein the county identified excessive wake ordinance, whereby waves resulting from operation of a vessel at speeds that create the most wake, moving quickly and displacing the most water, i.e. plowing in an artificially low bow high manner

to increase or enhance the wake, including using ballasts that cause water to lap over docks piers or other lawfully permitted encroachments were not permitted. Kootenai County code 6.2 et seq. The prohibition of excessive wake was not extended to the Spokane River. *Id.* The applicant argues that safety on the water is not based strictly on the number of boats using the water or the number of boats that have access to the water. Instead, it is the drivers of the boats using the water. Those not following the rules of the water, whether drinking and boating, driving at excess speed, driving too close to another boater, following too closely, those texting while driving or conversing with friends, enjoying a bottle of wine and a charcuterie board are not driving responsibly. The number of boaters is not the issue, the responsibility of the boater is the safety concern.

The Applicant reminds the Hearing Examiner that the jurisdiction relevant to the Application is found in IDAPA and does not relate to noise on the river, traffic on the river, reckless driving of boats and many other comments made by the public.

A secondary concern posed through public comment is that insufficient notice was provided. Here, the Applicant adopts the procedural history in the record. After 414 PF Hospitality's application was received complete, within the requisite time, IDL caused to be published a notice of application for two consecutive weeks in the CDA Press. The code makes mailing notice to littoral neighbor discretionary, and here IDL mailed to each littoral rights neighbor a notice of application. The public has 30 days from first publication to object, file the requisite filing fee, and request a public hearing. That was done. Request was made for a hearing, and a hearing was set and timely held. Inconvenience of the hearing date is not a reason for the obligatory delay or rescheduling. A continuance can be granted by the hearing examiner upon motion of a party. Here the public hearing was closed and the neither the Applicant nor IDL moved for a continuance. The time for public comment was closed on December 27, 2024, and no further

public comment can or should be accepted or considered after the close of public comment. Those objecting to the application received full opportunity to participate in the public hearing process.

V. CONCLUSION

414 PF Hospitality, LLC respectfully requests the approval of encroachment permit number L95S3036N; and a finding that 414 PF Hospitality, LLC proved by a preponderance of the evidence that all commercial marina and nonnavigational encroachment standards are satisfied, and the encroachment is more beneficial than detrimental to the people of the state of Idaho, for the reasons articulated above.

DATED this 14th of January, 2025.

APPLICANT

414 PF HOSPITALITY, LLC



Wm. Scott Hislop

Legal Counsel

CERTIFICATE OF SERVICE

I hereby certify that on the 14th day of January, 2025, I caused the foregoing to be served upon the following via the delivery method noted below:

Idaho Department of Lands John Richards 300 N. 6th Street, Suite 103 Boise, ID 83702 (208) 334-2400 In-House Counsel for Idaho Department of Lands	<input type="checkbox"/> U.S. Mail <input checked="" type="checkbox"/> Email: jrichards@idl.idaho.gov
Idaho Department of Lands Marde Mensinger IDL Program Manager for Navigable Waters 300 N. 6th Street Boise, ID 83720 (208) 334-0248	<input type="checkbox"/> U.S. Mail <input checked="" type="checkbox"/> Email: mmensinger@idl.idaho.gov
Idaho Department of Lands Kourtney Romine PO Box 83720 Boise, ID 83720-0050	<input type="checkbox"/> U.S. Mail <input checked="" type="checkbox"/> Email: kromine@idl.idaho.gov
Merritt Dublin Office of Administrative Hearings P.O. Box 83720 Boise, ID 83720-0104 (208) 605-4300 Hearing Officer	<input type="checkbox"/> U.S. Mail <input checked="" type="checkbox"/> Email: merritt.dublin@oah.idaho.gov
OAH P.O. Box 83720, Boise, ID 83720-0104 (208)605-4300	<input type="checkbox"/> U.S. Mail <input checked="" type="checkbox"/> Email: filings@oah.idaho.gov
Scott and Sheryl Scofield 11927 W. Span Way Rd. Post Falls, ID 83854 <i>Objectors</i>	<input type="checkbox"/> U.S. Mail <input checked="" type="checkbox"/> Email Sherichic91@gmail.com
Jose Jara 325 Simonsen Rd. Post Falls, ID 83854 909-648-4235 <i>Objector</i>	<input checked="" type="checkbox"/> U.S. Mail <input type="checkbox"/> Email
Dick Teich 12155 W Span Way Rd. Post Falls, ID 83854 208-651+4336 <i>Objector</i>	<input checked="" type="checkbox"/> U.S. Mail <input type="checkbox"/> Email

/s/ Mikinzie Ridgewell

Mikinzie Ridgewell, On Behalf of Applicant