

**BEFORE THE IDAHO DEPARTMENT OF LANDS**

In the Matter of  
Application for Encroachment Permit,  
Ringe Family Holdings, LLC  
Brian Ringe  
Applicant.

Agency Case No. PH-2024-NAV-20-001  
OAH Case No. 24-320-02  
**FINAL ORDER**

**I. NATURE OF PROCEEDINGS**

The Idaho Department of Lands (“IDL”), through the State Board of Land Commissioners, “shall regulate, control and may 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 in the Lake Protection Act, title 58, chapter 13, Idaho Code. Idaho Code § 58-1303. The corresponding administrative rules promulgated by the State Board of Land Commissioners are IDAPA 20.03.04, “Rules for the Regulation of Beds, Waters, and Airspace over Navigable Lakes in the State of Idaho.”

On or around May 1, 2024, IDL received an encroachment permit application to build a single-family dock, remodel an existing float home, construct shoreline riprap, and install a water intake line for irrigation filed by Ringe Family Holdings, LLC and Brian Ringe. A hearing was held on July 22, 2024. Deputy Chief Administrative Hearing Officer Leslie Hayes, of the Office of Administrative Hearings served as the duly appointed hearing officer. On August 15, 2024, Ms. Hayes issued a Findings of Fact, Conclusions of Law, and Recommended Order (“Recommended Order”), which contains the following sections: Background, Preliminary Evidentiary Rulings, Findings of Fact, and Conclusions of Law.

As Director of IDL, my responsibility is to render a Final Order pursuant to Idaho Code §§ 58-1305 and 1306, and IDAPA 20.03.04.025.06 and 20.03.04.030.07, on behalf of the State Board of Land Commissioners and based on the record, which I have reviewed in the context of my personal expertise gained through education, training, and experience. I relied on the entire record for this matter, including examining the hearing officer's Recommended Order.

## **II. FINDINGS OF FACT**

I adopt the Recommended Order's Findings of Fact as my Findings of Fact.

## **III. CONCLUSIONS OF LAW**

I adopt the Recommended Order's Conclusions of Law as my Conclusions of Law.

## **IV. ORDER**

I conclude that the hearing officer's Recommended Order is based on substantial evidence in the record, and I adopt the Recommended Order's Findings of Fact and Conclusions of Law as my decision in this matter. I hereby incorporate by reference the Recommended Order's Background, Findings of Fact, and Conclusions of Law into this Final Order. I have enclosed and served the Recommended Order along with this Final Order.

Based on the adopted Findings of Fact and Conclusions of Law, I HEREBY ORDER that the Encroachment Permit Application L96S2671A is APPROVED.

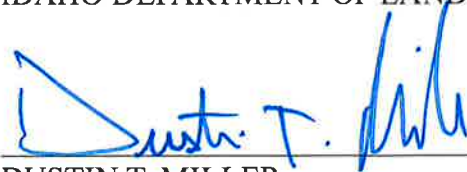
This is a final order of the agency. Pursuant to Idaho Code § 58-1306(c) and IDAPA 20.03.04.030.09, the Applicant or any aggrieved party who appeared at the public hearing has a right to have the proceedings and Final Order reviewed by the district court in the county where the encroachment is proposed by filing a notice of appeal within thirty (30) days from the

date of this Final Order. The filing of a petition for judicial review does not itself stay the effectiveness or enforcement of this Final Order under appeal pursuant to Idaho Code § 67-5274.

IT IS SO ORDERED.

DATED August 22, 2024.

IDAHO DEPARTMENT OF LANDS

A handwritten signature in blue ink, appearing to read "Dustin T. Miller", is written over a horizontal line.

DUSTIN T. MILLER

Director

## CERTIFICATE OF MAILING

I hereby certify that on this 22<sup>nd</sup> day of August 2024, I caused to be served a true and correct copy of the foregoing by the method indicated below, and addressed to the following:

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Kourtney Romine, Workflow Coordinator

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	)	OAH Case No. 24-320-02
Ringe Family Holdings, LLC,	)	
	)	
Brian Ringe,	)	
	)	
Applicant.	)	
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This matter was assigned to Hearing Officer Leslie Hayes on May 23, 2024. A public, in-person evidentiary hearing was set for July 22, 2024. A prehearing conference was held and recorded on July 16, 2024. The hearing was held on July 22, 2024, in Sandpoint, Idaho, at Sandpoint High School auditorium, at 5:00 p.m. Pacific Time. Present at the hearing were Hearing Officer Leslie Hayes; Mike Ahmer, IDL Lands Resource Supervisor; Applicant Brian Ringe and Tyler Ringe; and Objectors Halil and Alyssa Demir. Also present, but who did not testify, were IDL representatives Gwen Victorson, Amidy Fuson and Erik Sjoquist. IDL representatives Marde Messinger, Michelle Anderson and Idaho Fish and Game (IDFG) representative Merritt Horseman attended online via Zoom. Deputy Attorney Allison Olson, counsel for IDL, also attended via Zoom. A member of the public, Eric Eldenburg, attended the hearing and testified. The record for these proceedings closed on July 23, 2024. The hearing was recorded by Zoom and through the Hearing Officer’s iPad.

The Hearing Officer, having considered the matter herein, including documents contained in the Administrative Record as well as the written public comment, makes the following Findings of Fact and Conclusions of Law pursuant to Idaho Code sections 58-1305 and -1306.

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## PRELIMINARY EVIDENTIARY RULINGS

The parties stipulated to all exhibits, including IDL Exhibit 11, which was admitted at the hearing without objection. IDL Exhibits 1-11 are admitted into the agency record.

Pursuant to Idaho Code section 67-5342(3)(d), the Hearing Officer finds that due to the quality of the Zoom recording, the iPad recording is the official agency record for purposes of these proceedings and is the recording to be relied upon in the issuance of the Final Agency Order.

### FINDINGS OF FACT

1. On May 1, 2024, Brian Ringe, on behalf of Ringe Family Holdings (“Ringe”) submitted a completed Application L96S2671A (“the Application”) seeking to build a single-family dock, remodel an existing float home, construct shoreline riprap, and install a water intake line for irrigation. IDL Ex. 2, pp. 1-8.

2. The float home will be constructed on an existing structure that was previously permitted by IDL. Recording at 9:33-9:40; IDL Ex. 1.

3. Previously, in 2021, Ringe had obtained an after-the-fact permit for a previously existing structure which was deemed a float home on the Pend Orielle River (“2021 Permit”). IDL Ex. 1 p.1-7; Recording at 9:15-9:46. It was not a floating structure because it was raised above the water level and had residential living areas. IDL Ex. 1, p. 4. The permit issued for this structure described a 33’x40’ elevated float home totaling 1320 square-feet. Recording at 10:38-10:45.

a. The original float home was constructed before the Lake Protection Act of 1975.

Recording at 9:33-9:40. It was recorded as being there in 1974. *Id.*

b. The original structure was demolished, and this request is to rebuild and modify the original structure. Recording at 10:46-10:50.

c. The 2021 Permit also included a 21’x60’ single slip dock. IDL Ex. 1, p. 1-5.

4. The current float home has a total square footage of 1,320 square feet. IDL Ex. 10, p. 12. The Application seeks to remodel the float home to consist of a two-story structure with 1,306.56 square feet. IDL Ex. 10, p. 13.

5. Ringe is a littoral owner with littoral rights. Recording at 6:58-7:05.

6. Notices to adjacent neighbors were sent on May 3, 2024, including to Halil and Alyssa Demir as well as to Eldenburg Trust. IDL Ex. 4, p. 1-5.

7. The Bonner County Daily Bee newspaper ran advertisements regarding the proposed encroachment from May 7, 2024 to May 14, 2024. IDL Ex. 3, p. 1-2.

8. IDL received the Demirs's objection on May 10, 2024, along with the \$75 public hearing fee. IDL Ex. 6, p. 1-2.

9. The Demirs submitted a request for Permit for Parcel number RP020340000010..20A and cease and desist order RP020340000010A..20A for the years 1974 to 1987 to Bonner County Planning department on May 20, 2024. IDL Ex. 11. Bonner County Planning Department responded to the Demirs's request informing them that the record did not exist. IDL Ex. 11.

10. On June 6, 2024, Halil Demir submitted a letter of objection to the float home, stating that by allowing the float home to be permitted, it would violate his property rights because the height of the structure would "encroach[] on our property view." Dkt. 04 Objector Statement p. 1.

11. The Bonner County Daily Bee ran advertisements for the Public Hearing from June 28, 2024, to July 5, 2024. IDL Ex. 9, p. 1-6.

12. At the hearing, Mr. Ahmer with IDL presented testimony that while the structure owned by Ringe does "not fit neatly" into either a boat garage or float house, the structure is closest to a float house. Recording at 10:09-10:22. Mr. Ahmer differentiated a boat garage as being a

structure that is a three-wall structure with a door meant for parking a boat that does not have residential dwelling, from a float home defined as a structure meant to be used as a stationary water borne dwelling that is raised above the water level. Recording at 13:30-14:00.

13. The proposed structure sits above the water and does not have space for a boat to be parked. Recording at 13:30-14:00.

14. The proposed structure has four walls, not three. IDL Ex. 2, p. 27.

15. No objection was made to the single-family dock, water intake line, or riprap. Recoding at 8:58-9:15; 12:02-18:42; 20:20-23:27; Dkt. 04 Objector's Statement.

16. Mr. Ahmer testified that the primary objection was the addition of the second level. Recording at 9:15; 11:09-11:30; IDL Ex. 10 ("Following phone conversations with both adjacent neighbors, it sounded like the biggest issue involved the addition of a second story to the structure."); Dkt. 06 – Objector's Statement (stating that the structure will interfere with property views).

17. Mr. Ahmer stated that IDL was recommending approval citing IDAPA 20.04.03.015.10(c), which allows the addition of stories to an existing float home.

18. This Hearing Officer finds that objector also has an objection to the structure never being permitted prior to the 2021 Permit.

19. This Hearing Officer finds that no permit existed for the structure prior to the 2021 Permit. IDL Ex. 10 ("The float home was previously permitted on May 5, 2021, through an after-the-fact encroachment permit (L-96-S-2671). It was determined that the float home was originally constructed pre-[Lake Protection Act], based off information from the Bonner County Assessor's office."); IDL Ex. 11 (stating there are no records responsive to Mr. Demir's request for permits for the property from 1974-1987).



20. Mr. Ahmer also testified that it's not uncommon to discover unpermitted structures because not every littoral owner with an encroachment turned in their paperwork in 1974 when Lake Protection Act, Chapter 13, Title 58, first went into effect. Recording at 14:02-14:42.

21. Mr. Demir asked questions regarding his property rights; however, he did not point to any specific property laws. Recording at 14:54-15:40; 22:27-23:03. Mr. Demir offered testimony that he asked IDL about the permit and cease and desist order.<sup>1</sup> Recording at 23:16-24:30. No records were found of either by IDL or the Bonner County Planning Department. *Id.*; IDL Ex. 11, p. 4.

22. The term "boat house" was used repeatedly during the hearing. This Hearing Officer finds that while not defined in IDAPA, the term "boat house" used during the hearing should be interchangeable with float home, which is defined.

23. Ringe testified that the float home was not used much but used it as an overnight vacation spot occasionally. Recording at 30:49-31:23.

24. Eric Eldenburg, a member of the public,<sup>2</sup> testified that the home was not regularly occupied. He lived in the neighboring property since 1963, and he testified that he never witnessed anyone staying overnight there. Recording at 33:05-33:58.

### CONCLUSIONS OF LAW

1. The Idaho legislature enacted the Lake Protection Act ("LPA"), Title 58, Chapter 13, Idaho Code, in 1974 stating:

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 of

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<sup>1</sup> Reference was made by Objector and the public commenter to a "cease and desist order," but it was never established as to whether this order exists, who issued the order, the content, or the relevance to these proceedings. For these reasons, any reference to a "cease and desist order" should be assigned little to no weight pursuant to IDAPA 62.01.01.476 as it would be inadmissible under Rules 401, 403, 602, 802, and 901.

<sup>2</sup> While the Eldenburg Trust was notified of the Application, no objection was submitted, and Eric Eldenburg stated that he was testifying as a member of the public and not on behalf of the Eldenburg Trust or as an objector.

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 therefore has been given as provided in this act.

I.C. § 58-1301.

2. IDL, through the State Board of Land Commissioners, “shall regulate, control and may permit encroachments in aid of navigation or not in aid of navigation on, in or above the beds of waters of navigable lakes[.]” I.C. § 58-1303; I.C. § 58-119(1); *see also Newton v. MJK/BJK, LLC*, 167 Idaho 236, 242 (2020).

3. Through its statutory authority, IDL promulgated Rules for Regulation of Beds, Waters and Airspace Over Navigable Lakes in the State of Idaho. IDAPA 20.03.04.

4. A “navigable lake” is “any permanent body of relatively still or slack water, including man-made reservoirs, not privately owned and not a mere march or stream eddy, and capable of accommodating boats or canoes.” I.C. § 58-1302(a).

5. IDAPA 20.03.04.010.38 defines submerged lands as “[t]he state-owned beds of navigable lakes, rivers and streams below the natural or ordinary high water marks.”

6. While undisputed in these proceedings, this Hearing Officer finds that the Pend Oreille River is a “navigable lake” as defined in Idaho Code and is within IDL’s authority to regulate encroachment permits.

7. IDL’s authority in this matter is limited to encroachments “on, in or above the beds or waters” of Pend Orielle River. *See* I.C. § 58-1301; *see also Byrd v. Idaho State Bd. of Land Commissioners*, 169 Idaho 922, 929 (2022).

8. The single family dock, float home, water intake, and riprap are “on, in or above the beds or waters” of the Pend Oreille River.

9. Encroachments not in aid of navigation or non-navigational encroachments include encroachments not constructed for the primary use in aid of navigation. I.C. § 58-1302(i); IDAPA 20.03.04.010.16.

10. The Application for float home, riprap and water line are non-navigational encroachments. *See* IDAPA 20.03.04.015.07.16.

11. The Application for the single-family dock is a navigational encroachment. *See* I.C. § 58-1302(h); IDAPA 20.03.04.015.07.15.

12. The Application complies with the IDAPA 20.03.04.020.02 signature requirement because Applicant is the littoral owner and has not granted permission for anyone else to permit an encroachment from its property.

13. IDL complied with the IDAPA 20.03.04.030.01 and .03 notice requirements after it received the Application.

14. Application to construct navigational encroachments. Idaho Code section 58-1305 states that applications for construction of navigational encroachments not extending beyond the line of navigability nor intended for commercial or community use shall be processed unless the plans of the proposed encroachment indicate that an infringement may occur then the applicant is required to secure the consent of the adjacent owner.

15. Ringe seeks to construct a single-family dock. There are no objections to this nor are any adjacent neighbors stating that the single-family dock would infringe upon their littoral rights. It is recommended that the permit for the navigational encroachments be granted.

16. Application for non-navigational encroachments. Idaho Code § 58-1306(e) states

that:

In recognition of the 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 . . . [if] the board determines that the benefits, whether public or private, to be derived from allowing such encroachment exceed its detrimental effect, it shall grant the permit.

(emphasis added).

17. There was no objection to the water intake line or the riprap. There is no evidence that the water intake line or the riprap will have an adverse effect upon adjacent property or any interference with navigation.

18. There was an objection to the float home, in that it would interfere with neighboring property rights, and it was a structure that was not permitted prior to the 2021 Permit.

19. The LPA was enacted in 1974 and provides that:

Unless otherwise prohibited, every person seeking a permit for a navigational or nonnavigational encroachment constructed prior to January 1, 1975, shall provide the board with substantive documentation of the age of the encroachment and documentation that the encroachment has not been modified since 1974. For purposes of this section, the phrase “has not been modified” means that the overall footprint of the encroachment on the lake bed has not been expanded in dimension or height or changed in orientation or location.

20. In 2021, Ringe complied with this provision by obtaining the 2021 Permit. While the Demirs’s objection is well taken that the structure was not permitted from 1975-2021, the 2021 Permit constitutes a valid permit for purposes of the LPA. Because the 2021 Permit is not at issue in these proceedings its validity is not appropriately challenged here.

21. As to whether the changes to the float home should be approved, IDAPA 20.03.04.015.10 states that:

- a. Applications for permits to construct new float homes, or to expand the total square footage of the existing footprint, will not be accepted.

- c. Encroachment applications and approved local permits are required for replacement of, or adding another story to, a float home.

22. The Application seeks to remodel an existing structure, add a second floor, and reduce the square footage. This complies with IDAPA 20.03.04.015.10.

23. The Application does not increase the total square footage of the existing structure. The existing structure is 33'x40' for a total of 1,320 square feet. IDL Ex. 10, p. 12. The Application seeks to remodel to a two-story building with a total square footage of 1,306.56 square feet. This complies with IDAPA 20.03.04.015.10.

24. The primary objection is the proposed reconstruction of the float home and the addition of a second story. In the objection, the Demirs argue that by adding a second story, it will infringe on the property view rights.

25. “[L]ittoral rights solely concern the use of lakeside property, not the preservation of property’s scenic view.” *Newton*, 167 Idaho at 245.

26. The Demirs did not present any evidence that the float home will interfere with their littoral rights beyond the view interference.

27. As to whether the structure is a boat garage or a float home, Mr. Ahmer’s testimony is consistent with Idaho law. The structure does not fit squarely within the definition of a boat garage or a float home.

- a. IDAPA defines a Boat Garage as “a structure with one (1) or more slips that is enclosed with walls, roof, and doors, but no temporary or permanent residential area.” IDAPA 20.03.04.010.06.

b. IDAPA defines a Float Home as “a structure that is designed and built to be used . . . as a stationary waterborne residential dwelling and is not self-propelled.” IDAPA 20.03.04.010.17.

28. The 2021 Permit listed the structure as a float home and that decision will not be revisited in these proceedings. The structure is a float home.

29. For the above reasons, it is recommended that IDL grant the nonnavigational encroachment Application.

### **RECOMMENDED ORDER**

Based on the foregoing Findings of Facts and Conclusions of Law, the Hearing Officer recommends that the Applicant’s request be **GRANTED**.

### **RULE 625—RECOMMENDED ORDER NOTICE**

**This is a recommended order of the hearing officer. It will not become final without action of the agency head.** By law, the agency head must issue a final order within thirty (30) days of the close of the evidentiary portion in this case, which occurred on July 23, 2024. *See* I.C. § 58-1306(c). The agency head’s final order in this case must be issued no later than **August 22, 2024**.

If you disagree with this recommended order, you may file “exceptions” with the agency head. Motions for reconsideration filed with the presiding officer will not be considered. You may file any exception you may have to this recommended order, with a supporting brief, directly with the agency head within two (2) business days from the service date of this recommended order, or **no later than August 19, 2024**, unless the agency head sets a different deadline.

If another party has filed exceptions to this recommended order with the agency head, you must file any opposition brief within one (1) business day from the service date of the exception,

or no later than August 20, 2024. No further briefing by any party will be permitted unless the agency head, in their discretion, requests it. Oral argument will not be allowed unless requested by the agency head.

IT IS SO ORDERED

DATED August 15, 2024.

OFFICE OF ADMINISTRATIVE HEARINGS

/s/ Leslie M. Hayes  
Leslie M. Hayes  
Deputy Chief Administrative Hearing Officer

**CERTIFICATE OF SERVICE**

I hereby certify that on this 15th day of August, 2024, I caused to be served a true and correct copy of the foregoing by the following method to:

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