

BEFORE THE IDAHO DEPARTMENT OF LANDS

In the Matter of Application for Expansion)	AGCY. CASE NO. PH-2024-NAV-22-002
of Existing Commercial Facility, etc.,)	
)	OAH Case No. 24-320-06
Rivelle, LLC, dba StanCraft Companies,)	
)	FINDINGS OF FACT, CONCLUSIONS
Applicant.)	OF LAW, AND RECOMMENDED
)	ORDER

This matter was assigned to Administrative Law Judge Merritt Dublin as the Hearing Officer on September 19, 2024. A public administrative hearing was held at North Idaho College on November 8, 2024 at 4:00 p.m. Pacific Time. Present at the hearing were Hearing Officer Merritt Dublin, John Richards, General Counsel for Idaho Department of Lands (“IDL”), Mike Ahmer, IDL Resource Supervisor, Scott Hislop on behalf of Rivelle, LLC, dba StanCraft Companies (Applicant), Nelson Erickson with StanCraft Companies, and approximately 20 members of the public.¹ A Zoom link was provided to individuals who could not attend in-person.

The parties each presented their positions with an opportunity to ask questions of the other party. Mr. Ahmer testified under oath for IDL. At the conclusion of the parties’ presentations, public comment was received by three members of the public also under oath. The hearing was recorded, and the audio recording was made available to the public on the IDL website (<https://www.idl.idaho.gov/lakes-rivers/administrative-hearings/>). All exhibits were submitted without objection and admitted into the record. The Exhibits include IDL’s IDL-001-013 and Applicant’s APP-001. Exhibits provided by members of the public during the hearing were entered into the record as attachments to their respective public comment.

¹ Some members of the public joined the hearing after it began and may not have signed in.

The record remained open for public comment through Monday, November 11, 2025. The parties' closing statements were due and the record closed on November 19, 2024.

After extensive review of the record, the Hearing Officer noticed a status conference to address additional questions and provide the parties an opportunity to supplement the record, if necessary, to fully address the Hearing Officer's questions. The remote status conference took place on December 19, 2024. Mr. Hislop appeared on behalf of the Applicant and Mr. Richards on behalf of IDL. Both parties provided argument and declined to reopen the record to submit additional evidence. Applicant agreed to extend the deadline for IDL's Final Order by 30 days, to January 17, 2025, to allow the Hearing Officer additional time to consider the parties' arguments in her Recommended Order.

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

PRELIMINARY EVIDENTIARY ISSUES

1. The Hearing Officer may consider evidence as allowed by Idaho Code section 67-5251. IDAPA 62.01.01.475. Scott Hislop appeared in this proceeding as legal counsel for Rivelle, LLC. He presented the Applicant's position by way of a PowerPoint and was not placed under oath. The slides were admitted into evidence by stipulation as Applicant-001. Mr. Hislop's presentation, however, cannot be received as testimonial evidence regarding a contested fact. *See* IRPC 3.7. The Hearing Officer therefore does not consider any statements of contested fact introduced solely through Mr. Hislop's presentation as evidence in the record.

2. Additional written comments were received by IDL after the record closed on Tuesday, November 19, 2024. Those materials have not been considered by the Hearing Officer in rendering this Recommended Order as they were submitted beyond the deadline for public comment (November 11, 2024).

FINDINGS OF FACT

1. On August 19, 2024, Applicant Rivelle, LLC, applied for an encroachment permit on a parcel of land physically located at 1742 W. Blackwell Mill Rd., Coeur d’Alene, Idaho, and on the shore of Cougar Bay on Lake Coeur d’Alene. IDL-002-Application² (Live Dkt. 002). (Application L-95-S-6105A) (hereafter “Application”).

2. The Application lists Scott Hislop as the Contact for Rivelle, LLC, and Nelson Erickson with StanCraft Companies as the Agent for the Applicant. The Application includes Rivelle’s Articles of Incorporation which list Robert A. Bloem as a member and the registered agent for Rivelle LLC. There is nothing in the record establishing Nelson Erickson’s agency for Rivelle LLC, other than being listed on the Application as such. Mr. Hislop appeared on behalf of Rivelle LLC as a licensed attorney representing Rivelle LLC and with signatory authority.

3. The Application is a Joint Application for Permits that seeks approval of IDL and the U.S. Army Corp of Engineers for renovation and expansion of an existing dock at 1742 Blackwell Mill Road. IDL-002-Application, p. 20, Blackwell Mill Road Dock and Work Zone Improvement Project Summary (“Narrative”) (Live Dkt. 002).

² IDL Exh. 002 is 48 pages. Each page of the exhibit bears the “Received August 19, 2024” stamp. The pages however also appear to have been numbered at one time but were not transmitted to OAH in order and not all pages are numbered. The Hearing Officer refers to page numbers in the order submitted as Exh. 002 in the Live Docket.

4. StanCraft Construction Companies (“StanCraft”) is an affiliate company of Applicant that currently holds the existing submerged land lease in Cougar Bay near the Blackwell Mill site for dock storage. IDL-002-Application, p. 20, Blackwell Mill Road Dock and Work Zone Improvement Project Summary (“Narrative”) (Live Dkt. 002). StanCraft is engaged in the business of dock storage, repair and assembly, and unspecified commercial marine activities.

5. The primary intention of the project is to provide StanCraft a safe work zone near the dock storage area and to avoid hauling docks and equipment across the lake to other permitted work zones. *Id.* To accomplish this purpose, the project includes six parts: (1) a boat launch, (2) dredging and excavation, (3) rip rap and seawall, (4) a work dock, (5) a Conex storage box on the work dock, and (6) a lease of the surrounding area of the work dock for a year-round work zone.

6. The specific design of the work dock is intended to meet StanCraft’s agreements with an adjacent neighbor, the Cougar Bay Sailing and Chowder Society (CBSCS), who’s marina is located across from the west end of Applicant’s proposed work dock. IDL-002, pp. 37-38; Applicant-001, slide 38.

7. The work dock is designed in an L-shape which includes replacement of the existing dock with a 14’ x 120’ fixed pier adjoined to a 10’ x 425’ floating dock, which adjoins to a 10’ x 475’ floating dock running south and parallel to the shoreline (forming the “L”), and a 40’ x 100’ work dock located inside of the cove of the “L.”

8. Currently in the same approximate area as Applicant’s proposed work dock and work zone is an unpermitted “log raft” or “breakwater.” Applicant-001, slide 38. The log raft has been in place in varying size since at least as early as 1954 serving as log storage for lumber mills. *See* IDL-002, pp. 39-48; APP-001, slides 1 – 5. At one point in time, the logs extended as far as

from the commercial properties to the east of Applicant's parcel to the far west end of the privately owned shoreline (eight or nine properties to the west of Applicant's parcel). *See e.g.*, IDL-002, pp. 40 & 41.

9. Though Cougar Bay is no longer used for log storage for the mills, it is located at the exit point to the Spokane River where logs and debris naturally flow and collect, presenting challenges to the shoreline property owners. Free floating logs are a hazard to navigation if not contained. Over time, shoreline property owners have added free floating logs to the log raft in efforts to contain them. (Audio, 2:34- 2:45; IDL-013, PC-00002). The log pilings, however, are also a hazard and a barrier to navigation. The area westward of the log raft is described currently as non-navigational "due to the proliferation of deadheads and partially submerged logs" that have accumulated over time. IDL-002, p. 37.

10. As part of the proposed project, Applicant agreed with CBSCS to remove the unpermitted log raft and clear the area south of the log boom and future work zone creating a navigable access point at the west end of the work dock, and to maintain it at commercially reasonable levels, at its sole expense. (IDL-002, pp. 37-38). It also agreed to replace the log raft with its work dock and include wave attenuators that will provide the shoreline protection previously provided by the unpermitted log raft and maintain safe ingress and egress to CBSCS Marina. IDL-002, Narrative; pp. 37-38. Applicant included its Memorandum of Understanding (MOU) with CBSCS in support of its Application. IDL-002, pp. 37—38 (CBSCS MOU).

11. Applicant highlights several collateral benefits to the project which are:

a. Allowing StanCraft to provide its marine construction services more efficiently and cost effectively, which will in turn allow it to be more competitive in the industry and pass cost savings on to the public consumers.

b. Decrease commercial traffic at public boat launches and docks.

c. Reduce gas usage and safety risks and increase the public enjoyment of the lake by reducing commercial transportation of docks across the lake to and from other work zones.

d. Enhance safe navigation and aesthetics of the area by replacing a currently existing unpermitted log raft hazard with a permitted encroachment including a breakwater to protect the shoreline, and removing deadheads and debris that are preventing safe navigation in the area of the work dock.

e. Enhance public safety by enabling StanCraft to fulfill its agreement with Kootenai County to provide emergency response services and debris removal in the case of a declared emergency. Applicant contends that by giving it direct access to the lake, that the project will also aid it meeting its agreement with Kootenai County provide emergency response services in the case of a natural disaster that requires emergency waterborne transportation services or debris removal. IDL-002, pp. 33-36 (Kootenai County MOU).

f. Increase state revenue with a greater area of submerged land leased.

IDL-002, Narrative; Applicant-001.

12. The Application is signed by Scott Hislop for Rivelle LLC as Applicant and Nelson Erickson with StanCraft Companies as Agent. Application, p. 1.

13. The Application includes the following documents which are included in the record as exhibits included in IDL-002:

- a. Aerial maps of current conditions overlaid with project dimensions (pp. 5-8)
- b. Engineering drawings prepared by James A. Sewell and Associates LLC (depicting shoreland grading plan and approximate cut/fill limits (p. 9), quantities map (below existing OHWM) (p. 10), shoreland improvements site plan for retaining wall, boat launch and pier (p. 11), dock profile, retaining wall elevation, retaining wall section (p. 12), elevated pier sections and floating dock profile views and retaining wall (p. 13))
- c. Lakebed Profile diagram (p. 14)
- d. Aerial map depicting property lines (p. 15)
- e. Topographical map (p. 16)
- f. Kootenai County, Idaho parcel map of subject property (p. 17)
- g. Aerial map depicting work zone “Responsibility Zone” (p. 18)
- h. Aerial map – Neighboring Commercial operations (p. 19)
- i. Blackwell Mill Road Dock and Work Zone Improvements Project Summary with subheadings of Applicant, History of Location, Purpose and Need, Description of Overall Project, Navigational Improvements, Alternatives Considered, Dock Dimensions, Excavation and Fill Quantities (“Narrative”) (pp. 20-22)
- j. Printout – account information regarding tax parcel (p. 23)
- k. Filed Articles of Organization for Rivelle, LLC and cover letter from Idaho Secretary of State (pp. 24 & 25)

- l. Eurasian Milfoil Mitigation Plan (p. 26)
 - m. Printout “Why this project makes sense” (p. 27-28)
 - n. Commercial/Community/Non-Navigational Encroachment Permit Application signed by Nelson Erickson. (pp. 29-30).
 - o. Kootenai County Sheriff’s Office and Parks and Waterways Office Responses (pp. 31 & 32)
 - p. Kootenai County MOU (pp. 32-36)
 - q. CBSCS MOU (pp. 37 & 38).
 - r. Historical Aerial Photographs, (pp. 39-48)
14. IDL received Applicant’s Application and accepted is as complete on August 19, 2024.
15. The Application is missing the information requested on Blocks 23 through 28 of the Application,³ and contains no documentation giving Mr. Hislop signatory authority or Mr. Erickson agency authority for Rivelle, LLC.
16. IDL published a Notice of Application on September 13 and 20, 2024, in the Coeur d’Alene Press giving notice that “Rivelle LLC made application to expand existing commercial

³ Block 23 includes a box to select “yes” if the “Alteration(s) are located on Public Trust Lands, Administered by the Idaho Department of Lands. Block 24 requests information about the Size and Flow Capacity of Bridge/Culvert and Drainage Area Served. Block 25 asks if the project is located in a mapped floodway and instructs the applicant to contact the flood plain administrator in the local government to determine if a Floodplain Development permit and No-rise Certification may be required. Block 26a is titled “Water Quality Certification” and requests information for IDEQ and EPA concerning the impact to water quality and anti-degradation. Block 26b is titled “Best Management Practices” and asks the applicant to list the Best Management Practices that it will use to minimize impacts on water quality and anti-degradation of water quality, including all feasible alternatives. Block 27 asks the applicant to “LIST EACH IMPACT to stream, river, lake, reservoirs, including shoreline: Attach site map with each impact location.” IDL-002-Application, p. 3 (Live Dkt. 002). Block 28 asks the applicant to “LIST EACH WETLAND IMPACT include mechanized clearing, fill excavation, flood, drainage, etc. Attach site map with each impact location.” IDL-002-Application, p. 3 (Live Dkt. 002).

facility, construct a commercial year-round building area, build a boat launch, dredge, build a seawall with riprap, and have a nonnavigational building for storage on Lake Coeur d'Alene."

IDL-004 & 006.

17. On September 10, 2024, IDL sent a Memorandum giving "Notice of the Application Public Hearing L95S6105A – Rivelle LLC" with the same description to: Idaho Department of Fish and Game, Idaho Department of Environmental Quality, Idaho Department of Water Resources, Idaho Department of Transportation, U.S. Army Corps of Engineers-CDA, Kootenai County Parks, Recreation/Waterways, Kootenai County Marine Division, Kootenai County Building & Planning & Zoning, Kootenai Environmental Alliance, Panhandle Health District 1-Kootenai County, Coeur d'Alene Tribe, Idaho Conservation League and eight adjacent neighbors. IDL-005 & 007.

18. IDL received agency responses from IDEQ (IDL-012), Kootenai County Parks & Recreation (IDL-012), and the Panhandle Health District (IDL-003).

19. Idaho Department of Environmental Quality (IDEQ) responded by letter on October 15, 2024. (IDL-012). IDEQ noted that a DEQ issued § 401 Water Quality Certification would be required for the US Army Corps of Engineers' permit for the dredge and fill activities requested by the permit application. It noted further that the IDEQ's water quality certification is limited in scope to only the "short-term, project-related construction activities and not the long-term operation of the facility." IDL-012. IDEQ recommended permit conditions to address environmental concerns related to the long-term operation of the facility "to mitigate risks to water quality and preserve the beneficial uses of the lake." IDL-012.

20. IDEQ's recommendations addressed making plans to (1) avoid the release of petroleum products by equipment, boats, barges or other machinery, or spills, and hazardous materials related to preserved woods into the lake water; (2) avoid sediment disturbance by propwash and excessive boat wakes; (3) contain and prevent from entering the lake construction and demolition debris from dock construction, repair, or demolition, and (4) limit the spread of invasive species that may result from equipment, materials or vessels entering the water from other water bodies or areas of the lake with invasive species. IDL-012.

21. To these ends, the Application includes a plan to avoid the spread of milfoil; and Applicant contends the Conex box on the work dock will aid in the safe storage and containment of hazardous materials used in its construction business.

22. Kootenai County Parks and Waterways supports the proposed encroachment. On February 28, 2024, its Director, Nick Snyder, wrote to Nelson Erickson:

I was pleased to see that one of our local marine contractors was able to secure access to Lake Coeur d'Alene, which is critical in order to provide marine construction services to our agency, as well as many other government agencies that depend upon your services.

Marine contractors are critical in order for Kootenai County to provide safe and accessible recreation facilities to our area waterways. Notably, marine contractors are uniquely equipped to provide specialized marine services during local emergencies. As one example, North Idaho Maritime, now Rivelle Marine, was called on to retrieve two aircraft and those killed in the unfortunate double plane crash in Lake Coeur d'Alene in 2020.

Kootenai County Parks and Waterways supports the success of all of our local businesses, particularly those that provide critical services that support our mission to provide the best marine facilities in the state of Idaho.

IDL-012.

23. IDL also received written comments opposing the project from eight individuals associated with three adjacent properties to the west of Applicant's parcel, and one written comment from the owner of the adjacent property to the east of the Applicant's parcel, operating as Murphy's Landing. The latter expressed having no opposition subject to its littoral rights easement upon Applicant's property on the eastside of Applicant's dock (where Applicant proposes to excavate and dredge).

24. The adjacent neighbors oppose the project on the following grounds:

a. Applicant's property is not zoned commercial, has never been commercial, and is not appropriate for the proposed commercial use based on its location relative to their residences.

b. Applicant illegally conducted its commercial activities during the summer of 2024 which caused significant disruption to their use and enjoyment of the lake which will get worse if Applicant is allowed to expand its commercial activities. Large tugboats pushing barges from the west caused an unprecedented amount of weeds to be uprooted and float into their lake area and shoreline of their homes (described as solid six feet deep from the shoreline to the end of their docks). The weeds entangled props and people and attracted geese nesting on the weeds resulting in unhealthy amounts of geese feces accumulating in the water and on their shores. These conditions prevented them from swimming and boating along their shorelines and caused them significant expense in clean up. The conditions also prevented the Osprey from accessing fish in a prime fishing area.

c. The commercial activities were also extremely loud and caused noise pollution from large trucks, barges, tugboats and cranes loading materials at the lakeshore

and on the work dock which diminished their enjoyment of their property and scared normally visiting wildlife away.

d. The commercial activities will disturb their view of the lake with large barges and equipment directly in front of their shoreline year-round.

e. The L-shaped dock blocks the current navigational pathway to the lake, which is detrimental for small watercraft, kayaks and paddleboards because the new proposed navigational route to the west exposes them to higher waves and debris on the lake side of the dock and less safe.

f. The L-shape dock will decrease the already limited natural water flow out of Cougar Bay into the Spokane River and thereby increasing sedimentation, trapping surface debris and funneling it onto the shoreline properties.

g. The daily use of large commercial watercraft and increased traffic will disturb the heavily silted lake bottom in the area and negatively impact water quality.

h. The boat ramp and seawall will cause erosion to neighboring shorelines.

i. Applicant has two other options more suitable for a work dock that do not involve operating a commercial construction site in front of their lakefront properties and a more appropriate solution for the unpermitted log raft would be to enforce a three-log maximum (previously mandated by IDL) and to mandate that the landowners who expanded the unpermitted log raft remove the “improvements” and extra logs. This option would also ensure some water flow out of Cougar Bay into the Spokane River, and a natural clean out of the area versus debris piling up on their shorelines.

IDL-013, PC-00001-15; 23-25.

25. A public hearing was held at North Idaho College on November 8, 2024, from 4 p.m. to 8 p.m. A Zoom link was provided for remote viewing.

26. IDL presented testimony through Mike Ahmer, who has been in the position of IDL's Land Resource Supervisor for over ten years. Applicant presented the proposed project through Scott Hislop, counsel for Rivelle LLC, supported by a Power Point Presentation made part of the record as Applicant-001.

27. Public testimony was received from Frank Jessick, Ron Jessick, and William Chapman, all who also submitted written comments. Their public testimony generally reiterated the written submissions with the following additions:

a. William Chapman testified and provided diagrams demonstrating his position that IDL incorrectly determined the Jessick Trust property's littoral line. Audio 2:16 – 2:26.

b. Both Frank and Ron Jessick testified that an environmental specialist who they believed was hired by the Applicant to assess the weed problems complained of by the neighbors told them that the weeds were being pulled up by their roots. They testified that StanCraft's commercial operations during the summer of 2024 was the cause of the massive quantities of weeds collecting in Cougar Bay and along the shoreline, and that the tugboats pulling the large barge through the shallow water to the west was pulling out the weeds and depositing them into the bay daily. They testified that a document exists with the environmental specialist's conclusions. The document was not submitted into the record.

Findings Regarding Benefits of the Project

28. As noted by Kootenai County Parks and Waterways, Applicant provides important services necessary to provide safe and accessible recreation facilities for both private and public use on the lake and there is a general benefit for the companies offering these services to be able to do so in a way that makes business sense to ensure viability of the company and quality service.

29. The proposed encroachment also provides a clear economic benefit to Applicant in the ability to compete with the neighboring commercial enterprises that have direct access to the lake and a work dock by reducing Applicant's costs and increasing its efficiency.

30. The record lacks sufficient evidence for the Hearing Officer to conclude that Applicant's increased ability to compete is a public benefit. The Hearing Officer acknowledges the validity of a free-market theory urged by Applicant. The Hearing Officer finds however that with the current record, it is only a theory. There is no evidence regarding how Applicant is unable to effectively compete without this boat launch and work dock, or how the cost savings would be passed on to the end user (versus increasing Applicant's profit margin). Thus, the Hearing Officer finds that on this record, a public benefit of Applicant's increased ability to compete has not been shown.

31. The Hearing Officer finds sufficient evidence in the record to conclude that the benefits described in paragraphs 16(b), (c), (d), (e), and (f) above are both public and private benefits of the project. IDL and Kootenai County agree that decreasing commercial traffic at public docks and across the lake and efficient emergency response are benefits of the proposed encroachment. While there was some testimony disagreeing, there was no testimony controverting that Applicant's private boat launch would decrease commercial traffic and provide more public

access to the public boat launches, that hauling construction equipment and material across the lake poses safety risks, or that decreased commercial traffic generally would benefit the public. There was no testimony disputing that efficient emergency response is a benefit. All parties and public participants in this proceeding agree that the unpermitted log raft is a hazard and the debris and dead heads in the work zone vicinity renders the area non-navigational, even if they disagree as to the means of addressing the problem.

32. One neighbor who submitted opposition to the project noted that removal of the log raft without replacement of the breakwater could increase waves on the shoreline but might also provide necessary water movement to clean out the debris from the area. (IDL-13, PC-00009). The Hearing Officer, however, finds that the greater weight of the evidence supported that the breakwater function is beneficial. This evidence includes the CBSCS MOU, IDL's testimony, public testimony that the log raft has existed as a hazard for so many years, aerial photographs showing that log rafts serve as breakwaters all along the lake and river, and that rather than remove it, adjacent property owners have added to it and reinforced it. (Audio, 2:34-2:35). Further, the Hearing Officer finds that the County's input and IDL's testimony on these aspects of lake access should be afforded some deference due to the agencies' responsibilities over and/or experience in managing these activities, and afforded greater weight compared to the limited public testimony on these benefits.

33. The Hearing Officer finds that eliminating these hazards while maintaining the breakwater to protect the shoreline is a major public navigational benefit.

Detrimental Effects of the Project

34. The westward adjacent neighbors submitted substantial opposition to the project for its adverse effect on their properties and on the lake value factors as outlined above. Most of the neighbor's objections cannot be considered as a matter of law as discussed below.

35. The primary complaint however that may be considered was the impact on the neighbor's ability to use the lake they contend was due to Applicant's commercial activities and was the unprecedented number of weeds that flowed into their littoral boundaries and onto their shorelines.

36. The Hearing Officer finds the public testimony and written comments describing the weed problem as unusual, unreasonable, and adversely impacting their ability to make use of their littoral properties credible and compelling.

a. The neighbors commented and testified to having owned their homes and experienced the lake for significant amounts of time – decades or more. They described the problem consistently with significant detail including the unusual look of the weeds with pink roots still attached, the volume of weeds being six foot deep and extending the length of their docks, and the extent of the effort required to attempt to remove the weeds in comparison to past issues with weeds. Photographs of the weeds from the summer of 2024 are consistent with their descriptions of the extent of the problem.

b. The neighbors also commented and testified to extensive experience cleaning the shoreline, and that the timing of the weed accumulation was unusual as it would not be expected for weeds to accumulate as early as June. They each testified that the excessive number of weeds accumulated on their properties prevented them or their

family members from accessing and using their littoral properties for swimming, kayaking, and their personal watercraft as they had in many years past.

c. Both Jessick brothers testified to an environmental specialist they believed was hired by Applicant to assess the weed problem informing them that the weeds were being pulled out of the lake bottom by their roots. They testified to observing StanCraft's tugboat hauling a barge pulling the weeds out and depositing them into the bay daily. Frank Jessick also testified that after he filed a code enforcement complaint, StanCraft stopped using the dock for commercial operations and the weed accumulation stopped.

37. Mr. Ahmer testified that weeds can be a problem generally with lake front property in his experience, but did not know the cause of the weeds during the summer of 2024 because he is not a hydrologist. He testified to a time approximately seven years ago when the same neighbors previously complained of excessive weeds.

38. Applicant took no position on the cause of the weeds during the summer of 2024. Applicant acknowledged that increased boat traffic would move water, implying that moving water brings in more seaweed, and stated that if there are any problems, the neighbors could call Applicant who would address any problems "within reason." Applicant confirmed public testimony that it provided labor to assist in cleaning up the weeds during the summer of 2024. Mr. Hislop stated that he had no record of Applicant having hired an expert, but no evidence affirmatively disputing the testimony was entered into the record.

39. The Hearing Officer therefore finds substantial evidence in the record that the neighboring properties experienced an adverse effect from the commercial activities during the summer of 2024.

CONCLUSIONS OF LAW

1. “Pursuant to the public trust doctrine, the State owns in trust the beds and banks of navigable waters for the use and benefit of the public, including the uses of navigation, commerce, and fisheries.” *Byrd v. Idaho State Board of Land Commissioners*, 169 Idaho 922, 928 (2022).

2. As authorized by the public trust doctrine, the Idaho legislature enacted the Lake Protection Act (“LPA”), Title 58, Chapter 13, Idaho Code, 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 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 weighted against the navigational or economic necessity or justification for, or benefit to be derived from the proposed encroachment.* No encroachment on, in or above the beds or waters of any navigable lake in the state shall hereafter be made unless approval therefor has been given as provided in this act.

I.C. § 58-1301 (emphasis added).

3. Under the LPA, the State Board of Land Commissioners regulates, controls and may permit encroachments in aid of navigation, or not in aid of navigation, in or above the beds of navigable lakes, which includes Lake Coeur d'Alene. I.C. § 58–1303; I.C. § 58-119(1); *Lake CDA Invs., LLC v. Idaho Dep't of Lands*, 149 Idaho 274, 277, 233 P.3d 721, 724 (2010); *See also Newton v. MJK/BJK, LLC*, 167 Idaho 236, 242 (2020).

4. The State Board of Land Commissioners exercises this power through the Idaho Department of Lands. I.C. § 58–101. Through its statutory authority, IDL promulgated Rules for the Regulation of Beds, Waters and Airspace Over Navigable Lakes in the State of Idaho under IDAPA 20.03.04.000 *et. seq.*

5. “An 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).

6. IDL’s authority is limited to the beds of navigable waters which in this case mean those lands below the artificial high-water mark. I.C. §§ 58-1202(1) & 1302(b); *see Byrd*, 169 Idaho at 929.

7. Applicant bears the burden to prove that IDL should grant the encroachment permit on the grounds that its Application complies with the LPA standards and IDL encroachment regulations. *See Intermountain Health Care, Inc. v. Board of Cnty. Comm’rs of Blaine Cnty.*, 107 Idaho 248, 251 (Ct. App. 1984), *reversed on other grounds by* 109 Idaho 299 (1985) (burden of proof is on the party challenging government action); *accord*, 2 Am. Jur. 2d Administrative Law § 342. Applicant must meet this burden by a preponderance of the evidence, which means that it must establish material facts are more likely than not. *See Northern Frontiers, Inc. v. State*, 129 Idaho 437, 439 (Ct. App. 1996).

Type of Encroachment

8. The LPA defines navigational encroachments as “includ[ing] 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.” I.C. § 58-1302(h); *see also* IDAPA 20.30.04.10.15 (adding jet ski and boat lifts).

9. The LPA defines non-navigational encroachments as “includ[ing] 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 navigation.” I.C. § 58-1302(i); see also IDAPA 20.03.04.10.16 (adding bridges, utility and power lines, float homes and boat garages).

10. All activities in the proposed encroachment are intended to be used for commercial purposes. Therefore, commercial navigational standards apply to the navigational encroachment aspects of the Application. IDAPA 20.03.04.010.10.

11. The Application requests both commercial navigational and commercial non-navigational encroachments. The parties agree and the Hearing Officer finds that the boat ramp, dredging/excavation, and work dock are commercial navigational encroachments, and the rip/rap, work zone and Conex storage box are commercial non-navigational encroachments.

Technical Requirements

12. The LPA technical requirements for the Application are set forth in Idaho Code section 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.

13. Under IDL regulations, the Application must include:

- a. Lakebed profile in relationship to the proposed encroachment. The lakebed profile shall show the summer and winter water levels.

- b. Copy of most recent survey or county plat showing the full extent of the applicant's lot and the adjacent littoral lots.
- c. Proof of current ownership or control of littoral property or littoral rights.
- d. A general vicinity map.
- e. Scaled air photos or maps showing the lengths of adjacent docks as an indication of the line of navigability, distances to adjacent encroachments, and the location and orientation of the proposed encroachment in the lake.
- f. Total square footage of proposed docks and other structures, excluding pilings, that cover the lake surface.
- g. Names and current mailing addresses of adjacent littoral landowners.

IDAPA 20.03.02.020.05; *see also* I.C. § 58-1302(k). The necessary documentation was submitted with the Application and therefore Applicant meets this requirement.

14. “Only persons who are littoral owners or lessees of a littoral owner shall be eligible to apply for encroachment permits.” IDAPA 20.03.04.020.02. Rivelle is shown by the Idaho tax records to be the owner of the parcel, with the right to apply for the permit and meets this requirement.

15. The Application must be accompanied by the respective fees. IDAPA 20.03.04.020.07.e. In this case, Applicant submitted the required fee for three applications – a commercial navigational encroachment, nonnavigational encroachment, and navigational encroachment beyond the line of navigability, and therefore met this requirement.

16. “If demolition is required prior to construction of the proposed encroachment, then the application must describe the demolition activities and the steps that will be taken to protect water quality and other public trust values.” IDAPA 20.03.04.020.01. Applicant's “updated” dock is replacing the current dock requiring demolition of the old dock. Applicant failed to address

demolition in the Application and does not meet this requirement. However, as recommended by IDEQ, IDL may condition the permit on complying with this provision.

17. Idaho Code 58-1306(a) and IDAPA 20.03.04.020.02. require the Applicant, and if applicable, the Agent of the Applicant, to sign the application. Mr. Hislop signed the Application as legal counsel with signatory authority, and Mr. Erickson, with StanCraft Companies, signed as Agent for Applicant. The Application meets this requirement.

18. The IDL ordered a public hearing which required IDL to publish Notice of the Application and Hearing once a week for two consecutive weeks. I.C. § 58-1306(c). IDL met this requirement.

19. The Application appears incomplete because the information requested in Blocks 23 -28 is blank. However, in its Pre-trial Statement, IDL specified additional information it felt necessary but missing for its analysis, and Applicant had the opportunity to supplement the record or introduce evidence during the hearing. The remaining missing information appears to be required for the US Army Corps of Engineers consideration.

20. The Hearing Officer therefore finds that the Application is in substantial conformance with the technical requirements of Idaho Code sections 58-1306(a), 58-1302(k), IDAPA 20.03.04.020.07.a, 07.b, 07.e.ii & iv., subject to IDL conditions. *See Friends of Farm to Market v. Valley County*, 137 Idaho 192, 198-199 (2002) (finding substantial compliance with county ordinance justified grant of conditional use permit).

Substantive Requirements

21. The applicable substantive LPA standards are Idaho Code sections 58-1301, 1306(b), (c), (d), and (e):

a. 58-1301: IDL should give consideration to “the protection of property, navigation, fish and wildlife habitat, aquatic life, recreation, aesthetic beauty and water quality” and weigh those factors “against the navigational or economic necessity or justification for, or benefit to be derived from the proposed encroachment.” *See also* IDAPA 20.03.04.012.01.

b. 58-1306(b): IDL should consider the “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.”

c. 58-1306(d): IDL should consider “the economic or navigational necessity, justification or benefit, public or private, of such proposed encroachment as well as its detriment effects, if any, upon adjacent real property and lake value factors.”⁴

22. Under the Public Trust Doctrine, IDL must take a close look at “the degree of effect of the project on public trust uses, navigation, fishing, recreation and commerce; the impact of the individual project on the public trust resource; the impact of the individual project when examined cumulatively with existing impediments to full use of the public trust resource, *i.e.* in this instance

⁴ A public member cited Idaho Code section 58-1306(e) in support of opposition to the permit. The provision states in relevant part, that IDL “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.” This standard does not apply because the proposed encroachment extends below the natural or ordinary high-water mark. IDL must apply the statutes as written, and the Hearing Officer sees no reason IDL’s construction is incorrect.

the proportion of the lake taken up by docks, moorings or other impediments; the impact of the project on the public trust resource when that resource is examined in light of the primary purpose for which the resource is suited, *i.e.* commerce, navigation, fishing or recreation; and the degree to which broad public uses are set aside in favor of more limited or private ones.” *Kootenai Envtl. All. V. Panhandle Yacht Club*, 671 P.2d 1085, 1092-93 (Idaho 1983).

23. If following a hearing, IDL determined that the benefits, whether public or private, to be derived from allowing such encroachment exceed its detrimental effects, it shall grant the permit. I.C. § 58-1306(e).

24. Non-navigational encroachments however “will normally not be approved” and “will be considered only in cases involving major environmental, economic, or social benefits to the general public” and approved only “when consistent with the public trust doctrine and when there is no other feasible alternative with less impact on public trust values.” IDAPA 20.03.04.030.02.

Adverse Effect on Adjacent Littoral Property

25. Commercial navigational encroachments, community docks or nonnavigational encroachments are presumed to have 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.

26. Littoral rights are “the right of owners or lessees of land adjacent to navigable waters ‘to maintain their adjacency to the lake and to make use of their rights’ as littoral owners by building or using ‘aids to navigation.’” *Brett v. Eleventh St. Dockowner’s Assoc., Inc.* 141 Idaho 517, 521 (2005) (citations omitted); I.C. § 58-1302; see also *Newton v. MJK/BJK, LLC*, 167 Idaho 236, 243 (2020); *Lake CDA Invs., LLC v. Idaho Dep’t of Lands*, 149 Idaho 274, 284 (2010). When

infringement of littoral rights by the placement of an encroachment is disputed, the IDL must determine the littoral rights and the impact of an encroachment on the littoral rights of adjacent properties. *Brett*, 141 Idaho at 521.

27. Littoral right lines generally “extend waterward of the intersection between the artificial or ordinary high water mark and an upland ownership boundary to the line of navigation. They will “generally be at right angles to the shoreline.” IDAPA 20.03.04.010.34.

28. The “line of navigability” is:

[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.

I.C. § 58-1302(g); IDAPA 20.03.04.010.20.

29. However, where the shoreline is not straight, Idaho courts have held that “no one rule or formula could be invoked to determine the littoral boundaries which would apply in all cases.” *Driesbach v. Lynch*, 71 Idaho 501, 508-509, 234 P.2d 446, 453-54 (1951). “In fact, the only thing that uniformly applies is that courts strive to ensure that the shoreline owners have a ‘proportional share of deep water frontage.’” *Robideaux v. Idaho Dep’t of Lands*, No. CV 2005 8728, 2006 WL 3304476, at *4 (Idaho Dist. Oct. 10, 2006)(citing *Driesbach*, 71 Idaho at 509, 234 P.2d at 454.)

30. Applicant contends, and IDL agrees, that the proposed encroachments fall outside of the 25-foot buffer and therefore the presumption that the encroachment has an adverse effect on adjacent properties does not apply.

31. There is no dispute that the work zone and work dock surrounded by the work zone are outside of the 25 ft buffer from the LON. IDL reviewed the survey and aerial photos depicting

the current permitted encroachments and found that it is somewhat difficult to ascertain the LON because Applicant's property has two commercial marinas to the east and single-family docks to the west. Based on Applicant's survey and aerial maps depicting the property lines, and the respective location of the westward family docks, IDL concludes that the Applicant's LON appears appropriate though it may be closer to the shoreline than depicted because commercial marinas do not set the LON.

32. There is no evidence in the record that the LON has been set previously.⁵

33. Further, the portion of the proposed encroachment that extends parallel to the adjacent properties – the work dock and work zone - are significantly further out than the proposed LON making it unlikely that a different LON would be within 25 feet of them. The Hearing Officer finds that IDL's conclusion regarding the LON is appropriate.

34. Mr. Chapman however disagreed with IDL's determination of the littoral property lines between Applicant's parcel and the Jessick Trust property adjacent westward of Applicant's parcel based upon his reading of Idaho Code. Mr. Chapman acknowledged that he is not an attorney or a surveyor but based his opinion on the plain language of the statute. Mr. Chapman contends that Applicant's existing dock interferes with the Jessick Trust Parcel's littoral rights.

35. IDL finds that the littoral right lines set forth in the Application are appropriate based on review of the survey and aerial photographs depicting the property lines submitted with

⁵ The hearing coordinator's Preliminary Order, adopted as the Director's Final Order, in *In the Matter of Encroachment Permit Application No. L-95-S-5884*, North Idaho Maritime – John Condon, Applicant, references a LON of navigation having been established in that case that may include the LON relevant to this permit. The Hearing Officer however has no information in the record to make this determination. https://www.idl.idaho.gov/wp-content/uploads/sites/2/2020/12/107_20201123_PreliminaryOrder.pdf

the Application, and consideration of the property lines, the LON, and the relative size of the Jessick Trust Parcel and Applicant's Parcel. IDL found that Mr. Chapman's application of the statute results in what appears to be a disproportionate share of deep-water frontage in favor of the Jessick Trust Parcel and against Applicant, and is therefore inconsistent with the case law governing determination of the littoral property boundary.

36. The Hearing Officer finds that IDL's determination of the littoral right lines is appropriate and compliant with the Idaho law regarding determination of littoral right lines. *See* Brett, 141 Idaho at 521-22.

37. The Hearing Officer therefore concludes that the proposed encroachment is not within 25 feet of the Jessick Trust Parcel littoral boundary, and the presumption of an adverse effect on adjacent property does not apply.

38. However, this is not to say that the encroachment may not be shown to have an adverse effect on the adjacent property which IDL must consider; only that the Applicant does not bear the burden to rebut the presumption initially. The Hearing Officer considers the adverse effect on the adjacent property discussed in the Findings of Fact under the specific encroachment conclusions below.

Prior and Surrounding Commercial Uses

39. A great deal of discussion was had during the hearing regarding whether Applicant's dock is commercial or has historically been used commercially. The Hearing Officer finds that the historical use of the property is immaterial to the standards under which this permit must be decided. IDL's jurisdiction is limited to enforcement of the Land Protection Act and

governing regulations. It does not determine zoning. Any approval of this Application is subject to Applicant obtaining necessary state and federal permits.

40. Likewise, neighboring permit approvals are immaterial. Applicant points to its competitors having been issued permits for two boat launches each, and a work dock, and it stresses that it is requesting to do exactly what has already been approved next door to the west. The Hearing Officer notes that the eastward commercial properties are significantly larger and oriented in such a manner that the encroachments appear almost entirely within the littoral boundaries of the properties, unlike Applicant's proposed encroachment that extends past the line of navigability and parallels the shoreline in front of adjacent properties. Regardless, the past actions of IDL employees do not estop IDL from properly enforcing the law in evaluating a current encroachment permit. *See, e.g., Rangen, Inc. v. Dep't of Water Resources*, 159 Idaho 798, 809 (2016) (estoppel does not apply against the state in governmental or sovereign functions).

Boat Launch Ramp

41. The boat ramp is a navigational encroachment. IDAPA 20.03.04.010.015. There are no regulations governing boat ramps beyond the General Encroachment Standards for Encroachments in Aid of Navigation, none of which specifically apply to boat ramps. IDAPA 20.03.04.015.13. IDL's stated policy is not to permit boat launches to private homeowners except in unusual circumstances, but to permit boat launches to government and commercial facilities. (Audio, 18-16-18:42).

42. Thus, under the LPA as set forth in Idaho Code sections 58-1301, 1306(b), (c), (d), and (e), the boat ramp must be approved if Applicant shows that the benefits, whether private or public, outweigh the detriments considering adverse impact on adjacent property and the lake

value factors of navigation, fish and wildlife habitat, aquatic life, recreation, aesthetic beauty or water quality.

43. The is no evidence in the record that the boat launch will have an adverse effect on adjacent property or any appreciable impact on lake value factors that will not be required to be addressed by the U.S. Army Corps of Engineer and IDEQ permits. The boat launch provides both public and private benefits as set forth above in Findings of Fact ¶¶ 28 - 32. *See also* IDL-002, p. 31 (Kootenai County Sheriff’s opinion that “it is necessary to have marine contractors with direct access to the waterways.) After investigation, IDL found the boat launch provides significant benefits, and has historically permitted boat launches for commercial facilities.

44. The benefits of the boat launch exceed its detrimental effects.

Dredging/Excavation

45. Applicant proposes to re-dredge the existing channel between its current dock and the eastward property. IDAPA 20.03.04.015.11 provides:

An excavated or dredged channel or basin to provide access to navigable waters must have a clear environmental, economic, or social benefit to the people of the state, and must not result in any appreciable environmental degradation. A channel or basin will not be approved if the cumulative effects of these features in the same navigable lake would be adverse to fisheries or water quality.

46. The purpose of re-dredging the channel is to ensure sufficient water depth for the use of its boat ramp to avoid disruption to the lake bottom which is a clear public environmental and navigational benefit.

47. The channel already exists, and there is no evidence in the record that the re-dredging would be adverse to fisheries or water quality, or result in any appreciable environmental degradation. And to that end, Applicant is required to obtain a water quality certification from the

Idaho Department of Environmental Quality regardless prior to commencing excavation or re-dredging. IDAPA 20.03.04.020.06.

48. Measuring the benefits of the dredging/excavation, the Hearing Officer finds that the clear environmental and navigational benefits of ensuring sufficient depth for the use of the boat ramp, as well as the additional benefits of the boat ramp itself, outweigh the potential detrimental effect of the dredging/excavation, as conditioned by the IDEQ water quality certification.

Rip Rap/Seawall

49. The “seawall” portion of the project is above the AHWL of the lake and not within the jurisdiction of the IDL.

50. The Applicant proposes to install 48 cubic yards of “Gravel, Rock, or Stone.” 1 cubic yard will be used to stabilize the westward shoreline of the fixed pier portion of the proposed work dock; 8 cubic yards will be used to anchor the fixed concrete pier; and 39 cubic yards will be used eastward of the proposed boat launch to stabilize the concrete panels.

51. IDAPA 20.03.04.015.08 provides:

Riprap used to stabilize shoreline will consist of rock that is appropriately sized to resist movement from anticipated wave heights or tractive forces of the water flow. The rock must be sound, dense, durable, and angular rock resistant to weathering and free of fines. The riprap must overlie a distance filter layer which consists of sand, gravel, or nonwoven geotextile fabric. The riprap and filter layer must be keyed into the bed below the ordinary or artificial high water mark, as applicable. If the applicant wishes to install riprap with different standards, they must submit a design that is signed and stamped for construction purposes by a professional engineer registered in the state of Idaho.

52. After investigation, IDL found that the 1 cubic yard of riprap proposed to stabilize the westward shoreline and the 39 cubic yards proposed to stabilize the concrete panels eastward

of the boat launch meet IDL standards. To the extent they differ from IDL standards, Applicant has submitted the design signed and stamped for construction purposes by a professional engineer licensed in Idaho as required by IDAPA 20.03.04.015.08.

53. One public comment complained that the rip rap would damage the shoreline. However, the clear purpose of the rip rap is to protect the shoreline on both sides of the boat ramp, and is in the amount recommended by Applicant's professional engineer to accomplish its purpose.

54. The Hearing Officer gives the engineer's recommendation more weight than the speculative concerns of the public commenter and finds that the benefits of the rip rap outweigh any detriment.

Fill

55. With regard to the 8 cubic yards of "rip rap," IDL and Applicant agree that it is instead "fill," which is subject to the higher standard of a non-navigational encroachment. IDAPA 20.03.04.030.02 provides that non-navigational encroachments "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." *See Kaseburg v. State, Bd. of Land Com'rs*, 154 Idaho 570, 574 (2013).

56. The purpose of the 8 cubic yards of fill is to stabilize the connection and/or transition between the boat launch and the fixed pier concrete ramp and dock with the goal of being able to drive vehicles onto the pier. The 8 cubic yards of fill is the mechanism designed by Applicant's professional engineer presumably to best accomplish this stability for this design.

57. A detrimental impact of the fill is the reduction in the lakebed as noted and addressed by Applicant's engineer, Jeff Jensen, P.E. (Idaho), as follows:

There is fill inside of the concrete pier to support the slab on grad[sic] at the pier. The most common way to construct the pier based on the site conditions and ramp. There is only about 3' of elevation difference between the ramp elevation and existing ground and the water depth in the location is less than 18".

There is a way to install piers and float the sloped pier ramp above the water however, there will still need to be fill associated with the boat launch so the lakebed area will be reduced in that area no matter what.

That exiting fill area associated with the original dock will go away thought[sic] so the reduction in lakebed area will be minimal.

Applicant-001, slide 31.

58. The proposed benefit of this design is that it will allow Applicant to drive a vehicle onto the pier and up to a barge, and lift material off a barge with a smaller crane directly into the vehicle. This avoids using the large crane from the bulkhead landward from the ordinary high water mark and traversing material over the water into the vehicle which Applicant contends provides benefits to everyone including the lake.

59. Using smaller equipment and not having to carry big loads over the lake water appears to be an environmental, economic and social benefit. However, there is insufficient evidence in the record to conclude that it is a major public benefit in any of the enumerated areas.

60. Applicant further has not met its burden to show that "no other feasible alternative with lesser impact on the public trust values." The Applicant's engineer in fact states that there is another alternative that would not involve taking up lakebed area by the 8 cubic yards, but reasons that there will be an impact in the lakebed area regardless because of the fill associated with the boat launch. The record is unclear whether the alternative with less impact on the lakebed area is

feasible for the purpose. The engineer's expressed viewpoint appears to be that the lake is already negatively impacted in this way so adding to it will not matter. The Hearing Officer does not believe this line of reasoning is consistent with the Lake Protection Act or IDL regulations and can find no other evidence in the record addressing the feasibility of the other alternative. Given the clear encumbrance of the lakebed by the 8 cubic yards, the expertise necessary to evaluate alternatives, and the higher level of scrutiny required, the Hearing Officer is unable to speculate the reasons for the engineer's design or comparison to the other alternative.

61. Applicant has not met the requirement for approval of the 8 cubic yards of fill.

Work Dock and Work Zone

62. Applicant is proposing a 14' x 120' fixed pier, 10' x 425' floating dock, an L-shaped 10' x 475' work dock, and a 40' x 100' work dock in the arm of the L-shaped work dock, which the parties contend constitutes a commercial navigational encroachment that extends beyond the line of navigability, and a 1.34 acre Work Zone over the area and to the west side of the proposed Work Dock that is considered a commercial non-navigational encroachment.

63. Normally docks are considered navigational. IDAPA 20.03.04.010.15. Community or commercial docks are not limited to the length of single-family or two-family docks but may not extend beyond the LON unless approved by the Director. IDAPA 20.03.04.015.13(d). IDL typically approves community and commercial docks that extend beyond the LON.

64. Again, under the LPA set forth in Idaho Code sections 58-1301, 1306(b), (c), (d), and (e), the commercial dock must be approved if Applicant shows that the benefits, whether private or public, outweigh the detriments considering adverse impact on adjacent property and

the lake value factors of navigation, fish and wildlife habitat, aquatic life, recreation, aesthetic beauty or water quality.

65. Calling it a dock however does not make is navigational. The intended purpose is what makes is navigational. *Kaseburg v. State, Bd. of Land Com'rs*, 154 Idaho 570 (2013). The express purpose of the Work Dock is to provide a safe place for StanCraft to work on docks requiring primarily docks to be transported and tied to the work dock. Not clear, though reasonably inferred, StanCraft will moor its commercial watercraft to the dock in addition to docks needing repair. For this reason, the work dock may be appropriately approved as navigational.

66. The Work Zone is a non-navigational encroachment that “will normally not be approved” by the Department and will be considered only in cases involving a major environmental, economic or social public benefit and “when there is no other feasible alternatives with less impact on public trust values.” IDAPA 20.03.04.030.02 (emphasis added); *Kaseburg v. State, Bd. of Land Com'rs*, 154 Idaho 570, 574 (2013).

67. The work dock and work zone are interconnected in the project. If approved, the project would provide both private and public benefits as set forth in the Findings of Fact, ¶¶ 28-32. Removal of the unpermitted log raft is a major public benefit of the project as it is a navigational hazard, does not comply with any standards, poses a significant safety risk to the general public, and impedes navigation. Removing the dead heads and debris and maintaining the navigational corridor in the proposed ‘Responsibility Zone’ is a major public benefit.

68. IDL finds that enabling timely and efficient emergency response, and clean-up of lake debris, provides a major public benefit. Kootenai County agrees and characterized the marine construction services provided by Applicant as “critical” to provide safe and accessible recreation

facilities and notes that “marine contractors are uniquely equipped to provide specialized marine services during local emergencies.” IDL-002, pp. 31- 32.

69. Applicant’s marine construction services generally support and aid in navigation, and benefit the public’s interest in the lake value factors. The IDL specifically requires under its own regulations the use of companies that provide these services for winter dock storage to avoid damage to the lake. *See* IDL Navigable Waterways Program, Sec. 25- Encroachment Standards & Requirements, Document No. ENC- Sec. 25 (July 2024), § V.A., p. 29.

70. There is no evidence in the record disputing these benefits, and the Hearing Officer gives significant weight to IDL’s determination that they constitute major public benefits based on its expertise and responsibilities it is charged with under the LPA.

71. Further, based on the record, it is more likely than not that there is no other feasible alternative to address the existing public hazard and impact on navigation caused by the unpermitted log raft, dead heads and debris. Log storage in Cougar Bay appears to have ceased around 1998. Applicant-001, slide 6. According to public testimony, the unpermitted log raft has only been expanded since that time by neighboring property owners. There is evidence in the record that removing the log pilings and other existing hazards has been cost prohibitive (e.g., Audio, 2:05:43:890) which is supported by the fact that it has been allowed to exist as a significant impediment to navigation in the area. A reasonable inference is that if there was a feasible alternative to remove the hazard and maintain the breakwater protection, it would have been pursued by someone at some time.

72. The work dock and work zone also will have little appreciable impact on the lake value factors. The work dock and work zone will generally replace a current encumbrance, and

not impede the public use of available lake water. It will likely increase the available lake water in the surrounding area by eliminating the hazards.

73. The encroachment also does not appreciably interfere with navigation in general. Although the L-shaped work dock would extinguish the current navigational route to the lake and to the Spokane River from Cougar Bay, it would replace that route with another route southwest of the work dock. Kootenai County Parks and Water was alerted to safety concerns over the new route by Mr. Chapman and was unable to find that the proposed navigational change was a detriment to navigation despite his concerns. (IDL-012, PC-00003). IDL believes that the route through the existing neighboring work zone is currently hazardous, and that the new route is less so. The Hearing Officer gives greater weight to the Kootenai County Parks and Water opinion based on the agency's responsibility over and experience with ensuring the public's safe enjoyment of the lake generally versus the property owner's personal interests that may affect their perspective. The Hearing Officer finds that the re-routing of the navigational route is not an undue interference with navigation when balanced with eliminating the unsafe hazards and increasing navigation in the new route.

74. The adjacent property owners testified that the project would impact the aesthetic beauty of the lake by adding a construction zone. The Hearing Officer finds that the evidence is insufficient to conclude that adding the encroachment in place of the log raft will have an appreciable impact on the *public's* interest in the aesthetic beauty of the lake in general. The encroachment will be in an area that is already engaged in similar marine construction activity, will replace a dilapidated and dangerous log raft, and will not significantly alter the current view from the lake side. Concentrating construction in one area may also provide a benefit rather than

spreading construction sites throughout the lake and by reducing commercial traffic. Finally, being able to efficiently and quickly provide marine construction services to private and public docks will also further the aesthetic beauty of the lake by ensuring that docks and other marine structures are properly and timely maintained.

75. No agency objected to the Application or suggested alternatives to address any detrimental impact on the public trust or lake value factors, other than IDEQ's suggestions regarding conditions to ensure that the commercial operation does not negatively effect the water quality going forward. IDL can condition the permit on compliance with IDEQ's recommendations to ensure no detrimental impact on the water quality.

76. The evidence against the project concerns the impact of the commercial operation on the adjacent neighboring properties. As discussed in the Findings of Fact above, adjacent property owners opposed the permit because they believe the construction activities will interfere with their view of the lake, the noise will interfere with their peace and enjoyment including viewing visiting wildlife, and that the excessive weeds caused by StanCraft's more limited operation in the summer of 2024 will increase, and adversely effect their use of the lake.

77. Under the LPA, IDL's has authority and the duty to protect *littoral* property rights. The argument that littoral property owners have view rights as members of the public has been directly addressed and rejected by the Idaho Supreme Court. *Newton v. MJK/BJK, LLC, et al*, 167 Idaho 236 (2020). IDL can only consider the adverse impact to adjacent property littoral rights under the LPA. *Id.* For the same reasons, IDL cannot regulate the impact of noise unless there is evidence that the noise prevented the adjacent property from exercising littoral rights. There is no evidence of this in the record.

78. IDL argued that it does not require an Applicant to disprove a negative – that is the encroachment did not cause the excessive weed accumulation – and must rely on the record before it in deciding the Application, and that it does not consider impacts outside of the encroachment. IDL cited the impact of boat traffic as an example. The fact that IDL cannot regulate the proposed use of the encroachment does not prevent it from considering the effect of the proposed use. *Dupont v. Idaho State Bd. of Land Comm'rs*, 134 Idaho 618, 625, 7 P.3d 1095, 1102 (2000)

79. The Hearing Officer however finds that even considering the uncontroverted public testimony regarding excessive weed accumulation resulting from StanCraft's operations in the summer of 2024, there is insufficient evidence in the record to conclude that the proposed encroachment will have the same adverse effect. The proposed design will open a different navigational route to the dock. Applicant represented that the proposed dredging and excavation will address this potential issue by ensuring sufficient water depth for its barge. Applicant and IDL agree that the dredging and excavation, and the permitting process required through the US Army Corps of Engineers, will address the insufficiency of water depth and other factors that may or may not have contributed to this effect in the summer of 2024.

80. The adjacent neighbor's also raised concern that the proposed L-shaped dock will cut off the limited natural flow of lake debris that collects in Cougar Bay and filters it out to the Spokane River which will further contribute to the collection of debris on the shoreline adjacent properties. There is no expert testimony in the record regarding this potential impact. From a lay person perspective however the evidence in the record is that the debris that accumulates in the bay – other than the weeds experienced from summer of the 2024 – largely collects onto Applicant's property. If the "L" of the dock will prevent the debris from filtering out into the

Spokane River, it will likely accumulate on Applicant's property, and Applicant will be responsible to clean it up.

81. The Application meets the requirement for approval for the work dock and year-round work zone.

Conex Boxes

82. The Conex box is proposed to store marine construction materials and equipment close to the work dock and zone for convenience, efficiency, weather protection, and increased safe storage for the protection of the environment. Applicant also states that it may be used to store emergency response equipment.

83. The Conex box is a non-navigational encroachment that "will normally not be approved" by the Department and will be considered only in cases involving a major environmental, economic or social public benefit and "when there is no other feasible alternatives with less impact on public trust values." IDAPA 20.03.04.030.02 (emphasis added); *Kaseburg v. State, Bd. of Land Com'rs*, 154 Idaho 570, 574 (2013).

84. There is insufficient evidence in the record that Conex box serves a major public benefit or is only feasible alternative as required.

85. The Application does not meet the requirement for approval of the Connex boxes.

CONCLUSION

86. The Hearing Officer has not doubt that the operation of a marine construction site parallel to adjacent shoreline properties impacts these properties. The Lake Protection Act, however, limits IDL's regulation of private property rights in the context of encroachments over navigable lakes. IDL must regulate the encroachments for the benefit of the public and may not

consider the impact of the encroachment on the adjacent properties beyond its authority under the LPA. *See Newton v. MJK/BJK, LLC, et al*, 167 Idaho 236 (2020) (Littoral rights do not include a claim to a right to a lake view).

87. The Hearing Officer concludes that the benefits of the proposed project generally outweigh any minimal impact on the lake value factors, do not adversely effect adjacent property rights, and that the Application complies with IDL requirements with the exception of the 8 cubic yards of fill and the Conex box, as set forth above.

RECOMMENDED ORDER

Based on the foregoing Findings of Fact and Conclusions of Law, the Hearing Officer recommends that this Application be **GRANTED IN PART** and **DENIED IN PART**; consistent with the Findings of Fact and Conclusions of Law set forth above, the Hearing Officer recommends that Application for the 8 cubic yards of fill and the Conex box be denied; that boat launch, dredge and excavation, work dock and work zone, and rip rap be granted with the following conditions:

1. Compliance with all federal, state, and local laws;
2. Compliance with IDEQ recommendations set forth in IDL-012;
3. The unpermitted log raft be removed entirely;
4. Applicant complies with the agreements to maintain the Responsibility Zone and navigational route set forth in the CBSCS MOU as part of the permit;
5. Applicant's commercial activity will not adversely effect adjacent property;
6. Applicant enter into the required submerged land lease for the work zone and will include conditions for ensuring that that the commercial operations do not adversely effect adjacent littoral property rights.

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 October 18, 2024. *See* I.C. § 58-1306(c). The agency head's final order in this case must be issued no later than **January 17, 2025.**

If either **party** disagrees with this recommended order, pursuant to Idaho Code section 67-5244, the **party** may file an exception to this recommended order with the agency head. Public witnesses under Idaho's Administrative Procedure Act are not considered parties and, therefore, exceptions from the public cannot be accepted. *See* IDAPA 62.01.01.207. 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 January 14, 2025,** 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 January 15, 2025.** 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.

DATED: January 10, 2025.

OFFICE OF ADMINISTRATIVE HEARINGS

/s/ Merritt Dublin

Merritt Dublin
Administrative Law Judge

CERTIFICATE OF MAILING

I hereby certify that on this 10th day of January, 2025, 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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Nelson Erickson
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Applicant

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/s/ Merritt Dublin
Merritt Dublin, Office of Admin. Hearings