

John Richards, ISB #10670
General Counsel
Idaho Department of Lands
300 N. 6th St., Suite 103
Boise, ID 83702
(208) 334-0200
jrichards@idl.idaho.gov

Attorney for Idaho Department of Lands, Navigable Waterways Program

BEFORE THE STATE BOARD OF LAND COMMISSIONERS
STATE OF IDAHO

IN THE MATTER OF

Encroachment Permit Application No.
L96S0884G

Long Bridge Land Holding, LLC

Applicants.

Agcy Case No. PH-2024-NAV-20-003

OAH Case No. 24-320-10

**IDAHO DEPARTMENT OF LANDS’
PRE-HEARING STATEMENT**

The Idaho Department of Lands (IDL), by and through its counsel of record, and in accordance with the *Second Scheduling Order* issued January 23, 2025, submits the following Pre-hearing Statement for the above-titled matter, which has a public hearing set for March 6, 2025, at 4:00 p.m. PST. The Department also concurrently submits an Exhibit List and Witness List.

I. BACKGROUND

A. Application

B. Long Bridge Land Holding, LLC (Applicant) seeks an encroachment permit to enlarge an existing commercial marina to a total of 270 slips, on the south side of the Pend Oreille River, just west of the Highway 95 Long Bridge. IDL-002. (Application)

C. Procedural Background

On October 22, 2024, IDL received a complete application from the Applicant. IDL-002. On October 23, 2024, IDL sent resource agency notice and contacted the Daily Bonner Bee to publish public notice of the application in the local newspaper. IDL-004, 007-008. On October 23, 2024, IDL sent out notices to landowners immediately adjacent to the Applicant's parcel. IDL-003. On October 25, 2024, and November 1, 2024 an advertisement was run in the local newspaper providing notice to the public of the Application. IDL-007. On November 19, 2024, IDL received an objection and publication fee from the Idaho Transportation Department requesting a Public Hearing in accordance with IDAPA 20.03.04.030.04(b). IDL-005. On November 25, 2024, notice was received that a Hearing Officer had been appointed for this matter. IDL-009. A scheduling order was issued on December 12, 2024, setting the date for public hearing for January 27, 2025, and setting other associated deadlines. IDL-014. On January 9th, 2025, the parties stipulated to vacate the evidentiary hearing and reset for a later date to allow the applicant to contact and consult legal counsel. On January 10th, 2025, an Order was issued vacating the evidentiary hearing and prehearing deadlines. IDL-016. A second scheduling conference was conducted on January 21, 2025. IDL-017. A Second Scheduling Order was issued on January 23, 2025 resetting the date for public hearing for March 6, 2025 at 4:00pm PST, and setting other associated deadlines. IDL-018. IDL scheduled publication of the date, time, and location of the March 6, 2025 public hearing in the local newspaper for two consecutive weeks to provide public notice of the hearing.

D. Comments

To date, IDL has received agency responses from Idaho Transportation Department (ITD) Idaho Department of Environmental Quality (IDEQ), Idaho Department of Fish and Game (IDFG) and Bonner County. IDL-005-006, 024-025. As of the date of this submission, IDL has

received no comment from members of the general public on this Application. In addition to the public hearing scheduled for March 6, 2025, IDL is also accepting written comment on the Application, so additional agency and public comment may be forthcoming.

II. APPLICABLE LEGAL PROVISIONS

A. Lake Protection Act, Title 58, Chapter 13, Idaho Code

The Lake Protection Act (LPA), Title 58, Chapter 13, Idaho Code, governs encroachments upon Idaho's navigable lakes, and provides in pertinent part that "[n]o encroachment on, in or above the beds or waters of any navigable lake in the state shall hereafter be made unless approval therefor has been given as provided in this act." I.C. § 58-1301. IDL, acting on behalf of the State of Idaho Board of Land Commissioners (Board) has the power to "regulate, control and [] permit encroachments in aid of navigation or not in aid of navigation on, in or above the beds or waters of navigable lakes as provided herein." I.C. § 58-1303.

The following provisions of the Lake Protection Act, Title 58, Chapter 13, Idaho Code ("LPA") are applicable to the Application, and helpful to understanding IDL's analysis of the Application:

I.C. § 58-1301 – Legislative Intent (*see also* IDAPA 20.03.04.012):

The legislature of the state of Idaho hereby declares that the public health, interest, safety and welfare requires that all encroachments upon, in or above the beds or waters of navigable lakes of the state be regulated in order that the protection of property, navigation, fish and wildlife habitat, aquatic life, recreation, aesthetic beauty and water quality be given due consideration and weighed against the navigational or economic necessity or justification for, or benefit to be derived from the proposed encroachment. No encroachment on, in or above the beds or waters of any navigable lake in the state shall hereafter be made unless approval therefor has been given as provided in this act.

I.C. § 58-1302 - Definitions:

(b) "Beds of navigable lakes" means the lands lying under or below the "natural or ordinary high water mark" of a navigable lake and, for purposes of this act only, the lands lying between the natural or ordinary high water mark and the artificial high water mark, if there be one.

(c) "Natural or ordinary high water mark" means the high water elevation in a lake over a period of years, uninfluenced by man-made dams or works, at which elevation the water impresses a line on the soil by covering it for sufficient periods to deprive the soil of its vegetation and destroy its value for agricultural purposes.

(d) "Artificial high water mark" means the high water elevation above the natural or ordinary high water mark resulting from construction of man-made dams or control works and impressing a new and higher vegetation line.

(f) "Riparian or littoral rights" means only the rights of owners or lessees of land adjacent to navigable waters of the lake to maintain their adjacency to the lake and to make use of their rights as riparian or littoral owners or lessees in building or using aids to navigation but does not include any right to make any consumptive use of the waters of the lake. (*See also* IDAPA 20.03.04.010.32).

(h) "Encroachments in aid of navigation" means and includes docks, piers, floats, pilings, breakwaters, boat ramps, channels or basins, and other such aids to the navigability of the lake, on, in or above the beds or waters of a navigable lake. The term "encroachments in aid of navigation" may be used interchangeably herein with the term "navigational encroachments." (*See also* IDAPA 20.03.04.010.15).

(i) "Encroachments not in aid of navigation" means and includes all other encroachments on, in or above the beds or waters of a navigable lake, including landfills or other structures not constructed primarily for use in aid of the navigability of the lake. The term "encroachments not in aid of navigation" may be used interchangeably herein with the term "nonnavigational encroachments." (*See also* IDAPA 20.03.04.010.16).

(k) "Plans" means maps, sketches, engineering drawings, aerial and other photographs, word descriptions, and specifications sufficient to describe the extent, nature and approximate location of the proposed encroachment and the proposed method of accomplishing the same

I.C. § 58-1306:

(a) Applications for construction, enlargement or replacement of a nonnavigational encroachment, a commercial navigational encroachment, a community navigational encroachment, or for a navigational encroachment extending beyond the line of navigability shall be submitted upon forms to be furnished by the board and accompanied by plans of the proposed encroachment containing information required by section [58-1302\(k\)](#), Idaho Code, and such other information as the board may by rule require in conformance with the intent and purpose of this chapter. Applications for nonnavigational, community navigational, or

commercial navigational encroachments must be submitted or approved by the riparian or littoral owner.

(b) Within ten (10) days of receipt of an application submitted under subsection (a) of this section, the board shall cause to be published . . . a notice advising of the application and describing the proposed encroachment and general location thereof. Applications for installation of buried or submerged water intake lines and utility lines shall be exempt from the newspaper publication process. The board may also furnish copies of the application and accompanying plans to other state agencies having an interest in the lake to determine the opinion of such state agencies as to the likely effect of the proposed encroachment upon adjacent property and lake value factors of navigation, fish and wildlife habitat, aquatic life, recreation, aesthetic beauty or water quality. Within thirty (30) days following receipt of such copy of the application and plans from the board, such other state agency shall notify the board of its opinion and recommendations, if any, for alternate plans determined by such agency to be economically feasible to accomplish the purpose of the proposed encroachment without adversely affecting unreasonably adjacent property or other lake value factors.

(e) In recognition of continuing private property ownership of lands lying between the natural or ordinary high water mark and the artificial high water mark, the board shall consider unreasonable adverse effect upon adjacent property and undue interference with navigation the most important factors to be considered in granting or denying an application for a nonnavigational encroachment, a commercial navigational encroachment, or a community navigational encroachment not extending below the natural or ordinary high water mark. If . . . following a hearing, the board determines that the benefits, whether public or private, to be derived from allowing such encroachment exceed its detrimental effects, it shall grant the permit.

B. Applicable IDAPA Rules Pertaining to Subject Application

The following provisions of the Rules For the Regulation of Beds, Waters and Airspace Over Navigable Lakes in the State of Idaho, IDAPA 20.03.04 (“LPA Rules”) are applicable to this Application, and helpful in understanding IDL’s analysis of the Application.

IDAPA 20.03.04.010 DEFINITIONS

03. Artificial High Water Mark. The high water elevation above the natural or ordinary high water mark resulting from construction of man-made dams or control works and impressing a new and higher vegetation line.

04. Beds of Navigable Lakes. The lands lying under or below the “natural or ordinary high water mark” of a navigable lake and, for purposes of these rules only, the lands lying between the natural or ordinary high water mark and the artificial high water mark, if there be one.

08. Boat Ramp. A structure or improved surface extending below the ordinary or artificial high water mark whereby watercraft or equipment are launched from land-based vehicles or trailers.

09. Commercial Marina. A commercial navigational encroachment whose primary purpose is to provide moorage for rental or for free to the general public.

10. Commercial Navigational Encroachment. A navigational encroachment used for commercial purposes

15. Encroachments in Aid of Navigation. Includes docks, piers, jet ski and boat lifts, buoys, pilings, breakwaters, boat ramps, channels or basins, and other facilities used to support water craft and moorage on, in, or above the beds or waters of a navigable lake. The term “encroachments in aid of navigation” is used interchangeably with the term “navigational encroachments.”

16. Encroachments Not in Aid of Navigation. Includes all other encroachments on, in, or above the beds or waters of a navigable lake, including landfills, bridges, utility and power lines, or other structures not constructed primarily for use in aid of navigation, such as float homes and boat garages. The term “encroachments not in aid of navigation” is used interchangeably with the term “nonnavigational encroachments.”

20. Line of Navigability. A line located at such distance waterward of the low water mark established by the length of existing legally permitted encroachments, water depths waterward of the low water mark, and by other relevant criteria determined by the board when a line has not already been established for the body of water in question

23. Natural or Ordinary High Water Mark. The high water elevation in a lake over a period of years, uninfluenced by man-made dams or works, at which elevation the water impresses a line on the soil by covering it for sufficient periods to deprive the soil of its vegetation and destroy its value for agricultural purposes.

29. Public Hearing. The type of hearing where members of the public are allowed to comment, in written or oral form, on the record at a public meeting held at a set time and place and presided over by a designated representative of the Department who acts as the hearing coordinator. This type of hearing is an informal opportunity for public comment and does not involve the presentation of witnesses, cross examination, oaths, or the rules of evidence. A record of any oral presentations at such hearings will be taken by the Department by tape recorder. The hearing coordinator exercises such control at hearings as necessary to maintain order, decorum and common courtesy among the participants.

32. Riparian or Littoral Rights. The rights of owners or lessees of land adjacent to navigable waters of the lake to maintain their adjacency to the lake and to make use of

their rights as riparian or littoral owners or lessees in building or using aids to navigation but does not include any right to make any consumptive use of the waters of the lake.

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

40. Upland. The land bordering on navigable lakes, rivers, and streams.

IDAPA 20.03.04.012. POLICY.

01. Environmental Protection and Navigational or Economic Necessity. It is the express policy of the State of Idaho that the public health, interest, safety and welfare requires that all encroachments upon, in or above the beds or waters of navigable lakes of the state be regulated in order that the protection of property, navigation, fish and wildlife habitat, aquatic life, recreation, aesthetic beauty and water quality be given due consideration and weighed against the navigational or economic necessity or justification for, or benefit to be derived from the proposed encroachment. Moreover, it is the responsibility of the State Board of Land Commissioners to regulate and control the use or disposition of state-owned lake beds, so as to provide for their commercial, navigational, recreational or other public use.

02. No Encroachments Without Permit. No encroachment on, in or above the beds or waters of any navigable lake in the state may be made unless approval has been given as provided in these rules. An encroachment permit does not guarantee the use of public trust lands without appropriate compensation to the state of Idaho.

IDAPA 20.03.04.015. ENCROACHMENT STANDARDS.

003. Commercial Marina.

a. Commercial marinas must have a minimum of fifty percent (50%) of their moorage available for use by the general public on either a first come, first served basis for free or rent, or a rent or lease agreement for a period of time up to one (1) year. Moorage contracts may be renewed annually, so long as a renewal term does not exceed one (1) year. Moorage for use by the general public may not include conditions that result in a transfer of ownership of moorage or real property, or require membership in a club or organization.

b. Commercial marinas that are converted to a community dock must conform to all the community dock standards, including frontage requirements and square footage restrictions. This change of use must be approved by the Department through a new encroachment permit prior to implementing the change.

c. If local city or county ordinances governing parking requirements for marinas have not been adopted, commercial marinas must provide a minimum of upland vehicle parking equivalent to one (1) parking space per two (2) public watercraft or float home moorages. If private moorage is tied to specific parking spaces or designated parking areas, then one (1)

parking space per one (1) private watercraft or float home moorage must be provided. In the event of conflict, the local ordinances prevail.

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

e. Moorage that is not available for public use as described in Paragraph 015.03.a. of these rules is private moorage.

f. When calculating the moorage percentage, the amount of public moorage is to be compared to the amount of private moorage. Commercial marinas with private float home moorage are required to provide either nonprivate float home moorage or two (2) public use boat moorages for every private float home moorage in addition to any other required public use boat moorages.

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

h. Commercial marinas with private moorage must form a condominium association, co-op, or other entity that owns and manages the marina, littoral rights, upland property sufficient to maintain and operate a marina, and private submerged land, if present. This entity is responsible for obtaining and maintaining an encroachment permit under these rules and a submerged lands lease under IDAPA 20.03.17, "Rules Governing Leases on State-Owned Submerged lands and Formerly Submerged Lands."

i. Existing commercial marinas that desire to change their operations and convert some of their moorage to private use must keep at least fifty percent (50%) of their moorage available for use by the general public. This change in operations must be approved by the Department through a new encroachment permit prior to implementation of the change. The permit application must describe, in text and in drawings, which moorage will be public and which moorage will be private.

13. General Encroachment Standards

d. Length of Community Docks and Commercial Navigational Encroachments. Docks, piers, or other works may extend to a length that will provide access to a water depth that will afford sufficient draft for water craft customarily in use on the particular body of water, except that no structure may extend beyond the normal accepted line of navigability established through use unless additional length is authorized by permit or order of the Director. If a normally accepted line of navigability has not been established through use, the Director may from time to time as he deems necessary, designate a line of navigability for the purpose of effective administration of these rules.

e. Presumed Adverse Effect. It will be presumed, subject to rebuttal . . . that commercial navigational encroachments, community docks or nonnavigational encroachments will have a like adverse effect upon adjacent littoral rights if located closer than twenty-five (25) feet to adjacent littoral right lines.

f. Weather Conditions. Encroachments and their building materials must be designed and installed to withstand normally anticipated weather conditions in the area. Docks, piers, and similar structures must be adequately secured to pilings or anchors to prevent displacement due to ice, wind, and waves. Flotation devices for docks, float homes, etc. must be reasonably resistant to puncture and other damage.

IDAPA 20.03.04.020. APPLICATIONS

01. Encroachment Applications. No person shall hereafter make or cause to be made any encroachment on, in or above the beds or waters of any navigable lake in the state of Idaho without first making application to and receiving written approval from the department. The placing of dredged or fill material, refuse or waste matter intended as or becoming fill material, on or in the beds or waters of any navigable lake in the state of Idaho shall be considered an 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. No demolition activities may proceed until the permit is issued.

02. Signature Requirement. Only persons who are littoral owners or lessees of a littoral owner shall be eligible to apply for encroachment permits. A person who has been specifically granted littoral rights or dock rights from a littoral owner shall also be eligible for an encroachment permit; the grantor of such littoral rights, however, shall no longer be eligible to apply for an encroachment permit. Except for waterlines or utility lines, the possession of an easement to the shoreline does not qualify a person to be eligible for an encroachment permit.

03. Other Permits. Nothing in these rules shall excuse a person seeking to make an encroachment from obtaining any additional approvals lawfully required by federal, local or other state agencies.

05. Dock Reconfiguration.

a. Rearrangement of single-family and two-family docks will require a new application for an encroachment permit.

b. Rearrangement of community docks and commercial navigational encroachments may not require a new application for an encroachment permit if the changes are only internal. The department shall be consulted prior to modifications being made, and shall use the following criteria to help determine if a new permit must be submitted:

- i.** Overall footprint does not change in dimension or orientation;
- ii.** No increase in the square footage, as described in the existing permit and in accordance with Paragraph 015.13.a., occurs. This only applies to community docks;
- iii.** The entrances and exits of the facility do not change

IDAPA 20.03.04.030. PROCESSING OF APPLICATIONS FOR ALL OTHER TYPES OF ENCROACHMENTS.

01. Nonnavigational, Community, and Commercial Navigational Encroachments. Within ten (10) days of receiving a complete application for a nonnavigational encroachment, a community dock, a commercial navigational encroachment, or a navigational encroachment extending beyond the line of navigability, the Department will cause to be published a notice of application once a week for two (2) consecutive weeks in a newspaper of general circulation in the county in which the encroachment is proposed.

03. Notifications. Upon request or when the Department deems it appropriate, the Department may furnish copies of the application and plans to federal, state and local agencies and to adjacent littoral owners, requesting comment on the likely effect of the proposed encroachment upon adjacent littoral property and public trust values such as navigation, fish and wildlife habitat, aquatic life, recreation, aesthetic beauty, water quality, etc.

04. Written Comments or Objections. Within thirty (30) days of the first date of publication, an agency, adjacent littoral owner or lessee, or any resident of the state of Idaho may do one (1) of the following:

- a. Notify the Department of their opinions and recommendation, if any, for alternate plans they believe will be economically feasible and will accomplish the purpose of the proposed encroachment without unreasonably adversely affecting adjacent littoral property or public trust values; or
- b. File with the Department written objections to the proposed encroachment and request a public hearing on the application. The hearing must be specifically requested in writing. Any person or agency requesting a hearing on the application must deposit and pay to the Department an amount sufficient to cover the cost of publishing notice of hearing provided in Subsection 030.05.

05. Hearing. Notice of the time and place of public hearing on the application will be published by the Director once a week for two (2) consecutive weeks in a newspaper in the county in which the encroachment is proposed, which hearing will be held within ninety (90) days from the date the application is accepted for filing.

06. Hearing Participants. Any person may appear at the public hearing and present oral testimony. Written comments will also be received by the Department.

10. Factors in Decision. In recognition of continuing private property ownership of lands lying between the natural or ordinary high water mark and the artificial high water mark, if present, the Department will consider unreasonable adverse effect upon adjacent property and undue interference with navigation the most important factors to be considered in granting or denying an application for either a nonnavigational encroachment or a commercial navigational encroachment not extending below the natural or ordinary high water mark. If . . . following a public hearing, the Department determines that the

benefits, whether public or private, to be derived from allowing such encroachment exceed its detrimental effects, the permit will be granted.

III. IDL'S ANALYSIS OF COMPLIANCE WITH THE LPA AND RULES - GENERAL

A. Littoral Ownership.

The Applicant is a littoral owner and owns one (1) parcel adjacent to the Pend Oreille River identified as Bonner County Parcel No. RP0023401002B0A, with a common address of 31 Lakeshore Drive, Sagle, Idaho 83860. The parcel appears to be a waterfront parcel with littoral rights. There are no other parcels or roads between the parcel and the Artificial High Water Mark (AHWM).

B. Type of Encroachment.

The Applicant is seeking an encroachment permit to enlarge an existing commercial marina, which is a Navigational Encroachment.

C. Shoreline Length.

According to the application, the Applicant's parcel contains approximately 199 feet of water frontage. IDL-002.

D. Line of Navigability.

The proposed commercial marina expansion will extend farther out into the river than the current/existing marina. As described above, the Line of Navigability (LON) in IDAPA is based on the current length of permitted encroachments in the area. IDAPA 20.03.04.010.20. Commercial encroachments typically extend much farther out into the water than a residential dock and often extend beyond the LON. However, a long commercial facility typically does not

set the LON. This is evident from the fact that the IDAPA Rules allow commercial navigational encroachments and community docks to extend beyond the LON only if authorized by IDL to do so. See IDAPA 20.03.04.015.13(d).

Looking at the existing encroachments, there are single-family docks to the west, the site contains an existing commercial marina, and there is a highway bridge to the east. The existing commercial marina and bridge do not govern the LON and the location of the LON is determined by the length of the single family docks to the west. Given the nature of the area and the existing encroachments, it appears that the proposed encroachment would extend beyond the LON.

The proposed marina expansion extends out into the river approximately 655 feet according to the drawings, although there is one page in the application that appears to show the marina extends out 639 feet. IDL-002. The 655-foot measurement was based on calculations from the detailed marina drawings. *Id.* The Applicant should clarify at hearing the accurate length of the proposed commercial marina.

E. Distance from Littoral Lines.

IDAPA 20.03.04.015.13.e provides a rebuttable presumption that commercial navigational encroachments will have a like adverse effect upon adjacent littoral rights if located closer than twenty-five (25) feet to adjacent littoral right lines.

Based on the Application, the commercial marina will provide a twenty-five (25) foot buffer to the western littoral right lines and a twenty-five (25) foot buffer to the eastern littoral right lines. IDL-002 at 6. It should be noted that the eastern littoral line is unique. The Highway 95 Long Bridge provides an empty space between privately-owned parcels with shared property corners. Typically, IDL uses the chord method in determining littoral right lines, wherein you create chords between points where the property lines intersect with the AHW/OWM. *See*

Brett v. Eleventh St. Dockowner's Ass'n, Inc., 141 Idaho 517, 522, 112 P.3d 805, 810 (2005). Once the chords are created, an angle is created and the littoral line extends out into the water bisecting that angle (i.e. if the shoreline is straight and the angle is 180 degrees, the littoral line would then extend 90 degrees out into the water). The littoral right line extends out to the LON to define a littoral owner's littoral right area. IDAPA 20.03.04.010.34.

IDL created a littoral line based on the chord method and using the parcel on the east side of the Highway and determined that it would extend out into the water flaring towards the Long Bridge. Idaho Courts have recognized that, given the endless variability and irregularity in shorelines, there is no hard-and-fast rule for determining littoral lines that is applicable in all cases. *Eleventh St. Dockowner's Ass'n, Inc.*, 141 Idaho at 517. Ultimately, "the controlling thought in every case is to treat each case in an equitable manner so that, so far as it is possible, all property owners on such a body of water have access to the water." *Id.* It is IDL's determination that, based on the unique aspects of this shoreline and the presence of the Long Bridge, the Applicant's eastern littoral line extends waterward parallel with the Long Bridge as depicted in the Application. IDL-002 at 6. Based on this littoral line and the diagrams in the Application, it appears that the proposed project will maintain a 25 foot buffer from the littoral lines and the presumption of adverse effect on adjacent littoral rights does not arise. IDAPA 20.03.04.015.13.e. At this time, there does not appear to be other evidence in the record that the proposed project would adversely affect adjacent littoral rights.

F. Signature Requirement.

IDAPA 20.03.04.020.02 states that "[o]nly persons who are littoral owners or lessees of a littoral owner shall be eligible to apply for encroachment permits" and "[a] person who has been specifically granted littoral rights or dock rights from a littoral owner shall also be eligible for an

encroachment permit; the grantor of such littoral rights, however, shall no longer be eligible to apply for an encroachment permit.” In this matter, Applicant is the littoral owner of the parcels in question and there are no other parcels between the subject parcels and the river. Thus, Applicant satisfies IDAPA 20.03.04.020.02.

IV. IDL’S ANALYSIS OF COMPLIANCE WITH THE LPA AND RULES - SPECIFIC

The Application only contains one component, the expansion and extension of the existing commercial marina. The Applicant is not proposing any other encroachments through this Application.

Commercial Marina Expansion

As described herein, applications for commercial marinas must satisfy the specific requirements of IDAPA 20.03.04.15.03. Based on the application materials, it appears the Applicant is proposing to install a commercial marina containing a total of 270 slips, with an overall footprint of 460 feet wide by approximately 655 feet long. IDL-002.

The application does not state how many of the overall slips will be available to the general public and how many of the overall proposed slips will be private. Therefore, the application does not contain sufficient information to determine whether it satisfies the 50/50 ratio of public to private moorage requirement of IDAPA 20.03.04.15.03(a). The applicant ought to provide additional information at public hearing to determine whether the requirements of IDAPA 20.03.04.15.03(a) are satisfied.

The proposed marina expansion does not appear to satisfy the parking requirements under IDAPA 20.03.04.015.03(c). This provision provides that:

If local city or county ordinances governing parking requirements for marinas have not been adopted, commercial marinas must provide a minimum of upland vehicle

parking equivalent to one (1) parking space per two (2) public watercraft or float home moorages. If private moorage is tied to specific parking spaces or designated parking areas, then one (1) parking space per one (1) private watercraft or float home moorage must be provided. In the event of conflict, the local ordinances prevail.

Bonner County has adopted parking requirements for marinas, which requires .5 spaces per boat slip with 25% of parking spaces arranged as tandem spaces not less than 10 feet by 40 feet. Bonner County Ordinance 12-432. Pursuant to this ratio, with 270 proposed slips, the proposed expansion requires a minimum of 135 parking spaces if all slips are public. If any of the slips are private, the proposed expansion may require more spaces. On page 13 of the Application, it states there will be sixty (60) 9-foot parking spaces, while another page showing the parking diagram shows there will be 122 parking spaces. The Applicant should clarify at hearing the total number of parking spaces that would serve the proposed expansion. Additionally, it will be necessary to identify the number of private and public slips to determine the total number of parking spaces required. Lastly, once the foregoing is established, the Applicant should provide additional information to how the parking requirements of IDAPA 20.03.04.015.03(c) are satisfied based on the available number of parking spaces and proposed slips.

According to the application, it appears that all slips will be of a like kind and quality. Therefore, should there be a mixture of private and public mortgage included in the proposed expansion, the requirements of IDAPA 20.03.04.15.03(g) would be satisfied.

IDAPA 20.03.04.15.03(h) requires that “[c]ommercial marinas with private moorage must form a condominium association, co-op, or other entity that owns and manages the marina, littoral rights, upland property sufficient to maintain and operate a marina, and private submerged land, if present.” As stated above, it is unclear whether there will be private moorage associated with the proposed expansion and it is therefore unclear whether IDAPA 20.03.04.15.03(h). The Applicant

ought to provide additional information on whether there will be any private moorage and, if so, whether the provisions of IDAPA 20.03.04.15.03(h) are satisfied.

In sum, additional information is required to determine whether the proposed encroachment satisfies the requirements of IDAPA 20.03.04.15.03. The Applicant ought to provide the information requested hereinabove so compliance may be determined.

V. IDL ANALYSIS OF COMMENTS

To date, IDL has received comments from ITD, IDEQ, IDFG, and Bonner County. Based on the objection letter from the Idaho Transportation Department (ITD), they have concerns related to the proposed commercial marina expansion's close proximity to the Highway 95 Long Bridge and its associated easement, as well as potential traffic issues on Lakeshore Drive and pedestrian crossing at Lakeshore Drive to access the marina from the proposed parking lot. It should be noted that ITD also has an existing easement with IDL for the long bridge. IDAPA 20.03.04 does not list any specific setback buffer requirements from easement boundaries or right-of-way lines, only littoral lines. The proposed marina appears to provide a twenty-five (25) foot buffer to the eastern littoral line that borders the long bridge. However, it does appear that the proposed marina may be within the easement boundaries, and it appears that it does not provide a buffer to the right-of-way for the long bridge. The scope of potential impacts to ITD's easement area are not entirely clear in ITD's letter. It may be beneficial to obtain additional information from ITD and the Applicant to determine what the full scope of potential impacts may be. It also appears that the proposed marina will cross over another existing easement for an internet cable that crosses the Pend Orielle River.

IDL does not have regulatory jurisdiction over upland issues, such as increased traffic, pedestrian crossings, and parking lots. IDL's regulatory authority is limited to only those areas

specifically identified in the LPA. The LPA grants IDL the authority to “regulate, control and [] permit encroachments in aid of navigation or not in aid of navigation on, in or above the beds or waters of navigable lakes.” I.C. § 58-1303. This grants IDL the “authority to regulate encroachments *below* either the ordinary or artificial high water marks,” but not above. Byrd v. Idaho State Bd. of Land Commissioners, 169 Idaho 922, 929, 505 P.3d 708, 715 (2022)(emphasis added). However, IDL recognizes the difficult position that the approval of the proposed marina would place on ITD. Significant work has already taken place to alleviate traffic concerns at Lakeshore Drive and Highway 95, and there is currently funding in place for future studies on more work to alleviate traffic concerns and increase safety, along with plans to expand Highway 95 and the long bridge. IDL-005 The approval of the proposed marina could result in ITD having to spend even more money and resources to deal with traffic and safety issues at the Lakeshore Drive and Highway 95 intersection. *Id.* As stated above, IDL does not have jurisdiction over upland issues such as traffic and pedestrian when processing a commercial marina encroachment permit application. However, if there are other federal, state, or local laws applicable to the upland portions or impacts of the application, the Applicant will still be required to comply with those requirements. An encroachment permit from IDL does not excuse an applicant from obtaining any additional approvals lawfully required or from complying with other laws. IDAPA 20.03.04.020.03; .080.04.

IDL also received comment letters from IDEQ and IDFG regarding the Application. IDEQ stated concerns with construction debris management and also riprap and excavation. The riprap drawings in the Application were from a previously issued IDL encroachment permit. IDL requires that all encroachments be shown on drawings within the Application, since the most current permit supersedes and voids previous permits. Therefore, the riprap

drawings from the previous permit are incorporated in any new permit that is issued to reflect work that has already been performed. There will not be any new excavation or riprap work as part of this Application. However, IDL agrees with the concerns raised by IDEQ about construction debris management. If a permit is issued it will require that the Applicant effectively manage demolition and construction debris in an effective manner and dispose of any waste in an approved upland location.

IDFG raised concerns about how docks provide habitat for predatory fish that eat native salmonoids that travel in the river channel near the proposed marina, and that the proposed marina is very large in size. IDFG did not offer any mitigation measures to limit the impact, did not provide any information on how large a proposed marina could be to avoid negative impacts to native salmonoids, nor did they state the project should not be approved. IDFG did submit a letter stating the proposed marina could have a negative impact on native fisheries, however, the proposed marina will also provide a public benefit through a significant increase in boat slip availability offered to the general public.

The impacts outlined above that fall within IDL's jurisdiction ought to be considered when making the final determination of whether the benefits of the proposed expansion exceed its detriments, in accordance I.C. 58-1306(3).

VI. CONCLUSION

Given the reasons described above, the application satisfies the encroachment standards applicable to the proposed expansion, save for the additional information required to: (1) demonstrate compliance with IDAPA 20.03.04.015.03(a),(c), and (h) and (2) confirm the overall length of the proposed commercial marina. Additional information regarding the

potential impacts to ITD's easement rights may also be helpful determining the full scope of impacts of the proposed project.

Because the record for this matter remains open, the full potential impacts of this application may have not yet been fully determined and additional information may be forthcoming. IDL respectfully reserves the right to supplement, clarify, or modify its statements based on the availability of new information.

DATED this 21st day of February, 2025.

IDAHO DEPARTMENT OF LANDS

/s/John Richards
John Richards
Counsel for IDL

CERTIFICATE OF SERVICE

I hereby certify that on this 21st day of February, 2025, I caused to be served a true and correct copy of the foregoing by the method indicated below, and addressed to the following:

John Finney 120 E. Lake Street, Ste. 217 Sandpoint, ID 83864 (208) 263-8211 <i>Counsel for Applicant</i>	<input checked="" type="checkbox"/> Email: johnfinney@finneylaw.com
Benjamin Milbrath Long Bridge Land Holding Company P.O. Box 1942 Spokane, WA 99210 (612) 245-9665 <i>Applicant</i>	<input checked="" type="checkbox"/> Email: blhco@outlook.com
Neva Lane Laneco Marine PO Box 541 Kootenai, ID 83840 (208)514-3900 <i>Applicant's Agents</i>	<input checked="" type="checkbox"/> Email: info@lanecomarine.com
Idaho Transportation Department Robert Beachler 600 W. Prairie Ave. Coeur d'Alene, ID 83815 (208) 772-1216 <i>Planning & Scoping Program Manager</i>	<input checked="" type="checkbox"/> Email: Robert.beachler@itd.idaho.gov
Marde Mensinger Idaho Department of Lands 300 N. 6 th St. Boise, ID 83720 (208) 334-0248 <i>IDL Program Manager for Navigable Waters</i>	<input checked="" type="checkbox"/> Email: mmensinger@idl.idaho.gov
Kourtney Romine Kayla Dawson <i>Service Contact for IDL</i>	<input checked="" type="checkbox"/> Email: kromine@idl.idaho.gov kdawson@idl.idaho.gov

OAH General Government Division P.O. Box 83720 Boise, ID 83720-0104 816 W. Bannock St. (208) 605-4300	☒ Email: filings@oah.idaho.gov Leslie.hayes@oah.idaho.gov
---	---

/s/John Richards
John Richards
Counsel for IDL