

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’
CLOSING STATEMENT**

The Idaho Department of Lands (IDL), by and through its counsel of record, and in accordance with the Hearing Officer’s request, submits the following Closing Statement for the above-titled matter.

I. BACKGROUND

A. Application

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)

B. Procedural Background

IDL incorporates by reference the Procedural Background outlined in its Pre-Hearing Statement. IDL-027 at 1-2. Additionally, since the record remained open after the Pre-Hearing

Statement was filed, IDL notes the following additional facts that have been incorporated into the record since that time.

On March 6th, 2025, the scheduled public hearing was held at Sagle Elementary school. Witnesses were called by IDL, the Applicant, and the Idaho Transportation Department (ITD) who provided sworn testimony for the record. No members of the public provided testimony at the hearing. At the hearing, the Hearing Officer stated that the written comment period for the Application would remain open until 5:00 PM on March 7th, 2025. At 9:00 AM PST on March 7th 2025, the parties met to conduct a site visit of the proposed project area. The Hearing Officer, counsel for IDL, counsel for the Applicant, and counsel for ITD were present at the site inspection. Also present at the site inspection were staff for IDL and ITD and representatives of the Applicant. At the site inspection, all persons present who had not previously been put under oath at the public hearing, were placed under oath by the Hearing Officer prior to commencement of the inspection. Others were informed by the Hearing Officer that they remained under oath from the public hearing. The Hearing Officer took an audio recording of the site inspection and also took pictures of the project area.

C. 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 and the comment period closed March 7th, 2025, at 5:00 PM.

II. APPLICABLE LEGAL PROVISIONS

IDL incorporates by reference the Applicable Legal Provision section of its *Pre-Hearing Statement*. IDL-027 at 3-11.

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

IDL incorporates by reference the IDL's Analysis of Compliance with the LPA and Rules-General and the IDL's Analysis of Compliance with the LPA and Rules-Specific sections of its *Pre-Hearing Statement*. IDL-027 at 11-16. In its *Pre-Hearing Statement*, IDL requested that the Applicant provide specific additional information at public hearing so that IDL could determine whether the Application complies with certain requirements of IDAPA 20.03.04.15.03 and to clarify the total length of the proposed encroachment. IDL-027 at 14-16. In addition to the analysis provided in IDL's *Pre-Hearing Statement*, IDL provides the following additional analysis in light of the information presented at public hearing.

A. Length of Marina

In *IDL's Pre-Hearing Statement*, IDL requested that the Applicant clarify the total length of the proposed encroachment. IDL-027 at 12. Testimony at the public hearing by Lance Lane clarified that the length of the proposed encroachment is 639 feet. *Recording of Public Hearing* at 17:21:23¹

B. IDAPA 20.03.04.15.03 -Commercial Marina

a. Ratio of Public to Private Moorage

¹ References to the recording of the public hearing refer to the timestamp depicted on the recording at the time the relevant testimony was made.

In *IDL's Pre-Hearing Statement*, IDL requested that the Applicant provide additional information on how many proposed slips were to be private and public so that IDL could determine if the proposed encroachment satisfies the private-to-public slip ratio requirements of IDAPA 20.03.04.15.03(a). IDL-027 at 14. At the public hearing it was clarified that all moorage of the proposed encroachment would be public and that there is no private moorage proposed as part of the Application. *Recording of Public Hearing* at 17:21:30-21:41. Since no moorage will be private, the Application satisfies the public-to-private ratio requirements of IDAPA 20.03.04.15.03(a). It should be noted that if the Applicant ever seeks to convert public moorage to private moorage, the change in operations must be approved by IDL through a new encroachment permit prior to implementation of the change pursuant IDAPA 20.03.04.15.03(i).

IDL also stated in its *Pre-Hearing Statement* that if any moorage was private, the Applicant would need to provide information on how it would comply with the requirements of IDAPA 20.03.04.15.03(h) which requires “[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.” *Ex. IDL-027* at 15. Since no moorage will be private, the requirements of IDAPA 20.03.04.15.03(h) do not apply to the Application.

b. Parking

In *IDL's Pre-Hearing Statement*, IDL raised concerns that the parking proposed in the Application was not sufficient to satisfy the parking requirements of IDAPA 20.03.04.015.03(c) or Bonner County Ordinance 12-432. *IDL-027* at 15. At the public

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hearing, the Applicant entered as an exhibit an alternative plan for parking. See Applicant Exhibit LBM-4. Testimony was provided at the public hearing that this alternative parking plan was developed to comply with the County requirements for parking spaces for a commercial marina and that it was intended to replace the parking proposal included in the original application. *Public Hearing Recording* at 17:27:03-28:20; 17:37:50-38:52. The new parking proposal contains a total of 156 parking spaces with 72 tandem arranged parking spaces. LBM-4. This number of total spaces and tandem spaces appears sufficient to satisfy the requirements of Bonner County Ordinance 12-432 and the requirements of 20.03.04.015.03(c), if the plan is approved by Bonner County.

For the reasons stated herein and the reasons provided in *IDL's Pre-Hearing Statement*, pending approval of the parking plan by Bonner County, it appears that the Application satisfies all technical requirements of the LPA and IDAPA 20.03.04 for commercial marinas.

IV. IDL ANALYSIS OF COMMENTS AND TESTIMONY

The comment period for this Application closed March 7th at 5:00 PM. To date, IDL has received written comments from ITD, IDEQ, IDFG, and Bonner County. No written comments were received from individual members of the public on this Application. At public hearing, witnesses provided testimony on behalf of IDL, the Applicant, and ITD. No other entities or members of the public provided testimony at the public hearing. IDL incorporates by reference the IDL Analysis of Comments section of its *Pre-Hearing Statement*. IDL-027 at 16-18. In light of testimony provided at public hearing, IDL offers the following additional analysis.

A. Impacts to ITD Easement

In its comments and in its testimony provided at public hearing, ITD raised concerns about impacts to its easement area for its right of way for the Long Bridge portion of U.S. Highway 95. *Public Hearing Recording* at 17:44:45-45:38; IDL-005 at 1; ITD-1 at 1-2. Of particular concern was the possibility of encroachment into the ITD Easement Area from moorage on the outside of the most southeastern portion of the marina identified as Dock B in the Application and is the portion of the proposed encroachment that is closest to the ITD Easement Area. *Id.* See depictions of “Dock B” at IDL-002 at 6-7. ITD provided that their rules governing Highway Right of Way Encroachments on State Rights of Way prohibit placement of any portable objects or permanent, mobile, or temporary structures, manned or unmanned within an ITD right of way. *Public Hearing Recording* at 17:44:45-45:38; ITD-1 at 2. At hearing, the Applicant clarified that no permanent portion of the marina will be constructed within the ITD Easement Area. *Public Hearing Recording* at 17:29:45-30:12; 17:36:00-37:20. Applicant also stated that moorage of boats would only be on the internal portions of the docks and that no boats would be moored on the outside portions of the docks or otherwise be moored within ITD’s Easement Area. *Public Hearing Recording* at 17:31:10-31:30; 17:33:20-33:55. ITD provided testimony that if they are provided assurance that boats cannot be moored within the ITD right of way, that would resolve their concerns with the impacts to the Easement Area for the Long Bridge portion of Highway 95. 17:45:38-46:14.

Given this information, IDL would recommend that if a permit is granted, it be expressly conditioned to prohibit any mooring of watercraft within the ITD Easement Area for the Long Bridge portion of US Highway 95 and that also prohibits the installation of dock cleats or other mechanisms that would allow for mooring of watercraft on the most southeastern outside edge of dock closest to the ITD easement area, described in the Application as Dock B. Given the

information in the record, IDL believes that these assurances should be sufficient to address the concerns of ITD of permanent or temporary encroachment into the ITD Easement Area.

B. Parking and Traffic Impacts

ITD has also expressed in comments and testimony concerns with potential impacts that the increased parking associated with the proposed encroachment will have on traffic on Lake Shore Drive and Highway 95. ITD-1; IDL-005; *Public Hearing Recording* at 18:02:00 -:04:00. ITD also raised concerns about pedestrian safety and the lack of a pedestrian crossing across the road from the parking lot to the proposed marina. As described in *IDLs' Pre-Hearing Statement*, IDL does not have regulatory jurisdiction over upland issues such as increased traffic impacts, pedestrian crossing, and parking lot permitting. IDL-027 at 16-17. At the public hearing, testimony was provided that the appropriate authority over these impacts are Bonner County or possibly ITD if there are impacts in the ITD right-of-way for U.S. Highway 95. *Public Hearing Recording* 17:59:30-18:00:17; 18:19:00-18:21:10. Testimony was also provided at public hearing that additional proceedings and permitting from Bonner County would be necessary prior to construction of the parking lot and that ITD intends to participate in those proceedings and likely request a traffic impact study. *Id.* Moreover, during the site visit, the Applicant expressed a willingness to work with ITD to try and address or mitigate the impacts of the parking lot.

While the impacts to traffic and pedestrian safety are outside of IDL's regulatory authority, IDL recognizes that the concerns expressed by ITD are well founded. Significant work has already taken place to alleviate traffic concerns at Lakeshore Drive and Highway 95, and there appears to be resources for future studies to help alleviate traffic concerns and increase safety, along with potential plans to expand Highway 95. IDL-005. The approval of the proposed

marina could impact these efforts. While IDL does not have regulatory jurisdiction over these issues it does appear that there will be additional permitting and processes required at the county level that will provide an opportunity for these issues to be properly analyzed and addressed. 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. Thus, it appears that if a permit is issued by IDL, there will be additional opportunity for ITD's concerns to be addressed by the appropriate regulating body. However, while IDL does not have regulatory authority over the number of upland parking spaces an Applicant will construct or the ultimate permitting of the upland parking lot, IDL does have the authority to regulate the number of slips allowed below the AHW/ OHWM based on the available upland parking. IDAPA 20.03.04.015.03(c). Therefore, because the parking plan must still be approved by Bonner County, if a permit is granted, IDL recommends that it be conditioned upon the Applicant submitting to IDL a complete and correct copy of a favorable decision from Bonner County approving the proposed parking plan or a substantially similar parking plan that satisfies the requirements of IDAPA 20.03.04.015.03(c).

C. Bonner County Comments

Bonner County submitted comments stating that the proposed expansion described in the application would require a conditional use permit. IDL-006. If an IDL encroachment permit is issued in this matter it would not relieve the Applicant from the obligation to obtain the necessary additional approvals/permits from other federal, state, or local entities with regulatory authority over other aspects of the application nor would it relieve the Applicant from complying with other local, state, or federal laws prior to beginning construction. Thus, if a conditional use permit from Bonner County is required for any part of the Application, the Applicant will still be

responsible for obtaining the permit. However, it is ultimately the Applicant's responsibility to comply with the law and obtain the necessary permits and it is the Applicants decision in what order they seek permits and when.

D. IDEQ and IDFG Comments

IDEQ and IDFG did not provide testimony at public hearing or provide additional comment beyond what was previously received by IDL. Therefore, IDL incorporates by reference its analysis of the IDEQ and IDFG Comments in its Pre-Hearing Statement. IDL-027 at 17-18.

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).

V. CONCLUSION

Given the reasons described above and in *IDL's Pre-Hearing Statement*, the application satisfies the technical encroachment standards applicable to the proposed expansion. Since the proposed project complies with the applicable technical requirements of IDAPA 20.03.04 and the LPA, the final decision will largely rest on weighing the benefits of the proposed projects against the detrimental effects. In making the final determination, the benefit, both public and private, of the qualifying encroachments ought to be weighed against the detrimental effects in making the final decision of whether to approve each aspect of the permit. I.C. 58-1306(e). If it is found that the public and private benefits exceed the detrimental effects, the permit ought to be granted. *Id.*

If a permit is granted, IDL would recommend that any permit issued should include the following conditions or substantially similar conditions:

1. The Applicant must obtain a submerged land lease for all encroachments that require a lease pursuant to IDAPA 20.03.17.
2. Prior to construction of the commercial marina, Applicant must submit to IDL a complete and correct copy of a favorable decision from Bonner County approving the proposed parking plan or a substantially similar parking plan that satisfies the requirements of IDAPA 20.03.04.015.03(c).
3. No watercraft shall be moored within the Idaho Transportation Department's Easement Area for the Long Bridge portion of U.S. Highway 95. No dock cleats, or any other mechanism that would allow for mooring, shall be installed on the most southeastern edge of the dock closest to the ITD easement area, identified as Dock B in the application.

DATED this 21st day of March, 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 March, 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 <input checked="" type="checkbox"/> Email: gary.luke@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
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/s/John Richards
John Richards
Counsel for IDL