

BEFORE THE IDAHO DEPARTMENT OF LANDS

In the Matter of)	
)	AGENCY Case No. PH-2024-NAV-20-003
Application for Encroachment Permit,)	
)	OAH Case No. 24-320-10
Long Bridge Land Holding Company, LLC,)	
)	FINDINGS OF FACT, CONCLUSIONS
Benjamin Milbrath,)	OF LAW, AND RECOMMENDED
)	ORDER
Applicant.)	
_____)	

This matter was assigned to Deputy Chief Hearing Officer Leslie Hayes on November 25, 2024. The Hearing Officer conducted a public administrative hearing at Sagle Elementary School, in Sagle, Idaho on March 6, 2025, at 4:00 p.m. Pacific Time. Appearances at the hearing included John Richards, General Counsel for Idaho Department of Lands (IDL), John Finney, counsel for Applicant Long Bridge Land Holding Company, LLC, and objector Idaho Transportation Department (ITD), represented by Deputy Attorney General, Gary Luke. Also in attendance were IDL and ITD staff members. A Zoom link was provided to individuals who could not attend in-person.

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-001 – IDL-012, IDL-014 – IDL-020, IDL-024 – IDL-026, ITD-001 – ITD-004, and APP-001 – APP-004.¹

The Hearing Officer conducted a site visit on Friday, March 7, 2025, at 9:00 a.m. Pacific Time. The Hearing Officer recorded the site visit and took photographs, which were made part of the record. The record remained open for public comment through the close of business on Friday,

¹ No exhibits were excluded. Any gaps in exhibit numbering are due to a certain number of exhibits being “reserved” and unused, ultimately.

March 7, 2025. The parties' closing statements were due and the record closed on March 21, 2025. The Final Order is due on April 21, 2025.

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

PRELIMINARY EVIDENTIARY RULINGS

The parties stipulated to all exhibits, including ITD-004 and APP-004 (exhibits submitted at the hearing) and ITD-005 (submitted during the on-site inspection).

PRELIMINARY MATTERS

The parties agreed to condition issuance of the permit on a prohibition of moorage on the external side of the docks closest to the centerline of the long bridge, to prevent an encroachment within the easement of ITD's right-of-way.

FINDINGS OF FACT

1. On October 22, 2024, IDL received a complete Joint Application for Permits No. L-96-S-0884G, filed by Benjamin Milbrath of Long Bridge Land Holding Company, LLC (Long Bridge). Ex. IDL-002-001.

2. The Application seeks an encroachment permit to expand the existing commercial marina on Lake Pend Orielle in Sagle, Idaho (Parcel ID RP0023401002B0A) from forty (40) to two hundred seventy (270) boat slips, including lifts, and to permit the dock in its current location. Ex. IDL-002-001 – IDL-002-005.

3. The marina expansion would extend a total of six hundred thirty-nine (639) feet. Ex. IDL-002; Hearing Testimony 19:56 – 20:06.

4. Applicant owns approximately one hundred ninety-nine (199) feet of water frontage. Ex. IDL-002; Hearing Testimony 6:35 – 6:40.

5. On October 23, 2024, IDL mailed Courtesy Notifications of Application for Encroachment to landowners immediately adjacent to Long Bridge's parcel. Ex. IDL-003.

6. A public notice for the Application was published in the Bonner County Daily Bee and ran on October 25 and November 1, 2024. Ex. ITD-007.

7. On November 4, 2024, IDL received a comment from the Bonner County Planning Department advising that the proposed expansion would require a conditional use permit according to Bonner County Revised Code (BCRC) 12-3.4 and 12-335, in addition to the possibility of requiring a flood plan development permit. Ex. IDL-006.

8. On November 19, 2024, IDL received a written objection and publication fee from ITD, requesting a public hearing. IDL-005. ITD objected to ensure safe maintenance and operation of the US-95 Long Bridge, citing concerns about increased boat and vehicle traffic, including concerns for inadequate pedestrian crossing. *Id.* In addition to the prevention of obstructions within its right of way. *See* ITD-002.

9. On November 25, 2024, the Idaho Department of Environmental Quality (DEQ) submitted comments regarding the prevention of construction debris from entering Lake Pend Orielle and clarification on whether the permit would include excavation and/or riprap work. IDL-024. No new excavation or riprap work is part of this application and Applicant is required to effectively manage demolition and construction debris, including compliance with waste disposal. Hearing Testimony 15:42 – 16:20.

10. On November 27, 2024, Idaho Fish and Game (IDFG) commented that docks, piers, and shoreline modifications can harm fish habitat, particularly in the ESA-designated Critical

Habitat for Bull Trout (designated as threatened by U.S. Fish and Wildlife Service) in Lake Pend Orielle, by benefitting predatory fish that may threaten the species. IDL-025. There is no evidence that IDFG raised any objections to the proposed marina. IDFG did not provide mitigation measures or information about how limiting the marina expansion could prevent negative impact to native fish.

11. ITD holds a right-of-way along the length and extending one hundred fifty (150) feet in both directions “from the center line of the old [pedestrian] bridge,” pursuant to Easement No. 4780. ITD-003; Hearing Testimony 41:40 – 42:12.

12. Proposed dock B is adjacent to and abuts ITD’s easement and right-of-way such that, if a vessel were moored on its external edge, it would encroach upon the right-of-way and constitute a prohibited commercial use within a state highway. Hearing Testimony 43:00 – 44:14.

13. The proposed marina will extend beyond the line of navigability. Hearing Testimony 6:48 – 7:39.

14. A commercial marina extending beyond the line of navigability will not reset the line of navigability for neighboring docks. IDAPA 20.03.04.015.13(d); Hearing Testimony 6:50 – 7:20.

15. The proposed marina is intended for public use and is designed exclusively with internal moorage slips. Ex. IDL-002-001; Hearing Testimony 20:08 – 20:20, 31:19 – 33:11.

16. The parking plan submitted at hearing complies with Bonner County Ordinance 12-432 and IDAPA 20.03.04.015.03(c). APP-004; Hearing Testimony 36:27 – 37:34, 38:08 – 38:56.

17. The proposed marina will provide public benefit by significantly increasing boat slip availability offered to the public. Hearing Testimony 17:02 – 17:10.

18. No evidence was presented as to any potential detriment of the marina beyond the upland issues raised by ITD.

CONCLUSIONS OF LAW

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

The legislature of the state of Idaho hereby declares that the public health, interest, safety and welfare requires that all encroachments upon, in or above the beds of 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.

2. The State Board of Land Commissioners, through IDL, “shall regulate, control and may permit encroachments in aid of navigation or not in aid of navigation on, in or above the beds of waters of navigable lakes.” I.C. §§ 58-1303, 58-119(1). *See also Newton v. MJK/BJK, LLC*, 197 Idaho 236, 242 (2020).

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

4. Lake Pend Orielle is a navigable lake and is within IDL’s authority to regulate encroachment permits. *See Kaseburg v. Bd. Of Land Comm’rs*, 154 Idaho 570 (2013) (applying LPA to Lake Pend Orielle encroachment).

5. IDL’s authority in this matter is limited to encroachments “on, in or above the beds or waters” of Lake Pend Orielle. *See* I.C. § 58-1304; *see also Byrd v. Idaho State Bd. of Land Commissioners*, 169 Idaho 922, 929 (2022).

6. Idaho Code section 58-1302(h) and IDAPA 20.03.04.010.15 identify boat docks as an Aid to Navigation. The Application seeks permission for a navigational encroachment extending beyond the line of navigability.

7. Commercial marinas must reserve at least 50% of moorage for public use, available by short-term lease (up to one year), rental, or on a first-come, first-served basis. IDAPA 20.03.04.015.03(a). Public moorage cannot involve transfer of ownership or require club membership. The Applicant's proposal to designate all moorage for public use complies with this requirement.

8. If no local or parking ordinance applies, commercial marinas must provide one (1) space per two (2) public moorages and one (1) space per private moorage tied to designated parking. Local ordinances prevail in case of conflict. IDAPA 20.03.04.015.03(c). Bonner County requires 0.5 parking spaces per boat slip, with 25% as tandem spaces measuring at least ten (10) by forty (40) feet. Bonner County Ordinance 12-432. The Applicant proposes to provide 156 parking spaces, with 72 configured as tandem spaces, in compliance with both county and state parking requirements.

9. Applicant owns approximately one hundred ninety-nine (199) feet of water frontage, which is sufficient water frontage for navigational encroachment. *See* IDAPA 20.03.04.015.02.c.

10. The Application complies with IDAPA 20.03.04.02's signature requirement because Applicant is the littoral owner and has not granted permission for anyone else to permit an encroachment from its property.

11. IDL complied with IDAPA 20.03.04.030.01 and .03's notice requirements after it received the Application.

12. IDAPA 20.03.04.015.13.e provides a rebuttable presumption that commercial navigational encroachments will have an adverse effect upon adjacent littoral rights if located closer than twenty-five (25) feet to adjacent littoral right lines. There is no evidence in the record that the proposed project will have any impact on adjacent property owners. Based on the stipulation, hearing testimony, and absence of any contrary evidence, the issue of interference with adjacent littoral rights has been resolved and requires no further consideration.

13. This Hearing Officer expresses similar concerns on pedestrian safety and the prevention of accidents at Lake Shore Drive and U.S. Highway 95. ITD's future expansion of U.S. 95 will alleviate concerns but is not currently approved or funded. However, these are upland issues outside IDL's jurisdiction. Due to the marina providing significant social benefit, these concerns are mitigated by ITD and Long Bridge working together to decrease negative impacts on safety.

14. Long Bridge has agreed that no boats will be moored on the outside dock closest to the ITD easement; thereby resolving ITD's objection as it relates to the encroachment of the easement over the lakebed of a navigable waterway.

RECOMMENDED ORDER

Based on the foregoing Findings of Fact and Conclusions of Law, the Hearing Officer recommends that this Application be **GRANTED**. This recommendation does not alleviate the Applicant from complying with all other state, county, or local laws/regulations as it relates to this proposed project.

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 March 21, 2025. *See* I.C. § 58-1306(c). The agency head's final order in this case must be issued no later than **April 21, 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 April 15, 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 April 16, 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: April 11, 2025.

OFFICE OF ADMINISTRATIVE HEARINGS

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

CERTIFICATE OF SERVICE

I hereby certify that on this 11th day of April, 2025, I caused to be served a true and correct copy of the foregoing by the following method to:

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