

BEFORE THE IDAHO DEPARTMENT OF LANDS

In the Matter of Application for Encroachment
Permit,

Long Bridge Land Holding Company, LLC,

Benjamin Milbrath

Applicant.

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

OAH Case No. 24-320-10

FINAL ORDER

Applicant Long Bridge Land Holding Company, LLC (“Long Bridge”) submitted a Joint Application for Permits (“Application”) to Idaho Department of Lands (“IDL”) on October 22, 2024, to expand the existing commercial marina on Lake Pend Orielle in Sagle, Idaho from forty (40) to two hundred seventy (270) boat slips. At the request of the Idaho Transportation Department (“ITD”), a public hearing was held on March 6, 2025, at the Sagle Elementary school. On April 11, 2025, Deputy Chief Hearing Officer Leslie Hays of the Office of Administrative Hearings issued a Findings of Fact, Conclusions of Law, and Recommended Order (“Recommended Order”).

As Director of IDL, my responsibility is to render a Final Order pursuant to Idaho Code § 58-1306(c) and IDAPA 20.03.04.030.07, on behalf of the State Board of Land Commissioners based on the record reviewed in the context of my personal expertise gained through education, training, and experience. I relied on, and examined the entire record for this matter, including the Recommended Order. For the reasons set forth below, the Application is **GRANTED** subject to the conditions stated.

PROCEDURAL BACKGROUND

On October 22, 2024, IDL received a complete Application and attachments submitted by Benjamin Milbrath at Long Bridge through Applicant’s agent, Neva Lane of Laneco Marine, 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. IDL02-001 – 005. IDL held a public administrative hearing on March 6, 2025, at the Sagle Elementary School at 4:00 p.m. Pacific Time.

IDL General Counsel John Richards appeared on behalf of IDL, John Finney appeared for Long Bridge, and Deputy Attorney General Gary Luke appeared for objector ITD. Several IDL and ITD staff members were also present. A Zoom link was provided to individuals who could not attend in person. The hearing was recorded, and made available to the public on IDL's website (<https://www.idl.idaho.gov/lakes-rivers/administrative-hearings/>). All exhibits were submitted without objection and admitted into the record. The exhibits include IDL01 – IDL12, IDL14 – IDL20, IDL24 – IDL26, ITD-1 – 4, and LBM-1 – 4¹.

Hearing Officer Hayes conducted a site visit on March 7, 2025, at 9:00 a.m. Pacific Time. Hearing Officer Hayes recorded the site visit and took photographs, which were included in the record. The record remained open for written comment until March 7, 2025, at 5:00 p.m. The parties submitted closing statements on March 21, 2025.

On April 11, 2025, Hearing Officer Hayes issued a Recommended Order which contains the following sections: Background, Preliminary Evidentiary Rulings, Preliminary Matters, Findings of Fact, and Conclusions of Law. Unless stated otherwise, the Findings of Fact and Conclusions of Law in this Order are adopted from the Recommended Order.

FINDINGS OF FACT

I substantially adopt the Recommended Order's Findings of Fact as set forth below:

1. On October 22, 2024, IDL received a complete Joint Application for Permits No.

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

L-96-S-0884G, filed by Benjamin Milbrath of Long Bridge Land Holding Company, LLC. Ex. IDL02.

2. The Application seeks an encroachment permit to expand the existing commercial marina on Lake Pend Oreille 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. *Id.*

3. The marina expansion would extend a total of six hundred thirty-nine (639) feet. Ex. IDL02; Hearing Testimony 19:56 – 20:06.

4. Long Bridge owns approximately one hundred ninety-nine (199) feet of water frontage. Ex. IDL02-033; 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 and to interested agencies pursuant to Ex. IDL03; IDL04.

6. IDL published a Notice of Application in the Bonner County Daily Bee which ran on October 25 and November 1, 2024. Ex. IDL07-08.

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. IDL06.

8. On November 19, 2024, IDL received a written objection and publication fee from ITD, requesting a public hearing. IDL05. Generally, ITD raised concerns that the expansion would negatively impact safety and vehicle traffic on the US-95 corridor and local road system, including increased congestion, increased number of crashes, increased boat traffic adjacent to and underneath the bridge, and lack of pedestrian crossing facilities. *Id.* at 001.

9. On November 25, 2024, the Idaho Department of Environmental Quality (“DEQ”) submitted a comment regarding the Application as it relates to the protection of water quality. Generally, DEQ requested that all construction debris be immediately captured and disposed of and requested clarification regarding any proposed excavation and fill activities. IDL24; Hearing Testimony 15:42 – 16:20.

10. On November 27, 2024, Idaho Fish and Game (“IDFG”) submitted a comment, stating that docks, piers, and pilings can be detrimental to fish and fish habitat. IDL25. The Pend Oreille River is designated as critical bull trout habitat (designated as threatened by U.S. Fish and Wildlife Service). IDFG also stated that docks and breakwaters benefit predatory fish including smallmouth bass, walleye, and northern pike which pose a risk to the established fishery that includes native bull trout and westslope cutthroat trout. IDFG did not object to the marina expansion, and did not provide mitigation measures or alternative recommendations. IDFG did not describe how limiting the marina expansion could prevent negative impact to native fish. *Id.*

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. IDL02-001; Hearing Testimony 20:08 – 20:20, 31:19 – 33:11.

16. The parking plan complies with Bonner County Ordinance 12-432 and IDAPA 20.03.04.015.03(c). LBM-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

I substantially adopt the Recommended Order's Conclusions of Law as set forth below:

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 is authorized to “regulate and control the use or disposition of lands in the beds of navigable lakes, rivers and streams, to the natural or ordinary high water mark thereof, so as to provide for their commercial, navigational, recreational

or other public use. . .” I.C. § 58-104(9)(a). The LPA provides that the State Board of Land Commissioners “shall regulate, control and may permit encroachments in aid of navigation or not in aid of navigation on, in or above the beds of waters of navigable lakes.” I.C. §§ 58-1303. IDL is granted power to exercise the Board’s rights, powers and duties under the LPA. I.C. § 58-119(1); *Newton v. MJK/BJK, LLC*, 167 Idaho 236, 242 (2020).

3. Through its statutory authority, the State Board of Land Commissioners have promulgated the Rules for the Regulation of Beds, Waters and Airspace Over Navigable Lakes in the State of Idaho (“LPA Rules”), which provide minimum standards to govern projects or activities for which a permit or permits have been received” under the LPA. I.C. § 58-1304; 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 has no authority over upland property—authority in this matter is limited to encroachments “on, in or above the beds or waters” of Lake Pend Orielle. I.C. § 58-1304; *Byrd v. Idaho State Bd. of Land Comm’rs.*, 169 Idaho 922, 929 (2022).

6. The LPA and IDAPA 20.03.04.010.15 identify boat docks as “encroachments in aid of navigation.” I.C. § 58-1302(h). Long Bridge seeks a permit for a commercial 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. *Id.* Long Bridge provided evidence that all marina moorage will be available for public, fulfilling 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. Long Bridge proposes to provide 156 parking spaces, with 72 configured as tandem spaces, in compliance with both county and state parking requirements.

9. Long Bridge owns approximately one hundred ninety-nine (199) feet of water frontage, which is sufficient for a navigational encroachment. 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.

13. The increased moorage provides a substantial benefit to the general public through increased access to recreation and navigation.

14. There is no evidence in the record that the proposed project will negatively impact adjacent property owners or protection of property. 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.

15. DEQ cited concerns with water quality during construction and included

recommendations to mitigate any negative impacts.

16. IDFG expressed concern that fish habitat and aquatic life could be impacted by docks and breakwaters, but did not include recommendations or object to the expansion.

17. ITD expressed concerns regarding 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.

18. 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.

19. No evidence in the record suggests that the marina expansion will negatively affect aesthetic beauty.

20. Based on the evidence in the record, the public and private benefit through increased access to navigation and recreation substantially outweigh any detrimental effect upon adjacent property real property and lake value factors.

ORDER

Based on the foregoing Findings of Fact and Conclusions of Law, IT IS HEREBY ORDERED that the Encroachment Permit Application L-96-S-0884G is APPROVED, subject to the following conditions:

1. Long Bridge must develop a plan for demolition in consultation with DEQ that ensures protection of water quality;

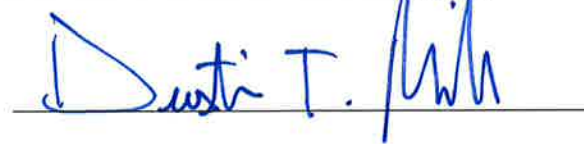
2. Long Bridge must comply with all other state, county, or local laws/regulations as it relates to this project.

This is a final order of the agency. Pursuant to Idaho Code § 58-1306(c) and IDAPA 20.03.04.030.09, the Applicant or any aggrieved party who appeared at the hearing has a right to have the proceedings and Final Order reviewed by the district court in the county where the encroachment is proposed by filing a notice of appeal within thirty (30) days from the date of this Final Order. The filing of a petition for judicial review does not itself stay the effectiveness or enforcement of this Final Order under appeal pursuant to Idaho Code § 67-5274.

IT IS SO ORDERED.

DATED this 18th day of April, 2025.

IDAHO DEPARTMENT OF LANDS



DUSTIN T. MILLER
Director

CERTIFICATE OF MAILING

I hereby certify that on this 21st day of April, 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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