

John Richards, ISB #10670  
Kayleen Richter, ISB #11258  
Idaho Department of Lands  
300 N. 6<sup>th</sup> St., Suite 103  
Boise, ID 83702  
(208) 334-0200  
jrichards@idl.idaho.gov  
krichter@idl.idaho.gov

*Attorneys 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. L95S6166

Mark E. Allen,

Applicant.

Agency Case No. PH-2025-NAV-22-002

OAH Case No. 25-320-04

**IDAHO DEPARTMENT OF LANDS’  
PREHEARING STATEMENT**

The Idaho Department of Lands (“IDL”), by and through its counsel of record, Kayleen Richter, submits the following Prehearing Statement in accordance with the *Scheduling Order* issued July 9, 2025. This matter is scheduled for a public hearing on August 5, 2025, at 5:00 p.m. Mountain Time/4:00 p.m. Pacific Time in the DeArmond Building, Classroom 216, at North Idaho College, 1000 W. Garden Avenue, Coeur d’Alene, Idaho. IDL concurrently submits its disclosure of witnesses, exhibit list, and proposed exhibits for hearing.

**I. BACKGROUND**

**A. Application**

Mark E. Allen (“Applicant”) seeks an encroachment permit to relocate an existing boat garage formerly moored at Heyburn State Park to Applicant’s property adjacent to Lakewood Cove, on Lake Coeur d’Alene (“Application”). IDL-2.

## **B. Procedural Background**

On May 28, 2025, IDL received a complete application from the Applicant. *See* IDL-2 at 7, 11. On May 29, 2025, IDL contacted the Coeur d’Alene Press to publish public notice of the application and pending public hearing. IDL-5. That same day, IDL sent a resource agency notice seeking comments on the Application and a notice to Applicant’s adjacent neighbors (Lincoln Wilson, Manisha Wilson, Randall Folkins, and Christy Folkins) and provided them with a copy of the Application. IDL-3 and IDL-4. Pursuant to IDAPA 20.03.04.030.04(b), on June 3, 2025, neighbor Randall Folkins objected to the Application due to concerns regarding aesthetic value, safety, and encroachment upon his littoral property and requested a public hearing. IDL-7 at 3–4. On May 31, 2025, and June 7, 2025, the Coeur d’ Alene Press published a legal advertisement to notify the public of the Application and pending public hearing. *See* IDL-6.

On June 24, 2025, IDL contacted the Office of Administrative Hearings (“OAH”) to request a public hearing on the Application. IDL-1. On June 26, 2025, IDL received notice that OAH appointed a Hearing Officer for this matter. *See* IDL-8. After a scheduling videoconference on July 8, 2025, the Hearing Officer issued a Scheduling Order setting the date to hold a public hearing for August 5, 2025, and setting associated prehearing deadlines. *See* IDL-10. On July 10, 2025, the Hearing Officer filed a Notice of Location of Evidentiary Hearing. IDL-12. The hearing will take place at North Idaho College in the DeArmond Building, Classroom 216. *Id.*

Finally, on July 22, 2025, IDL contacted the Coeur d’Alene Press to publish public notice of the details of the public hearing in the local newspaper. IDL-13. The Coeur d’Alene Press will publish a legal advertisement to notify the public of the details of the public hearing on July 24, 2025, and July 31, 2025. *Id.*

## **C. Comments**

To date, IDL has not received any public comment or resource agency responses for the Application.

## **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, “shall regulate, control and may 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 LPA, reproduced in relevant part, apply to the Application and guide IDL’s analysis of the Application:

#### **I.C. § 58-1301. Encroachment on Navigable Lakes – 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. Encroachment on Navigable Lakes – 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.

...

(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. Nonnavigational or Commercial Navigational Encroachments – Community Navigational Encroachments – Navigational Encroachments Beyond Line of Navigability – Application – Procedures – Publication of notice – Hearing – Appeals – Reconsideration – Criteria priority**

(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.

...

## **B. LPA Rules, IDAPA 20.03.04**

The Rules for the Regulation of Beds, Waters and Airspace Over Navigable Lakes in the State of Idaho, IDAPA 20.03.04 (“LPA Rules”), apply to this Application. The following provisions, reproduced in relevant part, guide 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.

...

**06. Boat Garage.** A structure with one (1) or more slips that is completely enclosed with walls, roof, and doors, but no temporary or permanent residential area.

...

**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.

...

## **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.**

### **05. Boat Garage.**

- a. Boat garages are considered nonnavigational encroachments.
- b. Applications for permits to construct new boat garages, expand the total square footage of the existing footprint, or raise the height will not be accepted unless the application is to support local emergency services.
- c. Existing permitted boat garages may be maintained or replaced with the current square footage of their existing footprint and height.
- d. Relocation of an existing boat garage will require a permit.

...

### **13. General Encroachment Standards**

...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.

#### **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.

**02. Encroachments Not in Aid of Navigation.** Encroachments not in aid of navigation in navigable lakes 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.



**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.

...

### **III. IDL'S ANALYSIS OF COMPLIANCE WITH THE LPA AND LPA RULES— GENERAL**

#### **A. Littoral Ownership**

The Applicant is a littoral owner and owns two (2) parcels adjacent to Lake Coeur d'Alene identified as Kootenai County Parcel Nos. 04800000011A, AIN 143369 (22533 S Lakewood Cove Rd) and 04800000010A, AIN 134612 (22664 S Middleton Ct). IDL-2 at 1, 4, 8. The Application specifies that the proposed encroachment will be appurtenant to the first parcel, No. 04800000011A ("Parcel"). IDL-2 at 1. The parcels appear to be waterfront parcels with

littoral rights. There are no other parcels or roads between the parcels and the Ordinary High Water Mark (“OHWM”).

**B. Type of Encroachment**

The Applicant is seeking an encroachment permit to relocate an existing boat garage, which is a nonnavigational encroachment.

**C. Shoreline Length**

According to the Kootenai County’s Parcel Webpage, KC Earth, the Applicant’s Parcel contains approximately 213 feet of water frontage. The Application indicates the Parcel has at least 163 feet of water frontage. IDL-2 at 5 (sum of the following shore-line measurements: Greater Than 100’, 38’, and 25’), 15 (listing total front footage as “> 200” feet).

**D. Line of Navigability**

The proposed boat garage will be located approximately the same distance (or shorter) in the lake as adjacent encroachments and will be within the Line of Navigability. IDL-2 at 14.

**E. Distance from Littoral Lines**

The LPA Rule governing General Encroachment Standards provides a rebuttable presumption that nonnavigational encroachments will have an 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.

Based on the application drawings, it appears the boat garage will provide at least an eighty (80) foot buffer to the littoral line to the south and a twenty-five (25) foot buffer to the littoral line to the north. IDL-2 at 5, 8. Therefore, there is no presumption of adverse effect upon adjacent littoral rights. IDL has not received any additional public or agency comment indicating that there will be an adverse effect on adjacent littoral rights from this Application.

While the automatic presumption of adverse effect is not triggered by the distance from littoral lines outlined in the application, the northern littoral owner, Randy Folkins, claims in his objection that the boat garage will nevertheless have an adverse effect upon his littoral rights. Mr. Folkins asserts:

The access or boat entry door to this garage is located 25 feet from our property line. In reality, to pilot a 22 foot boat into this door would require a minimum of 40 feet to align and approach safely. This approach would require the boat to consistently enter our primary swimming and water recreation area and also be dangerously close to our dock as well.

IDL-7 at 3. At hearing, the Applicant should be prepared to address whether the positioning of the boat garage and the entry door will have an adverse effect upon the Objector's adjacent littoral rights or the lake value factors.

#### **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 parcel in question and there are no other parcels between the subject parcels and the lake. Thus, Applicant satisfies IDAPA 20.03.04.020.02.

### **IV. IDL'S ANALYSIS OF COMPLIANCE WITH THE LPA AND LPA RULES—SPECIFIC**

The Application contains one component: the installation of an existing and permitted boat garage atop the pilings on the Applicant's property. IDL-2. The Applicant is not proposing any other encroachments through this Application.

#### **A. Boat Garage**

The Applicant is seeking to relocate a boat garage that was previously located at Heyburn State Park. IDL performed inspections of all boat garages at Heyburn State Park at the end of August 2024. *See* IDL-2 at 19–27. IDL performed these inspections in anticipation that all the Heyburn boat garages were required to be removed from the marinas at the end of the year, and that IDL would receive numerous applications to rebuild or relocate the boat garages within IDL's Navigable Waters jurisdiction. When performing inspections, IDL determined that all the Heyburn boat garages were built and installed prior to the LPA and thus could receive a permit

without the need to pay application or publication fees. I.C. § 58-1312. IDL then established a program to allow the Heyburn boat garage owners to apply for a temporary permit so the existing boat garage structures could be rebuilt or relocated within their existing footprint. The Applicant received one of these temporary permits for the boat garage at issue by assignment. IDL-2 at 16–18, 28–30. Due to the previous issuance of this temporary permit, IDL does not object to the Applicant’s boat garage with respect to its dimensions or status as a pre-LPA encroachment.

On the face of the application, the proposed boat garage relocation appears to meet the relevant rules and standards outlined in IDAPA 20.03.04.015.05. The proposed boat garage location does not trigger the presumption of adverse effect to the northern littoral owner due to being the minimum 25 feet from the northern littoral line. At hearing, should the Objector provide sufficient evidence to support his assertion that the proposed boat garage will likely cause an adverse effect upon his property or the lake value factors, IDL reserves the right to modify its estimation of the qualifications of the application.

## **V. ANALYSIS OF COMMENTS**

To date, IDL has not received comments from agencies or the public regarding this application.

## **VI. CONCLUSION**

Given the reasons described above, facially the application satisfies the encroachment standards applicable to the boat garage. With no additional comments from agencies or the public, IDL concludes that this application meets the standards within IDL’s authority. However, the public comment period remains open and additional information may be presented at the public hearing. IDL respectfully reserves the right to supplement, clarify, or modify its statements based on the availability of new information.

DATED this 22nd day of July, 2025.

IDAHO DEPARTMENT OF LANDS




---

Kayleen Richter  
Counsel for IDL

## CERTIFICATE OF SERVICE

I hereby certify that on this 22nd day of July, 2025, I caused to be served a true and correct copy of the foregoing by the method indicated below, and addressed to the following:

Mark E. Allen 248 Saint Court Richland, WA 99354  <i>Applicant</i>	<input checked="" type="checkbox"/> Email: markallen50@msn.com
Randy Folkins 4310 S. Thiermann Road Spokane, WA 99223  <i>Objector</i>	<input checked="" type="checkbox"/> Email: randy@eljayoil.com
Marde Mensinger Idaho Department of Lands 300 N. 6 <sup>th</sup> Street Boise, ID 83702  <i>IDL Program Manager for Navigable Waters</i>	<input checked="" type="checkbox"/> Email: mmensinger@idl.idaho.gov
Kourtney Romine Kayla Dawson  <i>Service Contacts 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 Street (208) 605-4300	<input checked="" type="checkbox"/> Email: filings@oah.idaho.gov bryan.nickels@oah.idaho.gov



Kayleen Richter  
Counsel for IDL