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**BEFORE THE STATE BOARD OF LAND COMMISSIONERS
STATE OF IDAHO**

IN THE MATTER OF

Encroachment Permit Application
No. L95S6181

The Estates at Waterstone HOA, Inc.,
Jason Garvey (Agent),

Applicant.

Agency Case No. PH-2025-NAV-22-006

OAH Case No. 25-320-08

**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 August 29, 2025. This matter is scheduled for a public hearing on October 6, 2025, at 4:00 p.m. Pacific Time in the Hayden Conference Room at the Best Western Plus, Coeur d’Alene, Idaho. IDL concurrently submits its disclosure of witnesses, exhibit list, and proposed exhibits for hearing. IDL is currently a neutral participant in this proceeding and does not have a position on the merits of the petitions to intervene. For ease of reference, the statutory and regulatory provisions applicable to this application within IDL’s administrative jurisdiction are reproduced in relevant part as Attachment A to this prehearing statement.

I. BACKGROUND

The Estates at Waterstone HOA, Inc. (“Applicant”) has applied for an encroachment permit to install one eleven (11) double-slip community dock with breakwater containing twenty-two (22) total moorages for the twenty-two (22) lots in Estates at Waterstone, a subdivision located on the Spokane River.

A. Procedural Background

On July 11, 2025, IDL received a complete application from the Applicant. IDL-2. On July 14, 2025, IDL contacted the Coeur d’Alene Press to publish public notice of the application. IDL-6. That same day, IDL sent a resource agency notice seeking comments on the application and a notice to Applicant’s adjacent neighbors (9427 E Marine Dr LLC and Iaar Idaho LLC) and provided them with a copy of the application. IDL-4 and IDL-5. On July 17, 2025, and July 24, 2025, the Coeur d’Alene Press published a legal advertisement to notify the public of the application (“Legal Advertisement”). IDL-3. Pursuant to IDAPA 20.03.04.030.04(b), on August 15, 2025, ‘Concerned Citizens, LLC’ (“Concerned Citizens”) objected to the application due to concerns regarding “navigational safety, environmental degradation, and long-term impacts on the shoreline and local ecosystems,” and requested a public hearing.¹ IDL-7 at 1, 2.

On August 19, 2025, IDL contacted the Office of Administrative Hearings (“OAH”) to request a public hearing on the application. IDL-1. On August 21, 2025, IDL received notice that OAH appointed a Hearing Officer for this matter. IDL-9. On August 27, 2025, a *Notice of Appearance* was filed on behalf of Applicant by Nathan Ohler of Ohler, Bean & Tinkey. IDL-16. After a scheduling videoconference on August 29, 2025, the Hearing Officer issued a *Scheduling Order* setting the date to hold a public hearing for October 6, 2025, and setting associated prehearing deadlines. IDL-17. On September 2, 2025, a *Notice of Appearance* was filed on behalf of ‘Concerned Citizens Against Additional 100 Boat Slips Added to Templins Resort on Spokane River, Inc.’ by Katie Sheftic and Nathan J. Sargent of the Law Offices of Fennemore Craig, P.C. IDL-18.

On August 22, 2025, Concerned Citizens filed a *Petition to Intervene*, along with a supporting Memorandum, and Declarations in support by Bruce Carey, Catherine Bedford,

¹ The Concerned Citizens objection, filed August 15, 2025, indicates it was submitted on behalf of “Concerned Citizens, LLC”. IDL-7. It is not clear from public records whether a ‘Concerned Citizens, LLC’ has ever existed in Idaho. However, according to the Idaho Secretary of State’s Business Search Tool, a ‘Concerned Citizens Against Additional 100 Boat Slips Added to Templins Resort on Spokane River, Inc.’ was incorporated as a General Nonprofit on January 20, 2025. Further, IDL notes that public records indicate this entity filed Articles of Amendment on September 5, 2025, then-identifying itself as a 501(c)(3) and changing its name to “Concerned Citizens Protecting the Spokane River Inc.”

Daniel Loughlin, Doug Parker, Herbert Preston Hawkins, Joseph V. Parrish, Keri McKee, Kimberli Gallagher, Laura McHugh, Lisa Richards Evans, Mary Lee & Dirk Linton, Michael High, Richard Teich, Scott Scofield, Sharon Grundwald, Sheri Scofield, Susan Loughlin, Traci Parris, and James Prussack. IDL-21.

On September 10, 2025, the Hearing Officer filed a *Notice of Hearing Location*. IDL-21. The hearing will take place at Best Western Plus, 506 West Appleway Avenue, Coeur d’Alene, Idaho 83814, in the Hayden Conference Room. *Id.*

B. Comments

To date, IDL has received approximately fifty (50) public comments for the application. IDL-11, IDL-12, IDL-13, IDL-14, IDL-15. IDL has not received any responses on the application from local, state, or federal agencies.

II. LEGAL STANDARD

By virtue of the public trust doctrine, the State of Idaho owns in trust the beds and banks of navigable waters for the use and benefit of the public. *Byrd v. Idaho State Bd. of Land Commissioners*, 169 Idaho 922, 928, 505 P.3d 708, 714 (2022) (citing *Newton v. MJK/BJK, LLC*, 167 Idaho 236, 242, 469 P.3d 23, 29 (2020)). As administrator of the trust on behalf of the public, the state “has the right to regulate, control and utilize navigable waters for the protection of certain public uses, particularly navigation, commerce and fisheries.” *Kootenai Env’t All., Inc. v. Panhandle Yacht Club, Inc.*, 105 Idaho 622, 625, 671 P.2d 1085, 1088 (1983) (quoting Roderick Walston, *The Public Trust Doctrine in the Water Rights Context: The Wrong Environmental Remedy*, 22 U. Santa Clara L. Rev. 62, 66 (1982)).

Accordingly, in 1974 the Idaho Legislature enacted the Lake Protection Act. Lake Protection Act, ch. 243, § 1 (Idaho 1974) (“LPA”). In the LPA, the Idaho Legislature proclaimed:

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. § 58-1301.

Pursuant to the LPA, the Idaho Board of Land Commissioners, through IDL as its administrative instrumentality, has the authority and duty to “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. *See also* I.C. §§ 58-101, 58-104(9), 58-119.

The LPA provides both procedural and substantive requirements that shape IDL’s authority and discretion to permit encroachments upon, in or above the state’s navigable waters. I.C. § 58-1301 *et seq.* For example, when IDL receives a permit application for an encroachment governed by Idaho Code § 58-1306, the LPA urges IDL to begin its substantive evaluation by seeking feedback from other interested agencies “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.”² I.C. § 58-1306(b).

Additionally, when an application is uncontested, the LPA directs IDL to decide whether to grant a permit *without* holding a hearing. I.C. § 58-1306(d). In such an event, IDL’s ultimate decision is “based upon its own investigation and considering the economics of navigational necessity, justification or benefit, public or private, of such proposed encroachment as well as its detrimental effects, if any, upon adjacent real property and lake value factors[.]” *Id.* Conversely, when an application is contested, the LPA requires IDL to hold a public hearing on the application, such that each person or agency appearing at the hearing may “giv[e] testimony in

² Note that the LPA suggests IDL seek comment on the application from other interested *state* agencies, which the LPA Rules broadens to include “federal, state and local agencies and to adjacent littoral owners.” I.C. § 58-1306(b); IDAPA 20.03.04.030.03.

support of or in opposition to the proposed encroachment[.]”³ I.C. § 58-1306(c). IDL considers both public and agency testimony when IDL gives “due consideration” to the potential detriment on the lake value factors, which IDL weighs “against the navigational or economic necessity or justification for, or benefit to be derived from the proposed encroachment.” I.C. § 58-1301; I.C. § 58-1306; *Brett v. Eleventh St. Dockowner's Ass'n, Inc.*, 141 Idaho 517, 523, 112 P.3d 805, 811 (2005) (“IDL is required to balance the competing interests involved while determining whether to approve permits for navigational encroachments”). *See also Kootenai Env't All., Inc. v. Panhandle Yacht Club, Inc.*, 105 Idaho 622, 628, 671 P.2d 1085, 1091 (1983) (“[P]ublic trust resources may only be alienated or impaired through open and visible actions, where the public is *in fact* informed of the proposed action and has substantial opportunity to respond to the proposed action before a final decision is made thereon.”).

Further, “to effectuate the purposes and policy of [the LPA] within the limitations and standards set forth in [the LPA]” IDL promulgated “minimum standards to govern projects... and regulations governing procedures for processing applications and issuing permits under [the LPA].” I.C. § 58-1304. These minimum standards and regulations are titled “Rules for the Regulation of Beds, Waters and Airspace Over Navigable Lakes in the State of Idaho” and are commonly known as the LPA Rules. IDAPA 20.03.04. In particular, the LPA Rules define additional relevant terms, expand on IDL’s processing of applications, and prescribe detailed parameters governing the myriad encroachments IDL permits. IDAPA 20.03.04.010; IDAPA 20.03.04.015; IDAPA 20.03.04.030.

³ While the LPA does not define “public hearing,” the LPA Rules do:

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.

IDAPA 20.03.04.010.29. Thus, when a hearing is open for public comment it is only a limited opportunity for the public to provide testimony for the record, which IDL will consider when weighing the proposed encroachment’s potential detriments upon the lake value factors against its potential benefits.

To summarize, when IDL processes and evaluates an encroachment permit application, the LPA requires IDL to determine (1) whether the proposed encroachment satisfies the applicable minimum standards prescribed in the LPA Rules, and (2) whether the proposed encroachment's potential detrimental effects on the lake value factors outweigh the potential benefits.

The inclusion of OAH as an intermediary of sorts in LPA hearings necessitated "IDL's" role in these matters to clearly bifurcate. Meaning, as subject matter experts IDL staff receive/process an application, evaluate its compliance with the technical requirements in the LPA Rules, and may note any deficiencies for the record. In contrast, it is the IDL Director—not IDL staff—who ultimately weighs the potential benefits and detriments of the proposed encroachment after considering the entire record, which may include IDL staff's technical summary, any public or agency comment, and the Hearing Officer's recommended order. *See* I.C. § 58-105; IDAPA 62.01.01.100–103. Accordingly, this prehearing statement constitutes IDL staff's summary evaluation of the application's compliance with the technical requirements in the LPA Rules.

III. SUMMARY OF APPLICATION'S COMPLIANCE WITH THE STATUTORY AND REGULATORY REQUIREMENTS WITHIN IDL'S JURISDICTION

The proposed encroachment for consideration in this proceeding is a community dock for the eventual residents of "The Estates at Waterstone," a 22-lot subdivision located on the Spokane River in Post Falls, Idaho. The Spokane River is considered a navigable river between Coeur d'Alene Lake and Post Falls Dam. *Washington Water Power Co. v. FERC*, 775 F.2d 305, 326 (D.C. Cir. 1985) ("The river is navigable *within Idaho* from Coeur d' Alene Lake for eight miles to Post Falls, Idaho, five miles east of the Washington-Idaho boundary, where there is a natural drop of 40 feet."). The Applicant proposes to locate the community dock on this navigable stretch of the Spokane River, subjecting the application to the state's authority under the LPA.

The application contains one component: one eleven (11) double-slip community dock with breakwater. IDL-2 at 2, 5. The Applicant is not proposing any other encroachments through this application.

A. Littoral Ownership

The Applicant is a littoral owner that owns real property adjacent to the Spokane River identified as “Tract A, Estates at Waterstone according to the Plat recorded as Instrument No. 3007089000 in Book “M” of Plats, Pages ‘31-31C,’ records of Kootenai County, Idaho.” IDL-2 at 7, 9, 14. Tract A is a lot within The Estates at Waterstone. IDL-8 at 1, 3. The Estates at Waterstone is a 22-lot subdivision (platted prior to completion of the subdivision improvements), which is currently identified as Kootenai County Parcel No. 00000122770, AIN 121635. IDL-2 at 1, 9, 11; IDL-8. The Kootenai County Assessor’s Parcel Information Search tool indicates AIN 121635 is owned by Spokane River Northshore, LLC. According to the recorded plat, the lots within AIN 121635/The Estates at Waterstone “are subject to the covenants, codes and restrictions recorded under Instrument No. 3007090000, records of Kootenai County, requirements of the Estates of Waterstone Homeowners Association, together with any and all amendments made thereafter.” IDL-8 at 4; IDL-23. The proposed encroachment will be appurtenant to Tract A on the plat map. IDL-2 at 6, 14; IDL-8 at 4; IDL-23 at 10. The property appears to be a waterfront lot with littoral rights. There are no other parcels or roads between the property and the Ordinary High Water Mark (“OHWM”).

B. Type of Encroachment

The Applicant is seeking an encroachment permit to build one eleven (11) double-slip community dock on the Spokane River, which is a navigational encroachment.

C. Shoreline Length

The application indicates parcel AIN 121635 has approximately 420 feet of water frontage. IDL-2 at 17. When processing the application, IDL staff calculated the water frontage to be 426.36 feet. IDL-2 at 9. The Applicant only owns Tract A within AIN 121635, which has ~85 feet of shoreline. However, the recorded Declaration of Covenants, Conditions, and

Restrictions for the Estates at Waterstone (“CC&Rs”) state that the “Association shall own and cover permitting associated with community dock located on the Spokane River for the use and enjoyment of the Owners and their guests” and that “[n]o Owners shall have the right to construct docks on the Spokane River. In particular, the Owners of Lots 9, 10, 11, and 12 that border the Spokane River may not construct a private dock because that waterfront footage was utilized for the community dock.” IDL-23 at 10. Spokane River Northshore, LLC is the owner of AIN 121635/Estates at Waterstone and is the Declarant of the CC&Rs. IDL-23 at 1; *see* IDL-8 at 4. Although Spokane River Northshore, LLC did not submit or formally sign off on this application, its actions (evidenced by the recorded plat and CC&Rs) support that it consents to The Estates at Waterstone HOA, Inc. using AIN 121635’s full ~420 lineal feet of water frontage for this community dock application. With 420.36 feet of shoreline dedicated to the community dock, the community dock is limited to a maximum of 2,984.52 square feet of decking per IDAPA 20.03.04.015.02.c. IDL-2 at 9. Applicant proposes to construct a 2,893.5 square foot community dock. Therefore, the application appears to meet the maximum decking square footage standard.

D. Line of Navigability

The proposed community dock will extend beyond the Line of Navigability for this area. IDL-2 at 16. Put differently, the proposed community dock extends out into the river farther than the adjacent docks to the east and west. However, IDL’s Encroachments Procedures state that when processing applications for commercial marinas and community docks, the line of navigability is typically not considered.⁴

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

⁴ One can access IDL’s Encroachments Procedures on IDL’s website under Agency Guidance Documents (<https://www.idl.idaho.gov/agency-guidance-documents/>) > Protecting Natural Resources > Lakes and Rivers > Encroachments Procedures. The current Encroachments Procedures can be found here: <https://www.idl.idaho.gov/wp-content/uploads/sites/2/2025/07/EncroachmentsProceduresAndReferenceDocuments-July2025.pdf>

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 community dock will provide at least a twenty-five (25) foot buffer to the littoral line to the west and a one hundred thirty-two (132) foot buffer to the littoral line to the east. IDL-2 at 5, 6. Therefore, there is no presumption of adverse effect upon adjacent littoral rights. The application appears to provide sufficient buffers to each littoral line, in compliance with the LPA Rules.

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 a littoral owner with littoral rights to the entire shoreline of the Estates at Waterstone and there are no other parcels between the Estates at Waterstone parcels and the lake. Thus, Applicant appears to meet the LPA Rules’ signature requirement.

G. Additional Minimum Standards for Community Docks

As previously stated, The Estates at Waterstone HOA, Inc. has applied for an encroachment permit to install one eleven (11) double-slip community dock with breakwater containing twenty-two (22) total moorages for the twenty-two (22) lots in Estates at Waterstone. The LPA Rules define a community dock as “A structure that provides private moorage for more than two (2) adjacent littoral owners, or other littoral owners possessing a littoral common area with littoral rights including, but not limited to homeowner's associations. No public access is required for a community dock.” IDAPA 20.03.04.010.11. IDL considers Applicant to be an “other littoral owner possessing a littoral common area with littoral rights including, but not limited to homeowner’s associations.” Therefore, the LPA Rules’ community dock littoral ownership definition standard appears to be met.

The LPA Rules for community docks also state that “[n]o part of the structure waterward of the natural or ordinary high water mark... may exceed ten (10) feet in width except breakwaters when justified by site specific conditions and approved by the Department.” IDAPA 20.03.04.015.02.b. Here, the Applicant proposes a pier dock structure with a six (6) foot wide walk out, seven (7) foot wide backbone, four (4) foot wide fingers, and three (3) foot wide webs. IDL-2 at 5. The application also proposes a four (4) foot deep breakwater that extends four (4) feet beneath the dock at summer level. IDL-2 at 2. Accordingly, the proposed dock appears to meet the maximum width standard in the LPA Rules.

IV. SUMMARY OF COMMENTS

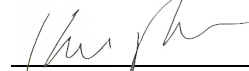
IDL has received numerous email and letter comments in opposition to the permitting of additional encroachments on the Spokane River generally, with most comments stating concerns for safety on the river, how crowded and busy the river already is, erosion problems, and environmental damage. IDL-11 through IDL-15. IDL has not received comments from agencies regarding this application.

V. CONCLUSION

Given the information provided in the application and in the record at this time, Applicant’s proposal appears to satisfy the minimum standards applicable to all encroachments and those specific to community docks under the LPA and LPA Rules. This prehearing statement does not opine whether the proposed encroachment’s potential detrimental effects on the lake value factors outweigh the potential benefits. As 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 herein based on the availability of new information.

DATED this 12th day of September, 2025.

IDAHO DEPARTMENT OF LANDS




Kayleen Richter
Counsel for IDL

CERTIFICATE OF SERVICE

I hereby certify that on this 12th day of September, 2025, I caused to be served a true and correct copy of the foregoing by the method indicated below, and addressed to the following:

The Estates at Waterstone HOA, Inc. Jason Garvey, Agent 1386 Northwest Boulevard Coeur d'Alene, ID 83814 (208) 916-3647 <i>Agent for Applicant</i>	<input checked="" type="checkbox"/> Email: jason@wesslen.com caseym@legacylw.com
Nathan S. Ohler Ohler Bean & Tinkey 1809 E. Sherman Avenue, Suite 101 Coeur d'Alene, ID 83814 (208) 444-8686 <i>Counsel for Applicant</i>	<input checked="" type="checkbox"/> Email: nathan@ohlerbean.com
Concerned Citizens, LLC 11927 W. Span Way Road Post Falls, ID 83854 (208) 964-4037 <i>Objector</i>	<input checked="" type="checkbox"/> Email: sherichic91@gmail.com
Peter J. Smith IV Katie Sheftic Nathan J. Sargent Fennemore Craig, PC 418 E. Lakeside Avenue, Suite 224 Coeur d'Alene, ID 83814 <i>Counsel for Objector Concerned Citizens</i>	<input checked="" type="checkbox"/> Email: peter.smith@fennemorelaw.com ksheftic@fennemorelaw.com nsargent@fennemorelaw.com
Amidy Fuson Marde Mensinger Idaho Department of Lands 300 N. 6 th Street, Suite 103 Boise, ID 83702 <i>IDL Navigable Waterways Program</i>	<input checked="" type="checkbox"/> Email: afuson@idl.idaho.gov mmensinger@idl.idaho.gov

Kayla Dawson Rachel King Kourtney Romine Idaho Department of Lands 300 N. 6 th Street, Suite 103 Boise, ID 83702 <i>Service Contacts for IDL</i>	<input checked="" type="checkbox"/> Email: kdawson@idl.idaho.gov rking@idl.idaho.gov kromine@idl.idaho.gov
Leslie Hayes OAH, General Government Division P.O. Box 83720, Boise, ID 83720-0104 816 W. Bannock Street <i>Hearing Officer</i>	<input checked="" type="checkbox"/> Email: filings@oah.idaho.gov leslie.hayes@oah.idaho.gov



Kayleen Richter
Counsel for IDL

ATTACHMENT A: APPLICABLE LEGAL PROVISIONS

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

The following provisions of the LPA apply to this 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.

(c) Any resident of the state of Idaho, or a nonresident owner or lessee of real property adjacent to the lake, or any state or federal agency may, within thirty (30) days of the first date of publication, file with the board an objection to the proposed

encroachment and a request for a hearing on the application. If a hearing is requested, the same shall be held no later than ninety (90) days from the date of filing the application and notice of such hearing shall be given in the manner prescribed for publishing notice of application. The board may, in its discretion, within ten (10) days of filing the application, order a hearing in the first instance in which case, publication of notice of the application shall be dispensed with. All such hearings shall be public and held under rules promulgated by the board under the provisions of chapter 52, title 67 of the Idaho Code. The board shall render a decision within thirty (30) days following conclusion of the hearing and a copy of the board's decision shall be mailed to the applicant and to each person or agency appearing at the hearing and giving testimony in support of or in opposition to the proposed encroachment....

...

II. LPA Rules, IDAPA 20.03.04

The following provisions of the LPA Rules apply to this application:

IDAPA 20.03.04.010 DEFINITIONS.

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.

...

11. Community Dock. A structure that provides private moorage for more than two (2) adjacent littoral owners, or other littoral owners possessing a littoral common area with littoral rights including, but not limited to homeowner’s associations. No public access is required for a community dock.

...

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.”

...

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.

02. Community Docks.

- a. A community dock is considered a commercial navigational aid for purposes of processing the application.
- b. No part of the structure waterward of the natural or ordinary high water mark or artificial high water mark may exceed ten (10) feet in width except breakwaters when justified by site specific conditions and approved by the Department.
- c. A community dock may not have less than fifty (50) feet combined shoreline frontage. Moorage facilities will be limited in size as a function of the length of shoreline dedicated to the community dock. The surface decking area of the community dock is limited to the product of the length of shoreline multiplied by seven (7) square feet per lineal foot or a minimum of seven hundred (700) square feet. However, the Department, at its discretion, may limit the ultimate size when evaluating the proposal and public trust values.
- d. If a breakwater will be incorporated into the structure of a dock, and a need for the breakwater can be demonstrated, the Department may allow the surface decking area to exceed the size limitations of Paragraph 015.02.c of these rules.
- e. A person with an existing community dock that desires to change the facility to a commercial marina must submit the following information to the Department:
 - i. A new application for an encroachment permit.
 - ii. Text and drawings that describe which moorage will be public and which moorage will be private.

...

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.

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