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

IN THE MATTER OF

Encroachment Permit Application
No. L95S6163A

River's Edge Apartments, LLC,
Lanzce Douglass,

Applicant.

Agency Case No. PH-2025-NAV-22-005

OAH Case No. 25-320-07

**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 20, 2025. This matter is scheduled for a public hearing on September 16, 2025, at 4:00 p.m. Pacific Time at the Best Western Plus, 506 West Appleway Avenue, Coeur d'Alene, Idaho 83814, in the Hayden Conference Room. 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

A. Procedural Background

On June 23, 2025, IDL received a complete application from the Applicant, identified as "Lanzce G. Douglass/Rivers Edge Apartments LLC." IDL-2. On June 30, 2025, IDL contacted

the Coeur d'Alene Press to publish public notice of the application and pending public hearing. IDL-4. That same day, IDL sent a resource agency notice seeking comments on the Application and a notice to Applicant's adjacent neighbors (City of Coeur d'Alene and River's Edge Property Owner's Assoc. Inc.) and provided them with a copy of the Application. IDL-5 and IDL-6. On July 4, 2025, and July 11, 2025, the Coeur d'Alene Press published a legal advertisement to notify the public of the Application ("Initial Legal Advertisement"). IDL-7. Pursuant to IDAPA 20.03.04.030.04(b), on July 31, 2025, the Kootenai County Sheriff objected to the Application due to concerns regarding safety for existing boaters and recreators within its jurisdiction. IDL-9. On August 1, 2025, IDL received a second objection from John Magnuson on behalf of Coeur d'Alene Land Company ("CDA Land Company"), opposing the Application due to concerns regarding the satisfaction of standards for a community dock under IDAPA 20.03.04.11 and requesting a public hearing. IDL-8. A third objection was submitted to IDL on August 4, 2025, by Concerned Citizens Against Additional 100 Boat Slips Added to Templins Resort on Spokane River, Inc. ("Concerned Citizens"), citing concerns that the proposed community dock system will worsen existing safety risks and "further degrade the river's ecological and recreational value," and requesting a public hearing. IDL-23. On the same date, a fourth objection and request for public hearing was submitted to IDL by Mill River Property Owner's Association ("Mill River POA"), stating concerns with the size of the proposed community dock system and public safety. IDL-22. On August 21, 2025, what seems to have been either public comment, or a fifth objection was submitted to IDL by Wahed Magee, a member of Concerned Citizens, citing concerns with public safety, lack of law enforcement resources, shoreline erosion, and long-term ecological sustainability. IDL-17.

Also on August 21, 2025, a *Petition to Intervene* was filed by John Magnuson on behalf of CDA Land Company. IDL-24. On August 22, 2025, a second *Petition to Intervene* was filed by Concerned Citizens, along with a supporting Memorandum and Declarations in support by Barbara J. James, Barbara T. Moen, C. Thomas Hoag, Cheryl Hollenback, Craig T. Sheppard, Dale F. James, Daniel F. Loughlin, David S. Magbee, Clinton Allert, Darci Allert, Marc Allert,

Steven D. Allert, Diana J. Sullivan, Doug Hardcastle, Doyle King, Eric Hirst, Erica Sheppard, Erin Hirst, Gary Maddock, Gina Magbee, Jason Lucas, Joseph V. Parrish, Joshua Sheppard, Linda Hardcastle, Margo Harding, Mary K. York, Michael High, Michael K. Moen, Michele M. Maddock, Patrick Smyly, Paula Smyly, Pauline Schindler, Randy Lewis, Rebecca Frost, Richard Teich, Scott Scofield, Sheryl Scofield, Steven Salhus, Susan B. Loughlin, Teresa Teich, Terri Shields, Traci M. Parrish, Vonda Manley, William A. and Lora L. Nienau, and William Harding. IDL-19, IDL-20, and IDL-21. Also on August 22, 2025, a third *Petition to Intervene* was filed by Boardwalk and Docks LLC and Residences on the Spokane LLC. IDL-18. On August 29, 2025, CDA Land Company filed an *Opposition to Petition to Intervene (Boardwalk and Docks, LLC and Residences on the Spokane, LLC)*. IDL-31. On August 30, 2025, and September 6, 2025, the Coeur d’Alene Press published a legal advertisement to notify the public of the Application and pending public hearing (“Second Legal Advertisement”). IDL-33.

On August 5, 2025, IDL contacted the Office of Administrative Hearings (“OAH”) to request a public hearing on the Application. IDL-1. On that same day, IDL received notice that OAH appointed a Hearing Officer for this matter. IDL-10. On August 7, 2025, OAH filed a *Notice of Errata to Correct Case Numbers*. IDL-12. A *Notice of Appearance* was filed on behalf of Applicant by Winston & Cashatt, Lawyers, a Professional Service Corporation, on August 13, 2025. IDL-15. After a scheduling videoconference on August 19, 2025, the Hearing Officer issued a *Scheduling Order* setting the date to hold a public hearing for September 16, 2025, and setting associated prehearing deadlines. IDL-16. On August 27, 2025, the Hearing Officer filed a *Notice of Hearing Location*. IDL-25. 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-13, IDL-14, IDL-17, IDL-20, IDL-30, and IDL-32. IDL has received one (1) agency response from the Kootenai County Sheriff. IDL-3 at 9.

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.”¹ 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 support of or in opposition to the proposed encroachment[.]”² 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

¹ 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.

² 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 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.

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 residents of a waterfront apartment complex located on the Spokane River in Coeur d'Alene, 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: a 74-slip community dock system comprised of five (5) separate docks, docks A-E on the Application. IDL-2 at 3, 7–11. The Applicant is not proposing any other encroachments through this Application.³

I. Littoral Ownership

When IDL received the Application on June 23, 2025, the Applicant was identified as "Lanzce G. Douglass/Rivers Edge Apartments LLC" at 1402 E Magnesium Rd #202, Spokane, WA. IDL-2 at 1.⁴ The tax record included in the Application indicates that when IDL received the Application, "Rivers Edge Apartments Llc" owned one (1) parcel adjacent to the Spokane River identified as Kootenai County Parcel No. C00000090200, AIN 228110. The parcel appears to be a waterfront parcel with littoral rights. As detailed below, the waterfront parcel is now

³ IDL notes for the record that IDL issued the Applicant an encroachment permit for a seawall on June 23, 2025 (L95S6163).

⁴ According to the Idaho Secretary of State's Business Search online tool, "River's Edge Apartments, LLC (478488)" with a principal address of 1402 E Magnesium Rd. Ste 202, Spokane, WA, was administratively dissolved on January 12, 2023, and has not been reinstated as of the date of this filing. The page in the Application that purports to demonstrate River's Edge Apartments, LLC's "ACTIVE" business status appears to be from the Washington Secretary of State's Business Entity Search Tool. IDL-2 at 15.

owned by Boardwalk and Docks, LLC.⁵ There are no other parcels or roads between the parcels and the Ordinary High Water Mark (“OHWM”).

II. Type of Encroachment

The Applicant is seeking an encroachment permit to build a seventy-four (74) slip community dock on the Spokane River, which is a navigational encroachment.

III. Shoreline Length

The Application indicates the Applicant’s parcel has 1,581 feet of water frontage. IDL-2 at 6, 13, 18. The Kootenai County parcel plat map provided in the Application does not show a lineal dimension for the waterfront parcel, only for the four (4) inland adjacent lots. IDL-2 at 17. However, the legal description on the quitclaim deed dated August 21, 2025 (attached as Appendix A-1 to Boardwalk and Docks LLC and Residences on the Spokane LLC’s petition to intervene) states the property follows the ordinary high water mark of the Spokane River a distance of 1579.8 feet. IDL-18 at 6.

IV. Line of Navigability

The proposed community dock will exceed the Line of Navigability for this area. IDL-2 at 18. The docks immediately to the west are approximately fifty (50) feet in length. The nearest docks to the east are approximately forty-five (45) feet in length.

V. Distance from Littoral Lines

The LPA Rule governing General Encroachment Standards provides a rebuttable presumption that community dock 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 community dock system will provide a 25-foot buffer to both the western and eastern property boundaries.

VI. Signature Requirement

IDAPA 20.03.04.020.02 states that “[o]nly persons who are littoral owners or lessees of a

⁵ As of its initial filing on August 12, 2025, Boardwalk and Docks, LLC is listed as “Active-Existing” on the Idaho Secretary of State’s Business Search online tool.

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.” A riparian or littoral owner is defined as the “fee owner of land immediately adjacent to a navigable lake, or his lessee, or the owner of riparian or littoral rights that have been segregated from the fee specifically by deed, lease, or other grant.” IDAPA 20.03.04.010.33.

IDL received a complete application from “Lanzce Douglass/Rivers Edge Apartments LLC” on June 23, 2025. When originally submitted to IDL, Rivers Edge Apartments LLC owned five (5) adjacent parcels: the waterfront parcel and four (4) inland lots. *See* IDL-2 at 17. When initially submitted, IDL considered Applicant to have satisfied IDAPA 20.03.04.020.02 as the signatory was the littoral owner.

However, it appears that on August 21, 2025 Applicant transferred ownership of the waterfront parcel to Boardwalk and Docks LLC, and one (1) adjacent inland lot to Residences on the Spokane LLC. IDL-18 at 5–8. The Applicant has provided documentation that the waterfront parcel, owned now by Boardwalk and Docks LLC has leased its littoral rights to the four (4) inland lots, now owned by Residences on the Spokane LLC and Rivers Edge Apartments LLC. As littoral owners or lessees of a littoral owner, IDL considers Boardwalk and Docks LLC, Residences on the Spokane LLC, and Rivers Edge Apartments to be eligible to apply for encroachment permits in accordance with IDAPA 20.03.04.020.02.

VII. Minimum Standards for Community Docks

As previously stated, Applicant proposes to install a community dock system comprising five (5) separate docks and containing seventy-four (74) total slips or moorages. 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. The LPA Rules define a littoral owner as the “fee

owner of land immediately adjacent to a navigable lake, or his lessee, or the owner of riparian or littoral rights that have been segregated from the fee specifically by deed, lease, or other grant.”

IDAPA 20.03.04.010.33. The LPA Rules define littoral rights as 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.” IDAPA 20.03.04.010.32. Aids to navigation are “[b]uoys, warning lights, and other encroachments in aid of navigation intended to improve waterways for navigation.” IDAPA 20.03.04.010.02. And, finally, encroachments in aid of navigation include “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.’” IDAPA 20.03.04.010.15.

When one considers these definitions read together and in context, one can conclude that the Applicant can be considered a fee owner of waterfront land possessed as a littoral common area for the benefit of lessees/tenants, which are either the residents of the waterfront apartment complex, or the additional LLCs. Put differently, the LPA’s definition allows for a “littoral owner” to be any type of lessee of the fee owner of land who “possesses”—not necessarily owns—a littoral common area, to make use of their rights to the waterfront by using a dock. As such, it appears the Applicant satisfies the littoral ownership definition requirements for a community dock as “other littoral owners possessing a littoral common area with littoral rights” in either the Application’s initial iteration of the littoral property ownership or in the secondary post-conveyance littoral property ownership/tenancy between the LLCs.

Next, the Application also appears to provide a twenty-five (25) foot buffer to each littoral line on the western and eastern property boundaries in compliance with the LPA Rules. The Applicant is proposing 11,064 square feet of dock space. Per IDAPA 20.03.04.015.02.c, the Applicant would be required to have 1,580.57 lineal feet of water frontage. The Application

states there is 1,581 lineal feet of water frontage. The quitclaim deed submitted indicates that total water frontage for AIN 228110 is 1,579.8 feet. IDL-18 at 6. Based on that information it appears the proposed dock may be slightly larger than allowed per IDAPA 20.03.04.015.02.c. At hearing, the Applicant should address the discrepancy between the two water frontage figures or reduce the size of the dock system to abide by the deeded dimension of 1,579.8 lineal feet. The community dock system 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.⁶

IV. SUMMARY OF COMMENTS

IDL has received numerous email and letter comments regarding this application, with most of them stating concerns for safety on the river, how crowded and busy the river already is, erosion problems, and environmental damage. IDL also received a letter from the Kootenai County Sheriff's office opposing this application, citing safety concerns and the potential that this stretch of the Spokane River could become a 'No Wake Zone'.

V. CONCLUSION

Given the information provided in the application and in the record at this time, Applicant's proposal seems to require additional information to determine compliance with encroachment standards regarding lineal feet of water frontage. IDL respectfully reserves the right to supplement, clarify, or modify its statements herein based on the availability of new information.

DATED this 5th day of September, 2025.

IDAHO DEPARTMENT OF LANDS



Kayleen Richter
Counsel for IDL

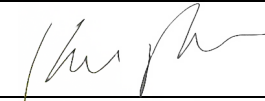
⁶ One can access IDL's Encroachments Procedures on IDL's website under Agency Guidance Documents (<https://www.idl.idaho.gov/agency-guidance-documents/>) > Protecting Natural Resources > Lakes and Rivers > Encroachments Procedures. The current Encroachments Procedures can be found here: <https://www.idl.idaho.gov/wp-content/uploads/sites/2/2025/07/EncroachmentsProceduresAndReferenceDocuments-July2025.pdf>.

CERTIFICATE OF SERVICE

I hereby certify that on this 5th 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:

Elizabeth A. Tellessen WINSTON & CASHATT, LAWYERS, P.S. 250 Northwest Boulevard, Suite 206 Coeur d'Alene, ID 83814 <i>Counsel for Applicant River's Edge Apartments and Lanzce Douglass</i>	<input checked="" type="checkbox"/> Email: eat@winstoncashatt.com clk@winstoncashatt.com lanzce@lgdproperties.com
Cindy and Brandon Richardson R & R Northwest 1857 W. Hayden Avenue, # 102 Hayden, ID 83835 <i>Agents for Applicant</i>	<input checked="" type="checkbox"/> Email: cindy.richardson@rrnorthwest.com
Coeur d'Alene Land Company John F. Magnuson 1250 Northwood Center Court, Suite A Coeur d'Alene, ID 83816 <i>Counsel for Objector CDA Land Co.</i>	<input checked="" type="checkbox"/> Email: john@magnusononline.com
Sheriff Robert B. Norris Kootenai County Sheriff's Office P.O. Box 9000 Coeur d'Alene, ID 83816 <i>Objector</i>	<input checked="" type="checkbox"/> Email: kcso@kcgov.us
Peter J. Smith IV Fennemore Craig, PC 418 E. Lakeside Avenue, Suite 224 Coeur d'Alene, ID 83814 <i>Counsel for Potential Intervenor Concerned Citizens</i>	<input checked="" type="checkbox"/> Email: peter.smith@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

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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....

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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.

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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.

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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.”

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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.

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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.

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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.

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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.

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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.

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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.

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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.

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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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