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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. L95S3071A

Fred Finney dba Finney Boat Works, Inc.,

Applicant.

Agency Case No. PH-2025-NAV-22-004

OAH Case No. 25-320-06

**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 September 4, 2025. This matter is scheduled for a public hearing on October 28, 2025, at 1:30 p.m. Pacific Time in the DeArmond Building, Room 212, at North Idaho College, 1000 W. Garden Avenue, Coeur d’Alene, Idaho 83814. IDL concurrently submits its disclosure of witnesses, exhibit list, and proposed exhibits for hearing.

I. BACKGROUND

Fred Finney, doing business as Finney Boat Works, Inc. (“Applicant”), has applied for a permit to authorize one (1) existing commercial dock and two (2) pilings on the Spokane River in Kootenai County, Idaho.

A. Procedural Background

On June 26, 2025, IDL received a complete application from the Applicant. IDL-1. On July 22, 2025, IDL contacted the Coeur d’Alene Press to publish public notice of the application.

IDL-3. That same day, IDL sent a resource agency notice seeking comments on the application and a notice to Applicant's adjacent neighbors (George and Kay Cherokee and Ross Schlotthauer) and provided them with a copy of the application. IDL-2 and IDL-5. On July 25, 2025, and August 1, 2025, the Coeur d' Alene Press published a legal advertisement to notify the public of the application ("Legal Advertisement"). IDL-6. Pursuant to IDAPA 20.03.04.030.04(b), on July 29, 2025, adjacent neighbor Ross Schlotthauer ("Schlotthauer") objected to the application and requested a public hearing. IDL-4.

On July 30, 2025, IDL contacted the Office of Administrative Hearings ("OAH") to request a public hearing on the application. IDL-7. On August 1, 2025, IDL received notice that OAH appointed a Hearing Officer for this matter. IDL-8. A *Notice of Scheduling Conference* was issued by OAH on August 4, 2025, setting the matter for a scheduling videoconference on August 21, 2025. IDL-9. On August 11, 2025, adjacent neighbor George Cherokee ("Cherokee") submitted to IDL an objection to the application. IDL-12. Upon receipt of this additional objection, OAH issued a *Notice of Reset Scheduling Conference*, resetting the scheduling videoconference for September 2, 2025. IDL-10. After the scheduling videoconference on September 2, 2025, the Hearing Officer issued a *Scheduling Order* setting the date to hold a public hearing for October 28, 2025, and setting associated prehearing deadlines. IDL-11.

On October 6, 2025, the Hearing Officer filed a *Notice of Hearing Location*. IDL-13. The hearing will take place at North Idaho College, 1000 W. Garden Avenue, Coeur d'Alene, Idaho, 83814, in the DeArmond Building, Room 212. *Id.*

B. Comments

To date, IDL has not received any public comments or responses from local, state, or federal agencies for the application.

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 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

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.

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.

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

The proposed encroachments for consideration in this proceeding are two (2) commercial pilings and a commercial dock for the Applicant and his business located on the Spokane River in Post Falls, Idaho. The Applicant has already installed the piling, and no new construction is planned for the dock, so both encroachments are seeking an after-the-fact permit.

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 encroachments are located on this navigable stretch of the Spokane River, subjecting the application to the state’s authority under the LPA.

The application contains two components: one (1) commercial dock and two (2) pilings. IDL-2 at 2, 5. The Applicant is not proposing any other encroachments through this application, the existing boat launch system is permitted.

A. Littoral Ownership

The Applicant is a littoral owner that owns real property adjacent to the Spokane River identified as Kootenai County Parcel No. 50N04W080475, AIN 165525. IDL-2 at 1, 9, 11; IDL-8. The Kootenai County Assessor’s Parcel Information Search tool indicates AIN 165525 is owned by Fred Finney. 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 authorize one (1) existing commercial dock and two (2) pilings on the Spokane River, which are navigational encroachments.

C. Shoreline Length

When processing the application, IDL staff calculated the water frontage to be approximately 100 feet, which coincides with measurements taken from Kootenai County’s parcel webpage, KC Earth.

D. Line of Navigability

The proposed commercial dock and outermost piling will extend slightly beyond the Line of Navigability for this area. IDL-2 at 16. The dock extends approximately one-hundred seven and a half (107.5) feet, while neighbor docks appear to be approximately ninety (90) to ninety-five (95) feet long. IDL’s Encroachments Procedures state that when processing applications for commercial marinas and community docks, the line of navigability is typically not considered.³

³ 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.

While this is not a commercial marina, it is a commercial navigational encroachment that is treated similarly with respect to the line of navigability. IDAPA 20.03.04.010.10.

E. Distance from Littoral Lines

The LPA Rule governing General Encroachment Standards provides a rebuttable presumption that commercial navigational encroachments and 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 materials, it appears the piling will not provide at least a twenty-five (25) foot buffer to the littoral line to the west but will provide at least a twenty-five (25) foot buffer to the littoral line to the east. The commercial dock appears to provide a forty (40) foot buffer to the littoral line to the west, and a fifty (50) foot buffer to the littoral line to the east. IDL-2 at 5, 6.

Prior to the submittal of the complete application, the Applicant met with IDL Resource Supervisor Mike Ahmer to discuss the littoral lines and how to apply the chord method when establishing littoral lines. Mr. Ahmer created a figure at that meeting for illustrative purposes showing roughly how the chord method is applied. Mr. Ahmer was then asked by the Applicant to recreate that figure for purposes of this Hearing. *See* IDL-16. The chord method locates riparian right lines by identifying the points of intersection with the parcel boundaries and the artificial or ordinary high-water mark (whichever is applicable). These points are connected by chords. The riparian right lines fall along the bisector of the angles created by the chords. The riparian right lines then extend to the line of navigability. There are limitations and challenges with determining the chord method angles using the County's parcel webpage software (KC Earth), particularly since the parcel lines are not always accurate in relation to the aerial image. In the case of the Applicant's westerly parcel line, it appears to be off by approximately four (4) feet based on conversations with the Applicant and the appearance of a fence line on the aerial image. One then has to estimate where the OHWM is located on the aerial image, which can be a challenge as the most recent (2025) image was taken when the boats were not located in their

slips or docks, and the dock coverings were not placed on canopies (meaning not in the summer when it's at the OHWM level). However, using the best of Mr. Ahmer's ability, Mr. Ahmer created the three markings where the Schlotthauer and Finney property lines actually meet the OHWM, taking into account the approximate four (4) foot shift in the property lines. Mr. Ahmer then created the chords that connected those three points. Using a protractor affixed to the computer screen, Mr. Ahmer estimated that the angle that was created at Finney's western littoral line was approximately 170 degrees. He then created a line that bisected that angle at a bearing of approximately 85 degrees from shore out into the water. Next, he measured the distance from the two (2) pilings to the chord method line and observed a distance of approximately twenty (20) feet for the outermost piling and approximately fifteen (15) feet for the innermost piling.

Mr. Ahmer believes that when he originally met with the Finneys to create the chord method line, the distances might have been a little different, as the method is not always 100% accurate like a licensed survey would produce. Upon reviewing the application and shoreline, and creating a chord method figure, Mr. Ahmer concluded that the chord method would produce a littoral line that flares away from the Finney dock and slightly towards the Schlotthauer dock to the west, and that the outermost piling would be located farther away from the littoral line as compared to the innermost piling due to the flaring. It could be possible if not all property lines were shifted approximately four (4) feet and Mr. Ahmer's estimation of the OHWM was slightly off, that the outermost piling could be located twenty-five (25) feet from the littoral line using the chord method. However, the only way to know the exact distance would be to hire a licensed surveyor to extend the accurate property lines to the precise OHWM elevation to create the three markings, use a compass calibrated for the local magnetic declination to determine the exact angle of the chord, and then have someone in waders or a wetsuit to go out in low water to mark the chord method littoral line. One could then measure from the existing piling to the delineated littoral line.

Upon review of the previous permit for this parcel (L95S3071), as well as current and previous permits for both objectors (Schlotthauer and Cherokee), it appears that all parties

submitted dock drawings as part of their applications showing the littoral lines as extensions of the shoreline, which is generally perpendicular to the general shoreline, as opposed to using the chord method. *See* IDL-17 – IDL-19. This is very common when the property lines meet the shoreline in generally a perpendicular fashion and there are existing docks in the area extending out into the water at the same angle.

On review of the application materials, it appears the piling are located approximately four (4) feet from the littoral line. The drawing for the commercial dock shows that it is located approximately forty (40) feet to the littoral line, and the figure for the piling shows that the dock is thirty-six (36) feet from the piling. Therefore, the piling would be located approximately four (4) feet from the littoral line, although, the application paperwork states a distance of eight (8) feet. Either way, when the littoral line is a general extension of the property line, the piling is within the twenty-five (25) foot buffer, triggering the presumption of adverse effect upon adjacent littoral rights.

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 and there are no other parcels between the Applicant’s parcel and the Spokane River. Thus, Applicant appears to meet the LPA Rules’ signature requirement.

IV. SUMMARY OF COMMENTS

IDL has received objections from both adjacent neighbors. ITD, IDFG and IDEQ submitted responses citing ‘No Comment’. Kootenai County Planning Department submitted comments referencing their requirements for a permit through them for upland activities. IDL has not received any additional public or agency comment at the time of filing.

V. ADDITIONAL CONTEXT

Based on Mr. Ahmer's conversations with one of the objectors and the Applicant, it appears the major issue here involves the location of the piling. The Application states the piling were installed in 2016, which is consistent with a review of aerial imagery on KC Earth and GoogleEarth. Mr. Ahmer's communication with Mr. Schotthauer began back in late April 2024 regarding issues with the piling and an extra dock that has since been removed. Mr. Ahmer contacted the Finneys and was able to resolve the issue of the extra dock. When Mr. Ahmer spoke with Mr. Finney regarding the piling, Mr. Finney pointed out that the original encroachment permit allowed seven (7) piling. However, based on photos provided by Mr. Schlotthauer and a review of aerial imagery, the piling were installed in an unpermitted location around 2016. Mr. Ahmer contacted the Finneys about the piling appearing to be in violation. Mr. Ahmer explained that if the piling were noncompliant, the piling would need to be removed or the Finneys would need to submit an after-the-fact encroachment permit application. Mr. Finney indicated he would apply for an encroachment permit, however, Mr. Ahmer understands that the Finneys left town for the winter before being able to submit a complete application. Nevertheless, Mr. Ahmer met with the Finneys in the spring of 2025 and they submitted an application packet in June 2025.

VI. CONCLUSION

Whether using the chord method, or using extensions of the property lines as the littoral right lines, the piling do not appear to provide a twenty-five (25) foot buffer to the westerly neighbor. As previously stated, it is possible that a figure could be created on KC Earth showing a twenty-five (25) foot buffer to the westerly littoral line. However, based on previous permits for the adjacent parcels to the Applicant, wherein the Applicant was presumably noticed as being an adjacent neighbor, along with the Applicant's own previous application paperwork, it appears that mutually agreed upon littoral lines were simply extensions of the property lines for this area. IDAPA 20.03.04.015.13.e states that it will be presumed, subject to rebuttal, that encroachments not providing the proper setback have an adverse effect on adjacent neighbors. While it appears

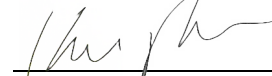
that the presumption is triggered here, it is rebuttable and IDL believes that both the applicant and objectors should be able to present their arguments in defense of or in favor of rebutting the presumption of adverse effect at hearing.

The commercial dock appears to provide more than the required twenty-five (25) foot buffer to both the easterly and westerly littoral lines. There are no size restrictions or limitations in IDAPA for commercial navigational encroachments. The application proposes to permit the existing dock that appears to have been in the location and size since at least 2010 based on aerial imagery. The dock extends out slightly further than the adjacent docks, but it is a commercial navigational encroachment—meaning that IDL does not typically consider the line of navigability for these types of encroachments. Regardless, because this is an after-the-fact application and the dock exists in the size and location proposed in the application, the current and actual line of navigability will not be impacted by permitting the existing dock.

Overall, IDL is currently neutral on the merits of this application in its entirety. However, IDL respectfully reserves the right to supplement, clarify, or modify its statements herein based on the availability of new information.

DATED this 14th day of October, 2025.

IDAHO DEPARTMENT OF LANDS

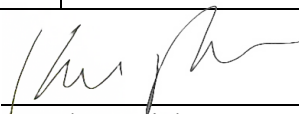


Kayleen Richter
Counsel for IDL

CERTIFICATE OF SERVICE

I hereby certify that on this 14th day of October, 2025, I caused to be served a true and correct copy of the foregoing by the method indicated below, and addressed to the following:

Fred Finney Finney Boat Works, Inc. 7014 E. Maplewood Avenue, Post Falls, ID 83854 (208) 755-5690 <i>Applicant</i>	☒ Email: finneydianek@gmail.com
Ross Schlotthauer 6980 E. Maplewood Avenue, Post Falls, ID 83854 (208) 755-8687 <i>Objector</i>	☒ Email: ross@burlyproducts.com
George Cherokee 931 Cindy Jo Court, Medical Lake, WA 99022 (509) 998-7550 <i>Objector</i>	☒ Email: george@fcontrol.com
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