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Lanzce Douglass, Boardwalk and Docks LLC
and Residences on the Spokane LLC

BEFORE THE IDAHO DEPARTMENT OF LANDS

In the Matter of the Application for
Encroachment L95S6163A, a
Community Dock,

River's Edge Apartments, LLC,
Lanzce Douglass,

Applicant.

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

OAH Case No. 25-320-07

**APPLICANT AND INTERVENORS'
CLOSING BRIEF**

1. Introduction

The Spokane River is held by the state of Idaho in trust for use by all the people of the state of Idaho, not just those that are lucky enough to own a house on the river. The interests of the public at large in navigating the Spokane River for commerce and recreation are improved by the construction of docks that serve more than individual landowners. The proposed community dock is one of a kind, offering moorage to tenants of the River's Edge Apartments. Analysis of the objections reveals the goal to preserve individual use and enjoyment, but are not evidence that this request works as a detriment to the public trust or lake value factors. The River's Edge community dock permit should be approved.

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2. Procedural History

Applicant River's Edge Apartments, LLC and Lanzce Douglass, along with Intervenor, Boardwalk and Docks LLC, and Residences on the Spokane LLC, (collectively "River's Edge") adopt and incorporate by this reference the Procedural Background, set forth in *Idaho Department of Lands' Prehearing Statement*. In addition, it should be noted that during the Pre-Hearing conference held September 8, 2025, the Hearing Officer granted Boardwalk and Docks LLC and Residences on the Spokane LLC's request to intervene noting that the record would be held open until September 30, 2025, for purposes of allowing further public comment on the change of ownership. That limitation was not expressed during the hearing (Hr'g Tr. p. 12, ll. 19-21) and since that time a number of substantive, albeit irrelevant, comments have been submitted.

The hearing on this matter was held September 16, 2025. At the hearing the Hearing Officer granted Coeur d'Alene Land Company's ("CDA Land") motion to intervene, and denied Concerned Citizens Protecting the Spokane River, Inc.'s ("Citizens") motion to intervene.¹ Nevertheless, Citizens was permitted to participate in the hearing as if it were a party, which included the right to submit exhibits, cross-examine witnesses, object to evidence, and present witness testimony outside the strictures of public testimony.

During the hearing IDL presented the technical aspects of the application but offered no evidence that the proposed encroachment would be a detriment to the public trust or the

¹ Citizens were denied the right to intervene due to the absence of a direct and substantial interest in the proceedings. IRAP 700, Hr'g Tr. p. 17, ll. 17-19.

lake value factors. (Hr'g Tr. pp. 20-21) The applicant called as witnesses: Hilary Patterson, the City of Coeur d'Alene Planning Director, the city being adjacent littoral owner to the east; Lanzce Douglass, representing the Applicant, Cindy Richardson of R&R Northwest, Ryan Andrade and Wayne Lockman of Whipple Consulting Engineers, and expert witness Captain Joseph Derie². The only agency with expertise that commented on the application or testified at the hearing was Kootenai County Sheriff Norris and Sargent Ryan Miller.

CDA Land owned and represented by attorney John Magnuson, testified that the application did not comply with the rules and that the encroachment extends beyond the line of navigability. (Hr'g Tr. p. 102) The alleged rule violation stems from the littoral ownership required for a community dock. This objection is addressed in the River's Edge Pre-Hearing Statement at Section 2.1, which is incorporated herein by this reference. Frivolously, Mr. Magnuson asserts that the change in littoral ownership results in a failure of due process (Hr'g Tr. p. 102, l. 25) although neither he, the state, nor any member of the public have liberty or property interest in River's Edge property or the pursuit of its littoral rights. (Hr'g Tr. p. 109, ll. 8-18) CDA Land's objections then spiral into allegations that the application misrepresents its intent to utilize these docks for community purposes and seeks a special condition requiring River's Edge to comply with the law. (Hr'g Tr. p. 103) The absurdity of CDA Land's position aside, the general conditions of the encroachment permit already require River's Edge to comply with the applicable law, there is no basis to impose a separate

² Citizens, although not a party, was permitted to object to Capt. Derie's expert testimony; but no party to the proceedings objected to his admission. IRAP 482.

or special condition. (E.g. REA-3-2, General Condition 2) CDA Land goes on to, again, restate the applicable law that these docks can only be permitted if approved by the Director of IDL. (Hr’g Tr. p. 104, ll. 8-9) Interestingly, CDA Land did not assert that the proposed docks would interfere with its littoral rights.

The testimony presented by Citizens and the public largely duplicated what was submitted in writing, spiced up with unfounded allegations of bribery and favoritism by IDL. (Hr’g Tr. pp. 110-11; p. 120 ll. 7-12) What became clear from the testimony is the goal to preserve the interests of those that are already on the river and shut the gate to everyone else. (Hr’g Tr. p. 115, ll. 3-5 [seeking that the public trust doctrine and IDAPA be applied to “our benefit”]; p. 112 and p. 118, ll. 12-14; pp. 125, 162, 173) It also became apparent that despite the proclaimed danger that persists along the river, all but one (Hr’g Tr. p. 163) testified to their continued use of the river during peak times (weekends and holidays). (Hr’g Tr. p. 112, ll. 13-15; pp. 124, 144) It also bears noting that of the eighteen videos (INT-1 and INT-6) offered by the self-described meticulous Vic Parrish, the majority of which are Saturdays and Sundays, none of them are evidence of the purported overcrowding on the river. (Hr’g Tr. p. 151) The testimony by Citizens and by the public is largely irrelevant to the evaluation of these proposed community docks.

3. Burden of Proof

Preponderance of the evidence is the standard for administrative proceedings. IRAP 477. “A preponderance of the evidence means that when weighing all of the evidence in the record, the evidence on which the finder of fact relies is more probably true than not.”

Oxley v. Medicine Rock Specialties, Inc., 139 Idaho 476, 481, 80 P.3d 1077, 1082 (2003).

The primary question presented in this matter is whether the proposed community dock will be a detriment to the lake value factors.

The relevant evidence offered by River's Edge establishes that the application complies with the Lake Protection Act (LPA, Title 58, Chapter 13, Idaho Code) and the rules promulgated under that authority (IDAPA 20.03.04). Furthermore, the LPA requires that the application be circulated to state agencies so that those may opine on whether the proposal will have a "likely effect" on the lake value factors. IC §58-1306(b). The LPA does not obligate the applicant to offer affirmative evidence of a benefit to the lake value factors.

The only agency to oppose this application was the Kootenai County Sheriff. And the opinion of the Sheriff was rebutted by expert witness Captain Joeseeph Derie. No other agency offered an opinion, objection or asserted a detriment to a lake value factor. Although the public opposition presented to this application is robust it focuses largely on observations of the river generally, with only speculation regarding this proposal's impact on the lake value factors. Speculation, however well intended, is not relevant and should be given minimal, if any, weight in these proceedings.

As provided in more detail below, River's Edge has met its burden of establishing by a preponderance of the evidence that the navigational and economic justification for this community dock is not outweighed by any detriment to the lake value factors.

4. The River's Edge community dock is a navigational encroachment that is properly approved under the LPA.

River's Edge incorporates herein by this reference the legal authority set out in its Pre-Hearing Statement. The balance of this brief will show the preponderance of the evidence supports approval of the requested permit, with standard conditions and a lease under IDAPA 20.03.17.

4.1 The proposal is for a community dock within the meaning and intent of the LPA and IDAPA 20.03.04.010.11 and .015.02.

The navigational and economic justification for this community dock is inextricably bound to its being available for lease only to tenants of the River's Edge Apartments. This intent was certified by Lance Douglass in the application and sworn by him under oath at the hearing. (Hr'g Tr. p. 40, ll. 6-10) Mr. Magnuson without any basis in law or fact, attempted to cast doubt on this intent and requested that the permit include a special condition to allay his personal suspicion. (Hr'g Tr. p. 103-104)

Upon issuance of the permit for a community dock River's Edge is legally bound to comply with the terms of the permit and remain in compliance with all applicable laws and regulations. To this end, the regulations already mandate that a change from a community dock to a commercial marina is subject to a new application. IDAPA 20.03.04.015.02(e). There is no basis to impose a special condition on this permit, the only purpose of which is to pacify a querulous landowner.

4.2 The docks comply with the surface decking requirements of IDAPA.

IDL requested in its Pre-Hearing Statement clarification regarding the length of the River's Edge shoreline, for purposes of verifying the dock surface follows IDAPA 20.03.04.015.02(c). The question arose when IDL compared the legal description, which calls out a straight line "coincident with the meandering ordinary high water mark of the Spokane River" the length of 1579.80 feet, to the length asserted in the application 1581 feet. (REA-4-2) The evidence and testimony presented at the hearing established that neither of those distances reflect the actual length of the shoreline.

During the hearing Ms. Richardson testified that she included the length of 1581 feet in the application based on her use of the GIS mapping tools available online, which is her common practice. (Hr'g Tr. p. 58, ll. 3-15) Surveyor, Mr. Wayne Lockman, then testified that the dimensional line in the legal description of 1579.80 feet, is not intended to establish the shoreline boundary. (Hr'g Tr. p. 75, l. 24 – p. 76, l. 7; p. 77, ll. 3-12) Rather, the ordinary high water mark establishes the boundary, and the surveyed length of the shoreline boundary is 1591.4 feet. (Hr'g Tr. p. 77, ll. 20-25, p. 78, ll. 4-17; and see REA-17-1) Accordingly, the surface area of the proposed community docks 11,064 sq.ft. is less than the allowed area 11,139.8 sq.ft.

4.3 There are both navigational and economic justifications for the River's Edge community dock.

It has long been recognized that "[t]he interest of the people in navigation of the waters and in commerce over them may be improved in many instances by the erection of wharves, docks, and piers therein, for which purpose the state may grant parcels of the submerged lands, and so long as their disposition is made for such purpose, *no valid objections can be made to the grants.*" *Illinois Cent. R. Co. v. State of Illinois*, 146 U.S. 387,

452 (1892). It is axiomatic that these docks are an aid to navigation; and they uniquely provide navigational opportunities to an otherwise unserved portion of the public.

But the community dock is not only an aid to navigation. Because of the community docks, there will be four river access points that will provide access for non-motorized navigation (paddleboards, kayaks), swimming and fishing for those so inclined. The navigational opportunities afforded by these community docks to the apartment's tenants are unique and further the public trust by making navigation of the Spokane River available to those not lucky enough to own river front property. Comments from Citizens and the public indicate a preference for single family docks, this narrowmindedness is further evidence of the justification and necessity for these community docks to provide alternatives for docking and moorage on the Spokane River for more of the public.

The LPA does not specify the nature or extent of the economic justification or necessity to be shown, nor does it require evidence of necessity.³ Further, neither the LPA nor the public trust limit or preclude corporate citizens from enjoying the economic benefit derived from riparian property and littoral rights. This highlights the hypocrisy of the Citizens and public comments that tout the benefits of increased property values they enjoy but seek to deprive others of the same benefit. (Hr'g Tr. p. 173, ll. 16-25) Further, to employ an apropos aphorism "a rising tide lifts all boats," the greater economic benefit to River's Edge the greater the economic benefit to the public through increased taxes, rental payments, boat license fees, etc.

There is no other apartment complex in the area that offers a community dock for its tenants. Furthermore, River's Edge Apartments will have affordable housing units, serving

³ Cross-examination by counsel for Citizens alluded to the need to show navigational or economic necessity, but this misstates the law, which directs consideration of "necessity or justification." (E.g. Hr'g Tr. pp. 49-51; IC §58-1301)

those whose income is at or below the average median income (AMI) for the area. (Hr’g Tr. p. 24, ll. 15-16) Making it plausible that a young or marginalized family will be able to prioritize their limited funds to lease a slip at this community dock, utilizing it for a small fishing boat, kayak or paddle boards. (Hr’g Tr. p. 58, l. 20 – p. 59, l. 5) Whatever the vessel, River’s Edge will be in no position to discriminate.

The weight of the evidence establishes that the navigational and economic justification for this community dock are unmatched and are due significant weight in the balancing of these interests against the lake value factors. The River’s Edge application for community docks should be approved.

4.4 The River’s Edge community docks do not deter from the lake value factors.

There is much ado about the condition of the Spokane River, from water quality to boater safety. But the Lake Protection Act does not control these attributes. (Hr’g Tr. p. 15, ll. 11-21; and see IC §58-1306(a), IDAPA 20.03.04.020) IDL’s responsibility is to weigh the navigational and economic justifications against the lake value factors. IDL seeks the advice and opinions of other agencies regarding the “likely effect of the proposed encroachment...upon the lake value factors.” IC §58-1306(b). The Sheriff’s department is the only agency to opine on the lake value factor of navigation.

The public testimony received before, during and after the hearing complains of conditions already present in the Spokane River. This testimony speculates that the community docks and the boats that occupy it will have a different impact than the docks and boats already present and enjoyed by the Citizens and public. And, while the question of cumulative impacts warrants evaluation, the cure for those impacts is properly borne by all users of the river, not just River’s Edge.

4.4.1 There is no evidence that the proposed docks will be a detriment to the lake value factor of navigation.

River's Edge, Boardwalk and Docks and Residences on the Spokane have littoral rights that includes the right to build and use a dock as an aid to navigation. IC §58-1302(f). The legislature has directed that a community dock be subject to more stringent review under IC §58-1306 because they present greater encroachment to navigation than single family docks⁴. However, the fact that a community dock extends beyond the line of navigability is not a basis to conclude that it is a detriment to navigation or to deny the permit. *IDL Encroachment Procedures*, Section 25.3.A, p. 32 (2025).

The proposed docks are not a hazard or detriment to safe navigation. (Hr'g Tr. p. 86, ll. 6-23; and e.g. 33 C.F.R. 64.06) While the docks are considered, as a matter of law, navigational encroachments, they will not prevent navigation in accordance with the adopted vessel operational standards. (Hr'g Tr. p. 87, ll. 2-9; p. 89, ll. 7 – 11) The survey of the river at this location establishes there will remain unobstructed a corridor at least 366' wide⁵. (REA-2) IDL's purpose in establishing this corridor was to show there remains a safe corridor for navigation. (Hr'g Tr. 72, ll. 5-10) While Sgt. Miller speculated there could be a variety of other potential hazards, obstructions and safety issues in the corridor, none of them related to the design, presence or use of these community docks. (Hr'g Tr. p. 134, ll. 16-22, p. 136, ll. 7-18, p. 138, ll. 8-22) Conversely, Capt. Derie's expert opinion⁶ is that these docks

⁴ “[D]ocks not intended for commercial or community use shall be processed by the board with minimum of procedural requirements and shall not be denied...” IC §58-13-05(a).

⁵ The ultimate width of the unobstructed channel will depend on the extent of the navigational encroachments placed on the southern shoreline.

⁶ Counsel, the Sheriff and the witnesses argued with Capt. Derie about his conclusions, none offered evidence establishing that this dock, or the boats to be moored at it will cause a distinct or disparate detriment to safe navigation. (E.g. Hr'g Tr. pp. 94-98, 181)

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will not impede navigation of the river, nor present a threat to safe navigation. (Hr’g Tr. p. 90, ll. 7-11) Furthermore, Sgt. Miller and Capt. Derie agree that studies of the entire river, including its use at peak times, are the proper way to evaluate its safety, although no funding has been requested to conduct such a study. (Hr’g Tr. p. 89, ll. 12-24; p. 130, ll. 8-14; p. 136, l. 25 – p. 137, l. 5)⁷

As the Sheriff remarked during the hearing, he is solely responsible for safety on the water. (Hr’g Tr. p. 127, ll. 20-24) In furtherance of this responsibility the deputies make routine stops for safety violations. (Hr’g Tr. p. 131, ll. 11-21) And, reflective of the marine deputies’ efforts, there are few reported crashes on the river. (Hr’g Tr. p. 132 and p. 87, ll. 13 – 25; REA-8 39:36-40:00) But, the Sheriff has not requested a study of the river to be funded to evaluate its safe carrying capacity. Consequently, the Sheriff is bound to enforce the Idaho Safe Boating Act (IC §67-7028) and ordinances adopted by Kootenai County for vessel operations. IC §67-7031(26); and *Kootenai County Code* 6-2-4. Under the current rules, navigation along the Spokane River is already restricted to the following vessel operation standards:

- 1) Speed Limit is 35 mph during the day (KCC 6-2-4.C.1), except the speed limit shall be 15 mph within 50 feet of another vessel (KCC 6-2-4.C.5)
- 2) Watercraft shall not be operated at a speed or in a manner that creates an excessive, dangerous or damaging wake. (KCC 6-2-4.C.3) The Sheriff has defined excessive wake as “wave[s] resulting from continuous operation of a vessel: at the speed at which boats create the most wake, moving quickly and

⁷ Although Mr. Magnuson at one point claimed to be an expert on the safety of the Spokane River, he did not offer any evidence that these docks present a risk to safety, rather only lay testimony of his personal observations of the river’s existing condition. (Hr’g Tr. p. 106, *contra*. p. 110)

displacing the most water, i.e plowing; in an artificially bow-high manner to increase or enhance a wake, including wake enhancement buy se of ballast, mechanical hydrofoils, or uneven loading; or to cause water to lap onto or over a dock, pier, or other lawfully permitted encroachment.”⁸

- 3) No wake zone or 5 mph within 100 feet of a dock, pier, structure or person in the water. IC §67-7077; 6-2-4.C.4.

Considering these existing limitations and the proposed dock design, the Sheriff’s conclusion that the proposed docks will obstruct navigation by restricting this portion of the river “to only allow one vessel to pass to avoid a collision” is unsupported by the applicable law and evidence in the record. (IDL-9) And it is pure conjecture to conclude that “*these docks* will increase the risk of injury and/or death to users and impact all recreators of the Spokane River.” (*Id.*) It was Sgt. Miller’s opinion that the diversity of recreational activities has the greatest impact on the safety of the river. (Hr’g Tr. p. 136, ll. 7-18) To that end, he could not identify the design of these docks as unsafe or an obligation of River’s Edge to ensure boaters operate their boats safely. (Hr’g Tr. p. 138, ll. 11-14; and p. 141 ll. 7-10) It stands to reason that if the Sheriff was persuaded that the expansion of the Templin’s docks was ok because it was in a no wake zone (IDL-9), then establishing a no wake zone at this location would be appropriate way to address the concern, even if it is unpopular. (Hr’g Tr. pp. 115, 142) But, in the absence of an applicable code, express standard, or objective study, the Sheriff’s call for denial of this permit based on safety is arbitrary and capricious. (E.g. Hr’g Tr. p. 99, ll. 4-14)

⁸ *Know the Safe Boating Rules* <https://www.kcgov.us/DocumentCenter/View/4462/Safe-Boating-Brochure-PDF>

4.4.2 The proposed docks are not detrimental to the lake value factor of protection of property.

The City of Coeur d'Alene, the adjacent littoral owner to the east of River's Edge supported this request for a community dock. CDA Land is not an adjacent littoral owner under the Lake Protection Act because its land is not "continuous or touching" or sharing a common boundary with River's Edge. IDAPA 20.03.04.010.01. Nevertheless, IDL and the Hearing Officer have recognized CDA Land's littoral rights and permitted it party status in these proceedings. (Hr'g Tr. p. 17, ll. 20-25) In fact, IDL's purpose in requesting River's Edge delineate the 366' foot channel was to ensure that CDA Land would not be deprived of its right to build docks on its shoreline. (Hr'g Tr. p. 72, ll. 5-10 and 24-25) CDA Land's littoral interests have been more than adequately considered and protected in these proceedings and there is no other evidence relevant to this lake value factor.

4.4.3 The proposed docks are not detrimental to the lake value factors of fish and wildlife habitat and aquatic life.

There is no evidence that these proposed docks will work as a detriment to the river's habitats or wildlife, aquatic or otherwise. The testimony of Citizens and the public present generalized conclusions that boat traffic is a detriment to this lake value factor, making it irrelevant for purposes of this review. It bears noting that Idaho Fish & Game did comment on and request planting and design accommodation for River's Edge seawall but made no comment on its application for these community docks. (REA-3-5-3-7) There is no evidence that these docks are likely to have a detrimental effect on the river habitat or aquatic life.

4.4.4 The proposed docks are not detrimental to the lake value factor of recreation.

The proposed community docks allow for a variety of river recreation. First, because there are only 5 instead of 28 docks there will be four river access points for swimming and

non-motorized recreation. Second, these docks will create additional space for kayaks and paddle boards within the 100' no wake zone beyond the ends of the docks, extending the protection afforded by the pilings in front of the City of Coeur d'Alene property. (REA-15) Third, these docks will provide opportunities for boat moorage to tenants at the apartments so that they can be among "the normal people" who get to live on and enjoy the river year-round. (E.g. Hr'g Tr. p. 115, ll. 10-15)

4.4.5 The proposed docks are not detrimental to the lake value factor of aesthetic beauty.

Aesthetics are certainly in the eye of the beholder, and the aesthetic impacts of this proposal do vary from other developments along the shoreline. The prior renditions of the development at River's Edge included 28 individual single-family lots, which would have extended the "dock, after dock, after dock" design of the shoreline. (E.g. REA-15; Hr'g Tr. p. 40, ll.1-5; IDAPA 20.03.04.015.01) But these docks present visual relief between docks and will be well maintained, consistent with the first-class standards of the rest of the development. (Hr'g Tr. p. 65, l. 18 – p. 66, l. 4; *Site Visit*, Sept. 17, 2025) There is no evidence that these docks will work as a detriment to the lake value factor of aesthetic beauty.

4.4.6 The proposed docks are not detrimental to the lake value factor of water quality.

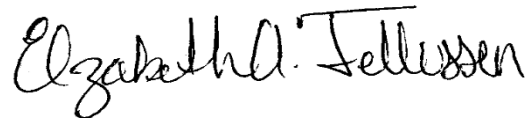
There is a vast amount of information and understanding of the quality of the water in the Spokane River. And the lake protection rules permit lake specific permit terms (IDAPA 20.03.04.015.15), but at present there do not appear to be any specific terms or conditions imposed on encroachment permits in the Spokane River. To this end, there is no evidence that the boats moored at these docks will have a disparate impact on the river's water quality. As previously stated, a study of the cumulative effects of boats on the river

may be appropriate, but the supposition that these docks must be denied in order to avoid a detriment to water quality is unfounded.

5. Conclusion.

River's Edge, Boardwalk and Docks and Residences on the Spokane are littoral owners and request IDL grant their request for a community dock permit. The preponderance of the evidence establishes that the unique navigational and economic justification of these community docks, providing moorage to apartment tenants, outweigh any speculation that they work a detriment to the lake value factors or the public trust. River's Edge should be granted its permit for the requested community docks.

DATED this 3rd day of October, 2025.



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I hereby certify that on this 3rd day of October, 2025, I caused to be served a true and correct copy of the foregoing by the following method to:

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