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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

**POST-HEARING ARGUMENT OF
INTERVENOR COEUR D'ALENE LAND
COMPANY, INC.**

COMES NOW Coeur d'Alene Land Company, Inc. (CDA Land Co.), whose Petition to Intervene (filed August 1, 2025) was granted by the Hearing Officer on the record of proceedings held September 16, 2025, by and through its attorney of record, John F. Magnuson, and respectfully submits this post-hearing argument in accordance with the directives of the Hearing Officer at the conclusion of said hearing.

I. BASES FOR CDA Land Co. CO.'S OBJECTIONS.

On August 1, 2025, CDA Land Co. timely objected to the application for a community dock filed by River's Edge Apartments, LLC. See Ex. CDA-1. CDA Land Co. objected on the following

bases:

- (1) The application, filed singularly by River's Edge Apartments, LLC (as "the Applicant"), did not satisfy the definition of a "community dock" as contained in IDAPA 20.03.04.010.11.
- (2) The proposed encroachment extended beyond the applicable line of navigability.

Id.

On August 22 2025, "Boardwalk and Docks, LLC" and "Residences on the Spokane, LLC," two (2) Idaho limited liability companies formed after the subject application was received and published by IDL as required by Idaho law, petitioned to intervene as co-applicants. Following the filing of CDA Land Co.'s August 1, 2025 objection (Ex. CDA-1), the application was fundamentally changed. The Petition to Intervene disclosed the following:

- (1) On August 21, 2025, the riparian/littoral parcel that formed the basis for the original application was conveyed by River's Edge Apartments, LLC (the Applicant) to Boardwalk and Docks, LLC, an Idaho limited liability company that didn't even exist when the original application was filed and published.¹
- (2) On August 21, 2025, Parcel #1 was conveyed by the Applicant (River's Edge Apartments, LLC) to Residences on the Spokane, LLC, an entity that did not even exist when the original application was accepted and published.
- (3) On August 21, 2025, an unrecorded lease was signed by Residences on the Spokane, LLC with the new transferee of the riparian/littoral parcel (Parcel #5). Residences on the Spokane, LLC (as the new owner of Parcel #1) and River's Edge Apartments, LLC (which still held title to Parcels 2 through 4), both signed unrecorded and terminable leases.

¹Attached hereto as Exhibit A for illustrative purposes is a copy of Kootenai County property tax map excerpt numbering the parcels at issue as 1, 2, 3, 4, and 5. This Exhibit was originally attached to CDA Land Co.'s "Opposition to Petition to Intervene" filed in this proceeding on August 29, 2025. The formation date of Boardwalk and Docks, LLC is a matter of public record on the Secretary of State's website and may be administratively noticed by the Hearing Officer.

- (4) The unrecorded leases may be terminated at any time with the consent of the landlord and the tenants, who were established as related parties and under common control at the hearing.
- (5) The leases purport to lease to the respective owners of each of the four (4) upland parcels an undivided interest in the riparian/littoral parcel (Parcel #5).

On September 8, 2025, over CDA Land Co.'s objection, the Hearing Officer allowed Boardwalk and Docks, LLC and Residences on the Spokane, LLC to intervene as additional applicants despite a fundamentally-changed application. As of September 8, 2025, the hearing was eight (8) days away and there was no publication made of the new application by the new applicants as required by Idaho law.

II. FLAWED PROCEDURE FOR FAILURE TO COMPLY WITH IDAHO LAW.

IDAPA requires publication of a complete application identifying the true applicant. IDAPA 20.03.04.020.07(c) states that: “[i]f more than one (1) littoral owner exists, the application must bear the signature of all littoral owners, or the signature of an authorized officer of the designated homeowner’s or property management association.” IDL published an application filed June 23, 2025 identifying River’s Edge Apartments, LLC as the sole applicant. After the period during which objections could be filed, the applicant created two new entities, made various conveyances and machinations, and then sought to substitute the two new entities as “applicants” through a “Petition to Intervene” filed August 22, 2025.

IDAPA 20.03.04.030.01 requires publication of a notice of application once a week for two (2) consecutive weeks after a complete application is submitted and signed by all applicants. This may have occurred with respect to the initial application filed June 23, 2025 by River’s Edge Apartments, LLC, but there is no question that it did not occur with respect to the August 22, 2025

substitutions and modifications authorized by the Hearing Officer after the last minute “fix” filed by Boardwalk and Docks, LLC and Residences on the Spokane, LLC.

These timelines are not advisory. They are mandatory. They form the fundamental hallmark of due process. No member of the public or the community was apprised of the full nature and extent of who was applying, on what basis, and for what purpose. All that was published was notice of a defective application to which CDA Land Co. timely objected, as can be seen by the post-objection machinations undertaken by River’s Edge Apartments, LLC, Boardwalk and Docks, LLC, and Residences on the Spokane, LLC, all in a belated and unnoticed attempt to fix what was defective and lacking the required notice and publication that form the hallmark of due process. The notice and publication rules simply can’t be ignored. There is no rule that says one can ignore the notice and publication requirements because some constituent or member of the public might be able to find an IDL website and follow the docket of pending administrative hearings. If a constituent reads the paper but has no internet access, they would have no knowledge of the nature of this application.

III. FAILURE TO SATISFY THE DEFINITION OF A “COMMUNITY DOCK”.

IDAPA 20.03.04.010.11 defines a “community dock” as follows:

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.

There are no public parking requirements for a community dock.

A “commercial marina” is defined as having the “primary purpose” of providing moorage for rental to the general public. See IDAPA 20.03.04.010.09. There are upland parking requirements for commercial marinas and commercial marinas must make one-half of the moorage slips available

for rent to the general public.

CDA Land Co. objected in the first instance because the original application filed by River's Edge Apartments, LLC was not made by "more than two (2) adjacent littoral owners." Nor was it made by "other littoral owners possessing a littoral common area with littoral rights." The original application caused concern in the fact that there was no recorded real property interests that required River's Edge Apartments, LLC to limit the use of its proposed community dock to an occupant (renter) of an apartment on River's Edge Apartments, LLC property or someone who subsequently built a house on a portion of the same property based upon a lawful subdivision process. Simply put, it appeared for all intents and purposes that the application originally filed by River's Edge Apartments, LLC could provide moorage to individuals without regard to their use or occupancy of the River's Edge Apartments, LLC property. In that sense, the proposed encroachment, without any limitations thereon, could be used to provide moorage in the nature of a public marina without adequate parking or compliance with the other requirements imposed on commercial marinas by IDL.

Applicant then created two (2) new LLCs, after the publication period had ended, and tried to "fix" the application to make it look more like a community dock. The applicant leased a fractional interest to the waterfront parcel to related entities, which ultimately included River's Edge Apartments, LLC, Boardwalk and Docks, LLC, and Residences on the Spokane, LLC. Yet this in and of itself did not create three (3) littoral owners of three (3) adjacent littoral properties. It simply created three (3) owners out of one parcel and remained deficient under IDAPA 20.03.04.010.11.

It appears that the applicants are attempting to claim that the waterfront parcel is a littoral common area with littoral rights. The problem in this regard is that the unrecorded and terminable

leases executed for the littoral area with the upland owners, because they are unrecorded and terminable, could result in the following scenario: the permit is issued, the leases are canceled, and the applicants can then rent the slips to anyone regardless of their use or occupancy of the applicant's properties, all in the nature of a public marina.

At the hearing, Mr. Douglass, a representative for the applicants, testified that he had no objection to the inclusion of a condition in any permit which might be issued by IDL, for the requested community dock, that limited the use of the dock to occupants (tenants) or owners of the parcels identified in the application presented to the Hearing Officer. Moreover, as is consistent with Idaho law, that permit should be recorded and made a part of the real property records that bind the applicants' properties so that the dock is actually used as a community dock and not as a public marina. Mr. Douglass testified as the applicant representative for all three LLCs that he was agreeable to such a condition.

IV. THE LINE OF NAVIGABILITY.

Attached hereto for the Hearing Officer's convenience is a copy of Exhibit CDA-3 admitted at the hearing. The Exhibit shows the established line of navigability for the expanse of the Spokane River where the applicants propose to place their community dock. IDAPA defines the line of navigability as follows:

A line located at such distance waterward of the low watermark established by the length of existing legally permitted encroachments, water depth waterward of a low watermark, and by other relevant criteria determined by the board when a line has not already been established for the body of water in question.

IDAPA 20.03.04.010.20 (emphasis added). There was no issue raised at the hearing that the existing line of navigability for this expanse of the Spokane River was established anywhere other than at

fifty (50) feet from summer pool (elevation 2128) (WWP datum)). This is confirmed by Exhibit CDA-3.

The applicants' proposed encroachment extends in parts over 104 feet beyond the established line of navigability. In other instances, it extends fifty-two (52) feet beyond the line of navigability. In all instances, it extends a minimum of twenty-five (25) feet beyond the line of navigability.

The issue of the line of navigability was specifically noted in CDA Land Co.'s August 1, 2025 objection. At the hearing, the Hearing Officer appeared to make comments that she did not perceive the line of navigability to be an issue in the case. CDA Land Co. respectfully disagrees. IDAPA 20.03.04.030.03.d specifically addresses the length of community docks with respect to the line of navigability:

Docks, piers, or other works mixed into a length that will provide access to a water depth that will afford sufficient draft for watercraft customarily in use on the particular body of water, except that no structure may extend beyond the normal accepted line of navigability established through use unless additional length is authorized by permit or order of the Director. . . .

(emphasis added).

IDL, in its pre-hearing statement, noted:

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

See IDL's Pre-Hearing Statement at p. 8. IDL further noted that "IDL's Encroachment Procedures state that when processing applications for commercial marinas and community docks, the line of navigability is typically not considered." Id. at p. 11. While IDL's citation to the Encroachment Procedures is correct, its legal reliance upon the same is fundamentally misplaced.

The rules in play are the rules established by Idaho Code and IDAPA. In this context, those rules are clear that with respect to the line of navigability: “No structure may extend beyond the normal accepted line of navigability established through use unless additional length is authorized by permit or order of the Director.” See IDAPA 20.03.04.030.03.d. IDL’s internal rules of procedure cannot, as a matter of law, vary or contradict the terms of Idaho Code or IDAPA.

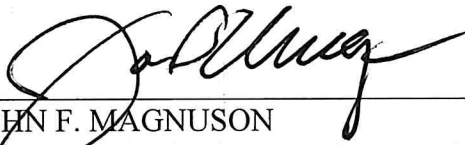
The length of a community dock, ignoring the line of navigability, is to “extend to a length that will provide access to a water depth that will afford sufficient draft for watercraft customarily in use on the particular body of water” Id. There was absolutely no evidence offered by the applicants that due to existing site constraints, water depths, underwater topography, or other factors that it was necessary to extend its proposed encroachment “beyond the normal accepted line of navigability established through use.” That line of navigability is at most fifty (50) feet. Other than the applicants’ desire to cram as many boat slips in as possible, there was no independent or substantiated proof as to a compelling basis do sd to simply ignore the established line of navigability.

V. CONCLUSION.

Based upon the reasons and authorities set forth above, Intervenor Coeur d’Alene Land Company, Inc. respectfully requests that the Hearing Officer deny the pending application as it fails to comply with the due process requirements of IDAPA and that it seeks to permit an encroachment that extends well beyond the established line of navigability with no justification evidenced by the record. In the event the Hearing Officer determines otherwise, over objection of CDA Land Co., then it is requested that, at a minimum, the permit be limited to use by a renter or owner of property identified in the after-the-fact application; that the application be recorded; and that a violation of

those conditions can constitute a basis for revocation of the permit by IDL.

DATED this 3rd day of October, 2025.



JOHN F. MAGNUSON
Attorney for Objecting Party/Proposed Intervenor
Coeur d'Alene Land Company

CERTIFICATE OF SERVICE

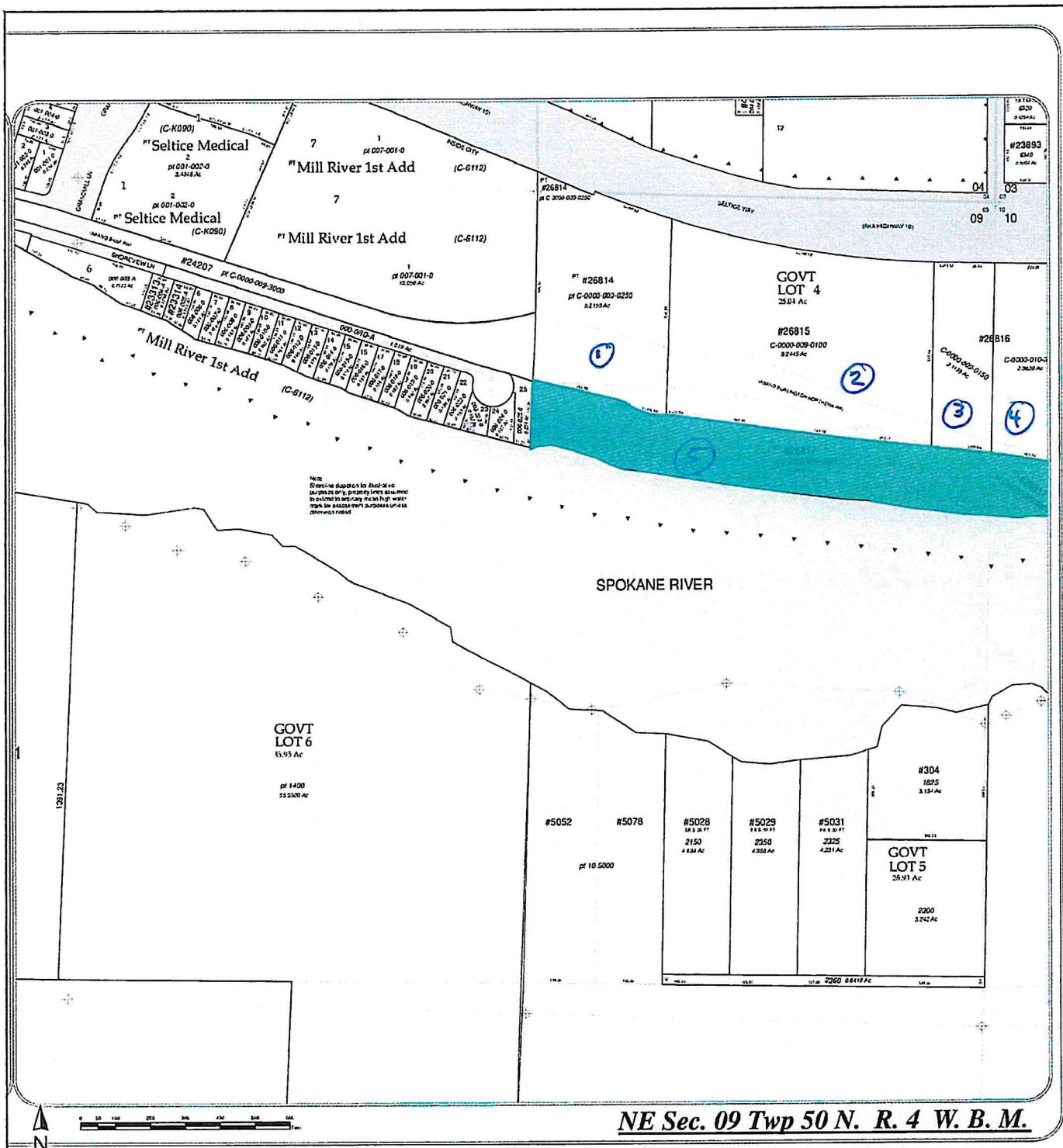
I HEREBY CERTIFY that on the 3rd day of October, 2025, I caused a true and correct copy of the foregoing document to be transmitted by the following method to:

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CDA LAND-RIVEERS EDGE-POST HRG.BRF.wpd



NE Sec. 09 Twp 50 N. R. 4 W. B. M.

KT / BT
KOOTENAI TITLE / BONNER TITLE
 MAKE A REQUEST FOR THE BEST

This map/plat is being furnished as an aid in locating the herein described land in relation to adjoining streets, natural boundaries and other land, and is not a survey of the land depicted. Except to the extent a policy of title insurance is expressly modified by endorsement, if any, the company does not insure dimensions, distances, location of easements, acreage or other matters shown thereon.

EXHIBIT A



EXHIBIT CDA-3