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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' POST-HEARING
CLOSING STATEMENT**

The Idaho Department of Lands ("IDL"), by and through its counsel of record, Kayleen Richter, submits its Post-Hearing Closing Statement in accordance with the Hearing Officer's request for the parties and the interested persons to submit simultaneous written closings.¹

I. BACKGROUND

On June 23, 2025, IDL received a complete application for permit from River's Edge Apartments, LLC and Lanzce Douglass seeking approval to build a 74-slip community dock system comprised of five (5) separate docks on the Spokane River.² IDL received objections on the permit application from Kootenai County Sheriff's Office, Coeur d'Alene Land Company, Concerned Citizens Protecting the Spokane River, Inc. fka Concerned Citizens Against Additional 100 Boat Slips Added to Templins Resort on Spokane River Inc. (hereinafter "Concerned Citizens"), and Mill River Property Owner's Association. IDL and OAH received

¹ One can find copies of the hearing materials and the post-hearing documents in the record mentioned here on IDL's hearing webpage for this matter: <https://www.idl.idaho.gov/lakes-rivers/administrative-hearings/rivers-edge-apartments-llc/>.

² To include further detail on the application, the pre-hearing proceedings, and further citations to the record without reproducing the same, IDL herein incorporates by reference its *Prehearing Statement* filed September 5, 2025.

numerous email and letter comments from the public regarding this application, which are in the record and speak for themselves.

On September 16, 2025, the Hearing Officer held a public hearing on the matter, which included an evidentiary hearing followed by public comment. The Applicant, IDL, and the Objectors³ appeared at the hearing represented by counsel. Prior to the start of the hearing, the Hearing Officer addressed the pending motions to intervene. The Hearing Officer granted Coeur d'Alene Land Company's motion and denied Concerned Citizens' motion. Tr. p. 17, L. 20 – Tr. p. 18, L. 4; Tr. p. 14, L. 14 – Tr. p. 17, L. 19. Accordingly, the Hearing Officer allowed Coeur d'Alene Land Company to participate in the proceedings as a party and, in an exercise of her discretion, allowed Concerned Citizens to participate in the proceedings as “an interested person or a public witness”. *See id.* IDAPA 62.01.01.706.

Approximately one hundred (100) members of the public attended the hearing. All were afforded the opportunity to provide public comment at the hearing. However, only ten (10) members of the public elected to speak. *See* Tr. p. 154, L. 8 – Tr. p. 177, L. 24. At the conclusion of the hearing, the Hearing Officer held the record open until September 30, 2025, to accommodate additional briefing from the Applicant and Concerned Citizens regarding the expert status of Applicant's witness, Captain Joseph A. Derie, II, and to allow for the public to submit any additional written comments. During this period, OAH received the expert witness briefing and two letters providing comments from (1) Spokane Riverkeeper and (2) Susan and Robert Stiger.

In footnotes four and five to its comments, Spokane Riverkeeper cited two news articles that referenced prior IDL navigable waters final orders. Upon receipt of Spokane Riverkeeper's comments the Hearing Officer requested that IDL supplement the record with copies of the final orders. On September 24, 2025 IDL complied with the request and distributed copies of the final orders from (1) *In re: Encroachment Permit Application No. L-95-S-6002*, Applicant Justin

³ Objectors Coeur d'Alene Land Company and Concerned Citizens participated in the hearing and were represented by counsel. Objector Kootenai County Sheriff's Office also appeared and testified for the record but did not appear to be represented by counsel.

Sternberg as trustee for Justin L. Sternberg Living Trust, IDL Case No. CC-2022-NAV-22-001; and (2) *In re: Encroachment Permit Application No. L-95-S-5567*, Applicant Lewis Dock Homeowners Association, Inc., IDL Case No. 2014-PUB-22-003. Also on September 24, 2025, Concerned Citizens lodged a *Notice of Supplemental Exhibit Submission*, which attached the “Lake Windermere Recreational Impact and Sediment Quality Assessment” referenced by witnesses and public commenters at the hearing. *See e.g.*, Tr. p. 114, L. 20 – Tr. p. 114, L. 21; Tr. p. 116, L. 12 – Tr. p. 117 L. 14.

II. LEGAL STANDARD

In 1974 the Idaho Legislature enacted the Lake Protection Act. (“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. As the instrumentality of the Land Board, IDL has the duty, authority, and discretion to “regulate, control and [] permit encroachments” within the limits of the LPA and the LPA Rules. I.C. § 58-1303. Put differently, IDL only has the authority to regulate and control what it is authorized to.

When an encroachment permit 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[.]” I.C. § 58-1306(c). A public hearing under the LPA is a limited opportunity for the public to provide testimony for the record.

IDL considers the entirety of the record, including 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.

To summarize and paraphrase, 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. ANALYSIS

A. Compliance with Applicable Minimum Standards

The first step in IDL’s evaluation of an encroachment permit application is to determine whether the proposed encroachment satisfies the applicable minimum standards prescribed by law. In IDL’s *Prehearing Statement*, incorporated by reference herein, IDL outlined IDL staff’s technical estimation of the application’s compliance with the applicable minimum standards. *IDL Prehearing Statement*, 7–11. Prior to the hearing, IDL noted that the record appeared to support that proposed encroachment complied with the applicable minimum standards except for the potentially conflicting information on the lineal feet of water frontage. Upon close of the record, IDL maintains its initial evaluation that the application appears to comply with the applicable minimum standards and is satisfied with the additional information the Applicant included in the record regarding the water frontage discrepancy. *Id.* at 11.

a. Lineal Feet of Water Frontage

In IDL’s *Prehearing Statement*, IDL noted that the proposed dock may have been slightly larger than allowed per IDAPA 20.03.04.015.02.c because of a discrepancy between two water frontage figures in the record. *Id.* In response, the Applicant supplemented the record with the testimony of Mr. Wayne Lockman, a licensed surveyor, in conjunction with a map depicting the both the dimension line described in the quitclaim deed and a 2023 survey of the ordinary high water mark. Tr. p. 75, L. 18 – Tr. p. 80, L. 11; REA-17. Mr. Lockman testified that the true and accurate shoreline frontage of the property is 1,591.4 feet. Tr. p. 78, L. 11 – Tr. p. 78, L. 17. For this proposed encroachment to comply with IDAPA 20.03.04.015.02.c, the Applicant would be

required to have at least 1,580.57 feet of water frontage. Therefore, the record appears to reflect that the Applicant's water frontage is sufficient.

b. Line of Navigability

At hearing, Objector Coeur d'Alene Land Company appeared to argue that the proposed encroachment will exceed the line of navigability and, therefore, does not meet the applicable minimum standard under IDAPA 20.03.04.015.13.d. However, in a colloquy with the Hearing Officer, counsel for the Applicant and IDL confirmed that it was not at issue whether the proposed community docks appear to exceed the line of navigability. Upon comparison of the hearing transcript to the hearing audio it is clear the hearing transcript on this colloquy contains inaccuracies. To clarify the record, the following is a corrected transcription of the colloquy:

HEARING OFFICER HAYES: Correct, that it's not a fact that's in dispute in these proceedings.

MS. RICHTER: That's correct. It is in [] IDL's encroachment standards, that the line of navigability is not considered when it comes to community docks, which is [in] IDL's [prehearing statement]. Thank you.

HEARING OFFICER HAYES: And then Ms. Tellessen, are you taking a position here today that your client's proposed community docks are within the line of navigability?

MS. TELLESSEN: No, Hearing Officer. We have stipulated and recognize that these docks go beyond what may be the line of [] navigability, recognizing that IDL has not exercised its statutory duty to identify a line of navigability in this area.

HEARING OFFICER HAYES: So with that, I don't mean to cut you off [in] your questioning, but we are starting to get crunched up on what I perceive as a time constraint that would limit public testimony, so I'd like you to keep it to the relevant points and the facts that are actually in dispute in these proceeding[s].

MR. MAGNUSON: Okay. For the record I would like to note that I did raise an objection as to [the] line [of] navigability in the objection I filed. I'm just preserving my objection. I'm not arguing with you. I preserve the objection.

I believe that was a misstatement [un]intentionally by counsel for IDL. The line of navigability does pertain to community docks. You don't throw it out with the baby in the bath water. You analyze it differently. But I just want this witness to demonstrate what her knowledge is and I will move on.

HEARING OFFICER HAYES: Okay. So noted[,] your objection. I believe there's a citation in IDL's materials about the line of navigability and community docks, but again it's not a fact in dispute.

Tr. p. 67, L. 10 – Tr. p. 68, L. 22. Hearing Audio 1:05:42 – 1:07:23.

In IDL's Prehearing Statement, IDL noted that 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." *IDL Prehearing Statement*, 8. IDL further explained that 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." *IDL Prehearing Statement*, 11.

Indeed, page 32 of IDL's Encroachment Procedures and Reference Documents, Section 25: Encroachment Standards and Requirements (Rev. July 2025) states: "When processing applications for commercial marinas and community docks, the line of navigability is typically not considered, as these facilities may extend beyond the line of navigability."⁴ The line of navigability is typically not considered with respect to community dock applications because of the reality that community docks are bigger/longer than single-family docks. For example, if a community dock is installed in an area with a line of navigability set by the length of existing single-family docks, the community dock would necessarily exceed the existing line of navigability regardless of whether such an extension would, in fact, impede navigation. Further, the LPA Rules allow the Director the discretion to "authorize" a community dock to extend beyond the line of navigability "by permit or order". IDAPA 20.03.04.015.13.d. Should the IDL Director grant an encroachment permit for a community dock that extends beyond the line of

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

navigability, the resulting Director-signed permit is the Director's authorization for the additional length. Regardless, the length of the proposed encroachment here is not disputed.

B. Evaluation of Lake Value Factors

The second step in IDL's evaluation of an encroachment permit application is to determine whether the proposed encroachment's potential detrimental effects on the lake value factors outweigh the potential benefits. The lake value factors to be given due consideration are the protection of property, navigation, fish and wildlife habitat, aquatic life, recreation, aesthetic beauty and water quality. The potential benefits may be public or private and include the navigational or economic necessity, or justification for, or benefit to be derived from the proposed encroachment.

IDL explained in its *Prehearing Statement* and reiterated at hearing that at this stage of the proceedings IDL's role is to assist in conveying the facts and developing the record for the Hearing Officer and the IDL Director to consider in reaching a decision on the merits. To effectuate its role IDL remains neutral on the weight of those facts in the record, but IDL will address a few matters that arose at hearing to further the development of the record. Again, the IDL Director's ultimate decision on an application is based on his independent evaluation of the entire record in *this proceeding*. Put differently, the IDL Director's decision *is not* based on any facts/opinions outside the bounds of the record in *this proceeding*. Further, the IDL Director's decision is constrained by his limited statutory and regulatory authority.

a. The 366-Foot Corridor

At hearing, the Applicant raised the "366-foot corridor" on the Spokane River at several points. The "366-foot corridor" describes a calculation the various agencies with an interest in and authority over Spokane River created to balance the equities of the various rights to and uses of the Spokane River including safe navigation and both sides of the river's riparian/littoral owners' rights to wharf out. The right to wharf out and access the waters of the state is well-settled in Idaho law. I.C. § 58-1302; *Lake CDA Invs., LLC v. Idaho Dep't of Lands*, 149 Idaho 274, 284, 233 P.3d 721, 731 (2010) (Appurtenant to ownership of lake front property, the littoral

owner possesses certain littoral rights including right of access to the water, and, subject to state regulation, the right to build wharves and piers in aid of navigation.); *Newton v. MJK/BJK, LLC*, 167 Idaho 236, 243, 469 P.3d 23, 30 (2020) (The LPA defines littoral rights as a littoral owner's right to maintain their adjacency and access to the lake).

In recognition of the public trust doctrine and the state's "right to regulate, control and utilize navigable waters for the protection of certain public uses, particularly navigation, commerce and fisheries" IDL requested the Applicant depict the 366-foot corridor in its application. *Kootenai Env't All., Inc. v. Panhandle Yacht Club, Inc.*, 105 Idaho 622, 625, 671 P.2d 1085, 1088 (1983); Tr. p. 71, L. 14 – Tr. p. 73 L. 25; REA-8, Video 03:40 – 05:30. The 366-foot corridor breaks down into five zones moving across the river: (1) a 150-foot zone closest to the shore allowing for a distance between the shoreline or dock and a boat towing someone; (2) an 8-foot zone in recognition that an average boat is about 8 feet wide; (3) a 50-foot passing zone between boats; (4) a second 8-foot zone for the second boat; (5) a second 150-foot zone for the distance from the boat towing someone to the other shoreline or dock. REA-8, Video 03:40 – 05:30. *See* Tr. p. 71, L. 18 – Tr. p. 71 L. 22 ("What was requested was a depiction of a 366-foot corridor, which is made above—which I think has been mentioned previously, as 66 foot, I'll call it drive aisle, unobstructed for boat traffic, with a 150-foot buffer north and south of said drive aisle."). The Applicant helpfully depicted the 366-foot corridor in its application. IDL-2 at 5, 6. Ultimately, however, the 366-foot corridor is not at issue in this proceeding.

b. 'Carrying Capacity'

In many of the public comments and the testimony of Concerned Citizens' witnesses, folks expressed support for IDL 'pausing' issuing encroachment permits on the Spokane River and to conduct a 'carrying capacity study' to determine how many boats can safely use the Spokane River. *See e.g.*, Tr. p. 114, L. 17 – Tr. p. 114, L. 24 ("[IDL] should put an indefinite pause on all for-profit applications for permits. They should conduct a study of maximum carrying capacity, such as the one Canada did."). Further, several witnesses expressed

consternation over IDL and other local agencies allegedly hanging up on the “all too familiar question, who’s going to pay for [the study]?” Tr. p. 123, L. 15.

While the source of research funding is, indeed, a perpetual and ubiquitous question, it is not the issue here. In this proceeding, IDL does not have the authority to impose a moratorium on issuing all encroachment permits on the Spokane River. “State agencies in Idaho have no inherent authority.” *See Idaho Power Co. v. Idaho Pub. Utils. Comm’n*, 102 Idaho 744, 750, 639 P.2d 442, 448 (1981); *see also* Richard Henry Seamon, *Idaho Administrative Law: A Primer for Students and Practitioners*, 51 Idaho L. Rev. 421, 439 (2015). “As a general rule, administrative agencies ‘are tribunals of limited jurisdiction.’ *Washington Water Power Co. v. Kootenai Envtl. Alliance*, 99 Idaho 875, 879, 591 P.2d 122, 126 (1979). Thus, agencies have no authority outside of what the Legislature specifically grants to them. *Idaho Retired Firefighters Assoc. v. Pub. Emp. Ret. Bd.*, 165 Idaho 193, 196, 443 P.3d 207, 210 (2019) (citing *Idaho Power Co.*, 102 Idaho at 750, 639 P.2d at 448). This is not to say that the Land Board and IDL do not have any statutory authority to act on the future of encroachments on the Spokane River generally, just that such an issue is outside the scope of the agency’s specific authority in these proceedings.

With respect to the details of the carrying capacity study issue, on September 24, 2025, Concerned Citizens supplemented the record with a copy of the example carrying capacity study from Canada, which is the Lake Windermere Recreational Impact and Sediment Quality Assessment (“Assessment”). This Assessment was prepared by two environmental consulting companies in British Colombia for “Lake Windermere Ambassadors” funded by Lake Windermere Ambassadors. *Assessment* at 1, 4. According to their website, the “Lake Windermere Ambassadors are a society formed by a group of concerned citizens.” About-Lake Windermere Ambassadors (<https://www.lakeambassadors.ca/about/>). It does not appear that any level of the Canadian government (local, provincial, federal) participated in the development of Assessment, has considered the results of the Assessment, or has acted on any of the recommendations in the Assessment yet.

In footnote one of the Assessment, the authors state without citation that “Safety standards for boat density vary, however, two common standards are 20 acres per boat (8ha/boat) on lakes with high-speed watercraft and 9 acres per boat (3.6 ha/boat) on small lakes with low-powered watercraft[.]” In a follow up document titled “Appendix of Questions – 2024/25”⁵ the Assessment authors cite that the safe boat density number was referenced from a 2011 journal article on the carrying capacity of a lake ecosystem in Kerala, South India. Rajan, B., V. M. Varghese, and A. P. Pradeepkumar. 2011. Recreational boat carrying capacity of Vembanad Lake Ecosystem, Kerala, South India. *Environmental Research, Engineering and Management* 56:11–19 (accessible online at <https://erem.ktu.lt/index.php/erem/article/view/270>). In this article, the authors explain the concept of recreational carrying capacity and outline some important considerations:

It should be recognized at the onset that the concept of recreational carrying capacity is as much perception as science (Mahoney and Stynes 1995). Although research shows that a higher density of boats increases the potential for negative impacts, there have been no conclusive studies that answer the question: *How many boats are too many?* (Wagne 1991). Each lake is different, and various lake users will have different perspectives on what constitutes congestion. Thus, there is no single boating density standard that will satisfy all lake users in all situations.

In light of these considerations, a recreational carrying capacity study should not be used as a sole determining factor limiting lake use or access. Rather, a recreational carrying capacity analysis should be used as a tool to evaluate the range of options that are available to help minimize multiuse conflicts, environmental concerns, and other problems associated with lake overcrowding. A recreational carrying capacity study can establish a framework for decision making and provide a basis for regulatory action.

...

The recreational boating capacity concept implies that specific areas have certain use capacities that are sustainable, and these capacities can be identified and managed for a specific number of watercraft for the entire body of water. Such calculations can only provide a crude estimate of capacity. Therefore, the concept of recreational boating capacity on rivers, lakes, and reservoirs is complex. To obtain an accurate picture, estimation of boating capacity must include information about current boating conditions, and identify a desired future condition that is agreed upon by managers and visitors alike. Once this is accomplished, appropriate strategies can be developed to address the objectives for short and long-term planning.

⁵ One can access the Appendix of Questions on the Lake Windermere Ambassadors website here: <https://www.lakeambassadors.ca/lwawp/wp-content/uploads/2025/04/APPENDIX-OF-QUESTIONS-Mar-31-2025.pdf>.

As the number of watercraft and the level of congestion increases on a given lake, so does the probability of conflict due to competition for the limited space. “The ability of a lake to accommodate a given number of users and mixed recreational uses depends on the compatibility of those uses” (Jones 1996). “While each water body may have special suitability for particular uses, the water body can accommodate only a limited number of such uses. Beyond this point, the overload of a single use, as well as interaction between several uses, causes conflict and perhaps damage to the water resource” (Kusler 1972). Increasing shore land development and lake-use pressures continue to threaten the quality of these public water bodies. In other words, the carrying capacity attempts to answer the question: *how much is too much?*

Id. at 12-14 (emphasis in original).

As the article suggests, the record here reflects that the Spokane River is a complex water body upon which various users have different opinions on what constitutes congestion. For example, compare the testimony of Applicant’s Coast Guard Captain Joseph Derie, II (Tr. p. 87, L. 2 – Tr. p. 88, L. 23) to the testimony of Kootenai County Sheriff’s Office Sergeant Miller (Tr. p. 130, L. 18 – Tr. p. 132, L. 19). Likewise, the record indicates that the users of the Spokane River appear to be experiencing conflict due to competing uses differing, potentially incompatible, desires for future conditions. Further study of the Spokane River and a collective, community and government effort to manage the river’s future seems to be prudent.

Among the largest issues raised by those in opposition to the application are the concerns for safety on the river, overcrowding, erosion, and environmental/property damage. Again, IDL’s authority is limited and IDL does not have the authority to regulate the Idaho Safe Boating Act or enforce boater safety. I.C. § 67-7001 *et seq.* The Idaho Department of Parks and Recreation acts pursuant to the Idaho Safe Boating Act. I.C. § 67-7003(6). And as Kootenai County Sheriff Norris testified, “there’s only one individual that is responsible for safety on the water, and that’s the sheriff of the county. It’s not a—it’s not any other entity or any other individual. The sheriff on the water is responsible for safety.” Tr. p. 127, L. 20 – Tr. p. 127, L. 24. Similarly, IDL does not have authority over no-wake zones or speed limits on the river.

c. Benefits, Public and Private

Finally, evidence in the record including testimony of Applicant Lanzce Douglass suggests that Applicant and Rivers Edge Apartments’ tenants will benefit from the community

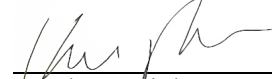
dock. *See* Tr. p. 39, L. 12 – Tr. p. 41, L. 21. In addition, the testimony of Hilary Patterson from the City of Coeur d’Alene suggests that the public and community dock members will benefit from the project through increased boat moorage and access to recreation and navigation. Tr. p. 24, L. 9 – Tr. p. 25, L. 21.

IV. CONCLUSION

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. Upon review of the record, the proposed encroachment appears to satisfy the applicable minimum standards. The record contains evidence of both potential detrimental effects on the lake value factors and potential public and private benefits. However, IDL’s ability to consider and remedy some of the public and agency concerns for potential detriments is constrained by IDL’s limited authority. The decision on this application must be made on the record before the Hearing Officer, on the merits of the application, consistent with the agency’s authority, and in compliance with the Public Trust Doctrine and the Lake Protection Act.

DATED this 3rd day of October, 2025.

IDAHO DEPARTMENT OF LANDS



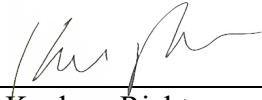
Kayleen Richter
Counsel for IDL

CERTIFICATE OF SERVICE

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 method indicated below, and addressed to the following:

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