

BEFORE THE IDAHO DEPARTMENT OF LANDS

In the Matter of the Application for) AGENCY Case No. PH-2025-NAV-22-005
Encroachment L95S6163A, a Community)
Dock,) OAH Case No. 25-320-07
)
River's Edge Apartments, LLC,) **FINDINGS OF FACT, CONCLUSIONS**
Lanzce Douglass,) **OF LAW, AND RECOMMENDED**
) **ORDER**
Applicant.)
)

Deputy Chief Administrative Law Judge Leslie Hayes was assigned as Hearing Officer in the above-captioned matter on August 5, 2024. The Hearing Officer conducted a public evidentiary hearing on September 16, 2025, at 4 p.m. Pacific Time at the Best Western Plus Hotel. Appearances were made by Kayleen Richter, General Counsel for Idaho Department of Lands (IDL); Elizabeth Tellessen, counsel for Applicant River's Edge Apartments, LLC (Applicant or River's Edge), Intervenor Boardwalk and Docks LLC (Boardwalk), and Residences on the Spokane LLC (Residences on the Spokane); John F. Magnuson, counsel for Objector/Intervenor Coeur d'Alene Land Company (CDA Land); Peter J. Smith IV and Nathan Sargent, counsel for Objectors Concerned Citizens Protecting the Spokane River, Inc. (Concerned Citizens);¹ and Objector Kootenai County Sheriff Robert Norris and Sergeant Ryan Miller. Also in attendance were IDL staff members and approximately 100 members of the public.² A Zoom link was provided to individuals who could not attend in person.

The parties, intervenors, and objectors each presented their positions with an opportunity to ask questions of the witnesses. At the conclusion of the presentations by parties, intervenors,

¹ Concerned Citizens was previously known as Concerned Citizens Against Additional 100 Boat Slips Added to Templins Resort on the Spokane River. Concerned Citizens changed their name during the pendency of these proceedings. *Notice of Name Change*, Live Dkt. 059.

² Some members of the public joined the hearing after it began and may not have signed in.

and objectors, public comments were received under oath by members of the public. The hearing was recorded, and the audio recording was made available to the public on the IDL website (<https://www.idl.idaho.gov/lakes-rivers/administrative-hearings/>). Given time constraints and concerns raised by CDA Land in its objection and Petition to Intervene regarding the identity of the Applicant,³ public comment was held open until September 30, 2025.

IDL submitted exhibits IDL-1-32; Applicant submitted exhibits REA 1-17; Concerned Citizens submitted exhibits INT-1-6; and CDA Land Company submitted exhibits CDA-1-3. The Sheriff's objection can be found at REA – 8, REA – 14, IDL – 3, and IDL – 9.

The Hearing Officer conducted a site visit on Wednesday, September 17, 2025, at 10 a.m. with: Lanzce Douglass and his counsel Elizabeth Tellessen; Kayleen Richter, counsel for IDL; and Concerned Citizens Objectors Scott and Sheryl Scofield, and their counsel Peter Smith. Ryan Andrade Engineering Manager at Whipple Consulting also attended. The Hearing Officer recorded the site visit and took photographs, which were made part of the record. Live Dkt. 065.⁴

The Hearing Officer, having considered the matter herein, including documents contained in the Administrative Record, the verbal and written public comments, and arguments of counsel, makes the following Findings of Fact and Conclusions of Law pursuant to Idaho Code section 58-1306 and IDAPA 62.01.01.252.d.

PETITIONS TO INTERVENE

Three Petitions to Intervene were filed in these proceedings by Boardwalk and Docks LLC and Residences on the Spokane LLC (collectively referred to as Boardwalk for purposes of the intervention motion), CDA Land, and Concerned Citizens. CDA Land and Concerned Citizens

³ The identity of the Applicant will be discussed more fully below.

⁴ The Live Docket can be found here: <https://www.idl.idaho.gov/lakes-rivers/administrative-hearings/rivers-edge-apartments-llc/>.

opposed the Petition filed by Boardwalk; no other oppositions were filed. Applicant did not oppose any of the petitions. Despite the non-opposition, this Hearing Officer determines whether the petitions meet the standards for intervention pursuant to Rule 705.⁵ See IDAPA 62.01.01.705.

This is a proceeding pursuant to Idaho Code section 58-1306, which states that “[a]ny resident of the state of Idaho, or a nonresident owner or lessee of real property adjacent to the lake[.]” may request a hearing on an encroachment application. I.C. § 58-1306(c). The request for hearing was transmitted to the Office of Administrative Hearings with a hearing deadline of September 30, 2025. *Transmittal Sheet*, Live Dkt. 001. At the scheduling conference, this matter was noticed for hearing On September 16, 2025 and Petitions to Intervene were ordered filed no later than August 22, 2025. *Scheduling Order*, Live Dkt. 016. While petitions are generally due twenty-one days prior to the hearing, the scheduling order required that they be filed by August 22, 2025, pursuant to Rule 702. *Scheduling Order*, Live Dkt. 016.

“Persons who are not parties to a proceeding but who claim a direct and substantial interest in the proceedings may petitioner for an order from the presiding officer granting intervention to become a party.” IDAPA 62.01.01.700. Rule 705 provides, in part, that:

If a petition to intervene **shows direct and substantial interest in any part of the subject matter of a proceeding**, does not unduly broaden the issues, and does not unduly delay or prejudice the original parties, the presiding officer **will grant intervention, unless the petitioner’s interest is already adequately represented by one or more parties already participating in the case.** . . . If it otherwise appears that an intervenor has no direct or substantial interest in the proceeding, or that intervention would unduly broaden the issues, or unduly delay or prejudice the original parties, the presiding officer may deny the petition.

IDAPA 62.01.01.705 (emphases added).

⁵ For ease of reference, specific citations to the Idaho Rules of Administrative Procedure (IDAPA 62.01.01) may be expressed in shorthand in this decision as “Rule”; for example, as here, IDAPA 62.01.01.705 is expressed as “Rule 705”.

“A person whose petition for intervention is denied may still, subject to these rules and the discretion of the presiding officer, participate in the proceeding as an interested person or a public witness.” IDAPA 62.01.01.706. Because Idaho Code section 58-1306 already permits public participation in these proceedings, it was determined that none of the potential intervenors would unduly broaden the issues or unduly delay or prejudice the original parties and all potential intervenors were granted the ability to participate as if party status had been granted. September 8, 2025, Hearing, at 35:37-36:38, Live Dkt. 054.

The decision whether to grant a petition to intervene is within the discretion of the Hearing Officer. *City of Boise v. Ada County*, 147 Idaho 794, 803 (2009). Unlike the Idaho Rules of Civil Procedure, the Idaho Rules of Administrative Procedure do not distinguish between an intervention as a matter of right or permissive intervention. Instead, the standard outlined above dictates intervention, that is, whether the individual can demonstrate a direct and substantial interest in the proceeding that is not adequately represented by the existing parties.

The Idaho Supreme Court took up what constitutes a “right” as it relates to the Lake Protection ACT (LPA) and the Public Trust Doctrine (PTD) in *Newton v. MJK/BJK, LLC*, 167 Idaho 236 (2020). The PTD codifies the common law doctrine that the State holds title to the beds of navigable waters and may “dispose of the beds of navigable waters, ‘in such manner as [it] might deem proper, . . . subject only to the paramount right of navigation and commerce’” I.C. § 58-1201(1). “[T]he PTD is ‘solely a limitation on the power of the state’ to encumber the beds of navigable waters and does not apply to the protection or exercise of private property rights in Idaho.” *Newton*, 167 Idaho at 244 (citing I.C. § 58-1203(1), (2)(c)).

The LPA relates to navigational and nonnavigational encroachments, including encroachments for those who have littoral rights. “A littoral (lakeside) property owner typically

possesses certain littoral rights, including “the right of access to the water, and, subject to state regulation, the right to build wharves and piers in aid of navigation.” *Newton*, 167 Idaho at 243. As noted in *Newton*, certain rights, like “a particular view” are not protected by the LPA. Pursuant to the LPA, the following are protected: “property, navigation, fish and wildlife habitat, aquatic life, recreation, aesthetic beauty and water quality[.]” I.C. § 58-1301. That provision also protects the “navigational or economic necessity or justification” for proposed encroachments. *Id.*

Concerned Citizens’ point to the factual crux of the issue in these proceedings as the basis for intervention. “The proposed encroachment is located in an active wake zone in one of the narrower and more congested portions of the Spokane River, where the channel width varies from approximately 522 feet to 769 feet. After the [community] docks are built, the area will be narrowed to 433 feet to 678 feet.” *Memorandum in Support of Petition to Intervene*, p. 2, Live Dkt. 020, (internal citation to Application, p. 5, Live Dkt. 002, omitted). With that, each petition will be addressed below.

Boardwalk’s Petition to Intervene: GRANTED

The Application in these proceedings was filed by Lanzce Douglass with River’s Edge Apartments LLC. On August 21, 2025, after the commencement of these proceedings, two entities were formed – Boardwalk and Docks LLC, which is the “fee simple owner of the Shoreline Parcel[.]” and Residence of the Spokane LLC, which is the “fee simply owner of a parcel of property within the River’s Edge Apartments development[.]” *Petition to Intervene by Boardwalk*, p. 1, Live. Dkt. 018. Counsel for Boardwalk explained at argument that these changes were made at the suggestion of IDL staff during a special meeting of the Kootenai County – County Commissioners. September 8, 2025 Hearing, at 16:01-18:48, Live. Dkt. 054 (explaining that this plan already existed but the comment of IDL staff cause Rivers Edge to “elect[] to move that along

more quickly.”) IDL did not take issue with the change in littoral ownership, lease, and the changing of ownership entities. September 8, 2025, Hearing, at 21:36-22:22; *see also* 27:47-28:01, Live Dkt. 054 (“IDL does not, at this time, consider the change in ownership, to be a material change to the substance of the application.”) Boardwalk’s Petition was granted at the September 8, 2025, hearing and public comment was extended until September 30, 2025, for the public to submit additional comment on the application based on CDA Land and Concerned Citizens’ concerns raised in the opposition. September 8, 2025, Hearing, at 29:51-30:18, Live Dkt. 054. That verbal order will be more thoroughly discussed below.

A summary of CDA Land and Concerned Citizens’ objection to Boardwalk’s Petition is that it is contrary to Idaho Code section 58-1306(b)-(d) and IDAPA 20.03.04.030.01 and that the change in the entity name of the Applicant fundamentally violates the notion of due process rights. This is because the public is entitled to notice of proposed encroachments and by changing the entity that is the applicant, the public was not appropriately placed on notice for purposes of providing comment and/or objecting to the identity of the applicant.

That point is well taken, which is why public comment was left open following the close of the hearing on September 16, 2025 – to provide the public an opportunity to comment on the change in the entity until September 30, 2025. This is despite the fact that nothing in Idaho Code contemplates that the identity of the applicant is an objectionable basis as long as the requirements for littoral ownership or littoral consent are met.

Idaho Code section 58-1306(b) addresses the public notice of the “application” and publishing “a notice advising of the application and describing the proposed encroachment and general location thereof.” CDA Land argues that “[t]his notice is intended to apprise all potentially interested parties of the identity of the applicant and the bases upon which the encroachment is

sought.” *Opposition to Petition to Intervene by CDA Land*, p. 4, Live Dkt. 031 (citing IDAPA 20.03.04.030.01, which closing mirrors the publication requirements of Idaho Code section 58-1306(b)). Idaho Code section 58-1306(b) only requires notice of the application, which would contain the identity of the applicant, and the proposed encroachment. It does not specifically require that the public be placed on notice of the applicant’s identity. This is further supported by Idaho Code section 58-1306(c) that provides “[a]ny resident of the state of Idaho [may] . . . file with the board an objection to the proposed encroachment and a request for a hearing on the application.” (Emphasis added). In other words, there is no statutory basis to object based on the identity of the applicant.

The identity of the applicant is not a factor considered in analyzing a requested encroachment beyond verifying that the request is made by a riparian or littoral owner or with approval from a riparian or littoral owner. *See generally*, I.C. § 58-1306(a). What is considered is “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[.]” I.C. § 58-1306(d). Therefore, the identity of the applicant, as long as there is littoral ownership or approval from the littoral owner, is not relevant in these proceedings.

Concerned Citizens also point to the signature requirement for the application, which provides that “[if] 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 a designated homeowner’s or property management association.” IDAPA 20.03.04.020.07(c). As stated by IDL at the hearing on Boardwalk’s Petition, the change in ownership to separate entities does not appear to be a material change in the application. Whether the signature requirement has been met will be addressed below and does not impact the finding of a basis for intervention.

Boardwalk, as the littoral owner, has demonstrated a direct and substantial interest in these proceedings.

CDA Land's Petition to Intervene: **GRANTED**

CDA Land filed its petition to intervene on the basis that the technical standards of the application have not been met. Those objections will be discussed below in the Findings of Fact and Conclusions of Law and do not provide a basis to intervene. CDA Land is not the entity charged with determining whether this application should be granted.

Despite that, the Hearing Officer exercises her discretion and granted CDA Land's petition on the basis that there could be a protected interest under the LPA given that CDA Land owns a parcel across the river from the project. Transcript 101:9-12 (CDA Land "owns about 280 acres across the river from the applicant's property, with about 4,000 feet of undeveloped waterfront.") Given that the project seeks to extend beyond the line of navigability and narrows the navigable channel, this could impact CDA Land's right to "access [] the water, and, subject to state regulation, the right to build wharves and piers in aid of navigation." *Newton*, 167 Idaho at 243. Although not articulated in the underlying petition, CDA Land holds a direct and substantial interest in these proceedings as the littoral owner across from the project site.

Concerned Citizens' Petition to Intervene: **DENIED**

Concerned Citizens raise several arguments in support of their Petition. First, Concerned Citizens argue that "an objector is a party to this proceeding without the need for a formal petition for intervention[]" and that intervention is necessary to potentially preserve appellate rights.⁶

⁶ The preservation of appellate right is not a direct and substantial interest in these proceedings. Allowing a party to intervene simply for the purpose of challenging the final agency order in district court flies in the face of the Court's analysis in *Laughy v. Idaho Dept. of Transp.*, 149 Idaho 867 (2010), and would contradict the purpose of having administrative proceedings be "the just, speedy, and inexpensive determination of contested case[]" proceedings." IDAPA 62.01.01.004.

Memorandum in Support of Petition to Intervene, pp. 2-3, Live Dkt. 20. Next, Concerned Citizens argue that “[t]heir use and enjoyment of the river will be directly harmed by increased congestion, safety hazards, and loss of public trust resources[.]” thereby giving them a direct and substantial interest in the proceedings. *Id.*, p. 6. Finally, Concerned Citizens argue that the existing parties in the proceedings do not adequately represent their interests. *Id.*⁷

The first argument relies on the language of Idaho Code section 58-1306(c), which states “[a]ny resident of the state of Idaho, or nonresident owner or lessee of real property adjacent to the lack, or any state or federal agency may, within thirty (30) days of the first date of publication, file with the board an objection to the proposed encroachment and a request for a hearing on the application.” Concerned Citizens argue that by virtue of having the ability to request a hearing as an objector, that confers *party status upon any objector* for purposes of participating in the administrative hearing.

Under the Idaho Rules of Administrative Procedure, parties are defined as follows: “[u]nless otherwise labeled by statute or by agency practice, parties to contested cases before the agency are called petitioners, respondents, or intervenors.” IDAPA 62.01.01.200. Concerned Citizens are not petitioners or respondents. Therefore, party status may only be conferred by “agency practice” or through a motion to intervene.

IDL defines parties as “[e]ach person or agency *named or admitted* as a party or properly seeking and entitled as of right to be *admitted* as a party.” IDAPA 20.03.04.010.25 (emphases added). The use of the word “named or admitted” and “admitted” seems to undercut the argument

⁷ Concerned Citizens also argue that intervention will not unduly delay or broaden the issues in these proceedings. The Hearing Officer previously ruled that this would not be a basis to deny intervention given the nature of the proceedings pursuant to Idaho Code section 58-1306 as a public proceeding. September 8, 2025, Hearing, at 35:37-36:18, Live Dkt. 054.

that “objectors” are automatically granted party status pursuant to agency practice. Instead, it seems that they either need to be “named” or “admitted” as intervenors. Therefore, Concerned Citizens are not parties pursuant to agency practice.

The Rules also define “Persons Not Parties – Interested Persons” as follows:

Persons other than the persons named in Rules 200 through 203 are not parties for the purpose of any statute or rule addressing rights or obligations of parties to a contested case. In proceedings in which persons other than a petitioner, respondent or intervenor would be expected to have an interest, persons may request the agency in writing that they be notified when proceedings of that kind are initiated. These persons are called “interested persons.” Interested persons may become intervenors or public witnesses.

IDAPA 62.01.01.206. Since Concerned Citizens are not treated by agency practice as parties (Rule 200), they are not Petitioners (Rule 201), and they are not Respondents (Rules 202), the only avenue for party status is as an Intervenor (Rule 203).

Concerned Citizens also point to language in the “Informational Handouts” located on IDL’s website to support their position that intervention is unnecessary for purposes of obtaining party status. *See Memorandum in Support of Petition to Intervene*, p. 3, Live Dkt. 020. That “Informational Handout” relates to community docks and states:

Comments. IDL publishes a notice of the application in the local paper and provides a notice of the application to adjacent land owners and other agencies. If an interested party objects, and an agreement cannot be reached, IDL will hold a public hearing. The purpose of the hearing is to gather the facts concerning the proposed encroachment and potential impact on the lake in order to determine if it meets relevant standards.

<https://www.idl.idaho.gov/wp-content/uploads/sites/2/2025/06/CommunityDock->

[Handout_2025.pdf](#) (last accessed October 23, 2025) (emphasis provided by Concerned Citizens).

Reliance on this document as a governing authority of the interpretation by IDL of its statutory and regulatory charge is misplaced. Pursuant to Executive Order No. 2020-02, guidance documents or final orders must be published on an agency website and labeled as such. *See*

<https://gov.idaho.gov/wp-content/uploads/2020/01/eo-2020-02.pdf> (last accessed October 23, 2025). This “Informational Handout” is neither published pursuant to the Executive Order nor labeled as an agency guidance document. Instead, this appears to simply be a two-page handout that generally describes the process for an application for a community dock.

This Hearing Officer does recognize that the term “party” is used throughout the published agency guidance pursuant to the Executive Order. <https://www.idl.idaho.gov/wp-content/uploads/sites/2/2025/07/EncroachmentsProceduresAndReferenceDocuments-July2025.pdf> (last accessed October 24, 2025). However, “[a]gency policy statements and guidance documents shall not have the force and effect of law.” I.C. § 67-5207A. While this could be persuasive authority that the intent of the agency is to treat objectors as parties, agency policy and guidance cannot be inconsistent with the letter of the law, which defines a party as a person “named or admitted” not simply a person who objects. I.C. § 58-1306(c); IDAPA 20.03.04.010.25; *see also Laughy v. Idaho Dep’t of Transp.*, 149 Idaho 867, 876 (2010) (“It would place a crushing burden on state agencies if anyone supposedly aggrieved by an agency action could become a ‘participant’ by commenting on a permit application, . . . This would eviscerate the administrative process and allow anyone to unfairly prevent an applicant from receiving a license from a state agency.”)

With that, “party” status is not conferred upon Concerned Citizens by virtue of the objection alone. Instead, the path toward party status is through intervention, which requires a showing of a direct and substantial interest in the proceeding that is not otherwise represented by another party in the proceeding.

Concerned Citizens presented about 50 declarations from their membership in support of the direct and substantial interest. Most of the declarations were littoral owners with corresponding

littoral rights along the Spokane River (roughly 35 of the 50), but only one of which expressed an impact on the littoral rights discussed in *Newton*. The concerns ranged from erosion, to the cost of shoreline repairs from excessive wake, an increase in taxes or homeowner's fees, and the safety of boat travel. IDL – 21, IDL – 26 – IDL – 29. These are not rights that are protected under the LPA. Of the rights protected by the LPA, Concerned Citizens did raise concerns related to recreation and navigation.

With recreation and navigation being protected pursuant to the LPA, the question then becomes are the Concerned Citizens' rights "adequately represented by one or more parties already participating in the case." See IDAPA 62.01.01.705. The answer to that question is yes. IDL, although a neutral participant, cannot "abdicate its role as trustee [of navigable waterways] in favor of private parties." *Kootenai Env. Alliance Inc. v. Pan Handle Yacht Club*, 105 Idaho 622, 625, (1983) (quoting *Illinois Central R.R. Co. v. Illinois*, 146 U.S. 387 (1892)). That is, IDL must consider the protection of property, navigation, fish and wildlife habitat, aquatic life, recreation, aesthetic beauty and water quality and it must weigh those factors against navigational or economic necessity or justification for the proposed encroachment. I.C. §§ 58-1301, -1306(b), -1306(d), and IDAPA 20.03.04.012.01. The Director recently affirmed this obligation stating: "[t]hrough the public hearing process, IDL receives input on lake value factors from agencies and the public. This input on the lake value factors – and any detriment there to – is carefully weighed against the economics of navigational necessity, justification or benefit, public or private, of such proposed encroachment." *In the Matter of Application for Expansion of Existing Commercial Facility – Rivelle, LLC dba StanCraft Companies as Applicant*, Agency Case No. PH-2024-NAV-22-02, OAH Case No. 24-320-06, p. 3 <https://www.idl.idaho.gov/wp->

content/uploads/sites/2/2025/05/20250117_FinalOrder-StanCraftRivelle.pdf (last accessed October 24, 2025).

Concerned Citizens have not demonstrated a direct and substantial interest that is protected under the LPA, however, even if they have, their interests are already adequately represented by IDL's obligation to weigh the lake value factors against the economic and navigational necessity, justification or benefit, of the proposed encroachment. For that reason, the Petition to Intervene by Concerned Citizens is DENIED.

EVIDENTIARY RULINGS

1. All exhibits were admitted in these proceedings. September 8, 2025, Hearing, at 5:45-7:05; Transcript 13:13-14:4.⁸
2. REA – 18 was entered into the record at the hearing without objection. Transcript 25:22-26:7.
3. Concerned Citizens offered Supplemental Exhibits at the request of IDL related to a study on carrying capacity. Live. Dkt. 060-061. No objection was made to this exhibit, and it is admitted as part of the administrative record.
4. The Spokane Riverkeeper submitted a public comment (Live Dkt. 058) following the hearing and the Hearing Officer requested that IDL supplement the record with the final orders referenced within that comment. Live Dkt. 062-064. These prior orders are considered part of the administrative record.

⁸ The Hearing Officer failed to inquire with IDL, the only other party at the time of the prehearing, as to whether there was an objection to the proposed exhibits of Applicant or Petitioners. However, no objection was made as to the admission of any party or proposed party's exhibits, and therefore, pursuant to IDAPA 62.01.01.475, all exhibits will be admitted. IDAPA 62.01.01.475 provides that "[e]vidence should be taken by the presiding officer to assist the parties' development of the record, not excluded to frustrate that development."

5. Applicant proffered Captain Joseph Derie (U.S. Coast Guard, Ret.) as an expert at the hearing, which Concerned Citizens objected to. Applicant and Concerned Citizens were asked to submit post-hearing briefing on the issue. Transcript 91:14-19. Based on that briefing, the expert testimony is **ADMITTED**. However, the Hearing Officer finds that although admissible, the testimony carries little weight in these proceedings.

a. Rule 485 governs experts in administrative proceedings and states:

A presiding officer may admit, weigh, and consider expert opinions, whether presented in writing or through testimony. Expert opinions are generally admissible if the proffering party demonstrates the relevancy of the expert opinions, as well as demonstrates the general reliability of the expert opinions, both as to methodology and qualifications of the expert. Expert testimony that is conclusory, offers legal opinions, or which is based solely upon hearsay, is inadmissible.

IDAPA 62.01.01.485.

b. Concerned Citizen objected to the testimony on the grounds that it lacks foundation and was “entirely speculative.” The basis of this objection is that Cpt. Derie viewed the river on a single Tuesday in August which was unrepresentative of the safety concerns raised by the Sheriff, Concerned Citizens, and members of the public.

c. Despite that limited personal viewing of the river, Cpt. Derie also testified that he reviewed the videos provided by Concerned Citizens and has extensive knowledge on boater safety and for that reason, his testimony will be admitted over the Concerned Citizens’ objection. Cpt. Derie’s testimony of his view of the river also related to the width of the section of the river and his opinion about whether that width was sufficient to permit safe passage of watercraft.

d. The testimony of Cpt. Derie, although admissible, carries little weight in these proceedings. As discussed below, the Idaho Boater Safety Act is not within IDL’s statutory charge and, therefore, is not particularly relevant in these proceedings. While IDL may

consider navigation and recreation as a lake value factor, IDL is not the regulatory agency related to boater safety. For that reason, Cpt. Derie's opinions as to the operation of the boats shown in the videos at INT – 1 and INT – 6 are not relevant to these proceedings.

e. Cpt. Derie's opinions are relevant as they relate to whether the proposed community dock creates a navigational obstruction or hazard given that an objection has been raised that the proposed encroachment seeks to extend beyond the line of navigability.

f. As stated above, Cpt. Derie's opinions are also relevant to the width of the river as it relates to the lake value factors of navigation and recreation.

FINDINGS OF FACT

1. River's Edge Apartments seeks to build a 74-slip community dock system to provide "[m]ooring opportunities for residents of the River's Edge Apartment Complex[.]" REA – 1, pp. 1-6.

2. The proposed community dock would be intended for apartment residents only and boater education would be required in order to rent a slip. Transcript 40:7-13.

3. CDA Land objected to the Application on the basis that River's Edge Apartments did not meet the technical requirements for a community dock because the upland parcels and littoral parcels were owned under a single entity.

4. On August 21, 2025, after publication of the Application, the littoral parcel was deeded to Boardwalk, and the Apartment parcels were deeded to Residences on the Spokane with lease agreements entered for Residence on the Spokane to access Boardwalk's littoral property. *Motion to Intervene*, Appendix A-1 through D-1, Live Dkt. 018, REA – 4 through REA – 6.

5. The Lease is for ten years and permits the upland parcels to exercise littoral rights for the waterfront parcel. REA – 6.

6. The Application was also partially assigned by River's Edge Apartments to Boardwalk and Residence on the Spokane. REA – 7.

7. IDL is not concerned with the change in ownership as it relates to the technical requirements of the Application, including the signature requirement. September 8, 2025, Hearing, at 21:48-22:21.

8. The Applicant has substantially complied with the technical components of the ownership requirement.

9. The proposed community dock would extend, at its maximum, 154 linear feet from the shoreline of the Spokane River and consists of five fixed pier docks and ramps. REA – 1, p. 3.

10. The width of the Spokane River at the proposed community dock is between 549 to 688 feet. REA – 1, p. 5; Transcript 74:4-22.

11. At IDL's request, the original proposal was shortened to provide 150 foot "buffer" from the center line of the river from both the northern and southern shoreline with an unencumbered 66-foot navigational aisle in the center. REA – 1, p. 6; Transcript 41:10-16.

12. The 150-foot northern and southern "buffer" along with the 66-foot navigational aisle leaves 366 feet of unencumbered navigational water through this stretch of the river. REA – 1, p. 6; Transcript 41:10-16.

13. The proposed community docks will all be ten feet in width. REA – 1, pp. 7-11.

14. There is no evidence in the record to demonstrate the distance of proposed community Dock A from the neighboring littoral line to the west. There is no evidence in the record to demonstrate the distance of proposed community Dock E from the neighboring littoral line to the east.

15. The City of Coeur d'Alene owns the parcel to the east of the proposed community dock and testified in support of the project. Transcript 23:14-17; 25:19-21.

16. There is no evidence in the record that the proposed community dock will be closer than twenty-five feet to the littoral owners to the east or west and no objection was received from either littoral owner.

17. The proposed community dock is 11,064 square feet in total. REA – 1, pp 7-11 (A-Dock – 10 slips at 1720 square feet; B-Dock – 30 slips at 4418 square feet; C-Dock – 10 slips at 1408 square feet; D-Dock – 16 slips at 2332 square feet; and E-Dock – 8 slips at 1186 square feet).

18. The property has 1591.4 feet of lineal footage.⁹ REA – 17; Transcript 78:11-17.

19. A majority of the objections to the project relate to boat traffic on the Spokane River in general. The following paragraphs will provide a summary of the objections and evidence received in support of those objections.

Concerned Citizens' Evidence

20. Members of Concerned Citizens provided testimony at the public hearing and by way of declaration. A summary of the evidence is as follows:

a. The cumulative impact of several recent projects has an impact of a total of 225 new boat slips¹⁰ on the Spokane River. Transcript 112:13-17.

b. There are concerns with “increase traffic, decreased safety, increased erosion, and decreased wildlife.” Transcript 113:1-3.

⁹ While the Application states that there is 1581 lineal footage to the property, testimony at the hearing clarified the actual lineal footage and why that measurement was accurate. Compare REA – 1, p. 19 to Transcript 77:22-25.

¹⁰ There was testimony that these are “new boats” on the Spokane River; however, there was no evidence to support that the individuals that will be mooring at the River’s Edge Apartments are not already boat owners that are already accessing the river for navigation and recreation. Transcript 178:20-23. The counter point that these could be new boats is well taken, but there is no evidence to support either position. Transcript 180:9-181:1.

c. Anecdotes of near accidents while recreating on their personal boats. *See generally* Transcript 120:13-121:7.

d. The volume of boats traveling past their property is excessive and takes away from the enjoyment of their own dock. Transcript 150:3-7.

21. Concerned Citizens also provided 12 videos demonstrating boat traffic on the Spokane River. INT – 06. The videos were taken from a property located across from Habor Island that is between Blackwell Slough and the Post Falls Dam. Transcript 148:17-20; 150:22-152:19. The videos are not adjacent to the proposed community dock. Transcript 152:17-153:1. There is no evidence in the record of the distance between the proposed community dock and where the videos were taken.

22. Concerned Citizens also submitted a reddit.com post entitled “More Boat Slips?” that looks to be a video from the same angle as the 12 videos discussed in the above paragraph. INT – 01. Again, there is no evidence of where this is in relation to the project.

23. The videos are clips of boat traffic from sporadic Saturdays and Sundays from July 12, 2025, through August 30, 2025, and one from the Monday of labor day weekend. INT – 06. They show motorboats (both pulling and not pulling floats), paddleboards, swimmers, and jet skis.

24. Based on the testimony of one member of Concerned Citizen, the videos show unsafe mixed-use¹¹ water recreation. Transcript 149:4-150:16. Whether the water recreation behavior is in compliance with the Idaho Safe Boating Act, Chapter 70, Title 67 is outside the scope of these proceedings and outside the scope of IDL’s jurisdiction. I.C. §§ 67-7002, -7003(6).

¹¹ Several individuals testified that one of the safety concerns is the mixing of motorized watercraft with non-motorized watercraft. That is what is meant by the term “mixed-use water recreation” when used in this Order.

25. Concerned Citizens also provided four “Photos of Shoreline.” INT – 02 – INT – 05. There is no evidence as to what shoreline these photos depict.

26. Concerned Citizens provided declarations from 50 individuals comprising of 35 Spokane River waterfront owners and 15 individuals that enjoy doing various activities on the Spokane River. *See* IDL – 21, IDL – 26 – IDL – 29.

27. Those individuals utilize the Spokane River for various recreation activities, including boating (motorized or non-motorized), fishing, swimming, and wildlife viewing. IDL – 21, IDL – 26 – IDL – 29.

28. They raise other concerns related to erosion of the shoreline, repairs needed from wake damage, increase in taxes or homeowner association fees due to necessary repairs, safety on the Spokane River, and the number of boats that already access this section of river.

Kootenai County Sheriff’s Testimony and Letter Re: Impact and Growth on Local Waterways

29. The Sheriff’s office received input from homeowners who ask the Sheriff’s office to oppose large expansion projects. REA – 9, p. 1.

30. The Sheriff’s office does not know if this project will add further congestion to the waterways. REA – 9, p. 1.

31. The Sheriff’s office does believe that adding more boats to the waterway will make the Spokane River less safe. Transcript 135:22-136:18. Again, the Sheriff’s office takes no position as to whether the proposed community dock will add boats to the waterway. REA – 9 , p. 1.

32. The Sheriff’s office has jurisdiction of the waterways in Kootenai County. REA – 9, p. 1; Transcript 127:20-22.

33. If the CDA Land property to the south of the proposed community dock is developed and includes docks, the waterway between Johnson Mill River Park and the highway 95 bridge will become a “no wake zone.” REA – 9, p. 1.

34. To make the Spokane River a “no towing” area would require amendments to the county ordinance. REA – 9, p. 1.

35. The state of Idaho is one of six states in the country that does not mandate boater education. Transcript 140:7-11.

36. The proposed community dock and requirement for boater safety education could help reduce safety concerns. Transcript 140:22-141:2.

Public Testimony

37. The public testimony and comment reiterated the concerns of Concerned Citizens, identifying personal accounts of boating encounters that felt unsafe, witnessing near accidents with multi-use watercraft, concerns with erosion of the shoreline, and repair costs associated with excessive wake and the impact on the shoreline, and water quality. IDL – 13- IDAL 14, IDL – 17, IDL – 22, IDL – 30, IDL – 32, and Live Dkt. 067.

38. Several members of the public stated a need for a “carrying capacity” study on the Spokane River and asked for a moratorium on the issuance of all new encroachment requests until the “carrying capacity” study was complete. Transcript 154:18-177:21.

39. Several members of the public expressed concern with excessive wake, unsafe boating practices. Transcript 154:18-177:21.

40. Several members of the public expressed concern about growth and changes in the Spokane River since as far back as the 1970’s. Transcript 154:18-177:21.

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CONCLUSIONS OF LAW

1. These proceedings are governed by the Lake Protection Act (“LPA”), which provides:

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 weighted against the navigational or economic necessity or justification for, or benefit to be derived from the proposed encroachment.

I.C. § 58-1301.

2. Idaho Code section 58-1301 lists out the lake value factors, which include: (1) protection of property, (2) navigation, (3) fish and wildlife habitat, (4) aquatic life, (5) recreation, (6) aesthetic beauty, and (7) water quality.

3. The Idaho Department of Lands through the State Board of Land Commissioners “shall 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[.]” I.C. § 58-1303.

4. Encroachments in aid of navigation “includes docks, piers, floats, pilings, breakwaters, boat ramps, channels or basins, and other such aids to the navigability of the lake, on, in or above the beds or waters of a navigable lake.” I.C. § 58-1302(h).

5. IDL, through the State Board of Land Commissioners, “shall regulate, control and may permit encroachments in aid of navigation or not in aid of navigation on, in or above the beds of waters of navigable lakes[.]” I.C. § 58-119(1); *see also Newton* 167 Idaho at 242 (2020).

6. Through its statutory authority, IDL promulgated Rules for Regulation of Beds, Waters and Airspace Over Navigable Lakes in the State of Idaho. IDAPA 20.03.04.

7. A “navigable lake” is “any permanent body of relatively still or slack water, including man-made reservoirs, not privately owned and not a mere march or stream eddy, and capable of accommodating boats or canoes.” I.C. § 58-1302(a).

8. IDAPA 20.03.04.010.38 defines submerged lands as “[t]he state-owned beds of navigable lakes, rivers and streams below the natural or ordinary high water marks.”

9. The Spokane River is a navigable waterway “within Idaho from Couer [sic] d’ Alene [sic] Lake for eight miles to Post Falls, Idaho, five miles east of the Washington-Idaho boundary[.]” *Washington Water Power Co. v. F.E.R.C.*, 775 F2d 305, 326 (D.C. Cir. 1985) (emphasis removed).

10. IDL’s authority in this matter is limited to encroachments “on, in or above the beds or waters” of the Spokane River. *See* I.C. § 58-1301; *see also* *Byrd v. Idaho State Bd. of Land Commissioners*, 169 Idaho 922, 929 (2022).

11. “If an agency acts without any authority, it is acting without a reasonable basis in law or fact.” *Syringa Networks, LLC v. Idaho Dept. of Admin.*, 159 Idaho 813, 831 (2016).

12. While several members of the public and the Concerned Citizens all asserted that IDL has the authority to “[s]top the approvals, pause the permits, and protect the Spokane River[.]” there is no statutory basis to support that position. Transcript 116:5-6.

13. As stated in IDL’s closing brief, “IDL does not have [statutory] authority to impose a moratorium on issuing all encroachment permits on the Spokane River.” *Idaho Department of Lands’ Post-Hearing Closing Statement*, p. 9, Live Dkt. 071.

14. “State agencies in Idaho have no inherent authority. . . . Thus, agencies have no authority outside of what the Legislature specifically grants to them.” *In re Idaho Workers Compensation Board*, 167 Idaho 13, 20 (2020).

15. As it relates to navigable waterways, IDL's statutory authority is governed by Titles 12 and 13, Chapter 58. Nothing in those sections of code gives IDL the unilateral authority to deny a requested permit based on the assertion of the public that there are "too many boats on the river[.]" Transcript 136:6.

16. IDL's authority is limited to addressing each individual permit on its face, evaluating the lake value factors, and weighing it against "the navigational or economic necessity or justification for, or benefit to be derived from the proposed encroachment." I.C. § 58-1301. "Too many boats" is not a lake value factor.

17. Additionally, IDL is not the agency authorized to enforce the boater safety act. *See* Chapter 70, Title 67 (granting enforcement authority to the Director of Parks and Recreation).

Community Dock Standards

18. A community dock is "[a] structure that provides private moorage for more than two (2) adjacent littoral owners, or other littoral owners possessing a littoral common area with littoral rights including, but not limited to homeowner's associations. No public access is required for a community dock." IDAPA 20.03.04.010.11.

19. Riparian or littoral rights are "the rights of owners or lessees of land adjacent to navigable waters of the lake to maintain their adjacency to the lake and to make sue of their rights as riparian or littoral owners or lessees in building or using aids to navigation[.]" I.C. § 58-1302(f).

20. Applicant has met the standard to be eligible to build a community dock. River's Edge Apartments has a lease for littoral rights with Boardwalks, the littoral owner. The River's Edge Apartments are lessees of "land adjacent to navigable waters" and with that carries littoral rights.

21. Objector CDA Land does not dispute that the “application [at hearing] designates more than two littoral owners[.]” Transcript 63:24-64:1.

22. A community dock is a commercial navigational encroachment. IDAPA 20.03.04.015.02.a.

23. “No part of the structure waterward . . . may exceed ten (10) feet in width[.]” IDAPA 20.03.04.015.02.b. The proposed community docks meet this standard. REA – 1, pp. 7-11 (drawings of the five proposed fix pier dock system with each dock at ten feet in width).

24. The amount of lineal feet of water frontage dictates the maximum total square footage permitted. IDAPA 20.03.04.015.02.c. That section provides, in part, that:

The surface decking area of the community dock is limited to the product of the length of shoreline multiplied by seven (7) square feet per lineal feet or a minimum of seven hundred (700) square feet. However, the Department, at its discretion, may limit the ultimate size when evaluating the proposal and the public trust values.

25. The public trust values are identified under the public trust doctrine. IDAPA 20.03.04.010.30.

26. The proposed community dock has lineal frontage of 1591 feet. REA – 17. This provides a maximum of 11,137 square feet for the community dock. The proposed 11,064 square feet has sufficient lineal frontage for this project.

27. A community dock located closer than twenty-five feet to an adjacent littoral right line will have a presumed adverse effect. IDAPA 20.03.04.13.e.

28. There is no evidence in the record to demonstrate the distance to the east and the west of the proposed community dock; however, this appears to be a fact that is not in dispute in these proceedings as IDL has taken the position that “[b]ased on the application drawings, it

appears the community dock system will provide a 25-foot buffer to both the western and eastern property boundaries.” *Idaho Department of Lands’ Prehearing Statement*, p. 8, Live Dkt. 046.

29. Both littoral neighbors were notified and one, the City of Coeur d’Alene, testified in support of the project. It is presumed that the proposed encroachment is not within 25 feet of the neighboring littoral line.

Line of Navigability¹²

30. The line of navigability is:

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

I.C. § 58-1302(g) (emphasis added).

31. The Board has not determined the line of navigability for the Spokane River.

32. Despite that, CDA Land provided an exhibit that demonstrates that if a line of navigability were established by the Board, the proposed community dock would likely exceed that line. *See* CDA – 3.

33. Applicant does not dispute that if a line of navigability were established by the Board, the proposed community dock likely exceeds that line. Transcript 67:18-68:1.

34. For purposes of this Order, it is assumed that the proposed community dock exceeds the line of navigability.

¹² CDA Land testified that “the hearing officer has ruled against me[.]” as it relates to the line of navigability. Transcript 104:3-5. However, that statement does not accurately reflect the ruling by the Hearing Officer at the hearing, which was merely that whether the proposed project was within the line of navigability was not in dispute. Applicant “recognize[s] that these docks go beyond what may be the line of [] navigability[.]” Transcript 67:22-24. IDL agreed that the proposed project appeared to be outside the line of navigability if one were established in the area. Transcript 67:7-12. The only ruling as to line of navigability at the hearing was that there was no dispute that if that line had been established by the Board, the proposed project exceeded that line.

35. As it relates to the length of a community dock, it:

may extend to a length that will provide access to a water depth that will afford sufficient draft for water craft 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.

IDAPA 20.03.04.13.d.

36. “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.” IDL’s Encroachment Procedure and Reference Documents, Section 25: Encroachment Standards and Requirements (Rev. July 2025), p. 32.¹³

37. This is consistent with Applicant’s dock designer’s experience. Transcript 66:2-4 (“Most of the community docks that we work on are much further out into the lake than the residential docks next door.”)

38. “Agency policy statements and guidance documents shall not have the force and effect of law.” I.C. § 67-5207A.

39. Idaho Code section 58-1306(a) applies to requests for a “nonnavigational encroachment, a commercial navigational encroachment, a community navigational encroachment, or for a navigational encroachment extending beyond the line of navigability[.]” (Emphasis added).

40. Idaho Code section 58-1305(a) applies to “navigational encroachments not extending beyond the line of navigability nor intended primarily for commercial or community

¹³<https://www.idl.idaho.gov/wp-content/uploads/sites/2/2025/07/EncroachmentsProceduresAndReferenceDocuments-July2025.pdf>

use.” This primarily relates to single-family and two-family docks, which may not extend beyond the line of navigability. IDAPA 20.03.04.015.c.

41. There is no corresponding provision in IDAPA or Idaho Code as it relates to application pursuant to Idaho Code section 58-1306.

42. While Concerned Citizens and CDA Land object that this project seeks to extend beyond the line of navigability and argue that this should be a basis for denying the Application, IDL’s own statutes contemplate that applications may be made to extend beyond the line of navigability.

43. While the policy guidance states that the line of navigability is not generally considered for community docks does not have the full force and effect of law, there is no law that prohibits a community dock from making a request to extend beyond the line of navigability. In fact, the law directly contemplates that such a request may be made.

44. If authorized by the Director pursuant to IDAPA 20.03.04.13.d, the proposed community dock may extend beyond the line of navigability.

Lake Value Factors

45. “IDL must weight [all the lake value factors] associated with a proposed encroachment[.]” against the “economic benefits and detriment of a proposed navigational encroachment[.]” *Brett v. Eleventh Street Dockowner’s Association, Inc.*, 141 Idaho 517, 523 (2005).

46. There is no evidence that this project will impact the protection of property, fish and wildlife habitat, aquatic life, aesthetic beauty or water quality. While public comment was made that there could be some impact, most of those comments were based on hypothesis,

speculation, and related to boat traffic in general and were not this specific project. This leaves navigation and recreation to evaluate.

47. There is evidence that navigation and recreation are impacted on the Spokane River currently. The question then becomes: does this project impact those two lake value factors in a way that warrants denial of the proposed community dock?

48. Applicant and IDL developed a plan to establish a “366-foot corridor” 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.” *Idaho Department of Lands’ Post-Hearing Closing Statement*, p. 7, Live Dkt. 071. This safety corridor was at the request of IDL and Applicant agreed. *Id.*, p. 8; Transcript 41:10-16.

49. The original design did not have the safety corridor but after it was introduced as a concept by IDL, the dock designers “did scale the docks to meet that buffer and stay out of it.” Transcript 59:14-60:6.

50. While not required for the determination of the permit application at issue, this safety corridor demonstrates that Applicant and IDL are mindful of the need to protect the littoral rights of the southern shore, which is owned by CDA Land, and the need to balance a project that seeks to extend the line of navigability, while also preserving recreation and navigation.

Weighed Against the Navigational or Economic Necessity or Justification for, or Benefit to be Derived from the Proposed Encroachment

51. The City of Coeur d’Alene, where this project is located, supports this project and “public access to the beneficial recreational opportunities in and on the Spokane River.” Transcript 25:19-21.

52. The 74 slips will be for residents of an apartment complex, a group of individuals that generally do not have access to homeowner lakeside moorage. Transcript 39:20-40:8.

53. The slip lessees will be required to take boater safety classes, which is not required by state law and could increase the safe operation of these boat-users. Transcript 40:11-13; 140:22-141:2.

54. The Applicant has not identified a detriment of this proposed project to “other private property owner[s.]” Transcript 42:18-21.

55. According to a dock designer in the area, this project is a unique one in that it provides access to navigation to individuals residing in apartments. Transcript 58:20-59:5. She sees this as a great benefit to the community. *Id.*

Approval Recommended

56. Weighing these benefits and access to navigation against the detriment to navigation and recreation, this project should be approved.

57. Applicant worked with IDL to address concerns and impacts on navigation and recreation and created a 366-foot safety corridor.

58. There is no evidence that the boats that will lease these additional slips are not already accessing the waterway. Therefore, it cannot be said that this will increase boat traffic on the Spokane River.

59. The mandator boater education will ensure that the individuals leasing these slips will be trained to operate a boat safely.

60. Evaluating the lake value factors as a whole, considering the input of the public, and weighing that against the navigational benefit and justification for this project, the encroachment is recommended for approval as designed.

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RECOMMENDED ORDER

Based on the foregoing Findings of Fact and Conclusions of Law, the Hearing Officer recommends that this Application be **GRANTED**.

RULE 625—RECOMMENDED ORDER NOTICE

This is a recommended order of the hearing officer. It will not become final without action of the agency head. By law, the agency head must issue a final order within thirty (30) days of the close of the evidentiary portion in this case, which occurred on September 30, 2025. *See* I.C. § 58-1306(c). The agency head's final order in this case must be issued no later than **October 30, 2025**.

Motions for reconsideration filed with the presiding officer will not be considered. IDAPA 62.01.01.625.03.a.

DATED: October 27, 2025.

OFFICE OF ADMINISTRATIVE HEARINGS

/s/ Leslie M. Hayes

Leslie M Hayes

Deputy Chief Administrative Law Judge

CERTIFICATE OF SERVICE

I hereby certify that on this 27th 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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/s/ Elaine Maneck

Elaine Maneck, Deputy Clerk
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