

BEFORE THE IDAHO DEPARTMENT OF LANDS

In the Matter of Application for Encroachment
L-95-S-6163A, 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

FINAL ORDER

Applicant River's Edge Apartments, LLC ("Applicant") submitted a Joint Application for Permits ("Application") to Idaho Department of Lands ("IDL") on June 23, 2025, to permit a 74-slip community dock system on the Spokane River. IDL held a public hearing on September 16, 2025, conducted by the Office of Administrative Hearings ("OAH"). Deputy Chief Administrative Law Judge Leslie Hayes ("ALJ Hayes") presided over the hearing. On October 27, 2025, ALJ Hayes issued a Findings of Fact, Conclusions of Law, and Recommended Order ("Recommended Order") which contains the following sections: Petitions to Intervene, Evidentiary Rulings, Findings of Fact, and Conclusions of Law.

As Director of IDL, my responsibility is to render a Final Order pursuant to Idaho Code § 58-1306(c) and IDAPA 20.03.04.030.07, on behalf of the State Board of Land Commissioners ("Board") based on the record reviewed in the context of my personal expertise gained through education, training, and experience. I relied on, and examined the entire record for this matter, including the Recommended Order. For the reasons set forth below, the Application is APPROVED.

I adopt ALJ Hayes's evidentiary rulings and rulings on petitions to intervene as my rulings. Unless stated otherwise, the Findings of Fact and Conclusions of Law in this Order are substantially adopted from the Recommended Order.

FINDINGS OF FACT

1. On June 23, 2025, Applicant River's Edge Apartments, LLC submitted a complete

Joint Application for Permit No. L-95-S-6163A to build a 74-slip community dock system (“Community Dock”). REA-1, pp. 1-6.

2. The Community Dock would provide moorage for apartment residents who have completed and passed a boater safety education course. Tr. 40, ll. 7-13.

3. The proposed Community Dock consists of five separate dock structures with 74 slips for a combined 11,064 square feet. REA-1, pp. 7-11 (A-Dock – 10 slips at 1,720 square feet; B-Dock – 30 slips at 4,418 square feet; C-Dock – 10 slips at 1,408 square feet; D-Dock – 16 slips at 2,332 square feet; and E-Dock – 8 slips at 1,186 square feet).

4. No portion of the Community Dock exceeds 10’ in width. Id.

5. The Community Dock would be located at least 25’ from the adjacent parcels to the east and west. REA-1-16, 17.

6. The Community Dock would extend between 75’ and 154’ from the shoreline of the Spokane River. (A-Dock, 154’; B-Dock, 81’; C-Dock, 88’; D-Dock, 75’; E-Dock, 75’). REA-1-6 through 11.

7. The width of the Spokane River at the Community Dock is between 549’ and 688’. REA-1-5.

8. At IDL’s request, Applicant shortened the length of the docks in order to provide a 366’ corridor into the river beyond the edge of the docks, consisting of two 150’ buffers and a 66’ navigational aisle between the buffers. REA-1-5, 6.

9. The Application identified River’s Edge Apartments, LLC as the owner of the littoral parcel, more particularly described as Tax#26817 [IN GOVT LT 4 SECTION 9 & GOVT LOT 1 SECTION 10] ATLAS URD 2018 0950N04W. REA-1.

10. The littoral parcel has 1,591.4 of shoreline¹. REA-17; Tr. pp. 77-78.

11. On June 30, 2025, IDL mailed a Notice of Application for Encroachment to interested agencies, including IDFG, IDEQ, IDWR, IDOT, USACE, Kootenai County Parks, Kootenai County Marine Division, Kootenai County Building & Planning & Zoning, Kootenai Environmental Alliance, Panhandle Health District 1, Coeur d’Alene Tribe, and Idaho Conservation League. IDL-6.

12. On June 30, 2025, IDL sent a similar notice to the City of Coeur d’Alene and

¹ While the Application indicates 1,581 lineal footage of shoreline, testimony at the hearing clarified the actual surveyed lineal footage and why that measurement was accurate. Compare REA-1, p. 19 to Tr. p. 77, ll. 22-25.

River's Edge Property Owner's Association, Inc. as adjacent neighbors. IDL-5.

13. The City of Coeur d'Alene does not object to the Community Dock. Hilary Patterson testified in support at the public hearing on account of the multiuse trail and public beaches with ADA access that will allow public access to the beneficial recreational opportunities in and on the Spokane River. Tr. pp. 24, 25.

14. IDL published a Legal Notice of Application in the Coeur d'Alene Press which ran on July 4 and July 11, 2025. IDL-4, 7.

15. On August 1, 2025, IDL received an objection and request for public hearing from Coeur d'Alene Land Company ("CDA Land") alleging that the Application does not meet the technical requirements for a community dock because the littoral parcel and four adjacent upland parcels were owned by the same entity and there was no matter of record title identifying a "littoral common area" or recorded littoral rights for apartment tenants on the upland parcels. IDL-8.

16. IDL referred the matter to OAH to conduct a public hearing in accordance with I.C. § 58-1306. ALJ Hayes was appointed as Hearing Officer. IDL-1, 10.

17. On July 31, 2025, IDL employees Mike Ahmer ("Ahmer") and Amidy Fuson ("Fuson") appeared at a meeting in front of three Kootenai County Commissioners ("Special Meeting"). REA-8. It is not clear from the record who called the meeting or for what purpose. Applicant was not present and did not know about the Special Meeting. App. Preh'g. Stmt., p. 4.

18. On August 21, 2025, Applicant deeded the littoral parcel to Boardwalk and Docks, LLC via quitclaim deed, and one of the four upland parcels to Residences on the Spokane, LLC. River's Edge Apartments, LLC retained ownership of the remaining three upland parcels. Pet. to Intervene, App. A, B; App. Preh'g. Stmt., p. 2

19. Residences on the Spokane, LLC and River's Edge Apartments, LLC (tenants) entered into a ten-year lease agreement with Boardwalk and Docks, LLC (landlord) to lease the littoral rights, providing each an undivided $\frac{1}{4}$ interest in the riparian and littoral rights and use of the Community Dock. Id., App. C.

20. Applicant also submitted a Partial Assignment of Joint Application for Permits L95S6163A to Residences on the Spokane, LLC and Boardwalk and Docks, LLC. Id., App. D.

21. IDL considered Boardwalk and Docks, LLC, Residences on the Spokane, LLC, and River's Edge Apartments to meet the eligibility requirements for obtaining a community

dock, pursuant to IDAPA 20.03.04.020.02, including the signature requirement. IDL Prehr'g. Stmt., p. 9.; REA-8, 14:35.

22. Three petitions to intervene were filed by CDA Land, Concerned Citizens Against Additional 100 Boat Slips Added to Templins Resort on Spokane River, LLC ("Concerned Citizens"), and Boardwalk Docks, LLC and Residences on the Spokane, LLC. IDL-18-21, 24. CDA Land objected to Boardwalk Docks Petition for generally the same reasons they objected to the Application. IDL-31.

23. At the public hearing, ALJ Hayes granted intervention to CDA Land and Boardwalk and Docks, LLC finding they showed a "direct and substantial interest", would not unduly broaden the issues, and would not unduly delay or prejudice the original parties. Recommended Order, pp. 5-8.

24. Concerned Citizens requested intervention "to ensure its ability to seek judicial review if necessary." IDL-20, p. 2. The Petition to Intervene included 49 declarations from members of Concerned Citizens. IDL-21, 27-29.

25. ALJ Hayes denied Concerned Citizens' petition to intervene as they did not show a direct and substantial interest that was not already adequately represented, and that preservation of an appellate right is not a direct and substantial interest. Recommended Order, pp. 7-8, n. 6.

26. On September 5, 2025, Applicant submitted a pre-hearing statement and exhibits REA-1 - 17. IDL submitted a pre-hearing statement and exhibits IDL-1 - 33. CDA Land submitted a pre-hearing statement and exhibits CDA-1 - 3. Concerned Citizens submitted a pre-hearing statement and exhibits INT-1 - 6.

27. IDL held a public hearing on September 16, 2025, at 4:00 p.m. at the Best Western Plus, 506 W. Appleway Ave., Coeur d'Alene, ID 83614. The hearing was recorded, and made available to the public on IDL's website (<https://www.idl.idaho.gov/lakes-rivers/administrative-hearings/>). The hearing was transcribed and is part of this record. DKT-66.

28. IDL Counsel Kayleen Richter and John Richards appeared on behalf of IDL, and attorney Elizabeth Tellessen appeared for Applicant. Around 100 members of the public attended and around sixteen presented testimony. All exhibits were submitted without objection and admitted into the record.

29. IDL received 58 written public comments opposing the Application—about half of which were from members of Concerned Citizens. The comments urge denial based generally on

river congestion, boat traffic, noise, and erosion. IDL-9, 13, 14, 17, 22, 23, 30, 32; DKT-58, 67. The following paragraphs provide a summary of the comments and evidence received from the public and testimony at the public hearing:

Concerned Citizens' Comments

30. Several members of Concerned Citizens provided written comments and testimony at the public hearing in addition to the declaration. A summary of their comments is as follows:

- a. The cumulative impact of several recent projects results in a total of 225 more boats². Tr. 112, ll. 13-17.
- b. There are concerns with “increased traffic, decreased safety, increased erosion, and decreased wildlife” in addition to “more boats, more congestion, more risk.” Tr. 113, ll. 1-5.
- c. Anecdotes of near accidents while recreating on their own personal boats. *See generally* Tr. 120, l. 13 - 121, l. 7.
- d. The volume of boats traveling past their property is excessive and takes away from the enjoyment of their own dock. Tr. 150, ll. 3-7.

31. Concerned Citizens provided 12 video clips of boat traffic on the Spokane River. INT-6. The videos were taken from a property located across from Harbor Island between Blackwell Slough and the Post Falls Dam and are not near, or adjacent to, the Community Dock. Tr. 148, ll. 17-20; 150, l. 22 – 152, l. 19.

32. Concerned Citizens also submitted a reddit.com post entitled “More Boat Slips?” that appears to be a video from the same property timestamped Sunday, August 10, 2025, at 11:55 a.m. INT-01. Again, there is no evidence of the location in relation to the Applicant’s parcel.

33. The videos each depict about 90 seconds of boat traffic on Saturdays and Sundays from July 12, 2025, through August 30, 2025, and one from Labor Day. INT-06. The video clips show mixed-use³ water recreation, including motorboats (both pulling and not pulling floats), paddleboards, swimmers, and jet skis.

34. Concerned Citizen member Joseph Vic Parrish testified that the videos show

² 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. Tr. 178:20-23. The counter point that these could be new boats is well taken, but there is no evidence to support either position. Tr. 180:9-181:1.

³ 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.

“unsafe” mixed-use water recreation, but does not indicate what is “unsafe” in any of the videos⁴. Tr. 149, l. 4-150, l. 16. Parrish testified that “we have seen as many as 20 boats in one video frame, in a 60-second video on that river.” Id.

35. After viewing the 12 videos, it is not clear what is considered “unsafe” navigation during the mixed use water recreation. No video shows 20 boats in one frame. Nearby paddleboarders and swimmers do not appear concerned or unsafe, even though the videos were taken during “heavy traffic times” on Saturdays or Sundays. The videos depict the following:

- a. Sat. 08/09/25 at 3:29 p.m. (1:22 mins.) – two boats going one direction and two boats going the other. One boat slows to give way to the passing boats. Paddleboarders and swimmers are present, and do not appear concerned or unsafe. A total of five boats pass the camera during the entire clip.
- b. Sun. 08/10/25 at 11:55 p.m. (1:02 mins.) – four boats going in same direction, one boat is towing. No near misses or safety concerns and the docks appear stable from the wakes produced. Four boats and one jetski pass the camera during the clip.
- c. Sat. 08/09/25 at 3:31 p.m. (1:04 mins.) – two boats going the same direction at a safe distance. Nearby paddleboarders do not appear concerned or unsafe. Two boats pass during the clip.
- d. Sun. 08/10/25 at 12:34 p.m. (:52 secs.) – one boat traveling slow, jetskiers behind at a safe distance, several paddleboarders and swimmers in the river do not appear concerned or unsafe. One boat and two jetskis pass the camera.
- e. Sun. 08/17/25 at 2:44 p.m. (1:52 mins.) – one pontoon boat remains stationary while another boat slowly travels by the docks. Another boat passes at a safe distance without creating excessive wake to pontoon. Swimmers in the area do not appear concerned or unsafe. Three boats pass during the clip.
- f. Sun. 08/17/25 at 2:34 p.m. (:52 secs.) – two boats going one direction, one boat going the other on the correct passing sides and appear to be a safe distance. Swimmers do not appear concerned or unsafe. Six boats pass during the clip.
- g. Sat. 08/30/25 at 1:22 p.m. (1:22 mins.) – two boats towing pass in opposite directions at a safe distance, swimmers and paddleboarders do not appear concerned or unsafe. Four boats pass during the clip.
- h. Sun. 08/24/25 at 11:13 a.m. (1:00 min.) – one boat traveling in one direction, another towing a skier several seconds behind. Four boats pass during the clip.
- i. Mon. 09/01/25 at 2:48 p.m. (1:14 mins.) – two boats several seconds apart travel by the camera moving at what appears to be a slow speed, paddleboarders and

⁴ Whether the videos show boats that are violating 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).

swimmers in the area do not appear concerned or unsafe. Three boats and three jetskis appear during clip.

j. Sat., 07/12/25 at 12:54 p.m. (1:08 mins.) – two boats pass about one minute apart. Pontoon moves very slowly. Possible sheriff in the middle of the river. Paddleboarders and swimmers in the area do not appear concerned or unsafe. Two boats pass during the clip.

k. Sun. 08/03/25 at 10:43 a.m. (1:06 mins.) – seven boats pass in one minute, going different directions and some are towing. Swimmers in water and people on nearby dock do not appear concerned or unsafe. Seven boats total appear in this clip.

l. Sat. 07/26/25 at 2:08 p.m. (:50 secs.) – four boats pass at safe distances. swimmers in water do not appear concerned or unsafe. Four boats total appear in this clip.

36. Concerned Citizens also provided four “Photos of Shoreline.” INT-2 – 5. It is not clear from the record where the photos were taken or what they depict.

37. Concerned Citizens provided declarations from 50 individuals⁵ comprising of 35 Spokane River waterfront owners along various parts of the river and 15 individuals that live near the river. Each declaration contains the following identical non-specific concerns:

- a. The project will increase boat traffic and congestion on this section of the Spokane River.
- b. Increased congestion will reduce safety for all users, including myself and my family.
- c. The project will interfere with my ability to use and enjoy the Spokane River.
- d. The project will increase risks of collision or injury to non-motorized users.
- e. Noise, wakes, and congestion will diminish the recreational value of this section of the river.

IDL–21, 26 – 29. It is not clear what “this section” of the river means in each declaration or how the Community Dock will reduce safety or increase the risk of collision or injury to each individual declarant. Although the declarations assert the river is congested with boat traffic, every declarant admits to boating on the river, and most admit to boating in addition to waterskiing/wakeboarding/wakesurfing, or tubing on the river, or all of the above. Id.

38. Others raised speculative, non-specific concerns related to shoreline erosion, dock repairs, possible increases in taxes or homeowner association fees, safety, and boat traffic. Id. None state how the Community Dock will erode their shoreline, destroy their dock, increase their HOA

⁵ Several members appear to be from the same household.

fees, or decrease their safety.

The Special Meeting with Kootenai County Board of Commissioners

39. Applicant submitted a recording of what is titled as a “Special Meeting” between the Kootenai County Board of Commissioners and IDL held on July 30, 2025, to discuss the Application. REA-8. It is not clear from the record who called the Special Meeting, or why the Applicant is not present to participate in the hour-long discussion. The meeting was attended by three commissioners, IDL employees Mike Ahmer and Amidy Fuson, Sheriff Norris and Sergeant Miller from the Kootenai County Sheriff’s Office (“KCSO”), a member from KC Parks, Hilary Patterson from the City of Coeur d’Alene, and other unidentified participants.

40. In his opening comments, Ahmer admits the Application “appears to meet our rules and regulations we have for community docks.” 2:14.

41. When asked about the Line of Navigability in the river, Ahmer stated: “Historically, community docks and commercial marinas do not have to abide by the line of navigability.” 2:58.

42. Ahmer explained the purpose of the 366’ corridor was to allow unobstructed navigation, a concept that was “new to IDL.” 3:45. There is a no wake zone 150’ from the end of every dock. 4:05. When traveling, boats should observe 50’ between when passing. The average boat is about 8’ in width. $8+8+50+150+150 = 366$. 4:21. Ahmer stated they “wanted to make sure the Applicant did not encroach into that 366’ corridor and wanted to think about the development to the South which has the potential to have docks in the future.” 4:25.

43. When asked about the Application, Ahmer stated it seems to meet the definition of community dock, setback requirements, 7:1 ratio, 366’ navigation corridor requirement, and will still provide adequate and equal opportunity for the developer on the South to construct docks. 4:58.

44. When asked if it meets the IDAPA definition of community dock, Ahmer replied that it can be met two ways, the first is to own at least 3 lots. The other has always been a struggle . . . In this case, Applicant owns a large waterfront parcel and four parcels up above. The slips are only available to apartment members. It’s not 100% slam dunk that it meets the definition of community dock. If it were pressed, I think they have two options: the upland lots get changed in ownership name . . . another easier thing they could do is to lease the littoral rights of the waterfront property to the community. That would definitively meet the definition. In broader strokes, it does appear to meet the meaning of community dock.” 15:19 – 18:00.

45. One of the Commissioners did not agree that the river is always congested. "There's some days where the river is incredibly congested. There are other days you look out there and go where is everybody?" 22:55.

46. Troy Tymesen, City Administrator with the City of Coeur d'Alene expressed support for the project because the public will have an opportunity to access the water. Tymesen commented that the shoreline is in much better condition today than the last 80 years. Tymesen complemented the connectivity and shore stabilization, stating it was much better for the environment and the Spokane River. 35:03.

47. When asked about the number of boating deaths, Norris responded: "In the past couple of years – no boating related deaths. Our reported cases of crashes has gone down. Numbers have started to go down." 38:37.

48. Ahmer expressed the need for a study regarding the carrying capacity. Put a pause on it, recommend denial, and launch some type of committee that would launch a carrying capacity study to figure out how many boats is too many boats . . . At one point you'll be able to walk from dock to dock along the Spokane River without ever getting in the water . . . Someone needs to stick their neck out a little bit and say "this shouldn't be happening because . . ." 20:45 – 22:38.

49. Although admitting the Application meets the requirements, Ahmer and Fuson appear to solicit objection from KCSO or someone "willing to stick their necks out." "We are not the experts when it comes to what is safe on the river, and how many boats is too many and what is safe and not safe on the river. We are experts when it comes to encroachments, whether encroachments meet the rules and standards. If we were to receive some type of comment from a marine deputy, from parks and recreation . . . maybe you guys expressing concern that this isn't safe, I would think we would take that to a public hearing where we would raise that issue in front of a hearing officer . . ." 7:17. "Do you foresee that your letter might make mention of that comparison? I think that would be helpful." 13:20.

50. Ahmer appeared to solicit specific contents for a letter objecting to the Application: If someone is going to put a letter out there recommending denial, it needs to be followed up with a qualifying statement . . . recommending denial is not going to be able to cross that threshold . . . If someone is going to be submitting some type of letter in opposition, I would encourage you to cite any type of data, research citation possible along with a recommendation. 33:30, 46:20.

51. The day after the Special Meeting, KCSO submitted a letter to Ahmer and Fuson

objecting to the Application, citing safety concerns including lack of boater education, obstructions in the water, and narrow river.

Public Testimony

52. The public testimony and comments raised similar concerns, describing 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 wake damage and the impact on the shoreline, and water quality. IDL-13, 14, 17, 22, 30, 32, and Live Dkt. 067.

53. Several cited 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. Tr. 154:18-177:21.

54. Several expressed concerns about excessive wake and unsafe boating practices. Tr. 154:18-177:21.

55. Several expressed concern about growth and changes in the Spokane River since as far back as the 1970’s. Tr. 154:18-177:21.

CONCLUSIONS OF LAW

The Idaho Legislature enacted the Lake Protection Act (“LPA”), Title 58, Chapter 13, Idaho Code, in 1974 stating that:

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 of 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.* 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 (emphasis added).

The LPA mandates that IDL weigh the economic benefits and detriments of a proposed navigational encroachment, along with environmental, navigational, recreational, and other impacts that may be associated. IDL, based on its experience and expertise, is in the best position to weigh the competing interests involved. *Brett v. Eleventh St. Dockowner's Ass'n, Inc.*, 141

Idaho 517, 523, 112 P.3d 805, 811 (2005).

The State Board of Land Commissioners (“Board”) is authorized to “regulate and control the use or disposition of lands in the beds of navigable lakes, rivers and streams, to the natural or ordinary high water mark thereof, so as to provide for their commercial, navigational, recreational or other public use. . .” I.C. § 58-104(9)(a).

The LPA provides that the Board “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. §§ 58-1303. IDL is granted power to exercise the Board’s rights, powers and duties under the LPA. I.C. § 58-119(1); *Newton v. MJK/BJK, LLC*, 167 Idaho 236, 242 (2020).

Through its statutory authority, the Board promulgated the Rules for the Regulation of Beds, Waters and Airspace Over Navigable Lakes in the State of Idaho (“LPA Rules”), which provide “minimum standards to govern projects or activities for which a permit or permits have been received” under the LPA. I.C. § 58-1304; IDAPA 20.03.04.

The Spokane River is a navigable river and is within IDL’s authority to regulate encroachment permits.

The Application meets the Requirements of Idaho Code § 58-1306(a) and LPA Rules.

Applications for construction of community navigational encroachments shall be submitted upon approved forms and “accompanied by plans of the proposed encroachment containing information required by section 58-1302(k), Idaho Code, and such other information as the board may by rule require in conformance with the intent and purpose of this chapter.” I.C. § 58-1306(a). Applications must be submitted or approved by the riparian or littoral owner. Id. Plans shall include:

- Lakebed profile in relationship to the proposed encroachment and show the summer and winter water levels.
- Copy of most recent survey or county plat showing the full extent of the applicant’s lot and the adjacent littoral lots.
- Proof of current ownership or control of littoral property or littoral rights.
- A general vicinity map.
- Scaled air photos or maps showing the lengths of adjacent docks as an indication of the line of navigability, distances to adjacent encroachments, and the location and orientation of the proposed encroachment in the lake.
- Total square footage of proposed docks and other structures, excluding pilings, that cover the lake surface.

- Names and current mailing addresses of adjacent littoral owners.

IDAPA 20.03.04.020.07.a. The Application meets the requirements of I.C. § 58-1306(a), 58-1302(k), and IDAPA 20.03.04.020.07.a.

The Application meets the standards required for a community dock.

The LPA Rules provide the following definition of a Community Dock:

A structure that provides 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.

IDAPA 20.03.04.010.11.

The LPA Rules provide the following standards for Community Docks:

- b. No part of the structure waterward of the natural or ordinary high water mark or artificial high water mark may exceed ten (10) feet in width . . .
- c. A community dock may not have less than fifty (50) feet combined shoreline frontage. Moorage facilities will be limited in size as a function of the length of shoreline dedicated to the community dock. 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 foot 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 public trust values.

IDAPA 20.03.04.015.02.b, c.

In this case, the Community Dock meets the definition of Community Dock. First, it is a navigational encroachment that will provide moorage for 74 other littoral owners who possess a littoral common area with littoral rights. Littoral rights, for the purposes of issuing lake encroachment permits, refer to the right of owners or lessees of land adjacent to navigable waters "to maintain their adjacency to the lake and to make use of their rights" as littoral owners by building or using "aids to navigation. *Brett v. Eleventh St. Dockowner's Ass'n, Inc.*, 141 Idaho 517, 521, 112 P.3d 805, 809 (2005).

Boardwalk & Dock, LLC possesses a littoral common area consisting of 1,591 feet of river shoreline, and has leased its littoral rights to the adjacent four upland parcels. The Community Dock will not provide moorage to the public—it is an aid to navigation and benefits the tenants of River's Edge Apartments, who have the right to access the public waterway at all points.

The littoral parcel contains approximately 1591.4' of shoreline frontage. The proposed Community Dock would be 11,064 square feet which meets the 7:1 square footage to shoreline ratio. REA-17; Tr. pp. 77-78. The proposed Community Dock does not exceed 10' in width and will not be within 25' of each adjacent littoral parcel.

The proposed Community Dock meets the definition and standards required by the LPA and LPA Rules.

The Line of Navigability.

The LPA Rules contemplate that community docks may extend beyond the line of navigability, if one is established, and the Director may designate a line of navigability for the purpose of effective administration of these rules. IDAPA 20.03.04.015.13.d. When determining littoral lines and lines of navigability, the Idaho Supreme Court has held “[i]t is realized that due to the numerous variations of the shore line formations, such as a convex or a concave, or otherwise irregular shore line of a lake or other large body of water, no one rule or formula could be invoked to determine the littoral boundaries which would apply in all cases. *Driesbach v. Lynch*, 71 Idaho 501, 508, 234 P.2d 446, 450 (1951).

[T]here seems to be no hard and fast rule or rules which are without modification to meet peculiar facts and circumstances; the controlling thought in every case is to treat each case in an equitable manner so that, so far as it is possible, all property owners on such a body of water have access to the water; the courts in all cases have striven to see that each shore line owner shall have his proportionate share of the deep water frontage and all of the rules which have been adopted and applied throughout the years by the courts in relation to this problem have had that end in view; the courts have not hesitated to point out that these rules often require modification under the peculiar circumstances of the case in order to secure equal justice, and that where such is the case the courts do not hesitate to invoke a modification to attain such objective.

Id. Here, the record does not identify an established line of navigability. However, to meet this concern, IDL requested the Applicant to modify the length of the docks to accommodate an unobstructed 366' corridor that would not interfere with navigability. The corridor allows a 150' no wake buffer to the end of the docks, and a 66' corridor for boats navigating up and down the river with ample passing space, another 150' buffer, and would still allow CDA Land to develop their parcel with similar docks in the future.

The length of the Community Dock into the river will provide access to a water depth that will afford sufficient draft for watercraft and provide ample room for the public to navigate the

waterway. Neither Applicant nor IDL objected to the implementation of the corridor. The decision to shorten the docks was a reasonable effort to balance out the interests of the Applicant, the navigating and recreating public, and the interests of the owner across the river who will be left with sufficient space to build docks in the future. This is a practical solution for providing additional moorage and access to navigation. *See Brett*, 141 Idaho at 523-24, 112 P.3d at 811-12.

The proposed Community Dock will provide a clear benefit and navigational justification.

The LPA requires IDL to balance several factors when evaluating an application for a proposed navigational encroachment:

It is the express policy of the State of Idaho 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.

Brett, 141 Idaho at 523, 112 P.3d at 811 (citing IDAPA 20.03.04.011.01 and I.C. § 58–1301). While the LPA contemplates that IDL will weigh the economic benefits and detriment of a proposed navigational encroachment, it is not the only factor. IDL, based on its experience and expertise, is in the best position to weigh the competing interests involved in determining whether to approve additional encroachments. *Id.*

Applicant presented testimony regarding the navigational and economic justification for, in addition to the benefits to be derived from, the Community Dock. First, the tenants will realize economic savings with the ability to store their boat where they live, instead of towing it back and forth and creating more congestion on the public boat launches. Tr. p. 34, ll. 9-11.

The Community Dock will allow the members to enjoy the benefits that all shoreline residents value. “These tenants are folks that might not ever have the benefit of direct access to a dock on the Spokane River. But in this instance they will be granted that, and that makes this project very unique and fills a gap in the otherwise available resources for recreation on the river and the lake.” Tr. p. 36, l. 24 – p. 37, l. 4.

Some openly questioned the benefit of—and even objected to—granting navigational access to apartment tenants. “As far as I know, apartments are transitional housing, and so when people – people live in apartments at times, and sometimes it’s because they have a short time that they need to fill in, but it’s also because they can’t afford a house in Kootenai County that has

tripled in prices. So I'm wondering how they plan to make sure that the high portion of their apartment renters are able to afford their boat docks and the boats?" Tr. p. 111, ll. 13-20. Another testified, "I have an objection to where renters will be gaining littoral rights that affect the property's value of homeowners all the way up and down the property by just diluting the – diluting the river stretch . . . and all of a sudden upstream they have littoral rights that impact everybody else along the river." Tr. p. 173 ll. 16-24.

The City of Coeur d'Alene Planning Director Hilary Patterson presented the benefits of the Community Dock both at the Special Meeting and the public hearing. Patterson testified that the City approved the apartment project recognizing the partnership provided a public benefit, including a connected multi-use trail and multiple public access points to the Spokane River. Tr. p. 24, ll. 9-16. One of four public beaches will be ADA complaint. Tr., p. 25, ll. 6-9. The public will gain more access to the river and increase recreational opportunities that otherwise would not be available.

Although some comments speculated that the Community Dock will increase the total amount of boats navigating the river by 74, others questioned that statistic as it is not known whether the tenants who obtain the slips already own boats and are forced to store them elsewhere.

Fish and wildlife habitat and aquatic life.

There is no evidence in the record that the Community Dock will pose a detriment to fish and wildlife habitat or aquatic life. Although invited to do so, IDFG did not submit comment.

Recreation.

There is no evidence that the Community Dock will pose a detriment to the public's use of the Spokane River for recreation. In fact, the project will provide four new beaches with public ADA access. It is without question that the boat slips will provide the tenants with greater access to recreation.

Although most of the comments in opposition generalize that the Community Dock will present a detriment to their own recreation, it is not clear how it would impact it specifically. Most commenters stated that they use various aspects of the river for some form of recreation, including wildlife viewing, boating, fishing, towing, and waterskiing. Most of the comments oppose additional boaters accessing the river, which is several miles long. No one presented testimony how the Community Dock would prevent such recreation. Instead, the evidence shows the

Community Dock project will actually increase opportunities for recreation to boat slip renters and the public through access.

Aesthetic Beauty

There is no evidence in the record that the proposed encroachment would be detrimental to the aesthetic beauty of the river. Counsel for Applicant testified that the project will provide four designated swimming areas and lake access points that don't exist in between individual homes. "This offers additional visual break and aesthetic break to the shoreline that wouldn't otherwise exist." Tr. p. 38, ll. 1-5.

Hilary Patterson testified at the Special Meeting that the shoreline is in much better condition today than the last 80 years. Patterson commented that the connectivity and shore stabilization was much better for the environment and the Spokane River.

Dock designer Cindy Richardson testified that one of the purposes of a community docks "is to have more condensed dock space to allow for visual appeal for people to be able to see the shoreline. It's not littered with docks." Tr. p. 65, l. 23 – p. 66, l. 1.

The testimony presented suggests that the design of the Community Dock will not decrease the aesthetic beauty of the Spokane River.

Water Quality

Some commenters submitted concerns about sediments in the riverbed that can be stirred up by boat traffic. Although no one disputes that the riverbed may contain sediments, no evidence shows how the Community Dock would directly affect the water quality in the river.

Spokane Riverkeeper submitted comments regarding the Spokane River's contamination legacy, urging IDL to deny this and future permits. PC0076-82. Riverkeeper provided factual information about how increased boat traffic can worsen contamination, citing to recent studies conducted in similar waters. PC0079. "In the Spokane River, where both the shoreline and riverbed are contaminated with heavy metals from historic mining, this erosion and disturbance carry additional risks." Id. The concern was echoed through testimony from Stephen Behlmer and Susan Stiger. Tr. p. 160, ll. 1-13; 168, ll. 10-23.

Unfortunately, it is not disputed that the navigable waterways in the area suffer from historical metals-contaminated sediment. While this point is well-taken and valid, IDL has no jurisdiction over the Clean Water Act or other environmental laws. The Legislature has declared Lake Coeur d'Alene as devoted to health and recreational use:

The lands belonging to the state of Idaho between the ordinary high and low water mark at said lakes as well as all other lands of the state adjacent to said lakes that are not held in trust for the beneficiaries of the endowed institutions are hereby declared to be devoted to a public use in connection with the preservation of said lakes in their present condition as a health resort and recreation place for the inhabitants of the state and said public use is hereby declared to be a more necessary use than the use of said lands as a storage reservoir for irrigation or power purposes.

I.C. § 67-4305 Priest, Pend Oreille, and Coeur d' Alene Lakes – Lands devoted to health and recreational use. IDL does not have authority to evaluate environmental threats or issue advisories or close rivers for environmental reasons. This authority is granted to the Idaho DEQ, who did not provide comment.

Safety.

Most of the comments and objections to the Application generally allege that the Community Dock will decrease safety. Kootenai County Sheriff Robert Norris testified in his capacity as the sheriff that “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, ll. 20-25.

The record provides no statistics of accidents or safety violations on the Spokane River, which was noted by Captain Joseph Derie. Tr. p. 87, ll. 17-25; 89, ll. 15-19. Sergeant Miller testified at the public hearing and the Special Meeting. “In the past several years we have not had a significant number of reported boat crashes or boat incidents on the Spokane River or Lake CDA. We’re in a lull right now, and I do not believe that that is going to stay around. I don’t have any data to support that. That is just my opinion . . .” Tr. p. 132, ll. 15-23. Miller also testified at the Special Meeting that there were no boat-related deaths over the last couple of years. When asked about the safety design of the docks in the river, Miller responded that he has no opinion because he is “not an engineer.”

Many opined that the river is becoming “unsafe” due to uneducated boaters. Miller testified that Idaho is one of six states that does not mandate boater education. To address concerns about the general lack of boating knowledge and etiquette, the Applicant will require each tenant to attend a boater safety course and provide proof that they have passed the course before acquiring a slip. Tr. p. 40, ll. 11-13. When asked if this would alleviate safety concerns, Sergeant Miller responded that it could help. “[A]ny way that we can incentivize education is big. As of right now,

I don't think anyone is willing to mandate it in this state, but by having these boaters be safer, that could definitely help." Tr. p 140, l. 25 – p. 141, l. 6.

Mr. Derie reviewed the videos, comments, and the exhibits, and did not see any safety concerns. Derie testified that the river is plenty wide enough to accommodate all kinds of navigation and the docks are far enough back along the shoreline so as not to present a navigational hazard. Tr. pp. 86, l. 6 – 87, ll. 9.

There is no evidence in the record that the Community Dock will present a detriment to safety. Given that the slip renters will each be required to take and pass a boater safety education course, this will likely increase the amount of boaters on the river who are acquainted with and know the laws and regulations about boater safety.

Congestion

The crux of comments and testimony in opposition to the Application directly and indirectly point to congestion on the Spokane River as the biggest concern overall. Several commenters call for a "carrying capacity" study or an outright moratorium on encroachments, even though most commenters admit to owning encroachments and boats themselves. The concerns about "too many boats" are founded on the premise that 74 more slips on the Community Dock = 74 new boats on the river, which is open to the public at all times.

The Spokane River is a navigable river as defined in I.C. § 36-1601(a): "Any stream which, in its natural state, during normal high water, will float cut timber having a diameter in excess of six (6) inches . . . or is capable of being navigated by oar or motor propelled small craft for pleasure or commercial purposes is navigable." I.C. § 36-1601(a).

The Idaho Legislature has declared that all navigable rivers are "open to *public use as a public highway for travel and passage*, up or downstream, for business or pleasure, and to exercise the incidents of navigation--boating, swimming, fishing, hunting and all recreational purposes." I.C. § 36-1601(b) (emphasis added).

The Spokane River is open to public use as a public highway and the public right to access the navigable waters as public highways is well-settled.

IDL is a regulatory agency that may only act within the bounds of the statutory authority to which it is granted, and not outside. IDL and the Board must regulate encroachments in the beds of navigable lakes, rivers and streams . . . *so as to provide for their commercial, navigational, recreational or other public use . . .*" I.C. § 58-104(9)(a) (emphasis added).

The Public Trust Doctrine mandates that while the state owns the title to the lands under the navigable waters of the state, that title is “held in trust for the people of the state, that they may enjoy the navigation of the waters, carry on commerce over them, and have liberty of fishing therein, freed from the obstruction or interference of private parties.” *Illinois Central R.R. Co. v. Illinois*, 146 U.S. 387, 452, 13 S.Ct. 110 (1892). The public trust doctrine at all times forms the outer boundaries of permissible government action with respect to public trust resources. *Kootenai Env't All., Inc. v. Panhandle Yacht Club, Inc.*, 105 Idaho 622, 632, 671 P.2d 1085, 1095 (1983).

Upon admission of the state of Idaho into the union, the title to the beds of navigable waters became state property, and subject to its jurisdiction and disposal under the equal footing doctrine. According to the United States supreme court's decision in *Shively v. Bowlby*, the state has the right to 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.

The title to the shore and lands under tide water is regarded as incidental to the sovereignty of the state, and held in trust for the public purposes of navigation and fishery. Lands under tide waters are incapable of cultivation or improvement. They are of great value to the public for the purposes of commerce, navigation, and fishery. Their improvement by individuals, when permitted, is incidental or subordinate to the public use and right. Therefore, the title and the control of them are vested in the sovereign, for the benefit of the whole people.

Shively v. Bowlby, 152 U.S. 1, 57, 14 S. Ct. 548, 569, 38 L. Ed. 331 (1894). “The navigable waters and the soils under them **shall be and remain public highways**; and, being chiefly valuable for the public purposes of commerce, navigation, and fishery, and for the improvements necessary to secure and promote those purposes, shall not be granted away.” *Id* at 49-50; *See also, Callahan v. Price*, 26 Idaho 745, 146 P. 732, 735 (1915) (The Salmon River is a navigable stream, and is therefore a **public highway** belonging to the state, and may be used and disposed of subject only to the rights of the public in such waters . . . no disposition shall interfere with the right to use the navigable lakes, rivers, or streams as public highways over which every citizen has a natural right to carry commerce, whether by ships, boats, or the floating of logs or lumber, having due consideration and reasonable care for the rights of individuals, as well as the public, in the common use of such public highways.); *Ritter v. Standal*, 98 Idaho 446, 450, 566 P.2d 769, 773 (1977) (Riparian owners upon navigable waters have a right to unobstructed access to the navigable waters along the entire length of their waterfront and may enjoin persons obstructing their

waterfront.); *S. Idaho Fish & Game Ass'n v. Picabo Livestock, Inc.*, 96 Idaho 360, 363, 528 P.2d 1295, 1298 (1974) (quoting *People v. Mack*, 19 Cal.App. 3d 1040, 97, Cal.Rptr.448 (1971)) (The public's right to use Silver Creek extended not only to fishing but also boating, swimming, hunting and all recreational purposes . . . ***Members of the public have the right to navigate and to exercise the incidents of navigation in a lawful manner at any point below high water mark of the waters of this state which are capable of being navigated by oar or motor propelled small craft.*** It hardly needs citation of authorities that the rule is that a navigable stream may be used by the public for boating, swimming, fishing, hunting and all recreational purposes).

It is without question that the Spokane River is navigable and the public has the absolute right of access to use the public highway for navigation and recreation. Regarding reasonable use, This question was addressed by the Supreme Court over 100 years ago:

The question of the reasonable use of a navigable stream, and to what extent the same may be obstructed by persons in exercising such reasonable use, is very fully discussed . . . The general doctrine to be deduced from the authorities we have collated in reference to the use of navigable rivers or public streams as public highways is that ***each person has an equal right to their reasonable use. What constitutes reasonable use depends upon the circumstances of each particular case; and no positive rule of law can be laid down to define and regulate such use, with entire precision, so various are the subjects and occasions for it, and so diversified the relations of parties therein interested.*** In determining the question of reasonable use, regard must be had to the subject-matter of the use, the occasion and manner of its application, its object, extent, necessity, and duration, and the established usage of the country. The size of the stream, also, the fall of water, its volume, velocity, and prospective rise or fall are important elements to be taken into the account. The same promptness and efficiency would not be expected of the owner of logs thrown promiscuously into the stream, in respect to their management, as would be required of a shipmaster in navigating his ship. ***Every person has an undoubted right to use a public highway***, whether upon the land or water, for all legitimate purposes of travel and transportation; and ***if, in doing so, while in the exercise of ordinary care, he necessarily and unavoidably impede or obstruct another temporarily, he does not thereby become a wrongdoer, his acts are not illegal, and he creates no nuisance for which an action can be maintained.***

Cameron Lumber Co. v. Stack-Gibbs Lumber Co., 26 Idaho 626, 144 P. 1114, 1121 (1914) (emphasis added).

Each one is entitled to the free and reasonable use of the navigable streams of this state, and may place such reasonable obstructions on the stream, so long as they serve a useful and beneficial purpose, and leave a reasonable use to others interested . . . ***If an obstruction merely impairs or renders more difficult the***

navigation, without destroying it, an individual has no rightful cause for complaint, because he has no right to insist on the best possible accommodation.

Small v. Harrington, 10 Idaho 499, 79 P. 461, 469 (1904).

Every member of the public, littoral owner or not, has the right to free and reasonable use of the navigable streams of this state, including the Spokane River. No person is guaranteed perpetually peaceful or perfect use according to his or her own definition of what that may be. Only “free and reasonable use” is contemplated.

Although many complain about sharing the river and long for the days of unfettered and uncrowded summer weekends, that is not the nature of our navigable waterways. Navigable rivers are designated as public highways, congested though they may be, they are highways nonetheless. Similarly, IDL has no jurisdiction over boating safety, legacy contamination, no-wake zones, towing regulations, or speed limits. IDL cannot act outside of the boundaries of its statutory authority and declines any invitation to do so.

IDL has no authority to restrict the public from accessing the water and doing so would violate its statutory duties. IDL has no authority to issue a moratorium on encroachment permit applications, or order a “carrying capacity” study. IDL has no standard that dictates how much traffic a navigational river can support, and there is no standard that limits the number of slips on a community dock outside of the existing square footage to shoreline length ratio. IDL has no jurisdiction over boating safety, historical mining contamination, no-wake zones, towing regulations, boater education, or speed limits.

Kootenai County is the authority charged with regulating the operation of vessels and swimming on public waters within the county, including the Spokane River. Kootenai County regulations provide basic boating rules including speed limits, no wake zones, restricted entry zones, noise control, towing restrictions, and all other methods of operating boats in the water—all of which were echoed as major concerns surrounding this Application.

IDL is required to evaluate all applications and balance the littoral rights of the owner, the right of the public to recreate and navigate on navigable rivers, and balance the benefits that would be derived from the proposed encroachment and weigh them against unknown detrimental effects.

This Application meets all standards for a community dock, and there is no evidence in the record demonstrating such an imbalance of detriments and benefits that would justify denial. No evidence was presented to show the community dock will prevent any member of the public from

navigating the river, or impact another's reasonable use. Although the concerns raised by the comments and testimony about congestion are understandable, IDL's ability to consider and remedy such concerns is constrained by IDL's limited authority.

ORDER

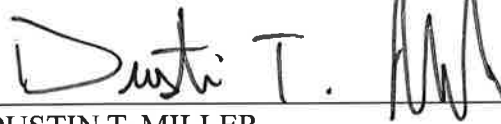
Based on the foregoing Findings of Fact and Conclusions of Law, IT IS HEREBY ORDERED that the Encroachment Permit Application L-95-S-6163A is **APPROVED**.

This is a final order of the agency. Pursuant to Idaho Code § 58-1306(c) and IDAPA 20.03.04.030.09, the Applicant or any aggrieved party who appeared at the hearing has a right to have the proceedings and Final Order reviewed by the district court in the county where the encroachment is proposed by filing a notice of appeal within thirty (30) days from the date of this Final Order. The filing of a petition for judicial review does not itself stay the effectiveness or enforcement of this Final Order under appeal pursuant to Idaho Code § 67-5274.

IT IS SO ORDERED.

DATED this 30th day of October, 2025.

IDAHO DEPARTMENT OF LANDS

A handwritten signature in black ink, appearing to read "Dustin T. Miller", is written over a horizontal line.

DUSTIN T. MILLER
Director

CERTIFICATE OF MAILING

I hereby certify that on this 30th 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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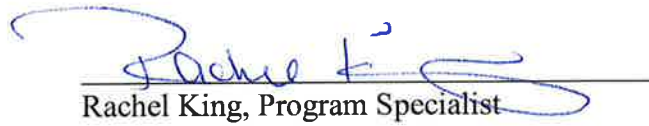
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