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**BEFORE THE STATE BOARD OF LAND COMMISSIONERS
STATE OF IDAHO**

IN THE MATTER OF

Encroachment Permit Application
No. L95S3071A

Fred Finney dba Finney Boat Works, Inc.,

Applicant.

Agency Case No. PH-2025-NAV-22-004

OAH Case No. 25-320-06

**IDAHO DEPARTMENT OF LANDS’
CLOSING STATEMENT**

In this proceeding, Fred Finney doing business as Finney Boat Works, Inc., (“Applicant”) has applied for a permit to authorize two encroachments on the Spokane River: (1) an existing commercial dock and (2) two existing piling. Applicant’s two adjacent neighbors, Ross Schlotthauer, and George and Kay Cherokee (“Objectors”), object to the application.

On October 28, 2025, Hearing Officer Zanzig held a public hearing on this matter. The Applicant, the Objectors Schlotthauer and Cherokee, all appeared pro se. The Idaho Department of Lands (“IDL”) appeared represented by counsel, Kayleen Richter. The Applicant testified in favor of the Application. The Applicant also introduced testimony from attorney John Magnusson who testified in favor of the application on behalf of Hagadone Hospitality Co. dba Hagadone Marine Group. Objector Schlotthauer testified in opposition to the Application and Objector Cherokee declined to testify. IDL called Mr. Mike Ahmer to testify as the Department’s witness. All witnesses were sworn and subject to cross-examination.

IDL objected to Objector Schlotthauer's proposed exhibits RS-03, RS-04, RS-14, RS-15, RS-20, RS-21, RS-40, RS-43, RS-44, RS-49, RS-51, and the document identified as RS-52 (IDL did not object to the video also identified as RS-52). IDL withdrew its objection to RS-20 and RS-21, and the Hearing Officer overruled IDL's objection to RS-49. The Hearing Officer did not rule on IDL's other objections. All other proposed exhibits were admitted to the record without objection.

At the conclusion of the evidentiary portion of the hearing, the Hearing Officer requested the Applicant, Objectors, and IDL submit written closing statements within seven (7) days. The Hearing Officer specifically requested that IDL provide additional information on the Hearing Officer's question to Mr. Ahmer regarding whether IDL has the authority to grant a permit with conditions. Accordingly, IDL submits this closing statement in compliance with the Hearing Officer's request.

BACKGROUND

At the end of Mr. Ahmer's testimony, the Hearing Officer asked Mr. Ahmer: "If IDL receives a permit application, does it have authority to grant the permit with conditions?" Live Dkt. 032 at 2:33:38–2:33:55. Mr. Ahmer responded affirmatively. The Hearing Officer continued, "Let me ask you this. So in this case, for example, would IDL have the authority to grant the Finneys' permit applications but prohibit them from using the piling to do anything but safely maneuver watercraft in and up the ramp?" Live Dkt. 032 at 2:33:58–2:34:19. Mr. Ahmer answered:

I understand your question Mr. Hearing Officer, and I'm not sure exactly how to respond. What I would say is that while there have been permits issued in the past, particularly following a hearing, that results in a permit issued with specific conditions, and while I personally understand that that could be a potential path forward here, I feel that there is a challenge with my staff and I, in terms of, for lack of a better phrase, "babysitting." We don't regulate vessels. And what would happen if a vessel or a dock was tied to those things, to those, I'm sorry, those piling? Would that result in the revocation of the permit? Would that result in a daily fine? Would that result in us having to call someone to go out there and have the encroachment removed? It creates a little bit of a challenge for us in terms of constant monitoring and constant enforcement. I feel like that might be something that's better solved in a civil matter between the two parties themselves as opposed to putting as a term in one of our permits.

Live Dkt. 032 at 2:34:19–2:35:47. Mr. Ahmer followed up this statement with the caveat that he reserved the right to potentially supplement or revise his statement after talking with others at IDL. Live Dkt. 032 at 2:36:20–2:36:36.

ANALYSIS

In general, IDL has the authority to issue permits with conditions. *See e.g., Brett v. 11th Street Dock Owners' Assn., Inc.*, 141 Idaho 517, 520, 112 P.3d 805, 808 (2005) (Affirming IDL's approval of an encroachment permit with several conditions). However, any conditions IDL may include in an encroachment permit must be within the scope of IDL's regulatory authority. "State agencies in Idaho have no inherent authority." *See Idaho Power Co. v. Idaho Pub. Utils. Comm'n*, 102 Idaho 744, 750, 639 P.2d 442, 448 (1981); *see also* Richard Henry Seamon, Idaho Administrative Law: A Primer for Students and Practitioners, 51 Idaho L. Rev. 421, 439 (2015). "As a general rule, administrative agencies 'are tribunals of limited jurisdiction.'" *Washington Water Power Co. v. Kootenai Envtl. Alliance*, 99 Idaho 875, 879, 591 P.2d 122, 126 (1979). Thus, agencies have no authority outside of what the Legislature specifically grants to them. *Idaho Retired Firefighters Assoc. v. Pub. Emp. Ret. Bd.*, 165 Idaho 193, 196, 443 P.3d 207, 210 (2019) (citing *Idaho Power Co.*, 102 Idaho at 750, 639 P.2d at 448).

The Lake Protection Act empowers IDL to regulate the permitting of encroachments. *See* Idaho Code § 58-1301 *et seq.* The Lake Protection Act does not give IDL statutory authority to regulate how a permittee *uses* a permitted encroachment, although IDL may consider the proposed use in its decision whether to grant an encroachment permit. *See Dupont v. Idaho State Bd. Of Land Com'rs*, 134 Idaho 618, 624-25, 7 P.3d 1095, 1101-02 ("[T]he fact the Board [of Land Commissioners] does not have the authority to regulate the use of the dock does not prevent the Board from considering the proposed use in its decision."). As Mr. Ahmer testified, IDL does not regulate vessels. Further, IDL considers a condition that prohibits the Finneys "from using the piling to do anything but safely maneuver watercraft in and up the ramp" to be outside the scope of its statutory authority as it would seemingly regulate the use of the encroachment rather than its existence.

CONCLUSION

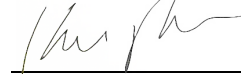
There are two encroachments at issue in this matter: (1) an existing commercial dock and (2) two existing piling. If one desired to do so, one could grant or deny the Finneys' application with respect to either encroachment independently. There was no evidence presented at hearing challenging the application with respect to the existing commercial dock and the commercial dock appears to meet all the relevant minimum standards.

The crux of this dispute is the location of the piling with respect to Objector Schlotthauer's littoral lines and, really, the location where the Finneys moor their houseboat. Although the Finneys assert they use the piling exclusively for guiding watercraft to the dry dock, the photos in the record suggest that the Finneys use the piling farthest from the shore for a dual purpose: to both aid in guiding watercraft up to the dry dock and to moor their houseboat perpendicular to their dock.

It seems to be undisputed that the piling are within the twenty-five (25) foot buffer to Objector Schlotthauer's littoral line, regardless of whether one uses the chord method or extends the property lines to mark the littoral right lines, triggering the rebuttable presumption of adverse effect under IDAPA 20.03.04.015.13.e. IDL defers to the Hearing Officer and the Director regarding whether the presumption of adverse effect has been rebutted and whether the balancing of the lake value factors weigh in favor of granting or denying the application to permit the piling. However, IDL believes that it does not have the authority to grant the Finneys a permit subject to the condition that they only use the piling in a particular manner.

DATED this 4th day of November, 2025.

IDAHO DEPARTMENT OF LANDS



Kayleen Richter
Counsel for IDL

CERTIFICATE OF SERVICE

I hereby certify that on this 4th day of November, 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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