

BEFORE THE IDAHO DEPARTMENT OF LANDS

IN THE MATTER OF

Application for Encroachment
L-96-S-2891,

Donovan & Alicia Claytor,

Applicants.

AGENCY Case No. CC-2025-NAV-20-001

OAH Case No. 25-320-09

FINAL ORDER

Applicants Donovan and Alicia Claytor (“Claytor”) submitted a Joint Application for Permits (“Application”) to Idaho Department of Lands (“IDL”) on or around August 20, 2025, to permit a single-family dock on the Pend Oreille River in Sagle, Idaho. IDL held a remote evidentiary hearing via Zoom on October 9, 2025 conducted by the Office of Administrative Hearings (“OAH”). Chief Administrative Law Judge Bryan Nickels (“ALJ Nickels”) presided over the hearing. On October 27, 2025, ALJ Nickels issued a Findings of Fact, Conclusions of Law, and Recommended Order (“Recommended Order”).

As Director of IDL, my responsibility is to render a Final Order pursuant to Idaho Code § 58-1305(c) and IDAPA 20.03.04.025.06, 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, including the Recommended Order. For the reasons set forth below, the Application is **APPROVED**.

Unless stated otherwise, the Findings of Fact and Conclusions of Law in this Order are substantially adopted from the Recommended Order.

I. FINDINGS OF FACT

1. On July 7, 2025, IDL received a Joint Application for Permits from Claytor for a single family dock identified as a “[p]rivate recreational dock and ramp” and an “[e]levated nature walk.” (IDL-2, pp. 1 & 13). Additional information was submitted on August 11, 2025. (*Id.* at pp. 10-12).

2. The proposed single-family dock and nature walk would be located at Tax Parcel RP57N03W348701A, owned by Claytor, more commonly known as 827 Gypsy Bay Road, Sagle, Idaho (“Claytor Property”). (*Id.*, pp. 1 & 6-9).

3. The Claytor Property is located adjacent to the eastern bank of the Pend Oreille River. (*Id.*, pp. 1 & 9). No party disputes that the Pend Oreille River is a navigable river.

4. Pursuant to Idaho Code § 58-1305(b), IDL sent notice of the Application to Claytor’s three adjacent property owners on August 26, 2025. (IDL-4, 6, 7). The three adjacent property owners are the U.S. Army Corps of Engineers, Craig Montgomery, and Union Pacific. (*Id.*)

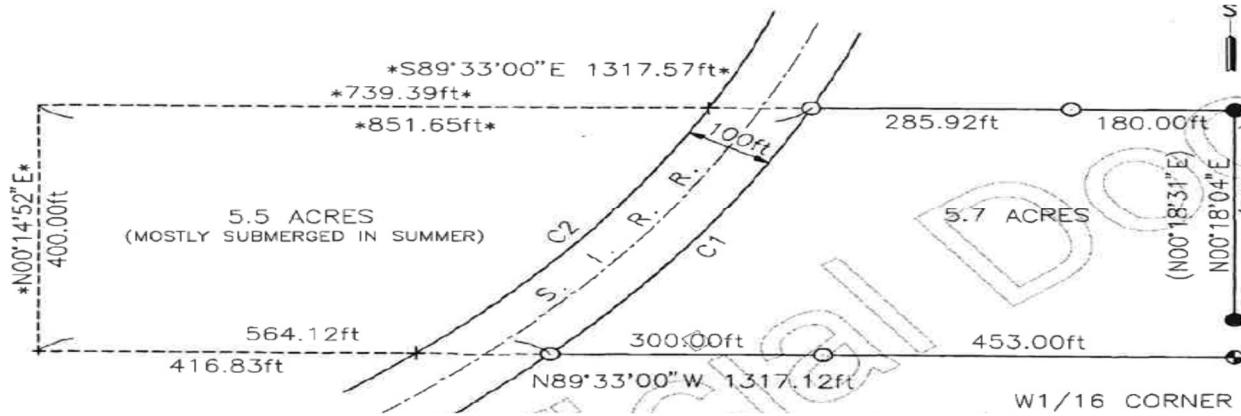
5. U.S. Army Corps of Engineers advised of their authorization for the Application via letter dated October 2, 2025. (C-6).

6. Craig Montgomery submitted a signed form consenting to the Application as well. (IDL-6).

7. Union Pacific objected to the Application on the basis that the Claytor Property is bisected by the Spokane International Railroad Right of Way (“SIRR”), which is owned by Union Pacific:



(IDL-2, p. 9). The SIRR essentially divides Claytor's property into a 5.5 acre riverside portion which is "mostly submerged in summer," and a 5.7 acre upland portion. (IDL-2, p. 5; C-2). An Amended Record of Survey reflects that the riverside 5.5 acres has at least 400 feet of shoreline, and further identifying the SIRR itself as having a width of 100 feet:



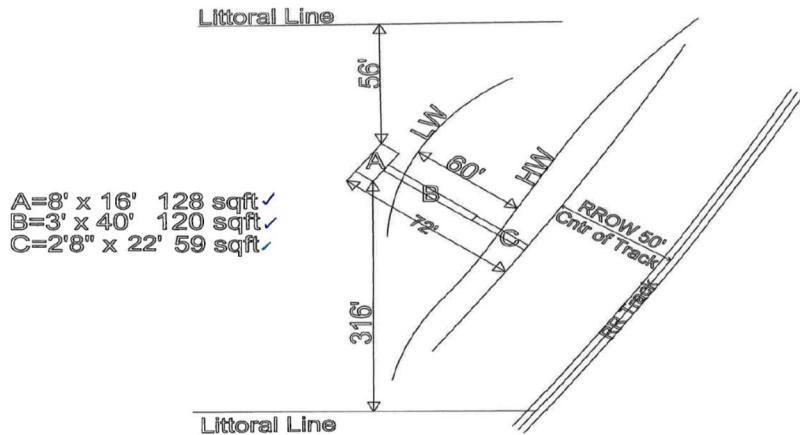
(IDL-2, p. 5; *accord* IDL-2, p. 14).

8. In making its objection, Union Pacific's representative advised IDL that "I don't foresee how this user would be able to access the dock without trespassing on UP [Union Pacific] property. Help me understand if I am interpreting it incorrectly." (IDL-5).

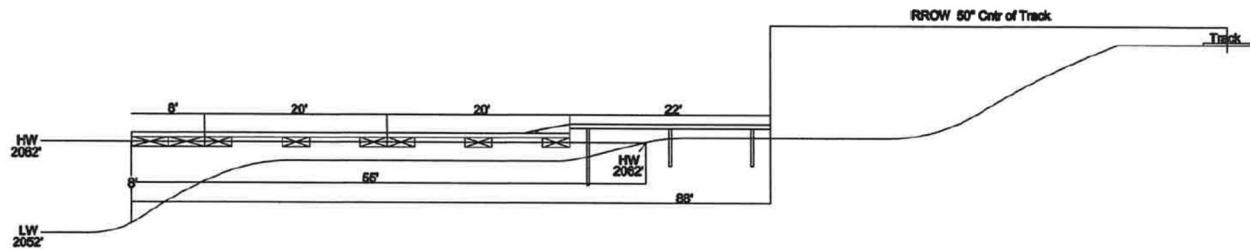
9. Claytor advises that he is aware that "the railroad requires a formal crossing agreement" and that he intends to "continue seeking a legal and safe means of access." (C-5).

10. The high water mark applicable to the proposed encroachment is reflected on two drawings submitted to IDL. (IDL-2, pp. 11-12). No party has disputed the location of this high water mark.

11. Drawings regarding the project reflect that the SIRR lies upland from the high water mark:



(IDL-2, p. 11.)



(IDL-2, p. 12). No evidence presented reflects that any portion of the SIRR lies below the high water mark at any location where it traverses Claytor's property.

12. An aerial photo with GIS and other data overlays presented by Claytor reflects that, along the same stretch of the Pend Oreille River, other docks have been placed where the properties which own the docks appear to have also been split by the SIRR:



(C-4.)

13. The proposed dock itself is to be prefabricated off-site and floated into place. (IDL-2 at p. 2.; HR at 25:55-26:18). The “elevated nature walk” portion is to be installed without the need for fill or grading. (*Id.*)

14. At the hearing, IDL’s Resource Manager for Navigable Waters, Mike Ahmer, testified that IDL authorizes permits for water access-only encroachments. (HR at 15:19-15:24). Mr. Ahmer testified that he was aware of other permitted water access-only docks, and that there were several on Lake Coeur d’Alene that were only accessible via boat. (*Id.* at 15:25-15:39).

15. The proposed dock is comprised of a main dock (8’ x 16’), 2 ramp sections (3’ x 20’ each), and the nature walk (2’ 8” x 22’, below the high water mark), for a total area of 307 square feet (128 ft², 120 ft², and 59 ft², for the respective sections above). (IDL-2 at pp. 2, 11 &

13). The main dock has a width of 16 feet. (*Id.* at pp. 11-12).

16. No specific line of navigability was identified by any of the parties at hearing; however, the proposed dock is not located near any other existing docks or encroachments, and is to be built at a right angle from the shoreline. (*See generally*, IDL-2 at pp. 9, 11, & 13).

17. The proposed dock is 56' from the closest riparian right line, and 316' from the other. (IDL-2 at p. 11).

II. CONCLUSIONS OF LAW

The Idaho Legislature enacted the Lake Protection Act (“LPA”), Title 58, Chapter 13, Idaho Code, in 1974 stating, in Idaho Code § 58-1301, 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.

The 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 has 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.

General Regulatory Principles

The Pend Oreille River is a navigable river and is within IDL’s authority to regulate with

respect to encroachment permits. I.C. §§58-104(9); 58-1305; C-6; & “List of Navigable Lakes and Rivers,” available at https://www.idl.idaho.gov/wp-content/uploads/sites/2/2025/07/DIS-003_navigable_lakes-rivers_2025.pdf (last accessed November 3, 2025).

As asserted by IDL and otherwise uncontested by the parties, the LPA Rules apply to this Application.

The Application meets the requirements of I.C. § 58-1305 and LPA Rules.

Applications for construction of single-family navigational encroachments not extending beyond the line of navigability “shall be processed by the board with a minimum of procedural requirements and shall not be denied nor appearance required except in the most unusual of circumstances or if the proposed encroachment infringes upon or it appears it may infringe upon the riparian or littoral rights of an adjacent property owner.” I.C. § 58-1305(a).

Applications for construction of single-family docks shall be upon forms to be furnished by the Board “accompanied by plans of the proposed navigational 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. § 58-1305(f).

As the party seeking IDL’s approval of the requested encroachment permit, and no statutes or rules appearing to otherwise provide, Claytor has the initial burden of proof to demonstrate that IDL should approve the Application. *See* IDAPA 62.01.01.477. No statutes or rules appearing to otherwise provide, the standard of proof applicable to Claytor’s burden of proof is preponderance of the evidence. *See* IDAPA 62.01.01.477.

Applications must be submitted by the riparian or littoral owner. IDAPA 20.03.04.020.02. 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. § 58-1305(a), 58-1302(k), and IDAPA 20.03.04.020.07.a.

The Application meets the standards for a single-family navigational encroachment.

The LPA Rules define a Single-Family Dock as: “A structure providing noncommercial moorage that serves one (1) waterfront owner whose waterfront footage is no less than twenty-five (25) feet.” IDAPA 20.03.04.010.36. It is not disputed that the dock will serve the Claytor family, who owns more than 400’ of shoreline length. Findings of Fact 2, 3, 7.

The LPA Rules provide the following standards for single-family docks:

- a. 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, excluding the slip cut out.
- b. Total surface decking area waterward of the natural or ordinary or artificial high water mark may not exceed seven hundred (700) square feet, including approach ramp and walkway for a single-family dock and may not exceed one thousand one hundred (1,100) square feet, including approach ramp and walkway for a two-family dock.
- c. No portion of the docking facility may extend beyond the line of navigability. Shorter docks are encouraged whenever practical and new docks normally will be installed within the waterward extent of existing docks or the line of navigability.

IDAPA 20.03.04.015.01.a-c.

In this case, the total square footage of the dock will be 307’, well below the 700’ standard. The main dock has a width of 16’, which is in excess of the allowed 10’ under the LPA Rules. IDAPA 20.03.04.0151.01.a; Findings of Fact 15. No party objected to the width. In addition, the LPA Rules authorize IDL to approve variances to the encroachment standards in IDAPA 20.03.04.015.01 (including dock width) “when justified by site specific considerations, such as the distance to the established line of navigability.” See IDAPA 20.03.04.015.01.d. While not expressly made, the lack of objection on this component of the project, coupled with IDL’s highlighting of a) the lack of other nearby docks/encroachments; and 2) the notable distance to other riparian right lines, demonstrates that IDL has approved a variance on the width of the dock in accordance with the minimal square footage. See IDL Prehearing Statement at pp. 10-11 & 12 (“Given the reasons described above, the application appears to satisfy the encroachment standards applicable to single-family docks and IDL recommends approval.”).

The proposed dock does not extend beyond the line of navigability and will be constructed at a right angle from the shoreline as required by IDAPA 20.03.04.015.13.c. The record shows that the proposed dock will be 56' from the closest riparian right line, and 316' from the other, both well beyond the minimum 10' distance under the Encroachment Rules. As such, there is no presumption of adverse effect on any of adjacent riparian rights, especially in light of consents provided by Craig Montgomery and the U.S. Corps of Engineers.

Based upon the testimony and written evidence in the record, it appears that the Application satisfies all salient criteria under the LPA Rules.

Union Pacific's Objection to the Application

Union Pacific objected to the Application due to concerns with Applicant's ability to access the dock without trespassing on the SIRR, which bisects the Claytor Property. However, no part of the SIRR lies waterward of the high water mark. Claytor demonstrated that he has access to the encroachment through an established footpath without trespassing on the SIRR. (C-3, 3a, 3b, 5).

This does not appear to be an unusual circumstance as Claytor presented evidence that several other properties in the area also have docks on waterfront parcels separated from an upland parcel by the SIRR. (C-2). Regardless, UP referred Claytor to the standard process to apply for a private crossing agreement, where Claytor must submit an application and be approved.

Although Union Pacific objected to the Application and triggered the hearing, Union Pacific did not file any exhibits or statements in the matter. At the hearing, Union Pacific raised additional concerns in argument, including, but not limited to, potential disturbance of the grade of the railroad tracks and other potential environmental concerns. (H.R. at 29:42-30:40.) However, again, no testimonial or written evidence was adduced Union Pacific regarding such arguments, whether in its own case presentation or on cross-examination. Likewise, nothing in the record independently identifies or supports any such concerns.

As recognized by IDL in the pre-hearing statement, Union Pacific's objection to Claytor's ability (or lack thereof) to cross the SIRR is an upland issue over which IDL has no jurisdiction. Claytor's access issue is independent from an encroachment permit and must be resolved between Claytor and Union Pacific. No encroachment permit issued by IDL can authorize a permittee to trespass over another's property for access, even so, it is not required in this situation. Claytor has demonstrated independent access to the encroachment, and testified he will not cross the SIRR without gaining approval from Union Pacific through the required process.

This Application meets all standards for a single-family dock, and there is no evidence that Claytor will trespass over the SIRR without approved access from Union Pacific.

ORDER

Based on the foregoing Findings of Fact and Conclusions of Law, IT IS HEREBY ORDERED that the Encroachment Permit Application L-96-S-2891 is **APPROVED**.

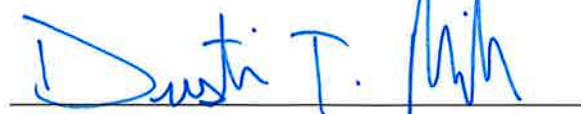
This is a final order of the agency. Pursuant to I.C. § 58-1305(c) and IDAPA 20.03.04.025.08, Applicant or any aggrieved party who appeared at the hearing has a right to have the proceedings and this Final Order reviewed by the district court in the county where the encroachment is proposed by filing a notice of appeal within thirty (30) days from the date of this Final Order.

An adjacent littoral neighbor shall be required to deposit an appeal bond with the court of not less than \$500 insuring payment to the applicant of damages caused by delay and costs and expenses, including reasonable attorney fees incurred on the appeal if the Final Order is sustained. 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 10th day of November, 2025.

IDAHO DEPARTMENT OF LANDS


DUSTIN T. MILLER
Director

CERTIFICATE OF MAILING

I hereby certify that on this 10th 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:

<p>Donovan & Alicia Claytor 827 Gypsy Bay Road, Sagle, ID 83860 <i>Applicant</i></p>	<p><input checked="" type="checkbox"/> U.S. Mail, postage prepaid <input checked="" type="checkbox"/> Email: donovanclaytor@gmail.com</p>
<p>Jim Porter Inland Dock & Repair 469059 Hwy 95, Unit E, Sagle, ID 83860 <i>Applicant's Representative</i></p>	<p><input checked="" type="checkbox"/> U.S. Mail, postage prepaid <input checked="" type="checkbox"/> Email: jim@inlandboatdock.com</p>
<p>Garrett Kitamura Parsons Behle & Latimer <i>for</i> Union Pacific Railroad Company 1400 Douglas Street, Omaha, NE 68124 <i>Counsel for Objector</i></p>	<p><input checked="" type="checkbox"/> U.S. Mail, postage prepaid <input checked="" type="checkbox"/> Email: gkitamura@parsonsbehle.com</p>
<p>Idaho Department of Lands Kayleen Richter 300 N. 6th Street, Ste. 103, Boise, ID 83702 <i>Counsel for IDL</i></p>	<p><input checked="" type="checkbox"/> Hand Delivery <input checked="" type="checkbox"/> Email: krichter@idl.idaho.gov</p>
<p>Idaho Department of Lands Marde Mensinger 300 N. 6th Street, Suite 103, Boise, ID 83720 <i>IDL Program Manager for Navigable Waters</i></p>	<p><input checked="" type="checkbox"/> Hand Delivery <input checked="" type="checkbox"/> Email: mmensinger@idl.idaho.gov</p>
<p>Kourtney Romine Kayla Dawson 300 N. 6th Street, Suite 103, Boise, ID 83720 <i>IDL Service Contacts</i></p>	<p><input checked="" type="checkbox"/> Hand Delivery <input checked="" type="checkbox"/> Email: kromine@idl.idaho.gov kdawson@idl.idaho.gov</p>
<p>OAH General Government Division P.O. Box 83720 Boise, ID 83720-0104 (208) 605-4300</p>	<p><input checked="" type="checkbox"/> U.S. Mail, postage prepaid <input checked="" type="checkbox"/> Email: filings@oah.idaho.gov bryan.nickels@oah.idaho.gov</p>

/s/ Rachel King
Rachel King, Program Specialist