

BEFORE THE IDAHO DEPARTMENT OF LANDS

IN THE MATTER OF

Application for Encroachment
L-97-S-0999B,

Derek Budig,

Applicant.

AGENCY Case No. CC-2025-NAV-10-001

OAH Case No. 25-320-10

FINAL ORDER

Applicant Derek Budig (“Applicant Budig”) submitted a Joint Application for Permits (“Application”) to Idaho Department of Lands (“IDL”) on or around August 18, 2025, to permit the relocation of an existing permitted dock, ramp, walkway, and boat lift on the west shore of Priest Lake in Priest Lake, Idaho. IDL held a remote evidentiary hearing via Zoom on October 22, 2025, conducted by the Office of Administrative Hearings (“OAH”). Chief Administrative Law Judge Bryan Nickels (“ALJ Nickels”) presided over the hearing. On November 10, 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**.

I adopt ALJ Nickels’s evidentiary rulings as my rulings. 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 August 25, 2025, IDL received a Joint Application for Permits from Applicant Budig for a proposed “relocati[on of] existing permitted dock, ramp, walkway, and boat lift, L-97-S-999-A, to the southwest side of the parcel.” (IDL-1, p.1).

2. The existing single-family dock, and proposed relocation thereof, are located at Tax

Parcel RPRP003940010080A, owned by Applicant Budig, more commonly known as 297 W. Lakeshore Rd., Priest Lake, Idaho (“Budig Property”). (IDL-1, pp. 1, 5 & 12).

3. The Budig Property is located on the west shore of Priest Lake. (IDL-1, p. 8.) Priest Lake is a navigable lake. See *State v. Hudson*, 162 Idaho 888, 889 (2017) (“Priest Lake has been a navigable lake since Idaho became a state in 1890.”).

4. Pursuant to Idaho Code § 58-1305(b), notice of Applicant Budig’s application was sent to Applicant Budig’s two adjacent property owners (Lisa Brulotte, and Kenneth Vanderburgh/Chris Bennett) on September 8, 2025. (IDL-7). Kenneth Vanderburgh (“Objector Vanderburgh”) timely submitted an objection on September 16, 2025. (IDL-2).

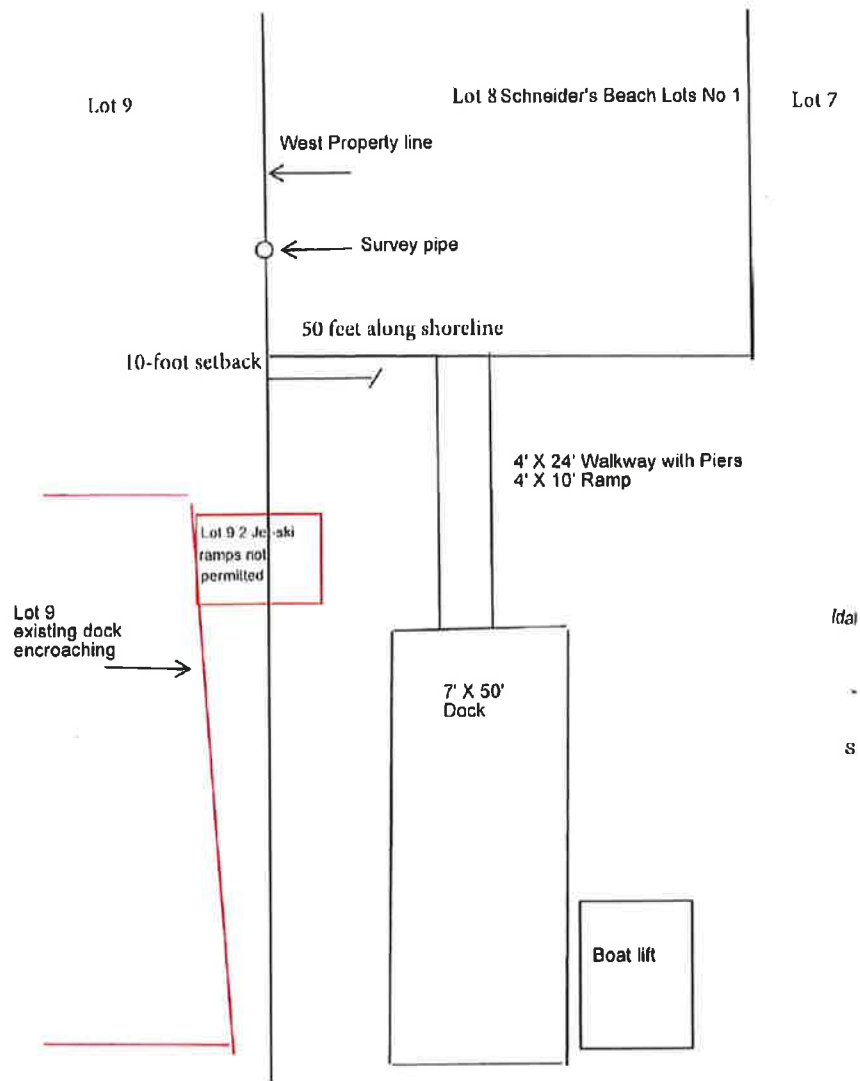
5. Applicant Budig’s application proposes the relocation of an “existing permitted walkway, ramp, dock, and boat lift, L-97-S-999-A, to the southwest property line,” completely removing the existing structure and moving it to the proposed new location. (IDL-1, p. 2). In noting that the dimensions of the existing structure would not change with the relocation, the application also notes that “the boat lift will be placed on the east side of the dock,” and “[n]ew pillings [sic] will be placed to support the dock and walkway.” (*Id.*)

6. An aerial photo, with markup, depicts the current dock location and arrangement, and, salient to this proceeding, also reflects the (contested) location of the littoral line between Applicant Budig’s and Objector Vanderburgh’s properties:



(IDL-1, p. 9).

7. In turn, the drawing of the proposed relocated dock shows the planned relocation of the boat lift, and – important to this proceeding – a 10-foot setback of the dock from the littoral line between the Budig and Vanderburgh properties:



(IDL-1, p. 10).

8. Objector Vanderburgh's submitted objection does not state the basis for objection; however, at hearing, he generally argued that his dock was grandfathered (per Idaho Code §58-1312), and made argument disputing the littoral line represented on the aerial photo, but otherwise made no other argument that Applicant Budig's proposed dock relocation did not comply with IDL's permit requirements. (See generally IDL-1, p. 9; HR 2:37:42-2:38:27 & 2:43:13-2:43:51).

9. The high water mark applicable to the proposed encroachment (and related low

water line) is reflected as a markup to the aerial photo submitted to IDL (denoted as the “summer level”).¹ (See IDL-1, p. 9). No party has disputed the location of this high water mark, either with respect to the existing dock or the planned relocation.

10. No specific line of navigability was identified by any of the parties at hearing. However, nothing in the application suggests that the proposed relocated dock will extend to a length beyond the length of the existing dock; the application reflects that “[t]he dimensions of the walkway, ramp and dock will not change” and that the length beyond the high water mark will be 85’. (IDL-1, pp. 2, 5, 9 & 10).

11. Applicant Budig’s property has approximately 50 feet of littoral frontage. (Exhibit IDL-1, pp. 6 & 10). The proposed dock will be built to within 10’ of the littoral line shared with Objector Vanderburgh. (IDL-1, p. 10).

12. The proposed relocated dock is to be comprised of a 4’ x 24’ walkway with piers, a 4’ x 10’ ramp, a 7’ x 50’ dock, and a boat lift, for a total surface area of 486 ft². (IDL-1, p. 10).

II. CONCLUSIONS OF LAW

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

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).

¹ Priest Lake is dam-controlled; thus, its high water mark is an artificial high water mark. See generally *Byrd v. Idaho State Bd. of Land Comm’rs*, 169 Idaho 922, 929 (2022). While Priest Lake’s high water mark has not been adjudicated, the only (and undisputed) evidence in the record regarding the high water mark at this location is as reflected in IDL-1, p. 9, and, as such, is accepted here for purposes of this application and this proceeding only. *Id.*

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.

Priest Lake is a navigable lake and is within IDL’s authority to regulate encroachment permits. *Byrd*, 169 Idaho at 929. Idaho Code § 58-1305(a), governing noncommercial navigational encroachments, such as applied for in this proceeding, provides that:

Applications for construction or enlargement of navigational encroachments not extending beyond the line of navigability nor intended primarily for commercial or community use 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) (emphases added). 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, Budig 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 Budig'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 Applicant Budig, who owns approximately 50' of shoreline length, in excess of the minimum 25' required by the LPA Rules. Finding of Fact 11.

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 is 486 ft², which is below the maximum of 700 ft² allowed for single-family docks. The proposed dock has a maximum width of 7', below the maximum allowable width of 10'. IDAPA 20.03.04.015.01.a. The proposed dock does not extend beyond the line of navigability and will be constructed at a right angle to the shoreline as required by IDAPA 20.03.04.015.13.c.

The proposed dock will be placed at least 10' from the littoral right line shared with Objector Vanderburgh, and at least 10' from the littoral right line shared with the other adjacent non-objecting property owner, thereby satisfying the minimum 10' distance under the LPA Rules. *See* IDAPA 20.03.04.010.32; IDAPA 20.03.04.015.13.e; Findings of Fact 11. As such, there is no presumption of adverse effect on any adjacent littoral rights.

Based upon the testimony and written evidence in the record, it appears that the Application satisfies all salient criteria under the LPA Rules and Applicant Budig has met his burden in demonstrating that IDL should grant the requested permit.

Objector Vanderburgh's Objection to the Application.

Objector Vanderburgh completed and returned the form to IDL, noting that he objected to the Application and requested a contested case hearing. (IDL-2). Initially, Objector Vanderburgh did not state a reason for the objection, or cite to any particular rule or statute. As Applicant Budig has satisfied his initial burden of proof, the burden then shifts to Objector Vanderburgh to demonstrate by a preponderance of the evidence why IDL should not approve the requested encroachment permit. *See* IDAPA 62.01.01.477.

During hearing, much of the argument focused not on any perceived deficiencies with Applicant Budig's proposed relocated dock, but, instead, on the contention—by both Applicant Budig and IDL—that Objector Vanderburgh's existing encroachments (his dock, and, in particular, the related jet ski lifts) was not in compliance and, with respect to the jet ski lifts, crossed the Budig/Vanderburgh littoral line. *See generally* IDL-1, p. 9; Ex. B-3; HR 29:14-31:22; HR 1:14:32-1:15:21.

Objector Vanderburgh, in turn, argues that his dock is grandfathered (per I.C. § 58-1312), and is otherwise compliant; he notes, instead, his concern that Applicant Budig will relocate the proposed dock to an incorrect location, thereby impairing Objector Vanderburgh's ability to access his dock. *See generally* HR 2:29:31-2:36:13; Exhibits KVB 1, 3, 5-6.

As an initial matter, there is some dispute as to the location of the littoral line as reflected in an aerial photograph regarding the location of Objector Vanderburgh's dock and jet ski lifts. *See* IDL-1, p. 9; HR 22:07. Additionally, there is at least some suggestion in the record that Objector Vanderburgh's dock may be the subject of some future action by IDL based upon an assertion of non-compliance. Exhibit B-3. Regardless, none of these questions need be resolved at this time, and this Final Order makes no determination regarding whether or not Objector Vanderburgh's dock and jet ski lifts are actually non-compliant. *See generally* IDL Statement, p. 11; HR 30:38-31:09; HR 34:47-35:25; HR 1:58:18-1:58:38. While a proposed encroachment's spatial relationship with an existing structure on an adjacent property (including, potentially, a grandfathered dock) may be a consideration for IDL in evaluating a requested encroachment permit, such consideration would not include existing unpermitted encroachments. HR 28:57-29:59; HR 32:59-34:21.

Here, nothing in the record suggests that the dispute at issue would warrant denial of Applicant Budig's requested permit. The concern with this interaction arises not from Applicant Budig's proposed placement – which complies with the Encroachment Rules – but from Objector Vanderburgh's encroachment(s)' placement. *See* Exhibit B-3. Thus, given that Applicant Budig's compliant proposed dock satisfies the minimum setback requirements, and also given that there is nothing so unusual at/near/around the Budig/Vanderburgh littoral line “as to make it inadvisable to issue the permit” to Applicant Budig, there is no basis to deny Applicant Budig's permit request.

Likewise, as to the other component of a potential denial under Idaho Code § 58-1305(a) (“if the proposed encroachment infringes upon or it appears it may infringe upon the riparian or littoral rights of an adjacent property owner”), nothing in the record suggests any such concern, even where two encroachments are situated more closely together than contemplated by the Encroachment Rules. The application reflects the minimum 10' setback from the littoral line, such that passage would still exist between Objector Vanderburgh's dock and the end of the proposed dock, at least as to the jet skis apparently in use by Objector Vanderburgh. (IDL-1, p. 10). Moreover, any concerns about conflicts in access between the two docks are further alleviated

given that Applicant Budig's proposal includes a relocation of his boat lift to the other side of his dock, away from the Budig/Vanderburgh littoral line. (*Id.*) Importantly, the (rebuttable) presumption of adverse impact on another's littoral rights does not even arise unless the encroachment is within 10 feet of the littoral line, which Applicant Budig's proposed dock does not do. Indeed, any consideration of a presumed adverse impact, as here, would only arise, instead, from the grandfathered and/or unpermitted encroachment owned by Objector Vanderburgh himself.

Finally, concerns about the identification of the lay of the littoral line appear unfounded. It appears clear from the record that the diagrams submitted in support of Applicant Budig's request which are causing consternation are just preliminary and approximate depictions of where the littoral line should fall between the Budig and Vanderburgh properties. These are presented for the benefit of IDL's analysis of the permit, rather than any kind of documentation legally and permanently altering the legal boundaries between the parties. Littoral right lines are expressly defined by regulation: "Lines that extend waterward of the intersection between the artificial or ordinary high water mark and an upland ownership boundary to the line of navigation. Riparian or littoral right lines will generally be at right angles to the shoreline." IDAPA 20.03.04.010.34. Thus, the littoral right line that must be used by Applicant Budig in construction of the proposed dock is already established by regulation (and tentatively identifiable by IDL staff), is not altered based merely upon a sketch of the proposed encroachment and nearby properties, and as needed, can even be assessed by a surveyor. See HR 38:09-39:23; 1:15:04-1:15:21. Ultimately, for purposes of evaluation of the requested encroachment permit at issue, nothing in the record reflects any intent to build the proposed dock in violation of the minimum 10' setback from the littoral right line established by rule.

ORDER

Based on the foregoing Findings of Fact and Conclusions of Law, IT IS HEREBY ORDERED that the Encroachment Permit Application L-97-S-0999B 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 1st day of December, 2025.

IDAHO DEPARTMENT OF LANDS



DUSTIN T. MILLER
Director

CERTIFICATE OF MAILING

I hereby certify that on this 1st day of December, 2025, I caused to be served a true and correct copy of the foregoing by the method indicated below, and addressed to the following:

Derek Budig 7322 N. Walnut Ct. Spokane, WA 99208 <i>Applicant</i>	<input checked="" type="checkbox"/> U.S. Mail <input checked="" type="checkbox"/> Email: dbudig@prolandllc.com angela367_@hotmail.com
Kenneth Vanderburgh 4502 E. Sprague Ave. Spokane, WA 99216 <i>Objector</i>	<input checked="" type="checkbox"/> U.S. Mail <input checked="" type="checkbox"/> Email: KennyVanderburgh@hotmail.com
John Richards Kayleen Richter Idaho Department of Lands 300 N. 6 th Street, Ste. 103 Boise, ID 83702 <i>Counsel for IDL</i>	<input checked="" type="checkbox"/> Hand Delivery <input checked="" type="checkbox"/> Email: krichter@idl.idaho.gov jrichards@idl.idaho.gov
Marde Mensinger Idaho Department of Lands 300 N. 6 th Street, Ste. 103 Boise, ID 83720 <i>IDL Program Manager for Navigable Waters</i>	<input checked="" type="checkbox"/> Hand Delivery <input checked="" type="checkbox"/> Email: mmensinger@idl.idaho.gov
Rachel King Kourtney Romine Kayla Dawson Idaho Department of Lands 300 N. 6 th Street, Ste. 103 Boise, ID 83720 <i>Service Contacts for IDL</i>	<input checked="" type="checkbox"/> Hand Delivery <input checked="" type="checkbox"/> Email: rking@idl.idaho.gov kromine@idl.idaho.gov kdawson@idl.idaho.gov
OAH General Government Division P.O. Box 83720 Boise, ID 83720-0104	<input checked="" type="checkbox"/> U.S. Mail <input checked="" type="checkbox"/> Email: filings@oah.idaho.gov bryan.nickels@oah.idaho.gov

/s/ Rachel King

Rachel King, Program Specialist