

## **BEFORE THE IDAHO DEPARTMENT OF LANDS**

In the Matter of the Application to Permit:

An Existing Commercial Dock and Piling on  
the Spokane River,

Fred Finney dba Finney Boat Works, Inc.

Finney.

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

OAH Case No. 25-320-06

### **FINAL ORDER**

Finney Fred Finney, d/b/a Finney Boat Works, Inc., (“Finney”) submitted a Joint Application for Permits (“Application”) to Idaho Department of Lands (“IDL”) on June 26, 2025, to permit a pre-existing commercial dock and two pilings on the Spokane River. IDL held a public hearing on October 28, 2025, conducted by the Office of Administrative Hearings (“OAH”). Administrative Law Judge Scott Zanzig (“ALJ Zanzig”) presided over the hearing. On November 19, 2025, ALJ Zanzig issued a Findings of Fact, Conclusions of Law, and Recommended Order (“Recommended Order”) which contains the following sections: Preliminary Issues, 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 Zanzig’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.

## FINDINGS OF FACT

1. On August 27, 1986, IDL issued Encroachment Permit No. L-95-S-3071 to Finney Boat Works for a “commercial boat services and repair facility.” IDL-17. The permit allowed a pier, walkway, dock, seven pilings, a cement slab and boatweigh. *Id.*

2. On January 1, 1987, IDL issued State-Owned Submerged Land Lease No. M-300-97 to Finney for the purposes of “constructing, operating and maintaining a breakwater, walkway, floating docks, and marina facility” in accordance with permit L-95-S-3071. FBW-2. The leased premises consists of an acre parcel of the lakebed described in the lease as:

Adjacent to the easterly 100 feet of Tax No. 4232, being an area over the bed of the Spokane River and adjacent to the lands owned by the Lessee within the area shown on encroachment permit number L-95-S-3071 and the attached approved marina boatweigh site plan, containing less than one acre . . .

3. At some point between 1986 and 2024, Finney lengthened the dock to allow access to water depth to afford sufficient draft. App. Preh’rg Stmt., p. 1.

4. On February 4, 2016, Tom Mort who lived adjacent to, and downriver from Finney, received encroachment permit No. L-95-S-5648 to construct a single-family dock with four pilings that would be located at least 10 feet away from the Finney/Mort littoral right line. IDL-18.

5. In June or July of 2016, Finney installed two pilings (“Pilings”) on the western (downriver) side of the dock.

6. At some point, Mort sold his property to Ross Schlotthauer (“Schlotthauer”).

7. In 2024, Schlotthauer called IDL to complain that Finney was storing docks that affected his littoral access and that the two Pilings were installed outside the scope of his permit. IDL Preh’rg Stmt., p. 10.

8. When IDL discovers an unpermitted or non-compliant encroachment, it asks the owner to either (1) remove the encroachment; or (2) (re)apply for an encroachment permit. R. 2:31:47 – 2:32:19. IDL followed that process in this matter, which led to the Finney Application. *See* R. 2:32:19 – 2:33:21.

9. On June 26, 2025, Finney submitted a complete Joint Application for Permit No. L-95-S-3071A for the pre-existing commercial dock and Piling. IDL-1.

10. On July 22, 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-2.

11. On July 22, 2025, IDL sent a similar notice to George & Cindy Cheroke ("Cheroke") and Schlotthauer as adjacent neighbors. IDL-5.

12. IDL published a Legal Notice of Application in the Coeur d'Alene Press which ran on July 25 and August 1, 2025. IDL-6.

13. On July 29, 2025, IDL received an objection and request for public hearing from Schlotthauer. IDL-4

14. On August 13, 2025, IDL received an objection and request for public hearing from Cheroke alleging that the Encroachment would make it difficult to maneuver his boat in and out of his dock slip and affect the aesthetic beauty of the river and curb appeal of his property. IDL-12.

15. IDL referred the matter to OAH to conduct a public hearing in accordance with I.C. § 58-1306. ALJ Zanzig was appointed as Hearing Officer. IDL-7, 8.

16. On October 14, 2025, Finney submitted a pre-hearing statement and exhibits FBW-1 - 13. IDL submitted a pre-hearing statement and exhibits IDL-1 - 19. Schlotthauer submitted a pre-hearing statement and exhibits 1-54.

#### **Finney Boatworks**

17. The Finney littoral parcel contains approximately 100 feet of shoreline and is located on the north side of the Spokane River at 7000 E. Maplewood Avenue in Post Falls, Idaho ("Finney Property"). IDL-1.

18. Although the Finney Property is surrounded by residential parcels, it is zoned industrial and has been the primary location of Finney Boatworks since 1986. *See generally* R. 00:20:26 – 00:23:13.

19. Finney Boatworks builds and maintains tour boats and other large commercial boats that have operated on Lake Coeur d'Alene for approximately 100 years, including the entire fleet at Coeur d'Alene Resort and operated by Hagadone Hospitality Co. Finney Posth'rg. Stmt., p. 2.

20. The encroachment permit issued to Finney in 1986 notes:

There is a recognized need for a commercial boat service for large-sized vessels on the Lake Coeur d'Alene. No such facility is presently available. The encroachment distance

into the river is acceptable when compared with existing encroachment by the DAW Mill just upstream from this site.

IDL-17.

21. Finney Boatworks continues to provide a valuable service that benefits the Lake Coeur d'Alene tour-boat industry. It is the trusted operation that Hagadone Marine Group uses regularly to service its largest tour boats that ply Lake Coeur d'Alene's waters and help support a vibrant tourist industry. R. 00:55:30 – 00:56:33.

### **Public Hearing**

22. IDL held a public hearing on October 28, 2025, at 1:30 p.m. at the North Idaho College, 1000 W. Garden Ave., Coeur d'Alene, ID 83814. The hearing was recorded, and made available to the public on IDL's website (<https://www.idl.idaho.gov/lakes-rivers/administrative-hearings/>).

23. IDL Counsel Kayleen Richter appeared on behalf of IDL. Finney, Schlotthauer, and Cheroke appeared pro se.

24. The following witnesses testified during the evidentiary portion of the hearing: Diane Finney, John Magnuson, Ross Schlotthauer, Mike Ahmer, and Fred Finney.

25. Mike Hathaway and Carl Fus offered public comment in support of the Application.

26. At the hearing, most of the testimony was directed around the two Pilings. Schlotthauer provided evidence and argument opposing the Pilings. Schlotthauer did not submit any evidence or argument opposing Finney's request to permit the existing commercial dock.

27. Schlotthauer presented several complaints about the neighbors' activities above the ordinary high water mark, over which IDL has no authority.

28. Cheroke provided no evidence or argument opposing the Application at or after the hearing.

### **Commercial Dock**

29. The Application depicts the dock extending 107.5 feet from the shoreline, which is 17.5 feet longer than originally permitted. IDL-1, 17, FBW-1.

30. Although designated commercial, the dock is modestly longer than Schlotthauer's dock, which is permitted for 105 feet in length. IDL-19.

31. The dock is located approximately 50 feet from the Cheroke-Finney littoral line to the east and approximately 40 feet from the Finney-Schlotthauer littoral line to the west. IDL-1,

pp. 5, 7.

32. The dock is approximately 907 square feet. IDL-1.

33. There was no evidence establishing that the dock interferes with navigation or any neighbors' littoral rights.

### **Two Pilings**

34. Finney installed two Pilings in 2016. R. 00:26:54 – 00:27:02. The Pilings are located in a line roughly perpendicular to shore and parallel to the dock. *See* FBW-4; RS-17; RS-18.

35. The Pilings are on the west side and downriver of the Finney dock. IDL-1, pp. 9-10.

36. Finney placed the Pilings far enough away from the dock to allow the largest tour boat Finney Boatworks services (the Mish-an-Nock), to fit between the Pilings and the dock, where it needs to be to approach the boatweigh and be removed from the water for inspection and service. R. 00:26:29 – 00:26:43; 00:27:49 – 00:28:02.

37. The Pilings were installed to prevent damage during the drydocking process. R. 00:26:29 - 00:26:43. Because there is current in the Spokane River that tends to push vessels downriver (west), particularly vessels perpendicular to the current, it is important to stabilize vessels as they enter the boatweigh to be drydocked. It is necessary to have vessels stable on a south-north course as they enter the boatweigh to avoid damage to their hulls. R. 00:25:16 - 00:25:45.

38. Before installing the Pilings, Finney previously used tugboats downriver from the Finney dock to stabilize large vessels as they entered the boatweigh to be drydocked. R. 00:26:02 - 00:26:43.

39. It would be difficult, if not impossible, to position a tugboat on the downriver side of a large tour boat entering the Finney Boatworks boatweigh now, because Schlotthauer's dock is so close to the Finney-Schlotthauer littoral line. R. 00:26:02 - 00:26:43. *See, e.g.*, IDL-19; RS-10 (showing the narrow distance between Schlotthauer's dock placed on the east side of his property and the boatweigh between the Schlotthauer and Finney docks); *see also* RS-16, RS-17, RS-27, RS-28, RS-29, RS-33, RS-38 (same).

40. The Pilings provide useful assistance to guiding large vessels onto the boatweigh. The Pilings could not provide the same benefit if they were moved farther to the east, unless the Finney Dock were moved eastward and the entire boatweigh and upland drydock were

reconfigured. *See, e.g.*, M-1 (showing the narrow buffers between the large vessel and the Pilings).

41. The Schlotthauer dock is very close to the Finney-Schlotthauer littoral line. *See, e.g.*, IDL-16. A surveyor hired by Hagadone Marine Group, Mike Hathaway, determined that the Schlotthauer dock is within 7.5 feet of the littoral line. R. 00:59:41 – 1:00:45. Schlotthauer believes it is within 9.1 feet of the line. RS-53. The dock likely is closer than 10 feet from the littoral line.

42. The Pilings are located on the Finney side of the Finney-Schlotthauer littoral line, but within 25 feet of that line. Hagadone Marine Group's surveyor determined that the Pilings are 15.1 feet and 19.4 feet inside the littoral line. R. 1:00:00 – 1:00:25. Schlotthauer presented an exhibit, RS-53, reflecting calculations he and Mike Ahmer had done. The results were similar, with Schlotthauer calculating the closest Piling to be 12.3 feet inside the littoral line. R. 1:38:57 – 1:41:16.

43. The Pilings' location has some minimal adverse impact on Schlotthauer's littoral rights. If Finney were to regularly moor vessels or docks to the west (downstream) side of the Pilings, it would significantly impact Schlotthauer's use of the east side of his dock. That happened only once, when Finney temporarily moored some floating docks for a day. *See* R. 2:38:30 – 2:39:15.

44. If boats or other items are not moored on the west (downstream) side of the Pilings, the Pilings do not create any significant adverse impact on Schlotthauer's littoral rights. There is at least 23 feet between the closest Piling and Schlotthauer's dock. *See* IDL-1, p. 9. Schlotthauer is able to dock and navigate his recreational vessel on the east side of his dock, between his dock and the Pilings. *See* KBW-8; RS-18.

45. There is no evidence that the Pilings have any adverse impact on Cherokee's littoral rights.

46. The Pilings create a significant benefit to Finney and his customers with large vessels. *See, e.g.*, R. 00:55:30 – 00:56:03 (Pilings help ensure that Hagadone Marine Group's valuable vessels are not damaged when being drydocked).

47. The Pilings also benefit Schlotthauer by preventing larger vessels approaching Finney Boatworks for service from damaging the Schlotthauer dock or any vessels that are moored on the east side of the dock, notwithstanding Schlotthauer's insistence that he does not want such protection.

## 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).

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

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. *United States v. Idaho*, 95 F. Supp. 2d 1094, 1099 (D. Idaho 1998), *aff'd*, 210 F.3d 1067 (9th Cir. 2000), *aff'd*, 533 U.S. 262, 121 S. Ct. 2135, 150 L. Ed. 2d 326 (2001).

IDL's authority in this matter is limited to encroachments "on, in or above the beds or waters" of the Spokane River. See I.C. § 58-1301; *see also Byrd v. Idaho State Bd. of Land Comm'rs*, 169 Idaho 922, 929 (2022). Therefore, IDL has no authority to address Schlotthauer's complaints about Finney's activities above the ordinary high water mark.

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

Finney's existing dock and Pilings are commercial navigational encroachments as defined in Idaho Code section 58-1302(h) and IDAPA 20.03.04.010.10 and 20.03.04.010.15. Applications for commercial 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 Finney'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 for a commercial navigational encroachment.**

The LPA Rules define a Commercial Navigational Encroachment as "A navigational encroachment used for commercial purposes." IDAPA 20.03.04.010.10. The LPA Rules do not provide standards for commercial navigational encroachments and impose no size restrictions or

limitations.

Finney's encroachments have been permitted as commercial navigational encroachments since 1986. Although the dock is considered "commercial," it is 907 square feet, which is not much larger than the surrounding residential navigational encroachments, which are subject to entirely different standards regarding size and distance from littoral lines. Although permitted as such, Finney Boat Works is not a marina. Regardless, the dock and Pilings meet the definition and standards required by the LPA and LPA Rules.

### **The line of navigability**

The LPA Rules contemplate that commercial navigational encroachments 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. Here, the record does not identify an established line of navigability. The dock extends modestly beyond the line of navigability measured by the neighboring docks to the east and west, but IDL typically does not consider the line of navigability in connection with commercial navigational encroachments. IDL Prehearing Statement, pp. 6-7 & n.3.

### **Adjacency to Littoral Right Lines.**

When determining littoral lines, 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).

The LPA Rules provide a rebuttable presumption that a commercial navigational encroachment will have an adverse effect upon adjacent littoral rights if located closer than 25 feet to adjacent littoral right lines. IDAPA 20.03.04.015.13.e. For context, residential encroachments must only be 10 feet from adjacent lines. Here, the dock is located 50 feet from Cheroke's littoral line and 40 feet from Schlotthauer's littoral line. IDL-1. Most of the testimony centered around the Pilings and the alleged adverse effect to Schlotthauer.

It is undisputed that the pilings are within 25 feet of the Finney/Schlotthauer littoral line and therefore present a rebuttable presumption that the Pilings adversely affect Schlotthauer's littoral rights. Littoral rights "means only the rights of owners of land adjacent to navigable waters of the lake to maintain their adjacency to the lake and to make use of their rights as littoral owners

or lessees in building or using aids to navigation but does not include any right to make any consumptive use of the waters of the lake.” I.C. § 58-1302. Schlotthauer’s littoral rights are one of the factors IDL must consider in analyzing the Application.

The evidence and testimony established that the Pilings’ adverse impact on Schlotthauer’s littoral rights is minimal, provided nothing is moored on the west side of the Pilings. Finney has represented that he will not use the Pilings to moor anything between the Pilings and the Schlotthauer dock. Finney Posth’rg. Stmt., pp. 7, 9.

Finney provided two videos that show Schlotthauer’s boat in relationship to the Pilings, and a tour boat that fits between the dock and Pilings. The video demonstrates the Pilings’ purpose to guide and secure boats of that size in place. FBW-7, 9, 10. The video also demonstrates that Schlotthauer is able to navigate freely between the piling and his dock when he parks his boat upriver instead of in his slip. Schlotthauer provided three videos that show large boats maneuvering between the Pilings and dock with little difficulty. RS-52, 53.

Diane Finney testified regarding the history of Finney Boat Works, which began in the same location, is zoned for industrial use, and is the only business on the river that can accommodate the large commercial boats. Finney Post-Hearing, p. 1. The prior permit issued in 1986 contemplated the current location and commercial nature of the business. IDL-17. Ms. Finney testified that the Pilings are driven 10 feet into the river bed and protect Schlotthauer’s dock from errant boats taken downriver by strong currents. Dianne testified that the Pilings are absolutely critical to protect their property, commercial boats which are valued at millions of dollars, and the public, and the Pilings enhance safety for everyone on the river.

Finney installed the Pilings in 2016 to obviate the need for utilizing a downriver tug to hold the large vessels in place adjacent to the permitted dock. Finney installed the pilings with the understanding that they were already authorized as his prior permit had already authorized seven pilings in 1986. IDL-17. IDL employee Mike Ahmer testified that although the prior permit allowed seven pilings, they are depicted on the permit as located upriver from the dock. IDL-17.

Although it is not clear when the Schlotthauer dock was built, it was built in its location after the Pilings were installed in 2016.

John Magnuson testified on behalf of Hagadone Marine Group in support of the Application. Mr. Magnuson spoke of Finney’s 100 year history on Lake Coeur d’Alene and Finney’s part in inventing the cruising boat industry. In 2024, cruise boats completed 3,600

cruises for 165,000 passengers on Lake Coeur d'Alene. Hagadone owns a fleet of cruise boats that are maintained and repaired by Finney Boat Works. There is no comparable service in the area that can service the tour boats on the lake.

Hagadone Marine Group commissioned a survey to determine the littoral lines under the chorded method and right line method, which was admitted as Exhibit M-1. According to the survey, the pilings are set back between 15 and 19 feet from the Finney/Schlotthauer littoral line. Mr. Magnuson also pointed out that Schlotthauer purchased the property and built his own dock next to the Finney littoral line knowing that the Pilings were in place. Depending on the method used, it appears that Schlotthauer's dock is inside the 10 foot setback required for non-commercial navigational encroachments, however, compliance of the Schlotthauer dock is not at issue.

Mr. Magnuson testified that some of the objections appear to revolve around the boats that are moored in front of the Finney Property and not the Pilings themselves. Mr. Magnuson correctly pointed out that a littoral owner has the right to access the navigable waterway at all points and that IDL has no authority to regulate vessels that are moored to encroachments. "It's ironic that after inventing the industry . . . this is what it comes to . . . two pilings . . ." R1:03:00.

According to Schlotthauer, the fact that the Pilings are used for commercial moorage is a "red herring" and the actual purpose of the Pilings is so that Finney can park his houseboat at the end of, and perpendicular to the dock. Finney pointed out that this parking is necessary during low water and that his submerged land lease authorizes him to utilize as much of the riverbed as necessary for the purpose of constructing, operating, and maintaining a breakwater, walkway, floating docks, and marina facility as described in the permit. FBW-2. The lease shows the historical use contemplated almost 40 years ago that continues to this day.

Although the Pilings are inside of the 25 foot setback to Schlotthauer's littoral line, the Piling closest to the shoreline appears to be 15 feet to 17 feet at its closest, depending on the method used. If the Piling were used for residential purposes instead of commercial, they would be well outside of the 10 foot setback required by any method. Regardless, the evidence presented shows that any adverse effect created by the Pilings is minimal and the use and location is reasonable given the circumstances, location, and history of the parcels.

**The dock and pilings provide a clear benefit and navigational justification.**

The LPA requires IDL to balance several factors when evaluating an application for a commercial 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 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 encroachments. *Id.*

Finney and Magnuson presented testimony regarding the clear navigational and economic justification for, in addition to the benefits to be derived from, the dock and pilings. For over 100 years, Finney Boat Works has positively contributed to the recreation and navigation of Lake Coeur d'Alene. The economic contribution Finney creates is clear and substantial.

#### **Fish and wildlife habitat and aquatic life.**

There is no evidence in the record that the dock and pilings 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 dock and pilings will pose a detriment to the public's use of the Spokane River for recreation. Although Schlotthauer testified that the Pilings inhibit his own navigation and recreation, it is not clear how they impact the littoral line. Schlotthauer's dock slip is downriver of his own dock and the Pilings. If Schlotthauer parks his boat on the upriver side of his dock, it appears like ample room to maneuver. For context, if the Pilings were permitted as residential instead of commercial, they would be well outside of the 10 foot required setback.

#### **Aesthetic Beauty**

There is no evidence in the record that the proposed encroachment would be detrimental to the aesthetic beauty of the river. It was alluded that Schlotthauer and Cheroke were actually objecting to the size of the boats, which are several times larger than the surrounding residential boats. As Mr. Magnuson pointed out, IDL does not regulate vessels, it regulates encroachments. No evidence was presented to show that the dock and Pilings decrease the aesthetic beauty of the Spokane River.

### **Water Quality**

No evidence was presented to show the dock and Pilings affect the water quality in the river. Although DEQ was invited to submit comments, it did not.

### **Safety.**

It is clear that the Pilings were more likely installed for safety than nuisance, and their purpose is to protect the boats, Finney property, and Schlotthauer's property, and keeps the large boats in place alongside the dock. Schlotthauer testified that he does not want the protection, even though he benefits from the Pilings from that aspect. Schlotthauer's testimony that the Pilings are not necessary conflict with Finney's testimony. Given the nature of Finney Boatworks and the reasons stated for their installation and the videos and pictures provided in the record, it appears the Pilings are necessary for safe moorage.

### **Congestion**

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).

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).

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. *See also, 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.).

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).

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. Thus, littoral rights

solely concern the use of lakeside property, not the preservation of property's scenic view. *Newton v. MJK/BJK, LLC*, 167 Idaho 236, 245, 469 P.3d 23, 32 (2020).

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.

Finney's Application meets all standards for a commercial navigational encroachment, and there is no evidence in the record demonstrating such an imbalance of detriments and benefits that would justify denial. Nothing about the dock or Pilings threatens Schlotthauer's access to the river, his ability to maintain his adjacency to it, or his own ability to "wharf out" on the river. Nor do the dock and Pilings appear to affect public navigation, recreation, safety, water quality, or aesthetic beauty.

## ORDER

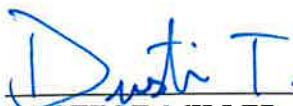
Based on the foregoing Findings of Fact and Conclusions of Law, IT IS HEREBY ORDERED that the Encroachment Permit Application L-95-S-3071A is **APPROVED**.

This is a final order of the agency. Pursuant to Idaho Code § 58-1306(c) and IDAPA 20.03.04.030.09, the Finney 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 1st day of December, 2025.

IDAHO DEPARTMENT OF LANDS

  
DUSTIN T. MILLER  
Director

## CERTIFICATE OF MAILING

I hereby certify that on this 14 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:

Fred Finney 7014 E. Maplewood Ave. Post Falls, ID 83854	<input checked="" type="checkbox"/> U.S. Mail, postage prepaid <input checked="" type="checkbox"/> Email: <a href="mailto:finneydianek@gmail.com">finneydianek@gmail.com</a>
Ross Schlotthauer 6980 E. Maplewood Ave. Post Falls, ID 83854	<input checked="" type="checkbox"/> U.S. Mail, postage prepaid <input checked="" type="checkbox"/> Email: <a href="mailto:ross@burlyproducts.com">ross@burlyproducts.com</a>
George Cherokee 931 Cindy Jo Court Medical Lake, WA 99022	<input checked="" type="checkbox"/> U.S. Mail, postage prepaid <input checked="" type="checkbox"/> Email: <a href="mailto:george@fcontrol.com">george@fcontrol.com</a>
Idaho Department of Lands John Richards Kayleen Ritcher 300 N. 6th Street Boise, ID 83720	<input checked="" type="checkbox"/> Email: <a href="mailto:jrichards@idl.idaho.gov">jrichards@idl.idaho.gov</a> <a href="mailto:krichter@idl.idaho.gov">krichter@idl.idaho.gov</a>
Idaho Department of Lands Marde Mensinger Amidy Fuson Kourtney Romine Kayla Dawson	<input checked="" type="checkbox"/> Email: <a href="mailto:mmensinger@idl.idaho.gov">mmensinger@idl.idaho.gov</a> <a href="mailto:afuson@idl.idaho.gov">afuson@idl.idaho.gov</a> <a href="mailto:kromine@idl.idaho.gov">kromine@idl.idaho.gov</a> <a href="mailto:kdawson@idl.idaho.gov">kdawson@idl.idaho.gov</a>
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/s/ Rachel King

Rachel King, Program Specialist