

BEFORE THE IDAHO DEPARTMENT OF LANDS

In the Matter of Application to Permit the
Expansion of a Commercial Marina,
Reconfigure Existing Fuel Lines, and Build a
New Ship Store on Spokane River,

414 PF Hospitality, LLC,

Applicant

AGENCY Case No. PH-2024-NAV-22-004

OAH Case No. 24-320-09

FINAL ORDER

I. NATURE OF PROCEEDINGS

The Idaho Department of Lands (“IDL”), through the State Board of Land Commissioners, “shall regulate, control and may permit encroachments in aid of navigation or not in aid of navigation on, in or above the beds or waters of navigable lakes” as provided in the Lake Protection Act, title 58, chapter 13, Idaho Code (“LPA”). Idaho Code § 58-1303. The corresponding administrative rules promulgated by the State Board of Land Commissioners are IDAPA 20.03.04, “Rules for the Regulation of Beds, Waters, and Airspace over Navigable Lakes in the State of Idaho” (“LPA Rules”).

On or around September 13, 2024, IDL received a complete Joint Application for Permits (“Application”) and attachments from 414 PF Hospitality, LLC, (“414 PF Hospitality” or “Applicant”) through their managing member, Mitchell Alhadeff, and their agent, Keaton Brown, to update and replace existing docks, rearrange and expand moorage, reconfigure existing fuel lines, and construct a new ship store. IDL-002-Application. A public hearing was held on December 19, 2024, and a site visit occurred on December 20, 2024. The record was held open for public comment until December 27, 2024, and the record closed on January 14, 2025. Administrative Law Judge Merrit Dublin, of the Office of Administrative Hearings, served as the duly appointed hearing officer. On February 7, 2025, Hearing Officer Dublin issued a Findings of Fact, Conclusions of Law, and Recommended Order (“Recommended Order”), which contains the following sections: Background, Preliminary Evidentiary Rulings, Findings of Fact, and Conclusions of Law.

As the 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 based on the record reviewed in the context of my personal expertise gained through education, training, and experience. In making this determination, I relied on the entire record for this matter. Specifically,

- I read the transcript of the public hearing held on December 19, 2024;
- I reviewed the entire record including all documents, exhibits, photographs and statements submitted by the parties;
- I reviewed written comments submitted by members of the public and state agencies;
- I examined the Hearing Officer's Findings of Fact, Conclusions of Law, and Recommended Order issued on February 7, 2025.

Below is my response to the exceptions submitted by the Concerned Citizens Objectors submitted on February 11, 2025 and my Final Order. For the reasons stated below, the requests for exceptions are **DENIED** and Applicant's Application for Encroachment Permit L-95-S-3036N is **APPROVED** subject to the conditions stated below.

II. OBJECTORS' REQUEST FOR EXCEPTION IS DENIED

As a threshold matter, the requests for exceptions are denied. The Hearing Officer's Recommended Order states that "if either party disagrees" with the Order, "[p]ursuant to Idaho Code § 67-5244, the party may file an exception to this recommended order with the agency head." (Recommended Order, p. 36). Objectors filed several exceptions to the Recommended Order on February 11, 2025. Notwithstanding language to the contrary in the Recommended Order, these proceedings are governed by the process set forth in I.C. § 58-1306(c), which does not provide any right to file an exception and preempts any general review procedure provided by the Administrative Procedures Act ("APA").

The APA provides that "[a] proceeding by an agency . . . that may result in the issuance of an order is a contested case and is governed by the provisions of this chapter, except as provided by other provisions of law." I.C. § 67-5240 (emphasis added). The LPA is one such other provision of law and provides specific guidance for issuance of final orders and appeal procedures. "Any applicant or other aggrieved party so appearing at a hearing shall have the right to have the proceedings and decision of the board reviewed by the district court in the county

where the encroachment is proposed by filing notice of appeal within thirty (30) days from the date of the board's decision.” I.C. § 58-1306(c). Neither the LPA nor the LPA rules address the nature and effect of the recommended order or the parties’ right to file exceptions to such a decision. In the absence of subject specific procedural statutes, the more specific statute controls. *Eller v. Idaho State Police*, 165 Idaho 147, 154, 443 P.3d 161, 168 (2019) (where two statutes conflict, courts should apply the more recent and more specifically applicable statute).

Nonetheless, I have considered Objectors’ Exceptions and determined it is not necessary to incorporate into this Final Order.

III. FINDINGS OF FACT

I adopt the Recommended Order’s Findings of Fact as my Findings of Fact.

IV. CONCLUSIONS OF LAW

I adopt the Recommended Order’s Conclusions of Law 1-31 and 40-60 as my Conclusions of Law. I decline to adopt conclusions 32-38. In conclusion 39, I strike the words “The Hearing Officer, however agrees with the Director’s conclusion that . . .” and adopt the balance of the paragraph.

V. ORDER

Based on the foregoing Findings of Fact and Conclusions of Law, IT IS HEREBY ORDERED that the Encroachment Permit Application L-95-S-3036N is APPROVED; with the following conditions:

1. Applicant enter into the required submerged land lease.
2. Applicant develop a comprehensive traffic control plan for accessing the marina, ship store, and fuel dispensers, that ensures public safety.
3. Applicant develop a plan for demolition in consultation with the Idaho Department of Environmental Quality (IDEQ) that ensures protection of water quality.

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 14th day of February, 2025.

IDAHO DEPARTMENT OF LANDS

A handwritten signature in black ink, reading "Dustin T. Miller". The signature is written in a cursive style with a large, looped "D" and a distinct "T".

DUSTIN T. MILLER
Director

CERTIFICATE OF MAILING

I hereby certify that on this 14th day of February, 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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Mitchell Alhadeff
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Applicant

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StanCraft
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Scott and Sheryl Scofield
11927 W. Span Way Rd., Post Falls, ID 83854
Objectors

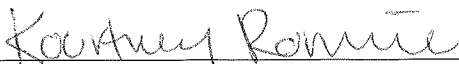
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Jose Jara
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Objector

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Kourtney Romine, Workflow Coordinator

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a New Ship Store on Spokane River,	)	
	)	FINDINGS OF FACT, CONCLUSIONS
414 PF Hospitality, LLC.	)	OF LAW, AND RECOMMENDED
	)	ORDER
Applicant.	)	
	)	

This matter was assigned to Administrative Law Judge Merritt Dublin as the Hearing Officer on September 19, 2024. The Hearing Officer conducted a public administrative hearing in the Coeur d'Alene High School auditorium on December 19, 2024, at 4:00 p.m. Pacific Time. Appearances were made by John Richards, General Counsel for Idaho Department of Lands ("IDL"), Mike Ahmer, IDL Resource Supervisor, and Scott Hislop, Legal Counsel for 414 PF Hospitality, LLC (Applicant). Also in attendance were Nelson Erickson with StanCraft Companies, IDL staff members, and approximately 57 members of the public including Scott and Sheryl Scofield, Jose Jara, and Richard Teich who filed a formal objection requesting the hearing. A Zoom link was provided to individuals who could not attend in person.

The parties each presented their positions with an opportunity to ask questions of the other party. Mr. Ahmer testified under oath for IDL. At the conclusion of the parties' presentations, public comments were received under oath by Objectors and ten additional members of the public. The hearing was recorded, and the audio recording was made available to the public on the IDL website (<https://www.idl.idaho.gov/lakes-rivers/administrative-hearings/>). All exhibits were submitted without objection and admitted into the record. The exhibits include IDL-001-013, 015-019, 023, 025, APP-001-007.

The Hearing Officer conducted a site visit on Friday, December 20, 2024, at 10:00 a.m. Pacific Time. Msrs. Richards and Hislop attended on behalf of their respective clients; Objectors Jose Jara, and Scott and Sheryl Scofield also attended. The Hearing Officer recorded the site visit and took photographs, which were made part of the record. The record remained open for public comment through the close of business on Friday, December 27, 2024. The parties' closing statements were due and the record closed on January 14, 2025. The Final Order is due on February 14, 2025.

PRELIMINARY MATTERS

1. Request for Extension

The Hearing Officer received several requests to extend the deadlines and hold another public hearing in this matter. The requestors reasoned that (1) the initial hearing held on December 19, 2025, was during the busy holiday season and many public citizens were unable to attend, (2) many affected property owners, including the residents of the adjacent Greenview Condominiums, did not receive appropriate notice of the application, and (3) "new evidence" was introduced at the hearing by Applicant and IDL. (*See Live Dkt. 039, PC000024*).

a. Timing of Holiday

Objectors requested a hearing in this case, which required IDL to hold the hearing within 90 days from the date of the Application. IDL received the completed Application on September 23, 20224. During the comment time period there were four (4) business holidays. The record was held open for public comment for an additional five days, through December 27, 2024, in recognition of the holiday period. Public comments were able to be submitted either in writing or through testimony during the public hearing over a period of more than 60 days.

The Hearing Officer understands that the holiday season can be busy with travel and activities for many people. Unfortunately, the state government and business owners are required to conduct business as usual except for recognized holidays and the deadlines imposed by Idaho state law. In addition to the thorough testimony provided at the hearing, IDL received over 100 written public comments during the public comment period. All comments, whether written or verbal, are part of the record and considered.

No objection has been raised that any person was prejudiced by a lack of notice or a wish to submit evidence or comment that has not already been introduced into the record for consideration. Additional duplicative evidence will not aid in developing the record in this matter. *See* IDAPA 62.01.01.475. Furthermore, the Applicant owns the right to waive the statutory time period, and no request was made by Applicant. The Hearing Officer therefore does not find cause to extend the proceedings or set another hearing due to the timing of holidays.

b. Notice to Adjacent Greenview Condominium Owners

IDL's statutory requirements for providing notice of the application are to publish legal notice of the application once a week for two consecutive weeks, within 10 days of receipt of the application, and to publish notice of any hearing requested or set by the Board in a similar manner. I.C. § 58-1306(c). IDL regulations further provide that IDL will provide notice to the adjacent littoral property owners under certain circumstances. IDAPA 20.03.04.025.02 provides in relevant part:

If the proposed encroachment may infringe upon the littoral rights of an adjacent owner, the department will provide notice of the application by certified mail, return receipt requested; otherwise, the notice will be sent by regular mail. Notification will be mailed to the adjacent littoral owners' usual place of address, which, if not known, will be the address shown on the records of the county treasurer or assessor.

IDL was required under the code and applicable regulations to provide notice by newspaper to the public and to the adjacent littoral owners “if the proposed encroachment may infringe upon the littoral rights.” *Id.* IDL met the statutory requirements for notice by publishing notice of the application in the Coeur d’Alene Press on September 27 and October 4, 2024, and then notice of the hearing on November 30 and December 3, 2024.

Regarding notice to the adjacent littoral owner Greenview Condominium owners, IDL mailed the notice of the application to the homeowners’ association, attention of Jan Gara, at 1110 W. Park Place, Ste 101, Coeur d’Alene, Idaho 83814. Mr. Ahmer testified that Greenview Condominium Owners, Inc. has a community dock and pays an annual lease, and that IDL mailed the notice to the same address the lease bill is sent to annually, which IDL apparently considers the homeowners’ association’s “usual place of address.” IDAPA 20.03.04.025.02. IDL was not notified of a different address for the Greenview Condominium Owners Assoc., but did receive the application notice marked “Return to Sender” and “Not at this address.” (IDL-008). IDL took no further action to notify Greenview Condominium Owners, Inc.

IDL contends that it was not required to do more to notify Greenview Condominium Owners, Inc. because the notice was mailed to the address IDL knew to be the Greenview Condominium Owners’ usual place of business. The Hearing Officer agrees that the regulation probably required IDL to take more action to notify the adjacent homeowners in this case. The “Return to Sender – Not at this address” notification informed IDL that the address was not, or no longer was, the association’s usual place of business. Not having a valid address, the regulation instructs that IDL should then mail the notice to the address shown on the records of the county treasurer or assessor. There is no evidence in the record that this was done.

Whether IDL was or was not required to do more, however, is immaterial in this case. Although Greenview Condominium Owners, Inc. did not receive written notice by mail to the correct address, it received actual notice. Kelly Yamura, Treasurer of Greenview Condominium Owners, Inc., appeared at the hearing and testified in opposition to the project on her own behalf and on behalf of the Board of Greenview Condominium Owners, Inc. Live Dkt.049, 101:8 – 19; 104:13-19. Greenview Condominium owners also submitted written comments. (*See, e.g.*, PC-00022, PC-00035, PC-00088 – 89). The Greenview Condominium owners therefore were on notice of the hearing, provided public comment during the hearing, and submitted additional public comment in writing through December 27, 2024.

In addition, IDL provides notice to adjacent homeowners primarily to provide the homeowner with an opportunity to raise objection to an encroachment's impact on their littoral rights. *See* IDAPA 20.03.04.025.02. This issue of infringement on the Greenview Condominium owners' littoral rights was raised in this proceeding, *see e.g.*, PC-00088 -89, and it is addressed below. The Hearing Officer therefore does not find cause to extend the proceeding or reset for a second hearing on this basis. *See Hawkins v. Idaho Transportation Dep't*, 161 Idaho 173, 176-177, 384 P.3d 420, 423- 424 (Ct. App. 2016) ("Claims of prejudice [in procedural delay] must be specific and particularized, as error will not be presumed, but must be affirmatively shown.")

c. New Evidence Regarding Footprint

Two identical requests (*see* Live Dkt. 039 & 040), argue that new evidence was submitted during the hearing relating to the "footprint" of Applicant's encroachment and the area of water between the log boom and edge of the marina. The requests contend that Applicant falsely represented that its encroachment includes this area, and that based on Mr. Ahmer's testimony, it does not, and therefore Applicant seeks to expand into the navigable area of the river. These

discussions are matters of legal argument and conclusions of law, not fact or new evidence. There was no new evidence regarding the scope of the proposed encroachment or the previously permitted encroachment. The discussion about the footprint involves Applicant's and IDL's legal interpretation of its encroachment. IDL's position that the encroachment extends beyond the line of navigability is thoroughly briefed in the filings and considered below. The Hearing Officer therefore does not find cause to extend the proceedings on this basis.

The Hearing Officer therefore denies the request to extend the proceedings and hold a second public hearing.

2. Testimonial Evidence

The Hearing Officer may consider evidence as allowed by Idaho Code section 67-5251. IDAPA 62.01.01.475. Scott Hislop appeared in this proceeding as legal counsel for Applicant. He presented the Applicant's position by way of a PowerPoint and was not placed under oath. The slides were admitted into evidence by stipulation as Applicant-008 Mr. Hislop's presentation, however, cannot be received as testimonial evidence regarding a contested fact. *See* IRPC 3.7. The Hearing Officer therefore does not consider any statements of contested fact introduced solely through Mr. Hislop's presentation as evidence in the record.

3. Late Submissions

Additional written comments were received by IDL after the record closed on January 14, 2025. Those materials have not been considered by the Hearing Officer in rendering this Recommended Order as they were submitted beyond the deadline for public comment (December 27, 2024) and the parties were not afforded an opportunity to respond if necessary.

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The Hearing Officer, having considered the matter herein, including documents contained in the Administrative Record, the verbal and written public comments, and arguments of counsel, makes the following Findings of Fact and Conclusions of Law pursuant to Idaho Code section 58-1306.

FINDINGS OF FACT

1. Applicant 414 PF Hospitality LLC is a foreign limited liability company, incorporated in Delaware, with its principal place of business in Hayden, Idaho. Applicant acquired the Red Lion Templin's Hotel on the River, in Post Falls, Idaho in May 2024 and is the littoral owner. As part of the acquisition, Applicant was assigned Encroachment Permit L-95-S-3036 and the corresponding Submerged Land Lease B220092 located on the Spokane River. APP-006.

2. The Encroachment Permit authorized the use of the leased lands generally for the operation of a ship store, commercial marina and swim area, which is known as Templin's Marina. APP-006; APP-008-04.

3. The marina's current Encroachment Permit L-95-S-3036 was issued in February 2015 and since been assigned twice. APP-008-004. The first assignment, from RL Post Falls LLC to Postfalls Hotels LLC, describes the encroachment as follows:

. . . to maintain existing Bulkhead at 2128' leading to 3' x 15' ramp to 9' x 160' walkway with 808' x 8 dock enclosing 7 wings having 168 slips; 60' x 24' cruise boat landing; 24' x 3' ship store with fuel system including a sealed sump and liquid sensors over the fuel line and dispensers; swim area to east of marina; logboom/piling southwest of marina; Kootenai County Sheriff Department attached dock, see L-95-s-5320, per attached approved design plan. Located: Spokane River, Tax 5846/5847, AIN 135604, Parcel P4200008002A, Lot 1 & 2, Block 8, Heirs of Margaret Post Estates Addition: Section 03, Township 50 North; Range 05 West, Boise Meridian: Kootenai County.

APP-008-004. The second assignment, from Postfalls Hotels LLC to Applicant, describes the encroachments as including: (1) Breakwater – log boom/piling southwest of marina – 630 feet; (2) Commercial Marina – 3’ x 15’ ramp. 9’ x 180’ walkway with 808’ x 8’ dock enclosing seven wings – 168 slips; (3) Other Non-Navigational - 24’ x 35’ ship store, fuel system including a sealed sump and liquid sensors over the fuel line and dispensers; (4) Other Non-Navigational – 280’ bulkhead/seawall; and (5) Other Non-Navigational – Swim area. APP-008-004.

4. The Submerged Land Lease legal description is stated as described in Attachment A and B to the lease, and as set forth in the Encroachment Permit: L-95-S-3036. The Legal Description of the Leased Premises, Attachment A, is Township 50N, Range 05W, Section 03, Adjacent to Heirs of Margaret Post Estate, Gov Lot 8, in the Spokane River, Kootenai County, Endowment GF, 4 acres, Spokane River. The legal description on the Site Map, Attachment B, is illegible. APP-006.

5. The exact area of the leased premises is unclear from the record. Encroachment Permit L-95-S-3036 is not in the record. The Applicant’s assignment differs somewhat from the first assignment as the description in the record omits the “60’ x 24’ cruise boat landing” and the Sheriff’s dock. There is no indication that the assignment was intended to change the encroachment.

6. Nonetheless, the current marina is configured with a bulkhead, a 3’ x 15’ ramp leading from the bulkhead to the 9’ x 180’ walkway with an 808’ x 8’ dock enclosing seven wings with 168 boat slips, a 24’ x 35’ ship store with a fuel system including a sealed sump and liquid sensors over the fuel line and dispensers, the Sheriff’s dock with a boat garage on the northwest corner of the docks. The 168 marina slips are rented to the public, along with moorage running along the lakeside of the dock. *See* IDL-002, AGYPG000027; APP-008-17.

7. The 630-foot log boom/piling is also clearly permitted as a breakwater encroachment that was included in the original permit and in both assignments and has remained unchanged since. APP-006; APP-008-10 & 23.

8. Applicant wishes to enlarge and reconfigure the marina to nine docks with 295 total slips with 110 private slips and 185 public slips, add a boardwalk along the riverside enclosing the docks (“marina expansion”), rebuild the fuel station building, re-install fuel lines and a dispenser, move and expand the ship store, and relocate the Sheriff’s boat garage within the marina. IDL-002, AGYPG000010.

9. Applicant must pay IDL for the submerged land lease to operate a commercial marina that includes base rent, 1 % from the ship store, and 3.75% of the gross receipts of the commercial marina which will increase with the marina expansion.

10. Applicant applied for an encroachment permit attached to littoral parcel located at 414 E. 1st Avenue, Post Fall, Idaho 83854, Tax parcel nos. AIN 135604 & 109323 and located on Spokane River. IDL-002-Application (Live Dkt. 002) (Application L-95-S-3036N) (hereafter “Application”). IDL accepted the Application as complete on September 23, 2024. IDL-002, AGYPG000003.

11. The Application lists Keaton Brown with Stancraft[sic] as Applicant’s Agent, and Mitch Alhadeff as Applicant’s Contact, and bears his electronic signature as of July 31, 2024. IDL-002, AGYPG000003 & 6.

12. The Application describes the “purpose and need” as:

Update and replace existing docks that have exceeded their useful life. We will be replacing old decrepid[sic] docks and rearranging the marina to provide more moorage to the community. The scope of the project stays within the original enroachment [sic] permit boundaries. Swim areas to the east and log-boom/piling southwest of the marina. This will be a mix of public and private slips as shown in the diagram attached.

AGYPG000003, block 15.

13. The Application included a letter of support from the Mayor of Post Falls stating:

As you are aware, for many years, Templin's Marina has maintained a marina in Post Falls allowing city residents to access, and recreate, on the Spokane River. The City of Post Falls provides many parks to provide recreational opportunities for our residents, but we do not have a marina. Templin's has helped to fill this gap and provide this needed amenity for our residents. I have reviewed the applicant's plans to reinvigorate the marina by providing additional slips and a publicly accessible boardwalk and believe that these improvements will benefit the residents of Post Falls by increasing public access to the river, which is part of what makes living in North Idaho so desirable.

IDL-002, AGYPG000036.

14. The Application includes the following documents which are included in the record as exhibits included in IDL-002:

- a. Diagrams with proposed encroachment overlaying current configuration (AGYPG000007-8)
- b. Square footage breakdown of proposed docks and boardwalk pier (AGYPG000009)
- c. Diagram proposed slips and designated private and public (AGYPG000010)
- d. Diagram specific slip dimensions (AGYPG000011)
- e. Diagram with proposed reconfiguration of ship store, fuel shack, fuel dispensers, fuel line, existing seawall, swim area, boat launch, water line. (AGYPG000012)
- f. Diagram proposed Structure dimensions for ship store (AGYPG000013)
- g. Diagram dimensions for R Dock showing fuel system and power and water (AGYPG000014)
- h. Diagram and square footage dimensions R Dock (AGYPG000015)

- i. Diagram and square footage dimensions Docks A – H (AGYPG000016 – 24)
- j. Diagram dock elements F, G & H (AGYPG000025)
- k. Diagram Riverbed East Facing from shoreline riverward showing OLWM (Ordinary Low Water Mark) and OHWM (Ordinary High Water Mark)
- l. Aerial photograph parking
- m. Parking Ordinance
- n. Aerial photograph, adjacent docks
- o. Kootenai County Assessor Map
- p. Map IDL to Red Lion Hotel Templin's on the River
- q. Aerial Map, proposed area Project Marina 33, May 30, 2024
- r. Tax record print off, Tax parcel AIN: 135604
- s. Commercial/Community/Non-Navigational Encroachment Permit Application
- t. Letter Office of Mayor, City of Post Falls, to Mike Ahmer (AGYPG000036)
- u. Memorandum of Understanding, StanCraft Marine Construction, Emergency Services (MOU) (AGYPG000037-40)

15. The attached diagrams include an overlay of the proposed plan and the current configuration. AGYPG000008. According to Applicant's diagram, the proposed boardwalk and river boundary of the marina extends out from the current docks' walkway edge to just beyond the log boom, which looks to be approximately 75 feet, and for a length of 898 feet (inclusive of Walkway 1 and Walkway 2, AGYPG000015). This will result in increasing the river area encroached by the physical marina structures by approximately 1 ½ acres.

16. This new encroachment area, however, is largely encumbered by the boats moored on the outside of the current dock and impeded by the log boom/piling. Boats entering the marina

currently must go around the log boom/piling either from the west past the adjacent Greenview Condominiums, or from the east in between the dock and the log boom piling. The primary navigational use currently for the proposed encroachment area is to access the marina and docking on the marina riverside. The proposed reconfiguration does not include permanent moorage on the riverside of the boardwalk but will include day slips to allow the public to enjoy the area and frequent the restaurant and ship store. Live Dkt. 034, 2:45 - 3:35.

17. The marina and surrounding area are encompassed in a “no wake zone” which “extends from the Spokane Street Bridge located west of the marina all the way past the eastern edge of the marina approximately 550 feet.” Live Dkt. 049, 50:13 – 19; APP-008-12.

18. The new southwest corner of the encroachment is 571 feet from the adjacent neighbors’ community dock and 25 feet from its littoral rights line. The southeast corner is 390 feet from the adjacent owners’ dock and 250 feet from its littoral rights line, and 320 feet from the littoral property line across the river. The proposed reconfiguration will narrow the current channel at its narrowest point to 320 feet in width. IDL-002, AGYPG000008.

19. Applicant has 228 parking spaces for public access to the marina through a public road through a Declaration of Easements For Ingress, Egress, Utilities and Parking created between Applicant’s two parcels. APP-007.

20. IDL published a Notice of Application on September 27 and October 4, 2024, in the Coeur d’Alene Press. IDL-003. The Notice advised that Applicant applied “to expand commercial marina having some private moorage, reconfigure existing fuel lines with two new dispensaries, and build a new ship store” and that written objection or requests for hearing must be filed with IDL within 30 days after the first notice with contact details for more information. *Id.*

21. On September 25, 2024, IDL sent a Memorandum giving “Notice of the Application for Encroachment L95S3036N” with the same description to: Idaho Department of Fish and Game, Idaho Department of Environmental Quality, Idaho Department of Water Resources, Idaho Department of Transportation, U.S. Army Corps of Engineers-CDA, Kootenai County Parks, Recreation/Waterways, Kootenai County Marine Division, Kootenai County Building & Planning & Zoning, Kootenai Environmental Alliance, Panhandle Health District 1- Kootenai County, Coeur d'Alene Tribe, Idaho Conservation League and two adjacent landowners – the River Run Homeowners Association and the Greenview Condominium Owners, Inc. (IDL-006; AGYPG000047-51).

22. IDL’s mailing to the Greenview Condominium Owners, Inc. was returned marked “Return to Sender” with a handwritten note stating, “Not at this address.” IDL-008. IDL mailed the notice to the address on file where IDL sends the invoice for the Greenview Condominium community dock encroachment. IDL did not attempt to find another address and remail the notice. A Board Member of Greenview Condominium Inc., was notified instead by another individual, as were some of the homeowners. *See* Live Dkt. 049, 10113-19 & 104:13-19; 038, PC-00022; 043, PC-00035; 045, PC-00088.

23. IDL received two agency responses, from the IDEQ Surface Water Section and Idaho Department of Fish and Game, both expressing “no comment” on the Application. IDL-010 & 011. IDL received no other agency responses.

24. On October 28, 2024, IDL received a formal objection, accompanied by a \$75 fee payment, from Scott & Sheryl Scofield, Jose Jara, and Dick Teich (collectively “Objectors”). IDL-007. Objectors stated concern about light pollution and lighting plans; and the addition of 100 boat slips putting increased strain on the river. Objectors stated, “we believe we have reached the

maximum carrying capacity on the narrow Spokane River,” and that an additional 100 boat slips will “pose a greater safety risk on an already over-saturated river.” Objectors expressed their belief that the project exceeded the limitations set by IDL rules and asked for a public hearing. IDL-007.

25. IDL referred the request to the Office of Administrative Hearings (OAH) for a Hearing Officer to be appointed to conduct the public hearing.

26. The Hearing Officer set the public hearing for December 19, 2024, from 4 – 8 p.m. Pacific Time. IDL-016. IDL caused notice of the hearing to be published in the Coeur d’Alene Press on November 30¹ and December 3, 2024.²

27. IDL received a total of 108 public comments, the majority of which express opposition to the marina expansion. Most comments were duplicative. The primary grounds for opposition are (1) that the additional boat slips will increase boat traffic which will increase multiple negative conditions that exist along the river due to the river being narrow and at its “maximum carrying capacity,” and (2) that increasing the area of the encroachment will be a detrimental to navigation by further and unreasonably narrowing the navigable portion of the river – particularly at the southeast corner where the ship store is to be relocated.

28. The negative conditions expressed by the written public comments experienced from boat traffic include:

- a. Excessive wakes that create dangerous conditions on the shoreline, destroy shoreline property including docks, degrade the shoreline itself causing significant expense to the property owners, and stir up sediment causing damage to the water quality and possibly aquatic life;

¹ Legals for November, 30 2024 | Coeur d'Alene Press

² Legals for December, 3 2024 | Coeur d'Alene Press

- b. Noise and trash pollution;
- c. Congestion, and impaired navigation;
- d. Dangerous boating conditions with frequent near accidents that will inevitably cause a tragedy to occur.

29. Some demonstrative examples of written opposition include:

Because the Spokane River is narrow it is already considered to be the most congested waterway in Kootenai County, if not the state, for recreational boat traffic. I would add, from my personal observation of several decades living on the lake and/or the river, that it is also the most dangerous due to over saturation of boat traffic. It would be a travesty to be complicit in making it more congested and arguably less safe by approval of this application.

Live Dkt. 029, PC-00012.

. . .The Spokane River has already reached its safety capacity under the current County and State regulations. In addition, the lack of enforcement from the Sheriff's department has allowed violations to occur daily. It has come to the point where people that live on the river will not boat, swim, fish, paddle board or kayak on weekends. The weekends are dangerous. The lakes have more restrictions for safety than the river does. The river averages 600 feet wide and 15 feet deep. There is not enough width for the river to accommodate the numbers of boats passing. The wake surf boats go down the middle so any boat trying to pass must power down to accommodate the huge wakes that occur thus creating an illegal situation that the sheriff refuses to enforce. If they followed the law the wake surf boats would not be allowed on the river.

. . .Erosion is a problem for all river front residences. The huge wakes from the wake surf boats break down the frontage on the river. Residents must build walls to help elevate loss of property. Also, the large wakes destroy docks. We have personally[sic] had to build a rock wall twice at a cost of approximately \$10,000. and this last year we replaced our dock at a cost of \$45,000. Your proposal will increase the traffic to an already uncontrolled situation.

Live Dkt. 044, PC-00083.

30. One commenter referenced an environmental study done by the Spokane Conservation District in 2012 that he asserts demonstrated that the wakeboards and other large vessels harm riverbanks and disturb riverbank ecosystems. Live Dkt. 038, PC-000018.

31. Two written public comments (other than the letter from Mayor Jacobson) expressed support for the project. One stated:

I have enjoyed recreating on this part of the lake for over 36 years and have been a neighbor to Templin's Hotel and Marina for all of that time. During that time, I witnessed the activity that the marina generates, the marina management and the amenities offered by the marina. In 2020 and 2021 due to the COVID-19 pandemic, the traffic dramatically increased all over the lake, including this section of the river, as visitors and residents desired to be outside. The lake, the river, and even the eastern portion of the river, the area in front of my home and Marina 33, saw an increase in public use. Safety and vessel traffic issues in our area of the river should be mitigated by the No-Wake Zone. At peak usage times I have seen boaters disregard our No-Wake Zone. I believe safety issues on the water can be complicated with increased traffic, but more often, it is a boater not following boating rules, not the volume of users.

I support the Marina 33 expansion project because it will directly address the issue of boaters ignoring the No-Wake Zone buoys by expanding out to the log boom, clearly identifying the Line of Navigability and creating a visual cue to slow down and adhere to the No-Wake Zone. The proposal expands the marina docks out to the log boom that has been in front of the marina for years. The log boom used to extend the entire length of the marina, helping to slow down boaters.

Live Dkt. 029, PC-00014.

32. Several written comments expressed concern that the new configuration includes placing docks in front of the Greenview Condominium shoreline, specifically Buildings D and C, and may infringe on their littoral rights. *See, e.g.*, Live Dkt. 045, PC-00088.

33. The public hearing was held on December 19, 2024. Mr. Ahmer testified on behalf of IDL regarding IDL's review and preliminary findings. Applicant presented the plan for the expansion by PowerPoint. Fourteen members of the public, including Objectors, testified.

34. By in large, the public testimony echoed the written comments with two exceptions. One exception was the testimony of John Stanley, a resident of River Run, and board member of the River Run Homeowners Association. He shared concerns on behalf of the association. River Run did not object to the project and focused on the problem that boaters do not follow the No Wake Zone on weekends. Mr. Stanley suggested Applicant try to get the buoys better placed and increase the size of the ship store signage to help enforce the No Wake Zone, requested better communication on the project so the board could keep their homeowners informed, and expressed that allowing the sale of private slips would ensure that the current slip holders do not lose their leases. Live Dkt., 049, 105:11 – 107:16.

35. The second was the testimony of Susan Stiger, a licensed civil engineer with a background in water who has lived on the river for 30 years. She echoed other concerns about the dangers and property damage caused by boat traffic and large boats. In addition, however, she testified that she, with other citizens concerned about the impact of big boats and wakes on the river, formed an ad hoc group, River Friends, and are working closely in cooperation with the University of Idaho to collect data on these impacts; that she has been collecting “data on boat census, water quality, boat types, boat wakes on the Spokane River” for five years and has shared her data with IDEQ. *Id.*, 116:2-9; 121:13-24. She testified that she has focused on turbidity, which is how boats stir up the riverbed silt, and that her turbidity data is clear that bigger boats, and bigger wakes, cause greater turbidity causing the riverbed heavy metals and phosphorus sediments to remobilize into the river. *Id.*, 118:1 – 25. She requested, on behalf of the River Friends, that (1) IDL not approve large numbers of additional boat docks on the river until the water quality studies are complete and “there’s a better scientific understanding of the impact of big boats, big boat wakes, and the amount of traffic on the river,” *id.*, 119:18 – 120:2, and (2) IDL consider the

cumulative impact of the permits that they are approving rather than individual slips, *id.*, 121:1 - 3.

36. IDL concludes that the Application complies with the technical requirements set forth in IDAPA 20.03.04 and takes no position regarding whether the benefits of the project outweigh its detrimental effects. IDL requests that if the permit is granted it be conditioned on Applicant obtaining a submerged land lease as required for all encroachments.

CONCLUSIONS OF LAW

1. “Pursuant to the public trust doctrine, the State owns in trust the beds and banks of navigable waters for the use and benefit of the public, including the uses of navigation, commerce, and fisheries.” *Byrd v. Idaho State Board of Land Commissioners*, 169 Idaho 922, 928 (2022).

2. As authorized by the public trust doctrine, the Idaho legislature enacted the Lake Protection Act (“LPA”), Title 58, Chapter 13, Idaho Code, 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 weighed 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).

3. “The State Board of Land Commissioners has the power 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). Therefore, the duty of administering the Lake Protection Act falls upon the IDL.” *Kaseburg v. State, Bd. of Land Comm'rs*, 154 Idaho 570, 578, 300 P.3d

1058, 1066 (2013)(citing *See Brett v. Eleventh St. Dockowner's Ass'n*, 141 Idaho 517, 523, 112 P.3d 805, 811 (2005); *Lovitt v. Robideaux*, 139 Idaho 322, 326–27, 78 P.3d 389, 393–94 (2003).

4. The State Board of Land Commissioners exercises this power through the Idaho Department of Lands. I.C. § 58–101. Idaho Const. art. IX, § 7; I.C. § 58–101; I.C. § 58–119. Through its statutory authority, IDL promulgated Rules for the Regulation of Beds, Waters and Airspace Over Navigable Lakes in the State of Idaho under IDAPA 20.03.04.000 *et. seq.*

5. “An agency must exercise any authority granted by statute within the framework of that statutory grant. . . . It may not exercise its sub-legislative powers to modify, alter, enlarge or diminish the provisions of the legislative act which is being administered.” *Roberts v. Transportation Dep't*, 121 Idaho 727, 731–32, 827 P.2d 1178, 1182–83 (Ct. App. 1991), *aff'd*, 121 Idaho 723, 827 P.2d 1174 (1992)(internal citations omitted).

6. Applicant bears the burden to prove that IDL should grant the encroachment permit on the grounds that its Application complies with the LPA standards and IDL encroachment regulations. *See Intermountain Health Care, Inc. v. Board of Cnty. Comm'rs of Blaine Cnty.*, 107 Idaho 248, 251 (Ct. App. 1984), *reversed on other grounds by* 109 Idaho 299 (1985) (burden of proof is on the party challenging government action); *accord*, 2 Am. Jur. 2d Administrative Law § 342. Applicant must meet this burden by a preponderance of the evidence, which means that it must establish material facts that are more likely than not. *See Northern Frontiers, Inc. v. State*, 129 Idaho 437, 439 (Ct. App. 1996).

Type of Encroachment

7. The LPA defines navigational encroachments as “includ[ing] 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); *see also* IDAPA 20.30.04.10.15 (adding jet ski and boat lifts).

8. The LPA defines non-navigational encroachments as “includ[ing] all other encroachments on, in, or above the beds or waters of a navigable lake, including landfills or other structures not constructed primarily for use in aid of navigation.” I.C. § 58-1302(i); *see also* IDAPA 20.03.04.10.16 (adding bridges, utility and power lines, float homes and boat garages).

9. All activities in the proposed encroachment are intended to be used for commercial purposes. Therefore, commercial navigational standards apply to the navigational encroachment aspects of the Application. IDAPA 20.03.04.010.10.

10. The Application requests both commercial navigational and commercial non-navigational encroachments. The parties agree and the Hearing Officer finds that marina expansion and conversion of private moorage are navigational encroachments, and the rebuilding and relocation of the ship store and fuel dispensers are non-navigational encroachments.

11. IDL considers the Application as also requesting an encroachment beyond the line of navigation. The “line of navigability” is:

[A] line located at such distance waterward of the low water mark established by the length of existing legally permitted encroachments, water depths waterward of the low water mark, and by other relevant criteria determined by the board when a line has not already been established for the body of water in question.

I.C. § 58-1302(g); IDAPA 20.03.04.010.20. There is no evidence in the record that the line of navigability has been previously set. Further, the log boom running parallel along half of the permitted encroachment impedes navigation. This fact along with IDL’s practice of not including commercial or community permitted docks in setting the line of navigation, the existence of the community dock to the northwest, and single-family docks to the southeast, makes it particularly difficult to determine the actual line of navigation. It seems likely that the southeastern part of the

encroachment extends beyond the line of navigability. The IDL and Applicant agree that the encroachment is beyond the line of navigability. The Hearing Officer therefore finds that the encroachment is beyond the line of navigability.

12. The relocation of the Sheriff's boat garage within the marina is a "reconfiguration" that does not require review or authorization and is therefore not considered in this order. IDAPA 20.03.04.020.05.b.

Technical Requirements

13. The LPA technical requirements for the Application are set forth in Idaho Code section 58-1306(a):

Applications for construction, enlargement or replacement of a nonnavigational encroachment, a commercial navigational encroachment, a community navigational encroachment, or for a navigational encroachment extending beyond the line of navigability shall be submitted upon forms to be furnished by the board 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. Applications for nonnavigational, community navigational, or commercial navigational encroachments must be submitted or approved by the riparian or littoral owner.

14. Under IDL regulations, the Application must include:

- a. Lakebed profile in relationship to the proposed encroachment. The lakebed profile shall show the summer and winter water levels.
- b. Copy of most recent survey or county plat showing the full extent of the applicant's lot and the adjacent littoral lots.
- c. Proof of current ownership or control of littoral property or littoral rights.
- d. A general vicinity map.
- e. 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.
- f. Total square footage of proposed docks and other structures, excluding pilings, that cover the lake surface.

g. Names and current mailing addresses of adjacent littoral landowners.

IDAPA 20.03.02.020.05; *see also* I.C. § 58-1302(k). The necessary documentation was submitted with the Application and therefore Applicant meets this requirement. IDL-002.

15. “Only persons who are littoral owners or lessees of a littoral owner shall be eligible to apply for encroachment permits.” IDAPA 20.03.04.020.02. Applicant is shown by the Idaho tax records to be the owner of the parcel, with the right to apply for the permit and meets this requirement. IDL-002, AGYPG000033.

16. The Application must be accompanied by the respective fees. IDAPA 20.03.04.020.07.e. In this case, Applicant submitted the required fee for three applications – a commercial navigational encroachment, nonnavigational encroachment, and navigational encroachment beyond the line of navigability, and therefore met this requirement. IDL Agency Guidance Document, Navigable Waterways Program, Encroachment Procedures, ENC-007, Encroachment Permit Fee Schedule; IDL-002, AGYPG000003.

17. “If demolition is required prior to construction of the proposed encroachment, then the application must describe the demolition activities and the steps that will be taken to protect water quality and other public trust values.” IDAPA 20.03.04.020.01. Applicant is replacing old, dilapidated docks, thus requiring demolition. Applicant failed to address demolition in the Application and does not meet this requirement. However, IDL may condition the permit on complying with this provision and providing a plan to mitigate any impact to water quality and other public trust values.

18. Idaho Code section 58-1306(a) and IDAPA 20.03.04.020.02 require the littoral owner to apply for and sign the encroachment permit. Applicant is the littoral owner of the parcel, therefore this requirement is met.

19. Idaho Code section 58-1306 provides notice and hearing requirements for this proceeding. IDL, acting for the Board, was required to publish notice of the application within ten (10) days of its receipt, once a week for two consecutive weeks, “in a newspaper having general circulation in the county in which the encroachment is proposed.” I.C. § 58-1306(b). IDL met this requirement by publishing notice of the application in the Coeur d’Alene Press on September 27, 2024, and October 4, 2024. IDL-0006; AGYPG000043.

20. IDL was then required, upon receiving an objection and request for a hearing, to again publish a notice of the hearing once a week, for two consecutive weeks and to hold the hearing no later than 90 days from the filing of the application. I.C. § 58-1306(c); IDAPA 20.03.04.030.05. IDL met this requirement as well by publishing legal notice of the hearing in the Coeur d’Alene Press on November 30, 2024, and December 3, 2024, and holding the hearing on December 19, 2024.

21. IDAPA 52.30.03.04 further requires IDL to give notice to the adjacent property owners. This requirement was not met with respect to the Greenview Property owners. However, as set forth above, Greenview Property Owners Inc. received actual notice of the hearing, and a Board Member testified on behalf of the association, and other owners submitted written comment. No homeowner stated having been prejudiced for not receiving notice pursuant to the regulation.

22. The Hearing Officer finds that the Application is in substantial conformance with the technical requirements of Idaho Code sections 58-1306(a), 58-1302(k), IDAPA 20.03.04.020.07.a, 07.b, 07.e.ii & iv., subject to IDL conditions. *See Friends of Farm to Market v. Valley County*, 137 Idaho 192, 198-199 (2002) (finding substantial compliance with county ordinance justified grant of conditional use permit).

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IDL Substantive Regulations

Marina Expansion

23. IDAPA 20.03.04. 015.03 governs commercial marinas.

24. “Commercial marinas must have a minimum of fifty percent (50%) of their moorage available for use by the general public on a first come, first serve basis for free or rent, or a rent or lease agreement for a period of time up to one (1) year.” IDAPA 20.03.04. 015.03.a. Any existing commercial marina applying to convert some moorage to private must apply for a new encroachment permit and maintain 50% for public use. Applicant has met this requirement as the proposed configuration provides 185 out of 295 slips, or 62.7% of the slips, will be for public moorage. Live Dkt. 037.

25. “When private moorage is permitted, the public moorage must be of similar size and quality as private moorage, except for float home moorage as provided in Paragraph 015.03.f.” IDAPA 20.03.04. 015.03.g. Applicant proposes the following:

Slip Size (ft)	Private	Public	Total
24		24	24
24	44	28	72
24		20	20
26		12	12
26		6	6
28		6	6
30	11		11
32	40	72	112
36	8	9	17
40	7	8	15

Live Dkt. 037, Petitioner’s Supplemental Exhibit M33. The Hearing Officer finds that the proposed slips constitute similar numbers of similar sizes. Likewise, the slips are fairly dispersed amongst the dock fingers and are identical as constructed. Applicant meets this requirement.

26. IDAPA 20.03.04.015.03.c provides that unless otherwise specified by a local ordinance, a commercial marina must provide a minimum of one (1) parking space per two (2) public watercraft, and one (1) parking space per one (1) private watercraft. Applicant requires 110 parking spaces for its proposed private slips and 93 parking spaces for its public slips for a total of 203 parking spaces. Applicant has 228 parking spaces for the marina. Applicant meets this requirement.

27. IDAPA 20.03.04.015.03.d requires that marina customers be allowed access via a road if the commercial marina can be accessed from that road. Applicant meets this requirement through the ingress/egress easement.

28. IDAPA 20.0304.015.03.h provides that “[c]ommercial marinas with private moorage must form a condominium association, co-op, or other entity that owns and manages the marina, littoral rights, upland property sufficient to maintain and operate a marina, and private submerged land, if present.” Applicant is an LLC that currently owns and manages the marina, littoral rights, and upland property. StanCraft is an affiliate that appears from the record to be responsible for the operations. The Hearing Officer finds this requirement is met.

29. Applicant complies with IDL regulations concerning a commercial marina converting moorage to private moorage.

Ship Store and Fuel Dispenser Rebuild

30. Other than IDAPA 20.03.04.030.02, there are no specific IDL regulations addressing the non-navigational encroachment of the ship store and fuel dispenser rebuild. IDAPA 20.03.04.030.02 states:

Encroachments not in aid of navigation in navigable lakes will normally not be approved by the Department and will be considered only in cases involving major environmental, economic, or social benefits to the general public.

Approval under these circumstances is authorized only when consistent with the public trust doctrine and when there is no other feasible alternative with less impact on public trust values.

31. The parties do not dispute that Applicant must show that the non-navigational elements of the encroachment are a major public benefit and that there is no other feasible alternative with a lesser impact on lake values.

32. In a recent Final Order in another case, the Director disagreed that IDAPA 20.03.04.030.02, standing alone, was the correct standard for a non-navigational encroachment. *In the Matter of Application for Expansion of Existing commercial Facility, etc., Rivelle, LLC, dba StanCraft Companies*, IDL Case No. PH-2024-NAV-22-002; OAH Case No. 24.320-06, Final Order, January 17, 2025. The Director concluded that the correct standard is set by Idaho Code section 58-1301, and *Kootenai Environmental Alliance, Inc., v. Panhandle Yacht Club, Inc.*, 105 Idaho 622, 632-33, 671 P.2d 1085, 1095-96 (1983), which involves balancing “the protection of property, navigation, fish and wildlife habitat, aquatic life, recreation, aesthetic beauty and water quality . . . against the navigational or economic necessity or justification for, or benefit to be derived from the proposed encroachment.” And in that vein, whether a non-navigational encroachment is a “major public benefit” and “the only feasible alternative” is but one factor to consider and balance against the others.

33. The Director’s interpretation is IDL’s final word on the regulation. I.C. § 67-5243 through 5246. Whether the Director’s interpretation should and will be given deference depends on application of the four-part test set forth in *J.R. Simplot Co. v. Tax Com’n*, 120 Idaho 849, 820 P.2d 1206 (1991) (“*Simplot* deference analysis”).

34. An agency’s interpretation of a statute, or rule, will be given “considerable weight” if (1) the agency has been entrusted with the responsibility to administer the statute at issue, (2)

the agency's statutory construction is reasonable, (3) the statutory language at issue does not expressly treat the precise question at issue, and (4) any of the rationales underlying the rule of deference are present. *Mason v. Donnelly Club*, 135 Idaho 581, 583, 21 P.3d 903, 905 (2001) (citing *J.R. Simplot Co.*, 120 Idaho at 862, 820 P.2d at 1219).

35. Rules of statutory construction apply to the interpretation of administrative rules. *Mason*, 135 Idaho 581, 583, 21 P.3d at 905. "Interpretation of a rule should begin, therefore, with an examination of its literal words." *State v. Besaw*, 155 Idaho 134, 142, 306 P.3d 219, 227 (Ct. App. 2013) (citing *Mason*, 135 Idaho at 586, 21 P.3d at 908). "The language of the rule should be given its plain, obvious, and rational meaning." *Id.* "In addition, this language should be construed in the context of the rule and statute as a whole, to give effect to the rule and to the statutory language the rule is meant to supplement." *Wheeler v. Idaho Transp. Dept.*, 148 Idaho 378, 384 (2009) (citing *Mason*, 135 Idaho at 586, 21 P.3d at 908).

36. A regulation that overreaches the agency's authority is invalid. *Mason*, 135 Idaho at 583.

37. Applying the four-prong test set forth in *J.R. Simplot Co.*, the first factor is unquestionably met - IDL has been entrusted with the responsibility of administering the Lake Protection Act. I.C. §58-1301 *et seq.*

38. The Hearing Officer finds the second factor more difficult however and concludes that it is not met. The Director's interpretation of the regulation as a factor in the balancing test is difficult to reconcile with the plain language of the regulation or giving it any meaning or purpose. The Hearing Officer therefore finds that interpreting the regulation to be a factor in the required balancing test does not comport with principles of statutory construction. *State v. Mercer*, 143 Idaho 108, 109, 138 P.3d 308, 309 (2006) (Statute's plain language must be given its plain

meaning; “effect must be given to all the words of the statute if possible, so that none will be void, superfluous, or redundant”), *holding modified by State v. Wilson*, 172 Idaho 495, 534 P.3d 547 (2023).

39. The Hearing Officer, however, agrees with the Director’s conclusion that IDAPA 20.03.04.030.02 is not the correct standard for a non-navigational encroachment under the Lake Protection Act, I.C. § 58-1301 and 1306. The regulation does not allow IDL to consider the private benefits of the non-navigational encroachment in the balance and requires Applicant to show that it is the only feasible alternative, when the LPA specifies that private benefits must be considered in the balance for all encroachment permits, and does not require that there be no other feasible alternative, only that the benefits outweigh the detriments. I.C. § 58-1301; 1306. The Hearing Officer concludes that the statute governs over the regulation, and will apply the statutory standard rather than the regulation. *See Mason*, 135 Idaho at 583.

Substantive LPA Requirements

40. The applicable substantive LPA standards are Idaho Code sections 58-1301, 1306(b), (d), and (e):

- a. 58-1301: IDL should give consideration to “the protection of property, navigation, fish and wildlife habitat, aquatic life, recreation, aesthetic beauty and water quality” and weigh those factors “against the navigational or economic necessity or justification for, or benefit to be derived from the proposed encroachment.” *See also* IDAPA 20.03.04.012.01.
- b. 58-1306(b): IDL should consider the “effect of the proposed encroachment upon adjacent property and lake value factors of navigation, fish and wildlife habitat, aquatic life, recreation, aesthetic beauty or water quality.”
- c. 58-1306(d): IDL should consider “the economic or navigational necessity, justification or benefit, public or private, of such proposed encroachment as well as its detrimental effects, if any, upon adjacent real property and lake value factors.”

- d. 58-1306(e): “if . . . following a hearing, the board determines that the benefits, whether public or private, to be derived from allowing such encroachment exceed its detrimental effects, it shall grant the permit. As a condition of the permit, the board may require a lease or easement for use of any part of the state owned bed of the lake.

41. Under the Public Trust Doctrine, IDL must take a close look at “the degree of effect of the project on public trust uses, navigation, fishing, recreation and commerce; the impact of the individual project on the public trust resource; the impact of the individual project when examined cumulatively with existing impediments to full use of the public trust resource, *i.e.* in this instance the proportion of the lake taken up by docks, moorings or other impediments; the impact of the project on the public trust resource when that resource is examined in light of the primary purpose for which the resource is suited, *i.e.* commerce, navigation, fishing or recreation; and the degree to which broad public uses are set aside in favor of more limited or private ones.” *Kootenai Env'tl. All. v. Panhandle Yacht Club*, 671 P.2d 1085, 1092-93 (Idaho 1983).

42. If following a hearing, IDL determines that the benefits, whether public or private, to be derived from allowing such encroachment exceed its detrimental effects upon adjacent property, navigation, fish and wildlife habitat, aquatic life, recreation, aesthetic beauty or water quality, it shall grant the permit. I.C. § 58-1306(e).

Littoral Rights

43. IDAPA 20.03.04.015.13.e provides that any encroachment within 25 feet of an adjacent property littoral rights line is presumed to have an adverse impact on those rights.

44. Littoral rights are “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. Docowner’s Assoc., Inc.* 141 Idaho 517, 521 (2005) (citations omitted); I.C. § 58-1302; *see also Newton v. MJK/BJK, LLC*, 167 Idaho

236, 243 (2020); *Lake CDA Invs., LLC v. Idaho Dep't of Lands*, 149 Idaho 274, 284 (2010). When infringement of littoral rights by the placement of an encroachment is disputed, the IDL must determine the littoral rights and the impact of an encroachment on the littoral rights of adjacent properties. *Brett*, 141 Idaho at 521.

45. Littoral right lines generally “extend waterward of the intersection between the artificial or ordinary high water mark and an upland ownership boundary to the line of navigation. They will “generally be at right angles to the shoreline.” IDAPA 20.03.04.010.34.

46. The “line of navigability” is:

[A] line located at such distance waterward of the low water mark established by the length of existing legally permitted encroachments, water depths waterward of the low water mark, and by other relevant criteria determined by the board when a line has not already been established for the body of water in question.

I.C. § 58-1302(g); IDAPA 20.03.04.010.20.

47. However, where the shoreline is not straight, Idaho courts have held that “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, 508-509, 234 P.2d 446, 453-54 (1951). “In fact, the only thing that uniformly applies is that courts strive to ensure that the shoreline owners have a ‘proportional share of deep water frontage.’” *Robideaux v. Idaho Dep't of Lands*, No. CV 2005 8728, 2006 WL 3304476, at *4 (Idaho Dist. Oct. 10, 2006)(citing *Driesbach*, 71 Idaho at 509, 234 P.2d at 454.)

48. Applicant contends, and IDL agrees, that the proposed encroachment falls outside of the 25-foot buffer and therefore the presumption that the encroachment has an adverse effect on adjacent properties does not apply.

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49. There was some public concern that the proposed encroachment would result in docks being built in front of the Greenview Condominium property which infringes on the owners' littoral rights. The comment further expressed that Applicant incorrectly determined Greenview Condominium's littoral rights line at a 45 degree angle off the shoreline.

50. Applicant provided aerial photographs outlining the boundary property line and the proposed configuration. *See* IDL-002, AGYPG000007. The adjacent dock runs approximately 90 degrees from the shoreline and is shown to be outside of the 25 foot buffer from the property line. Accordingly, the Hearing Officer does not presume that there is an adverse impact on Greenview Condominiums littoral rights. Further, the diagrams show that the dock is not placed in front of the Greenview Condominium buildings and jets directly straight out in front of Applicant's shoreline. *See* IDL-002, AGYPG000007. There is a diagram that shows a line at about a 45 degree angle from the shoreline to the north end of the log boom, which is in front of the condos. IDL-002, AGYPG000032. However, this diagram appears to be a visual depiction of Applicant's contention regarding the full area of its current encroachment and is not a diagram of the proposed marina. There is no evidence in the record that the dock itself infringes on the Greenview Condominium property.

Benefits and Detriments

51. Applicant contends that the Marina 33 project provides the following public and private benefits:

- a. The expansion will increase public and private moorage at the marina, which benefits the public because by creating more opportunities for recreation on the river, and there is a shortage of highly desired boat slips on the Spokane River and Lake Coeur d'Alene. Mayor Jacobson agreed on behalf of the Post Falls residents as did two public comments. IDL-025, PC000008; Live Dkt. 029, PC0000014.

- b. The reconfiguration will aid in navigation by providing additional public slips and day slips which will allow those boaters anchoring in the middle of the channel a safe place to anchor and open the channel. It will also promote safety by helping to enforce the No Wake Zone because the ship store will be larger and closer to the boat traffic entering the No Wake Zone and provide a visual cue to slow down.
- c. There is little direct impact on navigation because the expansion will not extend beyond the area of the log boom, which is already an encumbrance to navigation, and because the entire area is a No Wake Zone requiring boats to travel at No Wake speed or less than 5 mph. IDL agrees.
- d. The removal of the log boom will be another benefit because it will clean up the river by removing dead and decaying logs and provide order to the traffic pattern in the area.
- e. The expanded marina will provide economic benefits to both Applicant and the public by creating greater revenue. The larger submerged land lease will result in higher base rent, and the additional slips and larger store will increase the percentage rents paid to IDL.
- f. Expanding the ship store will also benefit the public by enabling Applicant to provide more services and employ more people with better working conditions. Relocating the store as proposed will provide better accessibility to the gas pumps, a better view of visitors needing service and more moorage along the dock to allow for moorage and general enjoyment of the area and amenities. The store itself allows for convenient refueling and purchasing recreational and safety items. Positioning the store at the end of the boardwalk is also more efficient than having boaters tie boats to the boardwalk and walk upland to purchase necessary items.

52. Objectors and overwhelming public comment primarily from residents who either reside on the river or have family who do express the view that more access is a benefit. They contend that the river is at “maximum capacity” and no additional slips should be authorized, or not authorized until research is conducted or completed on the impact of the boat traffic on the river.

53. Idaho Code section 58-1306 provides that IDL “may also furnish copies of the application and accompanying plans to other state agencies having an interest in the lake to determine the opinion of such state agencies as to the likely effect of the proposed

encroachment upon adjacent property and lake value factors of navigation, fish and wildlife habitat, aquatic life, recreation, aesthetic beauty or water quality,” and that within thirty days, “such other state agency shall notify the board of its opinion and recommendations, if any, for alternate plans determined by such agency to be economically feasible to accomplish the purpose of the proposed encroachment without adversely affecting unreasonably adjacent property or other lake value factors.” No agency commented on this application. Other than the public comments expressing concern about the impact of the project there is no evidence in the record of detrimental effects of the project.

54. There was significant testimony under oath and in written comments from first-hand public accounts that river traffic currently is dangerous on weekends and holidays during the peak season, and that the shoreline and property is being damaged due to an increase in large boats creating large wakes, and that the damage is detrimental to the river and the property owners who expend significant funds repairing and protecting the shoreline. The Hearing Officer finds that the testimony regarding the dangerous conditions is competent and credible. However, the overwhelming testimony as to the cause of the safety issues and damage is the increased prevalence of very large boats or boats with large wakes operating too fast ignoring the No Wake Zone and other safety regulations, and that law enforcement is not enforcing the safety regulations.

55. The public raised legitimate concerns about the potential impact of current circumstances on the river, and they are no doubt extremely frustrating and disruptive to riverfront homeowners’ enjoyment of the river. It is also clear from the record that some riverfront homeowners are expending resources, sometimes significant expense, repairing and protecting their shoreline.

56. The Hearing Officer finds however that there is not sufficient evidence in the record as to the cause of the shoreline erosion, or that the detriments will be increased by adding slips to the marina, or that not adding slips will benefit the river. As it stands, the evidence in the record is that adding slips might increase river traffic, which might increase shoreline erosion. The Hearing Officer cannot base a decision on speculation and must make findings of fact based on evidence in the record.

57. Idaho Department of Parks and Recreation is charged with administering the Idaho Safe Boating Act. I.C. §§ 67-7004 & 7003(6). Kootenai County Sheriff is charged with enforcement of the Idaho Safe Boating Act. I.C. § 67-7028. Neither of these agencies provided comment.

58. Likewise, although compelling testimony was provided regarding the impact of large boats and wakes on water quality, and that data is shared with IDEQ on these issues on the Spokane River, IDEQ did not comment. Ms. Stiger reported research that is in process but not concluded.³ IDEQ is the agency charged with protecting water quality and provides recommendations to mitigate potential risks to water quality even when it is beyond its jurisdiction to monitor. There is no evidence or reason in the record to believe IDEQ would not provide comment if it has reason to believe the project would negatively impact the water quality. IDEQ's silence indicates to the Hearing Officer that IDEQ does not consider additional boat slips to be a risk to the water quality such that IDEQ would recommend mitigation requirements. The Hearing

³“[P]ublic witnesses offering expert opinions at hearing or detailed analyses or detailed exhibits must comply with these rules and any order of the presiding officer regarding the prehearing disclosure of expert testimony.” IDAPA 62.01.01.207. Ms. Stiger did not provide analysis or detailed exhibits, and does not appear to have intended to offer an expert opinion, but rather an informed and educated cautionary recommendation.

Officer finds that there is insufficient evidence in the record to conclude that Applicant's proposed increased boat slips will cause detriments to the river value factors.

59. Considering the cumulative impact of the amount of traffic on the river in total to ensure its preservation and long-term viability and health may very well be a prudent course of action. The Hearing Officer is not unsympathetic to the residents' concerns about the impact of additional traffic on the river, particularly being unable to use the river for swimming, fishing and boating on weekends and holidays during the peak season because it has become too dangerous. However, public damage caused by the public's illegal conduct is not within IDL's jurisdiction to resolve under the statutes and regulations governing encroachments.

60. There is substantial evidence in the record that the Marina 33 project will provide private and public economic benefits, increase opportunities for public access to and use of the river, improve the public's experience of the river by providing more services and meeting the increased need efficiently and continuing to provide a convenient source for fuel and necessities. There is also some evidence that the Marina 33 project will contribute toward mitigating the undesirable actions of boaters that cause safety issues and a nuisance for nearby private property owners by increasing the presence of the marina and by offering day slips. The Hearing Officer concludes that there is less evidence that the Marina 33 project will have detrimental effects on the river value factors generally. The Hearing Officer concludes therefore that the benefits of the project outweigh the detrimental effects and that the Application should be approved with the following conditions.

RECOMMENDED ORDER

Based on the foregoing Findings of Fact and Conclusions of Law, the Hearing Officer recommends that this Application be **APPROVED**; with the following conditions:

1. Applicant enter into the required submerged land lease.
2. Applicant develop a comprehensive traffic control plan for accessing the marina, ship store, and fuel dispensers, that ensures public safety.
3. Applicant develop a plan for demolition in consultation with IDEQ that ensures protection of water quality.

RULE 625—RECOMMENDED ORDER NOTICE

This is a recommended order of the hearing officer. It will not become final without action of the agency head. By law, the agency head must issue a final order within thirty (30) days of the close of the evidentiary portion in this case, which occurred on October 18, 2024. *See* I.C. § 58-1306(c). The agency head's final order in this case must be issued no later than **February 14, 2025**.

If either **party** disagrees with this recommended order, pursuant to Idaho Code section 67-5244, the **party** may file an exception to this recommended order with the agency head. Public witnesses under Idaho's Administrative Procedure Act are not considered parties and, therefore, exceptions from the public cannot be accepted. *See* IDAPA 62.01.01.207. Motions for reconsideration filed with the presiding officer will not be considered. You may file any exception you may have to this recommended order, with a supporting brief, directly with the agency head within two (2) business days from the service date of this recommended order, or **no later than February 11, 2025** unless the agency head sets a different deadline.

If another party has filed exceptions to this recommended order with the agency head, you must file any opposition brief within one (1) business day from the service date of the exception, or **no later than February 12, 2025**. No further briefing by any party will be permitted unless

the agency head, in their discretion, requests it. Oral argument will not be allowed unless requested by the agency head.

DATED: February 7, 2025.

OFFICE OF ADMINISTRATIVE HEARINGS

/s/ Merritt Dublin

Merritt Dublin
Administrative Law Judge

CERTIFICATE OF MAILING

I hereby certify that on this 7th day of February 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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/s/ Elaine Maneck
Elaine Maneck, Deputy Clerk
Office of Administrative Hearings