

# STATE BOARD OF LAND COMMISSIONERS

November 18, 2025

Regular Agenda

## Subject

Adoption of Pending Rule, IDAPA 20.03.04, Rules for the Regulation of Beds, Waters, and Airspace Over Navigable Lakes in the State of Idaho

## Question Presented

Shall the Land Board adopt the pending rule for IDAPA 20.03.04, Rules for the Regulation of Beds, Waters, and Airspace Over Navigable Lakes in the State of Idaho?

## Background

The Idaho Department of Lands (Department) regulates encroachments on navigable lakes pursuant to Title 58, Chapter 13, Idaho Code, and IDAPA 20.03.04.

Following Executive Order 2020-01, Zero-Based Regulation, this rule chapter is scheduled for a comprehensive review in 2025. Negotiated rulemaking for these rules was approved by the State Board of Land Commissioners (Land Board) on February 20, 2024. The Department began negotiations in spring of 2024.

## Discussion

The Department's outreach for negotiated rulemaking included the following:

- Posting Notices in the Idaho Administrative Bulletin, the Department's rulemaking webpage, and Townhall Idaho in 2024 and 2025.
- Sending postcards to all lessees, major real estate associations, and state agencies in 2024 and 2025.
- Sending emails to encroachment permittees, lessees, and state and local agencies.
- Hosting public meetings, each with a video-conferencing option.

In the 8 meetings held over 2024 and 2025, 38 non-Department members attended the meetings in person and 23 attended the meetings virtually.

With no proposed fee increases, the discussion in the meetings centered around the extent to which the Department may regulate encroachments. Department staff fielded many questions about regulatory authority, citing the Lake Protection Act, Title 58, Chapter 13 Idaho Code.

The Department received 42 distinct comments from 11 submissions, which were addressed in the negotiated rulemaking summary, included as Attachment 1.

The proposed rule was published in the September 2025 Administrative Bulletin (Attachment 2). A public hearing was held on September 11, 2025, to solicit public testimony. A total of 3 non-Department members attended the hearing. No attendees provided testimony. Four written comments were received during the proposed rule comment period. A summary of written comments is included as Attachment 3. Several edits to the rule were incorporated based on Department review and grammatical adjustments. Attachment 4 is the draft pending rule consisting of the proposed rule with changes highlighted in yellow.

The pending rule reduces the overall regulatory burden by reducing the total word count and the number of restrictive words. The pending rule includes the following changes:

- 13.48 percent reduction in word count, 27 percent reduced restrictive words. The rule has been reduced by a total of 3 pages.
- Included definitions for common encroachments including breakwater, seawall, water line, residential area, and marine motor fuel dispensing facility.
- Incorporated by reference International Fire Code adopted through IDAPA 18.08.01.

If approved by the Land Board, the Department will submit the Notice of Adoption of Pending Rule (Attachment 5) to the Office of the Administrative Rules Coordinator for the 2026 legislative session.

### **Recommendation**

Adopt the pending rule with changes to the proposed rule text for IDAPA 20.03.04, Rules for the Regulation of Beds, Waters, and Airspace Over Navigable Lakes in the State of Idaho.

### **Board Action**

### **Attachments**

1. Negotiated Rulemaking Summary
2. Notice of Proposed Rulemaking
3. Proposed Rule Comments Summary
4. Pending Rule Text (changes to Proposed Rule)
5. Draft Notice of Rulemaking—Adoption of Pending Rule

**Negotiated Rulemaking Summary**  
**IDAPA 20.03.04 — Rules for the Regulation of Beds, Waters,**  
**and Airspace over Navigable Lakes in the State of Idaho**  
**Docket No. 20-0304-2401**

Members of the public participated in the Department’s negotiated rulemaking process by attending the meetings and submitting written comments. Key information considered by the Department included applicable statutes, information provided by the public, and the Department’s legal counsel during the negotiation process. In addition, the Department solicited information from the Idaho State Fire Marshal and the Idaho Office of Administrative Rules.

Key documents from the rulemaking record, which includes rule drafts, written public comments and documents distributed during the negotiated rulemaking process, are available at <https://www.idl.idaho.gov/rulemaking/docket-20-0304-2401/>. The entire rulemaking record is available for review upon request to the Department. At the conclusion of the negotiated rulemaking process, the Department formatted the final rule draft for publication as a proposed rule in the Idaho Administrative Bulletin.

In developing the draft rule, the Department considered all comments received during the negotiated rulemaking process. Following are comments on the draft rule and the Department’s response to those comments:

Commenter	Written Comments	Rule Section	Response
Brian Hirschi 5/8/2024	IDL should adopt rules specific to Bear Lake, since its fluctuating water levels distinguish it from the other large recreational lakes.	General Encroachment Standards 015.15	1. Lake-Specific encroachment permit terms are not within the scope of this rulemaking and are written as conditions of the permits. IDL will consider adding a condition specific to the needs of Bear Lake.
Brian Hirschi 5/8/2024	IDL should clarify that the one guaranteed moorage for littoral owners is not a limitation on moorages for commercial operations/marinas with lots of beachfront	Mooring Buoys 015.09	2. IDL adjusted the draft of the rule for mooring buoys, changing the rule from “one mooring buoy per littoral owner” to “one mooring buoy per single family owner”. This will enable commercial and community operations to have more than one mooring buoy.

Commenter	Written Comments	Rule Section	Response
Brian Hirschi 5/8/2024	The rules should more expressly contemplate your jet ski moorage system and/or contain a "catch-all" set of standards that applies to things that don't fit neatly within the categories of encroachments in the rules.	Encroachment Standards 015	3. The definitions of "encroachments in aid of navigation" and "encroachments not in aid of navigation" found in I.C. 58-1302 help define navigational and non-navigational encroachments.
Brian Hirschi 5/8/2024	The rules should define the term "encroachment" and/or identify items and activities that do not qualify as encroachments.	Definitions 010	4. The definitions of "encroachments in aid of navigation" and "encroachments not in aid of navigation" found in I.C. 58-1302 help define navigational and non-navigational encroachments.
Dylan B. Lawrence 6/12/2024	This rule purports to incorporate the International Fire Code (IFC) by reference. In my experience, an agency incorporates other legal provisions by reference when it has legal jurisdiction to enforce them. I do not read Director Miller's April 17, 2024 Final Order to suggest IDL has jurisdiction to enforce the IFC, which is administered by the Department of Insurance and local fire authorities. Clearly, the IFC has been adopted with amendments by the State of Idaho, and it is enforceable law. However, I question the propriety of IDL's adoption of the IFC in administrative rules specifically promulgated under the Lake Protection Act (LPA).	Incorporation by Reference 003.04	5. IDL does not purport to enforce the International Fire Code (IFC), but encroachments must fall within the IFC guidelines as they are enforced by the Idaho State Fire Marshal.
Dylan B. Lawrence 6/12/2024	The terms "encroachment," "navigational," and "nonnavigational" are all key concepts under the LPA and the Encroachment Rules, yet they remain undefined. In my experience, it is very unusual for such important terms in a regulatory program to remain undefined. In my opinion, there is enough legislative guidance in the LPA to provide definitions in the Encroachment Rules. This would	Definitions 010	6. There is no current definition of "encroachment" in either 58-1302 or IDAPA 20.03.04. However, there are definitions of "encroachments in aid of navigation" and encroachments not in aid of navigation" in I.C. 58-1302(h) and 58-1302(i). These terms may be used interchangeably with "navigational" and "nonnavigational" encroachments.

Commenter	Written Comments	Rule Section	Response
	be particularly helpful for parties who are not represented by attorneys or consultants		
Dylan B. Lawrence 6/12/2024	I suggest inserting the phrase "subject to decisions by the Idaho Supreme Court" before "will generally be at right angles to the shoreline." As I recall, the Idaho Supreme Court applies flexible standards to littoral lines that are highly specific to the particular lake and shoreline at issue. For unrepresented parties, it may be helpful to reference generally that it is important to consult Idaho Supreme Court opinions on this issue.	Definitions 010.26	7. IDL will consider this, but littoral right lines can also be determined through upland owner agreements, or local county officials. IDL will remove the sentence that states "Littoral right lines will generally be at right angles to the shoreline and are not an extension of upland property lines."
Dylan B. Lawrence 6/12/2024	The new language is helpful for littoral owners on Bear Lake, but the language is still vague and subject to multiple interpretations. IDL should more specifically state whether this is a minimum or maximum of one moorage per littoral landowner. To the extent it is the latter, I question the legal basis for the limitation in the first place. If IDL prefers docks to moorage, it should say so expressly in the rules so that applicants are aware of the preference.	Encroachment Standards Rule 015.09	8. IDL adjusted the draft of the rule for mooring buoys, changing the rule from "one mooring buoy per littoral owner" to "one mooring buoy per single family owner". This will enable commercial and community operations to have more than one mooring buoy. IDL considers docks and mooring buoys to be navigational aids.
Dylan B. Lawrence 6/12/2024	See general comment above. IDL has given itself authority to adopt lake specific rules. It should do so for Bear Lake.	General Encroachment Standards 015.15	9. Lake-Specific encroachment permit terms are written as conditions of the permits. IDL will consider adding condition(s) specific to the needs of Bear Lake.
Dylan B. Lawrence 6/12/2024	The language about what "will" be considered an encroachment should either be removed or revised to more specifically track the language of the LPA, which does not reference "dredged material" at all, and which only references "landfills" once. Otherwise, IDL is administratively revising the Legislature's definition of encroachments.	Applications 020.01	10. IDL has removed the language regarding all fill material from this section and moved it to the encroachment standards section under 015.16.

Commenter	Written Comments	Rule Section	Response
Dylan B. Lawrence 6/12/2024	The standards in the LPA and its three sets of rules that govern when easements and leases are required are extremely vague. When legal standards are vague, courts will often decline to enforce them, because the legislature and agency have not provided the courts with enough guidance. I believe that is the case here. Given the lack of guidance provided by the Legislature regarding easements and leases, IDL should develop rules that are consistent with the traditional understanding of those terms. There is significant judicial case law defining leases and easements. IDL should use those as guidance in developing rules governing leases.	Leases and Easements Rule 055.01	11. IDL will consider this comment as we consider future revisions to IDAPA 20.03.09 –Easements on State-Owned Navigable Waterways and 20.03.17 – Rules Governing Leases on State-Owned Navigable Waterways.
Gary MacDonald 11/20/2024	ACCESS to the water: Generally speaking, unless the land itself is owned by a government agency, the public at large does not have access to the water unless granted by the land owner. It is not likely that a private citizen is going to promote or allow the general public to have access to the water. That privilege has historically been provided by the state via public access sites AND private enterprises like ours, resorts and marinas that cater to the public. For a fee a citizen or a visitor can rent space at a marina for their watercraft. With that fee they are free to enjoy the docks and property. It used to be that almost all marinas were truly open to the public. Even if you were not a slip renter, you would still be able to walk the docks, use the restrooms, or just be "on the water." increasingly you will find gates on the docks and the public is locked out. In Bayview, I believe that MacDonald's Resort is the only place that the public can freely visit. Resorts and marinas who welcome the public provide genuine public	General	12. IDL does not control public access to navigable waterways, but there are terms in leases that allow discounts to commercial marinas to provide public moorage at their marina. These discounts are set and approved by the authority of the Land Board. There is room to allow for more discounts if comments are brought before the Land Board.

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	access including the right to fish, access to restrooms, or just a pleasant walk on the docks. The current Idaho rules do make an attempt to reward marinas that provide public access, BUT public access is absolutely not being enhanced, it is being eroded. We really need to reverse this trend because the population is increasing and the state and counties do not have sufficient resources to give the public access to "their" water. The days are approaching quickly where people will drive by on the roadways and remark, "took at that beautiful lake, too bad we can't get near it."		
Gary MacDonald 11/20/2024	Resort/Marina sales to Developers: There is tremendous pressure on resort/marina owners to sell to developers. The developer then carves up the property into parcels, advertises that the buyer can "own your private access to the lake," and with the sale the public loses another possible access to the waterfront. It is extremely easy to find examples of this public access erosion. In the past, it would be common to find multiple family resorts that offered public access to the water. There are lakes now where there are no resorts or marinas. All of the former resorts have been made into parcels and sold which effectively locks out residents and tourists. I believe that the state needs to actively work on programs that will keep family operations going so that the temptation to just "hang it up and take the money" is less of an option. When family run marinas are lost to the developers and their individual sales, they will NEVER return to a property that welcomes the public at large. The citizens of Idaho and tourists who bring vacation dollars to Idaho will be locked out. We can't let this happen.	General/ Commercial Marina	13. IDL does not have jurisdiction on operations above the Ordinary High Water Mark of a navigable lake. It would be at the discretion of local city and county officials to limit the development of waterfront properties.

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Gary MacDonald 11/20/2024	Layers of "Red Tape" and let's have more!? - At the meeting in Sandpoint this spring one of the rule "proposals" was the idea of incorporating the "Universal Building Code" or something similar into the state permit process. I mentioned at the time that I felt the proposal was an unnecessary burden on the resort/marina owners. I still feel that way because I have not seen a need for another layer of bureaucratic oversight of a resort/marina operation. Additionally, the compliance process has REAL costs associated with the increased compliance level. One would ask, "so what." Well, the "so what" part means that those costs have to be passed on to the people using the facility. That results in higher prices. Every year when our family meets to set prices, we actually worry about individual people who may not be able to afford to stay here. We want to continue to include as many income levels as possible in our customer and visitor clientele. If additional layers of compliance requirements are added, the financial impact will be the possibility that someone will be excluded because of that additional cost.	General/ Incorporation by Reference	14. IDL has removed the incorporation of the International Building Code rules from the draft rule. IDL anticipates no additional costs of compliance with the current rule draft.
Gary MacDonald 11/20/2024	A subject mostly unique to Bayview: Bayview for my 73year lifetime and even previous to my birth, has been a land and water village. The floathouses/floathomes that make up a good deal of waterfront offer a unique community. Tourists visit Bayview to view and sometimes utilize that unusual community. The health of the floathouse/floathome community is reliant on people being able to continue to improve and maintain the integrity and the look of the buildings. I believe that within the leased area that comprises our marina, our customers should be given a good	General/ Pend Oreille Specific/ Float Homes	15. Float homes must meet minimum standards for plumbing and electrical work, and must comply with minimum standards for building according to regional building codes. IDL does not allow new float homes nor the conversion of existing buildings into float homes.



Commenter	Written Comments	Rule Section	Response
	<p>degree of latitude when it comes to interior home modifications. I really don't see a need to overly complicate life by restricting my customers choosing to make improvements or modifications to their home's interior layout or uses. We want to promote those improvements to help the floathouse/floathome community remain vibrant so they will not ever constitute an eyesore. We want them to invite ownership and vitality! A. Having said that, we are <u>not</u> in favor of the proliferation of floathomes/floathouses. We are not in favor of making boat houses, which were originally built just to house boats, into floathouses/floathomes with their necessary plumbing and living facilities. We are comfortable having the 100 or so historical floathouses/floathomes as the unique community it is.</p>		
<p>Gary MacDonald 11/20/2024</p>	<p>Boat Sewage, Gray Water, Sanitation: Believe it or not, I think that the boat sewage pump out facilities at MacDonald's Resort are the ONLY working pump outs on the entire Southern end of Lake Pend Oreille. For years I thought that all marinas were required to have them, but I think I was wrong. Here are some of my comments regarding the current situation:</p> <p>A. We pump out sewage from a LOT of boats and we charge a small fee for that work. However, there are some boats, who very likely have heads/toilets that we NEVER see. I know they have the same bodily functions that I do, but we never see them at our pump out stations. I believe that they are illegally dumping their sewage overboard via macerator pumps exiting the boats via thru-hulls. Our recreational waters are being compromised by this practice.</p>	<p>General/Pump-Out/Sewage Disposal</p>	<p>16. Pump out of grey water and sewage is regulated under the Idaho Safe Boating Act, and rules administered by the Idaho Department of Environmental Quality. IDL does not regulate watercraft pump-out. Inspection of watercraft is regulated by the local marine deputies, or the U.S. Coast Guard.</p>

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	<p>B. Some of the larger monohull boats, power and sail, and most houseboats have extensive gray water producing facilities including sinks, tubs, showers, and even clothes washers with dryers. It is a rare boat that has graywater retention facilities. Most of this gray water is going right into the take along with the suspended soils, organic matter, soap, shampoo, detergent, and various and sundry additives. Again, this practice, with the increase in human population and lake use, will compromise our recreational waters. The take can take some of this abuse, but the growing population will likely overtax the take's ability to remain unsullied.</p> <p>C. What should be done? I believe that in order to get a boat license any boat with head/toilet facilities should be inspected by an authorized technician. That inspection should confirm that the boat does have an adequate holding tank for sewage. If there is an overboard discharge option via y-valve or direct discharge that option should be sealed with a tamperproof tag so that it cannot be used. If on inspection by law enforcement the tag has been compromised there should be a weighty fine so that people are not tempted to cheat. In past years I have had conversations with the local health district and they have been interested but the problem has certainty not been at the top of their List. No progress on possible enforcement has been done to date. However, the increasing population might necessitate another look at the growing problem. Regarding gray water, that is a more complicated issue because having to retrofit boats for gray water retention would be a big problem. However, it is worth addressing so that over time boats may be required to be</p>		

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	equipped with gray water retention as an industry standard. It is a subject worth some time and investigation.		
Gary MacDonald 11/20/2024	Abandoned Boats on Idaho State Property: I didn't think I would live long enough to see the day when people would just abandon boats. Now it is turning into a real problem. There is a boat now stuck in the mud in Buttonhook Bay because the owner left it there and when the lake went down it got stuck. That particular boat has been there all season. He is not paying for any dockage or space use to the state. It is an eyesore and has been taking up space that people who actually buy a boat license could use. The sheriff's office has been contacted as well as the Parks and Recreation people. Everyone wants to do something, but no one seems to have any authority. I think we need some legislation giving the state the right to lien the owner's property so there is a way to get the boat out of the water, sold, sent to the landfill, or other possibilities. At this point in time, it seems like the authorities do not have a clear path to removal.	General/Illegal Dumping and Waste	17. Illegal dumping of vessels is a problem that is managed by several entities. The marine sheriff deputies have the authority to cite individuals that dumps vessels or docks. Ultimately, the upland land owner is responsible for any unpermitted encroachments within their littoral right lines. Unpermitted encroachments are a violation of I.C. 58-1301, 58-1303, and are subject to penalties outlined in I.C. 58-1308 and 58-1310.
Coeur d'Alene Tribe 4/30/2025	There is significant inconsistency regarding the scope and applicability of the proposed rules, which must be remedied. The Heading and Sections 20.03 .04.012.02., .015.16.a., .015.16.a.(misnumbered in draft rule), .020.01., and .055.02., all state the rules apply to "navigable waterways." Yet the Scope (20.03.04.001) and numerous other Sections, confine the regulations to navigable lakes. The Lake Protection Act, Title 58, Chapter 13, Idaho Code applies specifically to navigable lakes, not navigable waterways. If IDL intends to extend these rules to all navigable waterways under its authority in I.C. § 58-104(9),	Scope 001	18. Navigable lakes are defined in Title 58, Chapter 13 Idaho Code. This definition does not limit the authority of federally-recognized entities. The title of the rule is now "Rules for Encroachments on Navigable Lakes". The other references to "waterways" have been changed to "lakes".

Commenter	Written Comments	Rule Section	Response
	then it should clearly state so and remove all inconsistencies.		
Coeur d'Alene Tribe 4/30/2025	Section 20.03.04.001. Scope reads: "These rules govern encroachments on, in, or above navigable lakes in the state of Idaho." However, there are navigable lakes in Idaho under the exclusive jurisdiction of the Coeur d'Alene Tribe and the Federal Government. Please revise the Scope to read: "These rules govern encroachments on, in, or above navigable lakes in the state of Idaho, except where those lakes are in the exclusive jurisdiction of a Federally recognized Indian tribe or the Federal Government."	Scope 001	19. See previous comment.
Coeur d'Alene Tribe 4/30/2025	1. As a general rule, key terms in regulations should be defined for clarity and simplicity purposes. Defining key terms in administrative rules is particularly important when the statutory definitions referenced by the rules are non-exclusive. a. The statutory definition of Encroachments in Aid of Navigation "means and includes 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). This key term must be defined in the rules because the insertion of the terms "includes" and "other such aids" renders the statutory list of encroachments non-exclusive-without a definition there is no clarity on what "other such aids" are considered encroachments in aid of navigation. b. The statutory definition of Encroachments Not in Aid of Navigation "means and includes 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	Definitions 010	20. a. IDL has determined that the definition of "encroachments in aid of navigation" defined in I.C. 58-1302 is sufficient to cover encroachments that are known navigational aids, and leaves sufficient room for any future or unique aids to navigation that would fall under that definition. b. See answer to a. above. c. Under the Executive Order 2020-02, Zero Based Regulation, that Idaho's citizens must review both Idaho statutes and rules in order to be law-abiding. Under the Rule Writers Manual published by the Idaho Office of Administrative Rules, "The purpose of a rule is to balance the statutory mandates and legislative intent of the law with any constitutional or federal mandates, executive orders of the Governor, and the agency mission." IDL has chosen not to adopt this suggested change.

Commenter	Written Comments	Rule Section	Response
	<p>of the navigability of the lake." I.C. § 58-1302(i). This key term must be defined in the rules because the insertion of the terms "includes" and "all other encroachments ... not constructed primarily for use in aid of the navigability of the lake," renders the statutory list of encroachments non-exclusive-without a definition there is no clarity on what "all other encroachments" are considered encroachments not in aid of navigation.</p> <p>c. Beds of Navigable Lakes is a term of art that is defined differently in Title 58, Chapter 13, Idaho Code than in other statutes, federal law, tribal law, and case law. Because I.C. § 58-1302(b) defines beds of navigable lakes "for purposes of this act only," as the land (1) below the natural or ordinary high-water mark, and (2) between the natural or ordinary high-water mark and artificial high-water mark, the rules should state this departure from regular parlance for clarity purposes. If IDL does not define "beds of navigable lakes," then it should, at the very least, define the terms "ordinary and normal high-water mark" and "artificial high-water mark," and state that the rules are applicable to the land between the different high-water marks. It is unreasonable to assume regulated parties, unrepresented by legal counsel, will delve into both administrative rules and statutes to determine whether their actions fall within the scope of statutes or regulatory rules.</p>		
Coeur d'Alene Tribe 4/30/2025	<p>If IDL chooses not to define key terms in its rules, then at the bare minimum, it must state in each definition when a structure is a navigational or nonnavigational encroachment for clarity purposes. It is particularly troubling that the draft rules use terms such as "structure" or "mechanism" in place</p>	Definitions 010	21. IDL has chosen to adopt the suggested changes for adding "navigational" or "nonnavigational" to encroachment definitions, as well as using the more standardized word of "encroachment" in said definitions.

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	<p>of "encroachment;" without using the statutorily correct key term, a regulated party cannot know whether the rules apply to them. Absent definitions of key terms, the following definitions should be revised to denote what rules apply to each encroachment:</p> <p>a. 010.03.: Boat Garage. "A nonnavigational encroachment with one (1) or more slips that is completely enclosed with walls, roof, and doors."</p> <p>b. 010.04.: Boat Lift. "A navigational encroachment mechanism for mooring boats partially or entirely out of the water." c. 010.05: Boat Ramp: "A navigational encroachment consisting of a structure or improved surface extending below the ordinary or artificial high water mark whereby watercraft or equipment are launched from land-based vehicles or trailers."</p> <p>d. 010.06.: Breakwater: "A navigational encroachment that is designed to protect moorage by reducing wave energy."</p> <p>e. 010.09.: Community Dock. "A navigational encroachment that provides private moorage for three (3) or more adjacent littoral owners, or other littoral owners possessing a littoral common area with littoral rights including, but not limited to homeowner's associations. No public access is required for a community dock."</p> <p>f. 01 0.14.: Float Home. "A nonnavigational encroachment that is designed and built to be used, or is modified to be used, as a stationary residential dwelling and is not self-propelled."</p> <p>g. 010.16.: Jet Ski Ramp, Port, or Lift. "A navigational encroachment mechanism for mooring jet skis or other personal watercraft similar to a boat lift."</p>		

Commenter	Written Comments	Rule Section	Response
	h. 010.24.: Piling. "A navigational encroachment made of commercially available materials intended to be used for such purpose, that is driven into the lakebed and used to secure other encroachments." i. 010.27.: Pylon. "A nonnavigational encroachment made of commercially available materials intended to be used for such purpose, that is placed into the lakebed and used to support other encroachments."		
Coeur d'Alene Tribe 4/30/2025	The definition of Public Trust Doctrine should be revised to reflect the accurate definition, consistent with I.C. § 58-1202(5) and the common law referenced therein. The definition should read: "The common law doctrine holds, the State owns in trust the beds and banks of navigable waters-not otherwise held in trust by the United States for the benefit of a Federally recognized Indian tribe-for the use and benefit of the public, including the uses of navigation, commerce, 'fish and wildlife habitation, recreation, aesthetic beauty, and water quality.'" Newton v. MJK/BJK, LLC, 469 P.3d 23, 29 (Idaho 2020); see also Byrd v. Idaho State Bd. of Land Comm'r, 505 P.3d 708, 714 (Idaho 2022).	General/Legal Authority	22. Definitions found in I.C. Title 52 chapter 12 are outside the scope of this rulemaking process.
Coeur d'Alene Tribe 4/30/2025	Section 20.03.04.015.15. Marine Motor Fuel Dispensing Facilities: Fuel dispensing facilities on, in, or above the waters or beds of navigable lakes present significant environmental and water quality concerns. This section is insufficiently vague; without further regulation there is considerable likelihood that these facilities will irreparably harm Tribal Waters, State waters, and waters of the United States. Water quality standards relating to hazardous spills and petroleum releases should be incorporated by reference; additionally, safety standards for liquified petroleum gas dealers and	Encroachment Standards 20.03.04.015.15	23. The permittee must follow all other applicable state, federal and local rules and laws insofar as they affect the use of public trust resources per IDAPA 20.03.04.070.04.

Commenter	Written Comments	Rule Section	Response
	<p>gas storage facilities should be incorporated by reference.</p> <p>a. A new subsection .015.15.c. should be added to read: "All Marine Motor Fuel Dispensing Facilities permitted under this section must adhere to the standards set forth in IDAPA 58.01.02. 'Department of Environmental Quality-Water Quality Standards,' Subsections: 800. 'Hazardous and Deleterious Material Storage'; 850. 'Hazardous Material Spills'; 851. 'Petroleum Release Reporting, Investigation, and Confirmation'; and 852. 'Petroleum Release Response and Corrective Action' as incorporated by reference in Section 003.05. of these rules. Further, such Facilities must adhere to the standards set forth in IDAPA 24.22.01 'Division of Occupational and Professional Licenses-Rules for the Idaho Liquified Petroleum Gas Safety Board,' as incorporated by reference in Section 003.06."</p> <p>b. IDL should also incorporate by reference the above regulations at subsection 003.05. and 003.06., respectively.</p>		
Coeur d'Alene Tribe 4/30/2025	<p>Section 20.03.04.015.16. Fill Material:</p> <p>a. Fill material has significant deleterious effects on water quality and aquatic habitat. IDL should not allow "refuse or waste matter," to be used as fill material. Any fill material should be naturally occurring and environmentally sound to protect water quality.</p> <p>b. There should be no ambiguity about what rules apply to this kind of encroachment. The section states fill material is an encroachment requiring "written approval by the Department." The term "written approval" is not synonymous with "encroachment permit," and must be changed to</p>	<p>Encroachment Standards</p> <p>20.03.04.015.16</p>	<p>24. a. IDL will adopt this suggested change in the new draft of the rule.</p> <p>b. IDL will adopt this suggested change in the new draft of the rule.</p> <p>c. IDL has referenced in the rule under 20.03.04.020.03 that a person seeking to make an encroachment must also obtain any additional approvals lawfully required by federal, local or other state agencies. IDL has chosen not to adopt this suggested change.</p> <p>d. 58-1301 establishes the sideboards that IDL considers when reviewing applications.</p>



Commenter	Written Comments	Rule Section	Response
	<p>accurately reflect that an encroachment permit is required, consistent with I.C. § 58-1306.</p> <p>c. The State is not solely responsible for regulating discharge of dredge or fill material into navigable lakes-the rule should reflect that other agencies share regulatory authority to put a regulated party on notice that they must acquire all necessary permits prior to discharging fill material into navigable lakes.</p> <p>d. The section should be revised to say: "The placing of dredged or fill material, on or in the beds of waters of any navigable lake is an encroachment and requires a nonnavigational encroachment permit from the Department, in addition to any other requisite permits from state, local, or federal agencies with jurisdiction. Any such fill material shall be naturally occurring and environmentally sound, no encroachment permit shall be issued if fill material will negatively affect water quality or aquatic habitat."</p>		
Dave and Helen Blyton 6/8/2025	<p>There is one section in Draft 2 regarding the Marine Motor Fuel Dispensing Facilities that we would like to see changed. The current language is very restrictive and will be virtually impossible to comply with, or for the State to enforce. On Lake Pend Oreille, it would require boaters to go approximately 10 miles to get fuel. Since many of the boaters use their boats year round on the lake to get to their cabins, or to fish, this trip could be present unnecessary challenges trying to get to the limited fuel dispensing facilities on the lake. Many other lakes in Idaho are similar with year round boaters and limited fuel dispensing facilities. We propose changing the language from requiring a marine motor fuel dispensing facility to requiring</p>	Encroachment Standards 20.03.04.015.15	<p>25. Portable gas cans are not fixed equipment. The public may refill their watercraft in a manner that complies with all local rules and codes. Marine motor fuel dispensing facilities are regulated under the International Fire Code and require an encroachment permit from IDL when located below the Ordinary High Water Mark.</p>

Commenter	Written Comments	Rule Section	Response
	<p>a fuel dispensing hose that has an automatic shut off nozzle and drip elimination device. These hoses and drip elimination options are available for purchase for \$40.00 - \$75.00 and can be used with portable gas cans. This keeps the can on the dock and the hose with a shut off nozzle at the boat or wave runner. This would be very similar to how it is dispensed at a fuel dispensing facility. This approach may still be difficult to enforce, but we believe its simplicity and common sense will get support from boaters so the end result will be less fuel getting into the water. Required signage at public boat ramps and moorage facilities could ensure all boaters are aware of the new fuel regulation. This would not only educate the boaters but help other boaters, property owners, marinas, and moorage associations say something to those who are not following the rules.</p>		
<p>Dylan Lawrence 6/9/2025</p>	<p>Newly proposed Encroachment Rule 003.04 incorporates IDAPA 18.08.01 by reference. Typically, "incorporation by reference" means that the incorporating agency has the legal authority to enforce the external regulations that are being incorporated. A good example of this is that because Idaho DEQ has authority over regulatory programs delegated by EPA, DEQ often incorporates EPA regulations by reference. I do not believe a similar legal relationship exists between the Department of Lands and the Department of Insurance ("DOI"), and incorporating DOI's legal authorities by reference may exceed IDL's statutory authorities. Instead of incorporating those regulations by reference (and perhaps the other regulations referenced in Encroachment Rule 003),</p>	<p>Incorporation by Reference 003.04</p>	<p>26. I.C. § 67-5229(1)(d) gives IDL the authority to incorporate IDAPA 18.08.01 by reference.</p>

Commenter	Written Comments	Rule Section	Response
	I suggest revising the initial language of that rule to read, "The following sets of regulations may also apply to activities regulated by these rules and should be consulted."		
Dylan Lawrence 6/9/2025	<p>Newly proposed Encroachment Rule 015.15(a) currently reads, "Wharves, piers, or docks at marine motor fuel dispensing facilities must be used exclusively for the dispensing or transfer of petroleum products to or from marine craft." This language appears to be taken verbatim from the International Fire Code (2018) ("IFC"). However, it is an incomplete reference. Section 2310.3.1 of the IFC provides: Wharves, piers or floats at marine motor fuel-dispensing facilities shall be used exclusively for the dispensing or transfer of petroleum products to or from marine craft, <b>except that transfer of essential ship stores is allowed.</b> (Emphasis added).</p> <p>The need to load and unload essential items from wharves and piers is universal. As an initial matter, I question the wisdom of quoting other regulatory programs, rather than simply referencing them to put the public on notice of their existence. For one thing, if the IFC is amended, then the Encroachment Rules could become outdated and inconsistent with the amended IFC. The same concern applies to the adoption of a new definition of "marine motor fuel-dispensing facility" in newly proposed Rule 010.20. While that appears mostly consistent with the definition of that phrase in IFC Section 202, that may not always be the case in the future. Given the reference to the state</p>	Encroachment Standards 015.15	27. IDL has chosen to remove the drafted language in Section 015.15.a, and amend it to read "Any portion of a marine motor fuel dispensing facility located below the O/AHWM requires an encroachment permit."

Commenter	Written Comments	Rule Section	Response
	regulations adopting the IFC in newly proposed Rule 003.04 as previously discussed, I question whether it is necessary to quote Section 2310.3.1 at all. However, if IDL keeps the reference, it should restore the italicized language above and monitor amendments to the IFC to ensure consistency.		
Dylan Lawrence 6/9/2025	Newly proposed Rule 015.16(a) makes the affirmative statement that the following items are encroachments: (1) dredged material; (2) fill material; (3) refuse; and (4) waste matter intended as or becoming fill material. The Encroachment Rules are adopted pursuant to the statutes in the Lake Protection Act, Title 58, Chapter 13 of the Idaho Code (the "LPA"). The term "dredged" appears nowhere in the LPA, and the phrase "fill material" also appears nowhere in the LPA, though there is a reference to "landfills" being considered non-navigational encroachments in Idaho Code Section 58-1302(i). To ensure consistency with IDL's authorities under the LPA, this Rule should read, "The placing of landfills on or in the beds or waters of any navigable waterway is an encroachment and requires written approval by the Department."	Encroachment Standards 015.16	28. Dredging and fill below the Ordinary High Water Mark are considered encroachments. The permittee must follow all other applicable state, federal and local rules and laws insofar as they affect the use of public trust resources per IDAPA 20.03.04.070.04.
Dylan Lawrence 6/9/2025	IDL is suggesting mostly minor revisions to newly renumbered Encroachment Rule 016, regarding lake-specific permit terms. In the past, IDL has described an intent to coordinate a public planning process for Bear Lake, but it has not followed through. While this comment may be outside the scope of a zero-based regulation rulemaking effort, given Bear Lake's uniqueness, IDL should consider resuming that effort, which could also involve	Encroachment Standards 015.17	29. Lake-Specific encroachment permit terms are written as a condition(s) of the permits. IDL will consider adding a condition specific to the needs of Bear Lake.

Commenter	Written Comments	Rule Section	Response
	development of standard permit conditions specific to Bear Lake.		
Idaho Conservation League 6/13/2025	<b>20.03.04 Title – RULES FOR ENCROACHMENTS ON NAVIGABLE WATERWAYS</b> The word 'waterways' must be reverted back to 'lakes,' as it was in the previous version of this rule. The Lakes Protection Act 2 specifically defines 'navigable lake' as <i>'any permanent body of relatively still or slack water, including man-made reservoirs, not privately owned and not a mere marsh or stream eddy, and capable of accommodating boats or canoes.'</i> The extent of the IDL's authority is limited to this definition of lakes, and must not be presumptively extended to rivers and other water bodies.	20.03.04 Title	30. IDL has elected to adopt this change. The title of the rule is now "Rules for Encroachments on Navigable Lakes".
Idaho Conservation League 6/13/2025	<b>20.03.04.010.07 Commercial Marina - Definition.</b> The proposed definition for a Commercial Marina is unclear. It states: "A commercial navigational encroachment whose primary purpose is to provide moorage for rental or for free to at least 50% of the general public." The definition for Commercial Marinas should state: "A commercial navigational encroachment primarily intended to provide moorage must make at least 50% of its moorage available for use by the general public. Access to this public moorage must not be contingent upon membership in a homeowners' association, club, or any other private entity."	Definitions 010.07	31. The standards for commercial marinas can be found in section 015.03.
Idaho Conservation League 6/13/2025	<b>20.03.04.010.09 Community Dock - Definition.</b> This definition should be limited to one 'structure', and the word 'structures' must not be added. The term 'Community Dock,' which is being defined, is a singular term, not plural. Each Community Dock	Definitions 010.09	32. The word "structure" has been removed from this definition and replaced with "encroachment". Applicants that meet the definition of a community dock may apply for

Commenter	Written Comments	Rule Section	Response
	<p>must be permitted independently just as each single family dock is permitted independently. While lack of clarity regarding the singular nature of a Community Dock in the previous version of this rule may have been considered a 'loophole,' IDL is now attempting to explicitly allow such divisions. It is unacceptable to do so, as it effectively removes size limitations for Single-Family Docks and Two-Family Docks. The size limit for a Single-Family Dock is 700 square feet and the size limit for a Two-Family Dock is 1100 square feet. Each Community Dock is limited in size by the littoral footage owned by three or more adjacent owners, or other littoral owners possessing a littoral common area with littoral rights including, but not limited to homeowner's associations. The permissible square footage for a community dock is determined by the total littoral footage times a factor of seven, so is virtually unlimited and only based on the amount of littoral ownership by the applicant.</p> <p>Littoral owners have in certain cases been allowed to divide their total permissible community dock square footage into multiple individual structures, effectively undermining the size limits for Single-Family Docks and Two-Family Docks. For example, the Camp Bay Community Association, Inc's Encroachment Permit Application No. L-96-S-2687 was approved, allowing a community dock 'system' composed of 13 docks without the size limitations required for Single-Family and Two-Family Docks. The current loophole and proposed lack of appropriate regulation undermine the legislative intent of the Lakes Protection Act to protect fish and wildlife habitat, aquatic life and water quality. Large docks and extensive dock systems cause a</p>		<p>community docks allowable under Title 58, Section 1306 Idaho Code.</p>

Commenter	Written Comments	Rule Section	Response
	loss of littoral zone habitat for fish, amphibians, insects, and other aquatic life. They can also change wave patterns and water circulation, leading to erosion or sediment accumulation. As such, fish spawning areas may be smothered and water clarity reduced.		
Idaho Conservation League 6/13/2025	<b>20.03.04.012.01 Policy - Public Trust Resources Protection</b> It should be clearly stated that the State Board of Land Commissioners is not the only entity responsible for managing lake beds in Idaho. Under Section 10 of the Rivers and Harbors Act of 1899 3 and Section 404 of the Clean Water Act 4 , the U.S. Army Corps of Engineers also has regulatory authority over lake beds of "Waters of the United States," including in Idaho. Additionally, certain Tribes have specific regulatory authority. The Coeur d'Alene Tribe owns the southern third of Lake Coeur d'Alene and its submerged lands. These rights were established through an 1873 executive order and affirmed in the 2001 Supreme Court case <i>United States v. Idaho</i> . Other Tribes may have ownership and regulatory authority related to land ownership and treaty rights. In order to support the public in navigating a complex legal system, these factors should be clearly stated.	Policy 012.01	33. Jurisdiction over navigable lakes is defined in Title 58, Chapter 13 Idaho Code. IDAPA 20.03.04.020.03 states "A person seeking to make an encroachment must also obtain any additional approvals lawfully required by federal, local or other state agencies.". Section 070.04 also states "The permittee must follow all other applicable state, federal and local rules and laws insofar as they affect the use of public trust resources."
Idaho Conservation League 6/13/2025	<b>20.03.04.015.08 Encroachment Standard - Riprap</b> Natural materials other than rock should be encouraged. Environmentally friendly solutions such as Coir Logs (coconut fiber rolls), logs and vegetative buffers can diminish wave action rather than exacerbate it as rock riprap does. Natural shoreline stabilization can absorb or diminish wave action, improve fish habitat and filter polluted runoff.	Encroachment Standards 015.08	34. IDL has revised the first sentence of Section 015.08 to say "Riprap used to stabilize shorelines will consist of rock or other materials that is appropriately sized to resist movement from anticipated wave heights or tractive forces of the water flow."

Commenter	Written Comments	Rule Section	Response
Idaho Conservation League 6/13/2025	<b>20.03.04.015.11 Encroachment Standard - Excavating or Dredging</b> The Idaho Lake Protection Act 5 makes no reference to excavating or dredging, and IDL does not have authority to regulate these activities. It should be clearly stated that the U.S. Army Corps of Engineers and various Tribes have regulatory authority over dredging and excavation of lake beds. Section 404 of the Clean Water Act 6 establishes that the U.S. Army Corps of Engineers has regulatory authority over "Waters of the United States," including in Idaho. Additionally, certain Tribes have specific regulatory authority. The Coeur d'Alene Tribe owns the southern third of Lake Coeur d'Alene and its submerged lands. These rights were established through an 1873 executive order and affirmed in the 2001 Supreme Court case <i>United States v. Idaho 7</i> . Other Tribes may have ownership and regulatory authority related to land ownership and treaty rights. In order to support the public in navigating a complex legal system, these factors should be clearly stated.	Encroachment Standards 015.11	35. Dredging is considered an encroachment. The permittee must follow all other applicable state, federal and local rules and laws insofar as they affect the use of public trust resources per IDAPA 20.03.04.070.04.
Idaho Conservation League 6/13/2025	20.03.04.015.13.h General Encroachment Standards (connected with upland sewer or septic systems) Permits for facilities and infrastructure designed to hold or transfer sewage need to be coordinated with the Idaho Department of Environmental Quality (DEQ) or the relevant Public Health District, depending on the type of system they connect to. The DEQ derives its authority to regulate upland sewage disposal through the Individual/Subsurface Sewage Disposal Rules 8 , and Section 402 of the Clean Water Act. 9 The DEQ administers the Individual/Subsurface Sewage Disposal Rules in collaboration with Idaho's seven	Encroachment Standards 015.13	36. Sewer and septic systems must adhere to IDAPA 24.39.20, "Rules Governing Plumbing", incorporated by reference in these rules. Additionally, the permittee must follow all other applicable state, federal and local rules and laws insofar as they affect the use of public trust resources per IDAPA 20.03.04.070.04.



Commenter	Written Comments	Rule Section	Response
	public health districts under a memorandum of understanding. While DEQ sets the standards and provides oversight, the public health districts are responsible for permitting and inspecting septic systems. Individuals or entities seeking to connect to community sewer or septic systems in Idaho must consult with the local public health district to ensure compliance with all applicable regulations and to obtain the necessary permits. This needs to be stated in IDL's rules in order to provide clarity to the applicant.		
Idaho Conservation League 6/13/2025	<b>20.03.04.015.15 Marine Motor Fuel Dispensing Facilities</b> Thank you for addressing this important issue. For clarity, consider changing the suggested language, "Wharves, piers, or docks at marine motor fuel dispensing facilities must be used exclusively for the dispensing or transfer of petroleum products to or from marine craft." to "Dispensing or transfer of petroleum products to or from marine craft must happen exclusively at marine motor fuel dispensing facilities."	Encroachment Standards 015.15	37. IDL has chosen to revise Section 015.15.a to read "Any portion of a marine motor fuel dispensing facility located below the O/AHWM requires an encroachment permit." Additionally, the permittee must follow all other applicable state, federal and local rules and laws insofar as they affect the use of public trust resources per IDAPA 20.03.04.070.04.
Idaho Conservation League 6/13/2025	<b>20.03.04.015.16 Fill Material</b> The Idaho Lake Protection Act 10 makes no reference to 'fill material,' and IDL does not have authority to regulate this activity. It should be clearly stated that the U.S. Army Corps of Engineers and various Tribes have regulatory authority over fill material being placed in lake beds. Section 404 of the Clean Water Act 11 establishes that the U.S. Army Corps of Engineers has regulatory authority over "Waters of the United States," including in Idaho. Additionally, certain Tribes have specific regulatory authority. The Coeur d'Alene Tribe owns the southern third of Lake Coeur d'Alene and its submerged lands. These rights were established	Encroachment Standards 015.16	38. Fill is considered an encroachment on navigable lakes. IDL works with the U.S. Army Corps of Engineers to address and/or permit fill below the Ordinary High Water Mark. Additionally, the permittee must follow all other applicable state, federal and local rules and laws insofar as they affect the use of public trust resources per IDAPA 20.03.04.070.04.

Commenter	Written Comments	Rule Section	Response
	through an 1873 executive order and affirmed in the 2001 Supreme Court case <i>United States v. Idaho 12</i> . Other Tribes may have ownership and regulatory authority related to land ownership and treaty rights. In order to support the public in navigating a complex legal system, these factors should be clearly stated.		
Idaho Conservation League 6/13/2025	<b>20.03.04.020.06 Applications - Dredging</b> The Idaho Lake Protection Act 13 makes no reference to dredging, and IDL does not have authority to regulate this activity. It should be clearly stated that the U.S. Army Corps of Engineers and various Tribes have regulatory authority over dredging lake beds. Section 404 of the Clean Water Act 14 authorizes the U.S. Army Corps of Engineers as the regulatory authority over "Waters of the United States," including in Idaho. Additionally, certain Tribes have specific regulatory authority. The Coeur d'Alene Tribe owns the southern third of Lake Coeur d'Alene and its submerged lands. These rights were established through an 1873 executive order and affirmed in the 2001 Supreme Court case <i>United States v. Idaho 15</i> . Other Tribes may have ownership and regulatory authority related to land ownership and treaty rights. In order to support the public in navigating a complex legal system, these factors should be clearly stated.	Applications 020.06	39. Dredging is considered an activity that may require an encroachment permit under IDAPA 20.03.04. IDL works with the U.S. Army Corps of Engineers to address and/or permit dredging below the Ordinary High Water Mark. Additionally, the permittee must follow all other applicable state, federal and local rules and laws insofar as they affect the use of public trust resources per IDAPA 20.03.04.070.04.
Idaho Conservation League 6/13/2025	<b>20.03.04.080 Violations - Penalties</b> Fines should be assessed for encroachments that are built without permits, when applications for permits are submitted after the fact or not submitted at all. According to the Lake Protection Act 16, a civil penalty ranging from \$150 to \$2,500 for each violation may be assessed. If the violation causes harm to water quality, fisheries, or other public	Violations/ Penalties 080	40. Imposing additional fees and penalties lies outside of the scope of Executive Order 2020-02, Zero Based Regulation. Cost recovery for noncompliance is regulated under the Lake Protection Act.

Commenter	Written Comments	Rule Section	Response
	trust values, the penalty may increase to up to \$10,000 per violation or \$1,000 for each day of a continuing violation, whichever is greater. It is very common to see permit applications after the fact, but very uncommon for IDL to assess fines. This effectively undermines IDL's authority to regulate encroachments, and even incentivizes unpermitted activity. Assessing fines in these situations would encourage compliance and also increase funding for IDL.		
Zack Spencer 6/13/2025	The part of the bill that concerns refilling only at marinas is not practical or almost all boat owners in medium to large size lakes. By the time that someone has driven there boat to and from a marina they will have used up the same amount or more gas then they started with. And as a person who workers at a marina on lake pend Oreille it would just cause even more of a headache for us because of the people would take there boats out for 5 minutes to refill with a gas can, then take another 10 minutes trying to put there boat back into the water, thus making our job harder. Also the gas prices for the floating pumps is stupidly expensive so no one with any sense will use them.	Encroachment Standards 015.15	41. IDL has chosen to remove the drafted language in Section 015.15.a, and amend it to read "Any portion of a marine motor fuel dispensing facility located below the O/AHWM requires an encroachment permit."
Ian and Kristen Burge 6/13/2025	The proposed requirements under section "Marine Motor Fuel Dispensing Facilities" creates many concerns for users on larger lakes in the state of Idaho, such as Lake Pend Oreille, Priest Lake and Lake Coeur d'Alene. Refueling locations can be many miles from marinas and private docks on the lakes. For example a boat that is kept at Garfield Bay on Lake Pend Oreille, would need to travel more than 20 miles round trip on water to obtain fuel or the owner would need to trailer their boat and travel about 20 miles round trip to refuel a		42. IDL has chosen to remove the drafted language in Section 015.15.a, and amend it to read "Any portion of a marine motor fuel dispensing facility located below the O/AHWM requires an encroachment permit."

Commenter	Written Comments	Rule Section	Response
	<p>boat at the closest land gas station in Sagle. Many of the boats kept at docks/marinas on the lake are challenging to transport for fuel, such as a sail boat.</p> <p>Higher Costs: Marina fuel is often more expensive than regular gas station fuel. Restricting fueling options could force boaters to pay these higher prices.</p> <p>Economic Impact on Boating: Restricting options could potentially hurt the recreational boating industry by making it more expensive and less convenient for boaters.</p> <p>I understand the desire to restrict refueling boats on the water, not at an approved marina gas facility. Perhaps instead of the draft language provided there can be restriction that marina gas stations must be used if located within 1-2 miles of where your boat is normally kept. Or put rules in place about the types of gas cans or transfer methods that can be used.</p>		

In-Person Comments	Rule Section	Response
<p>The following comment is a summation of a discussion that took place during the Sandpoint Public Meeting on April 15, 2025.</p> <p>The section that sets standards for Marine Motor Fuel Dispensing Facilities is considered too restrictive and limits individual needs to refuel a boat in an area with little access to a marine service station.</p>	20.03.04.015.15	<p>1. IDL has chosen to remove the drafted language in Section 015.15.a, and amend it to read "Any portion of a marine motor fuel dispensing facility located below the O/AHWM requires an encroachment permit."</p>

In-Person Comments	Rule Section	Response
<p>The following comment is a summation of a discussion that took place during the Sandpoint Public Meeting on April 15, 2025.</p> <p>The section under application requirements that suggests that applications for all encroachments that are enclosed structures require engineered plans stamped by a licensed engineer in the state of Idaho is overly restrictive and places an undue cost burden on applicants to get a stamped engineered drawing.</p>	<p>20.03.04.020.07.a.vi ii.</p>	<p>2. IDL has chosen to revise the language in Section 020.07.a.viii to read "Plans submitted for enclosed encroachments must accurately depict all interior and exterior features. Public, commercial, and residential encroachments may require engineered plans approved by a licensed professional engineer in the state of Idaho."</p>

## IDAPA 20 – IDAHO DEPARTMENT OF LANDS

### 20.03.04 – RULES FOR THE REGULATION OF BEDS, WATERS, AND AIRSPACE OVER NAVIGABLE LAKES IN THE STATE OF IDAHO

#### DOCKET NO. 20-0304-2401 (ZBR CHAPTER REWRITE)

#### NOTICE OF RULEMAKING – PROPOSED RULE

**AUTHORITY:** In compliance with Section 67-5221(1), Idaho Code, notice is hereby given that this agency has initiated proposed rulemaking procedures. The action is authorized pursuant to Sections 58-1304 and 58-104(6), Idaho Code.

**PUBLIC HEARING SCHEDULE:** A public hearing concerning this rulemaking will be held as follows:

<p><b>Thursday, September 11, 2025</b> <b>10:00 a.m. (MT)</b></p>
<p><b>Idaho Department of Lands</b> <b>Boise Bureau Office, Garnet Conference Room</b> <b>300 N. 6th St., Suite 103</b> <b>Boise, ID 83720</b></p> <p><b>To join via Microsoft Teams: <a href="#">Link</a></b></p> <p><b>Meeting ID: 247 072 447 001 4 Passcode: fb7ei7xd</b></p> <p><b>To attend by telephone call: +1 (469) 998-7393</b> <b>Conference ID: 533 914 872#</b></p>

The hearing site(s) will be accessible to persons with disabilities. Requests for accommodation must be made not later than five (5) days prior to the hearing, to the agency address below.

**DESCRIPTIVE SUMMARY:** The following is a nontechnical explanation of the substance and purpose of the proposed rulemaking:

Following [Executive Order 2020-01: Zero-Based Regulation](#), this rule chapter is scheduled to be repealed and replaced in 2025 for review during the 2026 legislative session. The department anticipates reducing the overall regulatory burden by reducing both total word count and the number of restrictive words in the new rule chapter. The department reviewed the rule with stakeholders to ensure that it is right sized. The department seeks to modify language for consistency within the rule, with statutes, and with other state rules.

**FISCAL IMPACT:** The following is a specific description, if applicable, of any negative fiscal impact on the state General Fund greater than ten thousand dollars (\$10,000) during the fiscal year as a result of this rulemaking: This rule will have no fiscal impact on the state General Fund.

**NEGOTIATED RULEMAKING:** Pursuant to Section 67-5220(1), Idaho Code, negotiated rulemaking was conducted. The Notice of Intent to Promulgate Rules - Negotiated Rulemaking was published in the April 2, 2025 Idaho Administrative Bulletin, [Vol. 25-4, pages 36-38](#).

**INCORPORATION BY REFERENCE:** Pursuant to Section 67-5229(2)(a), Idaho Code, the following is a brief synopsis of why the materials cited are being incorporated by reference into this rule:

IDL has chosen to incorporate by reference the International Fire Code adopted through IDAPA 18.08.01 - Idaho Department of Insurance State Fire Marshal – Adoption of the International Fire Code, which helps IDL ensure that

buildings, fueling stations, and commercial public encroachments meet minimum standards for safety over the water. The IFC is enforced through the Idaho State Fire Marshal or their deputy.

**ASSISTANCE ON TECHNICAL QUESTIONS, SUBMISSION OF WRITTEN COMMENTS:** For assistance on technical questions concerning the proposed rule, contact Marde Mensinger at (208) 334-0248 or [mmensinger@idl.idaho.gov](mailto:mmensinger@idl.idaho.gov).

Anyone may submit written comments regarding this proposed rulemaking. All written comments must be directed to the undersigned and must be delivered on or before September 24, 2025.

DATED this 30th day of July, 2025.

Marde Mensinger, Navigable Waterways Program Manager  
Idaho Department of Lands  
300 N. 6th Street, Suite 103  
P.O. Box 83720  
Boise, Idaho 83720-0050  
Phone: (208) 334-0248  
Fax: (208) 334-3698  
[rulemaking@idl.idaho.gov](mailto:rulemaking@idl.idaho.gov)



**Docket No. 20-0304-2401**  
Proposed Rulemaking Summary

## Proposed Rulemaking Summary

### **IDAPA 20.03.04 — Rules for the Regulation of Beds, Waters, and Airspace over Navigable Lakes in the State of Idaho** **Docket No. 20-0304-2401**

Members of the public participated in the Department's proposed rulemaking process by attending the public hearing and submitting written comments. Key information considered by the Department included applicable statutes, information provided by the public, and the Department's legal counsel during the negotiation process.

Key documents from the rulemaking record, which includes rule drafts, written public comments and documents distributed during the proposed rulemaking process, are available at <https://www.idl.idaho.gov/rulemaking/docket-20-0304-2401/>. The entire rulemaking record is available for review upon request to the Department. At the conclusion of the proposed rulemaking process, the Department formatted the rule draft for publication as a pending rule in the Idaho Administrative Bulletin.

In developing the pending rule, the Department considered all comments received during the proposed rulemaking process. Following are comments on the proposed rule and the Department's response to those comments:

	Commenter	Written Comments	Rule Section	Response
1.	Nick Snyder – Kootenai County Parks and Waterways 9/4/2025	Thank you for providing an opportunity to comment on this important topic which may affect nearly 200,000 residents of Kootenai County. Kootenai County is blessed to have eighteen lakes and rivers with over 45,000 boatable acres available for our citizens to enjoy. Kootenai County also has the highest number of registered boats in the state, along with several thousands of shoreline property owners. These two factors often create conflict between the boating/floating/angling public vs. shoreline	Non-specific/ Section 030 – Processing Applications	§ 58-1301 Idaho Code states “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 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



	<p>property owners. I often receive comments from our recreating citizens that; "IDL keeps permitting docks, float homes, and other stuff that is ruining our lakes and rivers and the property owners act like they own the public water." Conversely, shoreline property owners complain that; "Boats are ruining our docks and shorelines." I am sure these comments are common in every county in Idaho.</p> <p>I have had the opportunity to observe changes to our waterways for nearly 20-years in my current position and based on those observations, as well as other factors, I recommend IDL consider adoption of the following language to assist in protecting all state waterways. Idaho lakes and rivers are both unique and magnificent resources that must be protected for future generations. I believe that the language I drafted below will provide IDL with additional tools necessary to address unique circumstances where an application for encroachment may pose significant risk to the items listed below.</p> <p>REASONS FOR DENIAL OF ENCROACHMENT PERMIT:</p> <p>"Any application that may change historic public use of a waterway, interfere or adversely affect navigation, degrade public recreational opportunities, limit or otherwise restrict any use by the public, adversely affect commerce, or impact public safety as determined by the</p>		<p>justification for, or benefit to be derived from the proposed encroachment."</p> <p>Public safety is weighed and considered during review of all encroachment permits, and that authority is captured by this statute.</p>
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		County Sheriff, shall be considered when approving encroachment permits."		
2.	Alexander Nickolatos – KOREPower 9/11/2025	Thank you for hosting the call today. I noticed that on page 37 ("28"), a pylon is no longer defined with the deletions. As edited, it seems to read "A that is placed into the lakebed and used to support encroachments."	Definitions Section 010.28	IDL will adopt this suggest change so that the definition now reads "A post that is placed into the lakebed and used to support encroachments."
3.	Jennifer Ekstrom – Idaho Conservation League 9/23/2025	The proposed definition for a Commercial Marina is unclear. It states: "A commercial navigational encroachment whose primary purpose is to provide moorage for rental or for free to at least 50% of the general public." The definition for Commercial Marinas should state: "A commercial navigational encroachment primarily intended to provide moorage must make at least 50% of its moorage available for use by the general public for rent or free. Access to this public moorage must not be contingent upon membership in a homeowners' association, club, or any other private entity." The intended clarification is that the language currently states that 50% of the public is allowed moorage, rather than the intended 50% of the slips being available to the public.	20.03.04.010.07 Commercial Marina - Definition	IDL will adopt part of this recommendation. The definition will now read "A commercial navigational encroachment whose purpose is to provide at least 50% of its moorage available for rental or for free to the general public."
4.	Jennifer Ekstrom – Idaho Conservation League 9/23/2025	Thank you for deleting the word 'structures' and retaining the singular term, 'structure.' We recommend further clarification indicating that each Community Dock must be permitted independently just as each single family and two family dock is permitted independently. This would prevent the intent of the rule from being circumvented in the future.  Littoral owners have in certain cases been allowed to divide their total permissible	20.03.04.010.09 Community Dock - Definition	Community docks are limited in size by their shoreline length, or by the discretion of the Department. If a community dock were to cause adversely affects, the Department would consider these factors in reviewing the application. Applicants that meet the definition of a community dock may apply for community docks allowable under Title 58, Section 1306 Idaho Code.

		<p>community dock square footage into multiple individual structures, effectively undermining the size limits for Single-Family Docks and Two-Family Docks. For example, the Camp Bay Community Association, Inc's Encroachment Permit Application No. L-96-S-2687 was approved, allowing a community dock 'system' composed of 13 docks without the size limitations required for Single-Family and Two-Family Docks.</p> <p>Clear language is needed to highlight the legislative intent of the Lakes Protection Act to protect fish and wildlife habitat, aquatic life and water quality. Large docks and extensive dock systems cause a loss of littoral zone habitat for fish, amphibians, insects, and other aquatic life. They can also change wave patterns and water circulation, leading to erosion or sediment accumulation. As such, fish spawning areas may be smothered and water clarity reduced.</p>		
5.	Jennifer Ekstrom – Idaho Conservation League 9/23/2025	<p>It should be clearly stated that the State Board of Land Commissioners is not the only entity responsible for managing lake beds in Idaho. Under Section 10 of the Rivers and Harbors Act of 1899 and Section 404 of the Clean Water Act , the U.S. Army Corps of Engineers also has regulatory authority over lake beds of "Waters of the United States," including in Idaho. Additionally, certain Tribes have specific regulatory authority. The Coeur d'Alene Tribe owns the southern third of Lake Coeur d'Alene and its submerged lands. These rights were established through an 1873 executive order and affirmed in the 2001 Supreme Court case <i>United States v. Idaho</i> . Other Tribes may have</p>	20.03.04.012.01 Policy - Public Trust Resources Protection	<p>Jurisdiction over navigable lakes is defined in Title 58, Chapter 13 Idaho Code. IDAPA 20.03.04.020.03 states "A person seeking to make an encroachment must also obtain any additional approvals lawfully required by federal, local or other state agencies.".</p> <p>Section 070.04 also states "The permittee must follow all other applicable state, federal and local rules and laws insofar as they affect the use of public trust resources."</p>

		ownership and regulatory authority related to land ownership and treaty rights. In order to support the public in navigating a complex legal system, these factors should be clearly stated.		
6.	Jennifer Ekstrom – Idaho Conservation League 9/23/2025	Thank you for including language to allow materials other than rock. We recommend that natural materials other than rock should be explicitly encouraged. Environmentally friendly solutions such as Coir Logs (coconut fiber rolls), logs and vegetative buffers can diminish wave action. Natural shoreline stabilization can absorb or diminish wave action, improve fish habitat and filter polluted runoff.	20.03.04.015.08 Encroachment Standard - Riprap	Applicants may use whichever material would be best suited for their erosion control needs allowable under Idaho law. IDL encourages applicants to consider all options for erosion control in order to find a method that best suits their needs.
7.	Jennifer Ekstrom – Idaho Conservation League 9/23/2025	The Idaho Lake Protection Act makes no reference to excavating or dredging, and IDL does not have authority to regulate these activities. It should be clearly stated that the U.S. Army Corps of Engineers and various Tribes have regulatory authority over dredging and excavation of lake beds. Section 404 of the Clean Water Act 6 establishes that the U.S. Army Corps of Engineers has regulatory authority over “Waters of the United States,” including in Idaho. Additionally, certain Tribes have specific regulatory authority. The Coeur d’Alene Tribe owns the southern third of Lake Coeur d’Alene and its submerged lands. These rights were established through an 1873 executive order and affirmed in the 2001 Supreme Court case <i>United States v. Idaho</i> . Other Tribes may have ownership and regulatory authority related to land ownership and treaty rights. In order to support the public in navigating a complex legal system, these factors should be clearly stated.	20.03.04.015.11 Encroachment Standard - Excavating or Dredging	Dredging is considered an activity that may require an encroachment permit under IDAPA 20.03.04. IDL works with the U.S. Army Corps of Engineers to address and/or permit dredging below the Ordinary High Water Mark. Additionally, the permittee must follow all other applicable state, federal and local rules and laws insofar as they affect the use of public trust resources per IDAPA 20.03.04.070.04.

8.		<p>Permits for facilities and infrastructure designed to hold or transfer sewage need to be coordinated with the Idaho Department of Environmental Quality (DEQ) or the relevant Public Health District, depending on the type of system they connect to. The DEQ derives its authority to regulate upland sewage disposal through the Individual/Subsurface Sewage Disposal Rules , and Section 402 of the Clean Water Act.</p> <p>The DEQ administers the Individual/Subsurface Sewage Disposal Rules in collaboration with Idaho's seven public health districts under a memorandum of understanding. While DEQ sets the standards and provides oversight, the public health districts are responsible for permitting and inspecting septic systems.</p> <p>Individuals or entities seeking to connect to community sewer or septic systems in Idaho must consult with the local public health district to ensure compliance with all applicable regulations and to obtain the necessary permits. This needs to be stated in IDL's rules in order to provide clarity to the applicant.</p>	20.03.04.015.13.h General Encroachment Standards (connected with upland sewer or septic systems)	<p>Sewer and septic systems must adhere to IDAPA 24.39.20, "Rules Governing Plumbing", incorporated by reference in these rules. Additionally, the permittee must follow all other applicable state, federal and local rules and laws insofar as they affect the use of public trust resources per IDAPA 20.03.04.070.04.</p>
9.	Jennifer Ekstrom – Idaho Conservation League 9/23/2025	<p>We support the recommendation submitted by the Coeur d 'Alene Tribe on April 30th, 2025 , regarding this Negotiated Rulemaking. For ease of reference, an excerpt is copied here: <i>"Section 20.03.04.015.15. Marine Motor Fuel Dispensing Facilities: Fuel dispensing facilities on, in, or above the waters or beds of navigable lakes present significant environmental and water quality concerns. This section is insufficiently vague; without further regulation there is</i></p>	20.03.04.015.15 Marine Motor Fuel Dispensing Facilities	<p>Applicants that wish to install marine motor fuel dispensing facilities must follow all other applicable state, federal and local rules and laws insofar as they affect the use of public trust resources per IDAPA 20.03.04.070.04.</p>

		<p><i>considerable likelihood that these facilities will irreparably harm Tribal Waters, State waters, and Waters of the United States. Water quality standards relating to hazardous spills and petroleum releases should be incorporated by reference; additionally, safety standards for liquified petroleum gas dealers and gas storage facilities should be incorporated by reference. a. A new subsection .015.15.c. should be added to read: "All Marine Motor Fuel Dispensing Facilities permitted under this section must adhere to the standards set forth in IDAPA 58.01.02. 'Department of Environmental Quality-Water Quality Standards,' Subsections: 800. 'Hazardous and Deleterious Material Storage'; 850. 'Hazardous Material Spills'; 851. 'Petroleum Release Reporting, Investigation, and Confirmation'; and 852. 'Petroleum Release Response and Corrective Action' as incorporated by reference in Section 003.05. of these rules. Further, such Facilities must adhere to the standards set forth in IDAPA 24.22.01 'Division of Occupational and Professional Licenses-Rules for the Idaho Liquified Petroleum Gas Safety Board,' as incorporated by reference in Section 003.06." b. IDL should also incorporate by reference the above regulations at subsection 003.05. and 003.06., respectively."</i></p>		
10.	Jennifer Ekstrom – Idaho Conservation League 9/23/2025	<p>The Idaho Lake Protection Act makes no reference to ‘fill material,” and IDL does not have authority to regulate this activity. It should be clearly stated that the U.S. Army Corps of Engineers and various Tribes have regulatory authority over fill material being placed in lake beds. Section 404 of the Clean Water Act establishes that the U.S. Army Corps of</p>	20.03.04.015.16 Fill Material	<p>Fill is considered an encroachment on navigable lakes, and is included in the definition of “Encroachments not in aid of Navigation” in § 58-1302. IDL works with the U.S. Army Corps of Engineers to address and/or permit fill below the Ordinary High Water Mark. Additionally, the permittee must follow all other applicable state, federal and</p>

		Engineers has regulatory authority over “Waters of the United States,” including in Idaho. Additionally, certain Tribes have specific regulatory authority. The Coeur d'Alene Tribe owns the southern third of Lake Coeur d'Alene and its submerged lands. These rights were established through an 1873 executive order and affirmed in the 2001 Supreme Court case <i>United States v. Idaho</i> . Other Tribes may have ownership and regulatory authority related to land ownership and treaty rights. In order to support the public in navigating a complex legal system, these factors should be clearly stated.		local rules and laws insofar as they affect the use of public trust resources per IDAPA 20.03.04.070.04.
11.	Jennifer Ekstrom – Idaho Conservation League 9/23/2025	The Idaho Lake Protection Act makes no reference to dredging, and IDL does not have authority to regulate this activity. It should be clearly stated that the U.S. Army Corps of Engineers and various Tribes have regulatory authority over dredging lake beds. Section 404 of the Clean Water Act 14 authorizes the U.S. Army Corps of Engineers as the regulatory authority over “Waters of the United States,” including in Idaho. Additionally, certain Tribes have specific regulatory authority. The Coeur d'Alene Tribe owns the southern third of Lake Coeur d'Alene and its submerged lands. These rights were established through an 1873 executive order and affirmed in the 2001 Supreme Court case <i>United States v. Idaho</i> . Other Tribes may have ownership and regulatory authority related to land ownership and treaty rights. In order to support the public in navigating a complex legal system, these factors should be clearly stated.	20.03.04.020.06 Applications - Dredging	Dredging is considered an activity that may require an encroachment permit under IDAPA 20.03.04. IDL works with the U.S. Army Corps of Engineers to address and/or permit dredging below the Ordinary High Water Mark. Additionally, the permittee must follow all other applicable state, federal and local rules and laws insofar as they affect the use of public trust resources per IDAPA 20.03.04.070.04.

12.	Jennifer Ekstrom – Idaho Conservation League 9/23/2025	Fines should be assessed for encroachments that are built without permits, when applications for permits are submitted after the fact or not submitted at all. According to the Lake Protection Act, a civil penalty ranging from \$150 to \$2,500 for each violation may be assessed. If the violation causes harm to water quality, fisheries, or other public trust values, the penalty may increase to up to \$10,000 per violation or \$1,000 for each day of a continuing violation, whichever is greater. It is very common to see permit applications after the fact, but very uncommon for IDL to assess fines. This effectively undermines IDL’s authority to regulate encroachments, and even incentivises unpermitted activity. Assessing fines in these situations would encourage compliance and also increase funding for IDL.	20.03.04.080 Violations - Penalties	Imposing additional fees and penalties lies outside of the scope of Executive Order 2020-02, Zero Based Regulation. Cost recovery for noncompliance is regulated under the Lake Protection Act.
13.	IDL 9/24/2025	Under Section 20.03.04.010.26., Public Hearing, the word coordinator should be removed and replaced with the word “officer”.	20.03.04.010.26 – Public Hearing	This change will be accepted.
14.	IDL 9/24/2025	Under Section 20.03.04.015.13.f., Weather Conditions, there is a stray period that needs to be removed from the sentence. The sentence should read as “Flotation devices must be reasonably resistant to puncture and other damage.”	20.03.04.015.13.f - Weather Conditions	This change will be accepted.
15.	IDL 9/24/2025	Under Section 20.03.04.015.13.l.i., Overhead Clearance, the words “in the permit” need to be removed from the last sentence of the paragraph.	20.03.04.015.13.l.i - Overhead Clearance	This change will be accepted.
16.	IDL 9/24/2025	Under Section 20.03.04.015.13.l.ii., Overhead Clearance, the reference to Paragraph 015.13.h needs to be replaced with an updated reference to Paragraph 015.13.l.	20.03.04.015.13.l.ii - Overhead Clearance	This change will be accepted.



17.	IDL 9/24/2025	Under Section 20.03.04.015.14.a., Floating Toys, the sentence should be amended to remove the words "encroachment, and an" so that the sentence simply reads as "An encroachment permit is required for floating toys when they are anchored to the lakebed with an anchor that requires equipment for removal or when located waterward of the line of navigability for more than twenty-four (24) consecutive hours."	20.03.04.015.14.a - Floating Toys	This change will be accepted.
18.	IDL 9/24/2025	Under Section 20.03.04.020.07.a., the word "must" should be included in the first sentence. It should read as "Plans must include detailed information to demonstrate compliance with the applicable standards of these rules, and the following information at a scale sufficient to show the information requested:"	20.03.04.020.07.a	This change will be accepted.
19.	IDL 9/24/2025	Under Section 20.03.04.020.07.c., there is an "a" missing from the sentence. The correct language should read as "If more than one (1) littoral owner exists, the application must bear the signature of all littoral owners, or the signature of an authorized officer of an entity or a designated homeowner's or property management association."	20.03.04.020.07.c	This change will be accepted.
20.	IDL 9/24/2025	Under Section 20.03.04.020.07.h., the word "intake" should be removed from the sentence. It should read as "No publication cost is required for applications for noncommercial navigational encroachments not extending beyond the line of navigability or for application for installation of buried or submerged water lines and utility lines."	20.03.04.020.07.h	This change will be accepted.

21.	IDL 9/24/2025	Under Section 20.03.04.030.09., Judicial Review, the word “decision” should be removed from the first sentence. It should read as “Any applicant or party aggrieved by the Director’s final order has the right to judicial review of the final order by the district court in the county in which the encroachment is proposed by filing a notice of appeal within thirty (30) days from the date of the final order.”	20.03.04.030.09. - Judicial Review	This change will be accepted.
22.	IDL 9/24/2025	Under Section 20.03.04.055.02., Seawalls, Breakwaters, Fill., there is a stray comma after the word “authorized” that needs to be removed from the sentence. It should read as “Seawalls, breakwaters, and fill on or over state-owned beds, designed primarily to create additional land surface, will only be authorized by an encroachment permit and submerged land lease or easement, upon approval by the Department.”	20.03.04.055.02. - Seawalls, Breakwaters, Fill	This change will be accepted.

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UNOFFICIAL COPY: PENDING RULE TEXT OF DOCKET NO. 20-0304-2401  
(ZBR Chapter Rewrite.)

**20.03.04 – RULES FOR ~~THE REGULATION OF BEDS, WATERS, AND AIRSPACE~~  
OVER NAVIGABLE LAKES IN THE STATE OF IDAHO ENCROACHMENTS ON NAVIGABLE LAKES**

**00. LEGAL AUTHORITY.**

~~This Chapter is adopted under the legal authorities of Sections 58-104(6), 58-104(9), 58-105, and 58-127, Idaho Code; Title 58, Chapter 13, Idaho Code; and Title 67, Chapter 52, Idaho Code.~~ (3-18-22)( )

**01. ~~TITLE AND~~ SCOPE.**

**01. ~~Title.~~** ~~These rules are titled IDAPA 20.03.04, “Rules for the Regulation of Beds, Waters, and Airspace Over Navigable Lakes in the State of Idaho.”~~ (3-18-22)

**02. ~~Scope.~~** These rules govern encroachments on, in, or above navigable lakes in the state of Idaho. (3-18-22)( )

**02. ADMINISTRATIVE APPEALS.**

Any person aggrieved by any final decision or order of the ~~b~~Board is entitled to judicial review pursuant to ~~the provisions of Title 67, Chapter 52, Idaho Code, IDAPA 20.01.01,~~ Title 58, Chapter 13, Sections 58-1305 and 58-1306, Idaho Code, and Sections 025, 030, and 080 of these rules. (3-18-22)( )

**03. INCORPORATION BY REFERENCE.**

The following documents are incorporated by reference into these rules: (3-18-22)

**01. IDAPA 24.39.10, “Rules of the Idaho Electrical Board.”** IDAPA 24.39.10 is available at <https://adminrules.idaho.gov/rules/current/24/243910.pdf>. (3-18-22)

02. IDAPA 24.39.20, "Rules Governing Plumbing." This rule is available at <https://adminrules.idaho.gov/rules/current/24/243920.pdf>. (3-18-22)

03. 33 CFR Part 62, revised as of July 27, 2015 (United States Aids to Navigation System). The Electronic Code of Federal Regulations (eCFR) is available at <https://www.ecfr.gov/cgi-bin/ECFR>. (3-18-22)( )

04. IDAPA 18.08.01, "Idaho Department of Insurance State Fire Marshal – Adoption of the International Fire Code". This rule is available at <https://adminrules.idaho.gov/rules/current/18/180801.pdf>. ( )

04. -- 009. (RESERVED)

## 10. DEFINITIONS.

Additional definitions can be found in Title 58, Chapter 13, Idaho Code. ( )

01. **Adjacent.** Contiguous or touching, and with regard to land or land ownership having a common boundary. (3-18-22)

02. **Aids to Navigation (ATON).** Buoys, beacons, warning lights, and other encroachments in aid of navigation intended to improve waterways for navigation used to determine position or safe courses. (3-18-22)( )

03. **Artificial High Water Mark.** The high water elevation above the natural or ordinary high water mark resulting from construction of man-made dams or control works and impressing a new and higher vegetation line. (3-18-22)

04. **Beds of Navigable Lakes.** The lands lying under or below the "natural or ordinary high water mark" of a navigable lake and, for purposes of these rules only, the lands lying between the natural or ordinary high water mark and the artificial high water mark, if there be one. (3-18-22)

05. **Board.** The Idaho State Board of Land Commissioners or its designee. (3-18-22)

063. **Boat Garage.** A structure nonnavigational encroachment with one (1) or more slips that is completely enclosed with walls, roof, and doors, but no temporary or permanent residential area. (3-18-22)( )

074. **Boat Lift.** A mechanism navigational encroachment for mooring boats partially or entirely out of the water. (3-18-22)( )

085. **Boat Ramp.** A structure navigational encroachment or improved surface extending below the ordinary or artificial high water mark whereby watercraft or equipment are launched from land-based vehicles or trailers. (3-18-22)( )

06. **Breakwater.** A navigational encroachment that is designed to protect moorage by reducing wave energy. ( )

097. **Commercial Marina.** A commercial navigational encroachment whose primary purpose is to provide at least 50% of its moorage for rental or for free to the general public. (3-18-22)( )

1008. **Commercial Navigational Encroachment.** A navigational encroachment used for commercial purposes. (3-18-22)

1109. **Community Dock.** A structure navigational encroachment that provides private moorage for three (3) or more than two (2) adjacent littoral owners, or other littoral owners possessing a littoral common area with littoral rights including, but not limited to homeowner's associations. No public access is required for a community dock. (3-18-22)( )

120. **Covered Slip.** A slip, or group of slips, with a covered by a frame, fabric canopy, and eaves that do not extend beyond the underlying dock. (3-18-22)( )

- 131. Department.** The Idaho Department of Lands ~~or its designee.~~ (3-18-22)( )
- 142. Director.** The head of the Idaho Department of Lands or ~~his~~ their designee. (3-18-22)( )
- 15. — Encroachments in Aid of Navigation.** Includes docks, piers, jet ski and boat lifts, buoys, pilings, breakwaters, boat ramps, channels or basins, and other facilities used to support water craft and moorage on, in, or above the beds or waters of a navigable lake. The term “encroachments in aid of navigation” is used interchangeably with the term “navigational encroachments.” (3-18-22)
- 16. — Encroachments Not in Aid of Navigation.** Includes all other encroachments on, in, or above the beds or waters of a navigable lake, including landfills, bridges, utility and power lines, or other structures not constructed primarily for use in aid of navigation, such as float homes and boat garages. The term “encroachments not in aid of navigation” is used interchangeably with the term “nonnavigational encroachments.” (3-18-22)
- 13. Dredging.** The removal of earthen material below the ordinary or artificial high water mark. The term “dredging” may also be used interchangeably with “excavating.” ( )
- 174. Floating Home or Float Home.** A ~~structure~~ nonnavigational encroachment that is designed and built to be used, or is modified to be used, as a stationary ~~waterborne~~ residential dwelling and is not self-propelled. These structures are usually dependent for utilities upon a continuous utility linkage to a source originating on shore, and must have either a permanent continuous connection to a sewage system on shore, or an alternative method of sewage disposal that does not violate local, state, or federal water quality and sanitation regulations. (3-18-22)( )
- 185. Floating Toys.** Trampolines, inflatable structures, water ski courses, slides, and other nonnavigational recreational equipment that are not permanently anchored to the lake bed ~~or an encroachment~~ and are either located between the shoreline and the line of navigability or are waterward of the line of navigability for less than twenty-four (24) consecutive hours. (3-18-22)( )
- 196. Jet Ski Ramp, Port, or Lift.** A ~~mechanism~~ navigational encroachment for mooring jet skis or other personal watercraft similar to a boat lift. ~~The lifts may be free standing or attached to a dock or pier.~~ (3-18-22)( )
- 2017. Line of Navigability.** 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 ~~BB~~ Board when a line has not already been established for the body of water in question. (3-18-22)( )
- 18. Littoral Owner.** The fee owner of land adjacent to a navigable lake, or a lessee, or the owner of littoral rights that have been segregated from the fee specifically by deed, lease, or other grant. ( )
- 19. Littoral Right Lines.** Lines that extend waterward from the intersection of the artificial or ordinary high water mark and an upland ownership boundary to the line of navigation. ( )
- 240. Low Water Mark.** That line or elevation on the bed of a lake marked or located by the average low water elevations over a period of years, and marks the point to which the riparian rights of adjoining landowners extend as a matter of right, in aid of their right to use the waters of the lake for purposes of navigation. (3-18-22)
- 21. Marine Motor Fuel-Dispensing Facility.** A nonnavigational encroachment where flammable and/or combustible liquids or gases used as fuel for watercraft are stored and dispensed from fixed equipment on shore, piers, wharves, floats or docks into the fuel tanks of marine craft and includes all other facilities used in connection therewith. ( )
- 22. Moorage.** A place to secure float homes, boat garages, and watercraft ~~including, but not limited to,~~ boats, personal watercraft, jet skis, etc. (3-18-22)( )
- 23. Natural or Ordinary High Water Mark.** The high water elevation in a lake over a period of

years, uninfluenced by man-made dams or works, at which elevation the water impresses a line on the soil by covering it for sufficient periods to deprive the soil of its vegetation and destroy its value for agricultural purposes. (3-18-22)

~~24. Navigable Lake. Any permanent body of relatively still or slack water, including man made reservoirs, not privately owned and not a mere marsh or stream eddy, and capable of accommodating boats or canoes. This definition does not include man-made reservoirs where the jurisdiction thereof is asserted and exclusively assumed by a federal agency.~~ (3-18-22)

~~253. Party.~~ Each person or agency named or admitted as a party or properly seeking and entitled as of right to be admitted as a party. (3-18-22)

~~264. Person. A partnership, association, corporation, natural person, or entity qualified to do business in the state of Idaho and any federal, state, tribal, or municipal unit of government~~ Any individual, partnership, corporation, association, governmental subdivision or agency, or public or private organization or entity of any character. (3-18-22)( )

~~275. Piling. A metal, concrete, plastic, or wood p~~ Posts that is placed are driven into the lakebed and used to secure floating docks and other structures. (3-18-22)( )

~~28. Plans. Maps, sketches, engineering drawings, aerial and other photographs, word descriptions, and specifications sufficient to describe the extent, nature and approximate location of the proposed encroachment and the proposed method of accomplishing the same.~~ (3-18-22)

~~296. Public Hearing.~~ The type of hearing where members of the public, and other interested parties or agencies are allowed to comment, in written or oral form, on the record at a public meeting held at a set time and place and presided over by a designated representative of the Department who acts as the hearing coordinator officer. This type of hearing is an informal opportunity for public comment and does not involve the presentation of witnesses, cross examination, oaths, or the rules of evidence. A recording of any oral presentations at such these hearings will be taken by the Department by tape recorder. The hearing coordinator exercises such control at hearings as necessary to maintain order, decorum and common courtesy among the participants. (3-18-22)( )

~~3027. Public Trust Doctrine.~~ The duty of the State to its people to ensure that the use of public trust resources is consistent with identified public trust values. This common law doctrine has been interpreted by decisions of the Idaho Appellate Courts and is codified at Title 58, Chapter 12, Idaho Code. (3-18-22)

~~3128. Pylon. A metal, concrete, or wood post~~ that is placed into the lakebed and used to support fixed piers encroachments. (3-18-22)( )

~~32. Riparian or Littoral Rights.~~ The rights of owners or lessees of land adjacent to navigable waters of the lake to maintain their adjacency to the lake and to make use of their rights as riparian or 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. (3-18-22)

~~33. Riparian or Littoral Owner.~~ The fee owner of land immediately adjacent to a navigable lake, or his lessee, or the owner of riparian or littoral rights that have been segregated from the fee specifically by deed, lease, or other grant. (3-18-22)

~~34. Riparian or Littoral Right Lines.~~ Lines that extend waterward of the intersection between the artificial or ordinary high water mark and an upland ownership boundary to the line of navigation. Riparian or littoral right lines will generally be at right angles to the shoreline. (3-18-22)

~~35. Side Tie.~~ Moorage for watercraft where the dock or pier is on only one (1) side of the watercraft. (3-18-22)

~~29. Residential Area.~~ Any space used for habitation, whether temporarily or permanently, that may include, but is not limited to sleeping arrangements, cooking appliances, bathroom facilities, living amenities.

recreational or entertaining space, or utility connections. ( )

**30. Seawall.** A nonnavigational encroachment constructed to prevent erosion to an area of land. ( )

**361. Single-Family Dock.** A ~~structure~~ navigational encroachment providing noncommercial moorage that serves one (1) waterfront owner ~~whose waterfront footage is no less than twenty-five (25) feet.~~ (3-18-22)( )

**372. Slip.** Moorage for ~~boats~~ watercraft with pier or dock structures on at least two (2) sides of the moorage. (3-18-22)( )

**383. Submerged Lands.** The state-owned beds of navigable lakes, rivers and streams below the ~~natural~~ or ordinary high water marks. (3-18-22)( )

**394. Two-Family Dock.** A ~~structure~~ navigational encroachment providing noncommercial moorage that serves two (2) separate adjacent waterfront owners ~~having a combined waterfront footage of no less than fifty (50) feet. Usually the structure is located on the common littoral property line.~~ (3-18-22)( )

**4035. Upland.** ~~The land bordering on~~ The land above the ordinary high water mark bordering on navigable lakes, rivers, and streams. (3-18-22)( )

**36. Water Line.** A nonnavigational encroachment used to collect or discharge water. ( )

## 11. ABBREVIATIONS.

**01. ATON.** ~~Aids to Navigation.~~ (3-18-22)

**02. HDPE.** ~~High Density Polyethylene.~~ (3-18-22)

**01. O/AHWM.** Ordinary or Artificial High Water Mark. ( )

## 12. POLICY.

**01. Environmental Public Trust Resource Protection and Navigational or Economic Necessity, Justification, or Benefit.** 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. Moreover, it is the responsibility of the ~~State Board of Land Commissioners~~ to regulate and control the use or disposition of state-owned lake beds, ~~so as~~ to provide for their commercial, navigational, recreational or other public use. (3-18-22)( )

**02. No Encroachments Without Permit.** No encroachment on, in or above the beds or waters of any navigable lake ~~in the state~~ may be made ~~unless approval has been given~~ without approval as provided in these rules. An encroachment permit does not guarantee the use of public trust lands without appropriate compensation to the state of Idaho. An encroachment permit may require a submerged land lease. An encroachment permit for a specific activity or encroachment does not guarantee continued use if the activity or encroachment is subsequently found to substantially interfere with navigation or commerce. (3-18-22)( )

**03. Permitting of Existing Encroachments.** (3-18-22)

**a.** ~~The provisions of Title 58, Chapter 13, Section 58-1312, Idaho Code, apply.~~ (3-18-22)

**b.** ~~Any new encroachments, or any unpermitted encroachments constructed after January 1, 1975, are subject to these rules.~~ (3-18-22)

## 13. -- 014. (RESERVED)

## 15. ENCROACHMENT STANDARDS.

**01. Single-Family and Two-Family Docks.** ~~The following parameters govern the size and dimensions of single family docks and two family docks.~~ (3-18-22)( )

**a.** Total waterfront ownership must include at least twenty-five (25) linear feet of shoreline for single-family docks or fifty (50) feet of linear shoreline for two-family docks. ( )

**ab.** No part of the ~~structure~~ encroachment waterward of the ~~natural or ordinary high water mark or artificial high water mark~~ O/AHWM may exceed ten (10) feet in width, excluding the slip cut out. (3-18-22)( )

**bc.** Total surface decking area waterward of the ~~natural or ordinary or artificial high water mark O/ AHWM, including approach ramp and walkway,~~ may not exceed seven hundred (700) square feet, ~~including approach ramp and walkway~~ for a single-family dock ~~and may not exceed or~~ one thousand one hundred (1,100) square feet, ~~including approach ramp and walkway~~ for a two-family dock. (3-18-22)( )

**ed.** No portion of the ~~docking facility~~ encroachment may extend beyond the line of navigability. ~~Shorter docks are encouraged whenever practical and new docks normally will be installed within the waterward extent of existing docks or the line of navigability.~~ (3-18-22)( )

**de.** A variance to the standards in this Subsection 015.01 ~~may will only~~ be approved by the Department when justified by site specific considerations, ~~such as the distance to the established line of navigability.~~ Any variance granted may require a lease per IDAPA 20.03.17. (3-18-22)( )

**02. Community Docks.** (3-18-22)

**a.** ~~A community dock is considered a commercial navigational aid for purposes of processing the application.~~ (3-18-22)

**ba.** No part of the ~~structure~~ encroachment waterward of the ~~natural or ordinary high water mark or artificial high water mark~~ O/AHWM may exceed ten (10) feet in width except breakwaters when justified by site specific conditions and approved by the Department. (3-18-22)( )

**eb.** ~~A community dock may not have less than~~ Total waterfront ownership must have at least fifty (50) linear feet of combined shoreline frontage. ~~Moorage facilities will be limited in size as a function of the length of shoreline dedicated to the community dock. The surface decking area of the community dock is limited to the product of the length of shoreline multiplied by seven (7) square feet per lineal feet or a minimum of seven hundred (700) square feet. However, the Department, at its discretion, may limit the ultimate size when evaluating the proposal and public trust values.~~ (3-18-22)( )

**c.** The surface decking area of the community dock is limited to the greater of seven hundred (700) square feet or the product of the linear feet of the upland shoreline multiplied by seven (7) feet. The Department, in its sole discretion, may limit the surface decking area when site specific considerations justify a reduction to protect public trust resources. ( )

**d.** ~~If a breakwater will be incorporated into the structure of a dock, and a need for the breakwater can be demonstrated, the Department may allow the surface decking area to exceed the size limitations of Paragraph 015.02.c of these rules~~ The Department may allow the surface decking area of a community dock to exceed the size limitations if the need for a breakwater is demonstrated. (3-18-22)( )

**e.** ~~A person with permit is required to convert~~ an existing community dock ~~that desires to change the facility in~~ into a commercial marina ~~must submit the following information to the Department:.~~ (3-18-22)( )

**i.** ~~\_\_\_\_\_ A new application for an encroachment permit.~~ (3-18-22)

**ii.** ~~\_\_\_\_\_ Text and drawings that describe which moorage will be public and which moorage will be private.~~ (3-18-22)



**03. Commercial Marina.**

(3-18-22)

**a.** ~~Commercial marinas must have a minimum of~~ At least fifty percent (50%) of ~~their~~ moorage available for use by the at a commercial marina must be available to the general public on either a first come, first served basis for free or rent, or ~~a rent or lease agreement for a period of time up to one (1) for lease not to exceed one~~ (1) year. Moorage contracts leases may be renewed annually, ~~so long as a renewal term does not to~~ not to exceed one (1) year. ~~Moorage for use by the general public may~~ Public moorage must ~~not include conditions that result in a transfer of ownership of moorage or real property, or~~ require membership in a club or organization. (3-18-22)(    )

**b.** ~~Commercial marinas that are converted to a community dock must conform to all the community dock standards, including frontage requirements and square footage restrictions. This change of use must be approved by the Department through a new encroachment permit prior to implementing the change~~ A permit is required to convert an existing commercial marina into any other type of encroachment. Commercial marinas must keep at least fifty percent (50%) of their moorage available to the general public. The permit application must illustrate and clearly depict which is public moorage and which is private moorage. (3-18-22)(    )

**c.** If local city or county ordinances governing parking requirements for marinas have not been adopted, commercial marinas must provide ~~a minimum of upland vehicle parking equivalent to~~ at least one (1) upland parking space per two (2) public watercraft or float home moorages. If private moorage is tied to ~~specific parking spaces or designated parking areas~~ designated parking spaces or areas, then the commercial marina must provide at least one (1) upland parking space per one (1) private watercraft or float home moorage ~~must be provided~~. In the event of conflict, the local ordinances prevail. (3-18-22)(    )

**d.** ~~If a commercial marina can be accessed from a road, marina customers must be allowed access via that road.~~ (3-18-22)

**ed.** Moorage that is not available for public use as described in Paragraph 015.03.a. of these rules is private moorage. (3-18-22)

**fe.** When calculating the moorage percentage, the amount of public moorage is to be compared to the amount of private moorage. Commercial marinas with private float home moorage are required to provide either non-private float home moorage or two (2) public use boat moorages for ~~every~~ each private float home moorage in addition to any other required public use boat moorages. (3-18-22)(    )

**gf.** 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. (3-18-22)

**hg.** Commercial 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~~. This entity is responsible for obtaining and maintaining an encroachment permit under these rules and a submerged lands lease under IDAPA 20.03.17, ~~"Rules Governing Leases on State-Owned Submerged lands and Formerly Submerged Lands."~~ (3-18-22)(    )

**i.** ~~Existing commercial marinas that desire to change their operations and convert some of their moorage to private use must keep at least fifty percent (50%) of their moorage available for use by the general public. This change in operations must be approved by the Department through a new encroachment permit prior to implementation of the change. The permit application must describe, in text and in drawings, which moorage will be public and which moorage will be private.~~ (3-18-22)

**04. Covered Slip.**

(3-18-22)

**a.** Covered slips, regardless of when constructed, may not have a temporary or permanent residential area. (3-18-22)

**b.** ~~Slip covers should have colors that blend with the natural surroundings and are approved by the Department~~ Covered slips with hard roofs and up to three (3) walls may be maintained or replaced at their current size

if previously permitted or constructed prior to January 1, 1975. These structures may not be expanded nor converted to boat garages. (3-18-22)( )

c. Covered slips may not be supported by extra piling nor constructed with hard roofs. (3-18-22)

d. ~~Slip covers with permanent roofs and up to three (3) walls may be maintained or replaced at their current size if they were previously permitted or if they were constructed prior to January 1, 1975. These structures may not be expanded nor converted to boat garages.~~ Covered slips should have colors that blend with the natural surroundings and are approved by the Department. (3-18-22)( )

e. ~~Fabric~~ Covered slips must be constructed as canopies without sides unless the following standards are followed: (3-18-22)( )

i. At least two (2) feet of open space is left between the bottom of the cover and the dock or pier surface; and (3-18-22)

ii. Fabric for canopy and sides will transmit at least seventy-five percent (75%) of the natural light. (3-18-22)

**05. Boat Garage.** (3-18-22)

a. Boat garages ~~are considered nonnavigational encroachments~~ must only be used for mooring watercraft, and may not have separate fully enclosed rooms, overhead storage, or a residential area of any kind as defined by these rules. (3-18-22)( )

b. Applications for permits to construct new boat garages, ~~expand the total square footage of the existing footprint, or raise the height will not be~~ or to expand the height or square footage of existing boat garage are no longer accepted unless the application is to support local emergency services. (3-18-22)( )

c. ~~Existing permitted boat garages may be maintained or replaced with the current square footage of their existing footprint and height.~~ A permit is required to replace or relocate an existing boat garage. A new boat garage may not be expanded in size or height, and must retain the original square footage and footprint. (3-18-22)( )

d. ~~Relocation of an existing boat garage will require a permit.~~ (3-18-22)

**06. Breakwaters.** Breakwaters ~~built upon the lake for use in aid of navigation~~ will not be authorized below the ~~level of normal~~ low water mark without an extraordinary showing of need, provided, however that this does not apply to floating breakwaters secured by piling and used to protect private property from recurring wind, wave, or ice damage, or used to control traffic in busy areas of lakes. The breakwater must be designed to counter wave actions of known wave heights and wave lengths. (3-18-22)( )

**07. Seawalls.** Seawalls should be placed at or above the ~~ordinary high water mark, or the artificial high water mark~~ O/AHWM, if ~~applicable possible~~. Seawalls are ~~not an aid to navigation, nonnavigational~~ and placement waterward of the ~~ordinary or artificial high water mark~~ O/AHWM will generally not be allowed. (3-18-22)( )

**08. Riprap.** (3-18-22)

a. Riprap used to stabilize shorelines will consist of rock or other materials that ~~is~~ are appropriately sized to resist movement from anticipated wave heights or tractive forces of the water flow. The rock must be sound, dense, durable, and angular rock resistant to weathering and free of fines. The riprap must overlie a distinct filter layer which that consists of sand, gravel, or nonwoven geotextile fabric. The riprap and filter layer must be keyed into the bed below the ~~ordinary or artificial high water mark~~ O/AHWM, as applicable. If the applicant wishes to install riprap with different standards, they must submit a design that is signed and stamped for construction purposes by a professional engineer registered in the state of Idaho. (3-18-22)( )

b. Riprap used to protect the base of a seawall or other vertical walls may not need to be keyed into

the bed and may not require a filter layer, at the Department's discretion.

(3-18-22)

**09. Mooring Buoys.** Buoys must be installed a minimum of thirty (30) feet away from littoral right lines of adjacent littoral owners. One (1) mooring buoy per littoral owner may be allowed for single-family encroachments. (3-18-22)( )

**10. Float Homes.**

(3-18-22)

**a.** Applications for permits to construct new float homes, convert existing encroachments into float homes, or to expand the total square footage of the existing footprint, will not be accepted. (3-18-22)( )

**b.** ~~Applications for relocation of~~ A permit is required to relocate, rebuild, or add another story to existing float homes ~~within a lake or from one (1) lake to another.~~ Applications are subject to the following requirements: (3-18-22)( )

**i.** The applicant must provide ~~P~~proof of ownership or long term lease of the uplands ~~parcels~~ adjacent to the relocation site ~~must be furnished to the Department.~~ (3-18-22)( )

**ii.** The applicant must provide detailed, scaled drawings approved by an engineer licensed in the state of Idaho that accurately illustrate and depict all interior and exterior features, layouts, and dimensions. ( )

**iii.** The applicant must show that all wastes and waste water will be transported to shore disposal systems by a method approved by the Idaho Department of Environmental Quality or the appropriate local health authority. Applicant must either obtain a letter from the local sewer district stating that the district will serve the float home or demonstrate that sewage will be appropriately handled and treated. Applicant must also provide a statement from a professional plumber licensed in the state of Idaho that the plumbing was designed in accordance with IDAPA 24.39.20, "Rules Governing Plumbing," as incorporated by reference in Section 003 of these rules, installed properly, and has been pressure tested. (3-18-22)

**c.** ~~Encroachment applications and approved local permits are required for replacement of, or adding another story to, a float home.~~ (3-18-22)

**d.** ~~All plumbing work on float homes must be done in accordance with IDAPA 24.29.20, "Rules Governing Plumbing" and IDAPA 29.39.10, "Rules of the Idaho Electrical Board," as incorporated by reference in Section 003 of these rules.~~ (3-18-22)

**e.** ~~All float homes in Idaho that connect with upland sewer or septic systems must implement the following standards by December 31, 2012:~~ (3-18-22)

**i.** ~~The holding tank with pump or grinder unit must be adequately sealed to prevent material from escaping and to prevent lake water from entering. The tank lid must have a gasket or seal, and the lid must be securely fastened at all times unless the system is being repaired or maintained. An audible overflow alarm must also be installed.~~ (3-18-22)

**ii.** ~~Grinders or solids handling pumps must be used to move sewage from the float home to the upland system.~~ (3-18-22)

**iii.** ~~If solids handling pumps are used, they must have a minimum two (2) inch interior diameter discharge, and the pipe to the shoreline must also have a minimum two (2) inch interior diameter. Connectors used on either end of this pipe may not significantly reduce the interior diameter.~~ (3-18-22)

**iv.** ~~The pipeline from the float home to the shoreline must be a continuous line with no mechanical connections. Check valves and manual shutoff valves must be installed at each end of the line. Butt fused HDPE, two hundred (200) psi black polyethylene pipe, or materials with similar properties must be used. The pipeline must contain sufficient slack to account for the maximum expected rise and fall of the lake or river level. The pipeline must be buried in the lakebed for freeze protection where it will be exposed during periods of low water. Pipelines on the bed of the lake must be appropriately located and anchored so they will not unduly interfere with navigation or other~~ ( )

lake-related uses.

(3-18-22)

v. ~~Manifolds below the ordinary, or artificial if applicable, high water mark that collect two (2) or more sewer lines and then route the discharge to the shore through a single pipe are not allowed. All float homes must have an individual sewer line from the float home to a facility on the shore.~~

(3-18-22)

f. All float home permittees will have their float homes inspected by a professional plumber licensed in the state of Idaho by December 31, 2012. The inspection will be documented with a report prepared by the inspector. The report will document whether or not the float homes meet the standards in Paragraph 015.10.e. of these rules, and will be provided to the Department before the above date.

(3-18-22)

g. A float home permittee must request an extension, and give cause for the extension, if their float home does not meet the standards in paragraph 015.01.e. of these rules by December 31, 2012. Extensions beyond December 31, 2016 will not be allowed. A permittee's failure to either request the extension, if needed, or to meet the December 31, 2016 deadline will be a violation subject to the provisions of Section 080 of these rules.

(3-18-22)

h. Construction or remodel work on a float home that costs fifty percent (50%) or more of its assessed value will require an encroachment application and construction drawings stamped by an engineer licensed in the state of Idaho.

(3-18-22)

#### 11. ~~Excavated~~ing or ~~Dredged~~ing Channel.

(3-18-22)( )

a. Excavating, or dredging, ~~or redredging channels~~ requires an encroachment permit and are processed in accordance with Section 030 of these rules.

(3-18-22)( )

b. ~~An excavated or dredged channel or basin to provide~~ Dredging to improve access to navigable waters must have a clear environmental, economic, or social benefit to the ~~people of the state~~ public, and must not result in any appreciable environmental degradation. ~~A channel or basin~~ Dredging will not be approved if the cumulative effects of these features ~~in the same navigable lake~~ would be adverse to fisheries or water quality.

(3-18-22)( )

c. Whenever practical, ~~such channels or basins~~ dredging must ~~be located to serve~~ benefit more than one (1) littoral owner or a commercial marina; provided, however, ~~that no basin or channel~~ dredging will not be approved that will provide access for watercraft to nonlittoral owners.

(3-18-22)( )

12. **ATONs.** Aids to Navigation will conform to the requirements established by the United States Aid to Navigation system.

(3-18-22)

#### 13. **General Encroachment Standards.**

(3-18-22)

a. Square Footage. The square footage limitations in Subsections 015.01 and 015.02 include all ~~structures~~ encroachments beyond the ~~ordinary or artificial high water mark such as O/AHWM~~ including the approach, ramp, pier, dock, and all other floating or suspended structures that cover the lake surface, except for:

(3-18-22)( )

i. Boat lifts as allowed pursuant to Paragraph 015.13.b.

(3-18-22)

ii. Jet ski ramp, port, or lift as allowed pursuant to Paragraph 015.13.b.

(3-18-22)

iii. Slip covers.

(3-18-22)

iv. Undecked portions of breakwaters.

(3-18-22)

b. Boat Lifts and Jet Ski Lifts.

(3-18-22)

i. Single-family docks are allowed ~~a single one (1)~~ one (1) boat lift and two (2) jet ski lifts, or two (2) boat lifts, ~~without adding their footprint to the dock~~ which are not included in calculating total square footage. Additional

lifts will ~~require that~~ include fifty percent (50%) of the ~~footprint square footage~~ of the largest lifts ~~be included in the~~ into calculating total allowable square footage ~~of the dock or pier~~ as per Subsection 015.01. (3-18-22)( )

ii. Two-family docks are allowed either two (2) boat lifts and four (4) jet ski lifts, or four (4) boat lifts, ~~without adding their footprint to the dock which are not included in calculating total~~ square footage. Additional lifts will ~~require that~~ include fifty percent (50%) of the ~~footprint square footage~~ of the largest lifts ~~be included in the~~ allowable square footage of the dock or pier into calculating total allowable square footage as per Subsection 015.01. (3-18-22)( )

iii. A boat lift or jet ski lift within lines drawn perpendicular from the shore to the outside dock edges will not require a separate permit if the lift is outside the ten (10) foot adjacent littoral owner setback, the lift does not extend beyond the line of navigability, and the lift does not count toward the square footage of the dock as outlined in Subparagraphs 015.13.b.i. and 015.13.b.ii. The permittee must send a revised permit drawing with the lift location as an application to the Department. If the lift meets the above conditions, the application will be approved as submitted. Future applications must include the lifts. (3-18-22)

iv. Community docks are allowed either one (1) boat lift or two (2) jet ski lifts per moorage. Boat lifts placed outside of a slip must be oriented with the long axis parallel to the dock ~~structure~~. Additional lifts will require that fifty percent (50%) of their footprint be included in the allowable square footage of the dock or pier as per Subsection 015.02. (3-18-22)( )

c. Angle from Shoreline. (3-18-22)

i. Where feasible, all docks, piers, or similar structures must ~~be constructed so as to protrude as nearly as possible~~ protrude at right angles to the general shoreline, ~~lessening the potential for as nearly as possible to minimize~~ infringing on adjacent littoral rights. (3-18-22)( )

ii. Where ~~it is not feasible to place docks at~~ right angles to the ~~general~~ shoreline are not feasible, the Department will work with the applicant to ~~review and approve the applicant's proposed~~ design an acceptable alternative configuration and ~~location of the dock and the dock's~~ angle from shore. (3-18-22)( )

d. Length of Community Docks and Commercial Navigational Encroachments. Docks, piers, or other ~~works encroachments~~ may extend ~~to a length that will provide as far as necessary to~~ access ~~to~~ a water depth that will afford sufficient draft for water craft ~~customarily in use on the particular body of water, except that no structure may extend beyond~~ within the normal accepted line of navigability ~~established through use unless additional length is authorized by permit or order of the Director. The Department may authorize a longer or shorter length if justified by specific site conditions.~~ If a ~~normally accepted~~ line of navigability has not been established through use, the ~~Director~~ Department may ~~from time to time as he deems necessary,~~ designate a line of navigability for the purpose of effective administration of these rules. (3-18-22)( )

e. Presumed Adverse Effect. It will be presumed, subject to rebuttal, that single-family and two-family navigational encroachments will have an adverse effect upon adjacent littoral rights if located closer than ten (10) feet from adjacent littoral right lines, and that commercial navigational encroachments, community docks or nonnavigational encroachments will have ~~a like an~~ adverse effect upon adjacent littoral rights if located closer than twenty-five (25) feet to adjacent littoral right lines. Written consent of the adjacent littoral ~~owner or~~ owners will automatically rebut the presumption. All boat lifts and other structures attached to the encroachments are subject to the above presumptions of adverse ~~ae~~ effects. (3-18-22)( )

f. Weather Conditions. Encroachments and their building materials must be designed and installed to withstand normally anticipated weather conditions in the area. Docks, piers, and similar structures must be adequately secured to pilings or anchors to prevent displacement due to ice, wind, and waves. Flotation devices ~~for docks, float homes, etc~~ must be reasonably resistant to puncture and other damage. (3-18-22)( )

g. Markers. If the Department determines that an encroachment is not of sufficient size to be readily seen or poses a hazard to navigation, the permit will specify ~~that aids to navigation be used~~ the use of ATONs to clearly identify the ~~potential~~ navigational hazard. (3-18-22)( )

h. All encroachments that connect with upland sewer or septic systems must implement the following standards: ( )

i. The holding tank with pump or grinder unit must be adequately sealed to prevent material from escaping and to prevent lake water from entering. The tank lid must have a gasket or seal, and the lid must be securely fastened at all times unless the system is being repaired or maintained. An audible overflow alarm must also be installed. ( )

ii. Grinders or solids handling pumps must be used to move sewage from the encroachment to the upland system. ( )

iii. If solids handling pumps are used, they must have a minimum two (2) inch interior diameter discharge, and the pipe to the shoreline must also have a minimum two (2) inch interior diameter. Connectors used on either end of this pipe may not significantly reduce the interior diameter. ( )

iv. The pipeline to the shoreline must be a continuous line with no mechanical connections. Check valves and manual shutoff valves must be installed at each end of the line. Butt fused High-Density Polyethylene, two hundred (200) psi black polyethylene pipe, or materials with similar properties must be used. The pipeline must contain sufficient slack to account for the maximum expected rise and fall of the water level. The pipeline must be buried in the lakebed for freeze protection where it will be exposed during periods of low water. Pipelines on the bed of the lake must be appropriately located and anchored so they will not unduly interfere with navigation or other lake related uses. ( )

v. Manifolds below the O/AHWM that collect two (2) or more sewer lines and then route the discharge to the shore through a single pipe are not allowed. All encroachments must have an individual sewer line from the encroachment to a facility on the shore. ( )

vi. All permittees will have their encroachment inspected by a professional plumber licensed in the state of Idaho. The inspection will be documented with a report prepared by the inspector. The report will document whether or not the encroachment meets the standards in Paragraph 015.13.h. of these rules, and will be provided to the Department within thirty (30) days of any modification that impacts plumbing. ( )

i. All electrical work installed on encroachments must be done in accordance with IDAPA 24.39.10, as incorporated by reference in Section 003 of these rules. ( )

j. All plumbing work on encroachments must be done in accordance with IDAPA 24.39.20, as incorporated by reference in Section 003 of these rules. ( )

k. All encroachments beyond the O/AHWM mark must adhere to the safety standards set forth in IDAPA 18.08.01, as incorporated by reference in Section 003 of these rules. ( )

h. Overhead Clearance. (3-18-22)

i. Overhead clearance between the ~~natural or ordinary high water mark or the artificial high water mark, if there be one,~~ O/AHWM and the structure or wires must be sufficient to pass the largest vessel that may reasonably be anticipated to use the ~~subject~~ waters in the vicinity of the encroachment. ~~In no case will the clearance be required to exceed~~ The clearance must not exceed thirty (30) feet unless ~~after public hearing~~, the Department determines ~~after public hearing~~ that ~~it a higher clearance is in the overall public interest that the clearance be in excess of thirty (30) feet. Irrespective of height above the water, approval of~~ necessary for the public's benefit. Approval of structures or wires presenting a ~~hazard for boating or other water related activities~~ navigational hazard may be conditioned upon ~~require~~ adequate safety marking to show clearance and ~~otherwise to~~ warn the public of the hazard, ~~which will be specified. The Department will specify in the permit~~ the amount of overhead clearance and markings required. (3-18-22)( )

ii. When the permit provides for overhead clearance or safety markings under Paragraph 015.13.h., the Department will consider the applicable requirements of the United States Coast Guard, the Idaho Transportation Department, the Idaho Public Utilities Commission and any other applicable federal, state, or local ~~regulations~~ laws.



(3-18-22)( )

**im.** Beaded Foam Flotation. Beaded foam flotation must be completely encased in a manner that will maintain the structural integrity of the foam. The encasement must be resistant to the entry of rodents. (3-18-22)

**14. Floating Toys.** (3-18-22)

**a.** Encroachment permits are not required for floating toys, except where noted in Paragraph 015.14.b. Counties and cities may regulate floating toys for public safety and related concerns. (3-18-22)

**ba.** A floating toy becomes a nonnavigational An encroachment, and an encroachment permit is required, when one (1) of the following occurs: for floating toys when they are anchored to the lakebed with an anchor that requires equipment for removal or when located waterward of the line of navigability for more than twenty-four (24) consecutive hours. (3-18-22)( )

**i.** It is anchored to the bed of the lake with a device that requires equipment to remove it from the bed of the lake, or; (3-18-22)

**ii.** It is located waterward of the line of navigability for more than twenty-four (24) consecutive hours. (3-18-22)

**15. Marine Motor Fuel Dispensing Facilities.** ( )

**a.** Any portion of a marine motor fuel dispensing facility located below the O/AHWM requires an encroachment permit. ( )

**16. Fill Material.** ( )

**a.** The placing of any dredged or fill material on or in the beds or waters of any navigable lake is an encroachment and requires a permit from the Department. ( )

**157. Lake Specific Encroachment Permit Terms.** (3-18-22)

**a.** The Department may use encroachment permit conditions specific to individual lakes waterways if the permit conditions are needed necessary to protect public trust values resources and the permit condition is approved by the Land Board. (3-18-22)( )

**b.** Lake specific encroachment permit conditions may supplement, negate, or alter encroachment standards established in Section 015 of these rules. (3-18-22)

**c.** Lake specific encroachment permit conditions will be used to assist with implementing lake management plans authorized by Title 39, Chapter 66, Idaho Code; Title 39, Chapter 85, Idaho Code; Title 67, Chapter 43, Idaho Code; and Title 70, Chapter 2, Idaho Code. The purpose for using such lake specific permit conditions is to address lake specific environmental concerns that require attention and create a need for a variance from what is allowed on other lakes. (3-18-22)( )

**d.** Lake specific encroachment permit terms may be read at the Idaho Department of Lands website: <https://www.idl.idaho.gov/>. (3-18-22)( )

**16. -- 019. (RESERVED)**

**20. APPLICATIONS.**

**01. Encroachment Applications.** No person shall hereafter make or cause to be made any encroachments on, in or above the beds or waters of any navigable lake in the state of Idaho are allowed without first making application to and receiving written approval an encroachment permit from the dDepartment. The placing of dredged or fill material, refuse or waste matter intended as or becoming fill material, on or in the beds or waters of

any navigable lake in the state of Idaho shall be considered an encroachment and written approval by the department is required. If demolition is required prior to construction of the proposed encroachment, then the application must describe the include a description of any demolition activities and the steps that will be taken to protect water quality and other public trust values. No demolition activities may proceed until the permit is issued. (3-18-22)( )

**02. Signature Requirement.** Only persons who are littoral owners or lessees of a littoral owner shall be eligible to apply for encroachment permits. A person who has been specifically granted littoral rights or dock rights from a littoral owner shall also be eligible for an encroachment permit; the grantor of such these littoral rights, however, shall are no longer be eligible to apply for an encroachment permit. Except for waterlines or utility lines, the possession of an easement to the shoreline does not qualify a person to be eligible for an encroachment permit. (3-18-22)( )

**03. Other Permits.** Nothing in these rules shall excuse a person seeking to make an encroachment from obtaining must also obtain any additional approvals lawfully required by federal, local or other state agencies. (3-18-22)( )

**04. Repairs, Reinstallation of Structures.** No permit is required to clean, maintain, or repair an existing permitted encroachment, but a permit is required to completely replace, enlarge, or extend an existing encroachment. Replacement of single-family and two-family docks may will not require a permit if they meet the criteria in Section 58-1305(e), Idaho Code the replacement is within current standards as provided in Idaho Code § 58-1305(e). Reinstalling Replacing the top or decking of a dock, wharf or similar structure shall be an encroachment is considered a repair; reinstallation. Replacement of winter damaged or wind and water damaged of wind or water damaged pilings, docks, or floats logs shall be is considered a repair. Repairs, or replacements under Section 58-1305(e), Idaho Code, Any repair or replacement that adversely affects the bed of the lake will be considered is a violation of these rules. (3-18-22)( )

**05. Dock Reconfiguration.** (3-18-22)

a. Rearrangement Reconfiguration or rearrangement of single-family and two-family docks will require a new application for an encroachment permit. (3-18-22)( )

b. Reconfiguration or Rearrangement of community docks and commercial navigational encroachments may not require a new application for an encroachment permit if the changes are only internal and navigational. The Department shall must be consulted prior to commencement of modifications being made, and shall use will consider the following criteria to help determine if a new permit must be submitted is required: (3-18-22)( )

- i. Overall footprint does not change in dimension or orientation; (3-18-22)
- ii. No increase in the square footage, as described in the existing permit and in accordance with Paragraph 015.13.a, occurs. This only applies to community docks; (3-18-22)( )
- iii. The entrances and exits of the facility encroachment do not change. (3-18-22)( )
- iv. The number of slips does not change. ( )

**06. Redredging Dredging.** Redredging A permit is required before dredging or redredging a channel or basin shall be considered a new encroachment and a permit is required unless redredging is specifically authorized by the outstanding an existing permit. Water quality certification from the Idaho Department of Environmental Quality is required regardless of how redredging is addressed in any existing or future permit. (3-18-22)( )

**07. Forms, Filing.** Applications and plans shall must be filed on forms provided by the Department together with filing fees and costs of publication when required by these rules. Costs of preparation of incurred to prepare the application, including all necessary maps and drawings, shall must be paid by the applicant. (3-18-22)( )

- a. Plans shall must include detailed information to demonstrate compliance with the applicable standards of



these rules, and the following information at a scale sufficient to show the information requested: (3-18-22)( )

i. Lakebed profile in relationship to the proposed encroachment. The lakebed profile ~~shall show~~ must clearly depict the ~~summer and winter water levels~~ O/AHWM, the line of navigability, and the low water mark. (3-18-22)( )

ii. Copy of most recent survey or county plat showing the full extent of the applicant's ~~lot~~ upland parcel and the adjacent ~~littoral lots~~ upland parcels. (3-18-22)( )

iii. Proof of current ownership or control of ~~littoral~~ upland property or littoral rights. (3-18-22)( )

iv. ~~A general vicinity map~~ Scaled maps accurately depicting the location of all encroachments and their dimensions. (3-18-22)( )

v. Scaled air photos or maps ~~showing~~ accurately depicting the lengths of adjacent docks as an indication of the line of navigability, distances to adjacent encroachments, distance to littoral lines, and the location and orientation of the proposed encroachment in the lake. (3-18-22)( )

vi. Total square footage of proposed docks and other structures, excluding pilings, that cover the lake surface. (3-18-22)

vii. Names and current mailing addresses of adjacent littoral landowners. (3-18-22)

viii. Plans submitted for enclosed encroachments must accurately depict all interior and exterior features. Public, commercial, and residential encroachments may require engineered plans approved by a professional engineer licensed in the state of Idaho. ( )

b. Applications must be submitted or approved by the littoral owner or, if the encroachment will lie over or upon private lands between the ~~natural or ordinary high water mark~~ O/HWM and the ~~artificial high water mark~~ AHWM, the application must be submitted or approved by the owner of ~~such those~~ lands. When the littoral owner is not the applicant, the application ~~shall~~ must bear the owner's signature as approving the encroachment prior to filing. (3-18-22)( )

c. If more than one (1) littoral owner exists, the application must bear the signature of all littoral owners, or the signature of an authorized officer of an entity or a designated homeowner's or property management association. (3-18-22)( )

d. Applications for noncommercial ~~encroachments intended to improve waterways for navigation~~ ATONs, wildlife habitat, and ~~other~~ recreational uses by members of the public must be filed by any municipality, county, state, or federal agency, or other entity empowered to make ~~such those~~ improvements. Application fees are not required for these encroachments. (3-18-22)( )

e. The following applications ~~shall~~ must be accompanied by the respective nonrefundable filing fees together with a deposit toward the cost of newspaper publication, which ~~deposit shall~~ will be determined by the ~~director~~ Department at the time of filing: (3-18-22)( )

i. Nonnavigational encroachments require a fee of one thousand dollars (\$1,000); except that nonnavigational encroachments for bank stabilization and erosion control require a fee of five hundred fifty dollars (\$550). (3-18-22)

ii. Commercial navigational encroachments require a ~~base~~ fee of two thousand dollars (\$2,000). If the costs of processing an application exceed this amount, then the applicant may be charged additional costs as allowed by Title 58, Chapter 13, Section Idaho Code 58-1307, Idaho Code; (3-18-22)( )

iii. Community navigational encroachments require a fee of two thousand dollars (\$2,000); and (3-18-22)

iv. Navigational encroachments extending beyond the line of navigability require a fee of one thousand dollars (\$1,000). (3-18-22)

f. Applicants ~~shall~~ must pay any balance due ~~on publication costs~~ before written approval will be issued. The Department ~~shall~~ will refund ~~any excess at or before final action on the application~~ any publication costs if the notice is not published. (3-18-22)( )

g. Application for a single-family or two-family dock not extending beyond the line of navigability or a nonnavigational encroachment for a buried or submerged water ~~intake~~ line serving four or less households ~~shall~~ must be accompanied by a nonrefundable ~~filing~~ fee of four hundred twenty-five dollars (\$425). (3-18-22)( )

h. No publication cost is required for applications ~~s~~ for noncommercial navigational encroachments ~~s~~ not extending beyond the line of navigability or for application for installation of buried or submerged water ~~intake~~ lines and utility lines. (3-18-22)( )

i. Applications and plans ~~shall~~ must be stamped with the date ~~of filing received by the Department.~~ (3-18-22)( )

j. Applications that are incomplete, not in the proper form, not containing the required signature(s), or not accompanied by filing fees and costs of publication ~~when required, shall~~ will not be accepted for filing. The ~~d~~Department ~~shall~~ will send the applicant a written notice of incompleteness with a listing of the application's deficiencies. The applicant will be given thirty (30) days from receipt of the notice of incompleteness to resubmit the required information. The deadline may be extended with written consent of the ~~d~~Department. If the given deadline is not met, the ~~d~~Department will notify the applicant that the application has been denied due to lack of sufficient information. The applicant may reapply at a later date, but will be required to pay another filing fee and publication fee, if applicable. (3-18-22)( )

## 21. -- 024. (RESERVED)

## 25. PROCESSING OF APPLICATIONS FOR SINGLE-FAMILY AND TWO-FAMILY NAVIGATIONAL ENCROACHMENTS ~~WITHIN LINE OF NAVIGABILITY.~~

01. **Single-Family and Two-Family Navigational Encroachments.** Applications for single-family and two-family navigational encroachments not extending beyond the line of navigability will be processed with a minimum of procedural requirements and ~~shall~~ will not be denied except in the most unusual of circumstances. ~~No newspaper publication, formal appearance by the applicant, or hearing is contemplated.~~ (3-18-22)( )

02. **Notification of Adjacent Littoral Owners.** The ~~d~~Department will provide a copy of the application to the littoral owners ~~immediately~~ adjacent to the applicant's property. If the applicant owns one (1) or more adjacent lots, the ~~d~~Department ~~shall~~ will notify the owner of the next adjacent lot. If the proposed encroachment may infringe upon the littoral rights of an adjacent owner, the ~~d~~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. The applicant may submit the adjacent littoral owners' signatures, consenting to the proposed encroachment, in lieu of the ~~d~~Department's notification. (3-18-22)( )

## 03. Written Objections. (3-18-22)

a. If an adjacent littoral owner files written objections to the application with the ~~d~~Department within ten (10) days from the date of service or receipt of notice of ~~the completed~~ application, the ~~d~~Department ~~shall fix a time and a place for~~ will schedule a hearing. In computing the time to object, the day of service or receipt of notice of the application ~~shall~~ will not be counted. Objections must be received by the Department within the ten (10) day period ~~by mail or hand delivery in the local department office or the director's office in Boise.~~ If the last day of the period is Saturday, Sunday or a legal holiday, the time within which to object ~~shall~~ will run until the end of the first business day thereafter. (3-18-22)( )

b. The applicant and any objectors may agree to changes in the ~~permit~~ proposed encroachment that

result in the objections being withdrawn. Department employees may facilitate ~~any such~~ this agreement. Participation by ~~d~~Department personnel in this informal mediation ~~shall~~ will not constitute a conflict of interest for participation in the hearing process. A withdrawal of objections must be in writing, completed prior to a scheduled hearing, and contain: (3-18-22)( )

- i. Signatures of the applicant and the objecting party; (3-18-22)
- ii. A description of the changes or clarifications to the permit that are acceptable to the applicant, the objecting party, and the ~~d~~Department. (3-18-22)( )

**04. Unusual Circumstances.** Even though no objection is filed by an adjacent littoral owner to a noncommercial navigational encroachment, ~~if the dDirector deems it advisable~~ may require a hearing because of the existence of unusual circumstances, ~~he may require a hearing.~~ (3-18-22)( )

**05. Hearings.** Hearings ~~fixed set~~ by the ~~d~~Director following an objection ~~pursuant to Subsection 025.03 or the Director's own determination pursuant to Subsection 025.04 shall be fixed as to time and place, but no later than sixty (60) days from date of acceptance for filing of the application~~ will be held within sixty (60) days from the date the application is accepted. At the hearing, the Department the applicant and any adjacent ~~riparian~~ littoral owner filing timely objections may appear personally or through an authorized representative and present evidence. ~~The department may also appear and present evidence at the hearing. In such hearings the~~ The Director will designate a hearing coordinator shall officer who will act as a fact finder and not a party. ~~The Director, at his discretion, will designate a Department representative to sit as the hearing coordinator.~~ Provided, however, that the parties may agree to informal disposition of an application by stipulation, agreed settlement, consent order, or other informal means. (3-18-22)( )

**06. Decision Following a Hearing.** The ~~d~~Director ~~shall will~~, within forty-five (45) days after close of the hearing provided for in Subsections 025.03 or 025.04 render a final decision ~~and give notice thereof~~ to the parties appearing before him ~~either personally or by certified or registered mail. The final decision shall be in writing.~~ (3-18-22)( )

**07. Disposition Without Hearing.** If a hearing is not held under Subsection 025.03 or Subsection 025.04, then the ~~d~~Department ~~shall will~~ act upon a complete application ~~filed under Subsection 025.04~~ as expeditiously as possible but no later than sixty (60) days from acceptance of the application. Failure to act within this sixty (60) day timeframe ~~shall will~~ constitute approval of the application. Applications determined to be incomplete under Subsection 020.07 are not subject to the sixty (60) day timeframe until the information requested by the ~~d~~Department and required by the rules has been submitted. (3-18-22)( )

**08. Judicial Review.** Any applicant aggrieved by the Director's final ~~decision order~~, or an aggrieved party appearing at a hearing, ~~shall may~~ have a right to have the proceedings and final ~~decision 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 the final ~~decision order~~. An ~~adjacent littoral owner shall~~ objector will be required to deposit an appeal bond with the court, in an amount to be determined by the court but not less than five hundred dollars (\$500) insuring payment to the applicant of damages caused by delay and costs and expenses, including reasonable attorney fees, incurred on the appeal in the event the district court sustains the action of the ~~d~~Director. The applicant need post no bond with the court to prosecute an appeal. (3-18-22)( )

26. -- 029. (RESERVED)

### 30. PROCESSING OF APPLICATIONS FOR ALL OTHER TYPES OF ENCROACHMENTS.

**01. Nonnavigational, Community, and Commercial Navigational Encroachments.** Within ten (10) days of receiving a complete application for a nonnavigational encroachment, a community dock, a commercial navigational encroachment, or a navigational encroachment extending beyond the line of navigability, the Department will ~~cause to be published~~ a notice of application once a week for two (2) consecutive weeks in a newspaper of general circulation in the county in which the encroachment is proposed. If, however, the Director orders a public hearing on the application within the time for publication of the above notice, the Department will dispense with publication of the notice of the application and proceed instead to publish a notice of the public hearing

as provided in Subsection 030.05. Applications for installation of buried or submerged water ~~intake~~ lines and utility lines are exempt from the newspaper publication process. (3-18-22)( )

**02. Encroachments Not in Aid of Navigation.** Encroachments not in aid of navigation ~~in navigable lakes~~ will normally not be approved by the Department ~~and will be considered only except~~ in cases involving major environmental, economic, or social benefits ~~to the general public that exceed the detrimental effects of the proposed encroachment to public trust values and adjacent real property, if any.~~ 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. (3-18-22)( )

**03. Notifications.** ~~Upon request or when the Department deems it appropriate, t~~ The Department may ~~furnish~~ provide copies of the application and plans to federal, state and local agencies and to adjacent littoral owners, requesting comment on the likely effect of the proposed encroachment upon adjacent littoral property and public trust values such as navigation, fish and wildlife habitat, aquatic life, recreation, aesthetic beauty, water quality, etc. (3-18-22)( )

**04. Written Comments or Objections.** Within thirty (30) days of the first date of publication, an agency, adjacent littoral owner ~~or lessee~~, or any resident of the state of Idaho may do one (1) of the following: (3-18-22)( )

a. Notify the Department of their opinions and recommendation, if any, for alternate plans they believe will be economically feasible and will accomplish the purpose of the proposed encroachment without unreasonably adversely affecting adjacent littoral property or public trust values; or (3-18-22)

b. File with the Department written objections to the proposed encroachment and request a public hearing on the application. ~~The hearing must be specifically requested in writing.~~ Any person or agency requesting a public hearing on the application must deposit and pay to the Department an amount sufficient to cover the cost of publishing notice of hearing provided in Subsection 030.05. (3-18-22)( )

**05. Public Hearing.** ~~The Department will publish~~ Nnotice of the time and place of public hearing on the application ~~will be published by the Director~~ once a week for two (2) consecutive weeks in a newspaper in the county in which the encroachment is proposed, ~~which~~ The public hearing will be held within ninety (90) days from the date the application is accepted for filing. (3-18-22)( )

**06. Hearing Participants.** Any person may appear at the public hearing and present oral testimony. ~~Written comments will also be received by the Department~~ Persons may also submit written comments to the Department. (3-18-22)( )

**07. Decision After Hearing.** The Director will render a final decision and order within thirty (30) days after close of the public hearing. A copy of ~~his the~~ final decision order will be mailed to the applicant and to each person or agency appearing at the hearing and giving oral or written testimony ~~in support of or in opposition to the proposed encroachment.~~ (3-18-22)( )

**08. Decision Where No Hearing.** (3-18-22)

a. ~~In the event~~ If no objection to the proposed encroachment is filed with the Department and no public hearing is requested ~~under Subsection 030.04, or ordered by the Director under Subsection 030.01,~~ the Department, will issue a final decision and order based upon its investigation and ~~considering~~ consideration the economics of the navigational necessity, justification or benefit, public or private, of ~~such the~~ proposed encroachment as well as its detrimental effects, if any, upon adjacent real property and public trust values such as navigation, fish and wildlife habitat, aquatic life, recreation, aesthetic beauty, water quality, etc. ~~will prepare and forward to the applicant its decision.~~ (3-18-22)( )

b. The applicant, if dissatisfied with the Director's decision, has twenty (20) days from the date of the Director's decision to request reconsideration thereof. If reconsideration is ~~required~~ granted, the Director will set a time and place for a reconsideration hearing, not to exceed thirty (30) days from receipt of the request, at which time and place the applicant may appear in person or through an authorized representative and present briefing and oral

argument. Upon conclusion of reconsideration, the Director will, by personal service or by registered or certified mail, notify the applicant of ~~his~~ the final decision. (3-18-22)( )

**09. Judicial Review.** Any applicant or party aggrieved by the Director's final ~~decision, or an aggrieved party who appeared at a hearing order~~, has the right to ~~have the proceedings and~~ judicial review of the final decision of the Director reviewed order by the district court in the county in which the encroachment is proposed by filing a notice of appeal within thirty (30) days from the date of the final ~~decision~~ order. The applicant need post no bond with the court to prosecute an appeal. Any other aggrieved party is required to deposit an appeal bond with the court, in an amount to be determined by the court but not less than five hundred dollars (\$500), insuring payment to the applicant of damages caused by delay and costs and expenses, including reasonable attorney fees, incurred on the appeal in the event the district court sustains the action of the Director. (3-18-22)( )

**10. Factors in Decision.** In recognition of continuing private property ownership of lands lying between the ~~natural or ordinary high water mark~~ OHW and the ~~artificial high water mark~~ AHWM, if present, the Department will consider unreasonable adverse effect upon adjacent property and undue interference with navigation the most important factors to be considered in granting or denying an application for either a nonnavigational encroachment or a commercial navigational encroachment not extending below the ~~natural or ordinary high water mark~~ OHW. If no objections have been filed to the application and no public hearing has been requested or ordered by the Director, or, if upon reconsideration of a decision disallowing a permit, or following a public hearing, the Department determines that the benefits, whether public or private, to be derived from allowing ~~such the~~ encroachment exceed its detrimental effects, the permit will be granted. (3-18-22)( )

**31. -- 034. (RESERVED)**

**35. TEMPORARY PERMITS.**

**01. Applicability.** Temporary permits ~~are used~~ may be issued for construction, demolition, temporary activities related to permitted encroachments, or other activities approved by the Department. (3-18-22)( )

**02. Permit Term.** ~~These Temporary~~ permits are generally issued for less than one (1) year, but longer terms may be approved by the Department and permits may be extended with Department approval. (3-18-22)( )

**03. Bonding.** The Department may require ~~bonds~~ bonding for temporary permits. (3-18-22)( )

**04. Fee.** The ~~b~~Board sets fees for temporary permits, but the fees will not be greater than the amounts listed for the respective permit types in Subsection 020.07. Fee information is available ~~on the Internet~~ at www.idl.idaho.gov. (3-18-22)( )

**05. Processing.** ~~These Temporary~~ permits may be advertised if the Department deems it appropriate, with the applicant paying the advertising fee as per Subsection 020.07. (3-18-22)( )

**36. -- 049. (RESERVED)**

**50. — RECORDATION.**

~~Recordation of an issued permit in the records of the county in which an encroachment is located is a condition of issuance of a permit and proof of recordation must be furnished to the Department by the permittee before a permit becomes valid. Such recordation is at the expense of the permittee. Recordation of an issued permit serves only to provide constructive notice of the permit to the public and subsequent purchasers and mortgagees, but conveys no other right, title, or interest on the permittee other than validation of said permit.~~ (3-18-22)

**51. — 054. (RESERVED)**

**55. LEASES AND EASEMENTS.**

**01. Lease or Easement Required.** As a condition of the encroachment permit, the Department may require a submerged land lease or easement for use of any part of the state-owned bed of the lake where ~~such lease or easement is~~ required in accordance with ~~"Rules Governing Leases on State-owned Submerged Lands and Formerly~~



~~Submerged Lands,” IDAPA 20.03.17, or “Rules For Easements On State-owned Submerged Lands And Formerly Submerged Lands,” IDAPA 20.03.09. A lease or easement may be required for uses including, but not limited to, commercial uses. Construction of an encroachment authorized by permit without first before obtaining the required lease or easement constitutes a trespass upon state-owned public trust lands. This rule is intended to grant the state recompense for the use of the state-owned bed of a navigable lake where reasonable and it is not intended that the Department withhold or refuse to grant such a lease or easement if in all other respects the proposed encroachment would be permitted.~~ (3-18-22)( )

**02. Seawalls, Breakwaters, Quays Fill.** Seawalls, breakwaters, and quays fill on or over state-owned beds, designed primarily to create additional land surface, will only be authorized, if at all, by an encroachment permit and submerged land lease or easement, upon determination approval by the Department to be an appropriate use of submerged lands. (3-18-22)( )

**56. -- 059. (RESERVED)**

**60. INSTALLATION.**

**01. Installation Only After Permit Issued.** Installation or on-site construction of an encroachment may commence only when the permit is issued or, when the Department notifies the applicant in writing that installation may be commenced, or when the Department has failed to act in accordance with Subsection 025.07. (3-18-22)( )

**02. Removal of Construction Waste.** (3-18-22)

**a.** Pilings, anchors, old docks, and other structures or waste at the site of the installation or reinstallation and not used as a part of the encroachment shall must be removed from the water and lakebed at the time of the installation or reinstallation to a point above normal flood water levels; provided, however, that this shall not be construed to prevent the use of trash booms for the temporary control of floatable piling ends and other floatable materials in a securely maintained trash boom, but approval for a trash boom shall be required as part of a permit the O/AHWM. (3-18-22)( )

**b.** Demolition of encroachments shall will be done in a manner that does not unnecessarily damage the lakebed or shoreline. Demolition work must comply with water quality standards administered by the Department of Environmental Quality. (3-18-22)( )

**03. Compliance with Permit.** All work shall must be done in accordance with these rules, and the application submitted, and is subject to any condition specified in the permit. (3-18-22)( )

**04. Sunset Clause.** All activities authorized within the scope of the encroachment permit must be completed within three (3) years of issuance date. If the activities are not completed within three (3) years, the permit shall will automatically expire unless it was previously revoked or extended by the Department. The Department may issue a permit with an initial sunset clause that exceeds three (3) years, if the need is demonstrated by the applicant. (3-18-22)( )

**61. -- 064. (RESERVED)**

**65. ASSIGNMENTS.**

**01. Assignment of Encroachment Permit Assignment.** Encroachment permits may be assigned upon approval of the department provided that only if the permitted the encroachments conforms with the approved permits. The assignor and assignee must complete a department assignment form and forward it to the appropriate area office. An assignment is not valid until it is approved by the Department. (3-18-22)( )

**02. Assignment Application Fee.** The assignment fee is assignor and assignee must complete a Department assignment form and submit along with the three hundred dollars (\$300) and is due at the time the assignment is submitted assignment fee to the Department. (3-18-22)( )

**03. Approval Required for Assignment.** ~~An assignment is not valid until it has been approved by the department.~~ (3-18-22)

**43. Assignment With New Permit.** Encroachments not in compliance with the approved permit may be assigned only if: (3-18-22)

a. An application for a new permit to correct the noncompliance is submitted at the same time. (3-18-22)

b. The assignee submits written consent to bring the encroachment ~~permit~~ into compliance. (3-18-22)( )

**66. -- 069. (RESERVED)**

**70. MISCELLANEOUS.**

**01. Water Resources Permit.** A permit to alter a navigable stream issued by the Department of Water Resources pursuant to [Title 42, Chapter 38](#), Idaho Code, may, in appropriate circumstances, contain language stating the approval of the Department of Lands to occupy the state-owned bed of the navigable stream. (3-18-22)

**02. Dredge and Placer Mining.** Department authorization is required for dredge and placer mining in the lands, lakes and rivers within the state, whether or not the state owns the beds, pursuant to [Title 47, Chapter 13](#), Idaho Code. (3-18-22)

**03. Mineral Leases.** Littoral rights do not include any right to remove bed materials from state-owned lakebeds. Applications to lease minerals, oil, gas and hydrocarbons, and geothermal resources within the state-owned beds of navigable lakes will be processed by the Department pursuant to [Title 47, Chapters 7, 8 and 16](#), Idaho Code, and rules promulgated thereunder. (3-18-22)

**04. Other Laws and Rules.** The permittee must ~~comply with~~ [follow](#) all other applicable state, federal and local rules and laws insofar as they affect the use of public trust resources. (3-18-22)( )

**71. -- 079. (RESERVED)**

**80. VIOLATIONS - PENALTIES.**

**01. Cease and Desist Order.** ~~When the Department determines that a violation of these rules is occurring due to the~~ [Ongoing construction of an unauthorized encroachment or an unauthorized modification of a permitted encroachment, it may provide the](#) [is considered a violation of these rules. The Department will serve the](#) landowner, contractor, or permittee ~~with a written cease~~ [a cease](#) and desist order that ~~consists of~~ [contains](#) a short and plain statement ~~of what the violation is,~~ [describing the violation](#), the pertinent legal authority, and how the violation may be rectified. This order will be served by personal service or certified mail. The cease and desist order ~~is used to~~ [will require the permittee to](#) maintain the status quo pending formal proceedings by the Department to rectify the violation. (3-18-22)( )

**02. Notice of Noncompliance/Proposed Permit Revocation.** When the Department determines that these rules have been violated, a cause exists for revocation of a lake encroachment permit, or both of these have occurred, it will provide the permittee or offending person with a notice of noncompliance/proposed permit revocation that consists of a short and plain statement of the violation including any pertinent legal authority. This notice also informs the permittee or offending person of what steps are needed to either bring the encroachment into compliance, if possible, ~~or avoid revocation, or both.~~ (3-18-22)( )

**03. Noncompliance Resolution.** The Department will attempt to resolve all noncompliance issues through conference with the permittee or other involved party. Any period set by the parties for correction of a violation is binding. If the Department is unsuccessful in resolving the violations, then the Department may pursue other remedies under Section 080 of these rules. (3-18-22)

**04. Violations.** The following acts or omissions subject a person to a civil penalty as allowed by Title 58, Chapter 13, Section 58-1308, Idaho Code: (3-18-22)

a. A violation of ~~the provisions of~~ Title 58, Chapter 13, Idaho Code, or of the rules and general orders adopted and applicable to navigable lakes; (3-18-22)( )

b. A violation of any special order of the Director applicable to a navigable lake; or (3-18-22)

c. Refusal to cease and desist from any violation ~~in regards to a navigable lake~~ after having received a written cease and desist order from the Department by personal service or certified mail, within the time provided in the notice, or within thirty (30) days of service of ~~such the~~ notice if no time is provided. (3-18-22)( )

d. Willfully and knowingly falsifying any records, plans, information, or other data ~~required by these rules provided to the Department.~~ (3-18-22)( )

e. Violating the terms of an encroachment permit. (3-18-22)

**05. Injunctions, Damages.** The Board expressly reserves the right, through the Director, to seek injunctive relief under Title 58, Chapter 13, Section 58-1308, Idaho Code and mitigation of damages under Title 58, Chapter 13, Section 58-1309, Idaho Code, in addition to the civil penalties provided for in Subsection 080.04 of these rules. (3-18-22)

**06. Mitigation, Restoration.** The ~~b~~Board expressly reserves the right, through the Director, to require mitigation and restoration of damages under Title 58, Chapter 13, Section 58-1309, Idaho Code, in addition to the civil penalties and injunctive relief provided for in Subsections 080.04 and 080.05 of these rules. The Department may consult with other ~~state~~ agencies to determine the appropriate type and amount of mitigation and restoration ~~required.~~ (3-18-22)( )

**07. Revocation of Lake Encroachment Permits.** (3-18-22)

a. The Department may institute an administrative action to revoke a lake encroachment permit for violation of the conditions of a permit, or for any other reason authorized by law. ~~All such~~ These proceedings will be conducted as contested case hearings subject to ~~the provisions of Title 67, Chapter 52, Idaho Code, and IDAPA 20.01.01, "Rules of Practice and Procedure before the State Board of Land Commissioners."~~ (3-18-22)( )

b. A hearing officer appointed to conduct the revocation hearing prepares recommended findings of fact and conclusions of law and ~~forward~~ sends them to the Director for final adoption or rejection. (3-18-22)( )

c. An aggrieved party who appeared and testified at a hearing has the right to have the proceedings and final decision of the Director reviewed by the district court of the county in which the violation or revocation occurred by filing a notice of appeal within twenty-eight (28) days from the date of the final decision. (3-18-22)

**81. -- 999. (RESERVED)**



## IDAPA 20 – IDAHO DEPARTMENT OF LANDS

### 20.03.04 - RULES FOR THE REGULATION OF BEDS, WATERS, AND AIRSPACE OVER NAVIGABLE LAKES IN THE STATE OF IDAHO

DOCKET NO. 20-0304-2401

#### NOTICE OF RULEMAKING - ADOPTION OF PENDING RULE

**EFFECTIVE DATE:** This rule has been adopted by the agency and is now pending review by the 2026 Idaho State Legislature and must be approved by concurrent resolution of the Legislature to go into effect, in accordance with Section 67-5224(2)(c), Idaho Code. Should the pending rule be approved, it will become final and effective on July 1 following the Second Regular Session of the Sixty-eighth Idaho Legislature, unless the concurrent resolution states a different effective date.

**AUTHORITY:** In compliance with Section 67-5224, Idaho Code, notice is hereby given that this agency has adopted a pending rule. The action is authorized pursuant to Section(s) 58-1304 and 58-104(6), Idaho Code.

**DESCRIPTIVE SUMMARY:** The following is a concise explanatory statement of the reasons for adopting the pending rule and a statement of any change between the text of the proposed rule and the text of the pending rule with an explanation of the reasons for the change:

Changes to the proposed rule are based on comments received and are simple grammatical changes for consistency, clarifying the definition of a commercial marina, and ensuring sentences have correct syntax.

The text of the pending rule has been amended in accordance with Section 67-5227, Idaho Code. Only those sections that have changes that differ from the proposed text are printed in this bulletin. The complete text of the proposed rule was published in the September 3, 2025, Idaho Administrative Bulletin, Vol. 25-9, pages 33-55.

**FEE SUMMARY:** Pursuant to Section 67-5224(2)(d), Idaho Code, a pending fee rule shall not become final and effective unless affirmatively approved by concurrent resolution of the Legislature. The following is a description of the fee or charge imposed or increased in this rulemaking:

No new fees will be imposed or increased in this rulemaking.

**FISCAL IMPACT:** The following is a specific description, if applicable, of any negative fiscal impact on the state general fund greater than ten thousand dollars (\$10,000) during the fiscal year:

This rule will have no fiscal impact on the state general fund.

**ASSISTANCE ON TECHNICAL QUESTIONS:** For assistance on technical questions concerning this pending rule, contact Marde Mensinger at (208) 334-0248.

DATED this November 18, 2025.

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