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**IDAPA 20
TITLE 03
Chapter 04**

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

000. LEGAL AUTHORITY.

The State Board of Land Commissioners is authorized by Sections 58-104(9) and 58-1301, et seq., Idaho Code, to adopt these rules for the regulation of the beds, waters and airspace over navigable lakes in the state of Idaho.

(7-1-98)

001. TITLE AND SCOPE.

These rules shall be cited as IDAPA 20.03.04, "Rules for the Regulation of Beds, Waters and Airspace Over Navigable Lakes in the State of Idaho," IDAPA 20.03.04. These rules regulate encroachments on, in, or above navigable lakes in the state of Idaho.

(7-1-98)

002. WRITTEN INTERPRETATIONS.

The Department has no written interpretive statements pertaining to the interpretation of rules in this chapter.

(7-1-98)

003. ADMINISTRATIVE APPEALS.

Hearings and administrative appeals are available only as set forth herein under the rules governing the processing of applications for non-commercial single-family and two-family encroachments, Section 025; and the rules governing the processing of applications for all other types of encroachments, Section 030; and the rules governing revocation of encroachment permits, Section 040.

(7-1-98)

004. -- 009. (RESERVED).

010. DEFINITIONS.

01. Adjacent. Contiguous or touching, and with regard to land or land ownership having a common boundary.

(7-1-98)

02. 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 an higher vegetation line.

(9-13-90)

03. 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.

(9-13-90)

04. Board. The Board of Land Commissioners of the State of Idaho or its authorized representative.

(9-13-90)

05. Commercial Navigational Encroachment. A navigational encroachment for the use of which patrons pay a fee.

(9-13-90)

06. Community Docks. Structures that provide moorage facilities for more than two (2) adjacent riparian owners, or for a homeowners' association that is a riparian owner owning a riparian common area including riparian rights. A community dock shall be considered a commercial navigational aid for purposes of processing the application.

(7-1-98)

07. Contested Case Hearing. A formal hearing conducted pursuant to these rules, Idaho Code Title 67, Chapter 52, and IDAPA 20.01.01, "Rules of Practice and Procedure Before the State Board of Land Commissioners." This type of hearing requires the formal designation of parties as set forth in the board's Rules of Practice and Procedure, IDAPA 20.01.01, and is conducted like a trial. Members of the public not wishing to formally intervene in contested case hearings as a party may nevertheless participate in such hearings as public witnesses pursuant to IDAPA 20.01.01.

(7-1-98)

08. Department. The Department of Lands. (9-13-90)
09. Director. The director of the Department of Lands or his designee. (9-13-90)
10. Encroachments in Aid of Navigation. Includes, but is not limited to, docks, piers, floats, pilings, breakwaters, boat ramps, channels or basins, and other such aids to navigability on, in or above the beds or waters of a navigable lake. The term "encroachments in aid of navigation" may be used interchangeably herein with the term "navigational encroachments." (7-1-98)
11. 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. It shall also include float homes moored permanently or in any one place for a substantial period of time and used as either a permanent or temporary place of abode or residence and other encroachments permanently or temporarily moored or encroaching on the lake. (7-1-98)
12. Line of Navigability. The dock line established by existing docks or if no dock line exists then such distance below the low water mark as will afford sufficient draft for water craft customarily in use on that particular body of water. (7-1-98)
13. 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. (7-1-98)
14. Natural or Ordinary High Water Mark. The line which the water impresses upon the soil covering it for a sufficient period of time to deprive the soil of its vegetation and destroys its value for agricultural purposes. When the soil, configuration of the surface, or vegetation has been altered by human activity, the ordinary high water mark shall be located where it would have been if this alteration had not occurred. (7-1-98)
15. Navigable Lake. Any permanent body of relatively still or slack water, not privately owned and not a mere marsh and capable of accommodating boats or canoes and includes man-made reservoirs except where the jurisdiction thereof is asserted and exclusively assumed by a federal agency. (9-13-90)
16. Party. Each person or agency named or admitted as a party, or property seeking and entitled as of right to be admitted as a party to a hearing on an application for an encroachment. (9-13-90)
17. Person. Any individual, partnership, association, company, corporation, municipality, county, state or federal agency, or other entity. (9-13-90)
18. 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. (9-13-90)
19. Public Meeting Hearing. The type of hearing where members of the public 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 shall act as the hearing coordinator. 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 record of any oral presentations at such hearings will be taken by the department by tape recorder. The hearing coordinator shall exercise such control at hearings as necessary to maintain order, decorum and common courtesy among the participants. (7-1-98)
20. Public Trust Doctrine. The perpetual duty of the state to its people the use of the navigable waters of the state, related submerged lands and formerly submerged lands for navigation, commerce, fisheries, recreation and other public trust uses. The doctrine is dynamic and continually evolving as articulated by decisions of the Idaho Supreme Court or the Idaho Court of Appeals and Title 58, Chapter 13, Idaho Code. (7-1-98)
21. Riparian or Littoral Rights. Only the rights of owners or lessees of land adjacent to navigable lakes and 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 or to remove bed materials from state-owned lake. (9-13-90)

22. Riparian Owner. The fee owner of land immediately adjacent to a navigable lake, or his lessee, or the owner of riparian rights that have been segregated from the fee specifically by deed or grant. (7-1-98)

23. Single-family Dock. A structure providing moorage facilities that serves one waterfront lot having frontage of no less than twenty-five (25) feet. (7-1-98)

24. Submerged Lands. The state-owned beds of navigable lakes, rivers and streams below the natural or ordinary high water marks. (9-13-90)

25. Two-family Dock. A structure providing moorage facilities that serves two (2) adjacent waterfront lots having a combined frontage of no less than fifty (50) feet. Usually the structure is located on the common riparian property line. (7-1-98)

26. Uplands. The land bordering on navigable lakes, rivers and streams. (9-13-90)

011. POLICY.

01. Environmental Protection and Navigational or Economic Necessity. 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. (9-13-90)

02. No Encroachments Without Permit. No encroachment on, in or above the beds or waters of any navigable lake in the state shall hereafter be made unless approval therefore has been given as provided in these rules. (9-13-90)

012. -- 014. (RESERVED).

015. DOCK STANDARDS AND FLOAT HOME REQUIREMENTS.

01. Single-family and Two-family Docks. The following parameters govern the size and dimensions of single-family docks and two-family docks. (7-1-98)

a. No part of the structure waterward of the natural or ordinary high water mark or artificial high water mark shall exceed six (6) feet in width. (7-1-98)

b. Total surface area waterward of the natural or ordinary or artificial high water mark shall not exceed seven hundred (700) square feet, including approach ramp and walkway for a single-family dock and shall not exceed one thousand one hundred (1,100) square feet, including approach ramp and walkway for a two-family dock. (7-1-98)

c. No portion of the docking facility shall extend more than one hundred (100) feet waterward of the natural or ordinary high water mark or if applicable the artificial high water mark or further than three (3) feet of water depth at low water. Shorter docks are encouraged whenever practical and new docks normally will be installed within the waterward extent of existing docks. (7-1-98)

d. Where feasible, all docks, piers or similar structures shall be constructed to protrude as nearly as possible perpendicular to the general shoreline. (7-1-98)

02. Variance. A variance to the standards contained in Subsection 015.01 may be approved by the

director where it can be justified by site specific considerations such as the distance to the established line of navigation. (7-1-98)

03. Community Docks. (7-1-98)

a. No part of the structure waterward of the natural or ordinary high water mark of artificial high water mark shall exceed six (6) feet in width. No part of the fixed portion of the dock shall exceed six (6) feet in width. This includes fixed piers and approach ramps. (7-1-98)

b. Moorage facilities will be limited to size as a function of the length of shoreline dedicated to the community dock. The surface decking area of the community dock shall be 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. (7-1-98)

04. Breakwater. The breakwater shall be designed to counter wave actions of known wave heights and wave lengths. (7-1-98)

05. Mooring Buoys. Buoys shall be installed a minimum of thirty (30) feet sway from riparian right lines of adjacent riparian owners and shall be located within dock line. One (1) mooring buoy per riparian owner shall be allowed. (7-1-98)

06. Float Home Construction, Alteration or Relocation. (7-1-98)

a. Applications for permits to construct new float homes will not be accepted. (7-1-98)

b. Applications for relocation of float homes existing prior to April 5, 1974, shall be subject to the following requirements: (7-1-98)

i. Proof of ownership or long term lease of the uplands adjacent to the relocation site must be furnished to the department. (7-1-98)

ii. 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 Health and Welfare or the appropriate local health authority. (7-1-98)

c. Applications and approved local permits are required for replacement or enlargement of float homes. Adding another story to a float home shall require a permit. (7-1-98)

016. -- 019. (RESERVED)

020. APPLICATIONS.

01. Encroachment Applications. No person shall hereafter make or cause to be made any encroachment on, in or above the beds or waters of any navigable lake in the state of Idaho without first making application to and receiving written approval from the director. 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 director is required. (9-13-90)

02. Signature Requirement. Only persons who are riparian owners or lessees of a riparian owner shall be eligible to apply for encroachment permits. A person who has been specifically granted riparian rights or dock rights from a riparian owner shall also be eligible for an encroachment permit; the grantor of such riparian rights, however, shall 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. (7-1-98)

03. Other Permits. Nothing in these rules shall excuse a person seeking to make an encroachment from

obtaining any additional approvals lawfully required by federal, local or other state agencies. (9-13-90)

04. Repairs, Replacement. Approval is not required to clean, maintain or to make repairs to an existing encroachment, but approval is required to enlarge or extend an existing encroachment. Replacing the top or deck of a dock, wharf or similar structure shall be considered a repair; replacing of winter damaged or wind and water damaged pilings or float logs used to maintain existing encroachments in position shall be considered a repair. Redredging a channel or basin shall be considered a replacement and a permit is necessary unless redredging is authorized by the outstanding permit. Dredging of a channel or basin will require a new permit. Complete replacement of the entire dock at one time exactly to the same specifications of the currently existing dock is considered a repair and will not require a new permit so long as dock is made of same materials and same configuration in the same location. (7-1-98)

05. Forms, Filing. Applications must be in writing on forms provided by the department or copies. Applications and plans shall be filed in the office of the department in Coeur d'Alene, together with filing fees and costs of publication where required by these rules, except that applications and plans for noncommercial navigational encroachments may be filed at any supervisory field office. Plans shall include a lakebed profile in relationship to the proposed encroachment. The lakebed profile shall show the summer and winter water levels. The plan shall show, where possible, the lengths of adjacent docks as an indication of the line of navigability. The plans shall show the relationship of the proposed encroachment in the lake and indicate a general vicinity map. The plans shall be presented on paper no larger than eight and one-half (8 1/2) by fourteen (14) inches. Costs of preparation of the application, including all necessary maps and drawings, shall be paid by the applicant. (7-1-98)

a. Applications for nonnavigational encroachments and commercial navigational encroachments must be submitted or approved by the riparian or littoral owner or, if the encroachment will lie over or upon private lands between the natural or ordinary high water mark and the artificial high water mark, the application must be submitted or approved by the owner of such lands. Where the owner is not the applicant, the application shall bear the owner's signature as approving the encroachment prior to filing. (9-13-90)

b. Applications for noncommercial navigational encroachments associated with private or public uplands must be signed by the riparian or littoral owner or his lessee, or by the owner or lessee of private lands between the natural or ordinary high water mark, and the artificial high water mark, seeking approval to make the encroachment. Owners of riparian or littoral lands or of the aforesaid private lands not making or joining in the application shall be considered adjacent riparian owners entitled to notice under Subsection 025.02, where the encroachment is on or over such riparian or littoral or other private lands. (7-1-98)

c. Applications for noncommercial encroachments intended to improve waterways for navigation, 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 improvements. (7-1-98)

d. The following applications shall be accompanied by a nonrefundable filing fee of two hundred-fifty dollars (\$250), together with a deposit toward the cost of newspaper publication, which deposit shall be determined by the director at the time of filing: (9-13-90)

i. Nonnavigational encroachments; (9-13-90)

ii. Commercial navigational encroachments; (7-1-98)

iii. Community navigational encroachments; and (7-1-98)

iv. Navigational encroachments extending beyond the line of navigability. (9-13-90)

e. Applicants shall pay any balance due on publication costs before written approval will be issued. The department shall refund any excess at or before final action on the application. (9-13-90)

f. Application for a permit for single-family and joint two-family docks not extending beyond the line of navigability or nonnavigational encroachment for bank stabilization and erosion control or for fisheries and wildlife habitat improvements shall be accompanied by a nonrefundable filing fee of fifty dollars (\$50). (7-1-98)

g. No publication cost is required for application for noncommercial navigational encroachment not extending beyond the line of navigability or for application for installation of buried or submerged water intake lines and utility lines. (9-13-90)

h. Applications and plans shall be stamped with the date of filing. (7-1-98)

i. Applications that are incomplete, not in the proper form, not containing the required signature, or not accompanied by filing fees and costs of publication where required, shall not be accepted for filing. The director shall notify the applicant of any deficiency. The applicant may reapply provided the required information is submitted. (7-1-98)

021. -- 024. (RESERVED).

025. PROCESSING OF APPLICATIONS FOR NONCOMMERCIAL SINGLE-FAMILY AND JOINT TWO-FAMILY NAVIGATIONAL ENCROACHMENTS WITHIN LINE OF NAVIGABILITY.

01. Noncommercial Navigational Encroachments. Applications for navigational encroachments not extending beyond the line of navigability will be processed with a minimum of procedural requirements and shall not be denied except in the most unusual of circumstances. No newspaper publication, formal appearance by the applicant, or hearing is contemplated. (7-1-98)

02. Adjacent Riparian Owners. If a proposed encroachment referred to in Subsection 025.01 may infringe upon the riparian or littoral rights of an adjacent riparian owner, the director shall require the applicant to secure the written consent of the adjacent riparian owner. (7-1-98)

03. Notification of Adjacent Riparian Owners. If the signature of the adjacent riparian owner is not required, the department shall a copy of such application to the riparian owners immediately adjacent the applicant's property. Such adjacent riparian owner shall have twenty-one (21) days from the date of the mailing to provide comments to the department. This notice will be sent by regular mail to the adjacent riparian owners usual place of address, which, if not known, shall be the address shown on the records of the county treasurer or assessor. The applicant may submit the adjacent riparian owners' signatures as concurring with the application in lieu of the twenty-one (21) day notice period. (7-1-98)

04. Written Objections. If an adjacent riparian owner files written objections to the application with the director within twenty-one (21) days from the date of service or receipt of notice of the completed application, the director shall fix a time and a place for hearing. In computing the time to object, the day of service or receipt of notice of the application shall not be counted. Objections must be received within the twenty-one (21) day period by mail or hand delivery in the office of the department in Coeur d'Alene. If the last day of the period is Saturday, Sunday or a legal holiday, the time within which to object shall run until the end of the first business day thereafter. (7-1-98)

05. Unusual Circumstances. Even though no objection is filed by an adjacent riparian owner to a noncommercial navigational encroachment, if the director deems it advisable because of the existence of unusual circumstances, he may require a hearing. (7-1-98)

06. Hearings. Hearings fixed by the 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. At the hearing the applicant and any adjacent riparian owner filing timely objections may appear personally or through an authorized representative and present evidence. Said hearing shall be in the nature of a formal contested case hearing as defined herein by Subsection 010.07. In such hearings the Department shall act as the fact finder and not a party. The Director, at his discretion, shall designate a Department representative to sit as the hearing officer. Provided, however, that the parties may agree to informal disposition of an application by stipulation, agreed settlement, consent order, or other informal means. (7-1-98)

07. Decision. The director shall, within forty-five (45) days after close of the hearing provided for in Subsections 025.04 or 025.05 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. (7-1-98)

08. Reconsideration. The applicant, if dissatisfied with the Director's decision, or other aggrieved party who participated at a hearing, shall have twenty (20) days from the date of the Director's decision to required reconsideration thereof. If reconsideration is requested, the director shall 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 person requesting reconsideration and the applicant may appear in person or through an authorized representative and present briefing and oral argument. Upon conclusion of reconsideration, the director shall by personal service or by registered or certified mail notify the applicant of his decision. (7-1-98)

09. Judicial Review. Any applicant aggrieved by the Director's final decision on reconsideration, or other aggrieved party appearing at a reconsideration hearing, shall have a right to have the proceedings and final decision 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. An adjacent riparian owner shall be required to deposit with the court a five hundred dollars (\$500) appeal bond 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. The applicant need post no bond with the court to prosecute an appeal. (7-1-98)

10. Disposition Without Hearing. In the event no objection to the proposed encroachment and request for hearing is filed with the director by an adjacent riparian owner under Subsection 025.04, or hearing ordered by the director under Subsection 025.05, then the director shall act upon an application filed under Subsection 025.01 as expeditiously as possible but no later than sixty (60) days from acceptance of the application and failure to act within such time shall constitute approval of the application. (7-1-98)

026. -- 029. (RESERVED).

030. PROCESSING OF APPLICATIONS FOR ALL OTHER TYPES OF ENCROACHMENTS.

01. Nonnavigational, Community and Commercial Navigational Encroachments. Upon receipt of an application for a nonnavigational encroachment, a community dock, or a commercial navigational encroachment, or for a navigational encroachment extending beyond the line of navigability, the director shall, within ten (10) days of acceptance for filing of the application, cause notice of the application to be published once a week for two (2) consecutive weeks in a newspaper of general circulation in the county in which the encroachment is proposed, however, that if the director orders a hearing on the application in the first instance within the time for publication of the notice, the director shall dispense with publication of the notice of the application and shall proceed instead to publish notice of the hearing as provided in Subsection 025.06. Applications for installation of buried or submerged water intake lines and utility lines shall be exempt from the newspaper publication process unless it is of a size that it requires an easement from the state of Idaho. (7-1-98)

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 in cases involving major environmental, economic, or social benefits to the general public. Approval under these circumstances is authorized only when consistent with the public trust doctrine and when there is not other feasible alternative with less impact on public trust values. (7-1-98)

03. Agency Comments. Upon request or when the director deems it appropriate, the director may furnish copies of the application and plans to federal, state and local agencies and to adjacent riparian owners, requesting comment on the likely effect of the proposed encroachment upon adjacent riparian property and lake value factors of navigation, fish and wildlife habitat, aquatic life, recreation, aesthetic beauty or water quality. Within thirty (30) days following receipt of a copy of the application and plans, such agencies shall notify the director of their opinions and recommendation, if any, for alternate plans determined by such agencies to be economically feasible to accomplish the purpose of the proposed encroachment without adversely affecting unreasonably adjacent riparian property or other lake value factors and public trust values. (7-1-98)

04. Written Objections. Any resident of the state of Idaho, or a nonresident owner or lessee of real property adjacent to the lake in question, or any state, federal or local agency may, within thirty (30) days of the first date of publication file with the director written objections to the proposed encroachment and a request for a public

hearing on the application. Any person or agency requesting a hearing on the application shall deposit and pay to the director an amount sufficient to cover the cost of publishing notice of hearing provided in Subsection 025.13.

(7-1-98)

05. Hearing. Notice of the time and place of public hearing on the application shall 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 hearing shall be held within ninety (90) days from the date the application is accepted for filing.

(7-1-98)

06. Hearing Participants. Any person may appear at the public hearing and present oral testimony. Written comments shall also be received by the Department.

(7-1-98)

07. Decision After Hearing. The director shall render a decision within forty-five (45) days after close of the public hearing. A copy of his decision shall 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.

(7-1-98)

08. Decision Where No Hearing. In the event no objection to the proposed encroachment is filed with the director and no hearing is requested under Subsection 030.04, or ordered by the director under Subsection 030.01, the director, based upon his investigation and considering the economics of the navigational necessity, justification or benefit, public or private, of such proposed encroachment as well as its detrimental effects, if any, upon adjacent real property, lake value factors and public trust values such as navigation, fish and wildlife habitat, aquatic life, recreation, aesthetic beauty or water quality, shall prepare and forward to the applicant either personally or by registered or certified mail, his decision.

(7-1-98)

09. Reconsideration. The applicant, if dissatisfied with the Director's decision, or other aggrieved persons who appeared at a the public hearing and gave oral or written testimony, shall have twenty (20) days from the date of the Director's decision to requires reconsideration thereof. If reconsideration is required, the director shall 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 person requesting reconsideration and the applicant may appear in person or through an authorized representative and present briefing and oral argument. Upon conclusion of reconsideration, the director shall by personal service or by registered or certified mail notify the applicant of his decision.

(7-1-98)

10. Judicial Review. Any applicant aggrieved by the Director's final decision on reconsideration or other aggrieved party appearing at a reconsideration hearing shall have the right to have the proceedings and final decision of the director reviewed 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. The applicant need post no bond with the court to prosecute an appeal. Any other aggrieved party shall be required to deposit with the court a five hundred dollar (\$500) appeal bond 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.

(7-1-98)

11. Factors in Decision. In recognition of continuing private property ownership of lands lying between the natural or ordinary high water mark and the artificial high water mark, the director shall 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. If no objections have been filed to the application and no hearing has been requested or ordered by the director, or, if upon reconsideration of a decision disallowing a permit, or following a hearing, the director determines that the benefits, whether public or private, to be derived from allowing such encroachment exceed its detrimental effects, he shall grant the permit.

(9-13-90)

031. -- 039. (RESERVED).

040. PERMIT REVOCATION OR WITHDRAWAL.

01. Administrative Action on Revocation of Lake Encroachment Permit. 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 proceedings shall be conducted as contested case hearings subject to the provisions of Idaho Code Title 67, Chapter 52 and IDAPA 20.01.01. (7-1-98)

02. Notice of Noncompliance/Proposed Permit Revocation. When the department determines that cause exists for revocation of a lake encroachment permit, it shall provide the permittee with a "Notice of Noncompliance/Proposed Permit Revocation," which shall consist of a short and plain statement of the reason for the proposed revocation, including any pertinent legal authority. (7-1-98)

03. Request for Contested Case Hearing. If the permittee disputes the department's basis for revocation, the permittee shall, within thirty (30) days of receipt of the notice of noncompliance, request a contested case hearing in which to request a contested case hearing, the department may proceed to revoke the permit administratively. If the permittee requests a contested case hearing, the department shall proceed to schedule and conduct the hearing in accordance with these rules, Idaho Code Title 67, Chapter 52 and IDAPA 20.01.01. (7-1-98)

04. Recommended Findings of Fact and Conclusions of Law. A hearing officer appointed to conduct the revocation hearing shall prepare recommended findings of fact and conclusions of law and forward them to the Director for final adoption or rejection. (7-1-98)

041. -- 049. (RESERVED).

050. RECORDATION.

Recordation of an issued permit in the records of the county in which an encroachment is located shall be a condition of issuance of a permit and proof of recordation shall be furnished to the department by the permittee before a permit becomes valid. Such recordation shall be 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. (Idaho Code Section 58-1306(e)) (9-13-90)

051. -- 054. (RESERVED).

055. LEASES AND EASEMENTS.

01. Lease or Easement Required. As a condition of the permit, the director may require a 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 obtaining the required lease or easement shall constitute a trespass upon state-owned public trust lands. This rule is intended to grant the state recompense for the use the state-owned bed of a navigable lake where reasonable and it is not intended that the director withhold or refuse to grant such lease or easement if in all other respects the proposed encroachment would be permitted. (7-1-98)

02. Seawalls, Breakwaters, Quays. Seawalls, breakwaters and quays on or over state-owned beds, designed primarily to create additional land surface, will be authorized, if at all, by a permit and lease or easement, upon determination by the director to be an appropriate use of submerged lands. (9-13-90)

056. -- 059. (RESERVED).

060. INSTALLATION.

01. Installation Only After Permit Issued. Installation or construction of an encroachment may commence only when the permit is issued or when the director notifies the applicant in writing that installation may be commenced or when the director has failed to act in accordance with section 025.09. (9-13-90)

02. Construction. Where feasible, all docks, piers or similar structures shall be constructed so as to

protrude as nearly as possible at right angles to the general shoreline and shall be constructed so as not to interfere with docks, piers, or similar structures presently existing or likely to be installed to serve adjacent properties.

(9-13-90)

03. **Water Access.** Docks, piers or other works may extend to a length that will provide access to a water depth that will afford sufficient draft for water craft customarily in use on the particular body of water during the normal low water period, except that no structure may extend beyond the normal accepted line of navigability established through use unless additional length is authorized by permit or order of the director. If a normally accepted line of navigability has not been established through use, the director may from time to time as he deems necessary, after public hearing, designate a line of navigability for the purpose of effective administration of these rules.

(9-13-90)

04. **Excavated or Dredged Channels.** An excavated or dredged channel or basin to provide access to navigable waters may be authorized only when the applicant can show that it will provide a clear environmental, economic, or social benefit to the people of the state and will not result in any appreciable environmental degradation. A channel or basin shall not be approved if it appears that the cumulative effect of the proposed channel or basin plus all reasonably foreseeable future basins or channels in the same navigable lake would be adverse to fisheries or water quality. Whenever practical, such channels or basin shall be located to serve more than one (1) riparian owner; provided, however, that no basin or channel will be approved that will provide access for watercraft to nonriparian owners.

(7-1-98)

05. **Presumed Adverse Effect.** It will be presumed, subject to rebuttal, that commercial navigational encroachments, community docks or nonnavigational encroachments will have an adverse effect upon adjacent riparian property if located closer than twenty-five (25) feet to adjacent riparian property lines and that single-family and two-family navigational encroachments will have a like adverse effect upon adjacent riparian property if located closer than ten (10) feet from adjacent riparian property lines. Consent of the adjacent owner or owners will automatically rebut the presumption.

(7-1-98)

06. **Upland Vehicle Parking.** Commercial navigational encroachments shall provide upland vehicle parking equivalent to one parking space per two (2) watercraft moorages. Local city or county ordinances governing parking requirements for marinas will apply if such have been enacted.

(7-1-98)

07. **Weather Conditions.** Encroachments shall be designed and installed to withstand normally anticipated weather conditions in the area. Docks, piers and similar structures shall be adequately secured to pilings or anchors to prevent displacement due to ice, wind and waves.

(9-13-90)

08. **Markers.** If the director determines that an encroachment is not of sufficient size to be readily seen or which poses a hazard to navigation, he shall specify in the permit approved markers be used to identify clearly the extent and size of the encroachment.

(7-1-98)

09. **Removal of Waste.** Pilings, anchors and other structures, or material or waste at the site of the installation or reinstallation and not used as a part of the encroachment shall be removed from the water 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.

(9-13-90)

10. **Seawalls or Breakwaters.** Seawalls or breakwaters built upon the lake for use in aid of navigation will not be authorized below the level of normal low water without an extraordinary showing of need; provided, however that this shall 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.

(9-13-90)

11. **Compliance With Permit.** All work shall be done in accordance with these rules, and the application submitted, and is subject to any condition specified in the permit.

(7-1-98)

12. **Overhead Clearance.** Overhead clearance between the natural or ordinary high water mark or the artificial high water mark, if there be one, and the structure or wires must be sufficient to pass the largest vessel which

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 twenty (20) feet unless the director shall determine after hearing that it is in the overall public interest that the clearance be in excess of twenty (20) feet. Irrespective of height above the water, approval of structures or wires presenting a hazard for boating or other water related activities may be conditioned upon adequate safety marking to show clearance and otherwise to warn the public of the hazard. The director shall specify in the permit the amount of overhead clearance and markings required. (9-13-90)

13. Overhead Clearance; Other Requirements. When the permit provides for overhead clearance or safety markings under Subsection 060.07, the director shall consider the applicable requirements of the U.S. Coast Guard, the Idaho Transportation Department, the Idaho Public Utilities Commission and any other applicable federal, state or local regulations. (7-1-98)

14. 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 automatically expire unless it was previously revoked or otherwise extended. (7-1-98)

061. -- 069. (RESERVED).

070. 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. (9-13-90)

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. (9-13-90)

03. Mineral Leases. Applications to lease minerals, oil, gas and hydrocarbon, 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. (9-13-90)

071. -- 079. (RESERVED).

080. VIOLATIONS - PENALTIES.

01. Violations. The following acts or omissions shall subject a person to a civil penalty of not less than one hundred fifty dollars (\$150) nor more than two thousand five hundred dollars (\$2,500): (9-13-90)

a. A violation of the provisions of Section 58-1301, et seq., Idaho Code, or of the rules and general orders adopted thereunder and applicable to navigable lakes; (9-13-90)

b. A violation of any special order of the director applicable to a navigable lake; or (9-13-90)

c. Refusal to cease and desist from any violation in regards to a navigable lake after having been notified to do so in writing by the director by personal service or certified mail, within the time provided in the notice, or within thirty (30) days of service of such notice if no time is provided. (9-13-90)

02. Injunctions, Damages. The board expressly reserves the right, through the director, to seek injunctive relief under Section 58-1308, Idaho Code and mitigation of damages under Section 58-1309, Idaho Code in addition to the civil penalties provided for in Subsection 080.01. (7-1-93)

081. -- 999. (RESERVED).