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Attorney for Objector, Williams

IDAHO DEPARTMENT OF LANDS

In the Matter of the Application for
Encroachment L9652863A, for construction of
two boat garages at existing dock,

Patrick Lewis E. Trust,

Applicant.

AGENCY Case No. PH-2026-NAV-20-001

OAH Case No. 26-320-03

OBJECTOR'S MEMORANDUM IN
SUPPORT OF REQUEST TO REJECT
RECOMMENDED ORDER

COMES NOW, the Objector, Margaret Williams by and through her attorney of record Arthur M. Bistline of the law firm BISTLINE LAW, PLLC, and hereby files her memorandum in support of request to reject recommended order as follows:

A boat garage is categorized in two ways: 1) one that existed before the passage of the Lake Protection Act and 2) one that was modified after the Lake Protection Act. Rotating a grandfathered boat garage requires the garage to be permitted as new. The Department of Lands has not issued any rule allowing grandfathered boat garages to be moved without a showing of major public benefit. Any interpretation of the existing rules to the contrary is ultra vires and of no force and effect.

The proposed Order determines that existing IDAPA regulations permit the relocation of a boat garage that existed prior to the passage of the Lake Protection Act.

New boat garages are prohibited. IDAPA 20.03.04.015.05.b. Boat garages may be rebuilt or replaced with "the current square footage of their existing footprint and height." IDAPA 20.30.04.015.05.c. "Relocation of an existing boat garage will require a permit." IDAPA 20.03.04.015.05.d. These regulations read together and

subject to the facts in these proceedings show that: (1) this is an existing boat garage; (2) that is being relocated from Heyburn State Park to Applicant's property. Subject to the square footage issue identified above, this does not violate existing regulations.

The hearing officer concluded that the above regulations permitted relocating existing boat garages from one lake to another without treating them as new boat garages, provided the dimensions are the same. The regulations recite that relocating an existing boat garage will require a permit. The hearing officer interpreted that language to allow a boat garage to be moved, and a boat garage can be moved, however, doing so requires it be permitted as a new non-navigational encroachment. Any other interpretation is directly contrary to the mandates of Idaho Code §58-1312.

“Rules may be promulgated by an agency only when specifically authorized by statute.” Idaho Code §67-5231(1). “The adoption of the Administrative Procedure Act (“APA”) in 1965 served as a general statutory grant of rule-making authority to administrative agencies to promulgate rules and regulations to affect the purposes of effective acts they are required to administer.” *Rhodes v. Indus. Comm'n*, 125 Idaho 139, 141, 868 P.2d 467, 469 (1993). “When a conflict exists between a statute and a regulation, the regulation must be set aside to the extent of the conflict. *Roeder Holdings, L.L.C. v. Bd. of Equalization of Ada Cnty.*, 136 Idaho 809, 813, 41 P.3d 237, 241 (2001), abrogated on other grounds by *Ada Cnty. Bd. of Equalization v. Highlands, Inc.*, 141 Idaho 202, 108 P.3d 349 (2005) citing *Idaho County Nursing Home v. Dep't of Health*, 120 Idaho 933, 937, 821 P.2d 988, 992 (1991).

Idaho Code §58-1312 limits the Department of Lands' authority to create rules regarding encroachments that existed before 1974 and have not been modified. Encroachments that have been modified after January 1, 1975, must be permitted as new encroachments. Idaho Code 58-1312(2). Any change to the footprint, height, or location is considered a modification. Id at (1).

The term “modified” has been strictly construed. The Idaho Supreme Court found that a

OBJECTOR'S MEMORANDUM IN SUPPORT OF REQUEST TO REJECT RECOMMENDED ORDER-2

pre-1974 encroachment that was modified by only placing items on and around it that were later removed was “modified” and no longer qualified as exempt from the new encroachment process. *Wilson v. Idaho State Bd. of Land Commissioners*, 576 P.3d 291, 301 (Idaho 2025), as amended on denial of reh'g (Oct. 3, 2025).

The boat garages in question are not even being relocated. They were torn down, and now the applicant seeks to rebuild them on a different lake. No rule allows this, and Idaho Code §58-1312 requires the Department of Lands to treat the application as an application to construct new boat garages.

A boat garage is a non-navigational encroachment. IDAPA 20.03.04.015. Non-navigational encroachments are not improved except in extraordinary circumstances.

Encroachments not in aid of navigation in navigable lakes will normally not be approved by the Department and will be considered only in cases involving major environmental, economic, or social benefits to the general public. Approval under these circumstances is authorized only when consistent with the public trust doctrine and when there is no other feasible alternative with less impact on public trust values.

IDAPA 20.03.04.030.

The proposed boat garages are new, non-navigational encroachments, and no public benefit has been shown.

The existing rules do not allow a grandfathered boat garage to be moved, nor could they. The hearing officer's determination that the regulations allow the Department to issue encroachment permits to move a boat garage without a showing of major public benefit is in error and should not be adopted.

DATED this 7th day of April 2026.


ARTHUR M. BISTLINE
Attorney for Objector, Williams

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that on the 7th day of April 2026, I caused to be served a true and correct copy of the foregoing document to be forwarded, with all required charges prepaid, by the method indicated below, to the following:

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/s/Nichole Foreman
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