

Peter J. Smith IV, ISB #6997
FENNEMORE CRAIG, P.C.
233 E. Harrison Ave.
Coeur d'Alene, Idaho 83814
T: (208) 956-0145
E: peter.smith@fennemorelaw.com

Attorneys for Applicant

BEFORE THE IDAHO DEPARTMENT OF LANDS

In the Matter of the Application for Permit
Encroachment L9685863A, for construction of
two boat garages at existing dock,

Lewis E. Patrick Trust dated April 8, 1999,

Applicant.

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

OAH Case No. 26-320-03

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

Applicant, Lewis E. Patrick Trust dated April 8, 1999 (hereinafter "Applicant"), by and through its attorney of record, Peter J. Smith IV of Fennemore Craig, P.C., submits this Response to Objector's Memorandum in Support of Request to Reject Recommended Order.

I. INTRODUCTION

As a threshold matter, Objector's Memorandum in Support of Request to Reject Recommended Order ("Memorandum") should not be considered. Objector did not serve Applicant's counsel with the Memorandum, even though counsel appeared at the evidentiary hearing and is identified in the Recommended Order as counsel of record for Applicant. The record shows that the Recommended Order itself was served on both Applicant and Applicant's counsel. By contrast, Objector's certificate of service for the Memorandum lists service on the Applicant, but not on Applicant's counsel of record. Applicant's counsel learned of the objection only after

being notified by the Idaho Department of Lands (“Department”) that this Memorandum had been filed. That omission is both a procedural error, and a violation of the Scheduling Order governing this matter. *See Scheduling Order*, at ¶ 4 (filed February 4, 2026). Service on the client alone does not cure the failure to serve counsel of record in a contested administrative matter where counsel has appeared and is actively representing the party. Regardless of this procedural error, Objector’s legal arguments are based on a misunderstanding of the statutes and regulations at issue.

II. ANALYSIS

On the merits, Objector’s argument fails because it overstates what Idaho Code § 58-1312 does. That statute does not prohibit the Department from considering or permitting every encroachment that has been reconstructed, replaced, relocated, or otherwise modified after January 1, 1975. It does something narrower. It separates encroachments into two categories. Under subsection (1), an applicant who proves the encroachment existed before January 1, 1975 and has not been modified since 1974 receives a permit without having to go through the ordinary fee-based process. Under subsection (2), a person seeking a permit for an encroachment constructed, replaced, or modified on or after January 1, 1975 must submit an application and proceed through the same permitting process required for new encroachments. The statute thus determines which permitting track applies. It does not impose an automatic bar to permitting.

That distinction matters here. The hearing officer did not conclude that the proposed garages were exempt from permitting under Idaho Code section 58-1312(1). Nor did she conclude that they retained some untouchable grandfathered status. She concluded that, under the Department’s rules, this application concerns “existing boat garage[s]” being relocated, and that relocation “will require a permit.” She then evaluated the application under the governing rules and recommended approval subject to one condition: Boat Garage A must be reduced so it does

not exceed the square footage of the demolished structure. In other words, the Recommended Order already places the application into a permitting framework. That approach is consistent with section 58-1312, not contrary to it.

Objector's core legal premise is wrong. The fact that an encroachment has been modified, replaced, or relocated does not mean the Department must deny the application. It means the applicant must apply for a permit and proceed through the ordinary process. That is exactly what occurred. Applicant submitted an application. IDL processed it. Objections were heard. An evidentiary hearing was held. The hearing officer considered the governing statutes and rules and recommended approval with a condition designed to ensure compliance with IDAPA 20.03.04.015.05.c. Section 58-1312 does not require more.

Objector also argues that relocation of these garages is necessarily forbidden because they originated at Heyburn State Park and are now proposed at Applicant's property on Lake Pend Oreille. But the hearing officer addressed that exact point. She read IDAPA 20.03.04.015.05 together and concluded that new boat garages are prohibited, existing permitted boat garages may be maintained or replaced within the current footprint and height, and relocation of an existing boat garage requires a permit. Based on those provisions and the facts in the record, she concluded that this application does not violate existing regulation, so long as the square footage issue for Boat Garage A is corrected. Whether Objector disagrees with that reading is not enough. The question is whether the Recommended Order is legally erroneous. It is not. The rule expressly contemplates relocation by permit. The Recommended Order follows the text of the rule and imposes a condition to ensure dimensional compliance.

Contrary to Objector's argument, Idaho Code section 58-1312 does not nullify IDAPA 20.03.04.015.05.d. The statute and the rule can be read together without conflict. Section 58-1312

says that if an encroachment has been modified, replaced, or constructed after January 1, 1975, the applicant must go through the ordinary permitting process. The rule says that relocation of an existing boat garage requires a permit. Those provisions fit together. Both require permitting. Neither compels denial. Objector's argument depends on reading subsection (2) as a prohibition rather than as a direction to use the regular permitting process. The statute does not say that.

The Memorandum likewise overreaches when it says these structures are "not even being relocated" because they were dismantled before being reconstructed. Idaho Code section 58-1312(2) expressly covers encroachments that are "constructed, replaced or modified" after January 1, 1975. Even under Objector's own characterization, the statute directs the application into the ordinary permitting process. It does not foreclose the Department's authority to issue a permit after review.

The hearing officer's reasoning is also restrained. She did not approve an expansion of grandfathered rights. She found that Boat Garage A, as proposed, exceeded the allowable square footage by 2.14 square feet and therefore conditioned approval on reducing that structure to comply with the rule. She also required Applicant to submit updated and consistent plans for IDL approval before construction. That is the opposite of an ultra vires decision. It is an administrative decision that applies the rule text, corrects the one identified dimensional defect, and keeps final compliance review with the Department.

III. CONCLUSION

For these reasons, Objector has not shown any basis to reject the Recommended Order. The service defect alone warrants caution in considering the Memorandum. More important, the legal argument fails because Idaho Code § 58-1312 does not mandate denial of this application. It

requires permitting through the ordinary process. That process occurred here. The Recommended Order should be adopted.

DATED this 8th day of April 2026.

FENNEMORE CRAIG, P.C.

By: 

Peter J. Smith IV, ISB #6997
Attorney for Applicant

CERTIFICATE OF SERVICE

I hereby certify that on April 8, 2026, I caused to be served a true and correct copy of the foregoing document by the method indicated below, and addressed to the following:

Bob Presta CE Kramer Crane and Contracting 46820 Hwy 2 Hope, ID 83836 (208) 264-3021 <i>Agent for Applicant</i>	<input type="checkbox"/> By U.S. Mail <input type="checkbox"/> By Overnight Mail <input type="checkbox"/> By Facsimile <input checked="" type="checkbox"/> By Email: bob@cekramer.com <input type="checkbox"/> By iCourt
Kevin Chadwick 2365 E Tennessee Ave Denver, CO 80209 (303) 619-6877 <i>Objector</i>	<input type="checkbox"/> By U.S. Mail <input type="checkbox"/> By Overnight Mail <input type="checkbox"/> By Facsimile <input checked="" type="checkbox"/> By Email: kevinspears.chadwick@gmail.com <input type="checkbox"/> By iCourt
W.H. Williams Family LLC Ruth Williams c/o Margaret Williams 29 Eagle Cove Sandpoint, ID 83864 (208) 946-7105 <i>Objector</i>	<input type="checkbox"/> By U.S. Mail <input type="checkbox"/> By Overnight Mail <input type="checkbox"/> By Facsimile <input checked="" type="checkbox"/> By Email: Mrwlaw1315@gmail.com <input type="checkbox"/> By iCourt
Arthur Bistline Bistline Law, PLLC 1205 N 3 rd Street Coeur d' Alene, ID 83814 (208) 665-7270 <i>Attorney for Objector Williams</i>	<input type="checkbox"/> By U.S. Mail <input type="checkbox"/> By Overnight Mail <input type="checkbox"/> By Facsimile <input checked="" type="checkbox"/> By Email: service@bistlinelaw.com <input type="checkbox"/> By iCourt
Idaho Department of Lands Kayleen Richter 300 N. 6 th Street, Ste. 103 Boise, ID 83702 (208) 334-0200 <i>Counsel for IDL</i>	<input type="checkbox"/> By U.S. Mail <input type="checkbox"/> By Overnight Mail <input type="checkbox"/> By Facsimile <input checked="" type="checkbox"/> By Email: krichter@idl.idaho.gov <input type="checkbox"/> By iCourt

<p>Idaho Department of Lands Amidy Fuson <i>Lands Resource Specialist-Navigable Waters</i> Marde Mensinger <i>Program Manager for Navigable Waters</i> Rachel King <i>Program Specialist-Navigable Waterways</i></p>	<input type="checkbox"/> By U.S. Mail <input type="checkbox"/> By Overnight Mail <input type="checkbox"/> By Facsimile <input checked="" type="checkbox"/> By Email: afuson@idl.idaho.gov mmensinger@idl.idaho.gov rking@idl.idaho.gov <input type="checkbox"/> By iCourt
<p>Kourtney Romine Kayla Dawson Idaho Department of Lands 300 N. 6th Street, Suite 103 Boise, ID 83702 <i>Service Contacts for IDL</i></p>	<input type="checkbox"/> By U.S. Mail <input type="checkbox"/> By Overnight Mail <input type="checkbox"/> By Facsimile <input checked="" type="checkbox"/> By Email: kromine@idl.idaho.gov kdawson@idl.idaho.gov <input type="checkbox"/> By iCourt
<p>Office of Administrative Hearings General Government Division Leslie M. Hayes P.O. Box 83720 Boise, ID 83720-0104 (208) 605-4300</p>	<input type="checkbox"/> By U.S. Mail <input type="checkbox"/> By Overnight Mail <input type="checkbox"/> By Facsimile <input checked="" type="checkbox"/> By Email: filings@oah.idaho.gov leslie.hayes@oah.idaho.gov <input type="checkbox"/> By iCourt

/s/ Emily Boudreau
Emily Boudreau, Paralegal