

BEFORE THE IDAHO DEPARTMENT OF LANDS

In the Matter of the Application for
Encroachment L96S2863A, 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

FINAL ORDER

Applicant Lewis Patrick, trustee of the Lewis E. Patrick Trust dated April 8, 1999 (“Patrick”) submitted a Joint Application for Permits (“Application”) to Idaho Department of Lands (“IDL”) on December 11, 2025, to relocate and rebuild two boat garages at his existing dock on Lake Pend Orielle. Both adjacent neighbors objected and requested a public hearing.

IDL held a public hearing on March 5, 2026, conducted by the Office of Administrative Hearings (“OAH”). Administrative Law Judge Leslie Hayes (“ALJ Hayes”) presided over the hearing. On April 6, 2026 ALJ Hayes issued an Amended Findings of Fact, Conclusions of Law, and Recommended Order (“Recommended Order”).

As Director of IDL, my responsibility is to render a Final Order pursuant to Idaho Code § 58-1306(c) and IDAPA 20.03.04.030.07, on behalf of the State Board of Land Commissioners (“Board”) based on the record reviewed in the context of my personal expertise gained through education, training, and experience. I relied on, and examined the entire record, including the Recommended Order and Objector’s Memorandum in Support of Request to Reject Recommended Order. For the reasons set forth below, the Application is **APPROVED**.

I adopt ALJ Hayes’s evidentiary rulings as my rulings. Unless stated otherwise, the Findings of Fact and Conclusions of Law in this Order are substantially adopted from the Recommended Order.

FINDINGS OF FACT

1. In May 2024, Heyburn State Park (“Park”) announced plans to upgrade and renovate the marinas at Chatcolet and Rocky Point. To make room for new moorage, the Park terminated approximately 81 existing leases, requiring all boat garages be removed by the end of 2024.

2. At the request of the park’s lessees, IDL developed a plan to inspect each boat garage to determine pre or post-LPA status and to document the dimensions for future relocation or rebuild. IDL-001, pp. 30, 33.

3. On August 29, 2024, IDL staff inspected and documented the dimensions of all boat garages at the park and determined all were pre-LPA structures and eligible to receive a temporary permit to relocate and rebuild the structures. IDL-001, pp. 30, 33.

4. On September 25, 2024, IDL issued temporary permit LU300046 to Kelly Budge “to apply to rebuild, remove, or otherwise relocate their boat garage” by December 31, 2027. APP-2. APP-4. Permit LU300046 depicts the dimensions of the boat garage as 20.08 feet wide, 25.00 feet long, 10.5 feet high, totaling 502.08 square feet. APP-2.

5. On September 25, 2024, IDL issued temporary permit LU300091 to Craig Swenson “to apply to rebuild, remove, or otherwise relocate their boat garage” by December 31, 2027. APP-3. Permit LU300091 depicts the dimensions of the boat garage as 15.50 feet wide, 30.33 feet long, 10.5 feet high, totaling 470.17 square feet. APP-3.

6. Both permits were assigned to Patrick on April 14, 2025. APP-3, 5.

7. On December 11, 2025, Patrick submitted a complete Joint Application for Permits (Application L96S2863A) to IDL seeking to relocate and rebuild the two boat garages at an existing permitted boat dock on Lake Pend Oreille. IDL-001.

8. Patrick is a littoral owner with one parcel adjacent to Lake Pend Oreille identified as Bonner County Parcel No. RP57N01W084690A. IDL-001, p. 1. The parcel is physically located at 941 W. Oden Bay, Sandpoint, Idaho 83864. *Id.*

9. It is not clear whether the parcel includes privately submerged lands.

10. Applicant owns at least 144 feet of shoreline footage. The record contains discrepancies as to littoral parcel dimensions.

11. The two boat garages will be located towards the shoreline side of the existing single-family dock at the property. IDL-001, p. 5. This will place the boat garages within the line of navigability. *Id.*

Boat Garage A

12. Boat Garage A (LU300046) is proposed to be located on the northern end of the dock. The plans depict Boat Garage A to be 28 feet long by 13.5 feet wide, totaling 378 square feet. APP-14.

13. The master float dimensions of the former demolished boat garage was 25 feet long by 20.08 feet side, totaling 502 square feet. IDL-008.

14. The proposed boat Garage A will be 124 square feet smaller than the demolished boat garage.

15. Boat Garage A proposes a height of 10 feet, which is one-half foot shorter than the demolished boat garage. APP-14.

16. There is 43-foot buffer between Boat Garage A and the neighboring littoral line.

Boat Garage B

17. Boat Garage B (LU300091) is proposed to be located on the southern end of the dock. The plans depict Boat Garage B to be 23.83 feet long by 13.5 feet wide totaling 321.7 square feet. APP-14.

18. The master float dimensions of the former demolished boat garage was 30.33 feet long by 15.5 feet wide, totaling 470.11 square feet. IDL-007.

19. The proposed Boat Garage B will be 148.41 square feet smaller than the demolished boat garage. APP-14.

20. Boat Garage B proposes a height of 10 feet, which is one-half foot shorter than the demolished boat garage. APP-14.

21. There is 41-foot buffer between Boat Garage B and the neighboring littoral line.

22. Adjacent neighbors W.H. Williams, LLC (“Williams”), and Kevin Chadwick (“Chadwick”) (collectively, “Objectors”) objected to the Application on the grounds that (1) Patrick’s existing single-family dock is noncompliant and exceeds the maximum square footage allowed; (2) new boat garages are prohibited on Lake Pend Oreille; (3) the LPA Rules do not contemplate combination of two boat garages; (4) the boat garages will adversely impact the shoreline development and objectors’ views; and (5) public trust doctrine. OBJ-001, pp. 5-12.

23. In briefing, counsel for Objector Williams raised an additional objection that the Application is incomplete as it does not address the factors in IDAPA 20.03.04.030.

24. IDL received no public comment on the Application.

CONCLUSIONS OF LAW

IDL’s regulatory authority

In 1974, the Idaho Legislature enacted the Lake Protection Act (“LPA”), Title 58, Chapter

13, Idaho Code, stating that:

The legislature of the state of Idaho hereby declares that the public health, interest, safety and welfare requires that all encroachments upon, in or above the beds of waters of navigable lakes of the state be regulated in order that the protection of property, navigation, fish and wildlife habitat, aquatic life, recreation, aesthetic beauty and water quality be given due consideration and weighted against the navigational or economic necessity or justification for, or benefit to be derived from the proposed encroachment. No encroachment on, in or above the beds or waters of any navigable lake in the state shall hereafter be made unless approval therefor has been given as provided in this act.

I.C. § 58-1301. The State Board of Land Commissioners (“Board”) is authorized to “regulate and control the use or disposition of lands in the beds of navigable lakes, rivers and streams, to the natural or ordinary high water mark thereof, so as to provide for their commercial, navigational, recreational or other public use. . .” I.C. § 58-104(9)(a).

The LPA provides that the Board “shall regulate, control and may permit encroachments in aid of navigation or not in aid of navigation on, in or above the beds of waters of navigable lakes.”

I.C. §§ 58-1303. IDL is granted power to exercise the Board’s rights, powers and duties under the LPA. I.C. § 58-119(1); *Newton v. MJK/BJK, LLC*, 167 Idaho 236, 242 (2020). “Beds of navigable lakes” means the lands lying under or below the “natural or ordinary high water mark” of a navigable lake and, for purposes of this act only, the lands lying between the natural or ordinary high water mark and the artificial high water mark, if there be one. I.C. § 58-1302(b).

Lake Pend Oreille is a navigable lake and is within IDL’s authority to regulate encroachment permits. *See generally Lake CDA Invs., LLC v. Idaho Dep’t of Lands*, 149 Idaho 274, 277, 233 P.3d 721, 724 (2010). In the early 1950s, the United States Army Corps of Engineers constructed the Albeni Falls dam on Lake Pend Oreille, thereby creating an artificial high water mark (“AHWM”) approximately eleven and a half feet above the natural high water mark. *Kaseburg v. State, Bd. of Land Comm’rs*, 154 Idaho 570, 572, 300 P.3d 1058, 1060 (2013).

The LPA mandates that IDL weigh the economic benefits and detriments of a proposed navigational encroachment, along with environmental, navigational, recreational, and other impacts that may be associated. IDL, based on its experience and expertise, is in the best position to weigh the competing interests involved. *Brett v. Eleventh St. Dockowner's Ass'n, Inc.*, 141 Idaho 517, 523, 112 P.3d 805, 811 (2005). “If . . . following a hearing, the board determines that the benefits [of a nonnavigational encroachment], whether public or private, to be derived from allowing such encroachment exceed its detrimental effects, it shall grant the permit.” I.C. § 58-1306(e).

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 board 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 a nonnavigational encroachment, a commercial navigational encroachment, or a community navigational encroachment not extending below the natural or ordinary high water mark.

I.C. § 58-1306(e).

Through its statutory authority, IDL has promulgated Rules for the Regulation of Beds, Waters and Airspace Over Navigable Lakes in the State of Idaho (“LPA Rules”). See IDAPA 20.03.04.

The Application meets the requirements of Idaho Code § 58-1306(a) and LPA Rules

Applications for non-navigational encroachments shall be submitted upon approved forms and “accompanied by plans of the proposed encroachment containing information required by section 58-1302(k), Idaho Code, and such other information as the board may by rule require in conformance with the intent and purpose of this chapter.” I.C. § 58-1306(a). Applications must be submitted or approved by the riparian or littoral owner. *Id.* Plans shall include:

- Lakebed profile in relationship to the proposed encroachment and show the summer and winter water levels.

- Copy of most recent survey or county plat showing the full extent of the Finney’s lot and the adjacent littoral lots.
- Proof of current ownership or control of littoral property or littoral rights.
- A general vicinity map.
- Scaled air photos or maps showing the lengths of adjacent docks as an indication of the line of navigability, distances to adjacent encroachments, and the location and orientation of the proposed encroachment in the lake.
- Total square footage of proposed docks and other structures, excluding pilings, that cover the lake surface.
- Names and current mailing addresses of adjacent littoral owners.

IDAPA 20.03.04.020.07.a. The Application meets the requirements of I.C. § 58-1306(a), 58-1302(k), and IDAPA 20.03.04.020.07.a.

The Application meets the standards for boat garages.

Boat garages are defined as “[a] structure with one (1) or more slips that is completely enclosed with walls, roof, and doors, but no temporary or permanent residential area.” IDAPA 20.03.04.010.06.

The Rules provide the following encroachment standards for boat garages:

- a. Boat garages are considered nonnavigational encroachments.
- 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 accepted unless the application is to support local emergency services.
- c. Existing permitted boat garages may be maintained or replaced with the current square footage of their existing footprint and height.
- d. Relocation of an existing boat garage will require a permit.

IDAPA 20.03.04.015.05.

Both boat garages are permitted as pre-LPA structures under the land use permits. These structures are entitled to be rebuilt to their previous dimensions or relocated, and require a new

encroachment permit, which Patrick has applied for in this case. As such, this does not violate the existing statute or regulations as alleged by Objector Williams. (Obj. Mem. in Supp. of Request to Reject Recommended Order).

Objector also states that the LPA Rules do not contemplate combining two boat garages into one. There is no evidence that that is what Applicant seeks to do here. The boat garages will each be separate structures, divided by the single-family dock. The Rules are silent as to the number of boat garages that an individual may permit.

From the record, it appears that the dimensions of the demolished boat garages were much larger considering the master float footprint. The current boat garages do not appear to have a larger master float and therefore, are smaller overall. Although neither the old dimensions nor the new dimensions provide dimensions for the slip cutout sizes, the plans still indicate that the proposed boat garages will not exceed the size of the demolished garages.

The line of navigability

The boat garages will be within the line of navigability.

Adjacency to littoral right lines.

An adverse effect will be presumed if a non-navigational encroachment is closer than 25 feet to adjacent littoral right lines. IDAPA 20.03.04.13.e. Neither boat garage will be within 25 feet of the neighboring littoral owners.

The boat garages provide a benefit

Objector Williams argues that the regulations allows IDL to issue a permit to move a boat garage without a showing of "major public benefit" is contrary to the statute. The LPA provides that if, following a hearing, the board determines that the benefits, whether public or private, to be derived from allowing such encroachment exceeds its detrimental effects, it shall grant the permit.

I.C. § 58-1306(e). The LPA does not contemplate that no non-navigational or commercial or community encroachments will not be allowed, it requires a showing that the benefit — public or private — outweigh the benefits. In this case, Patrick stated that the boat garages will conform to their historical use as private moorage. The old boat garages pre-dated the LPA, and are allowed to be relocated or rebuilt. When the State decided to reconfigure Heyburn marina, it entered into several discussions with IDL regarding the existing boat garages. IDL agreed to inspect each one and issue a permit to relocate or rebuild the garages within three years.

As shown in the record, these boat garages were inspected and determined to be eligible to receive a temporary permit. Had the boat garage not offered some private benefit or was being used for something other than moorage, the boat garage would not have been eligible. (IDL Prehr'g. stmt., pp. 9-10).

Given the age and condition of some of the boat garages at Heyburn, relocation would have presented detriments that could have outweighed the benefits. In the *Wilson* matter cited by Objector, the pre-LPA log crib was obviously detrimental to public trust land because its sole purpose was to erode fine sand from the neighboring parcel and deposit it onto the adjacent parcel. This structure disrupted lakeshore current and altered the shoreline. There was no benefit to anyone except Wilson, and the demonstrated detriments outweighed his accumulation of sand.

Even though the LPA Rules allow boat garages to be rebuilt and relocated with a new permit, this Order weighs the benefits and detriments required by statute.

Private submerged lands

Lake Pend Oreille has a recognized artificial high water mark of 2062.5, caused by construction of the Albeni Falls Dam in the 1950s. During the winter when the lake draws down, 2051 feet is considered to be the low water mark. The record is not clear as to whether or not the

existing dock and proposed boat garages will be located on private submerged land lying between the artificial and ordinary high water marks, which requires IDL to consider unreasonable adverse effect upon adjacent property and undue interference with navigation the most important factors. I.C. § 58-1306(d). If this were the case, the record does not show undue interference with navigation or unreasonable adverse effect upon adjacent property. Regardless, IDL has authority to regulate encroachments under both marks. *State v. Hudson*, 162 Idaho 888, 893, 407 P.3d 202, 207 (2017).

Fish and wildlife habitat and aquatic life

There is no evidence in the record that the boat garages will pose a detriment to fish and wildlife habitat or aquatic life. Although IDFG was invited to present comments, it did not do so. The testimony at the hearing presented evidence of other boat garages on the lake and no evidence of detriment to habitat. Although some comments were alleged as to shadows, this was speculative and presented no other evidence of adverse effect.

Recreation

There is no evidence in the record that the boat garages will pose a detriment to the public's use of the lake for recreation.

Aesthetic beauty

The Objectors allege that the boat garages will impact the overall beauty of the bay and impact their views of the lake. The LPA protects littoral rights, which does not include "the right to a particular view." *Newton v. MJK/BJK, LLC*, 167 Idaho 236, 243 (2020). While it is unfortunate that this project will partially block Objectors' view, IDL only has jurisdiction as granted to it by statute and its jurisdiction does not extend to the view from the shoreline.

The bay is home to existing boat garages that are older than the new structures. The new boat garages will be smaller and shorter than the original. The designs present a clean and functional shape and fit within the existing dock.

Water quality

There is no evidence in the record that the boat garages will pose a detriment to the water quality in the lake. Although DEQ was invited to submit comments, it did not do so.

Safety

There is no evidence in the record that the boat garage will pose a detriment to public safety on the lake.

Although IDL no longer accepts applications for new boat garages on navigable lakes and rivers, the LPA Rules contemplate that pre-existing boat garages may be relocated and even rebuilt. As such, the record shows that the proposed boat garages were pre-existing and lawfully assigned to Patrick.

If the proposed boat garages were to be constructed on private submerged land, they do not appear to create unreasonable adverse effect upon adjacent property or undue interference with navigation as the most important factors.

Finally, if the navigational or economic necessity derived from the proposed encroachment is weighed against the lake value factors, the record does not show that any detrimental effects would outweigh the private benefit of the boat garages.

ORDER

Based on the foregoing Findings of Fact and Conclusions of Law, IT IS HEREBY ORDERED that the Encroachment Permit Application L-96-S-2863A is APPROVED.

This is a final order of the agency. Pursuant to Idaho Code § 58-1306(c) and IDAPA 20.03.04.030.09, the Applicant or any aggrieved party who appeared at the hearing has a right to have the proceedings and Final Order reviewed by the district court in the county where the encroachment is proposed by filing a notice of appeal within thirty (30) days from the date of this

Final Order. The filing of a petition for judicial review does not itself stay the effectiveness or enforcement of this Final Order under appeal pursuant to Idaho Code § 67-5274.

IT IS SO ORDERED.

DATED this 9th day of April, 2026.

IDAHO DEPARTMENT OF LANDS



BILL HAAGENSON
Deputy Director

CERTIFICATE OF MAILING

I hereby certify that on this 9th day of April, 2026, I caused to be served a true and correct copy of the foregoing by the method indicated below, and addressed to the following:

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/s/ Kayla Dawson
Kayla Dawson, Legal Assistant