

BEFORE THE STATE BOARD OF LAND COMMISSIONERS
STATE OF IDAHO

In the Matter of Encroachment Permit Application No.) Case No. PH-2022-NAV-10-002
L-97-S-1081D,)
) **FINAL ORDER**
Gregory M. Wilson,)
)
)
Applicant.)
_____)

I. NATURE OF PROCEEDINGS

The Idaho Department of Lands (“IDL”), through the State Board of Land Commissioners, “shall regulate, control and may permit encroachments in aid of navigation or not in aid of navigation on, in or above the beds or waters of navigable lakes” as provided in the Lake Protection Act, title 58, chapter 13, Idaho Code. Idaho Code § 58-1303. The corresponding administrative rules promulgated by the State Board of Land Commissioners are IDAPA 20.03.04, “Rules for the Regulation of Beds, Waters, and Airspace over Navigable Lakes in the State of Idaho.”

On or around September 15, 2022, IDL received an encroachment permit application from Gregory M. Wilson (“Applicant”) seeking to permit an existing rock structure underneath Applicant’s fixed pier dock. A hearing was held on December 19, 2022. Karen Sheehan served as duly appointed hearing coordinator. On January 13, 2023, the hearing coordinator issued her Preliminary Order, which contains the following sections: Background, Findings of Fact, and Analysis and Conclusion of Law.

As Director of IDL, my responsibility is to render a decision pursuant to the Lake Protection Act and the corresponding administrative rules in IDAPA 20.03.04 on behalf of the

State Board of Land Commissioners and based on the record, which I have reviewed in the context of my personal expertise gained through education, training, and experience. I relied on the record for this matter, including examining the hearing coordinator's Preliminary Order in light of the entire record in this matter.

II. FINDINGS OF FACT

I adopt the Preliminary Order's Background and Findings of Fact as my Findings of Fact with the following amendments:

On page 4, paragraph 3, in the second line from the bottom of the page, I amend the phrase "per-dock" to read "pier/dock." On the last line of that paragraph, I amend the word "services" to read "serves."

III. CONCLUSIONS OF LAW

I adopt the Preliminary Order's Analysis and Conclusion of Law as my Conclusions of Law, except that I make the following amendments and additions:

On page 6, Section B, paragraph 1, I delete the second sentence of the paragraph and add the following sentence in its place: "He argued the case should have proceeded pursuant to Idaho Code § 58-1305 instead of Idaho Code § 58-1306(c)."

On page 7, Section D, paragraph 1, I amend the phrase "per-dock" to read "pier/dock." On the third line of the block quote in that paragraph, I amend the word "services" to read "serves."

On page 10, Section D, paragraph 14, I add the following sentence between the sentence ending in "public" and the sentence beginning in "The Applicant has not met":

Applicant's identified purpose of making it easier to physically lift the pier-to-dock ramp is a benefit to Applicant, but is not a major environmental, economic, or social benefit to the public.

I also add the following paragraph to my Final Order as an additional Conclusion of Law.

My responsibility is to render a decision pursuant to the Lake Protection Act. As the Preliminary Order explains, Applicant argued that this is a navigational encroachment under the Lake Protection Act that should use the procedures in Idaho Code § 58-1305. The hearing coordinator concluded that her scope of authority was limited to holding a public hearing pursuant to Idaho Code § 58-1306(c) and she did not have authority to decide whether the hearing should be held under Idaho Code § 58-1306(c) or Idaho Code § 58-1305.

I have authority to determine whether the hearing should be held under Idaho Code § 58-1306(c) or Idaho Code § 58-1305. The Preliminary Order that I have adopted with the amendments herein concluded that the Application was for a non-navigational encroachment permit. I want to make express that I also determined, consistent with and for the reasons stated in the Preliminary Order, that the Application is for a non-navigational encroachment permit. Therefore, it was proper that this application was subject to the process in Idaho Code § 58-1306(c).

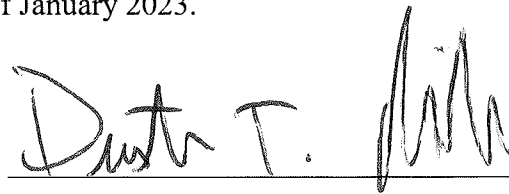
IV. ORDER

I conclude that the hearing coordinator's Preliminary Order is based on substantial evidence in the record, and I adopt the Preliminary Order's Background, Findings of Fact, and Analysis and Conclusions of Law with the amendments set forth herein as my decision in this matter. I hereby incorporate by reference the Preliminary Order's Background, Findings of Fact, and Analysis and Conclusions of Law into this Final Order except as specifically set forth herein. I have enclosed and served the Preliminary Order along with this Final Order.

Based on the adopted Findings of Fact and Conclusions of Law, I HEREBY ORDER that Encroachment Permit Application L-97-S-1081D is DENIED.

This is a final order of the agency. Pursuant to Idaho Code § 58-1306(c) and IDAPA 20.03.04.30.09, 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 the final decision. Pursuant to Idaho Code § 58-1306(c) and IDAPA 20.03.04.30.09, an adjacent littoral owner or other aggrieved party shall 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 Final Order. The Applicant does not need to post a bond with the district court for an appeal. The filing of the petition for review to the district court does not itself stay the effectiveness or enforcement of the order under appeal. Idaho Code § 67-5274.

Dated this 18th day of January 2023.



A handwritten signature in black ink, appearing to read "Dustin T. Miller", is written over a horizontal line.

DUSTIN T. MILLER

Director, Idaho Department of Lands

CERTIFICATE OF MAILING

I hereby certify that on this 18th day of January 2023, I caused to be served a true and correct copy of the foregoing by the method indicated below, and addressed to the following:

Gregory M. Wilson
PO Box 494
Greenacres, WA 99016
Applicant

- U.S. Mail, postage prepaid
- Hand Delivery
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Kourtney Romine, Workflow Coordinator

BEFORE THE IDAHO STATE BOARD OF LAND COMMISSIONERS

In the Matter of:)	
)	Case No. PH-2022-NAV-10-002
Encroachment Permit Application)	
No. L-97-S-1081D)	PRELIMINARY ORDER
)	
Gregory M. Wilson)	
)	
_____)	

I. BACKGROUND

On September 15, 2022, Gregory Wilson (“Applicant”) submitted an encroachment permit application number L-97-S-1081D (“Application”)¹ to the Idaho Department of Lands (“IDL”) seeking to permit an existing rock structure underneath Applicant’s fixed pier below the ordinary high-water mark (“OHWM”) on Priest Lake. (AR, Doc. 1.²) On September 20, 2022, IDL sent a notice to Applicant’s adjacent neighbors, William Faloon and Phillips Keyston Inheritance Trust, indicating Applicant had submitted the Application and that IDL would be calling for a hearing with the date and time to be determined. The notice further states that “IDL is not leaving it up to the neighbors to object” and then sets out procedures for the neighbors to object to the Application. (AR, Doc. 2.) On or about September 24, 2022, IDL received an objection from Dr. Faloon. (AR, Doc. 8.)

On October 4, 2022, IDL’s Director, Dustin T. Miller, issued a *Notice of Appointment of Hearing Coordinator and Scheduling Conference* (“Notice of Appointment”). The Notice of

¹ The initial application was received by IDL on July 27, 2022. It was returned as incomplete on August 5, 2022. Additional documents were submitted and IDL deemed the Application complete as of September 15, 2022.

² The citation “AR” refers to the Agency Record. “Doc.” refers to the document number.

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Appointment appointed Karen Sheehan as the Hearing Coordinator to conduct a public hearing per Idaho Code § 58-1306(c) with a scope of authority delineated by IDAPA 20.01.01.413.01 and, as applicable, IDAPA 20.03.04.030. The Notice of Appointment also set a scheduling conference for October 17, 2022 at 2:00 p.m. pacific time. (AR, Doc. 3.)

A telephonic scheduling conference was held on October 17, 2022. In attendance were: Gregory Wilson, William Faloon, along with his counsel, Mischelle Fulgham, Mike Ahmer, Deputy Attorney General Angela Kaufman, counsel for IDL staff.³ At the scheduling conference, the Hearing Coordinator requested IDL submit information regarding its decision to hold a public hearing pursuant to Idaho Code § 58-1306(c) instead of an administrative hearing pursuant to Idaho Code § 58-1305. A hearing date was set for December 19, 2022, at 9:00 a.m. Pacific Time.⁴

On October 21, 2022, IDL submitted *IDL's Response to Request for Information Re: Statute and Notice*. (AR, Doc. 4.) On the same date, Applicant requested a second scheduling conference. On October 24, 2022, the Hearing Coordinator sent out a *Notice of Scheduling Conference* setting a scheduling conference for November 7, 2022, at 8:00 a.m. Pacific Time. (AR, Doc. 5.)

The Hearing Coordinator issued a *Notice of Public Hearing* on October 25, 2022, scheduling a public hearing for December 19, 2022, at 1:00 p.m. Pacific Time, in-person or by video conference at the IDL office located at 3258 W. Industrial Loop, Coeur d'Alene, Idaho 83815. Exhibits and testimony was requested to be delivered to the Hearing Coordinator and IDL by December 12, 2022. (AR, Doc. 6.) On that same date, William Faloon requested the scheduling conference be moved to later in the day on November 7, 2022.

³ The scheduling conference was supposed to be recorded. However, IDL's telephone system encountered a glitch. The Hearing Coordinator did not learn until after the scheduling conference had ended that it was not recorded.

⁴ Applicant asserted during the hearing that the hearing was untimely held as it was not being held within the 90-day time-limit set out by statute; instead, it was held on the 94th day. The Hearing Coordinator notes that during the scheduling conference, she suggested dates prior to December 19, 2022 and Applicant agreed to the December 19, 2022 hearing date.

On October 27, 2022, the Hearing Coordinator sent out an *Amended Notice of Scheduling Conference* setting a scheduling conference for November 7, 2022, at 4:00 p.m. Pacific Time. (AR, Doc. 7.)

A second telephonic scheduling conference was held on November 7, 2022. In attendance were Gregory Wilson, William Faloon, along with his counsel, Mischelle Fulgham, Mike Ahmer, Marde Mensinger, Eric Wilson, and Deputy Attorney General Angela Kaufman, counsel for IDL staff, this telephonic conference was recorded.

On November 8, 2022, Applicant submitted *Applicant's Objection and Protest*. (AR, Doc. 9.) On December 12, 2022, IDL submitted a *Notice of Filing - IDL's Exhibits and Request for Addition to Agency Record*. (AR, Doc. 10.) and Applicant submitted a *Declaration of Gregory M. Wilson, Applicant's Memorandum of Authorities in Support Permit Issuance and Applicant's Exhibits A-D*. (AR, Doc. 11.)

The Hearing Coordinator issued an *Order Granting IDL's Request for Addition to Agency Record* on December 15, 2022. (AR, Doc. 12.) On that same date, IDL added the record from Case No. PH-2020-NAV-10-001 to the Agency Record in this matter. (AR, Doc. 13.)

Also on December 15, 2022, Mischelle Fulgham, Objector William Faloon's counsel, submitted *Legal Memorandum Supporting Denial of Wilson's Rock Jetty Encroachment Permit Application and Requiring Removal of the Unpermitted Encroachment*, Faloon's Objection Hearing Statement, and a PowerPoint presentation. (AR, Doc. 14.)

On December 18, 2022, Applicant submitted *Applicant's Response to IDL's Response to Request for Information Re: Statute and Notice, Declaration of Gregory M. Wilson in Support of Applicant's Response to IDL's Response to Hearing Coordinator*, and Objector submitted *Addendum to 1081D*. (AR, Docs. 15 and 16.)

On December 19, 2022, IDL held a public hearing starting at approximately 1:03 p.m. Pacific Time, at the IDL office located at 3258 W. Industrial Loop, Coeur d'Alene, Idaho 83815.

In physical attendance and offering testimony or argument were Gregory Wilson, Debra Wilson, William Faloon, Mischelle Fulgham, as attorney for Mr. Wilson, Mike Ahmer, IDL Resource Supervisor, and Angela Kaufman, Deputy Attorney General assisting IDL staff. According to the sign-in sheet, other persons in physical attendance were Ali Seibly, Cassandra Wilson, Marde Mensinger, Eric Wilson, and Jennifer Barker. Participating via Zoom were Tyler Wilson, Amidy Funsen, Mick Thomas, and Ryan Zandhuisen. (AR, Doc. 17.) The Hearing Coordinator was also physically present at IDL's office in Coeur d'Alene. The hearing was recorded. (Hearing Recording.)

At the public hearing, Ms. Fulgham, Objector's counsel, submitted a written comment regarding due process (AR, Doc. 18.) The public hearing concluded at approximately 3:20 p.m. Pacific Time. (Hearing Recording.)

The Hearing Coordinator is authorized by the IDL Director to issue this Preliminary Order. (AR, Doc. 3.) With the public hearing concluded and all evidence submitted, this matter is fully before the Hearing Coordinator.

II. FINDINGS OF FACT

1. Gregory Wilson, Applicant, owns Parcel ID RP0008700017A0A, Lot 17A of the Diamond Park Replat subdivision on the north-eastern shoreline of Priest Lake. Applicant is a littoral owner, with littoral rights. (AR, Docs. 1 and 10.)

2. Applicant was issued encroachment permit L-97-S-1081A on April 17, 2006 for a water intake line, 4'x 20' fixed pier, 4'x'7' ramp, 8'x'45' approach and 10'x'12' extension dock, along with a boat lift and a launch rail system. (AR, Docs. 1 and 10.)

3. On September 15, 2022, Applicant submitted a completed encroachment permit application number L-97-S-1081D to IDL seeking to permit:

... a cobblestone extension of the applicant's dock pier as an aid to navigation. The extension is a sloping 6-foot extension of applicant's existing per-dock encroachment permit. The extension services as a support structure of lowering

and raising the pier-to-dock access ramp. The ramp's weight rests just below the end of the pier on the stones supporting the ramp during periods of seasonal ramp detachment from the pier.

(AR, Doc. 1.)

4. On September 20, 2022, within 5 days of IDL receiving the completed application, IDL sent a notice to Applicant's adjacent neighbors stating IDL would be calling for a hearing.

(AR, Doc. 3.)

5. Objector William Faloon owns land adjacent to Applicant's property. (Hearing Recording, AR, Doc. 14.)

6. Mike Ahmer, IDL Resource Supervisor for the Mica Supervisory Area Office of IDL testified pursuant to his written statement. (Hearing Recording, AR, Doc. 9.)

III. ANALYSIS AND CONCLUSIONS OF LAW

A. IDL has jurisdiction over the beds and banks of Priest Lake.

1. The Idaho legislature enacted the Lake Protection Act, Title 58, Chapter 13, Idaho Code, on or about January 1, 1975, stating:

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 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.

Idaho Code § 58-1301.

2. The State of Idaho Board of Land Commissioners ("Land Board" or "Board") is authorized to regulate, control, and permit encroachments in the beds of navigable lakes, rivers, and streams in the state of Idaho. Idaho Code §§ 58-104(9), 58-1305 and 58-1306.

3. The Land Board exercises its authority through the instrumentality of IDL. *See* Idaho Code §§ 58-101 and 58-119.

4. In accordance with the LPA, IDL has promulgated Rules for the Regulation of Beds, Waters and Airspace Over Navigable Lakes in the State of Idaho, IDAPA 20.03.04.000 *et seq.* (“LPA rules”).

5. Priest Lake is a navigable lake under the LPA, and therefore, IDL has jurisdiction to regulate the proposed encroachment. *See State v. Hudson*, 162 Idaho 888, 407 P.3d 202 (2017).

6. Applicant, as an owner of property adjacent to Priest Lake, is a littoral owner, as defined in Idaho Code § 58-1302 and IDAPA 20.03.04.020.02 and therefore is qualified to submit the Application.

B. The Hearing Coordinator’s scope of authority is limited to conducting a public hearing pursuant to Idaho Code § 58-1306(c).

1. Applicant testified that IDL denied him due process in the way it processed the Application. The case should have proceeded pursuant to Idaho Code § 58-1305 not Idaho Code § 58-1306(c). (Hearing Recording, AR, Docs. 9, 15 and 16.)

2. The Hearing Coordinator holds that her scope of authority is limited per the Notice of Appointment. The Applicant agreed with this during his rebuttal testimony during the hearing. (Hearing Recording.)

3. The Notice of Appointment directs the Hearing Coordinator to conduct a public hearing in this matter pursuant to Idaho Code § 58-1306(c). And that the Hearing Coordinator has the scope of authority delineated by IDAPA 20.01.01.413.01, and as applicable IDAPA 20.03.04.030. *See Notice of Appointment.*

4. The Notice of Appointment does not grant the Hearing Coordinator authority to determine whether the hearing should be a public hearing under Idaho Code § 58-1306(c) or an administrative hearing pursuant to Idaho Code § 58-1305. The Hearing Coordinator must proceed within the scope of authority granted by the IDL Director.

5. Furthermore, as outlined below, the Hearing Coordinator has concluded based on the facts of this case and relevant law that the Application is for a non-navigational encroachment permit and consequently subject to the process set out in Idaho Code § 58-1306(c).

C. Applicant has the burden of proof.

1. The Applicant bears the burden of proof in this matter. “The customary common law rule that the moving party has the burden of proof including not only the burden of going forward but also the burden of persuasion – is generally observed in administrative hearings.” *Intermountain Health Care, Inc. v. Bd. Of County Com’rs of Blaine County*, 109 Idaho 299, 707 P.2d 410 (Ct. App. 1985).

2. The burden of proof is a preponderance of the evidence. *N. Frontiers, Inc. v. State ex rel. Cade*, 129 Idaho 437, 926 P.2d 213 (Ct. App. 1996). A preponderance of the evidence is “evidence that, when weighed with that opposed to it, has more convincing force and from which results a greater probability of truth.” *Harris v. Electrical Wholesale*, 141 Idaho 1, 105 P.3d 267 (2004). Stated another way, a preponderance of evidence is evidence that persuades you “the proposition is more probably true than not true.” Idaho Civil Jury Instruction (IDJI) 1.20.1.

D. The Application is denied.

1. Per the Applicant, Applicant is seeking to permit:

... a cobblestone extension of the applicant’s dock pier as an aid to navigation. The extension is a sloping 6-foot extension of applicant’s existing per-dock encroachment permit. The extension services as a support structure of lowering and raising the pier-to-dock access ramp. The ramp’s weight rests just below the end of the pier on the stones supporting the ramp during periods of seasonal ramp detachment from the pier.

(AR, Doc. 1.)

2. Mr. Ahmer testified that IDL determined that the Application should be processed as a non-navigational encroachment because the rocks more closely resemble a bank barb/fill/non-navigational encroachment. And the rock structure does not aid in the support of

watercraft or moorage of a vessel. Mr. Ahmer further testified that in his 8 plus years working for IDL in the Navigable Waters program, he has never seen a request, as in this case, claiming a rock structure is an aid to navigation. (Hearing Recording, AR, Docs. 4 and 10.)

3. Mr. Ahmer reviewed Idaho law and testified the rock structure does not meet the definition of a pier or a pier extension. The rock structure does not aid in the support of watercraft or moorage of a vessel. Additionally, the rocks do not support, hold up, or stop erosion of the fixed pier. The rocks simply serve as a support for Applicant when installing and removing the ramp in the shoulder season. Instead, Mr. Ahmer testified, relying on Idaho statute, rules and IDL's procedures, the rock structure more closely fits into the definition for a bank barb or jetty. (Hearing Recording, AR, Docs. 4 and 10.)

4. Mr. Ahmer additionally testified that in his professional opinion, the photos submitted with the Application show that the rock structure tapers vertically as it projects into the water, similar to the definition of a bank barb in IDL's Encroachments Procedures (the landward side of the rock structure is higher than the waterward side). He believes if Applicant truly wanted to have a support structure to rest the ramp during installation and removal, it would make more sense if the structure was flat and level, as opposed to tapered and sloped. Also, IDL's Encroachments Procedures regarding bank barbs states "Jetties and bank barbs shall generally not be permitted as a method of controlling erosion on lakes and slack waters of reservoirs administered by the Department for trust purposes. These types of encroachment can have adverse impacts to navigation and recreation." (Hearing Recording, AR, Docs. 4 and 10.)

5. Applicant testified that the main reason for the stone extension is because, as he and his wife have aged, they have experienced difficulty physically lifting their pier-to-dock ramp. The cobblestone extension acts as a ledge upon which the ramp can rest when it is seasonably moved. (Hearing Recording, AR, Doc. 11.)

6. The Hearing Coordinator, after reviewing the Agency Record, Idaho statutes, rules and IDL's Encroachment Procedures, agrees with IDL's interpretation that the application should be processed as a non-navigational encroachment permit.

7. The Hearing Coordinator's basis for making this determination is set out in Idaho Code § 58-1302(i) which defines "encroachments not in aid of navigation" as:

"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 of the navigability of the lake. The term "encroachments not in aid of navigation" may be used interchangeably herein with the term "nonnavigational encroachments."

8. IDAPA 20.03.04.010.16 provides additional authority as it defines "Encroachments Not in Aid of Navigation" to include:

...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."

9. IDL's Encroachment Procedures, provides additional rationale for processing the Application as a non-navigational encroachment. Relevant sections are as follows:

Section 10. III Definitions

Bank Barb - Rock or wood structures keyed into bank and angled towards the upstream current or long shore drift to re-direct flow direction to reduce water forces on a particular stressed bank. The bank barb tapers both horizontally and vertically as it projects into the water with the tip or nose also keyed into bed of stream or lake. Re-directed flow will be 90° off of the downstream face of the bank barb. Deposition will normally occur on the downstream side against the shoreline. Bank barbs are nonnavigational encroachments and are processed under Idaho Code 58-1306.

Groin - One or more structures placed perpendicular to shore, used to restrict long shore sediment transport. Groins are nonnavigational encroachments.

Jetty - An earthen and rock structure extending into the waterway to influence the current, or to protect property or moorage areas. Also, an erosion resistant

berm usually placed adjacent to inlets to control inlet migration and to minimize sediment deposition within the inlet.

Section 25.V.L Riprap, Seawall, and Bulkheads Standards and Requirements

Jetties and Barbs Jetties and bank barbs shall generally not be permitted as a method of controlling erosion on lakes and slack waters of reservoirs administered by the Department for trust purposes. These types of encroachment can have adverse impacts to navigation and recreation.

10. Based on a review of the above authorities, as well as the Applicant's testimony regarding the main purpose of the cobblestone extension (i.e., to assist Applicant with making it easier to physically lift the pier-to-dock ramp when it is seasonably moved), the Hearing Coordinator concludes the Application is for a non-navigational encroachment permit.

11. Since the Application is for a non-navigational encroachment permit, it will only be approved if it meets the requirements of IDAPA 20.02.04.030.02 which states:

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.

12. Mr. Ahmer testified that IDL determined that the Application does not meet the standards in IDAPA 20.02.04.030.02 because no public benefit is identified.

13. Applicant did not testify or provide any evidence that the cobblestone extension has any major environmental, economic, or social benefits to the general public and/or that there is no other feasible alternative with less impact on public trust values.

14. Based on a review of the Agency Record, the Hearing Coordinator concludes that the Application does not meet the standards in IDAPA 20.02.04.030.02. The Applicant does not identify any major environmental, economic or social benefit to the general public. The Applicant has not met his burden of proof and consequently, the Application is denied.

IV. PRELIMINARY ORDER

Based on the foregoing findings of fact and conclusions of law, IT IS HEREBY ORDERED that Encroachment Permit Application No. L-97-S-1081D be DENIED. It is outside the Hearing Coordinator's scope of authority to order remediation or mitigation as requested by Objector. *See Notice of Appointment.*

This Order is a Preliminary Order pursuant to Idaho Code §§ 58-1306(c), 67-5420 and 67-5245. Consistent with the *Notice of Appointment*, "[T]he Hearing Coordinator shall submit a preliminary order to the Director of IDL, who shall issue a Final Order no more than thirty (30) days after the conclusion of the hearing." The hearing in this matter was completed on December 19, 2022. This Preliminary Order is submitted fewer than thirty (30) days after conclusion of the hearing.

As provided in Idaho Code § 67-5240, the contested case provisions of the Administrative Procedures Act do not apply where the legislature has directed the use of alternative procedures. Because the legislature has enacted specific alternative procedures in Idaho Code § 58-1306 that require a final order to be issued within thirty (30) days of the hearing and leaves insufficient time to consider petitions for review of preliminary orders, the procedures of Idaho Code § 67-5245 addressing petitions for review of preliminary orders are not applicable. *See Notice of Appointment.*

DATE: January 13, 2023.

STATE OF IDAHO
OFFICE OF THE ATTORNEY GENERAL

By: *Karen Sheehan*
KAREN SHEEHAN
Hearing Coordinator