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**BEFORE THE STATE BOARD OF LAND COMMISSIONERS
STATE OF IDAHO**

IN THE MATTER OF

Encroachment Permit Application
No. L95S5573B

Clinton Zuber/Zuber Construction Inc.

Applicant.

Agency Case No. PH-2025-NAV-22-001

OAH Case No. 25-320-01

**IDAHO DEPARTMENT OF LANDS’
PREHEARING STATEMENT**

The Idaho Department of Lands (“IDL”), by and through its counsel of record, Kayleen Richter, submits the following Prehearing Statement in accordance with the *Scheduling Order* issued March 3, 2025. This matter is scheduled for a remote public hearing on April 1, 2025, at 5:00 p.m. Mountain Time/4:00 p.m. Pacific Time. IDL concurrently submits its disclosure of witnesses and its exhibit list for hearing.

I. BACKGROUND

A. Application

Clinton Zuber of Zuber Construction Inc. (“Applicant”) seeks an encroachment permit to install a single-family dock and relocate an existing boat garage from the Rocky Point Marina in Heyburn State Park at the southern end of Lake Coeur d’Alene to his property near Beauty Bay at the northern end of Lake Coeur d’Alene (“Application”). *See* IDL-002.

B. Procedural Background

On February 3, 2025, IDL received a complete application from the Applicant. IDL-002.¹ The Application received signed approval from both adjacent neighbors. IDL-002 at 4, 6, 33. Accordingly, IDL did not send additional courtesy notice to the adjacent neighbors. Pursuant to IDAPA 20.03.04.030.01, on February 3, 2025, IDL objected to the Application due to concerns with the loft/storage area of the boat garage component and requested the Office of Administrative Hearings (“OAH”) conduct a public hearing. IDL-001.² On February 4, 2025, IDL sent a resource agency notice and contacted the Coeur d’Alene Press to publish public notice of the application and pending public hearing. IDL-009, 010, 011. On February 7 and 14, 2025, the Coeur d’Alene Press published a legal advertisement to notify the public of the Application and pending public hearing. IDL-010, 011. On February 4, 2025, IDL received notice that OAH appointed a Hearing Officer for this matter. IDL-003. After a scheduling conference on March 3, 2025, the Hearing Officer issued a scheduling order setting the date to hold a remote public hearing for April 1, 2025, and setting associated prehearing deadlines. IDL-007. On March 12, 2025, IDL contacted the Coeur d’Alene Press to publish public notice of the details of the public hearing in the local newspaper. IDL-012, 013. On March 14 and 21, 2025, the Coeur d’Alene Press published a legal advertisement to notify the public of the details of the public hearing. *Id.*

C. Comments

To date, IDL has not received any public or resource agency responses.

II. APPLICABLE LEGAL PROVISIONS

A. Lake Protection Act, Title 58, Chapter 13, Idaho Code

The Lake Protection Act (“LPA”), Title 58, Chapter 13, Idaho Code, governs encroachments upon Idaho’s navigable lakes, and provides in pertinent part that “[n]o

¹ IDL received the initial portions of the Application on November 25, 2024. *See* IDL-002 at 5. However, the Application was not complete until the final submittal on February 3, 2025. *See* IDL-002 at 4, 33.

² Although the Transmittal Sheet is dated February 3, 2024, IDL sent the Transmittal Sheet to OAH on February 3, 2025.

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. IDL, acting on behalf of the State of Idaho Board of Land Commissioners, has the power to “regulate, control and [] 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 herein.” I.C. § 58-1303.

The following provisions of the LPA, reproduced in relevant part, apply to the Application and guide IDL’s analysis of the Application:

I.C. § 58-1301. Encroachment on Navigable Lakes – Legislative Intent (*see also* IDAPA 20.03.04.012)

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.

I.C. § 58-1302. Encroachment on Navigable Lakes – Definitions

...(b) “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.

(c) “Natural or ordinary high water mark” means the high water elevation in a lake over a period of years, uninfluenced by man-made dams or works, at which elevation the water impresses a line on the soil by covering it for sufficient periods to deprive the soil of its vegetation and destroy its value for agricultural purposes.

...

(f) “Riparian or littoral rights” means only the rights of owners or lessees of land adjacent to navigable waters of the lake 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 of the lake. (*See also* IDAPA 20.03.04.010.32).

...

(h) “Encroachments in aid of navigation” means and includes docks, piers, floats, pilings, breakwaters, boat ramps, channels or basins, and other such aids to the navigability of the lake, 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.” (*See also* IDAPA 20.03.04.010.15).

(i) “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.” (*See also* IDAPA 20.03.04.010.16).

...

(k) “Plans” means 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

I.C. § 58-1305. Noncommercial Navigational Encroachments – Procedures – Repairs – Forms

(a) Applications for construction or enlargement of navigational encroachments not extending beyond the line of navigability nor intended primarily for commercial or community use shall be processed by the board with a minimum of procedural requirements and shall not be denied nor appearance required except in the most unusual of circumstances or if the proposed encroachment infringes upon or it appears it may infringe upon the riparian or littoral rights of an adjacent property owner.

(b) If the plans of the proposed encroachment indicate such infringement will or may occur, the board shall require that the applicant secure the consent of such adjacent owner or that he be given notice of the application by personal service or by certified or registered mail, return receipt requested, directed to him at his usual place of address, which, if not otherwise known, shall be the address shown on the records of the county treasurer or assessor, and such adjacent owner shall have ten (10) days from the date of personal service or receipt of certified or registered mail to file objection with the board. The application itself shall be deemed sufficient notice if the adjacent owner is the state of Idaho.

(c) In the event objection to the application is filed by an adjacent owner or if the board deems it advisable because of the existence of unusual circumstances, the board shall fix a time, no later than sixty (60) days from the date of filing application, and a place, for affording the applicant and the adjacent owner filing objection to appear and present evidence in support of or in opposition to the application and within forty-five (45) days thereafter shall render a decision and give notice thereof to the parties concerned who may thereafter resort to appellate procedures prescribed in section 58-1306, Idaho Code.

(d) A permit shall not be required for repair of an existing navigational encroachment.

(e) A permit shall not be required for replacement of an existing navigational encroachment if all the following conditions are met:

- (1) The existing encroachment is covered by a valid permit in good standing.
- (2) The existing encroachment meets the current requirements for new encroachments.
- (3) The location and orientation of the replacement do not change from the existing encroachment.

- (4) The replacement will be the exact same size or smaller and the same shape as the existing encroachment.
- (5) The replacement will not be located closer to adjacent littoral right lines than the existing encroachment.
- (f) Applications submitted under this section shall be upon forms to be furnished by the board and shall be accompanied by plans of the proposed navigational 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.
- (g) If notice to an adjacent owner is not required or if the adjacent owner has consented to the proposed encroachment or has failed to file objection to the proposed encroachment within the time allowed following service of notice, the board shall act upon the application as expeditiously as possible but no later than sixty (60) days from receipt of the application and failure to act within such time shall constitute approval of the application.
- (h) All permits issued for noncommercial navigational encroachments shall be recorded in the records of the county in which the encroachment is located and shall be a condition of issuance of a permit. 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.

I.C. § 58-1306. Nonnavigational or Commercial Navigational Encroachments – Community Navigational Encroachments – Navigational Encroachments Beyond Line of Navigability – Application – Procedures – Publication of notice – Hearing – Appeals – Reconsideration – Criteria priority

- (a) Applications for construction, enlargement or replacement of a nonnavigational encroachment, a commercial navigational encroachment, a community navigational encroachment, or for a navigational encroachment extending beyond the line of navigability shall be submitted upon forms to be furnished by the board 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. Applications for nonnavigational, community navigational, or commercial navigational encroachments must be submitted or approved by the riparian or littoral owner.
- (b) Within ten (10) days of receipt of an application submitted under subsection (a) of this section, the board shall cause to be published . . . a notice advising of the application and describing the proposed encroachment and general location thereof. Applications for installation of buried or submerged water intake lines and utility lines shall be exempt from the newspaper publication process. The board may also furnish copies of the application and accompanying plans to other state agencies having an interest in the lake to determine the opinion of such state agencies as to the likely effect of the proposed encroachment upon adjacent 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 such copy of the application and plans from the board, such other state agency shall notify the board of its opinion and recommendations, if any, for alternate plans

determined by such agency to be economically feasible to accomplish the purpose of the proposed encroachment without adversely affecting unreasonably adjacent property or other lake value factors.

...

(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. If . . . following a hearing, the board determines that the benefits, whether public or private, to be derived from allowing such encroachment exceed its detrimental effects, it shall grant the permit.

B. LPA Rules, IDAPA 20.03.04

The Rules for the Regulation of Beds, Waters and Airspace Over Navigable Lakes in the State of Idaho, IDAPA 20.03.04 (“LPA Rules”), apply to this Application. The following provisions, reproduced in relevant part, guide IDL’s analysis of the Application.

IDAPA 20.03.04.010 DEFINITIONS.

...03. 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 and higher vegetation line.

04. 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.

...

06. Boat Garage. A structure with one (1) or more slips that is completely enclosed with walls, roof, and doors, but no temporary or permanent residential area.

...

15. Encroachments in Aid of Navigation. Includes docks, piers, jet ski and boat lifts, buoys, pilings, breakwaters, boat ramps, channels or basins, and other facilities used to support water craft and moorage on, in, or above the beds or waters of a navigable lake. The term “encroachments in aid of navigation” is used interchangeably with the term “navigational encroachments.”

16. 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, such as float homes and boat garages. The term “encroachments not in aid of navigation” is used interchangeably with the term “nonnavigational encroachments.”

...

20. Line of Navigability. A line located at such distance waterward of the low water mark established by the length of existing legally permitted encroachments,

water depths waterward of the low water mark, and by other relevant criteria determined by the board when a line has not already been established for the body of water in question

...

23. Natural or Ordinary High Water Mark. The high water elevation in a lake over a period of years, uninfluenced by man-made dams or works, at which elevation the water impresses a line on the soil by covering it for sufficient periods to deprive the soil of its vegetation and destroy its value for agricultural purposes.

...

29. Public 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 acts 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 exercises such control at hearings as necessary to maintain order, decorum and common courtesy among the participants.

...

32. Riparian or Littoral Rights. The rights of owners or lessees of land adjacent to navigable waters of the lake 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 of the lake.

...

34. Riparian or Littoral Right Lines. Lines that extend waterward of the intersection between the artificial or ordinary high water mark and an upland ownership boundary to the line of navigation. Riparian or littoral right lines will generally be at right angles to the shoreline.

...

36. Single-Family Dock. A structure providing noncommercial moorage that serves one (1) waterfront owner whose waterfront footage is no less than twenty-five (25) feet.

...

IDAPA 20.03.04.012. 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.

02. No Encroachments Without Permit. No encroachment on, in or above the beds or waters of any navigable lake in the state may be made unless approval has been given as provided in these rules. An encroachment permit does not guarantee the use of public trust lands without appropriate compensation to the state of Idaho.

...

IDAPA 20.03.04.015. ENCROACHMENT STANDARDS.

01. Single-Family and Two-Family Docks. The following parameters govern the size and dimensions of single-family docks and two-family docks.

- a. No part of the structure waterward of the natural or ordinary high water mark or artificial high water mark may exceed ten (10) feet in width, excluding the slip cut out.
- b. Total surface decking area waterward of the natural or ordinary or artificial high water mark may not exceed seven hundred (700) square feet, including approach ramp and walkway for a single-family dock and may not exceed one thousand one hundred (1,100) square feet, including approach ramp and walkway for a two-family dock.
- c. No portion of the docking facility may extend beyond the line of navigability. Shorter docks are encouraged whenever practical and new docks normally will be installed within the waterward extent of existing docks or the line of navigability.
- d. A variance to the standards in this Subsection 015.01 may be approved by the Department when justified by site specific considerations, such as the distance to the established line of navigability.

...

05. Boat Garage.

- 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.

...

13. General Encroachment Standards

- ...e. Presumed Adverse Effect. It will be presumed, subject to rebuttal . . . that commercial navigational encroachments, community docks or nonnavigational encroachments will have a like adverse effect upon adjacent littoral rights if located closer than twenty-five (25) feet to adjacent littoral right lines.
- f. Weather Conditions. Encroachments and their building materials must be designed and installed to withstand normally anticipated weather conditions in the area. Docks, piers, and similar structures must be adequately secured to pilings or anchors to prevent displacement due to ice, wind, and waves.

Flotation devices for docks, float homes, etc. must be reasonably resistant to puncture and other damage.

...

IDAPA 20.03.04.020. 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 department. 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 is required prior to construction of the proposed encroachment, then the application must describe the demolition activities and the steps that will be taken to protect water quality and other public trust values. No demolition activities may proceed until the permit is issued.

02. Signature Requirement. Only persons who are littoral owners or lessees of a littoral owner shall be eligible to apply for encroachment permits. A person who has been specifically granted littoral rights or dock rights from a littoral owner shall also be eligible for an encroachment permit; the grantor of such littoral 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.

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.

IDAPA 20.03.04.030. PROCESSING OF APPLICATIONS FOR ALL OTHER TYPES OF ENCROACHMENTS.

01. Nonnavigational, Community, and Commercial Navigational Encroachments. Within ten (10) days of receiving a complete application for a nonnavigational encroachment, a community dock, a commercial navigational encroachment, or a navigational encroachment extending beyond the line of navigability, the Department will cause to be published a notice of application once a week for two (2) consecutive weeks in a newspaper of general circulation in the county in which the encroachment is proposed.

...

03. Notifications. Upon request or when the Department deems it appropriate, the Department may furnish copies of the application and plans to federal, state and local agencies and to adjacent littoral owners, requesting comment on the likely effect of the proposed encroachment upon adjacent littoral property and public trust values such as navigation, fish and wildlife habitat, aquatic life, recreation, aesthetic beauty, water quality, etc.

04. Written Comments or Objections. Within thirty (30) days of the first date of publication, an agency, adjacent littoral owner or lessee, or any resident of the state of Idaho may do one (1) of the following:

- a. Notify the Department of their opinions and recommendation, if any, for alternate plans they believe will be economically feasible and will accomplish

the purpose of the proposed encroachment without unreasonably adversely affecting adjacent littoral property or public trust values; or

b. File with the Department written objections to the proposed encroachment and request a public hearing on the application. The hearing must be specifically requested in writing. Any person or agency requesting a hearing on the application must deposit and pay to the Department an amount sufficient to cover the cost of publishing notice of hearing provided in Subsection 030.05.

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

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

...

10. 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, if present, the Department will 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 . . . following a public hearing, the Department determines that the benefits, whether public or private, to be derived from allowing such encroachment exceed its detrimental effects, the permit will be granted.

III. IDL'S ANALYSIS OF COMPLIANCE WITH THE LPA AND LPA RULES—GENERAL

A. Littoral Ownership

The Applicant is a littoral owner and owns one (1) parcel adjacent to Lake Coeur d'Alene identified as Kootenai County Parcel No. 49N03W024830, AIN 321477. The parcel appears to be a waterfront parcel with littoral rights. There are no other parcels or roads between the parcel and the Ordinary High-Water Mark (OHWM).

B. Type of Encroachment

The Applicant is seeking an encroachment permit to install a single-family dock, which is a navigational encroachment. The Applicant is also seeking an encroachment permit to relocate an existing boat garage, which is a nonnavigational encroachment.

C. Shoreline Length

According to the Kootenai County's Parcel Webpage, KC Earth, the Applicant's parcel contains approximately 50 feet of water frontage. The Application drawings show the parcel has 50'6" of water frontage. IDL-002 at 7, 33.

D. Line of Navigability

The proposed single-family dock and boat garage will be located approximately the same distance in the lake as adjacent encroachments and will be within the Line of Navigability ("LON").

E. Distance from Littoral Lines

The LPA Rule governing General Encroachment Standards provides a rebuttable presumption that nonnavigational encroachments will have an adverse effect upon adjacent littoral rights if located closer than twenty-five (25) feet to adjacent littoral right lines. IDAPA 20.03.04.015.13.e. Likewise, the LPA Rule presumes, subject to rebuttal, that single-family navigational encroachments will have an adverse effect upon adjacent littoral rights if located closer than ten (10) feet to adjacent littoral right lines. *Id.*

Based on the Application drawings it appears the boat garage will provide a one (1) foot buffer to the littoral line to the east and at least a twenty-four (24) foot, six (6) inch buffer to the littoral line to the west.³ The Application also appears to show that the single-family dock will provide at least a twenty (20) foot, six (6) inch buffer to the west but it is unclear how much of a buffer is provided to the east. At hearing the Applicant should clarify the accurate distances from both property lines to the encroachments. Even so, both adjacent neighbors signed off on the Application, waiving the presumption of adversity. IDL-002 at 4, 6, 33. Additionally, the proposed boat garage will be located roughly where the existing boat garage and float home

³ It appears that the Applicant submitted two drawings that have different measurements for the distance from the western property line to the float dock. *See* IDL-002 at 6, 7, 33. In the older drawing, the distance from the western property line to the float dock is noted as being twenty-five (25) feet. IDL-002 at 6. Whereas, in the more recent drawing, the distance from the western property line to the float dock is noted as being twenty (20) feet, six (6) inches. IDL-002 at 7, 33.

structure is located. The existing boat garage and float home structure will be removed as part of the proposed project.

F. Signature Requirement

IDAPA 20.03.04.020.02 states that “[o]nly persons who are littoral owners or lessees of a littoral owner shall be eligible to apply for encroachment permits” and “[a] person who has been specifically granted littoral rights or dock rights from a littoral owner shall also be eligible for an encroachment permit; the grantor of such littoral rights, however, shall no longer be eligible to apply for an encroachment permit.” In this matter, Applicant is the littoral owner of the parcel in question and there are no other parcels between the subject parcels and the lake. Thus, Applicant satisfies IDAPA 20.03.04.020.02.

IV. IDL’S ANALYSIS OF COMPLIANCE WITH THE LPA AND LPA RULES— SPECIFIC

The Application contains two components:(1) the installation of a single-family dock; and (2) the relocation of an existing boat garage. The Applicant is not proposing any other encroachments through this Application.

A. Single-Family Dock

As described herein, applications for single-family docks must satisfy the specific requirements of IDAPA 20.03.04.015.01. Based on the application materials, it appears the Applicant is proposing to install a single-family dock that is 570 square feet in size, with no portion wider than ten (10) feet, which does not extend beyond the LON. The single-family dock may not provide the required 10-foot buffer to the littoral line to the east, but as described above, the Application contained adjacent neighbor sign-off and approval. Thus, the proposed single-family dock appears to meet all the rules and standards outlined in IDAPA 20.03.04.015.01.

B. Boat Garage

The Applicant is seeking to relocate a boat garage that was previously located at Heyburn State Park. IDL performed inspections of all boat garages at Heyburn State Park at the end of August 2024. *See* IDL-002 at 17–23. IDL performed these inspections in anticipation that all the

Heyburn boat garages were required to be removed from the marinas at the end of the year, and that IDL would receive numerous applications to rebuild or relocate the boat garages within IDL's Navigable Waters jurisdiction. When performing inspections, IDL determined that all the Heyburn boat garages were built and installed prior to the LPA and thus could receive a permit without the need to pay application or publication fees. I.C. § 58-1312. IDL then established a program to allow the Heyburn boat garage owners to apply for a temporary permit so the existing boat garage structures could be rebuilt or relocated within their existing footprint. The Applicant received one of these temporary permits for their boat garage IDL-002 at 14–16. Due to the previous issuance of this temporary permit, IDL does not object to the Applicant's boat garage with respect to its dimensions or status as a pre-LPA encroachment.

IDL initially requested the public hearing due to the 18'x16' (288 square feet) loft/storage area in the boat garage. *See* IDL-002 at 9, 25–30 IDL Area Staff initially had concerns that the loft/storage area may violate the LPA Rules, which define a boat garage 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 (emphasis added). Perhaps to address this concern, the Applicant submitted a statement in the Application affirming that the Applicant will never use the loft space as a temporary or permanent residential area. IDL-002 at 10. The Applicant expressed the desire to use the space for storage and to purportedly reinforce the structure of the boat garage. *Id.* Consistent with the Applicant's affirmations, the boat garage appears to meet the definitions and standards for boat garages outlined in IDAPA 20.03.04.015.05 and IDAPA 20.03.04.010.06.

IDL's initial concern with the loft/storage area potentially violating the LPA Rules caused IDL to request a hearing on the Application and to notify the public accordingly. Thereafter, IDL and the Applicant clarified that the Applicant would not use the loft/storage area as a temporary or permanent residential area, thereby appearing to qualify the structure as a boat garage under the LPA Rules and satisfy IDL's concern. Additionally, if the storage area should ever be used for permanent or temporary residential purposes, it would be a violation of the LPA

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and LPA Rules, which would authorize IDL to take enforcement action including potential permit revocation. IDAPA 20.03.04.080. While IDL now concludes that the boat garage appears to meet the relevant definitions and standards, the matter should proceed to hearing to provide the maximum transparency to the public, to comply with all statutory and regulatory procedural requirements, and to allow the Applicant the opportunity to present evidence in support of the Application should the Applicant choose to do so.

V. IDL ANALYSIS OF COMMENTS

To date, IDL has not received comments from agencies or the public regarding this application.

VI. CONCLUSION

Given the reasons described above, the application satisfies the encroachment standards applicable to the single-family dock and the boat garage. With no additional comments from agencies or the public, IDL concludes that this application meets the standards within IDL's authority. However, the public comment period remains open and additional information may be presented at the public hearing. IDL respectfully reserves the right to supplement, clarify, or modify its statements based on the availability of new information.

DATED this 25th day of March, 2025.

IDAHO DEPARTMENT OF LANDS

/s/ Kayleen Richter
Kayleen Richter
Counsel for IDL

CERTIFICATE OF SERVICE

I hereby certify that on this 25th day of March, 2025, 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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Marde Mensinger Idaho Department of Lands 300 N. 6 th St. Boise, ID 83720 (208) 334-0248 <i>IDL Program Manager for Navigable Waters</i>	<input checked="" type="checkbox"/> Email: mmensinger@idl.idaho.gov
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/s/ Kayleen Richter
Kayleen Richter
Counsel for IDL