

BEFORE THE IDAHO DEPARTMENT OF LANDS

In the Matter of Application to Permit)	AGENCY Case No. PH-2025-NAV-22-001
Existing Boat Garage,)	
)	OAH Case No. 25-320-01
Clinton Zuber, Zuber Construction Inc.)	
)	FINDINGS OF FACT, CONCLUSIONS
Applicant.)	OF LAW AND RECOMMENDED
)	ORDER
_____)	

This matter was assigned to Deputy Chief Administrative Hearing Officer Leslie Hayes on November 25, 2024. Hearing Officer Hayes conducted a public evidentiary hearing via Zoom on April 1, 2025, at 4:00 p.m. Pacific Time. Appearances were made by John Richards, General Counsel for Idaho Department of Lands (“IDL”), Marde Messinger, IDL Program Manager for Navigable Waters, and Applicant Clinton Zuber, Zuber Construction, Inc. No members of the public attended the hearing.

Mr. Richards gave a short opening statement where it was noted that no public or agency comment on Mr. Zuber’s application had been received. Ms. Messinger was put under oath and testified that IDL was adopting its prehearing statement in lieu of providing live testimony. Mr. Zuber testified under oath for Zuber Construction, Inc. and clarified a measurement from the float dock to the western property line for IDL. IDL was the only party to submit exhibits. IDL-001 through 013 were submitted without objection and admitted into the record.

Hearing Officer Hayes, having considered the evidence and arguments offered at the hearing, the documents in the administrative record, and the other papers and pleadings on file, makes the following Findings of Fact and Conclusions of Law pursuant to Idaho Code section 58-1306 and IDAPA 62.01.01.252.01.d.

FINDINGS OF FACT

1. On December 9, 2024, IDL received a complete Joint Application for Permits (Application L95S5573B) from Applicant Clinton Zuber to permit a boat garage and a single-family dock on their littoral property on Lake Coeur d'Alene. The boat garage is an existing leased garage at Heyburn State Park that Applicant wishes to relocate to its property. Application, p. 1.

2. No objection was received to the Application for the single-family dock.

3. IDL objected to the Application based on the loft storage area within the existing boat garage due to concerns that it might be used as a temporary or permanent residence. IDL Prehearing Statement,¹ pp. 12-14.

4. Prior to the hearing, those concerns were resolved and IDL withdrew its objections to the project. IDL Prehearing Statement, p. 13. No other objections to the project were received. *Id.*, p. 14.

5. Applicant is the littoral owner of a parcel on Lake Coeur d'Alene identified as Kootenai County Parcel No. 49N03W024830. Application, p. 1.

6. Applicant owns 50'6" of water frontage. Application, pp. 7, 33.

7. The Applicant proposes a single-family dock located 20 feet and six inches from the adjacent littoral rights. Application, pp. 6-7, 33, 35.

8. The boat garage will be located within one foot of the neighboring littoral lines. Application, p. 33-35.

9. The Applicant received consent from both littoral neighbors for the proposed project. Application, pp. 6-7, 33, 35; IDL Prehearing Statement, p. 11.

10. The proposed single-family dock is "570 square feet in size, with no portion wider

¹ IDL's Prehearing Statement was reviewed and adopted as sworn testimony through Marde Mensinger.

than ten (10) feet, which does not extend beyond the [Line of Navigability].” IDL Prehearing Statement, p. 12.

11. IDL had previously inspected the boat garages at Heyburn State Park and determined all the boat garages “were built and installed prior to the [Lake Protection Act.]” IDL Prehearing Statement, p. 13.

12. Applicant previously received a temporary permit for the boat garage. Application pp. 14-16.

13. No evidence was presented that there is any detrimental effect to this proposed project.

CONCLUSIONS OF LAW

1. The Idaho Legislature enacted the Lake Protection Act (“LPA”), Title 58, Chapter 13, Idaho Code, in 1974 stating, in Idaho Code §58-1301, 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.

2. The Board of Land Commissioners, through IDL, “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; *see also* I.C. § 58-119(1) and *Newton v. MJK/BJK, LLC*, 167 Idaho 236, 242 (2020).

3. Through its statutory authority, IDL has promulgated Rules for the Regulation of Beds, Waters and Airspace Over Navigable Lakes in the State of Idaho. *See* IDAPA 20.03.04.

4. There is no dispute as to whether Lake Coeur d'Alene is a navigable lake and is within IDL's authority to regulate encroachment permits.

5. An adverse effect will be presumed if a single-family dock is closer than ten feet from adjacent littoral right lines and a non-navigational encroachment is closer than twenty-five feet to adjacent littoral right lines. IDAPA 20.03.04.13.e. "Written consent of the adjacent littoral owner or owners will automatically rebut the presumption." *Id.*

6. Applicant's boat garage will be within one foot of the neighboring littoral owner. Application, pp. 33, 35. Applicant received written consent from the littoral owner, rebutting the presumption of adverse effect. *Id.*

7. The proposed single-family dock meets the rules and standards outlined in IDAPA 20.03.04.015.01.

8. A boat garage is "[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.

9. Applicant's single-family dock will be 20 feet and 6 inches from the other littoral neighbor. Application, pp. 6-7, 33, 35. Applicant received written consent from the littoral owner, rebutting the presumption of adverse effect. IDL Prehearing Statement, p. 11 ("both adjacent neighbors signed off on the Application, waiving the presumption of adversity.")

10. A boat garage is an encroachment not in aid of navigation. IDAPA 20.03.04.010.16 and 20.03.04.015.05.a.

11. "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).

12. Applicant described the need for the single-family dock and anchor dock in his history of the problems he has had with securing the currently permitted boat garage. Application, p. 10.

13. The boat garage is currently permitted as a pre-Lake Protection Act structure.

14. The Application does not seek to add a temporary or permanent residential area.

15. Because Applicant previously permitted the boat garage, “IDL does not object to the Applicant’s boat garage with respect to its dimensions or status as a pre-[Lake Protection Act] encroachment.” IDL Prehearing Statement, p. 13.

16. There is no evidence of any detrimental effect of the proposed project.

17. Without evidence of a detrimental effect, it is presumed there is none and the currently permitted boat garage that pre-dates the Lake Protection Act should be approved.

RECOMMENDED ORDER

Based on the foregoing Findings of Fact and Conclusions of Law, the Hearing Officer recommends that this Application be **APPROVED**.

RULE 625—RECOMMENDED ORDER NOTICE

This is a recommended order of the hearing officer. It will not become final without action of the agency head. By law, the agency head must issue a final order within thirty (30) days of the close of the evidentiary portion in this case, which occurred on April 1, 2025. *See* I.C. § 58-1306(c). The agency head’s final order in this case must be issued no later than **May 1, 2025**.

If either **party** disagrees with this recommended order, pursuant to Idaho Code section 67-5244, the **party** may file an exception to this recommended order with the agency head. Public witnesses under Idaho’s Administrative Procedure Act are not considered parties and, therefore, exceptions from the public cannot be accepted. *See* IDAPA 62.01.01.207. Motions for

reconsideration filed with the presiding officer will not be considered. You may file any exception you may have to this recommended order, with a supporting brief, directly with the agency head within two (2) business days from the service date of this recommended order, or **no later than April 17, 2025**, unless the agency head sets a different deadline.

If another party has filed exceptions to this recommended order with the agency head, you must file any opposition brief within one (1) business day from the service date of the exception, or **no later than April 18, 2025**. No further briefing by any party will be permitted unless the agency head, in their discretion, requests it. Oral argument will not be allowed unless requested by the agency head.

DATED: April 15, 2025.

OFFICE OF ADMINISTRATIVE HEARINGS

/s/ Leslie M. Hayes
Leslie M. Hayes
Deputy Chief Administrative Hearing Officer

CERTIFICATE OF SERVICE

I hereby certify that on this 15th day of April, 2025, I caused to be served a true and correct copy of the foregoing by the following method to:

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