

BEFORE THE IDAHO DEPARTMENT OF LANDS

In the Matter of Application to Permit Existing
Boat Garage,

Clinton Zuber, Zuber Construction Inc.,

Applicant.

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

OAH Case No. 25-320-01

FINAL ORDER

Applicant Clinton Zuber, Zuber Construction Inc. (“Applicant”) submitted a Joint Application for Permits (“Application”) to Idaho Department of Lands (“IDL”) on or around December 6, 2024, to permit and relocate a boat garage and a single-family dock on their littoral property on Lake Coeur d’Alene. The boat garage is a pre-LPA structure that was previously located at Heyburn State Park. IDL held an evidentiary hearing via Zoom on April 1, 2025 conducted by the Office of Administrative Hearings (“OAH”). Deputy Chief Hearing Officer Leslie Hayes presided over the hearing. On April 15, 2025, Hearing Officer Hayes issued a 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 for this matter, including the Recommended Order. For the reasons set forth below, the Application is **GRANTED**.

BACKGROUND AND PROCEDURAL HISTORY

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 lessees to remove all boat garages from the Park by

the end of 2024. 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 and memorialize the dimensions of each boat garage for relocation.

IDL staff completed the inspections in August, 2024 and determined that all boat garages were pre-LPA structures. All Park boat garage owners received temporary permits to rebuild the boat garages to match the existing dimensions and relocate to a littoral parcel by December 31, 2027. Before relocation or rebuild, IDL required the permittees to submit a new application and complete the application process pursuant to the requirements of the LPA.

On December 9, 2024, IDL received a complete Application and attachments submitted by Clinton Zuber to permit and relocate a pre-LPA boat garage and a single-family dock to littoral property on Lake Coeur d'Alene. Ex. IDL02. IDL held a remote evidentiary hearing via Zoom on April 1, 2025, at 4:00 p.m. Pacific Time.

IDL General Counsel John Richards appeared on behalf of IDL, and Clinton Zuber appeared on his own behalf. IDL Navigable Waterways Program Manager, Marde Mensinger, was also present. The hearing was recorded, and made available to the public on IDL's website (<https://www.idl.idaho.gov/lakes-rivers/administrative-hearings/>). All exhibits were submitted without objection and admitted into the record. The exhibits include IDL01 – IDL13.

On March 28, 2025, IDL filed an Amended Witness and Exhibit List to include Marde Mensinger as a witness.

On April 15, 2025, Hearing Officer Hayes issued a Recommended Order which contains the following sections: Findings of Fact and Conclusions of Law. Unless stated otherwise, the Findings of Fact and Conclusions of Law in this Order are substantially adopted from the Recommended Order.

FINDINGS OF FACT

I substantially adopt the Recommended Order's Findings of Fact with modifications :

1. On August 29, 2024, IDL staff inspected Applicant's existing boat garage at Heyburn State Park and determined it was eligible to receive a temporary permit to relocate and rebuild the boat garage within three years. IDL Prehr's Stmt., p. 13.
2. On September 25, 2024, IDL issued temporary permit LU300084 to Applicant. IDL02.
3. The temporary permit depicts the dimensions of the boat garage as 18' wide, 24.17' long, 12' high, totaling 435 square feet. IDL02, Attachment A, p. 16.
4. On February 3, 2025, IDL received a complete Joint Application for Permits No. L-95-S-5573B from Applicant. IDL Prehr's Stmt., p. 2, n. 1; IDL02.
5. The Application seeks an encroachment permit to relocate the pre-LPA boat garage previously moored at the Park to Applicant's littoral property on Lake Coeur d' Alene and install a single-family dock on the same property. *Id.*
6. Applicant is the littoral owner of a parcel on Lake Coeur d'Alene identified as Kootenai County Parcel No. 49N03W024830. *Id.*
7. Applicant owns 50'6" of water frontage. *Id.*
8. The single-family dock would be located 20 feet and 6 inches from the adjacent littoral right line to the West. *Id.*
9. The proposed single-family dock totals 570 square feet, with no portion wider than 10 feet, and does not extend beyond the Line of Navigability. IDL Prehr's Stmt., p. 12.
10. The boat garage will be located within 1 foot of the neighboring littoral line to the East. Ex. IDL02.

11. Applicant received signed consent from both littoral neighbors. *Id.*; IDL02 at 4, 6, 33.

12. On February 4, 2025, IDL mailed a Notice of Application for Encroachment to interested agencies. IDL09

13. IDL published a Notice of Application in the Coeur d' Alene Press which ran on February 7 and 14, 2025. IDL10-11.

14. IDL published a Notice of Application and Public Hearing in the Coeur d'Alene Press which ran on March 14 and 21, 2025. IDL12-13.

15. IDL did not receive any objections or comments from agencies or the public regarding the Application. IDL Prehr'g Stmt., p. 2.

16. IDL objected to the loft storage area within the existing boat garage due to concerns that it might be used as a temporary or permanent residence. IDL Prehr'g Stmt., 1 pp. 12-14.

17. Prior to the hearing, Applicant resolved the concerns and IDL withdrew its objections. IDL Prehr'g Stmt., p. 13. No other objections were received. *Id.*, p. 14.

18. The record contains no evidence of detrimental effects.

CONCLUSIONS OF LAW

I substantially adopt the Recommended Order's Conclusions of Law with modifications as set forth below:

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 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).

3. Through its statutory authority, the Board promulgated the Rules for the Regulation of Beds, Waters and Airspace Over Navigable Lakes in the State of Idaho (“LPA Rules”), which provide “minimum standards to govern projects or activities for which a permit or permits have been received” under the LPA. I.C. § 58-1304; IDAPA 20.03.04.

4. 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 10 feet to adjacent littoral right lines or if a non-navigational encroachment is closer than 25 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 1 foot of the neighboring littoral owner to the East. Ex. IDL02. Applicant received written consent from the littoral owner, rebutting the presumption of adverse effect. *Id.*, p. 33.

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

20.03.04.015.01.

8. Applicant's single-family dock will be 20 feet and 6 inches from the other littoral neighbor. Ex. IDL02. 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.")

9. 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.

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 historical narrative of the problems he has had with securing the boat garage. Ex. IDL02.

13. The boat garage is currently permitted as a pre-LPA structure under temporary permit LU300084.

14. The boat garage will not contain a temporary or permanent residential area.

15. IDL inspected and documented the dimensions of the boat garage and determined it is a pre-LPA structure and therefore entitled to an encroachment permit to relocate and rebuild the boat garage to its previous dimensions.

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

17. Any presumption of adverse effect to the adjacent littoral line was overcome through the adjacent littoral owner's signature approving the location of the boat garage.

ORDER

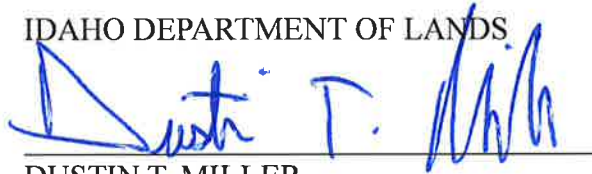
Based on the foregoing Findings of Fact and Conclusions of Law, IT IS HEREBY ORDERED that the Encroachment Permit Application L-95-S-5573B is APPROVED.

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 28th day of April, 2025.

IDAHO DEPARTMENT OF LANDS



DUSTIN T. MILLER
Director

CERTIFICATE OF MAILING

I hereby certify that on this 29th day of April, 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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