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

IN THE MATTER OF

Encroachment Permit Application
No. L95S0446C

Walter Nevin,

Applicant.

Agency Case No. PH-2025-NAV-22-003

OAH Case No. 25-320-05

**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 August 7, 2025. This matter is scheduled for a public hearing on September 15, 2025, at 12:00 p.m. Pacific Time in the DeArmond Building, Classroom 216, at North Idaho College, 1000 W. Garden Avenue, Coeur d’Alene, Idaho. IDL concurrently submits its disclosure of witnesses, exhibit list, and proposed exhibits for hearing.

I. BACKGROUND

A. Application

Walter Nevin (“Applicant”) seeks an encroachment permit to rebuild an existing permitted boat garage located on Lake Coeur d’Alene (“Application”). IDL-2.

B. Background

Between March 26, 2025 and April 24, 2025, IDL received documents from the Applicant that would ultimately constitute this Application. IDL-2. The Application is for a permit to rebuild an existing permitted boat garage appurtenant to a narrow strip of commonly owned lakefront property known as Tax No. 12664 in Kidd Island Bay on Lake Coeur d'Alene. *Id.* The Application and the boat garage's location in Kidd Island Bay raised significant legal questions for IDL due to a 1987 Kootenai County District Court decision and order that established Tax No. 12664's tenancy in common, ordered the owners to form the "Kidd Island Bay Tax No. 12664 Cooperative Association, Inc.," and purported to resolve disputes regarding the ownership, construction, and development of present and future "docking facilities" dependent upon Tax No. 12664. IDL-14. On June 17, 2025, IDL was satisfied with its legal review and deemed the Application complete. Accordingly, IDL began to process the Application. *See* IDL-3, IDL-4, IDL-5, IDL-6, and IDL-7.

On June 23, 2025, IDL contacted the Coeur d'Alene Press to publish public notice of the Application and pending public hearing. IDL-7. That same day, IDL sent a resource agency notice seeking comments on the Application and a notice to Applicant's adjacent neighbors (Dennis and Julie Pulos Family 1988 R. Schoonover Karen J., and Athena Dickerson), which included a copy of the Application. IDL-3 and IDL-5. On June 24, 2025, IDL sent a certified letter to Kidd Island Bay Homeowners Cooperative Association., Inc. ("KIBHA") notifying the community of their co-owner's Application for a new permit on the common parcel, Tax No. 12664. IDL-4.

On July 23, 2025, the co-owners of Tax No. 12664 objected to the Application and requested a public hearing. IDL-8 at 2–3. The co-owners' collective 1/61st interests in Tax No. 12664 are legally synonymous with KIBHA pursuant to the 1987 Decision. *See* IDL-14. The co-owners, through KIBHA, objected to the Application due to concerns regarding the perceived disrepair of Applicant's existing permitted boat garage, dissatisfaction with the Applicant's proposal to reuse materials from the existing permitted boat garage to rebuild the boat garage,

and consternation with the Applicant's lack of approval from the community. IDL-8. In addition, in their objection the co-owners raised their own questions related to the implementation of the 1987 Decision and the possible implications for the community. *Id.*

On July 24, 2025, IDL contacted the Office of Administrative Hearings ("OAH") to request a public hearing on the Application. IDL-1. On June 25, 2025, and July 2, 2025, the Coeur d' Alene Press published a legal advertisement to notify the public of the Application and pending public hearing. IDL-6. On July 28, 2025, OAH appointed a Hearing Officer for this matter. IDL-9. After a scheduling videoconference on August 6, 2025, the Hearing Officer issued a Scheduling Order setting the date to hold a public hearing for September 15, 2025, and setting associated prehearing deadlines. IDL-11. On August 11, 2025, the Hearing Officer filed a Notice of Location of Evidentiary Hearing. IDL-12. The hearing will take place at North Idaho College in the DeArmond Building, Classroom 216. *Id.*

Finally, on September 2, 2025, KIBHA sent an email withdrawing its objection and asserting its approval of the Application. IDL-16.

C. Comments

To date, IDL has not received any public comment or resource agency responses for the Application.

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 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, "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 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. § 58-1306. 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.

...

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.

...

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.

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.

02. Encroachments Not in Aid of Navigation. 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.

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.

...

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

A. Littoral Ownership

In 1987 a Kootenai County District Court decision established the littoral ownership of the Kidd Island Bay development at issue here. IDL-14 (*Miller et al. v. Kidd Island Bay Dev. Co. et al.*, Kootenai Cnty Case No. 57540 (1987) (*Decision and Amended Order*)).¹ In the Kidd Island Bay development, the waterfront parcel with littoral rights upon which encroachments are appurtenant is a strip of land directly contiguous with Lake Coeur d'Alene identified as Tax No. 12664. There are no other parcels or roads between Tax No. 12664 and the Ordinary High Water Mark ("OHWM").

In the 1987 *Decision*, the court ordered a trustee to convey Tax No. 12664 to all the owners of the upland lots within two platted subdivisions known as "Kidd Island Bay Lots" and "First Addition to Kidd Island Bay Lots." IDL-14 at 15. The court further defined the

¹ Please note that some pages of the *Decision* submitted as IDL-14 appear to have been annotated before the document was digitized. Unfortunately, IDL has not been able to locate a clean unannotated copy of the *Decision*. It is not clear who made these annotations or when, but they were not made with this matter in mind and may be disregarded.

conveyance, common ownership, and taxation of Tax No. 12664 in the *Amended Order*, which provides in pertinent part:

IT IS HEREBY ORDERED as follows:

1. Craig C. Kosonen, as court-appointed trustee, shall execute a deed granting and conveying all right, title and interest in and to Tax No. 12664 to the owners of Lots 1, through 39, Kidd Island Bay lots, and Lots 1 through 22, First Addition to Kidd Island Bay Lots to be held as tenants in common. The owners of each of said lots shall have a one-sixty-first (1/61) interest in Tax No. 12664....

...

5. Every lot in Kidd Island Bay Lots and Kidd Island Bay First Addition shall include an undivided one-sixty-first (1/61st) interest in Tax No. 12664 which cannot be separated, alienated or transferred from ownership of one of the designated lots in the two platted subdivisions.

IDL-14 at 2, 4. In other words, pursuant to the *Decision* the lot owners own Tax No. 12664 in equal undivided one sixty-first (1/61st) interests as a tenancy in common.

Here, Applicant owns a parcel in Kidd Island Bay identified as Kootenai County Parcel No. 04200000029A, AIN 128452 (4375 S Vanilla Ct.). IDL-2 at 1, 9, 10, 13, 14. It appears that applicant's parcel was once two lots in the "Kidd Island Bay Lots" subdivision as the Kootenai County Assessor's legal description of Applicant's parcel is "KIDD ISLAND BAY LOTS, LT 29, 30 & 2/61 INT IN TAX # 12664." IDL-2 at 14. This indicates that Applicant owns a 2/61st interest in Tax No. 12664. As explained above, since Tax No. 12664 is the waterfront parcel with littoral rights the Applicant's boat garage is appurtenant to Tax No. 12664 rather than Applicant's separately owned lot within Kidd Island Bay. Therefore, the boat garage is appurtenant to property owned by the lot owners as tenants in common, which includes the Applicant.

B. Type of Encroachment

The Applicant is seeking an encroachment permit to rebuild an existing boat garage, which is a nonnavigational encroachment.

C. Shoreline Length

According to the Kootenai County's Parcel Webpage, KC Earth, the Tax No. 12664 contains approximately 1,810 feet of water frontage. The Application indicates Applicant's

parcel has at least 100 feet of water frontage. IDL-2 at 15. However, as explained above, Applicant's individually owned parcel does not extend to the waterfront and, therefore, Applicant does not own water frontage in Kidd Island Bay separate from Tax No. 12664. *See* IDL-2 at 13.

D. Line of Navigability

The proposed boat garage will be located approximately the same distance (or shorter) in the lake as adjacent encroachments and will be within the Line of Navigability. IDL-2 at 15.

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.

Based on the Application drawings, it appears the boat garage will provide at least a twenty-eight (28) foot buffer to the littoral line to the southwest and at least a thirty (30) foot buffer to the littoral line to the northeast.² IDL-2 at 8, 9. Therefore, there is no presumption of adverse effect upon adjacent littoral rights. IDL has not received any public or agency comments indicating that there will be an adverse effect on adjacent littoral rights from this Application.

F. Signature Requirement

Under the Lake Protection Act ("LPA") permit applications for nonnavigational encroachments (*i.e.*, boat garages) "must be submitted or approved by the riparian or littoral owner." I.C. § 58-1306(a). Typically, applicants demonstrate another's approval of an application by including copies of signed drawings or plans depicting the encroachment within the application submitted to IDL. Further, under the LPA Rules, "[i]f more than one (1) littoral

² Note that the distances to these 'littoral lines' relate to the upland lots' property lines should the upland lots' property lines to extend through Tax No. 12664 to the waterfront, which they do not. IDL understands that this boat garage is currently permitted to be affixed to this location on Tax No. 12664, and the Application for rebuild does not alter the boat garage's location. IDL considers the Application to meet the littoral right line requirements to the extent they are applicable considering the future docking facility placement authority given to KIBHA in the *Decision and Amended Order*.

owner exists, the application must bear the signature of all littoral owners, or the signature of an authorized officer of a designated homeowner's or property management association.”

IDAPA 20.03.04.020.07.c.

In this case, “all littoral owners” of Tax No. 12664 are all the lot owners in Kidd Island Bay who own an undivided one-sixty-first (1/61st) interest in the lakefront parcel. Consequently, pursuant to the LPA and the LPA Rules, IDL must require any permit application for an encroachment appurtenant to Tax No. 12664 be submitted or approved of by all the tenants in common holding an interest in the property or by the Kidd Island Bay Homeowners’ Association.

Currently, the only littoral owner who signed the Application is the Applicant. Initially, KIBHA objected to the Application and called for a hearing on this matter. IDL-8. However, on September 2, 2025, the President of KIBHA emailed a purported a withdrawal of KIBHA’s objection and KIBHA’s approval of the Application. IDL-17. While KIBHA’s email appears to constitute approval of the Application by all the littoral owners, satisfying Idaho Code § 58-1306(a), the LPA Rules require the Application to be signed by all littoral owners or an authorized officer of a designated homeowner’s association. Accordingly, for IDL to consider this Application to have completely met the ownership approval/signature requirement under the LPA and LPA Rules, KIBHA’s approval of the Application must be signed by all the littoral owners or by an authorized officer of KIBHA.

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

The Application contains one component: the rebuilding of an existing and previously permitted boat garage appurtenant to property in which Applicant owns an interest. The Applicant is not proposing any other encroachments through this Application.

A. Boat Garage

IDL understands that Applicant’s position will be that the extent and nature of the construction being done to this boat garage does not trigger the requirement for Applicant to obtain a new permit. IDL anticipates that Applicant will argue that the construction work is more

akin to cleaning, maintaining, or repairing an existing permitted encroachment, which does not require a permit, rather than completely replacing, enlarging, or extending an existing encroachment, which does require a permit. IDAPA 20.03.04.020.04. As detailed below, IDL disagrees with this conclusion and maintains that the work being performed constitutes a replacement of the existing boat garage, which requires a new permit.

The LPA Rules' Encroachment Standard for Boat Garages states that “[e]xisting permitted boat garages may be maintained or replaced with the current square footage of their existing footprint and height.” IDAPA 20.03.04.015.05.c. This standard must be read within the context of the entire boat garage standard provision and the LPA Rules. Critically, the immediately preceding standard states that IDL will not accept “[a]pplications for permits to construct new boat garages, expand the total square footage of the existing footprint, or raise the height” of an existing, permitted boat garage “unless the application is to support local emergency services.” IDAPA 20.03.04.015.05.b. Put differently, in context LPA Rule 015.05.b means that IDL *will not allow* the construction of entirely new boat garages or the construction of bigger, existing boat garages, whereas LPA Rule 015.05.c means that IDL *will allow* existing boat garages to be replaced if they are reconstructed with the same dimensions.

LPA Rule 015.05.c must be read in conjunction with LPA Rule 020.04, which states: “No permit is required to clean, maintain, or repair an existing permitted encroachment, **but a permit is required to completely replace, enlarge, or extend an existing encroachment.**” IDAPA 20.03.04.020.04 (emphasis added). LPA Rule 020.04 applies to applications for all types of encroachments, including boat garages. Therefore, when one reads LPA Rules 015.05 and LPA Rule 020.04 together, the rules do not conflict—the rules allow IDL to accept and approve permit applications for the replacement of existing boat garages, provided the replacement complies with the current dimensions of the existing boat garage. These rules do not mean that one can replace their boat garage without a permit if the replacement is not “complete.”

The position that a reconstruction of an encroachment is not a ‘complete replacement’ if some original parts are used in the reconstruction is untenable. For IDL to adopt this

interpretation would be to allow, for example, all existing boat garage owners to replace every single inch of their boat garages without a permit so long as they recycle a single screw from the original structure. Such an interpretation would lead to absurd results and effectively circumvent and frustrate the purpose of LPA Rule 020.04.

IDL considers the work on the boat garage at issue here to be a complete replacement that requires a permit. Photos taken of the property in March 2025 clearly show that the boat garage has been torn down entirely and must be completely rebuilt. IDL-15. Rebuilding the boat garage with many of its original parts may be an excellent way to reuse materials, however, the return of original parts to a boat garage that needs to be completely reconstructed in the first place does not make the action more akin to a “repair” than a “complete replacement.”

Regardless, this matter is before OAH because Applicant *has applied* for a permit to rebuild his existing permitted boat garage. Ultimately, upon review it appears the Application to rebuild the existing permitted boat garage meets the relevant rules and standards outlined in IDAPA 20.03.04.015.05. IDL’s only concern is with receiving signed ratification of KIBHA’s approval of the Application. IDL reserves the right to modify its estimation of the qualifications of the Application if necessary.

V. 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 appears to satisfy the encroachment standards applicable to the replacement of the boat garage. With no additional comments from agencies or the public, and upon receipt of the preliminary approval of all the littoral owners, IDL concludes that this Application meets the standards within IDL’s authority. As 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 herein based on the availability of new information.

DATED this 2nd day of September, 2025.

IDAHO DEPARTMENT OF LANDS

A handwritten signature in black ink, appearing to read 'Kayleen Richter', is written over a horizontal line.

Kayleen Richter
Counsel for IDL

CERTIFICATE OF SERVICE

I hereby certify that on this 2nd day of September, 2025, I caused to be served a true and correct copy of the foregoing by the method indicated below, and addressed to the following:

Walter Nevin <i>Applicant</i>	<input checked="" type="checkbox"/> Email: qualityflrs@aol.com
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Kidd Island Bay Homeowners Association P.O. Box 263, Coeur d'Alene, ID 83816 <i>Objector</i>	<input checked="" type="checkbox"/> Email: Board.kibha@gmail.com
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