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Attorney for Objector, Williams

IDAHO DEPARTMENT OF LANDS

In the Matter of the Application for
Encroachment L9652863A, for construction of
two boat garages at existing dock,

Patrick Lewis E. Trust,

Applicant.

AGENCY Case No. PH-2026-NAV-20-001
OAH Case No. 26-320-03

OBJECTOR'S PREHEARING
STATEMENT

COMES NOW, the Objector, Margaret Williams by and through her attorney of record Arthur M. Bistline of the law firm BISTLINE LAW, PLLC, and hereby files her prehearing statement as follows:

The application at issue is for a non-navigational encroachment. The application should be denied without further action on the grounds that it is incomplete, or the applicant should be given time to amend the application to include the information required for the Department to make the necessary findings to approve the application. More importantly, this information is required to allow adjoining landowners to rebut it, as required by due process.

Idaho Code §58-1301(2) requires every person seeking to permit a navigational or non-navigational encroachment to obtain a permit from the Idaho Department of Lands. "Under the LPA and IDAPA, the Board's permitting authority generally falls into two categories: (1) encroachments constructed prior to January 1, 1975, which pre-date enactment of the LPA (i.e., 'existing' or 'preexisting' encroachments), and (2) 'new' encroachments constructed on or after January 1, 1975. *Wilson v. Idaho State Bd. of Land Commissioners*, 576 P.3d 291, 299 (Idaho

2025), as amended on denial of reh'g (Oct. 3, 2025) citing I.C. §§ 58-1312, 58-1306; IDAPA 20.03.04.012.03. A 'pre-existing' encroachment is one that has not been modified as to change the "...overall footprint of the encroachment on the lakebed has not been expanded in dimension or height or changed in orientation or location." Idaho Code §58-1031(1).

A boat garage is a non-navigational encroachment. IDAPA 20.03.04.015. Non-navigational encroachments are not improved except in extraordinary circumstances.

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.

IDAPA 20.03.04.030

Due process requires that citizens with the right to present and rebut evidence be informed of the evidence to be rebutted. *Friends of Farm to Mkt. v. Valley Cnty.*, 137 Idaho 192, 198–99, 46 P.3d 9, 15–16 (2002).

The evidence is undisputed that the boat garage the applicant purchased on Lake Coeur d'Alene was demolished and that it never existed on Lake Pend Oreille. Therefore, the applicant is subject to the requirements of Idaho's Lake Protection Act and its associated regulations and is not exempt under Idaho Code §58-1301(2).

The regulations state that the application will not be approved unless the proposed nonnavigational encroachment provides environmental, economic, or social benefits to the public. The application in this case contains no statements establishing any such benefits. Likewise, it contains no information regarding the absence of other feasible alternatives to achieve those ends. The applicant is proceeding as if granting this application is a foregone conclusion. Any attempt to present this evidence at the hearing will be objected to on the

grounds that it was not disclosed in the application, thereby depriving my client of any opportunity to prepare a response.

Furthermore, the applicant relies on IDAPA 20.03.04.030 to assert that the Department's most important factors are the impact on navigation and the unreasonable impact on adjoining properties. Those are two factors, not all the factors to consider as set forth above. In the absence of any evidence regarding the other factors, primarily public benefit, the Department cannot properly weigh the competing concerns of protecting the lake, which all the public owns, and protecting private property rights.

More importantly, that rule applies to proposed encroachments between the natural or ordinary high-water mark and the artificial high-water mark. The ordinary high-water mark of Lake Pend Oreille has never been judicially established, so the rule does not apply. If the Department determines that the rule applies in this case, the shoreline of Lake Pend Oreille will be adversely affected in the near future.

The undersigned resides in Sandpoint and has numerous acquaintances who are aware of this attempt to permit this boat garage without the required showing of public benefit. If this application is approved, the Department can expect many more applications for boat garages from applicants who own waterfront property on Lake Pend Oreille. Given that the lake drops by more than 10 feet annually, most of these applications will be for boat garages proposed for installation at elevations above 2051. Allowing this application to proceed on the assumption that the ordinary highwater mark of Lake Pend Oreille is below the location where these garages will be installed will bind the Department to that determination going forward, and perhaps to elevation 2051.

It is difficult to determine the public benefits of these boat garages, but if the applicant can make a case for them, the adjoining landowners will have something to comment on and

rebut. Receiving that information at the hearing will deny the objectors' due process.

The best course of action to save time for all parties and the Court would be to require the applicant to amend the application to include an explanation of how these boat garages will benefit the public.

DATED this 13th day of February 2026.


ARTHUR M. BISTLINE
Attorney for Objector, Williams

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that on the 13th day of February 2026, I caused to be served a true and correct copy of the foregoing document to be forwarded, with all required charges prepaid, by the method indicated below, to the following:

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/s/Nichole Foreman
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