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

IN THE MATTER OF

Encroachment Permit Application
No. L-96-S-2863A

Patrick Lewis E. Trust,

Applicant.

Agency Case No. PH-2026-NAV-20-001

OAH Case No. 26-320-03

**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 February 4, 2026. This matter is scheduled for a public hearing on March 5, 2026, at 5:00 p.m. Pacific Time at 233 E. Harrison Avenue, Coeur d’Alene, Idaho, 83814. IDL concurrently submits its disclosure of witnesses, exhibit list, and proposed exhibits for hearing.

I. BACKGROUND

A. Application

Patrick Lewis E. Trust, by and through its agent, Bob Presta with CE Kramer Crane and Contracting (“Applicant”) seeks an encroachment permit to relocate and rebuild two (2) boat garages at an existing permitted dock to provide covered boat moorage on Lake Pend Oreille. IDL-001.

B. Procedural Background

On December 11, 2025, IDL received a complete application from the Applicant. IDL-001 at 11. That same day, IDL contacted the Coeur d'Alene Press to publish public notice of the application in the Bonner County Daily Bee. IDL-002. Concurrently, IDL sent a resource agency notice seeking comments on the application and a notice to Applicant's adjacent neighbors (Kevin Chadwick and Ruth Williams) and provided them with a copy of the application. IDL-004, IDL-005. On December 16, 2025, and December 23, 2025, the Bonner County Daily Bee published a legal advertisement to notify the public of the application and the opportunity to object. *See* IDL-003. Pursuant to IDAPA 20.03.04.030.04(b), on January 14, 2026, neighbor Kevin Chadwick objected to the Application and requested a public hearing and on January 15, 2026, neighbor Margaret R. Williams, manager of W.H. Williams Family LLC, objected to the Application and requested a public hearing. *See* IDL-006 and IDL-009.

On January 20, 2026, IDL contacted the Office of Administrative Hearings ("OAH") to request a public hearing on the Application. Live Dkt. 001. On January 22, 2026, IDL received notice that OAH appointed a Hearing Officer for this matter. Live Dkt. 008. On January 29, 2026, Peter J. Smith IV of Fennemore Craig, P.C. filed a Notice of Appearance on behalf of Applicant. Live Dkt. 012. After a scheduling videoconference on February 2, 2026, the Hearing Officer issued a Scheduling Order setting the date to hold a public hearing for March 5, 2026, and setting associated prehearing deadlines. Live Dkt. 013. On February 9, 2026, the Hearing Officer filed a Notice of Location of Evidentiary Hearing. Live Dkt. 014. The hearing will take place at 233 E. Harrison Avenue, Coeur d'Alene, Idaho, 83814. *Id.*

Finally, on February 10, 2026, IDL again contacted the Coeur d'Alene Press to publish public notice of the details of the public hearing in the Bonner County Daily Bee. IDL-010. The Coeur d'Alene Press will publish a legal advertisement to notify the public of the details of the public hearing on February 12, 2026, and February 19, 2026. *Id.*

C. Comments

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

II. LEGAL STANDARD

By virtue of the public trust doctrine, the State of Idaho owns in trust the beds and banks of navigable waters for the use and benefit of the public. *Byrd v. Idaho State Bd. of Land Commissioners*, 169 Idaho 922, 928, 505 P.3d 708, 714 (2022) (citing *Newton v. MJK/BJK, LLC*, 167 Idaho 236, 242, 469 P.3d 23, 29 (2020)). As administrator of the trust on behalf of the public, the state “has the right to regulate, control and utilize navigable waters for the protection of certain public uses, particularly navigation, commerce and fisheries.” *Kootenai Env't All., Inc. v. Panhandle Yacht Club, Inc.*, 105 Idaho 622, 625, 671 P.2d 1085, 1088 (1983) (quoting Roderick Walston, *The Public Trust Doctrine in the Water Rights Context: The Wrong Environmental Remedy*, 22 U. Santa Clara L. Rev. 62, 66 (1982)).

Accordingly, in 1974 the Idaho Legislature enacted the Lake Protection Act. Lake Protection Act, ch. 243, § 1 (Idaho 1974) (“LPA”). In the LPA, the Idaho Legislature proclaimed:

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. § 58-1301.

Pursuant to the LPA, the Idaho Board of Land Commissioners, through IDL as its administrative instrumentality, has the authority and duty to “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. *See also* I.C. §§ 58-101, 58-104(9), 58-119. Accordingly, the LPA provides both procedural and substantive requirements that shape

IDL's authority and discretion to permit encroachments upon, in or above the state's navigable waters. I.C. § 58-1301 *et seq.*

Further, "to effectuate the purposes and policy of [the LPA] within the limitations and standards set forth in [the LPA]" IDL promulgated "minimum standards to govern projects... and regulations governing procedures for processing applications and issuing permits under [the LPA]." I.C. § 58-1304. These minimum standards and regulations are titled "Rules for the Regulation of Beds, Waters and Airspace Over Navigable Lakes in the State of Idaho" and are commonly known as the LPA Rules. IDAPA 20.03.04. In particular, the LPA Rules define additional relevant terms, expand on IDL's processing of applications, and prescribe detailed parameters governing the myriad encroachments IDL permits. IDAPA 20.03.04.010; IDAPA 20.03.04.015; IDAPA 20.03.04.030.

When IDL receives an application to permit an encroachment governed by Idaho Code § 58-1306, the LPA requires IDL to cause notice of the application to be published in a newspaper of general circulation in the applicable county within ten (10) days of receipt of the application. I.C. § 58-1306(b). Notice of the application must describe the proposed encroachment and its general location. *Id.* Section 58-1306 also directs IDL to begin its substantive evaluation by seeking feedback from other interested agencies "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."¹ I.C. § 58-1306(b). Once the paper publishes the first notice of the application, "[a]ny resident of the state of Idaho, or a nonresident owner or lessee of real property adjacent to the lake, or any state or federal agency may... file with the board an objection to the proposed encroachment and a request for hearing on the application." I.C. § 58-1306(c).

¹ Note that the LPA suggests IDL seek comment on the application from other interested *state* agencies, which the LPA Rules broadens to include "federal, state and local agencies and to adjacent littoral owners." I.C. § 58-1306(b); IDAPA 20.03.04.030.03.

If an application is uncontested, the LPA directs IDL to decide whether to grant a permit without holding a hearing. I.C. § 58-1306(d). IDL’s decision must be “based upon its own investigation and considering the economics of navigational necessity, justification or benefit, public or private, of such proposed encroachment as well as its detrimental effects, if any, upon adjacent real property and lake value factors[.]” *Id.* Conversely, when an application is contested, the LPA requires IDL to hold a public hearing on the application where each person or agency appearing at the hearing may “giv[e] testimony in support of or in opposition to the proposed encroachment[.]”² I.C. § 58-1306(c). IDL considers all testimony when IDL gives “due consideration” to the potential detriment on the lake value factors, which IDL weighs “against the navigational or economic necessity or justification for, or benefit to be derived from the proposed encroachment.” I.C. § 58-1301; I.C. § 58-1306; *Brett v. Eleventh St. Dockowner's Ass'n, Inc.*, 141 Idaho 517, 523, 112 P.3d 805, 811 (2005) (“IDL is required to balance the competing interests involved while determining whether to approve permits for navigational encroachments”). *See also Kootenai Env't All., Inc. v. Panhandle Yacht Club, Inc.*, 105 Idaho 622, 628, 671 P.2d 1085, 1091 (1983) (“[P]ublic trust resources may only be alienated or impaired through open and visible actions, where the public is *in fact* informed of the proposed action and has substantial opportunity to respond to the proposed action before a final decision is made thereon.”).

To summarize, when IDL processes and evaluates an encroachment permit application, the LPA requires IDL to determine (1) whether the proposed encroachment satisfies the applicable minimum standards prescribed in the LPA Rules, and (2) whether the proposed

² While the LPA does not define “public hearing,” the LPA Rules do:

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.

IDAPA 20.03.04.010.29. Thus, when a hearing is open for public comment it is only a limited opportunity for the public to provide testimony for the record, which IDL will consider when weighing the proposed encroachment’s potential detriments upon the lake value factors against its potential benefits.

encroachment's potential detrimental effects on the lake value factors outweigh the potential benefits.

III. SUMMARY OF APPLICATION'S COMPLIANCE WITH THE STATUTORY AND REGULATORY REQUIREMENTS WITHIN IDL'S JURISDICTION

The proposed encroachments for consideration in this proceeding are two (2) boat garages at an existing, permitted dock located on Lake Pend Oreille in Sandpoint, Idaho. A boat garage is a nonnavigational encroachment. I.C. § 58-1306; IDAPA 20.03.04.015.05.a.

Lake Pend Oreille is considered a navigable lake. *See Donovan-Hopka-Ninneman Co. v. Hope Lumber Mfg. Co.*, 194 F. 643, 647 (9th Cir. 1912) (identifying Lake Pend Oreille as “a fresh-water navigable lake, situated wholly within the state of Idaho[.]”); *Swanson v. United States*, 600 F. Supp. 802, 809 (D. Idaho 1985), *aff'd*, 789 F.2d 1368 (9th Cir. 1986) (finding that lands between the ordinary high water mark and the artificial high water mark on Lake Pend Oreille are included as navigable waters of the lake and are subject to regulation); *Gasman v. Wilcox*, 54 Idaho 700, 35 P.2d 265, 266 (1934) (recognizing the State's title to the beds and banks of Lake Pend Oreille).

The water level of Lake Pend Oreille is controlled by the Albeni Falls Dam, which is a project constructed by the U.S. Army Corps of Engineers (“USACE”) between 1951 and 1955. USACE currently regulates the lake level between a high water level of 2,062.5 ft. mean sea level (“msl”) during the summer and a low water level of 2,051 ft msl during the winter. *Line of Navigability of Glengary Bay of Lake Pend Oreille*, Dir.'s Finding on Line of Navigability at 7 – 8 (Idaho St. Bd. of Land Comm'rs April 14, 2014), https://www.idl.idaho.gov/wp-content/uploads/sites/2/2020/11/20140414_DirectorsFindingonLineofNavigability-Kaseburg.pdf. IDL considers the lake's high water elevation (2,062.5 ft. msl) an artificial high water mark (“AHWM”) created by the Albeni Falls Dam. *Id.* IDL considers the normal low water elevation (2,051 ft msl) as the lake's ordinary high water mark (“OHWM”) because IDL did not determine the ordinary high water mark before USACE constructed the dam. *Id.*

“The State has authority to regulate encroachments below either the ordinary or artificial high water marks.” *Byrd v. Idaho State Bd. of Land Commissioners*, 169 Idaho 922, 929, 505 P.3d 708, 715 (2022). Therefore, encroachments on Lake Pend Oreille are subject to the state’s regulatory authority under the LPA.

A. Littoral Ownership

The Applicant appears to be a littoral owner that owns one (1) parcel adjacent to Lake Pend Oreille identified as Bonner County Parcel No. RP57N01W084690A (941 W. Oden Bay, Sandpoint, ID 83864). IDL-001 at 1. The parcel appears to be a waterfront parcel with littoral rights. There are no other parcels or roads between the parcels and the AHWM.

B. Type of Encroachment

The Applicant is seeking an encroachment permit to relocate and rebuild two (2) existing boat garages. A boat garage is a nonnavigational encroachment.

C. Shoreline Length

According to Bonner County’s Public Mapping Application Webpage, the Applicant’s Parcel contains approximately 147 feet of water frontage.³ Two drawings in the application provide measurements for the encroachments and the property that include setbacks. IDL-001 at 5, 6. One can combine the individual measurements in these two drawings to reach a total measurement for the shoreline length. The combined figures from the drawing on page 5 of the application suggest the shoreline is 141 feet (43’ from dock to north littoral line, 57’ of dock (28’ + 4’ + 25’), 41’ to south littoral line). IDL-001 at 5. The combined figures from the drawing on page 6 of the application suggest the shoreline is 144 feet (45’ from dock to north littoral line, 57’ of dock, 42’ from dock to south littoral line). IDL-001 at 6. The previous permit, L96S2863, listed the shoreline frontage as 150 feet. However, for some reason the current application indicates the Parcel has 234 feet 8 ¾ inches of water frontage. IDL-001 at 23.

³ The Bonner County Public Mapping Application is accessible online at <https://cloudgisapps.bonnercountyid.gov/public/>.

D. Line of Navigability

The proposed boat garages will be located approximately the same distance (or shorter) in the lake as adjacent encroachments and will be within the Line of Navigability. IDL-001 at 5.

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 garages will not be located closer to the adjacent littoral right lines than the existed permitted dock. The proposed location of the boat garages will provide at least a forty-three (43) foot buffer to the littoral line to the north and at least a forty-one (41) foot buffer to the littoral line to the south. Regardless of the discrepancies in the shoreline length in the application documents, the two proposed boat garages appear to definitively provide the minimum twenty-five (25) foot buffer to each littoral line. IDL-001 at 5, 6. Therefore, there is no presumption of adverse effect upon adjacent littoral rights.

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 appears to be a littoral owner and there are no other parcels between the Applicant’s parcel and the lake. Thus, the application appears to meet the LPA Rules’ signature requirement.

G. Minimum Standards for Boat Garages

The LPA Rules 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. The encroachment standards for boat garages in the LPA Rules state:

- 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.

IDAPA 20.03.04.015.05.

Put differently, IDL may allow applicants to rebuild an existing non-emergency services boat garage, in whole or in part, if the boat garage will not increase in square footage from its permitted footprint. IDAPA 20.03.04.015.05.c. If the height and total area (length x width) will not increase, a boat garage may be rebuilt to different dimensions than the permitted boat garage. *See id.* One is also not precluded from building a smaller boat garage than the permitted footprint allows. *Id.* Additionally, IDL may permit applicants to relocate existing boat garages.

IDAPA 20.03.04.015.05.d. There are no geographic limitations on boat garage relocation. *See id.* In other words, one may relocate an existing boat garage from one location to another within the same navigable water body or from one navigable water body to another. *Id.*

The Applicant is seeking to relocate and rebuild two boat garages that were previously located at Heyburn State Park in the southern portion of Lake Coeur d’Alene. *See* IDL-001 at 24 – 35; IDL-007; IDL-008. IDL inspected all boat garages at Heyburn State Park at the end of August 2024 to confirm the structures’ existence, obtain measurements, and document the structures. *See* IDL-001 at 30 – 35; IDL-007; IDL-008. 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 and 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 and relocated within their existing footprint. The Applicant was assigned two of these temporary permits when he purchased the two Heyburn boat garages. IDL-001 at 25 – 26, 28 – 29. Due to the previous issuance of these temporary permits, IDL does not object to the Applicant’s boat garages with respect to their existing dimensions or status as pre-LPA encroachments. Overall, the proposed boat garages appear to meet the relevant rules and standards outlined in IDAPA 20.03.04.015.05.

IV. ANALYSIS OF COMMENTS

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

V. ADDITIONAL CONTEXT

The Objectors’ main concerns appear to be the existing single-family dock and its compliance, whether boat garages can be relocated, and the visual impacts from allowing new boat garages on properties that had never previously had a boat garage on them. With respect to the single-family dock, following the receipt of the objection letter IDL performed an inspection of the property on January 21, 2026. IDL-012. Tyler Warner, IDL Resource Specialist, observed that the framing and decking that once covered the two kayak slips had been removed and was stacked and placed on shore. *Id.* It is uncommon for a single-family slip dock to only contain slips large enough for kayaks and not a typical vessel like a boat. However, it is not prohibited.

IDL acknowledges that the framing and decking could easily be placed back into the kayak slips, which would create a non-compliant dock. Accordingly, IDL intends to continue to periodically inspect the permitted encroachment to ensure the framing and decking is not reinstalled. *See* IDL-011 at 5 (“Acceptance of this permit constitutes permission by Permittee for representatives of the Idaho Department of Lands to come upon Permittee’s Property at all reasonable times to inspect the encroachment authorized by this permit.”). Continuing to place the decking and removing the deck may result in revocation of the single-family dock permit. However, the current application is strictly for the relocation and rebuilding of two (2) existing

and permitted boat garages. Therefore, for purposes of this public hearing, IDL will only focus on the current application.

With respect to the issue of whether boat garages can be relocated, IDAPA 20.03.04.015.05 is clear that boat garages can be relocated through the permit process, and that they can be rebuilt if there is no increase in the square footage of the footprint. There are no rules in IDAPA or in IDL Procedures specific to Lake Pend Oreille. Lake Pend Oreille is governed by the same statutes, rules, and procedures as all other navigable waters in the State of Idaho, with the exception that Lake Pend Oreille has an AHWM as opposed to an OHWM. In addition, the current LPA Rules do not provide a limit on the maximum number of encroachments for any one property. Rather, the rules require that the individual standards for each encroachment must be met, and in the case of boat garages and float homes, there must be at least a twenty-five (25) foot setback from the encroachment to the littoral lines. The two Heyburn boat garages at issue in this application were permitted and inspected to ensure that if/when they were rebuilt IDL could verify that there would be no increase in square footage to the boat garage footprint.

Finally, with respect to the visual impact of the boat garages to adjacent properties, IDL notes that a littoral owner does not have a protected property interest in a certain view and “littoral rights solely concern the *use* of the lakeside property not the preservation of property’s scenic view.” *Newton v. MJK/BJK, LLC*, 167 Idaho 236, 245, 469 P.3d 23, 32 (2020). While Lake Pend Oreille is a beautiful and scenic lake, there are no specific rules governing it that differ from other scenic and beautiful lakes in Idaho. While processing this encroachment permit application, IDL must adhere to the current statutes and rules that do allow for boat garages to be relocated and rebuilt through the encroachment permit process if there is no increase in square footage or height from the previously permitted structure. The two boat garages proposed here will not increase in square footage or in height from their permitted dimensions. Additionally, there are no statutes or rules limiting how many boat garages or float homes a property can have,

provided the encroachment specific standards are met and the proper littoral line setbacks are respected.

VI. CONCLUSION

Given the reasons described above, the application appears to satisfy the encroachment standards applicable to boat garages. 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 13th day of February 2026.

IDAHO DEPARTMENT OF LANDS



Kayleen R. Richter
Attorney for Idaho Department of Lands

CERTIFICATE OF SERVICE

I hereby certify that on this 13th day of February 2026, I served a true and correct copy of the foregoing by the method indicated below, and addressed to the following:

Patrick Lewis E. Trust P.O. Box 14136, Scottsdale, AZ 95267 (602) 663-2600 <i>Applicant</i>	<input checked="" type="checkbox"/> Email: lew@patrickproperty.com
Bob Presta CE Kramer Crane and Contracting 46820 Highway 2, Hope, ID 83836 (208) 264-3021 <i>Agent for Applicant</i>	<input checked="" type="checkbox"/> Email: bob@cekramer.com
Peter J. Smith IV Fennemore Craig, P.C. 233 E. Harrison Avenue, Coeur d'Alene, ID 83814 (208) 956-0145 <i>Attorney for Applicant</i>	<input checked="" type="checkbox"/> Email: peter.smith@fennemorelaw.com
Arthur Bistline Bistline Law, PLLC 1205 N. Third Street, Coeur d'Alene, ID, 83814 (208) 665-7270 <i>Attorney for Objector Williams</i>	<input checked="" type="checkbox"/> Email: service@bistlinelaw.com
Kevin Chadwick 2365 E. Tennessee Avenue, Denver, CO 80209 (303) 619-6877 <i>Objector</i>	<input checked="" type="checkbox"/> Email: kevinspears.chadwick@gmail.com
W.H. Williams Family LLC Ruth Williams c/o Margaret Williams 29 Eagle Cove, Sandpoint, ID 83864 (208) 946-7105 <i>Objector</i>	<input checked="" type="checkbox"/> Email: mrwlaw1315@gmail.com

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