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Attorneys for Concerned Citizens Against Additional 100 Boat Slips Added to Templins Resort on Spokane River, Inc.

BEFORE THE IDAHO DEPARTMENT OF LANDS

Application for Permit to Install a Community
Dock, Encroachment L95S6181,

The Estates at Waterstone HOA, Inc., Jason
Garvey (Agent),

Applicant.

AGENCY Case No. PH-2025-NAV-22-0006

OAH Case No. 25-320-08

**MEMORANDUM IN SUPPORT OF
PETITION TO INTERVENE**

Concerned Citizens Against Additional 100 Boat Slips Added to Templins Resort on Spokane River, Inc. ("Concerned Citizens") respectfully submit this memorandum in support of their Petition to Intervene in the above-captioned administrative proceeding before the Idaho Department of Lands ("IDL"). The pending application by The Estates at Waterstone HOA, Inc., Jason Garvey (Agent) ("Applicant"), seeks approval for the construction of a community dock facility on the Spokane River (Application No. L95S6181). For the reasons set forth below, Concerned Citizens satisfies the legal standard for intervention and bring necessary perspectives regarding compliance with IDAPA, the Lake Protection Act, and the Idaho Public Trust Doctrine.

I. FACTUAL BACKGROUND

On July 11, 2025, the Applicant filed its application with IDL seeking approval to construct a single community pier-style dock with a footprint of approximately 2,900 square feet, supported

by 56 twelve-inch steel pilings, and including a 4-foot deep breakwater extending beneath the dock at summer water level. *JOINT APPLICATION FOR PERMITS* filed July 11, 2025 at 2 (the “Application”). The stated purpose is to “install one community dock at this site, where currently there is no dock system,” in order to provide private mooring opportunities for members of The Estates at Waterstone Homeowners Association. *Application* at 1, 2

The Kootenai County Sheriff has express concern about construction of new marinas on the river, citing safety hazards to boaters, tubers, kayakers, paddleboarders, and swimmers, and warning that the project would further constrict navigation to the point where only a single vessel could safely pass. See MEMORANDUM FROM SERGEANT RYAN MILLER TO IDAHO DEPARTMENT OF LANDS AND COMMUNITY LEADERSHIP dated March 10, 2025.

II. NEED FOR INTERVENTION TO PRESERVE APPELLATE RIGHTS

In a separate case involving Concerned Citizens, the District Court in Kootenai County ruled that without intervention in the IDL proceeding, Concerned Citizens had no right of appeal to the District Court. MEMORANDUM DECISION AND ORDER, CV28-25-1908 (First Jud. Dist. Ct., Kootenai Cnty., June 26, 2025). Concerned Citizens believes this decision is contrary to the plain language of the Lake Protection Act and intends to appeal. Nevertheless, to protect the rights of its members, Concerned Citizens seeks intervention here to ensure its ability to seek judicial review if necessary. Notwithstanding the foregoing, Concerned Citizens does not waive any arguments that intervention is unnecessary for an objector under the Lake Protection Act and applicable regulations. In short, an objector is a party to this proceeding without the need for a formal petition for intervention.

Nothing in the Lake Protection Act or the implementing regulations requires a petition to intervene. Idaho Code § 58-1306(c) expressly provides that “[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, within thirty (30) days of the first date of publication, file with the board an objection to the proposed encroachment and a request for a hearing on the application.” Upon filing such an objection, the objector becomes a party to the proceeding by operation of law.

This framework is confirmed in IDAPA 20.03.04.030.04, which provides that within thirty days of the first date of publication, an agency, adjacent littoral owner, or Idaho resident may either (a) submit opinions or recommendations or (b) *“file with the Department written objections to the proposed encroachment and request a public hearing on the application.”* The rule does not limit the number of objections, nor does it condition party status on filing a separate petition to intervene. To the contrary, it recognizes that *any* person or agency properly objecting and requesting a hearing has a right to participate.

IDL’s own published materials also acknowledge this procedure. Its *Community Dock Handout* states that after notice, *“If an interested party objects, and an agreement cannot be reached, IDL will hold a public hearing. The purpose of the hearing is to gather the facts concerning the proposed encroachment and potential impact to the lake in order to determine if it meets relevant standards.”* See https://www.idl.idaho.gov/wp-content/uploads/sites/2/2025/06/CommunityDock-Handout_2025.pdf last accessed August 22, 2025. No mention is made of any requirement for intervention, and the objector is treated as a participant in the hearing by virtue of filing the objection.

Concerned Citizens further notes that IDL staff previously informed it that only one objection would be accepted in this case. That limitation has no basis in statute or rule. Both Idaho Code § 58-1306(c) and IDAPA 20.03.04.030.04 contemplate that multiple residents, landowners, or agencies may file objections, each of whom is independently entitled to party status.

Accordingly, Concerned Citizens maintains that its objection and request for hearing—filed pursuant to Idaho Code § 58-1306(c) and IDAPA 20.03.04.030.04—are sufficient to confer party status in this proceeding, without the need for a petition to intervene. Its request to intervene here is made solely out of an abundance of caution, to preserve its rights in light of the District Court’s recent ruling.

III. STANDARD FOR INTERVENTION

Under the Idaho Administrative Procedure Act and IDAPA procedural rules, intervention is permitted where a petitioner demonstrates: (1) a direct and substantial interest in the proceeding; (2) that the interests will not be adequately represented by existing parties; and (3) that participation will not unduly broaden the issues or delay the proceedings.

IV. THE LAKE PROTECTION ACT

The Idaho Legislature has declared that the public health, interest, safety, and welfare require strict regulation of all encroachments upon the waters of the state. Idaho Code § 58-1301. The statute mandates that protection of property, navigation, fish and wildlife habitat, aquatic life, recreation, aesthetic beauty, and water quality must be weighed against any claimed navigational or economic necessity or benefit from a proposed encroachment. No encroachment may be approved absent such consideration and approval.

The Act further provides that the 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. Idaho Code § 58-1303. In addition, Idaho Code § 58-1304 authorizes the Board to adopt, revise, and rescind rules and regulations as necessary to effectuate the purposes of the Act. These may include minimum standards for projects or activities requiring permits, as well as procedures for processing applications. Section 58-1306 prescribes

the application and hearing procedures, requiring applications for community or commercial navigational encroachments to be filed by riparian or littoral owners and published for public notice. It authorizes state agencies and members of the public—including residents of Idaho and nonresident adjacent property owners—to file objections and request hearings. The statute emphasizes that unreasonable adverse effects on adjacent property and undue interference with navigation are the most important factors to be considered. These provisions underscore the participatory role envisioned for the public and the importance of considering the Act’s enumerated values in every encroachment decision.

V. ARGUMENT

The Lake Protection Act requires IDL to weigh protection of property, navigation, habitat, aquatic life, recreation, aesthetic beauty, and water quality against claimed benefits of an encroachment. Idaho Code § 58-1301. Concerned Citizens is uniquely positioned to present evidence on these statutory values, ensuring they are fully considered alongside the Applicant’s claimed benefits. Without their participation, the record will lack adequate representation of the broader public interests the Act is designed to protect.

A. Concerned Citizens Possess Direct and Substantial Interests.

The members and supporters of Concerned Citizens live, recreate, and navigate along the Spokane River near the proposed encroachment. Their use and enjoyment of the river will be directly harmed by increased congestion, safety hazards, and loss of public trust resources.

B. Existing Parties Do Not Adequately Represent Concerned Citizens’ Interests.

Neither the Applicant nor IDL staff represent the public’s recreational and navigational interests. Adjacent landowners have raised title and zoning concerns, but only Concerned Citizens represents the broader community of Spokane River users most affected.

C. Intervention Will Not Unduly Delay or Broaden the Issues.

Concerned Citizens seeks to ensure proper application of IDAPA rules governing community docks, marina requirements, and the Public Trust Doctrine. Their participation will assist IDL in developing a complete factual record on safety, congestion, and compliance with regulatory standards.

VI. CONCLUSION

For the foregoing reasons, Intervenors respectfully request that the Hearing Officer grant their Petition to Intervene so they may fully participate in this proceeding, present evidence, and ensure that the Department's obligations under IDAPA and the Lake Protection Act are met.

DATED this 5th day of September, 2025.

FENNEMORE CRAIG, P.C.



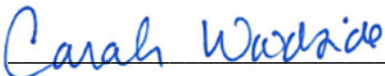
PETER J. SMITH IV, ISB #6997
Attorney for Concerned Citizens

CERTIFICATE OF SERVICE

I hereby certify that on the 5th day of September, 2025, I cause to be served a true and correct copy of the foregoing document by the method indicated below, and addressed to the following:

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| The Estates at Waterstone HOA, Inc. Jason Garvey, Agent 1386 Northwest Blvd Coeur d'Alene, ID 83814 (208) 916-3647 <i>Agent for Applicant</i> | <input type="checkbox"/> By U.S. Mail <input checked="" type="checkbox"/> By Email jason@wesslen.com caseym@legacylw.com |
| Nathan S. Ohler Ohler Bean & Tinkey 1809 E. Sherman Ave., Ste. 101 Coeur d'Alene, ID 83814 (208) 444-8686 <i>Attorneys for Applicant</i> | <input type="checkbox"/> By U.S. Mail <input checked="" type="checkbox"/> By Email nathan@ohlerbean.com |
| Idaho Department of Lands John Richards, General Counsel Kayleen Richter, Counsel 300 N. 6 th Street, Ste. 103 Boise, ID 83702 (208) 334-0200 <i>Counsel for Idaho Department of Lands</i> | <input type="checkbox"/> By U.S. Mail <input checked="" type="checkbox"/> By Email jrichards@idl.idaho.gov krichter@idl.idaho.gov |
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