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Attorneys for Applicant

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-
22-006

OAH Case No. 25-320-08

**RESPONSE TO CONCERNED
CITIZENS' PETITION TO
INTERVENE**

COMES NOW the Applicant, The Estates at Waterstone HOA, Inc., Jason Garvey (Agent), by and through its counsel, Nathan S. Ohler of Ohler Bean & Tinkey, and submits the following response to the *Petition to Intervene (Concerned Citizens)* and *Memorandum in support of Petition to Intervene* submitted by opposing party *Concerned Citizens Against Additional 100 Boat Slips Added to Templins Resort on Spokane River, Inc.* on September 5, 2025, as follows:

INTRODUCTION

The *Concerned Citizens Against Additional 100 Boat Slips Added to Templins Resort on Spokane River, Inc.* have petitioned to intervene in this matter. To have standing to intervene, the proposed intervenor must establish that they have a direct *and* substantial interest in the proceeding that is not otherwise adequately represented. The proposed intervenor does not assert an interest in the Applicant's property nor to property lying adjacent to Applicant's property.

The proposed intervenor does not purport to represent any state, local, or political subdivision of the State of Idaho. Without a direct *and* substantial interest in the outcome of the proceeding, the proposed intervenor does not have standing to intervene in this matter. The collective that comprises the *Concerned Citizens Against Additional 100 Boat Slips Added to Templins Resort on Spokane River, Inc.* should therefore be confined to voice their concerns as interested persons in common with other members of the public who lack a direct *and* substantial interest in the subject application.

OBJECTION

The *Concerned Citizens Against Additional 100 Boat Slips Added to Templins Resort on Spokane River, Inc.* move to intervene on the generic basis that they are “uniquely positioned” to present evidence as to the legislative intent codified in Idaho Code § 58-1301 (Encroachment on navigable lakes – Legislative intent). See *Memorandum in Support of Petition to Intervene*, p. 5.

Subchapter H – Special Proceedings, Rules 700-724, of IDAPA 62.01.01, sets forth the regulations to govern intervention. Rule 700 limits intervention to those persons who are not parties to a proceeding but “who claim a direct and substantial interest in the proceeding”. IDAPA 62.01.01.700 (underline added). Rule 705 provides that “[i]f a petition to intervene shows direct and substantial interest in any part of the subject matter of a proceeding, does not unduly broaden the issues, and does not unduly delay or prejudice the original parties, the presiding officer will grant intervention, unless the petitioner’s interest is already adequately represented by one or more parties already participating in the case.” IDAPA 62.01.01.705 (underline added). The requirements “direct and substantial interest” are conjunctive per the plain language of the regulations.

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The *Concerned Citizens Against Additional 100 Boat Slips Added to Templins Resort on Spokane River, Inc.* do not have or purport to have a direct and substantial interest in the littoral rights of the Applicant or in the property adjacent to the Applicant. They do not assert that Applicant has failed to satisfy the standards for approval of a community dock pursuant to and enumerated within the Idaho Department of Lands' Rules for the Regulation of Beds, Waters, and Airspace Over Navigable Lakes in the State of Idaho (IDAPA 20.03.04) to implicate the requisite direct and substantial interest. As such, they stand on equal footing to the 200,000 or so other residents of Kootenai County and Benewah County which bound Lake Coeur d'Alene and the Spokane River. This entitles them to speak as interested persons at the time of the hearing along with other members of the public in favor of or in opposition to the application. It does not qualify them as a party with a "direct and substantial interest" in the subject proceeding *beyond* their prerogative to speak at the hearing in common with the public at large. To find otherwise would be to invite members of the public at large to intervene in matters for which they have no direct and substantial right other than political predilections that are more appropriately expressed during public comment or the Legislature.

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For the foregoing reasons, Applicant respectfully requests that the *Concerned Citizens Against Additional 100 Boat Slips Added to Templins Resort on Spokane River, Inc.*’s Petition to Intervene be denied. The denial of their Petition to Intervene will not preclude their ability to “participate in the proceeding as an interested person or as a public witness.” IDAPA 62.01.01.706.

DATED: September 12, 2025.

OHLER BEAN & TINKEY

/s/ Nathan S. Ohler

By _____
Nathan S. Ohler, Of the Firm
Attorneys for Applicant
The Estates at Waterstone HOA, Inc.,
Jason Garvey (Agent)

CERTIFICATE OF SERVICE

I hereby certify that on September 12, 2025, I served a true and correct copy of the foregoing by the method indicated below, and addressed to the following:

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Office of Administrative Hearings
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Hearing Officer

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Objector

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/s/ Jennifer Escruceria

Jennifer Escruceria