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

IN THE MATTER OF

Encroachment Permit Application
No. 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

**IDAHO DEPARTMENT OF LANDS’
CLOSING STATEMENT**

In this proceeding, The Estates at Waterstone HOA, Inc. (“Applicant”) has applied for a permit to install one eleven (11) double-slip community dock with containing twenty-two (22) total moorages for the twenty-two (22) lots in Estates at Waterstone, a subdivision located on the Spokane River. Concerned Citizens, LLC (“Concerned Citizens”) objects to the application.

I. BACKGROUND

On October 6, 2025, Hearing Officer Hayes took in-person public comment on this application at a meeting originally scheduled to be the evidentiary hearing. Due to a noticing issue the evidentiary hearing was continued to October 30, 2025, however, the Hearing Officer allowed the assembled public to give in-person comment if they wished. Eleven (11) people provided comments in-person. Prior to the start of the hearing and public comments, the Hearing Officer denied Concerned Citizens’ petition to intervene but exercised her discretion to allow Concerned Citizens to participate in the proceedings as “an interested person or a public witness”. IDAPA 62.01.01.706. The Hearing Officer recorded the meeting, the audio of which is

available to review on IDL's website for this matter: <https://www.idl.idaho.gov/lakes-rivers/administrative-hearings/estates-at-waterstone-hoa/>. Live Dkt. 047.

The next day, October 7, 2025, the Hearing Officer conducted a site visit. Present at the Hearing Officer's site visit were Nathan Ohler (Attorney for Applicant), Rob Elder (Principal Realtor for Waterstone Project), Casey Mason (Estates at Waterstone Project Manager), and Kayleen Richter (Attorney for IDL). Live Dkt. 041. Hearing Officer Hayes recorded the site visit and took thirty (30) photos, all of which are included in the record and available on IDL's website. Live Dkt. 041, 042.

On October 8, 2025, IDL contacted the Coeur d'Alene Press to publish legal notice of the public evidentiary hearing scheduled for October 30, 2025. IDL-24. The Coeur d'Alene Press ran the notice of application and public hearing on October 11, 2025, and on October 18, 2025. IDL-25. Prior to the start of the hearing on October 30, 2025, IDL received additional written comments on the application from adjacent neighbor IAAR, LLC and from the public. IDL-26 – IDL-30.¹

On October 30, 2025, Hearing Officer Hayes held a remote public evidentiary hearing on this matter via Zoom. The Applicant, Concerned Citizens, and IDL all appeared represented by counsel. IDL, the Applicant, and Concerned Citizens all called witnesses. All witnesses were sworn and subject to cross-examination by both the parties and Concerned Citizens. When the evidentiary portion of the hearing concluded, the Hearing Officer opened the proceeding for additional public comment. Nine (9) people provided comments remotely via Zoom.

At the conclusion of the evidentiary portion of the hearing, the Hearing Officer requested the Applicant, Concerned Citizens, and IDL submit written closing briefing within two (2) weeks. On November 11, 2025, IDL received ten (10) emails containing additional public comment on this matter and the Spokane River. It is not clear whether copies of these emails

¹ To date, IDL has received approximately sixty-five (65) written public comments on this application. IDL-11, IDL-12, IDL-13, IDL-14, IDL-15, IDL-26, IDL-27, IDL-28, IDL-29, IDL-30. IDL has not received feedback on the application from any local, state, or federal agencies.

have been distributed or included in OAH's record. Accordingly, IDL concurrently submits copies of these additional public comments with this closing statement. For ease of reference, IDL has marked these emails by continuing OAH's Bates numbering convention in the bottom center of each page beginning with PC-Waterstone0100.

II. LEGAL STANDARD

In 1974 the Idaho Legislature enacted the Lake Protection Act. ("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. As the instrumentality of the Land Board, IDL has the duty, authority, and discretion to "regulate, control and [] permit encroachments" within the limits of the LPA and the LPA Rules. I.C. § 58-1303. Put differently, IDL only has the authority to regulate and control what it is authorized to.

When an encroachment permit application is contested, the LPA requires IDL to hold a public hearing on the application, such that each person or agency appearing at the hearing may "giv[e] testimony in support of or in opposition to the proposed encroachment[.]" I.C. § 58-1306(c). A public hearing under the LPA is a limited opportunity for the public to provide testimony for the record.

IDL considers the entirety of the record, including both public and agency 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.

To summarize and paraphrase, 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 encroachment's potential detrimental effects on the lake value factors outweigh the potential benefits.

III. ANALYSIS

A. Compliance with Applicable Minimum Standards

The first step in IDL's evaluation of an encroachment permit application is to determine whether the proposed encroachment satisfies the applicable minimum standards prescribed by law. In IDL's *Prehearing Statement*, IDL outlined its technical estimation of the application's compliance with the applicable minimum standards. Live Dkt. 022 at 6 – 10. At hearing, Mr. Ahmer verified IDL's *Prehearing Statement* and adopted it as part of his testimony. Mr. Ahmer also testified that it was his opinion that the proposed community dock satisfies the applicable minimum standards and requirements for a community dock. Upon review of the application and the evidence presented at hearing, IDL maintains its evaluation that the application appears to comply with the applicable minimum standards.

B. Evaluation of Lake Value Factors

The second step in IDL's evaluation of an encroachment permit application is to determine whether the proposed encroachment's potential detrimental effects on the lake value factors outweigh the potential benefits. The lake value factors to be given due consideration are the protection of property, navigation, fish and wildlife habitat, aquatic life, recreation, aesthetic beauty and water quality. The potential benefits may be public or private and include the navigational or economic necessity, or justification for, or benefit to be derived from the proposed encroachment.

The IDL Director's ultimate decision whether to approve or deny an encroachment permit application is based on his independent evaluation of the entire record in the proceeding. Put differently, the IDL Director's decision *is not* based on any facts/opinions outside the bounds of the record in a given proceeding. Further, the IDL Director's decision is constrained by his limited statutory and regulatory authority.

a. Congestion on the Spokane River

In many of the public comments and the testimony of Concerned Citizens' witnesses, folks expressed support for IDL 'pausing' issuing encroachment permits on the Spokane River and to conduct a 'carrying capacity study' to determine how many boats can safely use the Spokane River.

IDL agrees it would be beneficial to gain more information about the traffic on the river; however, IDL notes that in this proceeding IDL does not have the authority to impose a moratorium on issuing all encroachment permits on the Spokane River or to unilaterally launch such a study. "State agencies in Idaho have no inherent authority." *See Idaho Power Co. v. Idaho Pub. Utils. Comm'n*, 102 Idaho 744, 750, 639 P.2d 442, 448 (1981); *see also* Richard Henry Seamon, *Idaho Administrative Law: A Primer for Students and Practitioners*, 51 Idaho L. Rev. 421, 439 (2015). "As a general rule, administrative agencies 'are tribunals of limited jurisdiction.' *Washington Water Power Co. v. Kootenai Env'tl. Alliance*, 99 Idaho 875, 879, 591 P.2d 122, 126 (1979). Thus, agencies have no authority outside of what the Legislature specifically grants to them. *Idaho Retired Firefighters Assoc. v. Pub. Emp. Ret. Bd.*, 165 Idaho 193, 196, 443 P.3d 207, 210 (2019) (citing *Idaho Power Co.*, 102 Idaho at 750, 639 P.2d at 448).

Further, the Spokane River is a public waterway, which "shall be open to public use as a public highway for travel and passage, up or downstream, for business or pleasure, and to exercise the incidents of navigation—boating, swimming, fishing, hunting and all recreational purposes." I.C. § 36-1601(b). The Idaho Supreme Court addressed the issue of the public's reasonable use of the river over 100 years ago:

Each one is entitled to the free and reasonable use of the navigable streams of this state, and may place such reasonable obstructions on the stream, so long as they serve a useful and beneficial purpose, and leave a reasonable use to others interested . . . If an obstruction merely impairs or renders more difficult the navigation, without destroying it, an individual has no rightful cause for complaint, because he has no right to insist on the best possible accommodation.

Small v. Harrington, 10 Idaho 499, 79 P. 461, 469 (1904). Consequently, the mixed-use boating capacity of the Spokane River is outside the scope of the agency's specific authority.

Among the largest issues raised by those in opposition to the application are general concerns for safety on the river, overcrowding, erosion, and environmental/property damage. Again, IDL's authority is limited and, as Mr. Ahmer testified, IDL does not have the authority to regulate the Idaho Safe Boating Act or enforce boater safety. I.C. § 67-7001 *et seq.* The Idaho Department of Parks and Recreation acts pursuant to the Idaho Safe Boating Act. I.C. § 67-7003(6). Similarly, IDL does not have authority over no-wake zones or speed limits on the river.

IV. CONCLUSION

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 encroachment's potential detrimental effects on the lake value factors outweigh the potential benefits. The record contains mention of both potential detrimental effects on the lake value factors and evidence of potential public and private benefits. However, IDL's ability to consider and remedy some of the public concerns regarding potential detriments is constrained by IDL's limited authority. The decision on this application must be made on the record before the Hearing Officer, on the merits of the application, consistent with the agency's authority, and in compliance with the Public Trust Doctrine and the Lake Protection Act. Upon review of the record, IDL concludes that the proposed encroachment appears to satisfy the applicable minimum standards. Nevertheless, IDL defers to the Hearing Officer and the Director regarding whether the balancing of the lake value factors weighs in favor of granting or denying the community dock permit application.

DATED this 13th day of November, 2025.

IDAHO DEPARTMENT OF LANDS



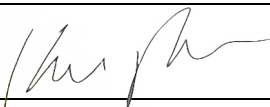
Kayleen Richter
Counsel for IDL

CERTIFICATE OF SERVICE

I hereby certify that on this 13th day of November, 2025, I caused to be served a true and correct copy of the foregoing by the method indicated below, and addressed to the following:

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