

Peter J. Smith IV, ISB #6997
FENNEMORE CRAIG, P.C.
418 E. Lakeside, Suite 224
Coeur d’Alene, Idaho 83814
T: (208) 956-0145
E: peter.smith@fennemorelaw.com

Attorneys for Concerned Citizens Protecting the 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

**CLOSING STATEMENT OF
CONCERNED CITIZENS**

Concerned Citizens Protecting the Spokane River Inc. (“Concerned Citizens”) submits this closing statement.

I. INTRODUCTION AND REQUESTED RELIEF.

The Estates at Waterstone HOA seeks authorization for a community dock that would add twenty-two slips to an already congested reach of the Spokane River. The Lake Protection Act (“LPA”) requires Idaho Department of Lands (“IDL”) to give “due consideration” to lake-value factors—navigation, recreation, aesthetic beauty, water quality, property, and habitat—and then weigh those factors against any navigational or economic necessity, justification, or benefit of the encroachment. Idaho Code § 58-1301. On this record, the balance is not close: unrebutted public testimony details dangerous congestion, damage to private and public shorelines, and degraded recreational use on a narrow river reach, while the Applicant shows no navigational or economic

necessity for the proposed slips [verify cite]. The Court should deny the application (or vacate and remand with instructions to deny) because the lake-value factors outweigh any asserted private benefit. I.C. §§ 58-1301, -1303, -1306.

II. ISSUE PRESENTED.

Whether, on this record, the lake-value factors outweigh any navigational or economic necessity, justification, or benefit of the proposed dock.

III. CONTROLLING AUTHORITY.

The Legislature requires 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.” I.C. § 58-1301. IDL has the duty, authority, and discretion to “regulate, control and [] permit encroachments” within the LPA’s limits. I.C. § 58-1303. The Spokane River is open to the public for navigation and recreation. I.C. § 36-1601(b). Encroachments that materially impair safe navigation, recreation, or shoreline stability defeat the statutory balance. I.C. § 58-1301.

IV. THE LAKE-VALUE FACTORS WEIGH HEAVILY AGAINST MORE SLIPS ON THE SPOKANE RIVER.

The record documents dangerous congestion and a narrow, conflicted channel. Residents describe a river corridor already overrun by boats and mixed uses that cannot safely coexist in the remaining mid-channel. One commenter states plainly: “this river has become dangerous.” PC-Waterstone0101. Another explains that the Spokane River “is TOO narrow for the safe, simultaneous use” of wake surfing, water-skiing, tubing, jet-skiing, kayaking, and ordinary cruising. PC-Waterstone0102–PC-Waterstone0103. That same witness details the geometry

driving the risk: the river averages roughly 400 feet wide, with 100-foot no-wake zones on each bank, leaving a ~200-foot mid-channel where multiple high-energy activities converge. *Id.* Another nearby owner quantifies the corridor as 549–688 feet wide in this segment, further underscoring limited maneuvering room. PC-Waterstone0110.

The record shows cumulative crowding from existing slips. A riparian owner reports living “less than half a mile from over 331 existing slips,” explaining that added moorage will “increase the number of boats, creating unsafe choke points.” PC-Waterstone0110. Another commenter urges a pause on new slips “until a safety and environmental study can be conducted,” recognizing that “there will never be another Spokane River.” PC-Waterstone0104.

The record details injuries to property and infrastructure from wakes and traffic. The record details injuries to property and infrastructure from wakes and traffic. One homeowner had to “spend \$16,000 to repair damage to [the] dock” from swaying and wakes, and “another \$10,000 to replace cracked poles.” PC-Waterstone0103–PC-Waterstone0104. Another replaced a dock pole for \$2,000 and chained logs to shield shoreline from “massive wake surf wakes.” PC-Waterstone0107. Others describe “increased boat traffic especially among the high number of wake boats” and conclude that “shorelines are being destroyed.” PC-Waterstone0105. A nearby resident summarizes the experience for ordinary users: navigating the river “is like trying to cross a football field with a game in progress. You’re going to get bumped around and hurt PC-Waterstone0103.

The record associates boating pressure with environmental and recreational harms. Commenters link large wakes to erosion, sediment resuspension, and habitat disturbance, urging management of cumulative impacts before adding more moorage. PC-Waterstone0102; PC-Waterstone0105; PC-Waterstone0109–PC-Waterstone0110. One explains that wake-surfing

“stirs up significantly more sediments than any other activity on the River,” with consequences for “water quality, fisheries, and the environment.” PC-Waterstone0102. Another notes that “the fish and game are being disrupted,” capturing the everyday degradation that the LPA commands IDL to weigh before approving new encroachments. PC-Waterstone0109.

These factual accounts are consistent, specific, and unrebutted in this record. The public testimony shares common observations: hazardous crowding, limited navigable channel, infrastructure and shoreline damage, and degraded recreational quality. PC-Waterstone0101; PC-Waterstone0102–PC-Waterstone0105; PC-Waterstone0107–PC-Waterstone0110. No contrary study or data appears in the record to refute these cumulative-impact descriptions.

These written submissions are merely a portion of the testimony of the public but provide an accurate example of the testimony.

V. THE APPLICANT HAS NOT CARRIED ANY BURDEN TO SHOW NAVIGATIONAL OR ECONOMIC NECESSITY OR JUSTIFICATION FOR TWENTY-TWO NEW SLIPS ON THE SPOKANE RIVER.

The LPA’s second step requires weighing lake-value detriments “against the navigational or economic necessity or justification for, or benefit to be derived from the proposed encroachment.” I.C. § 58-1301. The record contains no navigation analysis showing a need for additional moorage in the Spokane River. The record contains no economic analysis establishing that twenty-two additional slips are necessary to sustain any public or commercial navigation function. At most, a private benefit may flow to a particular real-estate development from attaching moorage rights to subdivision lots, but a private sales premium is not a “navigational or economic necessity” within the LPA’s meaning when weighed against demonstrable harms to safe navigation, recreation, property, and water quality. I.C. § 58-1301. The public comment

record confirms that added slips here will intensify congestion and risk without addressing any public navigational need. PC-Waterstone0101–PC-Waterstone0105; PC-Waterstone0110.

VI. IDL ITSELF ACKNOWLEDGES THE PROBLEM AND THE NEED FOR INFORMATION; LIMITED AUTHORITY OVER BOATING CONDUCT DOES NOT EXCUSE ENCROACHMENT DECISIONS THAT EXACERBATE HARM.

IDL recognizes that “many of the public comments and the testimony of Concerned Citizens’ witnesses” urged IDL to pause encroachment permits on the Spokane River and conduct a “carrying capacity study” to determine how many boats the river can safely support. IDL Closing Statement at 5. IDL “agrees it would be beneficial to gain more information about the traffic on the river,” even as it asserts it cannot unilaterally impose a moratorium or launch such a study. *Id.* IDL further notes that it does not administer the Idaho Safe Boating Act or no-wake/speed controls; that role lies elsewhere. *Id.* at 6. None of this relieves IDL of its statutory duty at the permitting stage: to weigh navigation, recreation, property, and water-quality harms against any proven necessity or justification for the encroachment. I.C. §§ 58-1301, -1306. An agency’s limited authority over *boating behavior* does not curtail its clear authority over *encroachments*. *Idaho Power Co. v. Idaho Pub. Utils. Comm’n*, 102 Idaho 744, 750, 639 P.2d 442, 448 (1981) (agency acts within conferred authority); I.C. § 58-1303. Denying an encroachment that aggravates unsafe, overcrowded conditions is squarely within IDL’s mandate.

VII. CUMULATIVE IMPACTS REQUIRE VIEWING THE RIVER AS A WHOLE, NOT DOCK-BY-DOCK.

The LPA’s lake-value factors—navigation, recreation, aesthetic beauty, water quality, protection of property and habitat—are system-wide outcomes, not isolated to a dock’s footprint. I.C. § 58-1301. The record describes a corridor already burdened by hundreds of nearby slips and

intense mixed uses, with shoreline and infrastructure damage and diminished safety.

PC-Waterstone0101–PC-Waterstone0105; PC-Waterstone0107–PC-Waterstone0110. Without a carrying-capacity analysis, approving new multi-slip docks compounds visible harms and contradicts the statute’s requirement to *weigh* lake-value factors before adding to the load. Where, as here, the evidence of detriment is concrete and the claimed necessity is absent, the LPA’s balance requires denial. I.C. § 58-1301.

IDL need not (and should not) announce a blanket moratorium. The record supports a narrower, fact-bound rule: On the Spokane River, where (i) the effective navigable channel is constricted and crowded, (ii) cumulative moorage already generates unsafe interactions and shoreline damage, and (iii) the Applicant shows no navigational or economic necessity or justification for additional slips, the LPA’s weighing test requires denial. PC-Waterstone0101–PC-Waterstone0105; PC-Waterstone0107–PC-Waterstone0110). This principle implements the statute on the record before the Court, respects agency limits over boating conduct, and preserves IDL’s discretion to evaluate other sites with different facts. I.C. §§ 58-1301, -1303; Idaho Power, 102 Idaho at 750, 639 P.2d at 448.

VIII. CONCLUSION AND RELIEF.

The LPA commands a balance, not a rubber stamp. I.C. § 58-1301. The record shows dangerous crowding in a narrow corridor, widespread infrastructure and shoreline damage, and degraded recreation for the broader public. PC-Waterstone0101–PC-Waterstone0105; PC-Waterstone0107–PC-Waterstone0110. The Applicant has not demonstrated any navigational or economic necessity or justification to add twenty-two more slips on this reach. Approving this encroachment would give only token recognition to lake-value factors and would be inconsistent with the State’s public-trust obligations. I.C. §§ 58-1301, -1303.

Concerned Citizens respectfully requests that the Court deny Encroachment Permit Application No. L95S6181 on the ground that, under Idaho Code § 58-1301, the lake-value factors outweigh any asserted necessity, justification, or benefit on this record.

DATED this 14th day of November, 2025.

FENNEMORE CRAIG, P.C.



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

CERTIFICATE OF SERVICE

I hereby certify that on the 14th day of November, 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:

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>	☐ By U.S. Mail ☒ 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>	☐ By U.S. Mail ☒ 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>	☐ By U.S. Mail ☒ By Email jrichards@idl.idaho.gov krichter@idl.idaho.gov
Marde Mensinger Amidy Fuson <i>Program Manager for Navigable Waters</i>	☐ By U.S. Mail ☒ By Email mmensinger@idl.idaho.gov afuson@idl.idaho.gov
Kourtney Romine Rachel King Kayla Dawson <i>Service Contacts for Idaho Department of Lands</i>	☐ By U.S. Mail ☒ By Email kromine@idl.idaho.gov rking@idl.idaho.gov kdawson@idl.idaho.gov

OAH General Government Division P.O. Box 83720 Boise, ID 83720-0104 (208) 605-4300	☐ By U.S. Mail ☒ By Email filings@oah.idaho.gov leslie.hayes@oah.idaho.gov elaine.maneck@oah.idaho.gov
--	---



Peter J. Smith IV