



**Comments to the Idaho Department of Lands
Falls at Hayden Lake Dock
Application: L-95-S-3185B**

December 22, 2009

With these comments, we express our serious concerns with the above-described application to permit construction of 10,380.75 square feet of decking resulting in an encroachment of 33,104 square feet of lake surface, extending some 130 feet into Hayden Lake in Kootenai County, Idaho. On balance, we are concerned that this intense encroachment to public waters outweighs the minimal public benefits, which appear to be limited to emergency moorage for Northern Lakes Fire District for unspecified emergencies.

Moreover, “the economics of navigational necessity, justification or benefit, public or private, of such proposed encroachment” must be weighed against “its detrimental effects, if any, upon adjacent real property and lake value factors” as required by law.¹ If the benefits do not outweigh the detrimental impacts, then the permit should not be issued. There is certainly no navigational necessity served by this proposal. Indeed, in this instance, it is clear that the detriment to the lake and the public’s interest require that the permit be denied.

When considering the values to be weighed, IDAPA 20.03.04.12 states:

“It is the express policy of the State of Idaho 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.”

Particularly pertinent in this instance, Hayden Lake has been officially listed as an “impaired waterbody” because it does not meet the state’s water quality standards for total phosphorous. Although the Total Maximum Daily Load (TMDL)

¹ Idaho Code §15-1308(d)

for phosphorous in Hayden Lake has been established, an implementation plan has not been established and little progress has been made towards lowering phosphorous levels in the Lake. Idaho's law to implement the Clean Water Act acknowledges that "designated agencies" including the Idaho Department of Lands are responsible for implementing restoration of Hayden Lake. This permit would flie in the face of that responsibility.

1. The excessive encroachment to public waters outweighs the minimal public benefits.

Idaho code requires that "unreasonable adverse effect upon adjacent property and undue interference with navigation the most important factors" in determining whether to grant a permit.² In this instance, the encroachment into the navigable portion of the lake is highly significant and is likely to impact navigation and boat traffic on this somewhat narrower portion of a very popular lake.

Although this community dock is less than the maximum 7 square feet of encroachment per linear frontage foot, the total surface decking area of 10,380 square feet is very nearly the maximum allowable. More significantly, it will encroach on an extraordinary 33,000 square feet of lake surface extending 130 feet into the Lake. The length of the dock is unclear from the application materials – it is not stated on the permit application as required, nor is it shown on the accompanying drawing. Nevertheless, it appears to be at least several hundred feet long.

This particularly large dock is planned to serve only 46 residents who own property well above Hayden Lake. Lake access is provided by a tram down a steep slope through lakefront property owned by the development's homeowners association. Unrestricted permitting of these "keyhole" developments will result in very intensive development of the lake surface and ultimately overuse of our water resources. Unfortunately, rather than a more reasonably restrained request, this application appears an attempt to maximize the number of slips and decking and encroachment for the mere 46 lots this community dock would serve.³

We note that IDAPA 23.03.04.02(c) gives the department the discretion to limit the ultimate size of the dock when considering the public trust values. Considering this massive request for encroachment for minimal public value, we would, at a minimum, suggest that this proposal be cut to a more reasonable size.

Finally, public benefits from this project are limited to emergency moorage for Northern Lakes Fire District for unspecified emergencies. It isn't clear that this

² Idaho Code § 15-1308(e)

³ The 1489 linear feet of total littoral frontage corresponds to only 32 feet for each of the 46 lots.

“benefit” serves anyone other than the applicant. We suspect the fire district didn’t actually request this moorage, but rather it appears that the moorage in this application exists only to provide the illusion of public interest.

2. The unique water quality concerns in Hayden Lake may be exacerbated by this project.

Boat traffic (especially from large motorboats) has been proven to stir up bottom sediments containing phosphorous, which in effect adds to the phosphorous load in Hayden Lake. Additionally, wakes from motorboats severely impacts bank stabilization leading to erosion and additional phosphorous loading. Significantly increased moorage should not be approved until the affects of motorcraft on Hayden Lake has been fully assessed and managed. Unfortunately, Hayden Lake’s water quality capacity for heavy motorized boat traffic may have already been exceeded.

There is no question that this proposal will be ultimately detrimental to lake values required to be weighed under the statute, such as fish and wildlife habitat, aquatic life, aesthetic beauty and water quality. These serious detriments, particularly to water quality are simply not balanced by recreational advantages for 46 lots which are significantly removed from the shoreline.

3. If approved, the proposal required significant conditions for mitigating damage to Hayden Lake

As the application exists currently, we do not believe the public benefits outweigh the detriments and risks to water quality, and we believe the application should be denied. If approved however, significant mitigation measures should be required. We suggest that mitigation should include funding to independently monitor water quality and monitor the effect of boat wakes. While we appreciate that boats with wastewater holding tanks would be prohibited, we would suggest conditions to guarantee such prohibition and enhanced penalties for violation. We would also suggest prohibiting “wakesurfing” boats which produce very large, powerful, and destructive wakes. We also urge examination of much less intensive dock alternatives under the Department’s discretionary authority.

We thank the Department for this opportunity to comment.

Respectfully submitted,

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