



SELKIRK CONSERVATION ALLIANCE

KEEPING THE *Wild* IN THE SELKIRK ECOSYSTEM

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RE: Comments in Opposition of Commercial Non-Navigational Encroachment Permit Application: L96S2798 (Joint application for permits USACOE, IDL, IDWR) June 14, 2023.

Selkirk Conservation Alliance, on behalf of Center for Biological Diversity, Panhandle Chapter of Trout Unlimited and the Inland Empire Task Force (IETF) (herein after "Selkirk Conservation Alliance et al."), submit the following comments in opposition to the above referenced Permit Application.

The Applicant seeks to;

1. Excavate, fill and reconfigure the existing boat basin, slack water channel and adjacent shoreline
2. Fill 1.19 acres of wetlands and excavate 1.43 acres of wetlands (Total 2.26 wetland acres - 24,310 cubic yards)

3. Discharge 10,410 cubic yards of dirt/topsoil (8820 cy) and gravel, rock or stone (1590 cy) below the ordinary high water mark and /or wetlands
4. Redirect the North Branch of Trestle Creek
5. Remove an existing boat launch
6. Construct 105 fixed pier docks
7. Shoreline/upland development of five residential home sites
8. Development of a private park and beach
9. Road access and parking lot development for private residential community

It is the mission of the Idaho Department of Lands (IDL) to protect public trust values such as navigation, fish and wildlife habitat, aquatic life, recreation, aesthetic beauty & water quality Idaho Code §58-1301. Title to these lands is held in trust and is administered for the public benefit rather than for a specific beneficiary. IDL has an obligation to protect water quality and other public trust values.

Encroachments on navigable lakes are 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. Idaho Code §58-1301

Idaho Statute TITLE 58; PUBLIC LANDS, CHAPTER 13, NAVIGATIONAL ENCROACHMENTS
58-1301. ENCROACHMENT ON NAVIGABLE LAKES — LEGISLATIVE INTENT

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.

Selkirk Conservation Alliance et al. recommends denial of the Commercial Non-Navigational Encroachment Permit Application: L96S2798 (Joint application for permits USACOE, IDL, IDWR) June 14, 2023 on Lake Pend Oreille – Trestle Creek – overwater, shoreline & wetlands development for the following reasons;

- **The proposed encroachments will have long term, un-mitigatable negative effects on public trust values such as: fish and wildlife habitat, aquatic life, recreation, aesthetic beauty and water quality.**
- **There is no justification for and the proposed encroachments do not benefit the greater public and are solely for the use of a specific private beneficiary, members of the Idaho Club.**
- **The site contains wetlands that have been identified and mapped by the USFWS National Wetlands Inventory. Wetlands with a continuous surface connection to Waters of the US (WOTUS) are protected under the Clean Water Act (CWA) and subject to regulation under Section 404 of the CWA.**

- **The site is located within a mapped FEMA Flood Hazard Zone.**

The proposed encroachments will have negative effects on public trust values such as: fish, wildlife habitat and aquatic life

Lake Pend Oreille (LPOR) is a high quality fishery supported by Rainbow Trout (*Oncorhynchus mykiss*), Westslope Cutthroat Trout (species of concern in Idaho), Kokanee (*Oncorhynchus nerka*) and the ESA listed Bull Trout (*Salvelinus confluentus*). LPOR and its major tributaries have been designated as critical habitat under the Endangered Species Act (ESA) for Bull Trout (a species threatened with extinction) by the U. S. Fish & Wildlife Service (USFWS). A Critical Habitat designation identifies geographic areas that contain features *essential* for the conservation of endangered and threatened species. Trestle Creek has been identified as a primary spawning area for Bull Trout supplying around ~38% of the LPOR Bull Trout population (Pend Oreille Basin Bull Trout Redd Monitoring 2021 Annual Project Update). Bull Trout populations are declining drastically throughout the majority of their current range and the species is extinct from much of its historic range. LPOR is one of the only lakes in the nation that has a relatively stable population of these threatened native fish. Agencies and entities such as Avista, Trout Unlimited, Idaho Department of Fish & Game and others have invested millions into restoring spawning and rearing habitat for this threatened species within this important drainage. LPOR is a stronghold for this threatened species and very important centerpiece of recovery for the nation.

- The applicant has not provided any proposals for mitigating the effects of development and marina operations on spawning Bull Trout. Marina operations will include extensive boat traffic to and from the site daily during the operational season May-October. The primary spawning period for Bull Trout is mid-late September to early October. According to Exhibit A; Project Description Summary – Overall Construction, access to docks would be limited in October and May with full use of the docks and marina occurring June through September annually. Boat traffic and use of the 105 slip marina at the mouth of this critical Bull Trout spawning stream would negatively impact Bull Trout populations in LPOR.
- The site is on and within designated Critical Habitat and is primary spawning habitat for Bull Trout, a species protected as threatened under the ESA. The proposed development will likely negatively impact this species by rerouting a spawning stream, using pile driving during spawning, increasing boat traffic and angling on and near Trestle Creek, a vital spawning stream for Bull Trout. State and federal management plans call for the protection and conservation of these threatened species and the habitats they depend on for spawning and long-term survival. Approval of this Permit would be contrary to these mandates.
- Increased boat traffic at the mouth of Trestle Creek has the great potential to stir up bottom sediments negatively effecting water quality and fisheries, including Bull Trout, spawning and rearing habitat & decreasing fisheries populations in LPOR.
- Boat marinas, including existing marinas in LPOR have been documented to do extensive damage to lake beds with hundreds of thousands of pounds of trash accumulating under docks and piers over time. This trash negatively impacts Lake POR fisheries; aquatic life and water quality (see attached 2022 Bayview Marina Cleanup PPT).
- Boat marinas have also been documented to increase the potential for invasive aquatic species such as Quagga (*Dreissena rostriformis*) & Zebra mussels (*Dreissena polymorpha*), Eurasian watermilfoil (*Myriophyllum spicatum*), Common Reed Phragmites (*Phragmites*

australis), Flowering Rush (*Butomus umbellatus*) and other ecosystem devastating invasive species to be transported to and begin population of nearshore waters.

- The proposed development would have negative impacts on Bald Eagles (*Haliaeetus leucocephalus*) who are known to nest & roost in the shoreline cottonwoods. Bald & Golden Eagles are protected under the Bald and Golden Eagle Protection Act and the Migratory Bird Treaty Act.
- The site's winter mud flat is also used by eagles and waterfowl for feeding and loafing. The proposed development would negatively impact these important wintering areas.
- Docks, piers and pilings are an encroachment in lakes and rivers that can be detrimental to fish habitats and public angling opportunities creating optimal sites for non-native pike to prey on natives.
- Shoreline modifications such as docks and breakwaters tend to benefit species such as smallmouth bass and northern pike, which have become widespread in the lake and are detrimental to Bull Trout and other native species recovery efforts.
- Trestle Creek and the mouth, shoreline and wetland habitats along LPOR are extremely important locally and regionally for fisheries and wildlife including; Bull Trout, Kokanee, several warm water fish species, deer, raptors (including bald eagles), shorebirds, songbirds, upland birds, water birds and waterfowl, moose, elk, deer, black bear and mountain lions also utilize the area. Removal and fill of the forested wetland and shoreline habitats on site will negatively impact native fish and wildlife.

The proposed encroachments will have negative effects on public trust values such as: Recreation

The proposed development property is located on the north eastern shoreline of Lake POR and borders both the North Branch of Trestle Creek and LPOR. The property is currently undeveloped and contains freshwater forested shrub wetlands and dense shrub and forest riparian vegetation with meandering freshwater inlets (see attached satellite images). This site is used by anglers, kayakers/canoes, wildlife watchers, bird watchers and other members of the public year round.

- The proposed development would fill in and excavate much of the complex habitat on site and necessary for wildlife to utilize and occupy the area.
- The proposed development and operations at the mouth of Trestle Creek on LPOR including noise, human use and other activity has the potential to displace wildlife, pollute the site, reduce water quality and would undoubtedly have negative effects on recreation and the public's ability to enjoy this scenic area.

The proposed encroachments will have negative effects on public trust values such as: Aesthetic Beauty

This natural area is one of the only undeveloped wetland sites on the upper northeastern arm of LPOR. As one can see from satellite images (attached) the area southeast of the property is

completely developed with three large marina complexes with hundreds of moorings for recreational watercraft. The proposed development encompasses a portion of lakeshore property which abuts the Pend Oreille Scenic Byway, HWY 200. This highway is a national scenic byway recognized for its natural views. In order to be recognized by the United States Department of Transportation as a national scenic byway the road must possess one or more of six "intrinsic qualities": archeological, cultural, historic, natural, recreational, and scenic.

- The proposed project would negatively affect the aesthetic beauty and the scenic and intrinsic qualities of the Pend Oreille Scenic Byway, HWY 200 via increased traffic from development and annual operational activities, loss of scenic view sheds, increased noise pollution, negative effects to area fish and wildlife habitats and populations.
- Negative effects to aesthetic beauty, scenic views and wildlife populations will decrease tourism and the economic prosperity of Bonner County.
- The proposed project would increase urban sprawl on LPOR with the development of another marina complex and additional waterfront housing on the shoreline of the lake. As stated, there are three large marinas just south of this proposed encroachment project site.

**The proposed encroachments will have negative effects on public trust values such as:
Water quality**

The nearshore waters of LPOR are TMDL listed for nutrients. Shoreline development associated with waterfronts are known to increase nutrient inputs to nearby lake and river systems during construction and into perpetuity as shoreline native riparian vegetation is removed and ornamental lawns and landscaping take its place. Significant land changes or development proposals for the Trestle Creek drainage must be considered based on their ability to meet Idaho Water Quality Standards.

- Decreases in nutrient uptake coupled with increased application of nutrients (fertilizers) being applied by numerous new property owners has the potential to negatively impact LPOR water quality.
- Storm-water management concerns - conceptual site maps contain plans to develop numerous paved areas on site, parking lots, access road, large fertilized lawn areas/private park. These uses pose a great threat to water quality and the site must have a Storm-water management plan and system that contains runoff from these areas and prevents further water quality contamination of LPOR.
- As discussed previously, boat marinas, including existing marinas in LPOR have been documented to do extensive damage to lake beds with hundreds of thousands of pounds of trash accumulating under docks and piers over time. This trash negatively impacts LPOR fisheries, aquatic life and water quality.
- Again, as also previously mentioned, increased boat traffic at the mouth of Trestle Creek has the great potential to pollute nearshore waters with gas and oil discharges from overwater recreational vehicles and stir up bottom sediments increasing water temperature and turbidity and negatively effecting LPOR water quality.

There is no justification for and the proposed encroachments do not benefit the greater public and are solely for the use of a specific private beneficiary, members of the Idaho Club.

Appendix A – Project Description Summary

Paragraph two of the Project Description Summary states;

*“The project involves the redevelopment of a previous privately owned recreation vehicle park, camp site and marina **into a private residential community development and private boat marina for the use by residents and members of the Idaho Club.**”*

- The detrimental effects to public trust values highlighted in these comments will likely far exceed benefits gained by a small private beneficiary from the development of this important ecological site.

The site contains wetlands that have been identified and mapped by the USFWS National Wetlands Inventory. Wetlands with a continuous surface connection to Waters of the US (WOTUS) are protected under the Clean Water Act (CWA) and subject to regulation under Section 404 of the CWA.

Wetland ecosystems are among the most biologically diverse and productive ecosystems on the planet. Wetlands provide habitat for thousands of species of aquatic and terrestrial plants and animals (including many rare and endangered species). In addition, wetlands provide many ecosystem services to the public including flood control and protection and shoreline erosion control. In Idaho, wetlands make up only one to two percent of the land mass and yet they are critical for the survival of 80 to 90 percent of the state’s species. Currently only 44% of the original wetlands in the state of Idaho remain.

- The proposed project would see much of the wetlands and dense forested areas on site filled in and removed.

The site is located within a mapped FEMA Flood Hazard Zone – A

FEMA Flood Hazard Zone A is a high risk flood zone and building in this zone would require federal, state and local permitting. Because of the high probability of damage from flooding, Bonner County Building Code requires all buildings and certain other structures located within this zone are elevated/built one foot above the 100 year base flood elevation.

- Page 3 of the permit application question number 25 asks; IS PROJECT LOCATED IN A MAPPED FLOODWAY? The applicant falsely answers NO to this important question. Development at this site will require a Bonner County Floodplain Development Permit.

Recommended alternatives

It is the mission of the IDL to protect public trust values (navigation, fish and wildlife habitat, aquatic life, recreation, aesthetic beauty & water quality) Idaho Code §58-1301. *Title to these lands is held in trust and is administered for the public benefit rather than for a specific beneficiary.*

IDL is obligated to place public trust values above the economic benefit of a particular individual or small minority of community members, that is, the greater good of the public must outweigh the economic benefit of the few.

For the above stated justifications, Selkirk Conservation Alliance et al. Recommends denial of Commercial Non-Navigational Encroachment Permit Application: L96S2798 (Joint application for permits USACOE, IDL, IDWR) June 14, 2023.

We truly cannot afford to develop areas like the Trestle Creek drainage that still exist around LPOR with critical functioning stream and wetland ecosystems. It is imperative that we preserve these areas at all costs for the ecosystem services that we receive far outweigh the economic benefits derived from yet another private maritime operation on the shorelines of our beloved LPOR.

Selkirk Conservation Alliance (SCA) would like to thank the Idaho Department of Lands, USACOE & IDWR for working collaboratively with the community members of Bonner County and giving thoughtful, considerate attention to the comments of the public. Land use decisions made by you regarding this shoreline property and all properties within the state of Idaho and Bonner County have a direct effect on the health, safety and general welfare of the people of our region and the health of our lakes, rivers, streams, wetlands and native wildlife populations.

The burden and responsibility faced at this time by IDL (and all applicable management agencies) is to ensure that growth and encroachments on Lake POR occur in a responsible way that preserves the natural environment and accounts for the environmentally sensitive areas (streams, wetlands and wildlife corridors) of the Trestle Creek drainage.

Selkirk Conservation Alliance is one of north Idaho's oldest conservation organizations and has been working to protect and conserve the lower Selkirk Mountain ecosystem for the past 36 years.

Respectfully submitted,

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Attachments;

1. Pend Oreille Basin Bull Trout Redd Monitoring 2021 Annual Project Update
2. USFWS Wetlands Inventory map – Trestle Creek mouth/proposed project area
3. Satellite image Trestle Creek drainage - Wetlands
4. Satellite image marinas and development south of Trestle creek drainage
5. 2022 Bayview Marina cleanup PowerPoint

CC
Advocates for the West
Bonner County
Center for Biological Diversity
Idaho Conservation League
IDEQ
IDFG
Kalispel Tribe
Lakes Commission
Panhandle Chapter Trout Unlimited
Pend Oreille Master Naturalists