

**DIRECTOR'S OFFICE**  
300 N 6th Street Suite 103  
PO Box 83720  
Boise ID 83720-0050  
Phone (208) 334-0200  
Fax (208) 334-5342



**STATE BOARD OF LAND COMMISSIONERS**  
*Brad Little, Governor*  
*Lawrence E. Denney, Secretary of State*  
*Lawrence G. Wasden, Attorney General*  
*Brandon D Woolf, State Controller*  
*Sherri Ybarra, Sup't of Public Instruction*

June 23, 2021

John Condon  
North Idaho Maritime  
4020 N. Huetter Road  
Coeur d'Alene, Idaho 83814

SUBJECT: State of Idaho Lease B220168

Dear Mr. Condon,

The Idaho Department of Lands (IDL) has completed our evaluation of your lease application for use of Cougar Bay. Please see the attached Lease Analysis. IDL has decided to approve the 5-acre winter dock storage but not the 2-acre year-round work area. Yearly rent is \$1,000 per acre per year for a total of \$5,000 per year.

As a result of this decision, please ensure that all construction materials, equipment, and associated encroachments not needed for winter dock storage are removed by August 1, 2021. In addition, payment for the last 12 years of commercial activity in Cougar Bay is required. The total payment for this is \$60,000 (12 years, 5 acres at \$1,000 per acre). Please provide payment with the signed lease.

We have enclosed one copy of your lease for signature. We request when you sign the lease:

- If the lease is in the name of a company or corporation, please have your President and/or Secretary sign as lessee(s). If applicable, please write the office you hold next to your name (e.g., John Doe, President, etc.).

Please have **all** signatures acknowledged by a Notary Public and return the lease, attachments, proof of insurance noted under Term 4.f, and \$60,000 to this office by **August 1, 2021** in the enclosed, self-addressed envelope.

If these items are not received by August 1, 2021, IDL may seek remedies as described in IDAPA 20.03.17.060.05 (Rules Governing Leases on State-Owned Submerged Lands and Formerly Submerged Lands). These remedies include civil penalties, removal of improvements, and other actions as deemed appropriate.

After the lease has been signed by State Officials, a certified copy will be returned to you for your files.

Please contact me at 208-334-0200 if you have any questions concerning your lease.



John Condon  
June 23, 2021  
Page 2



Eric Wilson  
Resource Protection and Assistance Bureau Chief  
Idaho Department of Lands

Enclosure(s)

- 1) Return Envelope
- 2) Lease
- 3) Lease Analysis

cc: Bureau File  
Area File



# NIM Lease Analysis

**MINERALS, PUBLIC TRUST, OIL AND GAS DIVISION**  
**RESOURCE PROTECTION & ASSISTANCE BUREAU**  
300 N. 6th Street Suite 103  
PO Box 83720  
Boise, ID 83720-0050  
Phone (208) 334-0200  
Fax (208) 334-3698



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## Memorandum

**Date:** June 11, 2021

**To:** Dustin T. Miller, Director

**From:** Eric Wilson, Resource Protection and Assistance Bureau Chief

### Question:

Shall the Idaho Department of Lands ("IDL") approve North Idaho Maritime's application for Submerged Land Lease B220168?

### I.

#### Background

##### A. Procedural Background

On December 11, 2020, IDL received an application for a submerged land lease from North Idaho Maritime LLC (NIM). On January 25, 2021, IDL received the final update to the application. (Complete application attached hereto as **Exhibit 1** and incorporated herein by reference). In the final application, NIM seeks to lease five acres in Cougar Bay on Lake Coeur d'Alene for dock storage and construction.

Previously, NIM filed an Application for Encroachment Permit L-95-S-5884<sup>1</sup> for winter dock storage and a construction area in Cougar Bay. On December 3, 2020, IDL Director Dustin Miller issued a Final Order denying NIM's encroachment permit application for this proposal. The Final Order adopted the Preliminary Order's Factual and Procedural Background and Conclusions of Law dated November 2, 2020 (L-95-S-5884 Order). (Both Orders are attached hereto as **Exhibit 2** and incorporated herein by reference). The lack of littoral rights to support the encroachment permit application was cited as a reason for denying the encroachment permit (L-95-S-5884 Order, Conclusions of Law B on pgs. 17-19). The Preliminary Order also expressed concurrence with IDL's analysis and conclusions, and stated, "The Hearing Coordinator would encourage IDL to evaluate any submerged lands lease application with the same or similar scope of the current encroachment permit Application, the same way IDL evaluated the encroachment permit Application." (L-95-S-5884 Order, Conclusions of Law C.4 on p. 21).

##### B. Winter Dock Storage Generally

Winter dock storage is an issue on many lakes. A review of professional recommendations for dock storage in several states and Canadian provinces is found as **Exhibit 3** hereto. In general, the

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<sup>1</sup> Encroachment permit applications are processed pursuant to the Lake Protection Act, Title 58, Chapter 13, Idaho Code and the related rules found at IDAPA 20.03.04.000 *et seq.*



recommendation for floating or non-permanent pier docks is removal during the winter months, if possible, to prevent damage from lowered lake levels, ice build-up, and the effects of wind or water currents. The combination of wind or water currents with ice or rocks on the lake bed or shore is particularly damaging. When removal is not possible, the recommendation is to remove all ladders, ramps, and other peripheral attachments and let the dock float freely in a protected cove while tied loosely to a secure tree or rock. Anchor chains should also be given some slack so the dock can float more freely.

Many docks in Idaho still use cedar logs for flotation due to the ready supply from local timberlands. Winter removal of cedar log float docks from the water is simply not feasible. Docks with more modern flotation such as encased foam or poly-floats are lighter and might be easier to remove for winter storage, but dock construction in Idaho rarely uses segmented docks that can easily be disassembled and removed by hand or with equipment. Where sandy beaches are present, like many locations around Priest Lake, Idaho, dock owners will often drag their floating dock partially up on the beach to minimize ice and wind effects. Lakes with more rocky shorelines such as Pend Oreille, Coeur d'Alene, and Hayden do not provide many options for this type of winter dock removal. Several marine contractors on these lakes, including NIM, offer a service to collect docks in the fall, tow them to a sheltered bay, and store them for the winter. In the spring the docks are towed back and reinstalled. Northern Idaho appears to be the only place where this is a common practice.

### **C. Cougar Bay History – Log and Dock Storage**

Cougar Bay was used for decades as a place to store logs that were waiting to be milled at a number of nearby lumber mills. Log storage ceased after 2008 when the last lumber mill closed down (**Exhibit 4**). Piling placed throughout the bay continue to restrict navigation, as does the shallow water depth and numerous sunken logs. Dock storage started as a minor commercial use in the middle of Cougar Bay. The evolution of dock storage is shown in **Exhibit 5** via eleven (11) aerial images from 1998 through 2018. As you can see, dock storage is now the main commercial use of the middle of Cougar Bay. Two commercial marinas also remain in the northeast corner of Cougar Bay near the start of the Spokane River segment of Lake Coeur d'Alene.

Winter dock storage in the location proposed by NIM is first seen in the April 2009 photo of **Exhibit 5**. This dock storage location grew to the northwest/southeast trending feature still used by NIM. As stated by NIM, they have been using this area to store docks for 12 to 15 years (L-95-S-5884 Order, Factual and Procedural Background E.9 on p. 10). IDL issued a notice of violation to NIM in 2020 for the unpermitted dock storage in Cougar Bay. NIM then submitted the application for L-95-S-5884 (**Exhibit 6**) which was denied in December 2020.

A prior encroachment permit application filed by North Idaho Maritime and Murphy Marine Construction in a different location in Cougar Bay was denied by IDL in 2008 (**Exhibit 7**). Much of the testimony from the public hearing regarding that application supported the concept of winter dock storage in Cougar Bay if it was done in a manner that minimized potential impacts to navigation. An application from Murphy Marine Construction for winter dock storage in Cougar Bay was approved in 2011 due in part to hearing testimony that demonstrated the need for this storage (**Exhibit 8**). Some public testimony at the 2020 hearing on NIM's application for Permit L-95-S-5884 also demonstrated the



need for winter dock storage, and comments submitted by IDL supported the granting of an encroachment permit for winter dock storage.

## II.

### Analysis of NIM Lease Application

At the outset, I want to emphasize that in consideration of NIM's lease application, and in drafting this recommendation, IDL has reviewed the entire record of the proceedings regarding Application for Encroachment permit L-95-S-5884, and that record is incorporated by reference herein. In addition, IDL has received and reviewed numerous comments received since issuance of the Final Order in the encroachment permit proceeding and has taken those comments into consideration regarding NIM's lease application. Specific information about the comments provided during the encroachment permit proceeding, and received since that proceeding, is set forth below.

The NIM lease application is **Exhibit 1** hereto. It proposes an overall storage area of approximately 5 acres, of which 2 acres would be a year-round work and storage area. Approximately 3 acres would then be for winter dock storage (**Exhibit 1**, page 3). NIM proposes several improvements to the piling and booms to help secure the stored materials; lighting to improve visibility; and cameras to enhance security.

#### A. Pertinent Legal Principles

At statehood, Idaho took title to the beds and banks of navigable waters below the ordinary high water mark, pursuant to the equal footing doctrine. However,

Idaho obtained that title subject to a public trust, which "preserves the public's right of use in such land, and, as a result, restricts the state's ability to alienate any of its public trust land." *Mesenbrink v. Hosterman*, 147 Idaho 408, 410, 210 P.3d 516, 518 (2009) (quoting *Idaho Forest Indus., [Inc. v. Hayden Lake Watershed Improvement Dist.]*, 112 Idaho 512, 516, 733 P.2d 733, 737 (1987)) (internal quotation marks omitted and bracketed material added). The PTD traditionally protected the public's right to navigation, but has since expanded to protect fish and wildlife habitation, recreation, aesthetic beauty, and water quality. *Idaho Forest Indus.*, 112 Idaho at 516, 733 P.2d at 737.

*Newton v. MJK/BJK, LLC*, 167 Idaho 236, 242, 469 P.3d 23, 29 (2020). See also Title 58, Chapter 12, Idaho Code.

Because the state owns the bed and banks of Lake Coeur d'Alene below the OHWM, including the area of Cougar Bay that NIM is using for dock storage, IDL has authority to issue a submerged lands lease. When considering whether to issue a submerged lands lease, and the terms and conditions that should be included with any such lease, IDL applies the Rules Governing Leases on State-Owned Submerged Lands and Formerly Submerged Lands, IDAPA 20.03.17.000 *et seq.* ("Submerged Leasing Rules"). IDL further relies on guidance from the Idaho Supreme Court in the case of *Kootenai Env'l Alliance v. Panhandle Yacht Club, Inc.*, 105 Idaho 622, 626, 671 P.2d 1085, 1089 (1983). (KEA). In that case, the Court used a two-part test to determine the validity of a permit, lease or other encumbrance upon public trust property: "One, is the grant in aid of navigation, commerce, or other trust purposes, and



two, does it substantially impair the public interest in the lands and waters remaining?” (*KEA*, citing *Illinois C.R. Co. v. Illinois*, 146 U.S. 387, 460 (1892)).

The proposed uses in the lease application will be evaluated using the two-part test enunciated in *KEA*, with the second part of the test applied using the public trust doctrine values. IDL has evaluated each proposed use (winter dock storage and year-round storage/work area) separately.

## **B. Winter Dock Storage Area**

NIM’s proposed winter dock storage would be a commercial use of a navigable waterway – Lake Coeur d’Alene. As documented in the hearing process for L-95-S-5884 and prior applications, a need for winter dock storage has been established. The prior discussion on winter dock storage confirms the many comments IDL has received about the need for winter dock storage. Therefore, winter dock storage does appear to meet the public trust purposes of navigation and/or commerce, and satisfies the first criteria outlined in *KEA*.

The issue of impairment of the public interest is more difficult to judge, but on balance winter dock storage does not appear to present a substantial impairment to the public trust values. IDL notes that piling and booms have existed in this area for several decades, so in that respect this is not proposing an expansion of existing improvements in Cougar Bay. As to the specific public trust doctrine factors:

### **1. Navigation**

On the one hand, having a location to safely store docks (which are navigational encroachments) during the winter months enhances navigation. However, some members of the public did express concern about the effect of the docks, pilings, etc. on their ability to navigate through the waters of Cougar Bay.

The dock storage occurs primarily from October to May as described in the application for L-95-S-5884. Boat use during this time is much reduced from summertime levels, so the overall impact on public navigation is small. The storage area is beyond the line of navigation (**Exhibit 2**, L-95-S-5884 Order, Conclusions of Law B.3 on p. 19), and the images in **Exhibits 5** and **6** indicate sufficient room to easily navigate between the storage area and the north shore of Cougar Bay. Cougar Bay is a no-wake zone as designated by Kootenai County, so it does not receive the level of motorboat use as does most of the lake. Nonmotorized boaters could easily avoid the proposed storage area as it would only occupy a maximum of five acres out of approximately 400 acres within Cougar Bay. This is far less area than the reported 104 acres of log storage formerly present (**Exhibit 2**, L-95-S-5884 Order, Factual and Procedural Background E.8 on p. 10).

As a result, the proposed winter dock storage does not appear to substantially impair navigation in Cougar Bay. In order to reduce potential impacts to navigation, IDL has included terms in the proposed lease to limit dock storage to the period of October 1 to May 31 of the succeeding year, thus avoiding the presence of dock storage during the busier boating season. In addition, IDL is requiring that NIM ensure that any docks that are stored are secured to piling; that a lighting plan be submitted and implemented; and that a maintenance plan be submitted and implemented, including at least two inspections during the storage season.



## **2. Fish and Wildlife**

Some commenters expressed concern about the effect of dock storage on fish and wildlife habitat, including the potential introduction of noxious weeds or invasive species. The Idaho Department of Fish and Game (IDFG) provided comment during the encroachment permit proceeding, and recommended that in order to avoid creating a favorable habitat for smallmouth bass and northern pike, both of which prey on native cutthroat trout, the overall footprint of the encroachments be kept as small as possible. IDFG recommended a small footprint for purposes of protecting waterfowl as well. IDL has addressed those concerns in the proposed submerged lands lease by limiting the acreage of the storage area to no more than five acres. IDL is also requiring that NIM consult with IDFG to ensure that the storage area is not presenting problems for waterfowl. (See Lease, section 3.V).

As to noxious weeds and invasive species, in the encroachment permit proceeding, the Idaho State Department of Agriculture (ISDA) noted that Cougar Bay is a relatively new Eurasian watermilfoil management area. IDL has addressed the issue of noxious weeds and invasive species in the proposed submerged lands lease by requiring that NIM comply with noxious weeds and invasive species laws (see Lease, section 7.C), and by requiring that NIM conduct inspections and otherwise insure that it is not introducing quagga or zebra mussels into Lake Coeur d'Alene. (See Lease, section 3.N).

## **3. Water Quality**

The effect of winter dock storage on water quality was understandably a major concern of many commenters. During the encroachment permit proceeding, the Idaho Department of Environmental Quality ("DEQ") recommended the inclusion of several terms to protect water quality. Those terms have been included in the proposed lease. (See Lease, sections 3.J, L and P).

Submerged land leases have a term of 10 years (IDAPA 20.03.17.025.07), so the issuance of a lease for winter dock storage is not a permanent impact on Lake Coeur d'Alene. In addition, insurance and other lease requirements give IDL the ability to regulate the uses occurring under the lease. If changes are needed to the lease terms, then those changes can be implemented upon the issuing of a new lease following lease expiration, or if necessary prior to expiration of the lease, may be implemented via lease amendment.

## **4. Recreation**

The primary recreational uses of Cougar Bay are boating (both motorized and non-motorized), fishing, and waterfowl hunting. The measures that IDL is requiring to address potential impacts to those uses are discussed above, in subsections 1 – 3. In addition, IDL notes that recreation opportunities will be enhanced by providing a safe place for dock owners to store their docks for the winter, which will not only enhance recreational opportunities for those owners, but for others by minimizing the amount of debris in the lake due to dock breakage, etc.

## **5. Aesthetics**

Several commenters, particularly those who live on or near Cougar Bay (including the area overlooking Cougar Bay) expressed strong concern about the impact of dock storage on the aesthetic component of the public trust doctrine. Because aesthetic values are often subjective, it is sometimes difficult to



factor those values into a public trust doctrine evaluation. IDL understands the strong viewpoint of those who feel that their view and/or aesthetic enjoyment of Cougar Bay will be adversely impacted by winter dock storage. However, as noted above, the presence of commercial activity in Cougar Bay is not new, and existed for decades in the form of log storage. In addition, winter dock storage plays an important navigational role. Many of the requirements described above will serve to minimize aesthetic impacts by limiting the time period for storage, requiring containment, etc. Moreover, because IDL has concluded that a year-round storage and work area is not appropriate, and is not included in the lease, aesthetic impacts will be further minimized.

When the navigational and commercial justification for winter dock storage is evaluated in light of the public trust doctrine factors, IDL concludes and recommends that NIM be offered a submerged lands lease for winter dock storage, on the terms and conditions set forth in the lease.

### **C. Year-Round Construction Temporary Storage Area**

IDL reaches a different conclusion and recommendation regarding NIM's proposed year-round work and storage area, which would also be a commercial use of the navigable waterways. A similar request was included in the 2008 application for L-95-S-5303 with Murphy Marine Construction. During the comment period and hearing regarding that application, several public commenters objected to the year-round storage of boat garages, float homes and docks, and a work area for construction and demolition of these structures (**Exhibit 7**).

Those concerns from 2008 appear to be well-founded, and equally applicable today. Comments received by IDL for L-95-S-5884 repeated these same concerns and documented that the year-round storage area has continued to be used for barges, docks, floating structures, floating debris, and piling storage (L-95-S-5884 Hearing Record Items 26, 37, 42, and 94; **Exhibits 5 and 9**). Some of the docks and structures are described as half-sunk. The words "garbage", "junk", and "debris" are used in many of the letters describing the existing materials in the work area. As an example, one item seen in the L-95-S-5884 Hearing Record photos is the infamous "Hooligan Island" that was placed on the lake in 2017 and used for one season as an entertainment "vessel". It has not been used since that time yet continues to be stored by NIM in Cougar Bay.

During the encroachment permit hearing, and on behalf of NIM, John Condon stated that Cougar Bay is a logical place for year-round storage due to the floating debris that often ends up in Cougar Bay, and that NIM provides a service by removing these hazards from the lake (**Exhibit 2**, L-95-S-5884 Order, Factual and Procedural Background E.5 on pgs. 8 and 9). No documentation on the volume or timeliness of debris removal was provided, so it is impossible for IDL to evaluate these claims. Removal of debris from the lake does not occur in Cougar Bay due to NIM's lack of littoral access and infrastructure there. Removal is anticipated to occur from NIM's newly permitted Wolf Lodge Bay property (**Exhibit 2**, L-95-S-5884 Order, Factual and Procedural Background E.6 on p. 9).

IDL staff did not find a significant benefit to the public from the year-round work and storage area component of the L-95-S-5884 application, and recommended denial of the year-round work area (**Exhibit 2**, L-95-S-5884 Order, Factual and Procedural Background E.17 and 18 on p. 13). IDL continues to support that conclusion. As a result, this does not appear to meet the public trust purposes as outlined in *KEA* and *Newton*.



As documented in the hearing record for L-95-S-5884, the proposed work area may be useful to NIM, but it also substantially impairs the public interest in Cougar Bay (L-95-S-5884 Hearing Record Items 26, 37, 42, and 94; **Exhibits 5 and 9**). Mr. Condon stated that NIM had to change its business model when the lumber mills shut down in 2008 (L-95-S-5884 Order, Factual and Procedural Background E.9 on p. 10), but a business model that is inconsistent with state regulation of navigable lakes is a flawed business model. NIM's admitted use of this area for year-round work goes back at least 12 years, and the Lake Encroachment and Submerged Lands Leasing rules for this type of commercial use have not changed substantially over those 12 years. The 2008 Final Order that denied L-95-S-5303 (**Exhibit 7**) clearly stated in part that all unauthorized encroachments, structures, and debris were to be removed from Cougar Bay. The images in **Exhibit 5** suggest that NIM has instead expanded the year-round footprint of its usage, structures, and debris in Cougar Bay. While the owner of NIM did not know the extent of equipment storage in Cougar Bay (L-95-S-5884 Order, Factual and Procedural Background E.19 on p. 13), NIM is the applicant and continues to store barges, piling and other materials in Cougar Bay without a submerged lands lease.

If NIM is proposing to remove debris from the lake at its Wolf Lodge Bay location (L-95-S-5884 Order, Factual and Procedural Background E.6 on p. 9), then a year-round storage and work area closer to or in Wolf Lodge Bay seems more appropriate and convenient. If the Wolf Lodge Bay location is too shallow to currently permit this activity (L-95-S-5884 Order, Factual and Procedural Background E.7 on p. 9), then NIM may need to propose a modification to that permit or pursue a different littoral location with sufficient water depths for a year-round storage and work area.

### **III.**

#### **Conclusions**

1. Approve the application in part to lease five acres for winter dock storage with sufficient conditions to ensure safe operation of the storage area and as otherwise determined by IDL staff.
2. Deny the year-round storage and work area and require all stored materials and debris to be removed from Cougar Bay by August 1, 2021.
3. Require back payment of submerged lease rental from 2009 through 2020 at the same rate as the offered lease. Payment must be received by August 1, 2021.

#### **Exhibits:**

Exhibit 1	Application for Submerged Lands Lease B220168
Exhibit 2	Preliminary and Final Orders regarding Application for Encroachment Permit L-95-S-5884
Exhibit 3	References for Winter Dock Storage
Exhibit 4	2008 News Article on Lumber Mill Closure
Exhibit 5	Aerial Photos from 1998 through 2018
Exhibit 6	Encroachment Application for L-95-S-5884



- Exhibit 7 Preliminary and Final Orders regarding Application for Encroachment Permit L-95-S-5303
- Exhibit 8 Preliminary and Final Orders regarding Application for Encroachment Permit L-95-S-3615D
- Exhibit 9 2021\_01\_05-William Stach-Email and Photos



DAID  
ck#26816  
\$150.00 12/11/2020



## Application for Use Submerged Land Lease

For Area Office Use Only  
Instrument No.: \_\_\_\_\_

**Instructions:** This form is used by persons seeking to lease state owned submerged and formerly submerged lands pursuant to IDAPA 20.03.17. Please complete this form and submit it, along with the non-refundable filing fee of \$150 and required attachments to your local Idaho Department of Lands Supervisory Area Office.

### Section 1: Applicant Information

Full legal name of applicant: North Idaho Maritime LLC

Legal status:

- ☐ Individual
 ☐ Trust or non-profit (attach Affidavit of Existence)  
☐ State government
 ☒ Business (attach Secretary of State Certificate of Existence)  
☐ City, County, or Federal government
 ☐ Other:

Name of primary contact: John Condon

Mailing address: 4020 N Huetter Rd

City: Coeur d' Alene

State: ID

Zip: 83814

Contact phone number: (208)664-8215

Phone number type: ☒ Work ☐ Home ☐ Cell

Email address: john@northidahomaritime.com

Do you currently hold a lease with the Idaho Department of Lands? ☐ No ☒ Yes  
If yes, provide lease number(s): B220160

Are you require you to obtain worker compensation insurance? ☐ No ☒ Yes

Are there multiple applicants? ☒ No ☐ Yes  
If yes, please complete and attach Attachment A – Multiple Applicants.

### Section 2: Description of Associated Upland Property

Facility name: John and Gaila Condon Living Trust

Physical Address: 6719 S Highway 97

City: Coeur d' Alene

State: ID

Zip: 83814

County: Kootenai

AIN/Parcel ID: 111552

Government Lot: 7

Section: 06

Township: 49N

Range: 2w

Body of water: Coeur d' Alene Lake

### Section 3: Encroachment Description

Encroachment or Stream Channel Alteration Permit Number:  
Please, attach a copy of the recorded permit.

Identify all encroachments/uses to be under lease:

- ☐ Single-family dock
 ☐ Two-family dock
 ☐ Community dock  
☐ Commercial marina
 ☐ Store
 ☐ Boat ramp  
☐ Restaurant
 ☐ Swim area
 ☐ Fill  
☒ Other(s): Storage/work area

### Section 4: Discounts

If a commercial marina, you may qualify for a discount on your annual lease payment. Select one of the following that best describes the marina facilities:

- ☐ 25% discount: All marina facilities are made available to the public on a first come, first served basis.  
☐ 50% discount: All marina facilities are made available to the public on a first come, first served basis AND fifty percent (50%) or more of the boat slips are set aside for day use only.  
☒ None of the above.

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IDLRPP0004 (11/16)





# Application for Use Submerged Land Lease

## Section 5: Attachments

Please attach all of the following required attachments, as applicable:

- ☒ \$150 nonrefundable filing fee
- ☐ Encroachment or Stream Channel Alteration Permit
- ☒ A scale drawing of the proposed lease area with plans detailing all intended improvements, including reference to the nearest known property corner(s) (Only required if not included in encroachment/stream channel alteration permit)
- ☒ Secretary of State Certificate of Existence (Only required if applicant is a business)
- ☐ Affidavit of Existence (Only required if applicant is a trust or non-profit)
- ☐ Attachment A – Multiple Applicants (Only required if multiple applicants)

## Section 6: Affidavit

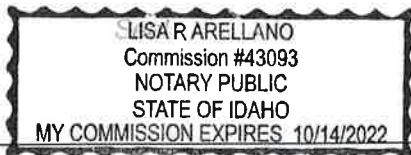
I hereby certify that I am the applicant or authorized representative of the applicant and that the information contained in this application is true and correct to the best of my knowledge and further acknowledge that falsification or misrepresentation of any information contained herein, or provided herewith, will be grounds for denial of the application.

  
Applicant Signature  
12/11/20  
Date

John Condon  
Applicant Name  
  
Applicant Title (if applicable)

State of Kootenai )  
County of Idaho ) ss.

On this 11 day of December, in the year 2020, personally appeared John Condon, known or identified to me to be the person whose name is subscribed to the within instrument, and acknowledged to me that he/she/they executed the same.



  
Notary Public  
My Commission Expires: 10/14/22

# RECEIVED

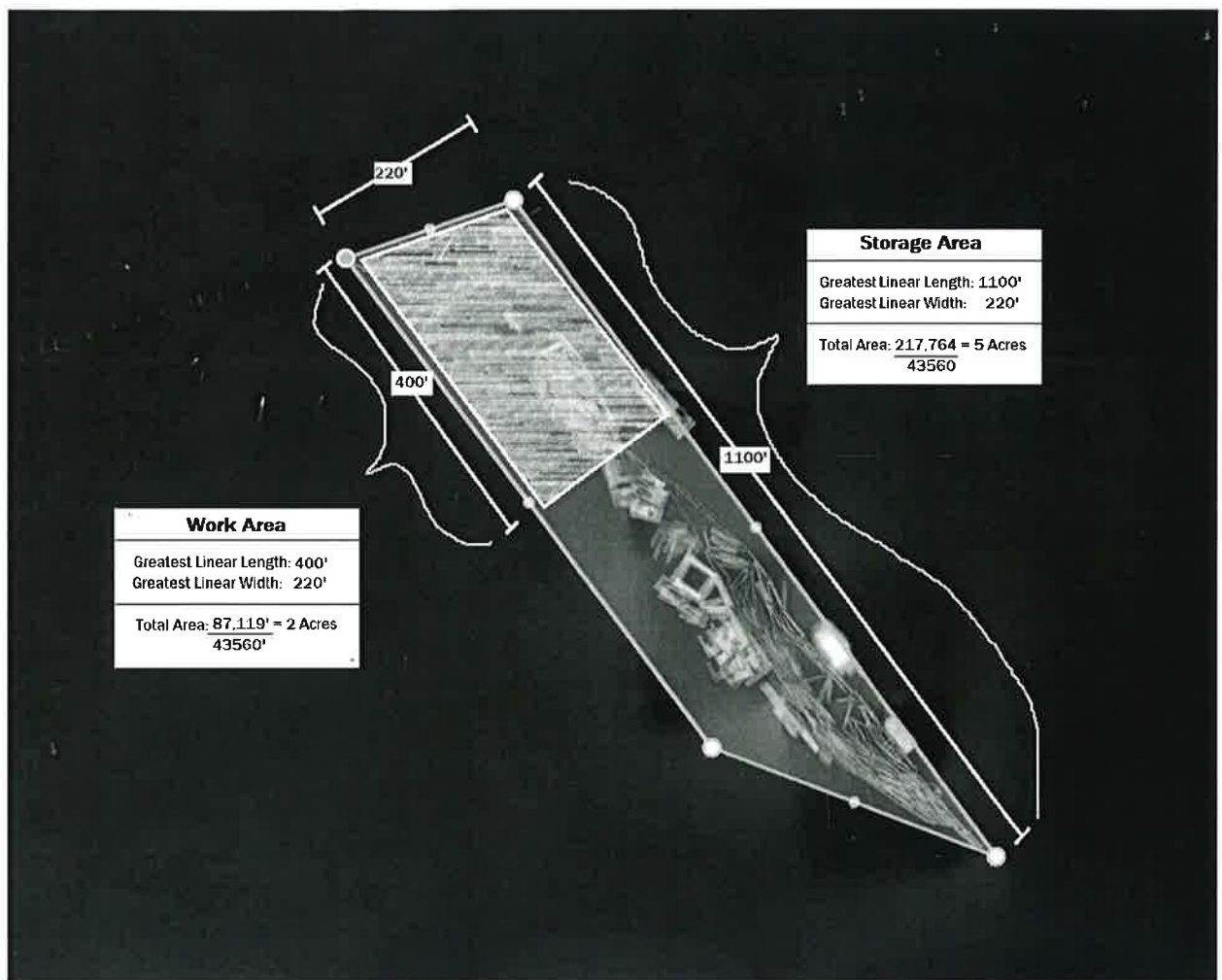
DEC 11 2020



North Idaho Maritime

Encroachment Permit Application No. L-95-S-5884

- Plan to improve existing infrastructure:
  - Replace rotten or broken existing piling as needed
  - Replace inadequate existing boom sticks as needed
  - Replace inadequate existing boom stick chains as needed
  - Install flashing solar lights at each end and around perimeter of storage area.
    - Lights will be up to US Coast Guard and Kootenai Sheriff code
  - Install cameras to help regulate storage area



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DEC 11 2020

Idaho Dept. of Lands  
Africa Supervisory Area





# STATE OF IDAHO

Lawrence Denney | Secretary of State  
**Business Office**

450 North 4th Street  
PO Box 83720  
Boise, ID 83720

December 10, 2020

**Request Type: Certificate of Existence/Filing**

Request #: 0004097208

Receipt #: 000417051

Issuance Date: 12/10/2020

Copies Requested: 0

**Regarding: NORTH IDAHO MARITIME LLC**

Filing Type: Limited Liability Company (D)

Formation/Qualification Date: 11/16/2015

Status: Active-Existing

Duration Term: Perpetual

File #: 481630

Formation Locale: IDAHO

Inactive Date:

## Certificate of Existence

I, Lawrence Denney, Secretary of State of the State of Idaho, do hereby certify that effective as of the issuance date noted above

### **NORTH IDAHO MARITIME LLC**

is a Limited Liability Company duly formed under the law of this State with a date of incorporation and duration as given above.

Lawrence Denney

**Idaho Secretary of State**

Processed By: Business Division

**Verification #: 010239523**

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**DEC 11 2020**

**Idaho Dept. of Lands  
Mica Supervisory Area**



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DEC 11 2020

Idaho Dept. of Lands  
Mica Supervisory Area

Submerged Land Lease

North Idaho  
Maritime LLC  
check # 26816  
12/11/2020 \$150

Based upon the foregoing findings of fact and conclusions of law, outlined in the preliminary order of Encroachment Permit Application No. L-95-S-5884 by Michelle Anderson, and adopted and made final by Director Dustin T. Miller, North Idaho Maritime and Mr. Condon are following the directive set forth to act diligently in securing a submerged lands lease for a 5 acre sector of Cougar Bay.

North Idaho Maritime

4020 N Huetter Rd

Coeur d' Alene, ID 83814

(208) 664-8215



## Exhibit 2

### BEFORE THE IDAHO STATE BOARD OF LAND COMMISSIONERS

In the Matter of Encroachment Permit Application	)	Case No. PH-2020-PUB-22-003
No. L-95-S-5884	)	
	)	<b>FINAL ORDER</b>
North Idaho Maritime – John Condon,	)	
	)	
Applicant.	)	
	)	

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### I. NATURE OF PROCEEDINGS

The Idaho Department of Lands (“IDL”), through the State Board of Land Commissioners, “shall regulate, control and may permit encroachments in aid of navigation or not in aid of navigation on, in or above the beds or waters of navigable lakes” as provided in the Lake Protection Act, title 58, chapter 13, Idaho Code. Idaho Code § 58-1303. The corresponding administrative rules promulgated by the State Board of Land Commissioners are IDAPA 20.03.04, “Rules for the Regulation of Beds, Waters, and Airspace over Navigable Lakes in the State of Idaho.”

On or around May 20, 2020,<sup>1</sup> IDL received an encroachment permit application filed by North Idaho Maritime. A public hearing was held on November 4, 2020. Michele Andersen served as duly appointed hearing coordinator. On November 23, 2020, the hearing coordinator issued her Preliminary Order, which contains a Factual and Procedural Background and Conclusions of Law.

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<sup>1</sup> The Application was received on or around May 20, 2020. After IDL notified NIM that the application was incomplete, NIM submitted an amended application on July 20, 2020 with additional materials provided July 27, 2020 and September 4, 2020.



As Director of IDL, my responsibility is to render a decision pursuant to Idaho Code § 58-1306(c) and IDAPA 20.03.04.030 on behalf of the State Board of Land Commissioners and based on the record, which I have reviewed in the context of my personal expertise gained through education, training, and experience. I relied on the record for this matter, including examining the hearing coordinator's Preliminary Order in light of the entire record in this matter.

## **II. FINDINGS OF FACT**

I adopt the Preliminary Order's Factual and Procedural Background as my Findings of Fact.

## **III. CONCLUSIONS OF LAW**

I adopt the Preliminary Order's Conclusions of Law as my Conclusions of Law.

## **IV. ORDER**

I conclude that the hearing coordinator's Preliminary Order is based on substantial evidence in the record, and I adopt the Preliminary Order's Factual and Procedural Background and Conclusions of Law as my decision in this matter. I hereby incorporate by reference the Preliminary Order's Factual and Procedural Background and Conclusions of Law into this Final Order. I have enclosed and served the Preliminary Order along with this Final Order.

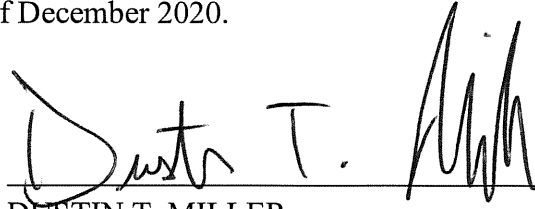
Based on the adopted Factual and Procedural Background and Conclusions of Law, I HEREBY ORDER that Encroachment Permit Application L-95-S-5884 is DENIED.

This is a final order of the agency. Pursuant to Idaho Code § 58-1306(c) and IDAPA 20.03.04.30.09, the Applicant or any aggrieved party who appeared at the hearing has a right to have the proceedings and Final Order reviewed by the district court in the county where the encroachment is proposed by filing a notice of appeal within thirty (30) days from the date of the final decision. The Applicant does not need to post a bond with the district court for an appeal.



The filing of the petition for review to the district court does not itself stay the effectiveness or enforcement of the order under appeal. Idaho Code § 67-5274.

Dated this 3<sup>rd</sup> day of December 2020.

A handwritten signature in black ink, appearing to read "Dustin T. Miller", is written over a horizontal line.

DUSTIN T. MILLER  
Director, Idaho Department of Lands



BEFORE THE STATE BOARD OF LAND COMMISSIONERS  
STATE OF IDAHO

In the Matter of Encroachment Permit	)	
Application No. L-95-S-5884	)	Case No. PH-2020-PUB-22-003
	)	
North Idaho Maritime – John Condon,	)	<b>PRELIMINARY ORDER</b>
	)	
Applicant.	)	
	)	
	)	
	)	

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**I. FACTUAL AND PROCEDURAL BACKGROUND**

**A. Background of Administrative Record.**

1. On April 20, 2020, the Idaho Department of Lands (“Department” or “IDL”) issued a Notice of Non-Compliance to North Idaho Maritime LLC through its manager, John Condon (collectively “NIM” or “Applicant”), for its dock storage in Cougar Bay because NIM did not have an encroachment permit for that activity. On May 20, 2020, NIM submitted its original encroachment permit application. On May 21, 2020, NIM responded to the Notice of Non-Compliance. On June 1, 2020, the Department extended the deadline for NIM to submit a complete application. On June 19, 2020, IDL informed NIM their application was still incomplete. On July 20, 2020, NIM submitted a revised encroachment permit application (“Application”). On July 27, 2020, NIM submitted additional information in support of the Application.

2. In a letter dated August 13, 2020, the Department informed the Coeur d’Alene Press regarding legal notice of an application the Department received from NIM for a winter dock storage area and a year round work area, located on Lake Coeur d’Alene in Cougar Bay.

3. On August 13, 2020, the Department sent a Memorandum to various public agencies, the Kootenai Environmental Alliance (“KEA”), the Idaho Conservation League, and



adjacent neighbors of the Application: “Enclosed is an application requesting permission to have a winter dock storage area and year-round work area in Cougar Bay on Lake Coeur d’Alene. Please submit your comments, recommendations or objections to IDL by September 15, 2020... .”

4. On September 1, 2020, the Idaho Department of Fish & Game (“IDFG”) sent written comments to the Department regarding the Application and providing technical information addressing “potential effects on wildlife and wildlife habitat and how any adverse effects might be mitigated.” The IDFG recommended “keeping the footprint of the facility to the smallest size practical, and away from the Cougar Creek Channel.”

5. On September 9, 2020, the Department sent a Memorandum noticing the recipients of a revised application “for winter and year-round storage area location on Lake Coeur d’ Alene. Please contact the Department within 30 days from the date of this letter to comment in writing on this proposal.”

6. On September 16, 2020, the Idaho State Department of Agriculture submitted written comments requesting that the “applicant mention their aquatic noxious weeds spread prevention plan” in the Application.

7. On September 18, 2020, the Department received consent from an adjacent property owner, Thomas Burns, agreeing to the encroachment.

8. On September 23, 2020, the Department received consent from an adjacent property owner, Edwin Haglund, agreeing to the encroachment.

9. On October 1, 2020, the Department received written comments from the Idaho Department of Environmental Quality regarding the disposition of demolition debris, Best Management Practices (“BMPs”) for petroleum products, retrieval and removal of submerged



demolition debris, and guidance on BMPs for the use of treated and preserved wood products in or around aquatic environments.

10. On October 2, 2020, the Department received consent from an adjacent property owner, Martha Cornwall McCain, agreeing to the encroachment.

11. On October 7, 2020, the Department received consent from an adjacent property owner, David Yadon, agreeing to the encroachment.

12. On October 29, 2020, the Hearing Coordinator issued an Amended Notice of Hearing re: Exchange of Hearing Exhibits and Official Notice.

**B. The Applications.**

1. On May 20, 2020, North Idaho Maritime filed its initial *Joint Application for Permits* (“initial application”) with the Department. The initial application states that fees were received by IDL on May 20, 2020. *Initial Appl’n* at 1. According to the initial application, the “[p]urpose of the project is for a designated area to perform winter storage, along with a designated work area within the footprint to be in use all year round.” *Id.* “Bring floating encroachments to Cougar bay with 1-2 man crew and tugboat. They will be tied together and secured to existing pile with rope. These will be stored from October-May. Storage area will be ~5-10 acres as needed. The max area would be ~1100’ long and ~400’ wide. Inside of the winter storage area will be a ~1-2 acre designated ‘work area’ ... will include the intermittent storage of miscellaneous docks for repair, resale, and disposal all year-round...suitable for assembly of modular dock sections that are built off site. ... no dredging or fill material will be used at this site.” *Id.* at 2, ln. 16. “Deadheads will be avoided in transport. Employees will practice responsible measures while building, repairing, and demolition when needed. Boats will be reasonably maintained to prevent any leaks of fluids. All necessary infrastructure is in place. ... Floating encroachments secured with multiple



lines and additional log boom if necessary. Docks are brought in in groups of up to 4 to maximize efficiency and to limit trips through bay.” *Id.* at 2, ln. 17. “Mitigation plan not necessary. BMP’s cover relevant hazards. ...Vessels are equipped with necessary prevention and containment equipment.” *Id.* at 2, ln. 18. It is anticipated no impacts will be caused. *Id.* at 2, ln. 20. “There have been ongoing operations in Cougar bay for over 100 years.” *Id.* at 2, ln. 21. The “Idaho Department of Lands Lease B-2186” was listed as a previously issued permit authorization. *Id.* at 2, ln. 22.

2. Attachments to the initial application include the Department’s required form titled Commercial/Community/NonNavigational Encroachment Permit Application (“Encroachment Application”) in which NIM states the type of encroachment is “Other - Winter Storage”. The proposed encroachment will exceed the maximum width of 10 feet. According to the Encroachment Application, necessary attachments included; county plat map, lakebed profile, general vicinity map, scaled air photos. According to the Encroachment Application, the littoral rights are, “Other – Public Trust.” According to the Encroachment Application, the tax record identifying the owner of the upland parcel indicated “N/A” and no tax record was included in the attachments.

3. Photos attached to the initial application display the dimensions of the encroachment, the location within Cougar bay, and indicate the distances from other encroachments and neighboring littoral right lines.

4. Another attachment depicts the encroachment footprint with existing pilings.

5. On June 19, 2020, IDL notified NIM that their application was incomplete as submitted. The Department stated that additional information was required for the “404 Joint Application for Permits. Questions: (9.) Tax Parcel ID# - provide the Littoral Rights that will be used for this application. (11c-e) Section, Township and Range of this proposed encroachment. (16) Detailed Description of Each Activity with overall Project – this narrative will need to clearly state



amounts of acres and or feet of area will be used during each use.” Additionally, the “lake profile drawing” and a “brief project narrative” that the proposed “Encroachment Not in Aid to Navigation meets IDAPA 20.03.04.030.02” were necessary for IDL to receive within “30 days of receiving this letter”... “before the application can be considered complete.”

6. On July 20 2020 the Department received an amended application. The amended application included an attachment depicting the lakebed profile for the proposed encroachment. The amended application also included an attachment with answers to the application questions that the Department identified as incomplete in its Notice of Incomplete Application. For Question (9) Tax Parcel ID, NIM answered that, “this location does not have a parcel; however, the Applicant owns littoral rights at his property located at 6719 S Highway 97, Coeur d’Alene, ID. Sec. 06 Twp 49 N. R.2 W.B.M. Parcel AIN Number 111552.” For Question (11c-e) NIM added the following information, “property adjacent to the encroachment is in SE Sec. 15 Twn 50 N. R.4 W.B.M.” As an explanation that the Application is for Encroachments Not in Aid to Navigation, NIM stated:

The said encroachment is not in aid of navigation, but we do strongly believe our encroachment will provide environmental and economic benefits to the general public. Winter storage is a valuable service provided and hundreds of residents with littoral rights to Coeur d’Alene Lake take advantage of such service every year. In shallow areas, areas that ice over, and areas of the lake susceptible to storms are all detrimental locations to floating encroachments. Encroachments in these areas are at a greater risk to damage that is costly to fix and in extreme cases this damage can cause floating debris. By storing encroachments in a protected area with ample water depth we can help to mitigate the costs and safety hazards associated without having storage service.

7. Referring to the year-round work area, NIM stated that it “will include the intermittent storage of miscellaneous docks for repair, resale, and disposal all year-round ... suitable for assembly of modular dock sections that are built off-site. This will benefit the public because it will minimize the actual effect of work being done at their site location. ... When new



docks are installed ... old docks need to be disposed of. ...This area would also act as a temporary storage area.” The year-round work area would also be used “in the recovery of derelict and miscellaneous hazards in the form of docks and logs.”

8. The amended application also included a copy of an Idaho Commercial Lease Agreement between John & Gaila Condon and NIM for land and improvements at 6719 S Highway 97 Coeur d’Alene, ID, AIN 111552, TX#5934. The amended application along with the additional materials provided to the Department on July 27, 2020 and on September 4, 2020, appear to have been accepted by IDL as the complete Application.

**C. Appointment of the Hearing Coordinator and Notice of the Public Hearing.**

On October 2, 2020, the Director appointed the Hearing Coordinator to preside over a public hearing to be held on November 4, 2020. According to the *Notice of Appointment of Hearing Coordinator and Public Hearing*, and considering the current public health climate and COVID-19<sup>1</sup>, the public hearing would be held both in-person at the Department’s office in Coeur d’Alene, as well as by Zoom, enabling any member of the public to “attend and present comments at the public hearing. You may also submit written comments.... In order to be considered, all written comments must be received by the close of the hearing.”

**D. Written Public Comments.**

1. Numerous written comments from members of the public were received by the Department, most of which opposed the Application. Comments opposing the Application generally discussed adverse esthetics effects; potential impacts to property values for property owners in and near Cougar Bay; negative impacts to wildlife habitat, specifically related to noxious weed transport; impacts to water quality; adverse impacts from floating debris; impacts from an

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<sup>1</sup> See <https://coronavirus.idaho.gov/>.



increased dock storage footprint; concerns regarding NIM's "after the fact" application; concerns regarding storage of floating debris rather than disposal of debris at an appropriate upland location; that the proposed encroachment will not greatly contribute to environmental, economic or social benefits to or for the general public, as compared to benefits to the fewer lakefront property owners who are NIM's customers; negative impacts to native fish populations and other wildlife species; negative impacts due to noise pollution from operational activities; negative impacts for boater safety; infringement on the use and enjoyment of the area in Cougar Bay by the public; concerns regarding the littoral right eligibility of the Applicant; incompatibility with current uses; reduction in sportsman access; disturbing potentially contaminated lakebed sediments; and whether there is truly a need for a floating work area in addition to NIM's existing upland work area adjacent to its littoral property in Wolf Lodge Bay on Lake Coeur d'Alene.

2. Comments supporting the Application generally discussed the essential services that marine contractors provide for constructing and managing public facilities on area waterways; critical service support provided by NIM during emergencies; the need for winter dock storage; and the historic industrial and commercial use of Cougar Bay for log storage and transportation to area mills that previously operated, but no longer in business.

**E. The November 4, 2020 Public Hearing.**

1. On November 4, 2020, a public hearing was held at the Idaho Department of Lands office in Coeur d'Alene and utilizing the Zoom videoconference platform. The hearing started just after 6:00 p.m. Pacific Time. The order of testimony was established by the Hearing Coordinator as follows: (1) testimony from North Idaho Maritime's representatives; (2) testimony from public agencies other than IDL; (3) testimony from members of the public; (4) testimony from IDL; and (5) any reply from North Idaho Maritime.



2. Testimony on behalf of the Applicant was first given by Rand Wichman. Mr. Wichman started off by thanking IDL staff for their assistance with the Application and stated that dock storage on Cougar Bay has been an issue in search of a solution for more than 10 years. Mr. Wichman explained that NIM is seeking an encroachment permit for winter dock storage with a work area that would allow for assembly of new docks and repair and rebuilding of docks that required such service. The total area covered by the Application is 5 acres, winter dock storage is the primary purpose of the Application and would take up most of the area, likely 2-3 acres as needed. A smaller portion of the site would be used for interim storage for floating encroachments that are awaiting repair, delivery to a new owner, or awaiting removal from the lake. The other activity proposed for this site is a work area for the repair and assembly of modular dock sections. These modular sections would not be built on this site.

3. Mr. Wichman stated that the need for winter dock storage has been well documented by the Department and that the Department has issued permits to other operators in different areas of Coeur d'Alene Lake as well as in Cougar Bay and referred to Staff remarks in the record supporting this request.

4. Referring to the year-round aspect of the storage area, Mr. Wichman explained that with wintertime storage, the stored docks return home at the end of each season, yet the infrastructure for that storage remains. The referenced infrastructure includes existing pilings, containment booms, and other materials necessary to secure the docks.

5. Mr. Wichman explained that cast-off docks, deadheads, and floating debris are year-round hazards for the (Kootenai County Sheriff's Office) Marine Division and recreational boaters. These are items that must be removed from the lake so that they are not a hazard to navigation or a nuisance to downwind property owners. Lake currents and wind make Cougar Bay a logical place



to tow and store these items until they can be removed. Removal of these hazard items is a service that NIM provides. The year-round dock storage infrastructure provides a suitable location to store these items until they can be removed. Mr. Wichman went on to explain that there is a need for the storage area to exist year-round and that “it serves a clear public benefit sequestering these navigational hazards until they can be removed from the lake.”

6. Referring to the public’s concern regarding the accumulation of “junk” and debris in Cougar Bay, Mr. Wichman stated that removal of these navigational hazards from the lake has been difficult due to the lack of necessary shoreline infrastructure. He then explained that NIM believes that they will have approval for that use (i.e. a crane) at their Wolf Lodge Bay commercial site in the near future. This will allow NIM to remove unserviceable docks and ameliorate the concerns regarding floating junk accumulation in the proposed year-round storage area in Cougar Bay.

7. Regarding the use of the proposed work area in Cougar Bay for dock repair and assembly, Mr. Wichman explained that dock repairs cannot always be completed at a shoreline owner’s location. Dock repair generally needs to be done in a protected area with relatively calm water and that these conditions do not always exist at a property owner’s location. Water depth, nearby encroachments, and shoreline configuration, and other conditions can prevent easy access for equipment necessary to facilitates repairs. These circumstances require towing the dock to an approved work area to facilitate repairs. Approval of the Wolf Lodge location will provide a work area for repairs; however, that site is inaccessible due to water depth for a significant portion of the year and has limited space, “the space in Cougar Bay is needed to fill that gap.” Mr. Wichman then stated his opinion that “all aspects of the Application are in aid of navigation and safety on the lake.”



8. Following Mr. Wichman, comments were given by NIM's manager, John Condon. Mr. Condon provided perspective regarding the historical use of Cougar Bay including historical log storage of 104 acres and the remaining infrastructure from those activities. Mr. Condon explained that it is their plan to "rehabilitate and upgrade that facility to handle this future need."

9. Mr. Condon discussed the revamping of NIM's business model from historically doing 90% of its business for the local mills, to now servicing waterfront development and dock construction. With this business reinvention, NIM started storing docks in Cougar Bay approximately 12-15 years ago.

10. Mr. Condon discussed how the lake hydrology contributes to debris accumulation within Cougar Bay, the historical lack of development along the shoreline, that there are shallow water depths within areas of the bay, and that the historic use of the area for log storage and transportation has protected the shoreline from boat wakes and enable the parts of the bay to become a nature conserve. These factors also contribute to the circumstance of a "safe harbor" that NIM would like to have for its year-round storage and work area.

11. Mr. Condon discussed the need for replacement of some of the piling and booms that would be used within the proposed encroachment area, the need to install lighting that meets Coast Guard requirements, and conducting regular safety inspections. In response to related questions from the Hearing Coordinator, Mr. Condon said that they would replace existing piling as necessary, would also upgrade the existing log boom system, which it is in disrepair. After further questioning by the Hearing Coordinator, Mr. Condon estimated that there are at least 30 pilings within the "backbone" system of 4-pilings per clusters that need to be replaced. These pilings are not identified or depicted in the Application but were discussed by both Mr. Wichman and Mr. Condon as being part of the infrastructure facilities of the proposed encroachment area.



12. Mr. Condon also stated that all the pilings NIM would use (if the Application were granted) were previously permitted by IDL to Foss Maritime, and that NIM sublet from Foss Maritime for the use of that encroachment area. While the Submerged Lands Lease No. B-2186 to Foss Maritime is in the record, it terminated by its own terms on December 31, 2009. There is no document in the administrative record that confirms Mr. Condon's statement that NIM sublet the pilings from Foss Maritime or that NIM has had any type of written permission from the Department to utilize Cougar Bay for its business operations since 2009.

13. No representatives from other government agencies were present at the hearing to provide testimony in addition to any written comments previously provided to IDL. Therefore, after the Applicant's representatives concluded, comments were taken into the record from members of the public. Most of the oral comments were opposed to the project, for the same or similar reasons given in writing and identified in paragraph D.1., above.

14. One gentleman, Mr. William Chapman, commented and agreed that there is a need for the pilings and log boom facility. However, Mr. Chapman disagreed that NIM just inherited the infrastructure from the logging companies. Mr. Chapman also suggested that, if the Application is granted, the shape of the encroachment area be changed from a long rectangle to a square-shaped area, so that it has less of a visual impact.

15. After comments were taken from the public, Mike Ahmer, Lands Resource Supervisor – Public Trust, with the Department, read into the record his *revised* written Hearing Statement, which contains comments on and recommendations for the Application ("IDL Report"). The initial IDL Report was made part of the record on November 2, 2020, as Exhibit IDL-1, along with Exhibit IDL-2 (Kootenai County GIS webpage depicting the Applicant's littoral ownership in Wolf Lodge Bay), and Exhibit IDL-3 (Google Earth Image dated 9/27/2005 showing historical log



storage in Cougar Bay). Mr. Ahmer explained that since the IDL Report was submitted, the Department had made some additional written recommendations and that he would be submitting a revised version prior to the close of the record. Mr. Ahmer also indicated that, based on Mr. Condon's representations at the beginning of the hearing, the Department had three additional recommended conditions, if the Application were to be granted.

16. The IDL Report explains that the initial application was received on April 20, 2020, but the application was incomplete. Following a series of exchanges with NIM, the Application was deemed complete on September 4, 2020. The Application proposes a 5-acre winter storage area and a 2-acre year-round work area on Cougar Bay in Lake Coeur d'Alene. Mr. Ahmer explained the timeline of events surrounding the Application. After reviewing pertinent sections of title 58, chapter 13, Idaho Code; and IDL's navigable water rules at IDAPA 20.03.04, the IDL Report states: "The location of the proposed encroachments is in Cougar Bay and not within nor near the applicant's littoral right area in Wolf Lodge Bay." *IDL Report p. 5*. "Historically, Cougar Bay was used as a log storage area. ... IDL leased a portion of the bed of Cougar Bay to Foss Maritime between 2000 and 2009 for log storage area." *Id. at 5*. In 2008, North Idaho Maritime and Murphy Marine Construction Company applied together for an encroachment permit for a dock storage area, but after holding a public hearing, the application was denied. In 2010, Murphy Marine Construction Company applied for a dock storage area and after a public hearing, the permit was granted." *Id. at 5*. "IDL has determined that NIM is seeking an encroachment permit for a winter storage area as well as a year-round work area. The winter storage area is for 'floating encroachments' which may include navigational encroachments such as single-family docks and nonnavigational encroachments such as boat garages and float homes. IDL also notes that it has no jurisdiction over tugs and barges." *Id. at 5*.



17. The IDL Report explained that: “The [Lake Protection Act] Rules do not have specific size limitations for winter dock storage areas or year-round work areas.” *Id. at 5*. The IDL Report also commented that:

There is a significant public benefit from the storing of floating encroachments through the winter ... the storing of docks prevents them from being damaged and becoming floating hazards throughout the lake, as well as from washing up on shore and becoming another waterfront owner’s problem to deal with. Additionally, the storage occurs in the winter months, when the water is lower and colder, and there is much less public recreating on the water. However, allowing a year-round area in Cougar Bay prevents the public from utilizing a portion of the lake during the prime summer months and it ensures that all members of the public see floating encroachments in Cougar Bay all year long. IDL does not see a significant benefit to the public by allowing a year-round work area in Cougar Bay.

*Id. at 7*.

18. The IDL Report recommended, “denying the year-round construction area and if the winter storage area is approved,” applying specific terms and conditions to that encroachment permit. *Id. at 7*.

19. After the Department gave its report and recommendation, a reply was given by Mr. Condon. Mr. Condon explained that his proposed encroachment does not represent a new impact on the lake and that their proposal would clean up, repair, and better manage the existing infrastructure. Mr. Condon stated that NIM has been trying to do this for 12 years. Mr. Condon explained that Wolf Lodge Bay is not suitable for winter dock storage. Mr. Condon acknowledged the differences between the year-round work area and the winter dock storage, but maintained that there is a necessity for each. In response to questions from the Hearing Coordinator, Mr. Condon stated that NIM had most-likely started moving docks into Cougar Bay for storage during the 2020-2021 winter, and that he was not aware of all the personal property or equipment that NIM currently has at the proposed encroachment location.



20. The public hearing concluded at approximately 7:51p.m. (PT) on November 4, 2020. The record was left open by the Hearing Coordinator through 5:00 p.m. (PT) on November 5, 2020, to allow for additional, requested documents to be provided to the Hearing Coordinator.

21. Additional written comments were received by IDL after the record closed on November 5, 2020. Those materials have not been reviewed by, and will not be considered by the Hearing Coordinator in rendering this Preliminary Order. With all evidence submitted, the matter is fully before the Hearing Coordinator.

## **II. CONCLUSIONS OF LAW**

### **A. IDL Has Jurisdiction Over the Beds, Banks and Waters of Lake Coeur d'Alene.**

1. Under the *Notice of Appointment of Hearing Coordinator and Public Hearing*, the Hearing Coordinator is authorized by the Director of the Department to issue this Preliminary Order. I.C. § 67-5245.

2. Lake Coeur d'Alene is a navigable lake within the state of Idaho. *See Newton v. MJK/BJK, LLC, et al*, 167 Idaho 236, 469 P.3d 23, 27 (2020); *Kootenai Envtl. Alliance, Inc. v. Panhandle Yacht Club, Inc.*, 105 Idaho 622, 624, 671 P.2d 1085, 1087 (1983). A “navigable lake” is “any permanent body of relatively still or slack water ... capable of accommodating boats or canoes.” I.C. § 58-1302(a); *see also* IDAPA 20.03.04.010.024 (iterating definition).

3. Upon admission of the State of Idaho into the Union, and under the Equal Footing Doctrine, the title to the beds and banks of navigable waters became state property that is subject to the Public Trust Doctrine. I.C. § 58-1201(1). Under the Public Trust Doctrine, the “state board of land commissioners may approve, modify or reject all activities involving the alienation or encumbrance of the beds of navigable waters in accordance with the public trust doctrine.” I.C. § 58-1203(1). The Public Trust Doctrine “traditionally protected the public’s right to navigation, but



has since expanded to protect fish and wildlife habitation, recreation, aesthetic beauty, and water quality.” *Newton*, 469 P.3d at 29 (citing *Idaho Forest Indus., Inc. v. Hayden Lake Watershed Improvement Dist.*, 112 Idaho 512, 516, 733 P.2d 733, 737 (1987) (citing *Kootenai Env'tl. Alliance, Inc.*, 105 Idaho at 625, 632-33, 671 P.2d at 1088, 1095-96)).

4. Compatible with the Public Trust Doctrine are the Land Board’s general legislative authorities, which include the power to “regulate and control the use or disposition of lands in the beds of navigable lakes ... so as to provide for their commercial, navigational, recreational or other public use; provided, that the board shall take no action in derogation of or seeking to interfere with the riparian or littoral rights of the owners of upland property abutting or adjoining such lands ... .” I.C. § 58-104(9)(a); *see also* Idaho Const. art. IX, § 7 (providing the Land Board shall have the power to direct, control, and dispose of public lands of the state, under such regulations as may be prescribed by law).

5. The “disposal” or “disposition” of public lands “incorporates conveyances other than just sales—it contemplates both sales and leases.” *Wasden v. State Bd. of Land Comm’rs*, 153 Idaho 190, 197, 280 P.3d 693, 700 (2012).

6. The scope of the state’s title in the beds of navigable lakes “extends to the natural high water mark as it existed at the time the state was admitted into the Union.” *Idaho Forest Indus., Inc. v. Hayden Lake Watershed Improvement Dist.*, 112 Idaho 512, 516, 733 P.2d 733, 737 (1987) (citations omitted); *see also* I.C. § 58-1302(b) (defining “beds of navigable lakes” as the lands lying under or below the natural or ordinary high water mark of a navigable lake).

7. As a navigable lake, Lake Coeur d’Alene may be used and disposed of by the state, but no such disposition shall interfere with the rights of the Land Board “to regulate commerce on . . . the navigable lakes, rivers, or streams as public highways over which every citizen has a natural



right to carry [on] commerce, whether by ships, boats, or the floating of logs or lumber, having due consideration and reasonable care for the rights of individuals, as well as the public, in the common use of such public highways.” *Callahan v. Price*, 26 Idaho 745, 146 P. 732, 735 (1915) (citing *Illinois C.R. Co. v. Chicago*, 176 U.S. 646 (1900)).

8. The granting of an encroachment permit or a submerged land lease is not a disposal of property in fee simple to a private party. Such grants maintain the public trust land within the control of the state because “the state is not precluded from determining in the future that this conveyance is no longer compatible with the public trust imposed on this conveyance.” *Kootenai Env'tl. Alliance, Inc.*, 105 Idaho at 631, 671 P.2d at 1094.

9. The Idaho Supreme Court has adopted a two-part test to determine the validity of a disposal, including the lease, of public trust property: “One, is the grant in aid of navigation, commerce, or other trust purposes, and two, does it substantially impair the public interest in the lands and waters remaining?” *Kootenai Env'tl. Alliance, Inc.*, 105 Idaho at 626, 671 P.2d at 1089 (citing *Illinois C.R. Co. v. Illinois*, 146 U.S. 387, 460 (1892)).

10. With limited exceptions that do not apply in this matter, the Land Board exercises its rights, powers and duties through IDL. I.C. § 58-119(1). “It is clear, therefore, that the Department of Lands acting as the representative of the State Land Board has the power to dispose of public [trust] lands.” *Kootenai Env'tl. Alliance, Inc.*, 105 Idaho at 632, 671 P.2d at 1095.

11. With “the public trust doctrine at all times [forming] the outer boundaries of permissible government action with respect to public trust [lands],” the Land Board and, therefore, IDL may manage navigable waters through any applicable statutory and regulatory framework. *Kootenai Env'tl. Alliance, Inc.*, 105 Idaho at 631-33, 671 P.2d at 1094-96. Such statutory and regulatory framework includes the Land Board’s general authority in Idaho Code § 58-104(9)(a);



and the Public Trust Doctrine, as codified in title 58, chapter 12, Idaho Code; along with the related administrative rules at IDAPA 20.03.17 – Rules Governing Leases on State-Owned Submerged Lands and Formerly Submerged Lands. The other often-used framework is the Lake Protection Act at title 58, chapter 13, Idaho Code (“LPA”); along with the administrative rules promulgated to implement the purposes and policy of the LPA at IDAPA 20.03.04 – Rules for the Regulation of Beds, Waters, and Airspace Over Navigable Lakes in the State of Idaho (“Rules”). *Kootenai Envtl. Alliance, Inc.*, 105 Idaho at 631-33, 671 P.2d at 1094-96 (upholding the LPA and Rules as consistent with the Public Trust Doctrine).

**B. The Application is Denied because the Applicant, in this Specific Circumstance, is Not Qualified Under the LPA to Hold an Encroachment Permit at the Proposed Location in Lake Coeur d’Alene.**

1. The Application and this administrative matter are being conducted according the LPA and the Rules. However, as discussed, below, the LPA and the Rules are not an applicable framework because the Applicant does not have littoral rights adjacent to land that has a common boundary with the low water mark at any location in or above the bed of Lake Coeur d’Alene that the Applicant seeks to encumber. Such littoral rights are a threshold requirement of the LPA.

a. Under the LPA, IDL must “regulate, control and may permit encroachments in aid of navigation or not in aid of navigation on, in or above the beds or waters of navigable lakes **as provided herein.**” I.C. § 58-1303 (emphasis added).

b. An application for a commercial navigational encroachment or a nonnavigational encroachment “**must be submitted** or approved **by the riparian or littoral owner.**” I.C. § 58-1306(a) (emphasis added); *see also* IDAPA 20.03.04.020.02 and 20.03.04.020.07.b (reiterating that only littoral owners or lessees shall be eligible to apply for an encroachment permit).



c. The “littoral owner” is the “fee owner of land **immediately adjacent** to a navigable lake, or his lessee, or the owner of ... littoral rights that have been segregated from the fee specifically by deed, lease, or other grant.” IDAPA 20.03.04.010.33 (emphasis added). The word “adjacent” is expressly defined in the Rules to mean “[c]ontiguous or touching, and with regard to land or land ownership having a common boundary.” IDAPA 20.03.04.010.01.

d. The two other phrases that must be understood in order to define who, as a littoral owner, is qualified to submit an LPA application for a commercial navigational encroachment or a nonnavigational encroachment are “littoral rights” and “low water mark.. The term “littoral rights” means “only the rights **of owners** or lessees **of land adjacent** to navigable waters of the lake to maintain their adjacency to the lake and to make use of their rights as ... littoral owners or lessees in building or using aids to navigation but does not include any right to make any consumptive use of the waters of the lake.” I.C. § 58-1302(f) (emphasis added); *see also* IDAPA 20.03.04.010.32 (iterating the definition). Finally, the term “low water mark” is defined as “that line or elevation on the bed of the lake marked or located by the average low water elevations over a period of years **and marks the point to which the riparian rights of adjoining landowners extend as a matter of right**, in aid of their right to use the waters of the lake for purposes of navigation.” I.C. § 58-1302(e) (emphasis added); *see also* IDAPA 20.03.04.010.21 (repeating definition).<sup>2</sup>

e. In summary of the above-quoted statutes: As provided for in the LPA, an application for a commercial navigational encroachment or a nonnavigational encroachment may

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<sup>2</sup> “[O]ne of the basic rights enjoyed by owners of properties upon a navigable lake is the right to have access to the waters of such lake *at the low water mark*; this right is valuable and in many instances it is the controlling aspect of the value of such lands.” *Lake CDA Inv., LLC v. IDL*, 149 Idaho 274, 283, 233 P.3d 721, 730 (2010) (emphasis in *Lake CDA Inv.*).



be approved by IDL when the application is submitted by the owner or lessee of upland real property, the littoral rights of which touch and share the common boundary line with the low water mark at the location in or over the bed of navigable lake where the applicant requests an encroachment permit.<sup>3</sup>

2. Here, the Applicant admittedly is not a littoral owner on Cougar Bay. *See Appl'n; Exhibit IDL-2*. The Applicant does not hold the littoral rights of any upland location bordering Lake Coeur d'Alene anywhere near the location of the proposed encroachment area. *Id.* Under the LPA, the Applicant is not qualified to be issued an encroachment permit at the proposed encroachment location. Therefore, no part of the Application can be granted.

3. Indeed, no person's littoral rights extend to and exist at the proposed encroachment location. The most landward point of the encroachment location is approximately 431 feet waterward from the closest intersection with the line of navigability<sup>4</sup> – as depicted in an aerial photograph submitted with the Application. *See Appl'n; IDL Report p. 5*. At the proposed location, the bed of Lake Coeur d'Alene is unencumbered public trust land owned by the state. Consequently, the legal authority to allow either of NIM's proposed encroachments is not the LPA and Rules since that framework is for permitting encroachments to enable adjacent littoral rights.

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<sup>3</sup> The single exception to the requirement of littoral ownership or permission appears to be at IDAPA 20.03.04.020.07.d, which requires that applications “for noncommercial encroachments intended to improve waterways for navigation, wildlife habitat and other recreational uses by members of the public must be filed by any municipality, county, state, or federal agency, or other entity empowered to make such improvements.”

<sup>4</sup> The “line of navigability” means “a line located at such distance waterward of the low water mark established by the length of existing legally permitted encroachments, water depths waterward of the low water mark, and by other relevant criteria determined by the board when the line has not already been established for the body of water in question.” I.C. § 58-1302(g).



**C. The Applicant Could Be Issued a Submerged Lands Lease as the Requisite Government Approval for a Proposed Encumbrance of Lake Coeur d’Alene.**

1. As discussed, above, IDL could evaluate whether to approve NIM’s proposed encumbrances to Lake Coeur d’Alene through another statutory and regulatory framework – namely the Land Board’s constitutional and statutory authority, including the Public Trust Doctrine, along with the corresponding administrative rules at IDAPA 20.03.17 – Rules Governing Leases on State-Owned Submerged Lands and Formerly Submerged Lands. Idaho Const. art. IX, § 7; I.C. §§ 58-104(9)(a), 58-1203(1); *see also* IDAPA 20.03.17.000 (citing as its legal authorities I.C. § 58-104(9) and title 58, chapter 12, Idaho Code).

2. In the Submerged Lands Rules, and consistent with its legal authorities, the state “asserts the right to issue leases for all encroachment, navigational or non-navigational, upon, in or above the beds or waters of navigable lakes and rivers” and provides instruction and the procedure for the issuance of a submerged lands lease that is **“in the public interest and consistent with these rules.”** IDAPA 20.03.017.001.02.b. and 20.03.017.025.02 (emphasis added).

3. Without permission from the state, and therefore in violation of Idaho law, NIM has been encumbering the water and bed of Lake Coeur d’Alene, in Cougar Bay, for at least 12 years. *See J. Condon testimony; IDL Report pp. 1 and 5.* While Mr. Condon expressed frustration with the government regulation of Lake Coeur d’Alene’s public trust resource, he also acknowledged that the lack of government approval has not caused NIM to cease its unauthorized uses of the lake. *See J. Condon testimony.*

a. In the administrative matter currently before the Hearing Coordinator, NIM has applied to receive the requisite government approval. However, as discussed, above, given the specific circumstances of the Applicant and Application, such permission cannot be granted



pursuant to the LPA and the Rules, and therefore cannot be approved by the Hearing Coordinator whose authority arises from the LPA and Rules.

b. NIM and Mr. Condon must be diligent in securing a submerged lands lease if it is to continue its occupation of Cougar Bay.

c. As the responsible regulatory agency, IDL must be diligent in either approving a submerged lands lease, if possible under those rules, or requiring NIM to completely remove all encroachments related to its business in Cougar Bay.

4. Although the IDL Report, including its written conclusions and recommendations and IDL's additional verbal recommendations offered during the public hearing in this matter, were presented under the legal framework of the LPA and Rules, the Hearing Coordinator is in agreement with IDL's analysis and conclusions, and believes that IDL's analysis and conclusions can be recast under the legal framework of the Submerged Lands Rules and its legal authorities. The Hearing Coordinator would encourage IDL to evaluate any submerged lands lease application with the same or similar scope of the current encroachment permit Application, the same way IDL evaluated the encroachment permit Application.

### **III. ORDER**

Based upon the foregoing findings of fact and conclusions of law, IT IS HEREBY ORDERED that Encroachment Permit Application No. L-95-S-5884 is DENIED, subject to any conditions imposed by the Director of the Idaho Department of Lands.

This order issued herein is a Preliminary Order, pursuant to Idaho Code §§ 58-1306(c), 67-5270 and 67-5272, and the *Notice of Appointment of Hearing Coordinator and Public Hearing* issued on October 2, 2020, which states as follows:



In accordance with Idaho Code § 67-5240, the Hearing Coordinator shall submit a preliminary order to the Director of the Idaho Department of Lands, who shall issue a Final Order no more than thirty (30) days after the conclusion of the hearing.

The Preliminary Order can and will become final without further action of the agency if the Director does not issue a Final Order within thirty (30) days of the close of the hearing.

If this Preliminary Order becomes final, or if the Director issues a Final Order, pursuant to Idaho Code § 58-1306(c), the Applicant or other aggrieved party has the right to have this decision reviewed by the district court in the county where the encroachment is proposed by filing notice of appeal within thirty (30) days from the date of the final decision. Idaho Code § 58-1306(c). The filing of an appeal to the district court does not itself stay the effectiveness or enforcement of the order under appeal. Idaho Code § 67-5274.

DATED this \_\_23\_\_ day of November, 2020.



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Michele Andersen  
Hearing Coordinator



## Exhibit 3

### National and Canadian Winter Dock Storage References

**Shoremaster** is a Northwest based dock manufacturer. Recommend pulling docks out and stacking them in a flat location to protect from ice damage.

<https://www.shoremaster.com/about-shoremaster/news-events/articles/a-quick-guide-to-proper-boat-dock-storage/>

**Alumidock** is a New York based dock manufacturer. Recommend pulling their sectional pier systems out of the water and stacking them.

<https://alumidock.com/blog/storing-your-dock-winter-120>

**Multinautic** is a Canadian based dock manufacturer. Recommend pulling docks out and stacking them to protect from ice or other damage.

If they are to be left in the water, they recommend detaching docks from the shoreline and from other dock sections, making all anchor chains slack, and connecting everything to shore with ropes. Bumpers should be used as needed. This will allow the dock sections to float freely all winter.

<https://www.multinautic.com/winter-storage/>

**Lakeside Dock Sales** is a Maryland based dock manufacturer. They recommend leaving docks in the water if three conditions are met:

1. The area is protected from wind and waves are 1 foot high or less.
2. The floats will not rub on the lake bottom or rocks when the water drops.
3. The docks should have two feet of clearance around them for freedom of movement after the water freezes.

They also recommend loosening anchor chains, removing ramps, and tying the dock to something solid on shore with a rope.

If the conditions are not as described, they recommend removing the dock from the water.

<https://www.lakesidedocksales.com/winter-storage-keeping-your-dock-in-the-water/>

**EZ Dock** is a nationwide dock manufacturer. Recommend pulling docks out and stacking them protect from ice or other damage. They recommend removing their polyethylene float docks and storing them on shore.

If removal is not possible, then they recommend installing a bubbler system around the dock to minimize ice formation. The dock should be tied to shore with a rope and then detached from the shore.

<https://www.ez-dock.com/blog/how-to-winterize-your-boat-dock/>

**Technidock** is a New York based dock manufacturer. Recommend pulling docks out in northern states to protect from ice or other damage.

<https://www.technidock.com/preparing-your-docks-for-winter/>



**Accudock** is a Florida based dock manufacturer. Recommend pulling docks out and stacking them to protect from ice or other damage. Pulling them up on shore is an option if stacking cannot be done.

Docks can be left in if:

1. The dock has room to shift around with the freezing water.
2. The area is protected from the wind.
3. Waves do not exceed one foot in height.
4. Floats do not rub on the bottom at lowest water level.

They also recommend loosening anchor chains and tying the dock to shore with a rope.

<https://www.accudock.com/blog/residential-floating-dock-winter/>

**Dock Hardware** is a New York based dock manufacturer. Recommend pulling docks out and stacking them to protect from ice or other damage.

<https://www.dockhardware.com/should-i-remove-my-floating-boat-dock-for-winter-months/>

**Decks & Docks Lumber Co.** is an eastern US dock manufacturer. Recommend pulling docks out to protect from ice or other damage. Pipe docks (see Alumidock above) must be removed. Pier docks can have oscillators (de-icers) or bubblers installed to prevent ice buildup. This may not protect against moving ice.

Docks can be left in if:

1. The area is protected from the wind and waves.
2. The lake is drained every winter.
3. The dock will not rest on rocks when the water is down.
4. The dock has two feet of space to shift.

In addition, the anchor chains should be loosened and a rope should be used to tie the dock to the shore.

<https://www.decks-docks.com/prepare-your-dock-for-winter>

**CanadaDocks** is a Canadian dock manufacturer. They recommend that all “standing docks” on “legs” (see Alumidock above) be removed for winter due to ice damage.

Floating docks exposed to wind and ice movement, or moving current along a river, are also recommended for removal.

Floating docks in sheltered areas on a lake may be left in the water if the ramp is removed, anchors are loosened, and the dock is tied to the shoreline with rope.

<https://www.canadadocks.ca/preparing-your-dock-for-winter>

**Cottage Life** magazine recommends removing a pipe dock (see Alumidock above) to protect from ice damage. Floating docks should only be left in the water if they are tied up in a protected bay. Lift docks (boat lifts) should be winched up to five feet above the normal summer water level.

Pier docks subject to ice buildup may require bubblers to prevent ice formation around the legs.



<https://cottagelife.com/outdoors/dealing-with-your-dock-in-the-winter/>

**Lake Front Living Blog** is New England based and recommends pulling docks out and stacking them to protect from ice or other damage. Bubblers will not protect a dock from wind driven ice that heaves onto shore or is just blown into shore. They recommend pulling out all docks except those on fixed piling.

<https://blog.lakefrontliving.com/docks-ice-can-leave-docks/>

## **Idaho Winter Dock Storage References**

Boondocks, LLC is based in Spirit Lake, Idaho. They recommend either moving the dock to a protected bay or securing it in place properly to avoid damage from winter ice and strong winds.

<https://www.boondocksllc.org/services>

North Idaho Maritime is based in Coeur d'Alene, Idaho. They recommend dock storage in a protected bay, removing slip covers due to snow load and ramp removal due to changes in lake level. If docks are not moved, then anchor systems may need adjustment for changing water levels. Winter hazards include grounding out as the lake water level drops, ice, and heavy winter winds in unprotected areas.

<https://www.northidahomaritime.com/services>





U.S. & WORLD

## Northern Idaho lumber mill set to saw its last log

By Deseret News | May 18, 2008, 12:40am MDT

Becky Kramer, *The Spokesman-Review*



A worker sorts lumber recently in the DeArmond Mill in Coeur d'Alene, Idaho. The soon-to-close mill, owned by Stimson Lumber, is the last one operating along the Spokane River. | Jesse Tinsley, Associated Press

COEUR D'ALENE, Idaho (AP) — Sawmills create their own industrial symphony, and Joe Hoesche has a keen ear for it.

From his office, the maintenance supervisor listens to the rumble and shriek of machinery and knows whether the DeArmond mill's equipment is working in harmony.

The rhythmic slap of boards comes from the stacker, piling two-by-fours into neat rectangles.



The pebbles-in-a-can sound comes from the blower, whisking chips and sawdust into bins.

But when the hog starts to vibrate like a bell, well, that's a problem. It means the bark-chewing machine is choking on rocks.

The sounds are part of a soon-to-be-extinct way of life on Coeur d'Alene's waterfront. Sometime this week, the mill will saw its last log. A few days later, the final piece of lumber will finish curing in the kiln. The DeArmond will close.

"It's the last sawmill on the Spokane River. It's a piece of history that's going away," said Hoesche, who has spent two years photographing and filming the DeArmond's operations.

Record-low lumber prices, the result of a shaky national housing market, sped up the inevitable. Squeezed between an expanding North Idaho College to the east and offices and waterfront condos to the west, the DeArmond occupies 17 coveted acres.

Stimson Lumber Co. planned to operate the mill into 2009 and then sell the land to Black Rock Development's Marshall Chesrown. But lumber prices tumbled. "The decision to close it at this time is market driven," said Mike Telford, the mill's manager.

The closure provides an opportunity for North Idaho College, which is working on a \$10 million financing package in hopes of purchasing the property from Chesrown.

"We see this as a logical and cost-effective solution to the higher education needs of the region," said Kent Propst, spokesman for the college, which has a 4,500-student enrollment.

But Propst said he'll miss the smell of fresh-cut fir. The scent of sawdust was the first thing he noticed five years ago when he arrived on campus for a job interview. It fit the native Nebraskan's image of north Idaho.

New sawmills are sleek and automated. The DeArmond, built in the late 1940s, still relies on manual labor for many tasks.

"There's not a whole lot of technology in this mill," Telford said.



Still, the DeArmond has enjoyed a reputation for high output and low operating costs. The Douglas fir two-by-fours and two-by-sixes rolling off the line this week were marked "Stimson Premium." The lumber will be sold at Home Depot.

About 70 workers will lose their jobs when the mill closes. Sawyer Ken O'Riley is 62, old enough to retire, though he isn't sure it will suit him. He's worked at the DeArmond for 38 years. The mill's hustle is second nature to him.

"I'll miss the doing," O'Riley said. "Slowing the pace is going to be hard for me."

In the early 1990s, Crisy Carlson took a night shift job at the DeArmond to pay for her NIC tuition. The job turned into a 17-year detour.

"I like physical work, and I like working outdoors," said Carlson, 43, who wears a blond ponytail under her hard hat. "I'm a certified grader, and I can operate a lot of the saws."

Wages about \$16 to \$18 an hour, plus health insurance and regular bonuses, kept Carlson, a single mother, at the mill.

"It's a man's world," Carlson said, but one that accepted her. After the DeArmond closes, she may pursue long-stalled plans of becoming a teacher.

The mill workers will gather on Friday for a barbecue. They're calling it "The Last Supper."

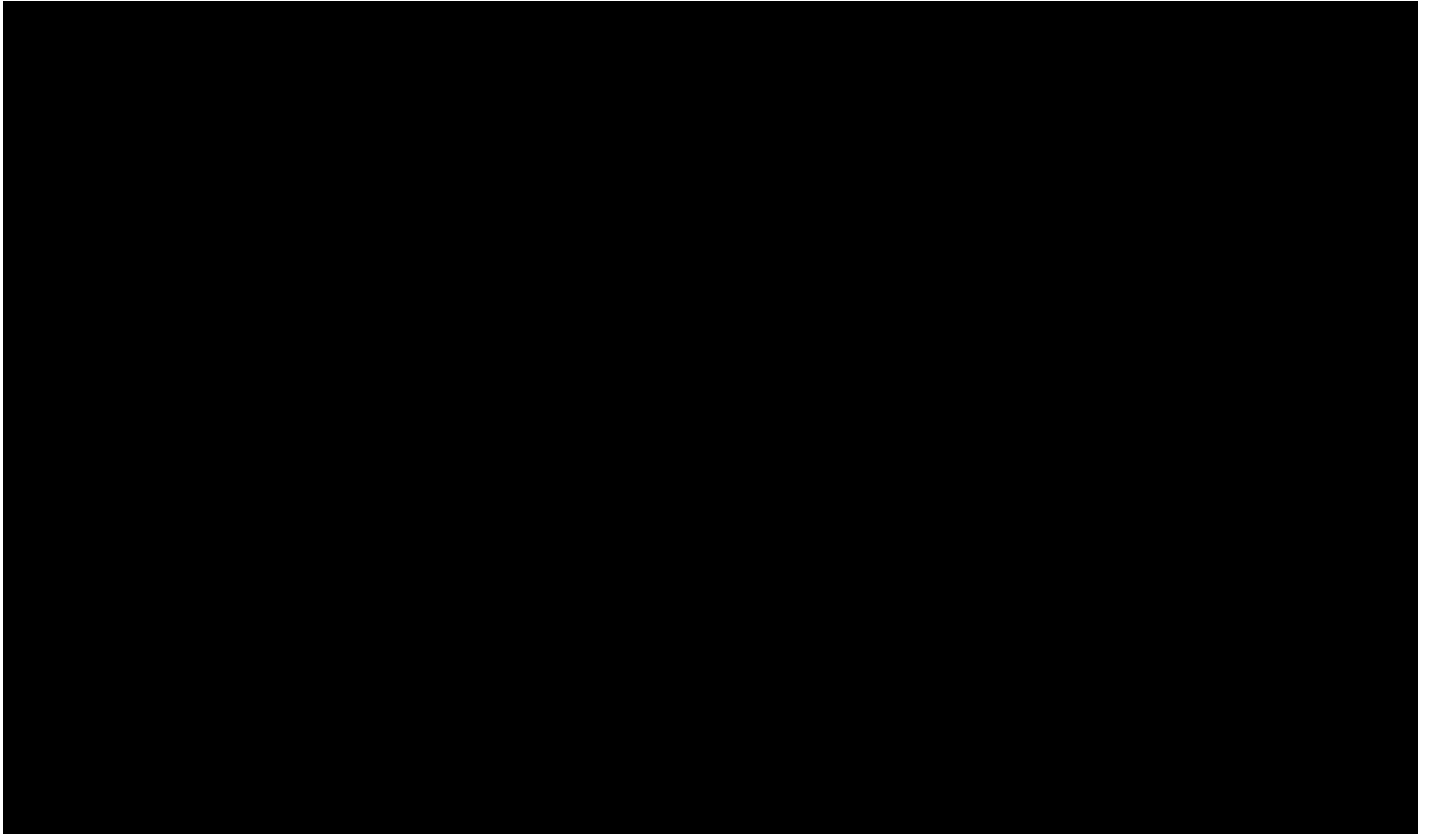
In June, the mill's equipment will be sold at an auction. By year end, all traces of the DeArmond will be gone.

That's why Hoesche, the maintenance supervisor, has worked to capture the DeArmond on film. He's assembled a small picture book, and he plans to create a larger, yearbook-style publication.

Hoesche, 41, credits the forestry products industry for giving him career-path opportunities. The former line cook started as a temporary worker at another sawmill. He worked his way into a supervisory position.



And he isn't done with sawmills yet. Stimson has offered him a job at its mill in Plummer, Idaho.

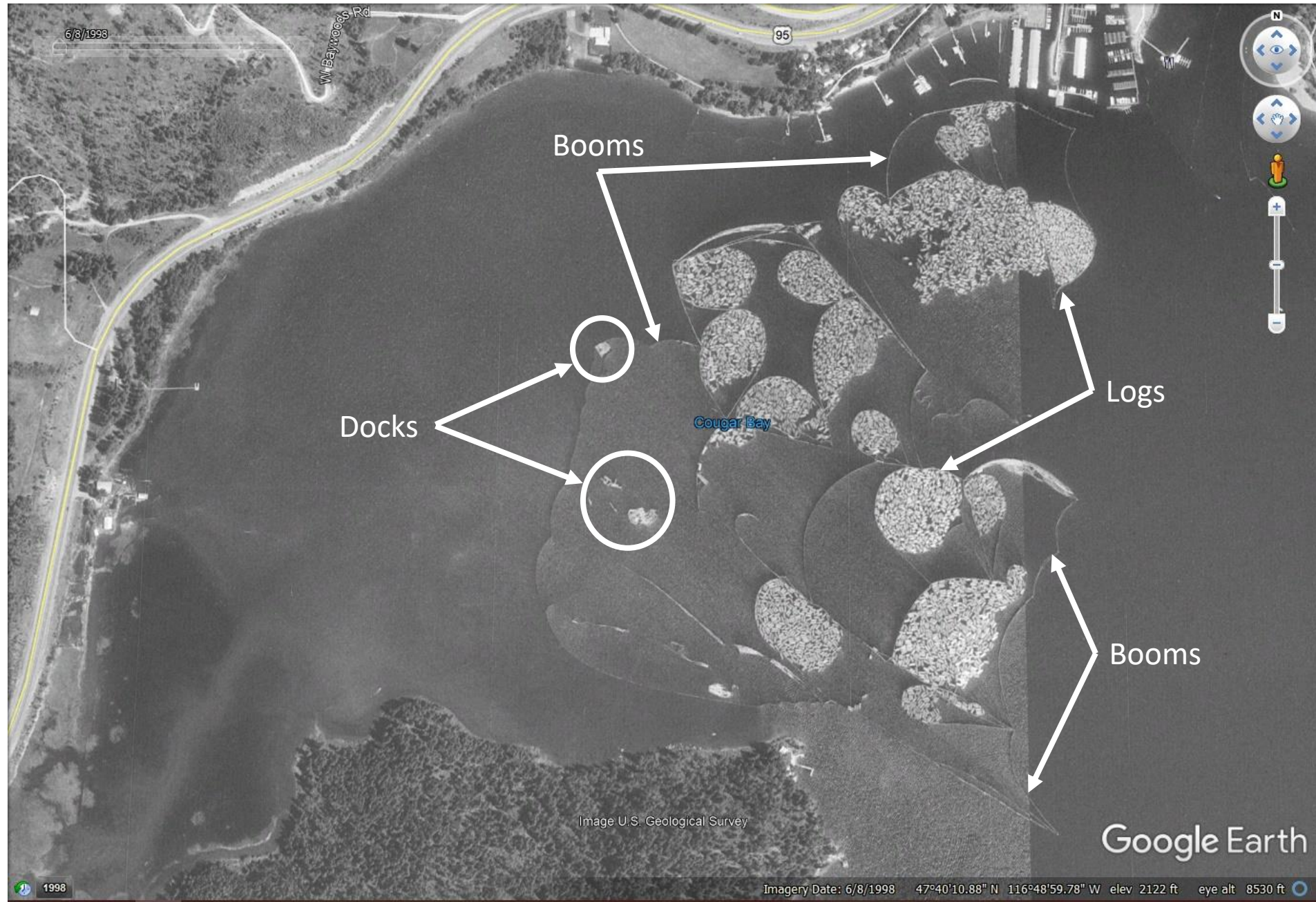


**SKIP AD**

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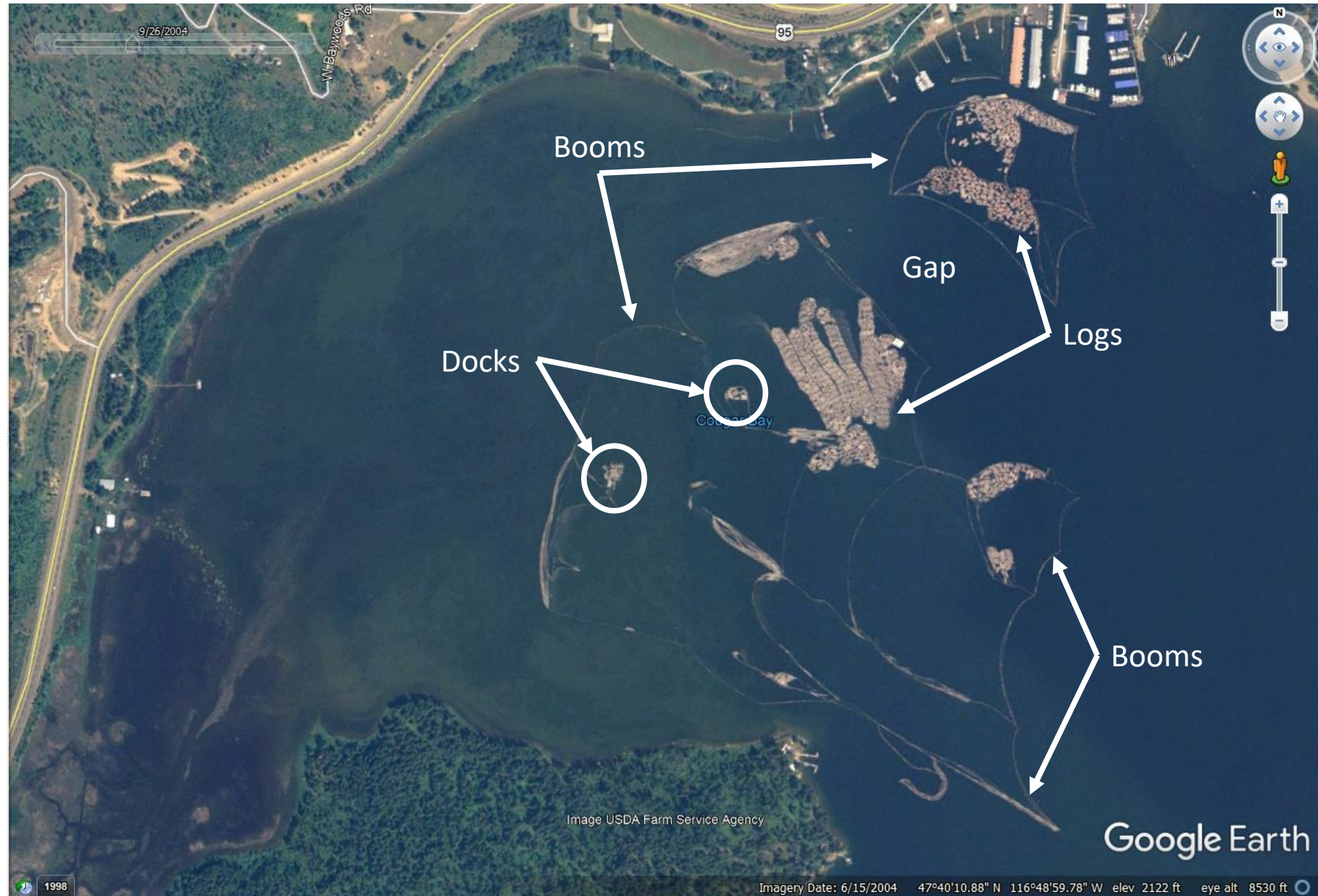
Cougar Bay, 6/8/1998  
Log storage is primary use, a few docks present  
Exhibit 5





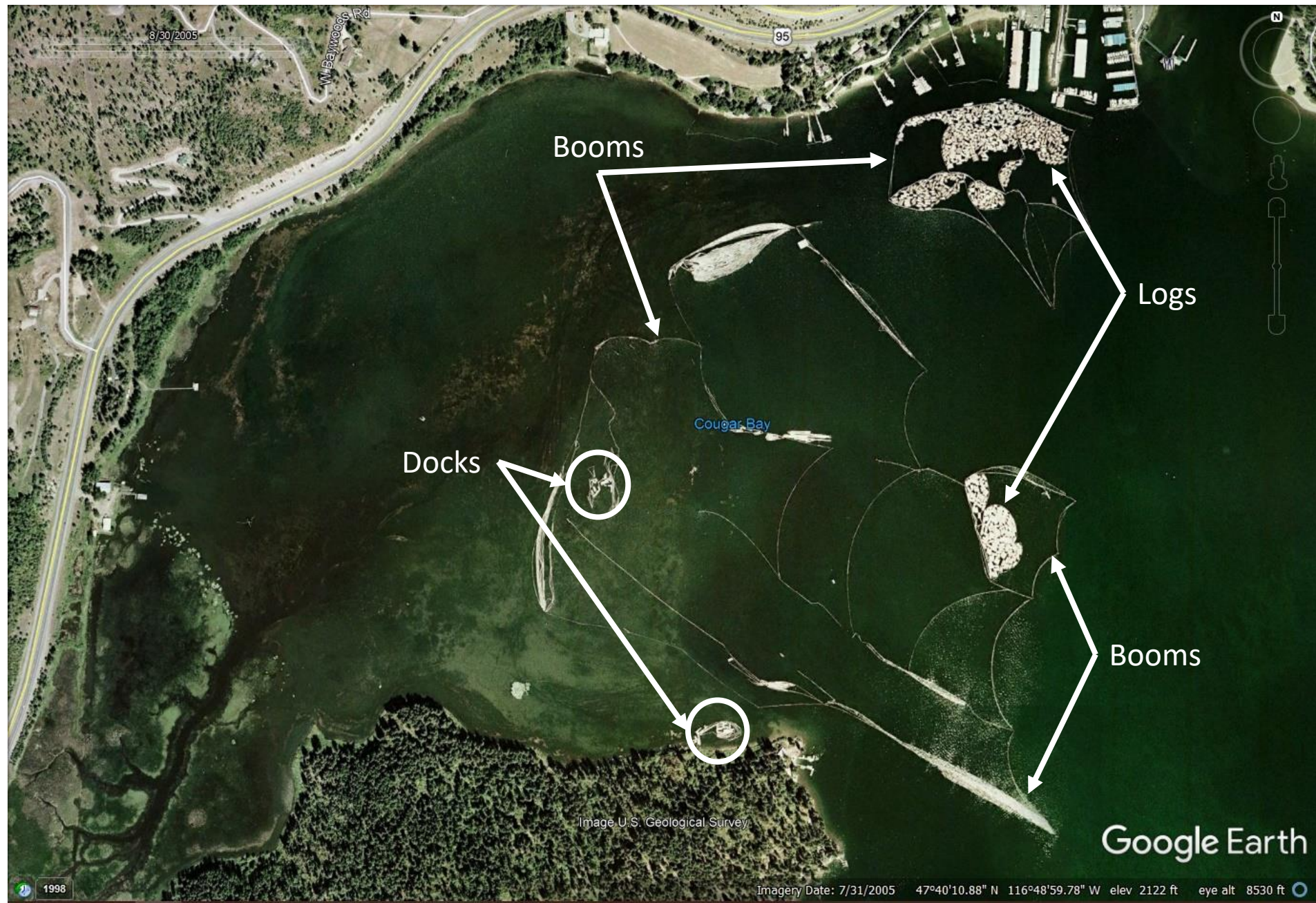
Cougar Bay, 6/15/2004

Log storage decreasing, some docks present. A gap is now present between the north booms and the rest of the bay.



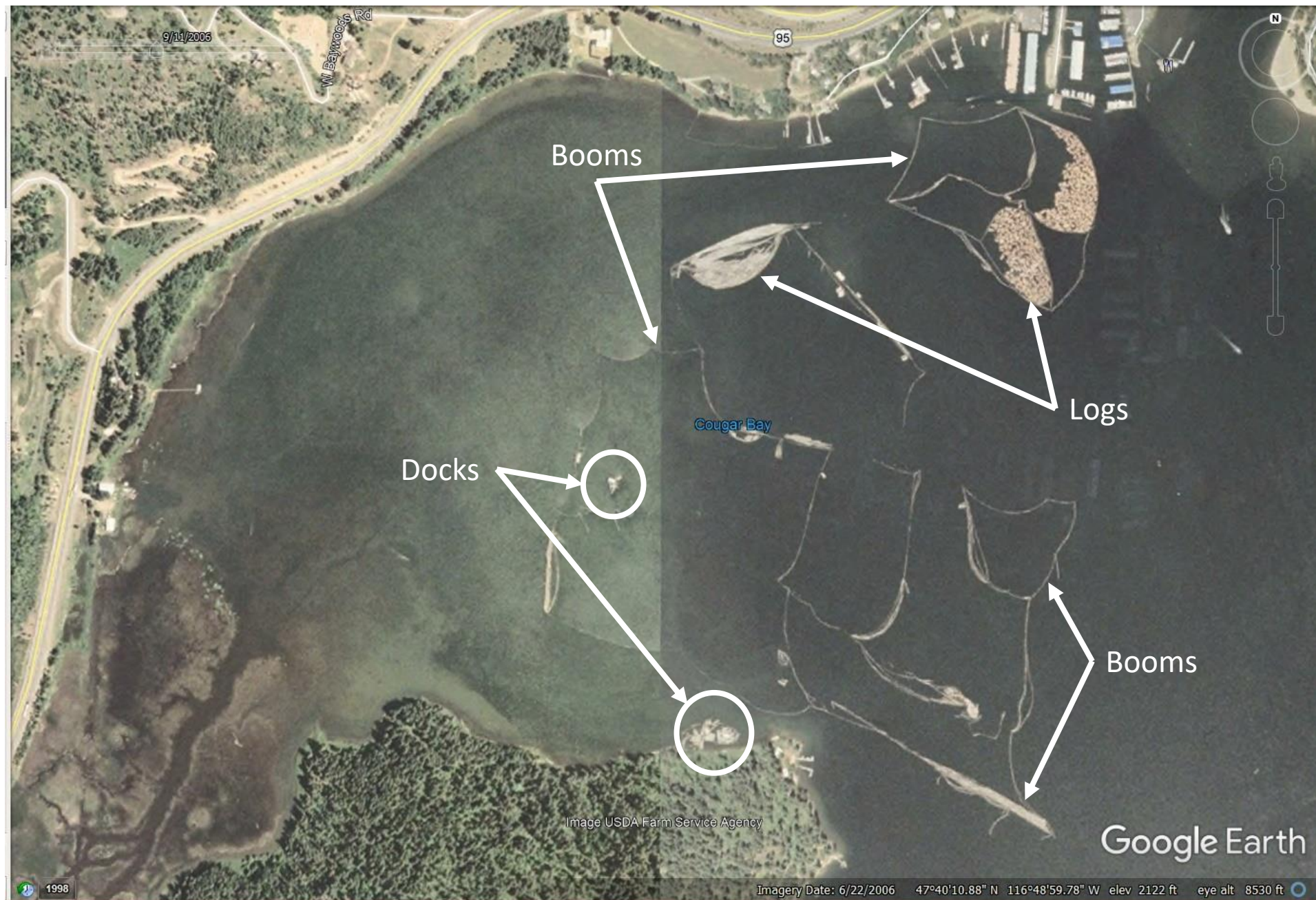


Cougar Bay, 7/31/2005  
Similar to 2004, but docks have moved around



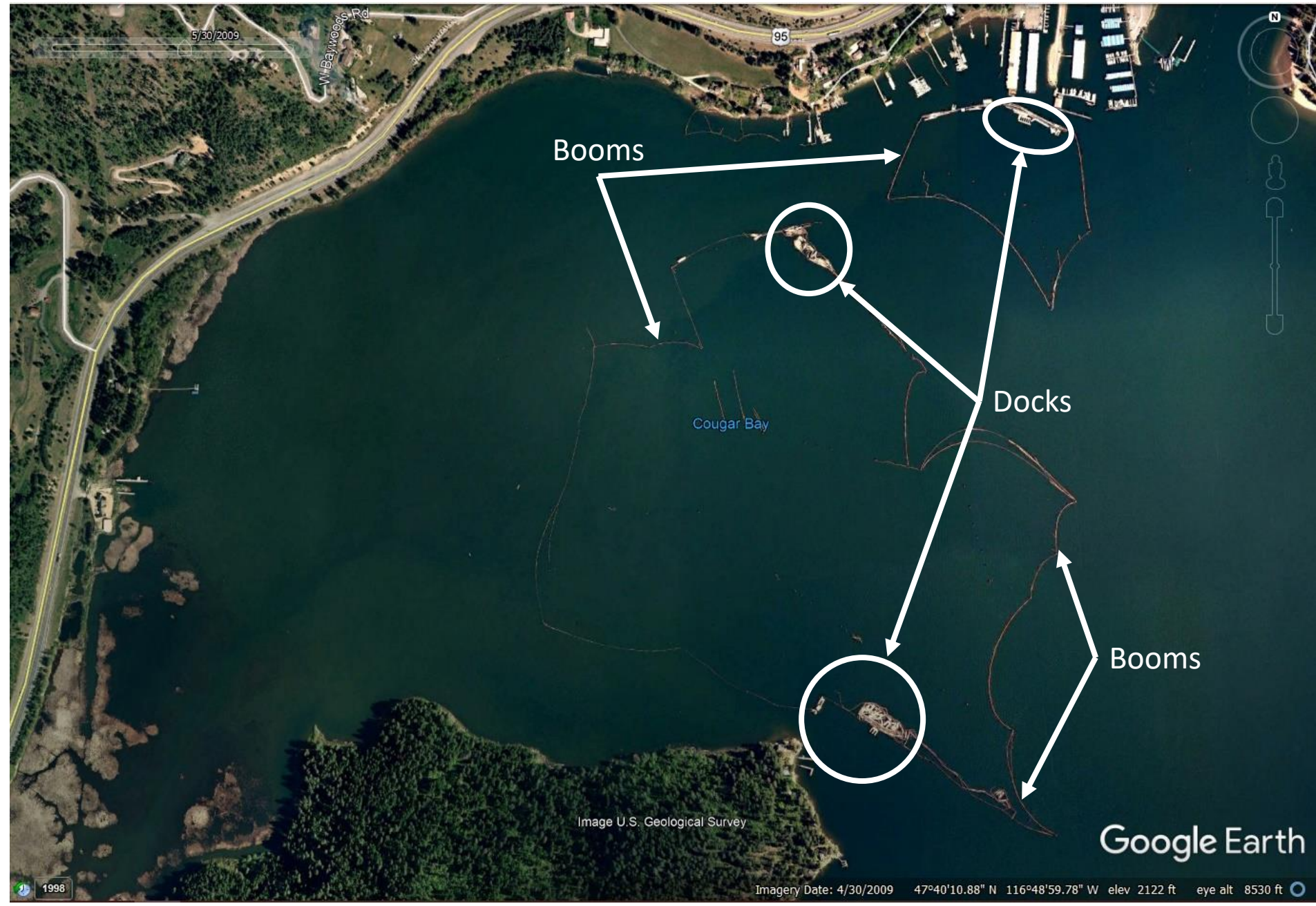


Cougar Bay, 6/22/2006  
Similar to 2005





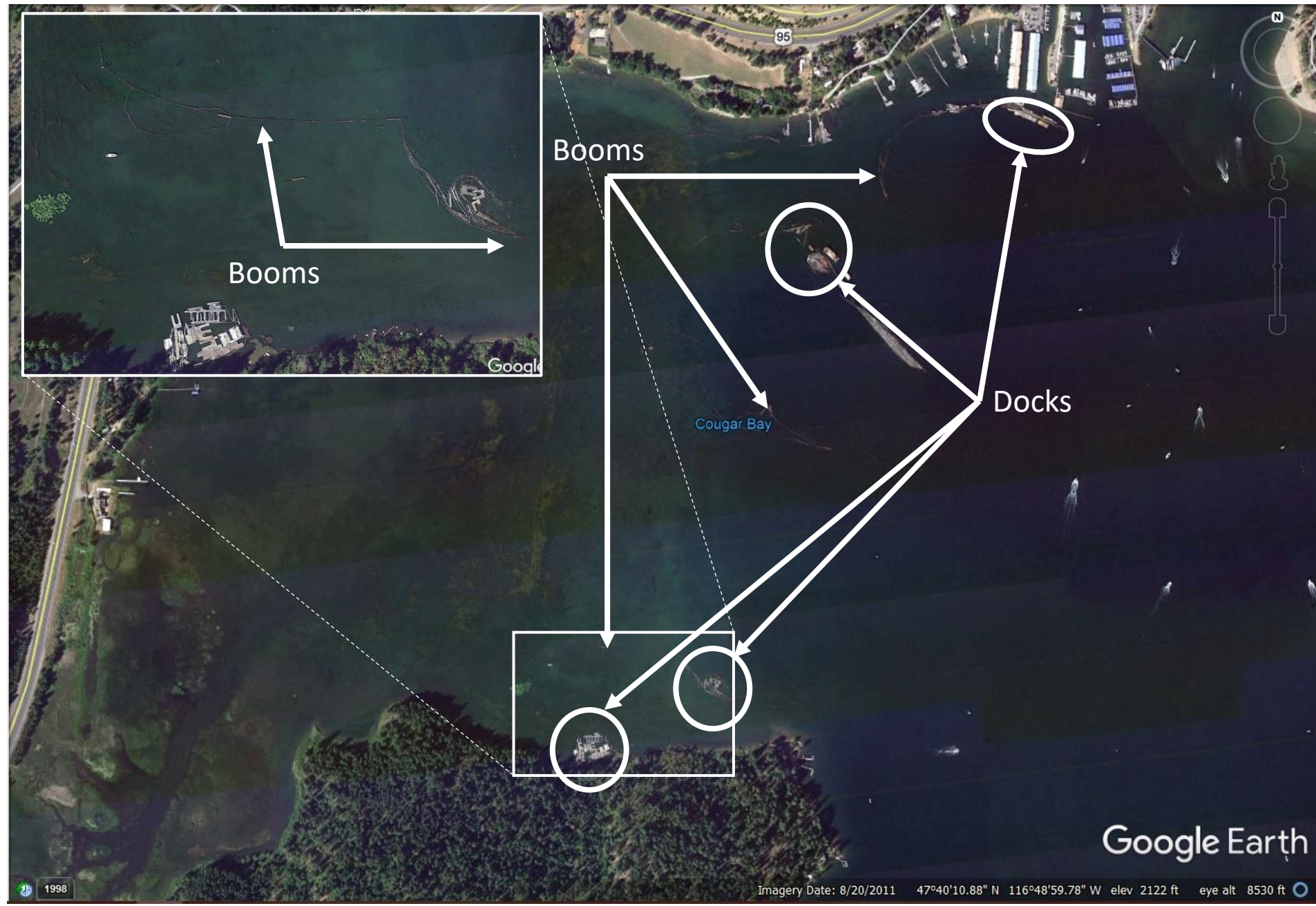
Cougar Bay, 4/30/2009  
Log storage gone. Docks have moved around.





Cougar Bay, 8/20/2011

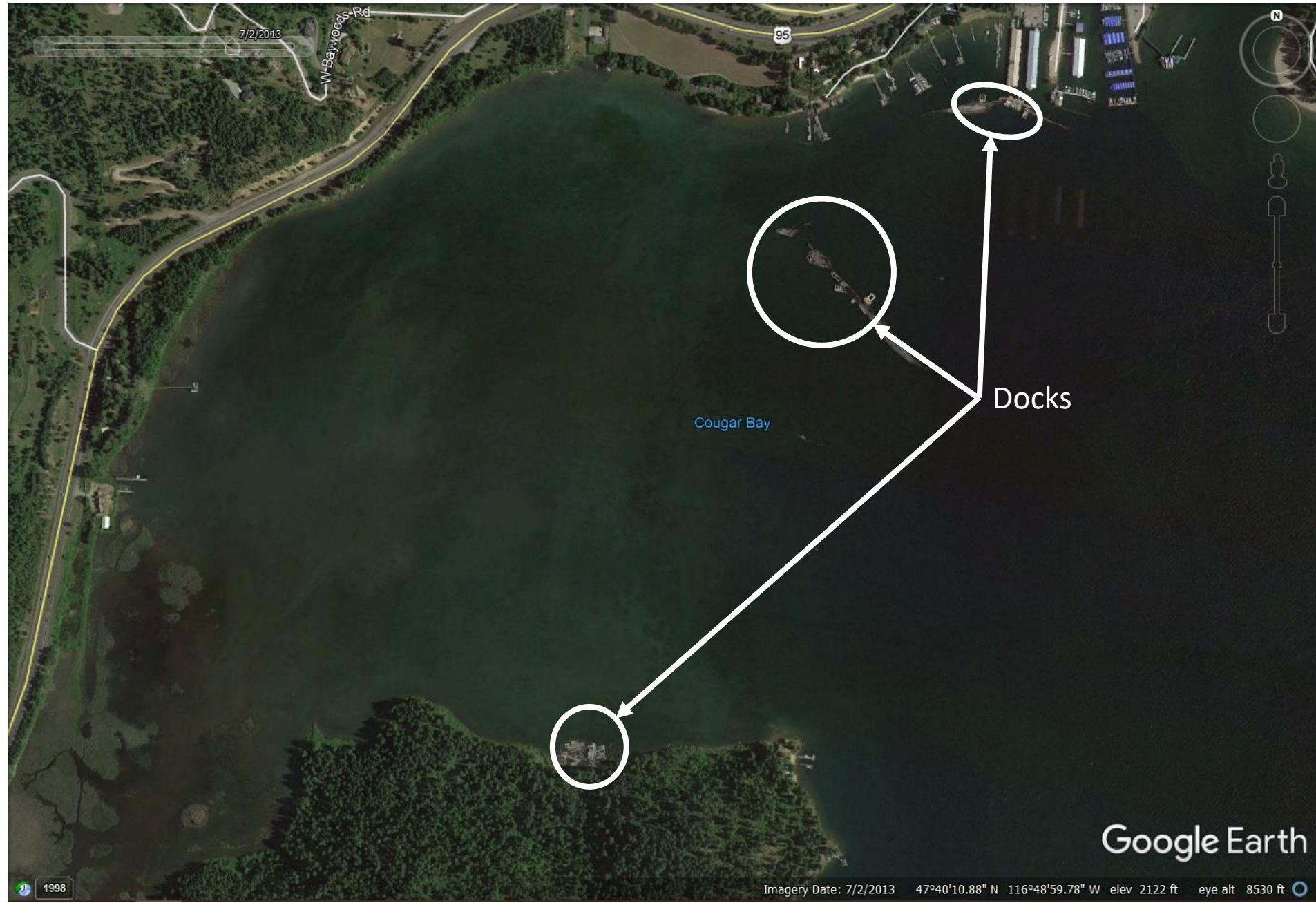
Similar to 2009, but booms are much reduced. They are more easily seen when zoomed in more. Docks have moved around.





Cougar Bay, 7/2/2013

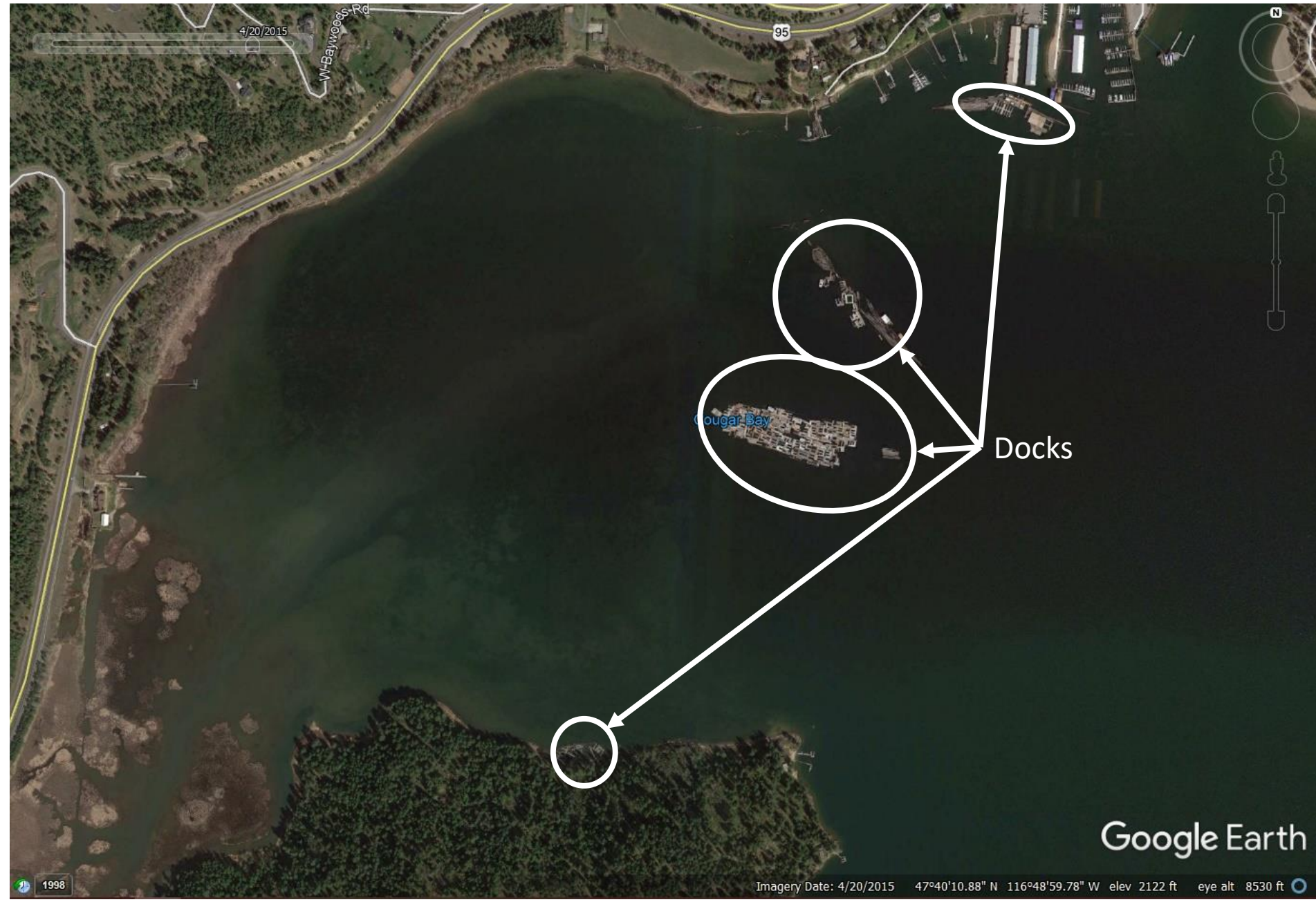
Similar to 2011, but booms are gone except for storage areas in middle of bay and northeast corner. Docks have consolidated a bit.





Cougar Bay, 4/20/2015

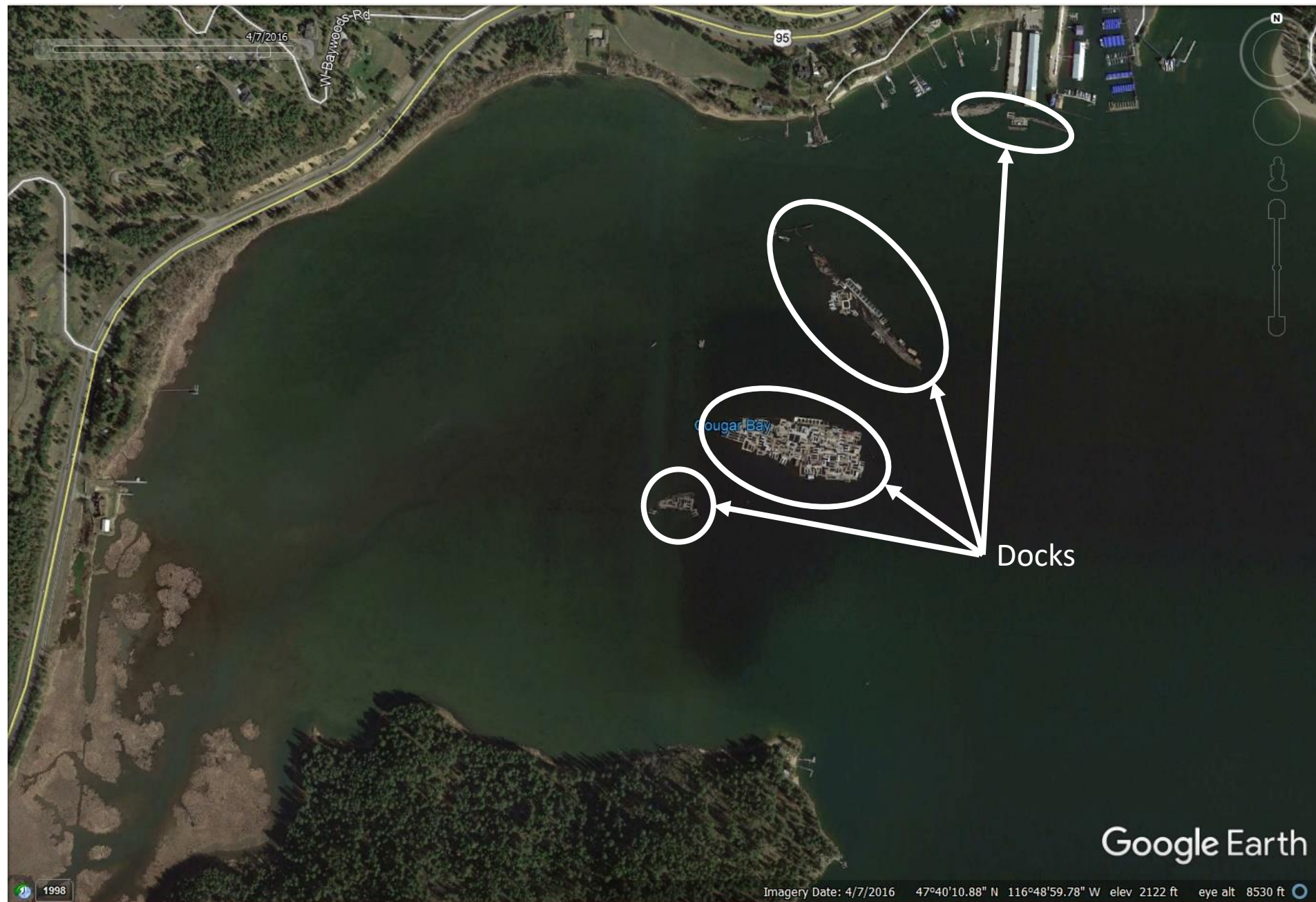
Similar to 2011. Docks have expanded a lot, and storage season is still in effect.





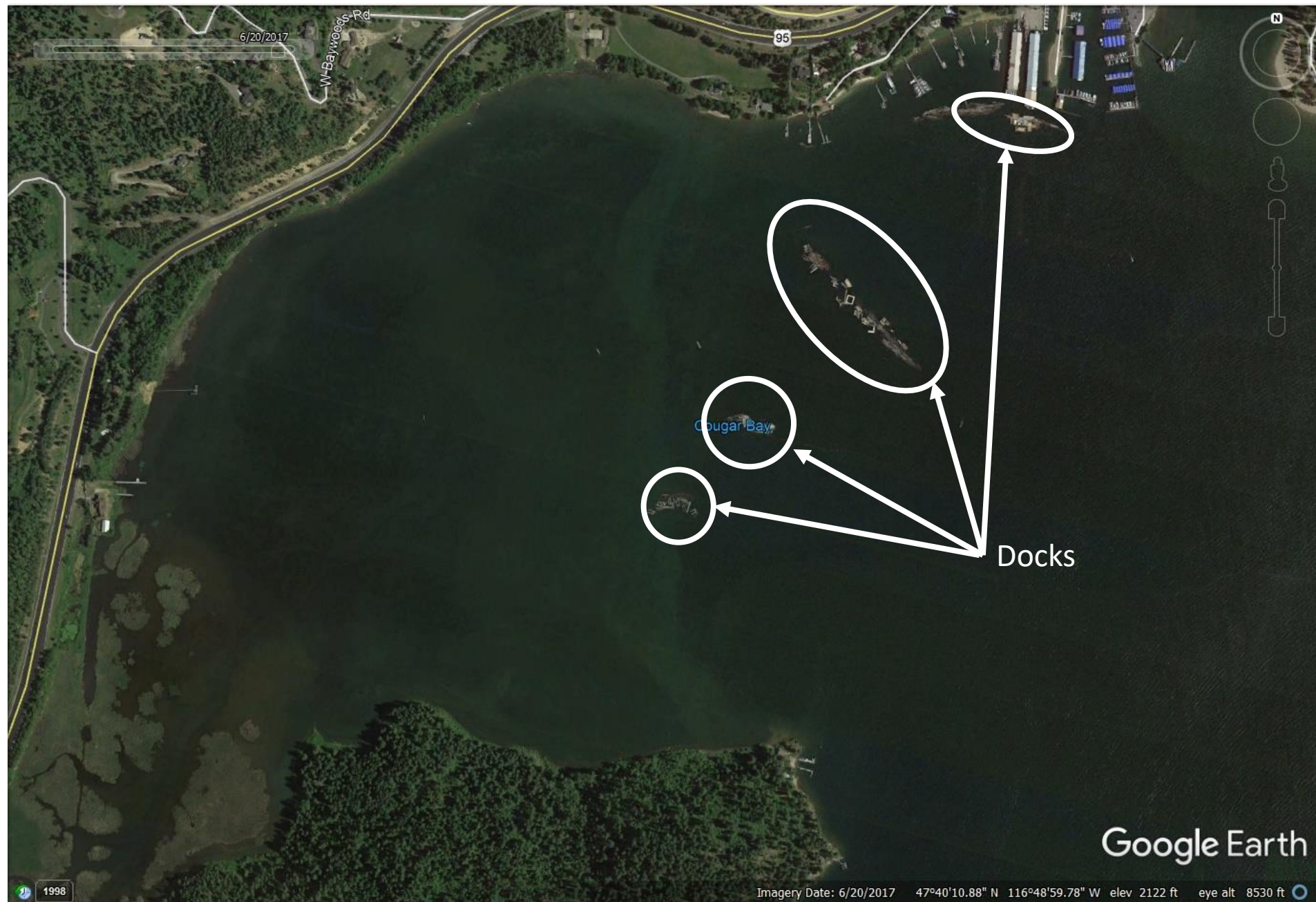
Cougar Bay, 4/7/2016

Similar to 2015. Docks have moved around a bit, and storage season is still in effect.



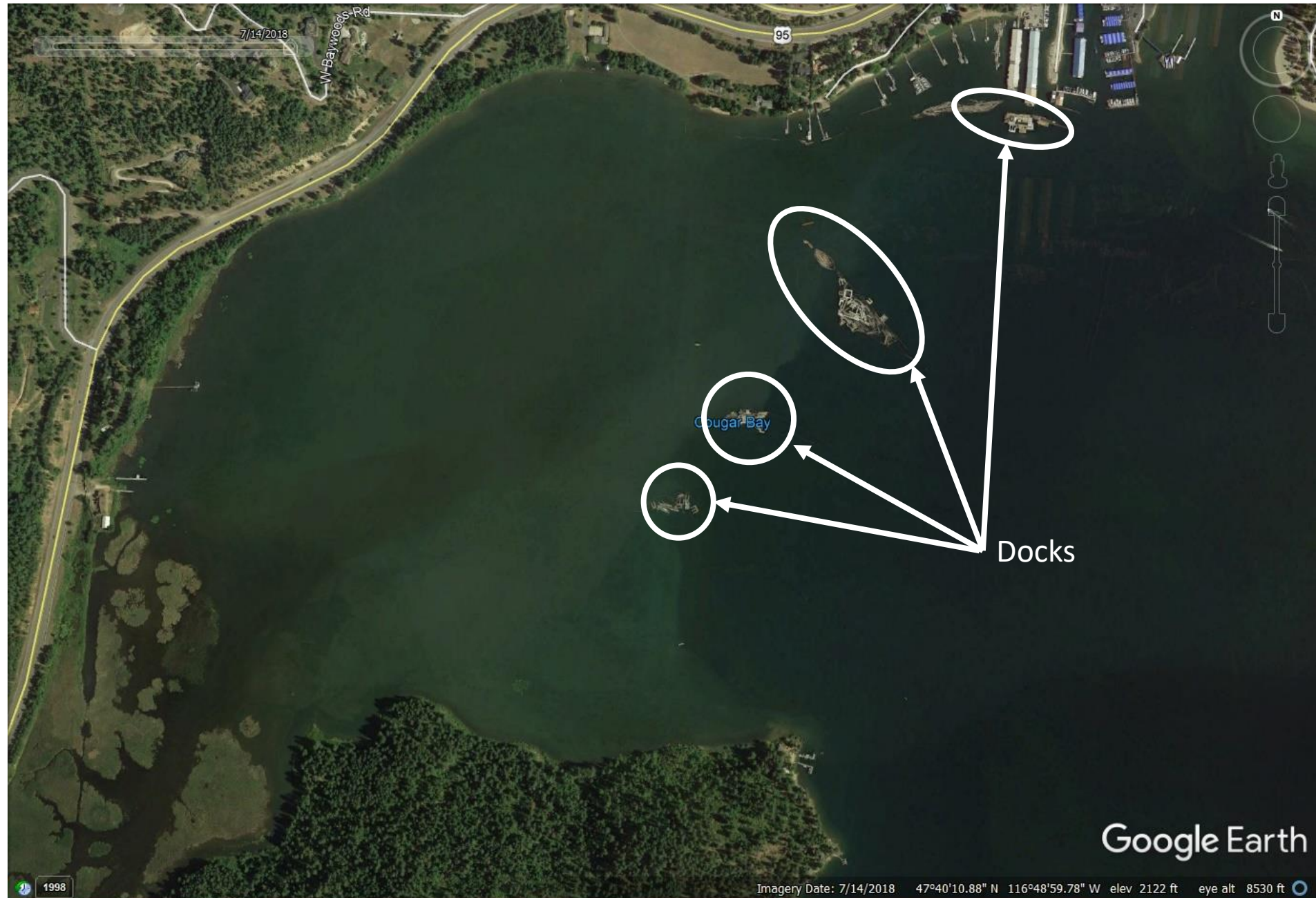


Cougar Bay, 6/20/2017  
Similar to 2016, but this is post storage season.





Cougar Bay, 7/14/2018  
Similar to 2017, also post storage season.





## JOINT APPLICATION FOR PERMITS

## U.S. ARMY CORPS OF ENGINEERS - IDAHO DEPARTMENT OF WATER RESOURCES - IDAHO DEPARTMENT OF LANDS

**Authorities:** The Department of Army Corps of Engineers (Corps), Idaho Department of Water Resources (IDWR), and Idaho Department of Lands (IDL) established a joint process for activities impacting jurisdictional waterways that require review and/or approval of both the Corps and State of Idaho. Department of Army permits are required by Section 10 of the Rivers & Harbors Act of 1899 for any structure(s) or work in or affecting navigable waters of the United States and by Section 404 of the Clean Water Act for the discharge of dredged or fill materials into waters of the United States, including adjacent wetlands. State permits are required under the State of Idaho, Stream Protection Act (Title 42, Chapter 38, Idaho Code and Lake Protection Act (Section 58, Chapter 13 et seq., Idaho Code). In addition the information will be used to determine compliance with Section 401 of the Clean Water Act by the appropriate State, Tribal or Federal entity.

**Joint Application:** Information provided on this application will be used in evaluating the proposed activities. Disclosure of requested information is voluntary. Failure to supply the requested information may delay processing and issuance of the appropriate permit or authorization. **Applicant will need to send a completed application, along with one (1) set of legible, black and white (8½"x11"), reproducible drawings that illustrate the location and character of the proposed project / activities to both the Corps and the State of Idaho.**

**See Instruction Guide** for assistance with Application. Accurate submission of requested information can prevent delays in reviewing and permitting your application. Drawings including vicinity maps, plan-view and section-view drawings must be submitted on 8-1/2 x 11 papers.

**Do not start work until you have received all required permits from both the Corps and the State of Idaho**

FOR AGENCY USE ONLY							
USACE NWW-	Date Received:		<input type="checkbox"/> Incomplete Application Returned		Date Returned:		
Idaho Department of Water Resources No.	Date Received:		<input type="checkbox"/> Fee Received DATE:		Receipt No.:		
Idaho Department of Lands No. <b>19585884</b>	<b>7/20/20</b>		<input checked="" type="checkbox"/> Fee Received DATE: <b>5/20/20</b>		Receipt No.: <b>\$1,075<sup>00</sup></b> <b>CK# 26327</b>		
<b>INCOMPLETE APPLICATIONS MAY NOT BE PROCESSED</b>							
1. CONTACT INFORMATION - APPLICANT Required:				2. CONTACT INFORMATION - AGENT:			
Name: John Condon				Name: Colton Carlson			
Company: North Idaho Maritime				Company: North Idaho Maritime			
Mailing Address: 4020 N Huetter rd				Mailing Address: 4020 N Huetter Rd			
City: Coeur d' Alene		State: ID	Zip Code: 83814		City: Coeur d' Alene		State: ID Zip Code: 83814
Phone Number (include area code): (208)664-8215		E-mail: john@northidahomarine.com		Phone Number (include area code): (208) 664-8215		E-mail: colton@northidahomarine.com	
3. PROJECT NAME or TITLE: Cougar Bay Winter Storage				4. PROJECT STREET ADDRESS: Cougar Bay			
5. PROJECT COUNTY: Kootenai		6. PROJECT CITY: Coeur d' Alene		7. PROJECT ZIP CODE: 83814		8. NEAREST WATERWAY/WATERBODY: CDA Lake	
9. TAX PARCEL ID#: n/a		10. LATITUDE: 47.672153 LONGITUDE: -116.812295		11a. 1/4: n/a 11b. 1/4: n/a 11c. SECTION: n/a		11d. TOWNSHIP: n/a 11e. RANGE: n/a	
12a. ESTIMATED START DATE: n/a		12b. ESTIMATED END DATE: n/a		13a. IS PROJECT LOCATED WITHIN ESTABLISHED TRIBAL RESERVATION BOUNDARIES? <input checked="" type="checkbox"/> NO <input type="checkbox"/> YES Tribe:			
13b. IS PROJECT LOCATED IN LISTED ESA AREA? <input checked="" type="checkbox"/> NO <input type="checkbox"/> YES				13c. IS PROJECT LOCATED ON/NEAR HISTORICAL SITE? <input checked="" type="checkbox"/> NO <input type="checkbox"/> YES			
14. DIRECTIONS TO PROJECT SITE: Include vicinity map with legible crossroads, street numbers, names, landmarks. Take Atlas south. Left on Seltice. Right on Northwest. Right on to 95. Boat from there.							
15. PURPOSE and NEED: <input checked="" type="checkbox"/> Commercial <input type="checkbox"/> Industrial <input type="checkbox"/> Public <input type="checkbox"/> Private <input type="checkbox"/> Other Describe the reason or purpose of your project; include a brief description of the overall project. Continue to Block 16 to detail each work activity and overall project. The purpose of the project is to have a designated area to perform winter storage, along with a designated work area within the footprint to be in use all year round.							

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16. DETAILED DESCRIPTION OF EACH ACTIVITY WITHIN OVERALL PROJECT. Specifically indicate portions that take place within waters of the United States, including wetlands: Include dimensions; equipment, construction, methods; erosion, sediment and turbidity controls; hydrological changes: general stream/surface water flows, estimated winter/summer flows; borrow sources, disposal locations etc.:

**Winter Storage:**

Bring floating encroachments to Cougar bay with 1-2 man crew and tugboat. They will be tied together and secured to existing pile with rope. These will be stored from October through May.

Storage are will be ~2-3 Acres as needed. The max area would be ~1000' long and ~300' wide.

Winter storage area would likely see a tug bringing in floating encroachments most evenings for about 2/3 weeks in October. Likewise, It would likely see a tug leaving the area most mornings, returning floating encroachments, for about a 2/3 week period in May.

**Work Area:**

Inside of the "Winter Storage Area" will be an area ~1-2 Acres in size designated as a "work area". This area will include the intermittent storage of miscellaneous docks for repair, resale, and disposal all year-round. Along with repairs this area would be suitable for assembly of modular dock sections that are built off-site. Typically a 1-2 man crew with a boat and possibly a barge would be in this area as needed.

The "work area" would see 1-2 boats w/ 2 man crew intermittently as needed through the year.

No dredging or fill material will be used at this site.

17. DESCRIBE ALTERNATIVES CONSIDERED to AVOID or MEASURES TAKEN to MINIMIZE and/ or COMPENSATE for IMPACTS to WATERS of the UNITED STATES, INCLUDING WETLANDS: See Instruction Guide for specific details.

-Deadheads will be avoided in transport.

-Employees will practice responsible measures while building, repairing, and demolition when needed.

-Boats will be reasonably maintained to prevent any leaks of fluids.

-All necessary infrastructure is already in place so there are no additional impacts in that regard

-Floating encroachments secured with multiple lines and additional log boom if necessary

-Floating encroachments are towed in groups of up to 4 to maximize efficiency and to limit trips through bay

18. PROPOSED MITIGATION STATEMENT or PLAN: If you believe a mitigation plan is not needed, provide a statement and your reasoning why a mitigation plan is NOT required. Or, attach a copy of your proposed mitigation plan.

Mitigation plan not necessary. BMP's cover relevant hazards. Our vessels are equipped with necessary prevention and containment equipment.

19. TYPE and QUANTITY of MATERIAL(S) to be discharged below the ordinary high water mark and/or wetlands:

Dirt or Topsoil: \_\_\_\_\_ 0 cubic yards  
Dredged Material: \_\_\_\_\_ 0 cubic yards  
Clean Sand: \_\_\_\_\_ 0 cubic yards  
Clay: \_\_\_\_\_ 0 cubic yards  
Gravel, Rock, or Stone: \_\_\_\_\_ 0 cubic yards  
Concrete: \_\_\_\_\_ 0 cubic yards  
Other (describe): \_\_\_\_\_ : \_\_\_\_\_ 0 cubic yards  
Other (describe): \_\_\_\_\_ : \_\_\_\_\_ 0 cubic yards

TOTAL: \_\_\_\_\_ 0 cubic yards

20. TYPE and QUANTITY of impacts to waters of the United States, including wetlands:

Filling: \_\_\_\_\_ 0 acres \_\_\_\_\_ 0 sq ft. \_\_\_\_\_ 0 cubic yards  
Backfill & Bedding: \_\_\_\_\_ 0 acres \_\_\_\_\_ 0 sq ft. \_\_\_\_\_ 0 cubic yards  
Land Clearing: \_\_\_\_\_ 0 acres \_\_\_\_\_ 0 sq ft. \_\_\_\_\_ 0 cubic yards  
Dredging: \_\_\_\_\_ 0 acres \_\_\_\_\_ 0 sq ft. \_\_\_\_\_ 0 cubic yards  
Flooding: \_\_\_\_\_ 0 acres \_\_\_\_\_ 0 sq ft. \_\_\_\_\_ 0 cubic yards  
Excavation: \_\_\_\_\_ 0 acres \_\_\_\_\_ 0 sq ft. \_\_\_\_\_ 0 cubic yards  
Draining: \_\_\_\_\_ 0 acres \_\_\_\_\_ 0 sq ft. \_\_\_\_\_ 0 cubic yards  
Other: \_\_\_\_\_ : \_\_\_\_\_ 0 acres \_\_\_\_\_ 0 sq ft. \_\_\_\_\_ 0 cubic yards

TOTALS: \_\_\_\_\_ 0 acres \_\_\_\_\_ 0 sq ft. \_\_\_\_\_ 0 cubic yards



21. HAVE ANY WORK ACTIVITIES STARTED ON THIS PROJECT? ☒ NO ☐ YES If yes, describe ALL work that has occurred including dates.

There have been ongoing operations in Cougar bay for over 100 years.

22. LIST ALL PREVIOUSLY ISSUED PERMIT AUTHORIZATIONS:

Idaho Dept of Lands Lease B-2186

23. ☒ YES, Alteration(s) are located on Public Trust Lands, Administered by Idaho Department of Lands

24. SIZE AND FLOW CAPACITY OF BRIDGE/CULVERT and DRAINAGE AREA SERVED: n/a Square Miles

25. IS PROJECT LOCATED IN A MAPPED FLOODWAY? ☒ NO ☐ YES If yes, contact the floodplain administrator in the local government jurisdiction in which the project is located. A Floodplain Development permit and a No-rise Certification may be required.

26a. WATER QUALITY CERTIFICATION: Pursuant to the Clean Water Act, anyone who wishes to discharge dredge or fill material into the waters of the United States, either on private or public property, must obtain a Section 401 Water Quality Certification (WQC) from the appropriate water quality certifying government entity.

See Instruction Guide for further clarification and all contact information.

The following information is requested by IDEQ and/or EPA concerning the proposed impacts to water quality and anti-degradation:

☐ NO ☒ YES Is applicant willing to assume that the affected waterbody is high quality?  
☒ NO ☐ YES Does applicant have water quality data relevant to determining whether the affected waterbody is high quality or not?  
☐ NO ☒ YES Is the applicant willing to collect the data needed to determine whether the affected waterbody is high quality or not?

26b. BEST MANAGEMENT PRACTICES (BMP's): List the Best Management Practices and describe these practices that you will use to minimize impacts on water quality and anti-degradation of water quality. All feasible alternatives should be considered - treatment or otherwise. Select an alternative which will minimize degrading water quality

-Consult the County weed Superintendent and Avista on the distribution of aquatic invasive species and noxious weeds in travel lanes. Areas with known infestations will be avoided or treated before being disturbed by travel from the storage area to other sites on the lake.

-Employees are educated and experienced in proper vehicle maintenance.

-Vessels equipped with proper prevention and containment equipment.

-Low Pool areas to be avoided to minimize turbidity.

-Existing "deadhead" logs to remain in-tact and be avoided

-Employees will adhere to rules and regulations from relevant agencies and act in accordance with the clean water act and CDA Lake Management Plan

-Encroachment area clearly designated as no-wake zone and hazardous area due to myriad of "deadhead" logs

-Shorten tow-line to have maximum control over floating encroachments while transporting in and out of Cougar bay

-Maintain low speeds in bay to minimize turbidity

-Educate employees on positioning of deadheads in bay

-maintain consistent paths through bay to minimize disturbance

Through the 401 Certification process, water quality certification will stipulate minimum management practices needed to prevent degradation.

27. LIST EACH IMPACT to stream, river, lake, reservoir, including shoreline: Attach site map with each impact location.

Activity	Name of Water Body	Intermittent Perennial	Description of Impact and Dimensions	Impact Length Linear Feet
Winter Storage	CDA Lake	Perennial	Store floating encroachments seasonally in ~3 Acre Area	~ 650
Work Area	CDA Lake	Perennial	Intermittent storage and work area ~2 Acres in size	~ 350
TOTAL STREAM IMPACTS (Linear Feet):				

28. LIST EACH WETLAND IMPACT include mechanized clearing, fill, excavation, flood, drainage, etc. Attach site map with each impact location.

Activity	Wetland Type: Emergent, Forested, Scrub/Shrub	Distance to Water Body (linear ft)	Description of Impact Purpose: road crossing, compound, culvert, etc.	Impact Length (acres, square ft linear ft)
n/a				
TOTAL WETLAND IMPACTS (Square Feet):				

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TOTAL WETLAND IMPACTS (Square Feet):



29. ADJACENT PROPERTY OWNERS NOTIFICATION REQUIREMENT: Provide contact information of ALL adjacent property owners below.

<p>Name: RASMUSSEN INC</p> <p>Mailing Address: PO box 578</p> <p>City: State: Zip Code: Coeur d' Alene ID 83816</p> <p>Phone Number (include area code): E-mail:</p>	<p>Name: DAVID &amp; KRISTINE WOLD FAMILY TRUST</p> <p>Mailing Address: 2010 S Highway 95</p> <p>City: State: Zip Code: Coeur d' Alene ID 83814</p> <p>Phone Number (include area code): E-mail:</p>
<p>Name: FOREDECK LLC</p> <p>Mailing Address: 2093 W Blackwell Mill Rd</p> <p>City: State: Zip Code: Coeur d' Alene ID 83814</p> <p>Phone Number (include area code): E-mail:</p>	<p>Name: SWEENEY, PAMELA</p> <p>Mailing Address: PO box 653</p> <p>City: State: Zip Code: Coeur d' Alene ID 83816</p> <p>Phone Number (include area code): E-mail:</p>
<p>Name: CORNWALL FAMILY FARM ENTERPRISES LLC</p> <p>Mailing Address: PO box 6452</p> <p>City: State: Zip Code: Asheville NC 28816</p> <p>Phone Number (include area code): E-mail:</p>	<p>Name: JOHN A BEUTLER AND ANN J BEUTLER LIVING TRUST</p> <p>Mailing Address: 1836 Northwest BLVD</p> <p>City: State: Zip Code: Coeur d' Alene ID 83814</p> <p>Phone Number (include area code): E-mail:</p>
<p>Name: Yadon David</p> <p>Mailing Address: PO box 734</p> <p>City: State: Zip Code: Coeur d' Alene ID 83814</p> <p>Phone Number (include area code): E-mail:</p>	<p>Name: COUGAR BAY SAILING AND CHOWDER SOCIETY LLC</p> <p>Mailing Address: 1522 E Rockwood Blvd</p> <p>City: State: Zip Code: Spokane WA 99203</p> <p>Phone Number (include area code): E-mail:</p>

30. SIGNATURES: STATEMENT OF AUTHORIZATION / CERTIFICATION OF AGENT / ACCESS

*Application is hereby made for permit, or permits, to authorize the work described in this application and all supporting documentation. I certify that the information in this application is complete and accurate. I further certify that I possess the authority to undertake the work described herein; or am acting as the duly authorized agent of the applicant (Block 2). I hereby grant the agencies to which this application is made, the right to access/come upon the above-described location(s) to inspect the proposed and completed work/activities.*

Signature of Applicant:

Date:

Signature of Agent:

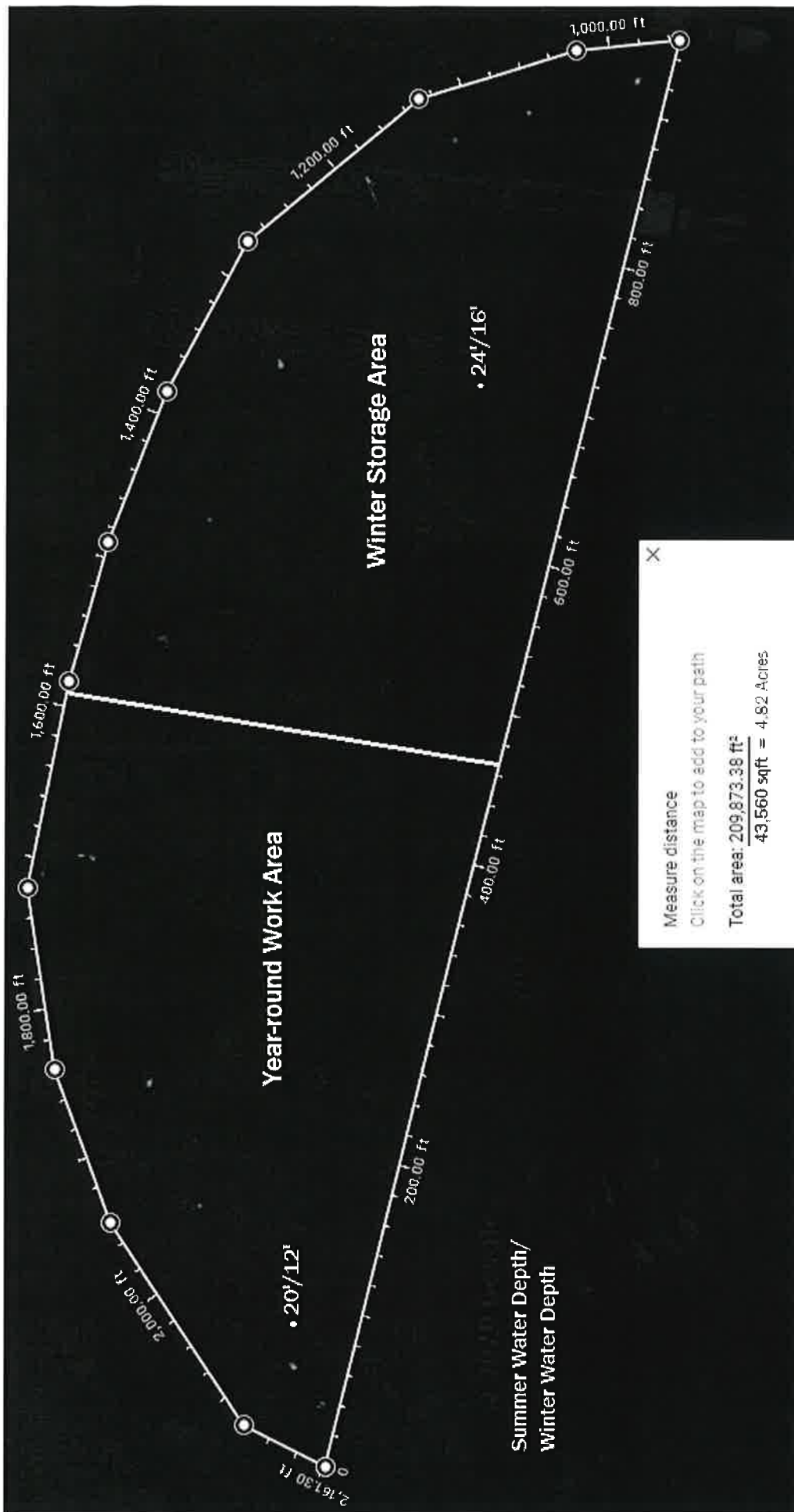
Date:

This application must be signed by the person who desires to undertake the proposed activity AND signed by a duly authorized agent (see Block 1, 2, 30). Further, 18 USC Section 1001 provides that: "Whoever, in any manner within the jurisdiction of any department of the United States knowingly and willfully falsifies, conceals, or covers up any trick, scheme, or disguise a material fact or makes any false, fictitious, or fraudulent statements or representations or makes or uses any false writing or document knowing same to contain any false, fictitious or fraudulent statements or entry, shall be fined not more than \$10,000 or imprisoned not more than five years or both".

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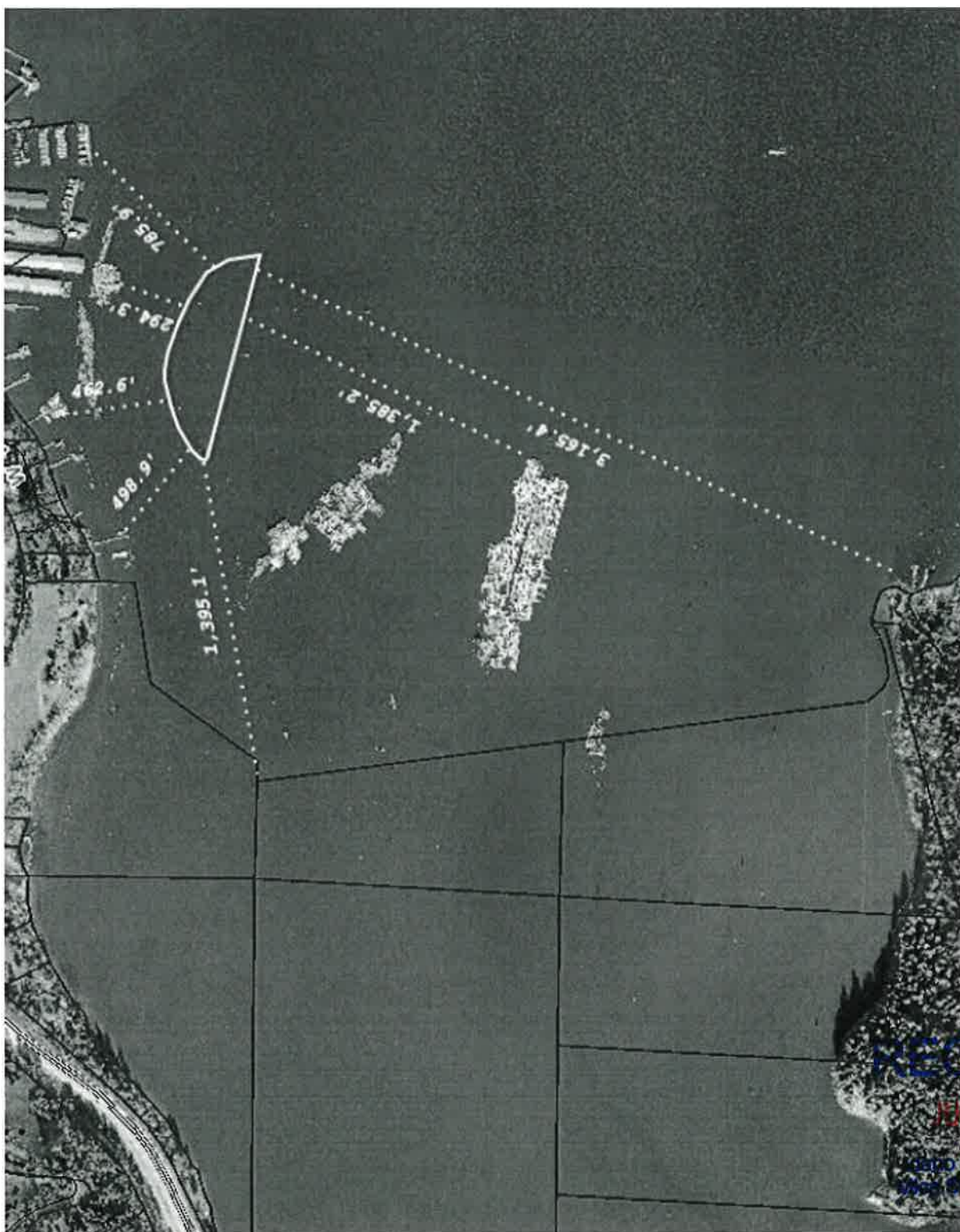


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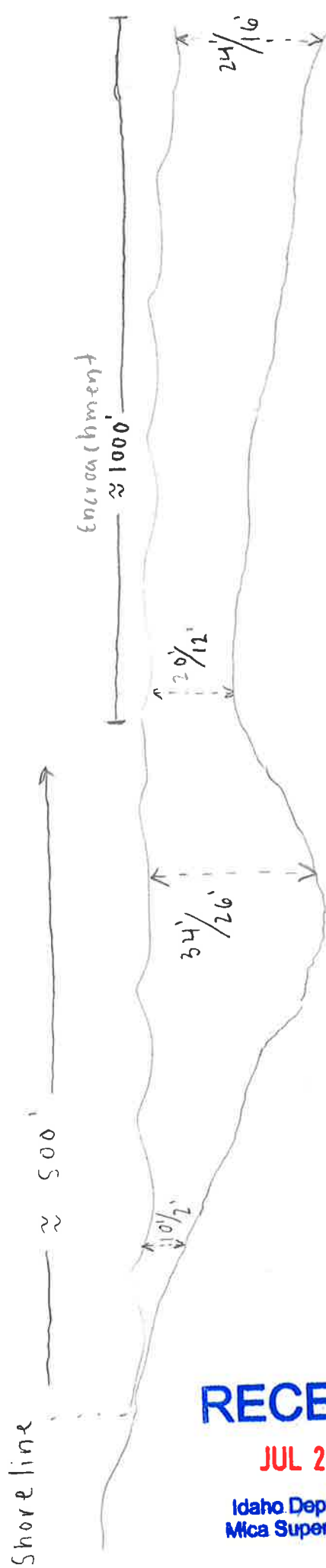
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# Lake Bed Profile



Summer water Depth  
Winter water Depth

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North Idaho Maritime Cougar Bay Winter Storage

L95S5884

- Question 9 Tax Parcel
  - This location does not have a parcel; however, the applicant owns littoral rights at his property located at 6719 S Highway 97, Coeur d' Alene, ID. Sec. 06 Twp 49 N. R.2 W.B.M. Parcel AIN Number 111552.
- Question 11c., d. and e – Please provide the adjacent Section, Township and Range
  - Property Adjacent to the encroachment is in SE Sec. 15 Twp 50 N. R.4 W.B.M
- Encroachments Not in Aid to Navigation
  - The said encroachment is not in aid of navigation but we do strongly believe our encroachment will provide environmental and economic benefits to the general public. Winter storage is a valuable service provided and hundreds of residents with littoral rights to Coeur d' Alene Lake take advantage of such service every year. In shallow areas, areas that ice over, and areas of the lake susceptible to storms are all detrimental locations to floating encroachments. Encroachments in these areas are at a greater risk to damage that is costly to fix and in extreme cases this damage can cause floating debris. By storing encroachments in a protected area with ample water depth we can help to mitigate the costs and safety hazards associated without having the storage service.
  - The year round work area will include the intermittent storage of miscellaneous docks for repair, resale, and disposal all year-round. Along with repairs this area would be suitable for assembly of modular dock sections that are built off-site. This will benefit the public because it will minimize the actual effect of work being done at their site location. When new docks are installed at the location the old ones need to be disposed of. This is a borderline impossible task for residents on the lake to complete themselves. To alleviate this problem, we dispose of the docks for the customer, but often times the coordination of towing a dock and removing it from the lake in the same day is very difficult. This area would act as a temporary storage area so our crews can re-group with proper and necessary resources to finish the job. Another example of the year round area being a benefit would be in the recovery of derelict and miscellaneous hazards in the form of docks and logs. As cited in the previous scenario, too often, residents are not able to demo their docks when they become beyond repair, there have been plenty of cases when people have detached their dock and sent it into the lake or towed it to uninhabited property during the night. We get the call to take care of these situations. These derelict items need a temporary location to be stored before they can be permanently taken care of. As with removal, sometimes we need a temporary holding area for resources and supplies that are scheduled to go out to different locations on the lake.

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- All of the reasons for this year round work and storage area are to the benefit of residents on the lake and the general public. Businesses are only able to operate because they satisfy the needs of their customers. The purpose of this encroachment is to make it possible for our company to continue to serve the needs of our customers, the general public, and different local, state, and federal agencies and departments.

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### Idaho Commercial Lease Agreement

This Commercial Lease Agreement ("Lease") is made and effective 4-6-20 by and between John & Gaila Condon ("Landlord") and North Idaho Maritime, LLC ("Tenant").

Landlord is the owner of land and improvements at the address 6719 S Highway 97, Coeur d Alene, ID 83814.

- AIN 111552
- TX# 5934

Landlord desires to lease the premises to Tenant, and Tenant desires to lease the premises from Landlord for the term, at the rental and upon the covenants, conditions and provisions herein set forth.

THEREFORE, in consideration of the mutual promises herein, contained and other good and valuable consideration, it is agreed:

#### 1. Term.

A. Landlord hereby leases the premises to Tenant, and Tenant hereby leases the same from Landlord, for an "Initial Term" beginning May <sup>1</sup>, 2020 and continuing month to month thereafter. Both Landlord and Tenant have the option to terminate this lease agreement with written notice at least 30 days prior to the lease termination. Landlord shall use its best efforts to give Tenant possession as early as possible at the beginning of the Lease term. If Landlord is unable to timely provide the Leased Premises, rent shall abate for the period of delay. Tenant

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shall make no other claim against Landlord for any such delay.

B. Tenant may renew the Lease for one extended term of TBD. Tenant shall exercise such renewal option, if at all; by giving written notice to Landlord not less than sixty (60) days prior to the expiration of the Initial Term. The renewal term shall be at the rental set forth below and otherwise upon the same covenants, conditions and provisions as provided in this Lease.

## 2. Rental.

A. Tenant shall pay to Landlord during the Initial Term rental of \$1,000.00. Each installment payment shall be due in advance on the first day of each calendar month during the lease term to Landlord at John & Gaila Condon, 8207 N Sally Street, Hayden, ID 83835 or at such other place designated by written notice from Landlord or Tenant. The rental payment amount for any partial calendar months included in the lease term shall be prorated on a daily basis. Tenant shall also pay to Landlord a "Security Deposit" in the amount of 500.00.

B. The rental for any renewal lease term, if created as permitted under this Lease, shall be TBD per year payable in installments of TBD per month.

## 3. Use

Notwithstanding the forgoing, Tenant shall not use the Leased Premises for the <sup>purposes of</sup> storing, manufacturing or selling any explosives, flammables or other inherently dangerous substance, chemical, thing or device.

## 4. Sublease and Assignment.

Tenant shall have the right without Landlord's consent, to assign this Lease to a corporation with which Tenant may merge or consolidate, to any subsidiary of Tenant, to any corporation under common control with Tenant, or to a purchaser of substantially all of Tenant's assets. Except as set forth above, Tenant shall not sublease all or any <sup>part of the Leased Premises,</sup> or assign this Lease in whole or in part without Landlord's consent, such consent not to be unreasonably withheld or delayed.

## 5. Repairs.

During the Lease term, Tenant shall make, at Tenant's expense, all necessary repairs to <sup>the Leased</sup> Premises. Repairs shall include such items as routine repairs of floors, walls, ceilings, and other parts of the Leased Premises damaged or worn through normal occupancy, except for major mechanical systems or the roof, subject to the obligations of the parties otherwise set forth in this Lease.

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## 6. Alterations and Improvements.

Tenant, at Tenant's expense, shall have the right following Landlord's consent to remodel, redecorate, and make additions, improvements and replacements of and to all <sup>or any part of the Leased</sup> Premises from time to time as Tenant may deem desirable, provided the same are made in a workmanlike manner and utilizing good quality materials. Tenant shall have the right to place and install personal property, trade <sup>fixtures, equipment and other temporary</sup> installations in and upon the Leased Premises, and fasten the same to the premises. All personal property, equipment, machinery, trade fixtures and temporary installations, whether acquired by Tenant at the commencement of the Lease term or placed or installed on the Leased Premises by Tenant thereafter, shall remain Tenant's property free and clear of any claim by Landlord. Tenant shall have the right to remove the same at any time during the term of <sup>this Lease provided that all damage to the Leased</sup> Premises caused by such removal shall be repaired by Tenant at Tenant's expense.

## 7. Property Taxes.

Landlord shall pay, prior to delinquency, all general real estate taxes and installments of special assessments coming due during the Lease term on the Leased Premises, and all personal property taxes with respect to Landlord's personal property, if any, on the Leased Premises. Tenant shall be responsible for paying all personal property taxes <sup>with respect to Tenant's personal property at the</sup> Leased Premises.

### B. Insurance.

A. If the Leased Premises or any other part of the Building is damaged by fire or other casualty resulting from any act or negligence of Tenant or any of Tenant's agents, employees or invitees, rent shall not be diminished or abated while such damages are under repair, and Tenant shall be responsible for the costs of repair not covered by insurance.

B. Landlord shall maintain fire and extended coverage insurance on the Building and <sup>the Leased</sup> Premises in such amounts as Landlord shall deem appropriate. Tenant shall be responsible, at its expense, for fire and extended coverage insurance on all of its <sup>personal property, including removable trade fixtures, located in the Leased Premises.</sup>

C. Tenant and Landlord shall, each at its own expense, maintain a policy or policies of comprehensive general liability insurance with respect to the respective activities of <sup>each in the Building</sup> with the premiums thereon fully paid on or before due date, issued by and binding upon some insurance company approved by Landlord, such insurance to afford minimum protection of not less than \$1,000,000 combined single limit coverage of bodily injury, property damage or combination thereof. Landlord shall be listed as an <sup>additional insured on Tenant's policy or policies of comprehensive general liability</sup> insurance, and

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Tenant shall provide Landlord with current Certificates of Insurance evidencing Tenant's compliance with this Paragraph. Tenant shall obtain the agreement of Tenant's insurers to notify Landlord that a policy is due to expire at least (10) days <sup>prior to such expiration.</sup> Landlord shall not be required to maintain insurance against thefts within the Leased Premises or the Building.

#### 9. Utilities.

Tenant shall pay all charges for water, sewer, gas, electricity, telephone and other services and utilities used by Tenant on the Leased Premises during the term of this Lease unless otherwise expressly agreed in writing by Landlord. In the event that any utility or service provided to the Leased Premises is not separately metered, Landlord shall pay the amount due and separately invoice Tenant for Tenant's pro rata share of <sup>the charges.</sup> Tenant shall pay such amounts within fifteen (15) days of invoice. Tenant acknowledges that the Leased Premises are designed to provide standard office use electrical facilities and standard office lighting. Tenant shall not use any equipment or devices that utilizes excessive electrical energy or which may, in Landlord's reasonable opinion, overload the wiring or interfere with electrical services to other tenants.

Tenants are responsible for their own snow removal on the premises.

#### 10. Signs.

Following Landlord's consent, Tenant shall have the right to place on the Leased Premises, at locations selected by Tenant, any signs which are permitted by applicable zoning ordinances and private restrictions. Landlord may refuse consent to any proposed signage that is in Landlord's opinion too large, deceptive, unattractive or otherwise inconsistent with or inappropriate to the Leased Premises or use of any other tenant. Landlord shall assist and cooperate with Tenant in obtaining any necessary permission from governmental authorities or adjoining owners and occupants for Tenant to place or construct the foregoing signs. Tenant shall repair all damage to the Leased Premises resulting from the removal of signs installed by Tenant.

#### 11. fEY:

Landlord shall have the right to enter upon the Leased Premises at reasonable hours to inspect the same, provided Landlord shall not thereby unreasonably interfere with Tenant's business on the Leased Premises.

#### 12. Parking.

During the term of this Lease, Tenant shall have the non-exclusive use in common with Landlord, other tenants of the Building, their guests and invitees, of the non-reserved common

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automobile parking areas, driveways, and footways, subject to rules and regulations for the use thereof as prescribed from time to time by Landlord. Landlord reserves the right to designate parking areas within the Building or in reasonable proximity thereto, for Tenant and Tenant's agents and employees. Tenant shall provide Landlord with a list of all license numbers for the cars owned by Tenant, its agents and employees. Separated structured parking, if any, located about the Building is reserved for tenants of the Building who rent such parking spaces. Tenant hereby leases from Landlord spaces in such structural parking area, such spaces to be on a first come-first served basis. In consideration of the leasing to Tenant of such spaces, Tenant shall pay a monthly rental of per space throughout the term of the Lease. Such rental shall be due and payable each month without demand at the time herein set for the payment of other monthly rentals, in addition to such other rentals.

" Landlord reserves the right to section off and lease the east side of the fenced storage area. At no time shall Tenant use this area for storage of personal vehicles including boats, motorhomes, etc... and Tenant shall keep storage area clean and free of debris.

### 13. Building Rules.

Tenant will comply with the rules of the Building adopted and altered by Landlord from time to time and will cause all of its agents, employees, invitees and visitors to do so; all changes to such rules will be sent by Landlord to Tenant in writing. The initial rules for the Building are attached hereto as Exhibit '4' and incorporated herein for all purposes=

### 14. Damage and Destruction.

Subject to Section 8 A. above, if the Leased Premises or any part thereof or any appurtenance thereto is so damaged by fire, casualty or structural defects that the same cannot be used for Tenant's purposes, then Tenant shall have the right within ninety (90) days following damage to elect by notice to Landlord to terminate this Lease as of the date of such damage. In the event of minor damage to any part of the Leased Premises, and if such damage does not render the Leased Premises unusable for Tenant's purposes, Landlord shall promptly repair such damage at the cost of the Landlord. In making the repairs called for in this paragraph, Landlord shall not be liable for any delays resulting from strikes, governmental restrictions, inability to obtain necessary materials or labor or other matters which are beyond the reasonable control of Landlord. Tenant shall be relieved from paying rent and other charges during any portion of the Lease term that the Leased Premises are inoperable or unfit for occupancy, or use, in whole or in part, for Tenant's purposes. Rentals and other charges paid in advance for any such periods shall be credited on the next ensuing payments, if any, but if no further payments are to be made, any such advance payments shall be refunded to Tenant. The provisions of this paragraph extend not only to the matters aforesaid, but also to any occurrence which is beyond Tenant's reasonable control and which renders the Leased Premises, or any appurtenance thereto, inoperable or unfit for occupancy or use, in whole or in part, for Tenant's purposes.

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#### 15. Default.

If default shall at any time be made by Tenant in the payment of rent when due to Landlord as herein provided, and if said default shall continue for fifteen (15) days after written notice thereof shall have been given to Tenant by Landlord, or if default shall be made in any of the other covenants or conditions to be kept, observed and performed by Tenant, and such default shall continue for thirty (30) days after notice thereof in writing to Tenant by Landlord without correction thereof then having been commenced and thereafter diligently prosecuted, Landlord may declare the term of this Lease ended and terminated by giving Tenant written notice of such intention, and if possession of the Leased Premises is not surrendered, Landlord may reenter said premises. Landlord shall have, in addition to the remedy above provided, any other right or remedy available to Landlord on account of any Tenant default, either in law or equity. Landlord shall use reasonable efforts to mitigate its damages.

#### 16. Quiet Possession.

Landlord covenants and warrants that upon performance by Tenant of its obligations hereunder, Landlord will keep and maintain Tenant in exclusive, quiet, peaceable and undisturbed and uninterrupted possession of the Leased Premises during the term of this Lease.

#### 17. Condemnation.

If any legally, constituted authority condemns the Building or such part thereof which shall make the Leased Premises unsuitable for leasing, this Lease shall cease when the public authority takes possession, and Landlord and Tenant shall account for rental as of that date. Such termination shall be without prejudice to the rights of either party to recover compensation from the condemning authority for any loss or damage caused by the condemnation. Neither party shall have any rights in or to any award made to the other by the condemning authority.

#### 18. Subordination.

Tenant accepts this Lease subject and subordinate to any mortgage, deed of trust or other lien presently existing or hereafter arising upon the Leased Premises, or upon the Building and to any renewals, refinancing and extensions thereof, but Tenant agrees that any such mortgagee shall have the right at any time to subordinate such mortgage, deed of trust or other lien to this Lease on such terms and subject to such conditions as such mortgagee may deem appropriate in its discretion. Landlord is hereby irrevocably vested with full power and authority to subordinate this Lease to any mortgage, deed of trust or other lien now existing or hereafter placed upon the Leased Premises of the Building, and Tenant agrees upon demand to execute such further instruments subordinating this Lease or attorning to the holder of any such liens as Landlord

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**Idaho Dept. of Lands  
Mica Supervisory Area**



may request. In the event that Tenant should fail to execute any instrument of subordination herein required to be executed by Tenant promptly as requested, Tenant hereby irrevocably constitutes Landlord as its attorney-in-fact to execute such instrument in Tenant's name, place and stead, it being agreed that such power is one coupled with an interest. Tenant agrees that it will from time to time upon request by Landlord execute and deliver to such persons as Landlord shall request a statement in recordable form certifying that this Lease is unmodified and in full force and effect (or if there have been modifications, that the same is in full force and effect as so modified), stating the dates to which rent and other charges payable under this Lease have been paid, stating that Landlord is not in default hereunder (or if Tenant alleges a default stating the nature of such alleged default) and further stating such other matters as Landlord shall reasonably require.

#### 19. Security Deposit.

The Security Deposit shall be held by Landlord without liability for interest and as security for the performance by Tenant of Tenant's covenants and obligations under this Lease, it being expressly understood that the Security Deposit shall not be considered an advance payment of rental or a measure of Landlord's damages in case of default by Tenant. Unless otherwise provided by mandatory non-waivable law or regulation, Landlord may commingle the Security Deposit with Landlord's other funds. Landlord may, from time to time, without prejudice to any other remedy, use the Security Deposit to the extent necessary to make good any arrearages of rent or to satisfy any other covenant or obligation of Tenant hereunder. Following any such application of the Security Deposit, Tenant shall pay to Landlord on demand the amount so applied in order to restore the Security Deposit to its original amount. If Tenant is not in default at the termination of this Lease, the balance of the Security Deposit remaining after any such application shall be returned by Landlord to Tenant. If Landlord transfers its interest in the Premises during the term of this Lease, Landlord may assign the Security Deposit to the transferee and thereafter shall have no further liability for the return of such Security Deposit.

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20. Notice.

Any notice required or permitted under this Lease shall be deemed sufficiently given or served if sent by United States certified mail, return receipt requested, addressed as follows:

If to Landlord to:

John & Gaila Condon 8207 N Sallv Street  
Hayden, ID 83835 208-755-2818  
-gshandyl3@gmail.com 208-755-7009 -  
John@northidahomaritime.com

If to Tenant to:

John Condon 6719 S Highway 97  
CDA, ID 83814 Phone: Email:  
iohn@northidahomaritime.com  
John Condon 208-755-7009

AP: lisa@northidahomaritime.com 208,664.8215

Landlord and Tenant shall each have the right from time to time to change the place notice is to be given under this paragraph by written notice thereof to the other party.

21 . Brokers.

Tenant represents that Tenant was not shown the Premises by any real estate broker or agent and that Tenant has not otherwise engaged in, any activity which could form the basis for a claim for real estate commission, brokerage fee, finder's fee or other similar charge, in connection with this Lease.

22. Waiver.

No waiver of any default of Landlord or Tenant hereunder shall be implied from any omission to take any action on account of such default if such default persists or is repeated, and no express waiver shall affect any default other than the default specified in the express waiver and that only for the time and to the extent therein stated. One or more waivers by Landlord or Tenant shall not be construed as a waiver of a subsequent breach of the same covenant, term or condition.

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Mica Supervisory Area



23. Memorandum of Lease.

The parties hereto contemplate that this Lease should not and shall not be filed for record, but in lieu thereof, at the request of either party, Landlord and Tenant shall execute a Memorandum of Lease to be recorded for the purpose of giving record notice of the appropriate provisions of this Lease.

24. Headings.

The headings used in this Lease are for convenience of the parties only and shall not be considered in interpreting the meaning of any provision of this Lease.

25. Successors.

The provisions of this Lease shall extend to and be binding upon Landlord and Tenant and their respective legal representatives, successors and assigns.

26. Consent.

Landlord shall not unreasonably withhold or delay its consent with respect to any matter for which Landlord's consent is required or desirable under this Lease.

27. Performance.

If there is a default with respect to any of Landlord's covenants, warranties or representations under this Lease, and if the default continues more than fifteen (15) days after notice in writing from Tenant to Landlord specifying the default, Tenant may, at its option and without affecting any other remedy hereunder, cure such default and deduct the cost thereof from the next accruing installment or installments of rent payable hereunder until Tenant shall have been fully reimbursed for such expenditures, together with interest thereon at a rate equal to the lesser of twelve percent (12o/o) per annum or the then highest lawful rate. If this Lease terminates prior to Tenant's receiving full reimbursement, Landlord shall pay the unreimbursed balance plus accrued interest to Tenant on demand.

28. Compliance with Law.

Tenant shall comply with all laws, orders, ordinances and other public requirements now or hereafter pertaining to Tenant's use of the Leased Premises. Landlord shall comply with all laws, orders, ordinances and other public requirements now or hereafter affecting the Leased Premises.

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Mica Supervisory Area**



29. Final Agreement.

This Agreement terminates and supersedes all prior understandings or agreements on the subject matter hereof. This Agreement may be modified only by a further writing that is duly executed by both parties.


30. Governing Law.

This Agreement shall be governed, construed and interpreted by, through and under the Laws of the State of Idaho.

IN WITNESS WHEREOF, the parties have executed this Lease as of the day and year first above written.

  
Landlord Signature

  
Date

  
Tenant Signature

  
Date

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Mica Supervisory Area





THIS DRAWING IS TO BE USED FOR REFERENCE PURPOSES ONLY. THE COUNTY IS NOT RESPONSIBLE FOR ANY INACCURACIES CONTAINED HEREIN.

### Map Revisions

## Notes:

0209010-10CB  
Pin S0N040A-15-7600, 8, 7550 combos w/ pin 7300, 8 redid as  
Tasr225816; Ren 7300 combos w/ pin 7600, 8 redid as  
Tasr225816; Ren 7300 comb w/ pin 7600, 8 redid as  
Tasr225816 (16)

0301/12-1B  
Pin S0N040A-15-9100 redid as Tasr23237 (14)

0207/15-1B  
Pin S0N040A-15-7725 combos w/ 7750 and redid as  
Tasr23810 (15)

04/01/16-1E  
Pin S0N040A-15-8300 redid as Tasr24458 (17)

05/01/16-1E  
Pin S0N040A-15-8300 combos w/ 8550 as Tasr24458 (17)

06/01/16-1E  
Pin S0N040A-15-8300, 8, 9500 red id 9000 as Tasr24946 & Tasr24947;  
Ren 9000 combos as Tasr24946 (14)

05/07/18-1H  
Pin S0N040A-15-7900 red id Riv. & RW as Cat 19 (19)

06/01/18-1E  
Pin S0N040A-15-9200 combos w/ 9300 as Tasr25159;  
Ren 9300 redid as Tasr25159 (13)

10/03/18-1E  
Pin S0N040A-15-8200 combos w/ 8250 and redid as  
Tasr25665; Ren 9200 redid as Tasr25670 (20)

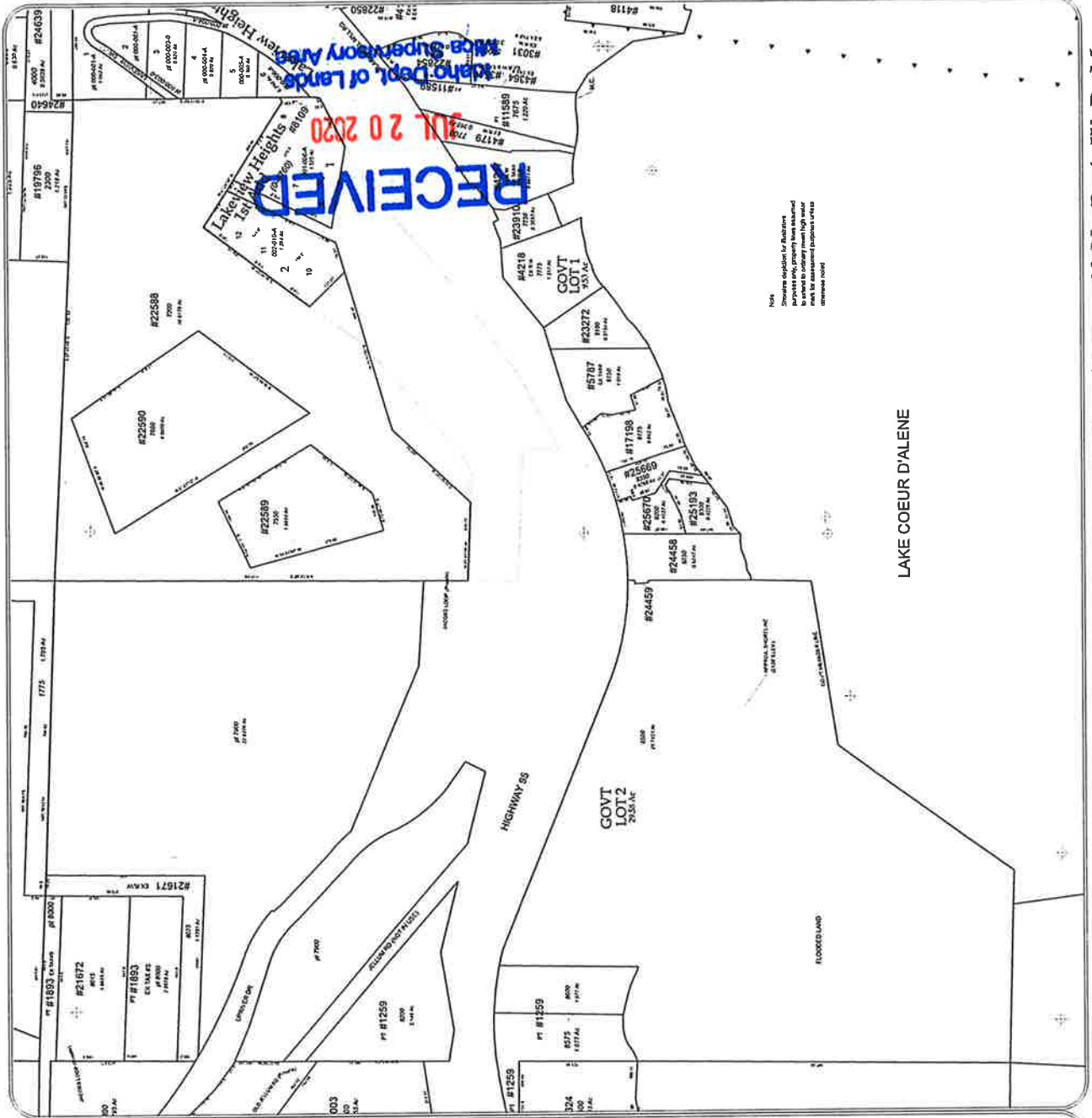
Percol areas have been calculated by Kavona closure when sufficient information has been available. Area shown in Net Assessable Area; Right-of-Way, where applicable, has been subtracted. Distances and curve lengths less than 50' may not be shown due to scale limitations. Dimensions in parenthesis denote record and/or platted lot dimensions.

LOCATION OF ROADS SHOWN ARE BASED ON ADDRESSABLE ROAD INFORMATION AND MAY OR MAY NOT BE PUBLIC.

Parcel Identification Number (PIN) are compiled as follows:  
Placed: Sub-code and Parcel ID#, ex. C-3510 and 02-1-998-C  
Resulting PIN = 50N030W16-1750 or 60N030W16-7500  
Unplatted: Sub-code and Parcel ID#, ex. C-3510 and 02-1-998-C  
Resulting PIN = 50N030W16-1750 or 60N030W16-7500

### Legend

(C-5357) Sub-code      TaxParcels      Private Roads      City Limits  
001-001-A Parcel ID# (P/N)      LegalAreas      Plat Boundaries      GCDB\_Corners  
Road RW      Railroad      GCDB\_Lines



**Note:** Showings depletion for illustrative purposes only; property taxes assumed to extend to ordinary mean high water mark for assessment purposes unless otherwise noted.

LAKE COEUR D'ALENE

SE Sec. 15 Twp 50 N. R. 4 W. B. M.

Maptile: 50N04W15SE







Application Number L 9595884**COMMERCIAL/COMMUNITY/NON-NAVIGATIONAL  
ENCROACHMENT PERMIT APPLICATION**

This information sheet and checklist must be completed when submitting an encroachment permit application. Incomplete applications will be returned without processing.

**ENCROACHMENT TYPE:** (Check all that apply)

<input type="checkbox"/> - Community dock	<input type="checkbox"/> - Float home
<input type="checkbox"/> - Commercial marina	<input type="checkbox"/> - Boat garage
<input type="checkbox"/> - Bank stabilization	<input type="checkbox"/> - Mooring buoy(s)
<input checked="" type="checkbox"/> - Other – describe: <u>Winter Storage</u>	

**Applicant's Littoral Rights Are:**

☐ - Signature of littoral rights owner is obtained if applicant is not the owner of the riparian/littoral rights

☐ - Owned, fee simple title holder  
☐ - Leased  
☒ - Other – describe: Public Trust

**Provide a Black/White Copy of Each Required Document on 8½"x14" or Smaller Paper:**

N/A

- ☒ - County plat map showing both neighboring littoral lots.  
☐ - Tax record identifying the owner of the upland parcel(s)  
☒ - Lakebed profile with encroachment and water levels of winter and summer  
☒ - General vicinity map that allows Department to find the encroachment  
☒ - Scaled air photo or map showing lengths of nearby encroachments, distances to adjacent encroachments, and location and orientation of the proposed encroachment.

**Are Existing Docks or Other Encroachment(s) Permitted On This Parcel(s)?**

- ☒ - No  
☐ - Yes

Please attach a current photograph and a "to scale" drawing (see Document Requirements Above)

Permit # \_\_\_\_\_

Date of Construction: \_\_\_\_\_

What will happen to the existing dock or encroachment if this permit application is approved?

- ☐ - Remain unchanged  
☐ - Complete removal  
☐ - Modification  
☐ - Other: \_\_\_\_\_

(Please note that old dock materials must be removed from the lake. Discarding these materials creates serious boating safety issues and offenders will be subject to prosecution and penalties.)

**How Many Feet Does the Proposed Encroachment Extend Beyond the Ordinary (or Artificial) High Water Mark?** N/A feet

**The Proposed Dock Length Is:**

- ☐ The same or shorter than the two adjacent docks  
☐ Longer than the two adjacent docks  
☐ Longer than the two adjacent docks, but within the line of navigability established by the majority of existing docks in the area.  
☐ N/A feet and not located near any other docks or other encroachments.

**For Community Docks, Does the Proposed Dock Exceed the Maximum Square Footage of 7 ft<sup>2</sup> per Littoral Front Foot?**

N/A ☐ - No ☐ - Yes Total square footage: \_\_\_\_\_ ft<sup>2</sup>

**For Community Docks, Does the Property Have at Least 50 Feet of Littoral Frontage?**

☐ - Yes ☐ - No Total front footage: \_\_\_\_\_ feet

N/A **RECEIVED**

Commercial/Community/Non-navigational Application

Page 1 of 2

JUL 20 2020

Idaho Dept. of Lands  
Mica Supervisory Area



Will the Proposed Encroachment Exceed the Maximum Width of 10 Feet?

☐ - No

☒ - Yes

If yes, explain why: Storage of multiple encroachments

Will the Proposed Encroachment Be Located Closer Than 25 Feet to the Riparian/Littoral Right Lines Established With Your Neighbors?

☒ - No

☐ - Yes

If yes, what are the proposed distances? \_\_\_\_\_ feet

☐ - Consent of affected neighbor was obtained

**Determining Riparian/Littoral Right Lines**

Littoral right lines are not simple extensions of the upland property lines. Littoral right lines are generally perpendicular, or at right angles, to the shoreline. Curved shorelines or unusual circumstances may require Department Staff, or other professionals, to closely examine littoral right lines and assess the potential for infringement on adjacent littoral property owners.

Printed Name

Date

Signature of Applicant or Agent

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**JUL 20 2020**

Idaho Dept. of Lands  
Mica Supervisory Area



GEORGE B. BACON  
Director  
Idaho Department of Lands  
300 N. 6<sup>th</sup> St., STE 103  
P.O. Box 83720  
Boise, Idaho 83720-0050

BEFORE THE STATE BOARD OF LAND COMMISSIONERS  
STATE OF IDAHO

In the Matter of;	)	
	)	
Encroachment Permits No. L-95-S-5303	)	<b>FINAL ORDER</b>
North Idaho Maritime and Murphy Marine	)	
Construction	)	
	)	
Applicants	)	
_____	)	

**I. NATURE OF PROCEEDINGS/ISSUES**

A public hearing was held on October 16, 2008 at 6:00 pm PST at the IDL Staff Office in Coeur d'Alene, Idaho. Eric Wilson served as Hearing Coordinator. The Hearing Coordinator issued his Recommendations on November 6, 2008.

My responsibility is to render a decision on the behalf of the State Board of Land Commissioners based on the record reviewed in the context of my personal expertise gained through education, training, and experience. In making this determination I have relied on the record provided. Specifically;

- I have read the transcript of the public hearing conducted in Coeur d'Alene, Idaho on October 16, 2008.
- I have reviewed the record including all documents and exhibits.
- I have examined the Hearing Coordinator's Recommendations in light of the entire record.

Encroachments, including piling and log booms, placed on navigable waters require a permit issued by the Idaho Department of Lands pursuant to the requirements of Title 58, Chapter 13, Idaho Code, and the Rules for the Regulation of Beds, Waters and Airspace over Navigable Lakes in the State of Idaho, IDAPA 20.03.04, as promulgated by the State Board of Land Commissioners.



## **II. FINDINGS OF FACT**

I concur with the Findings of Fact presented by the Hearing Coordinator.

## **III. CONCLUSIONS OF LAW**

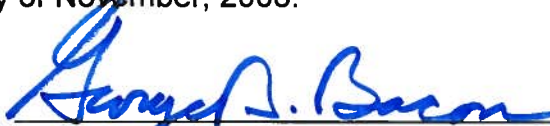
I concur with the Conclusions of Law presented by the Hearing Coordinator.

## **IV. FINAL ORDER**

On the basis of the record, it is my order that Encroachment Permit L-95-S-5303 be denied. Furthermore, it is my order that the Mica Supervisory Area shall issue a temporary permit to authorize the current use as a seasonal dock storage area from November of 2008 through May of 2009 pending a long term resolution of this issue. In addition, the Mica Supervisory Area shall work with Applicants to have all of their unauthorized encroachments, structures, and debris removed from Cougar Bay. Lastly, it is my order that IDL pursue a comprehensive plan for management or removal of the piling and log booms in Cougar Bay.

This is a final order of the agency. If the Applicant, or a party who appeared at the hearing, is aggrieved by the director's final decision, they shall have the right to have the proceedings and final decision of the director reviewed by the district court in the county in which the encroachment is proposed. A notice of appeal must be filed within thirty (30) days from the date of the final decision in accordance with IDAPA 20.03.04.030.09.

DATED this 17 day of November, 2008.



GEORGE B. BACON  
Director



## CERTIFICATE OF SERVICE

I HEREBY CERTIFY that on this 17<sup>th</sup> day of November, 2008, I caused to be served a true and correct copy of the foregoing document, by the method indicated:

Steve Schuster  
Idaho Department of Lands  
300 N. 6<sup>th</sup> St. Ste. 103  
PO Box 83720  
Boise, ID 83720-0050

- ☐ U.S. Mail, postage prepaid
- ☒ Hand Delivery
- ☐ Federal Express
- ☐ Facsimile: \_\_\_\_\_
- ☐ Statehouse Mail

John J. Condon  
4837 Mill River Ct.  
Coeur d'Alene, ID 83814

- ☒ U.S. Mail, postage prepaid
- ☐ Hand Delivery
- ☐ Federal Express
- ☐ Facsimile: \_\_\_\_\_
- ☐ Statehouse Mail

Fred and Susan Murphy  
448 Casco Bay Shore  
Coeur d'Alene, ID 83814-8934

- ☒ U.S. Mail, postage prepaid
- ☐ Hand Delivery
- ☐ Federal Express
- ☐ Facsimile: \_\_\_\_\_
- ☐ Statehouse Mail

Ronald M. Fritz  
2516 S. Highway 95  
Coeur d'Alene, ID 83814-7816

- ☒ U.S. Mail, postage prepaid
- ☐ Hand Delivery
- ☐ Federal Express
- ☐ Facsimile: \_\_\_\_\_
- ☐ Statehouse Mail

Buddy Paul  
2772 W. Lutherhaven Rd.  
Coeur d'Alene, ID 83814-8227

- ☒ U.S. Mail, postage prepaid
- ☐ Hand Delivery
- ☐ Federal Express
- ☐ Facsimile: \_\_\_\_\_
- ☐ Statehouse Mail

Robyn Miller  
530 S. Asbury, STE 2  
Moscow, ID 83843

- ☒ U.S. Mail, postage prepaid
- ☐ Hand Delivery
- ☐ Federal Express
- ☐ Facsimile: \_\_\_\_\_
- ☐ Statehouse Mail

Jerry S. Carlson  
PO Box 2257  
Hayden, ID 83835

- ☒ U.S. Mail, postage prepaid
- ☐ Hand Delivery
- ☐ Federal Express
- ☐ Facsimile: \_\_\_\_\_
- ☐ Statehouse Mail



Kurt E. Pavlat  
3815 N. Schreiber Way  
Coeur d'Alene, ID 83815-8362

- ☒ U.S. Mail, postage prepaid
- ☐ Hand Delivery
- ☐ Federal Express
- ☐ Facsimile: \_\_\_\_\_
- ☐ Statehouse Mail

Bob Bjelland  
5500 N. Government Way  
Coeur d'Alene, ID 83816

- ☒ U.S. Mail, postage prepaid
- ☐ Hand Delivery
- ☐ Federal Express
- ☐ Facsimile: \_\_\_\_\_
- ☐ Statehouse Mail

Keith Kroetch  
3402 S. Highway 95  
Coeur d'Alene, ID 83814

- ☒ U.S. Mail, postage prepaid
- ☐ Hand Delivery
- ☐ Federal Express
- ☐ Facsimile: \_\_\_\_\_
- ☐ Statehouse Mail

Rick S. Powers  
PO Box 2173  
Coeur d'Alene, ID 83816-2173

- ☒ U.S. Mail, postage prepaid
- ☐ Hand Delivery
- ☐ Federal Express
- ☐ Facsimile: \_\_\_\_\_
- ☐ Statehouse Mail

Kurtis W. Robinson  
1210 E. Singing Hills Dr.  
Post Falls, ID 83854-9087

- ☒ U.S. Mail, postage prepaid
- ☐ Hand Delivery
- ☐ Federal Express
- ☐ Facsimile: \_\_\_\_\_
- ☐ Statehouse Mail

Joanne M. Wing  
3222 W. Baywods Road  
Coeur d'Alene, ID 83814

- ☒ U.S. Mail, postage prepaid
- ☐ Hand Delivery
- ☐ Federal Express
- ☐ Facsimile: \_\_\_\_\_
- ☐ Statehouse Mail

Oscar N. Mooney  
2503 W. Presby Road  
Coeur d'Alene, ID 83814

- ☒ U.S. Mail, postage prepaid
- ☐ Hand Delivery
- ☐ Federal Express
- ☐ Facsimile: \_\_\_\_\_
- ☐ Statehouse Mail



John G. Reinhardt  
2607 S. Perry St.  
Spokane, WA 99203-3837

- ☒ U.S. Mail, postage prepaid
- ☐ Hand Delivery
- ☐ Federal Express
- ☐ Facsimile: \_\_\_\_\_
- ☐ Statehouse Mail

Roberta M. Larsen  
PO Box 578  
Coeur d'Alene, ID 83816

- ☒ U.S. Mail, postage prepaid
- ☐ Hand Delivery
- ☐ Federal Express
- ☐ Facsimile: \_\_\_\_\_
- ☐ Statehouse Mail

Edwin R. Haglund  
PO Box 3762  
Coeur d'Alene, ID 83816

- ☒ U.S. Mail, postage prepaid
- ☐ Hand Delivery
- ☐ Federal Express
- ☐ Facsimile: \_\_\_\_\_
- ☐ Statehouse Mail

Mark Hall  
800 S. Marina Dr.  
Coeur d'Alene, ID 83814-7149

- ☒ U.S. Mail, postage prepaid
- ☐ Hand Delivery
- ☐ Federal Express
- ☐ Facsimile: \_\_\_\_\_
- ☐ Statehouse Mail

Robert S. West  
3621 W. Fairway Drive  
Coeur d'Alene, ID 83815-9049

- ☒ U.S. Mail, postage prepaid
- ☐ Hand Delivery
- ☐ Federal Express
- ☐ Facsimile: \_\_\_\_\_
- ☐ Statehouse Mail

Donald D. Gross  
2808 W. Baywoods Rd.  
Coeur d'Alene, ID 83814-9697

- ☒ U.S. Mail, postage prepaid
- ☐ Hand Delivery
- ☐ Federal Express
- ☐ Facsimile: \_\_\_\_\_
- ☐ Statehouse Mail

Anni Ryan Meyer  
East 825 Overbluff Road  
Spokane, WA 99203

- ☒ U.S. Mail, postage prepaid
- ☐ Hand Delivery
- ☐ Federal Express
- ☐ Facsimile: \_\_\_\_\_
- ☐ Statehouse Mail



Bob Macdonald  
1407 S. Silver Beach Road  
Coeur d'Alene, ID 83814

- ☒ U.S. Mail, postage prepaid
- ☐ Hand Delivery
- ☐ Federal Express
- ☐ Facsimile: \_\_\_\_\_
- ☐ Statehouse Mail

Bret Bowers  
2600A E. Seltice Way #224  
Post Falls, ID 83854-7941

- ☒ U.S. Mail, postage prepaid
- ☐ Hand Delivery
- ☐ Federal Express
- ☐ Facsimile: \_\_\_\_\_
- ☐ Statehouse Mail

Greg Delavan  
3665 S. Boothe Park Road  
Coeur d'Alene, ID 83814-7748

- ☒ U.S. Mail, postage prepaid
- ☐ Hand Delivery
- ☐ Federal Express
- ☐ Facsimile: \_\_\_\_\_
- ☐ Statehouse Mail

Janet D. Robnett  
PO Box E  
Coeur d'Alene, ID 83816

- ☒ U.S. Mail, postage prepaid
- ☐ Hand Delivery
- ☐ Federal Express
- ☐ Facsimile: \_\_\_\_\_
- ☐ Statehouse Mail

Mike Denney  
Idaho Department of Lands  
3706 Industrial Avenue South  
Coeur d'Alene, ID 83815

- ☒ U.S. Mail, postage prepaid
- ☐ Hand Delivery
- ☐ Federal Express
- ☐ Facsimile: \_\_\_\_\_
- ☐ Statehouse Mail

George B. Bacon  
Idaho Department of Lands  
300 N. 6th St. Ste. 103  
PO Box 83720  
Boise, ID 83720-0050

- ☐ U.S. Mail, postage prepaid
- ☒ Hand Delivery
- ☐ Federal Express
- ☐ Facsimile: \_\_\_\_\_
- ☐ Statehouse Mail



ERIC WILSON  
IDL Program Manager - Navigable Waters and Minerals



**BUREAU OF SURFACE AND  
MINERAL RESOURCES**  
300 N. 6<sup>th</sup> St. Ste 103  
PO Box 83720  
Boise ID 83720-0050  
Phone (208) 334-0200  
Fax (208) 334-3698



**GEORGE B. BACON, DIRECTOR**  
EQUAL OPPORTUNITY EMPLOYER

**STATE BOARD OF LAND COMMISSIONERS**  
*C. L. "Butch" Otter, Governor*  
*Ben Ysursa, Secretary of State*  
*Lawrence G. Wasden, Attorney General*  
*Donna M. Jones, State Controller*  
*Tom Luna, Sup't of Public Instruction*

November 6, 2008

## **MEMORANDUM**

**TO:** George B. Bacon, Director

**FROM:** Eric Wilson, Navigable Waters/Minerals Program Manager

**SUBJECT:** Public Hearing – Encroachment L-95-S-5303 for North Idaho Maritime and Murphy Marine Construction.

### **I. INTRODUCTION**

The following document, which includes a recommendation for your consideration, was prepared following a public hearing conducted by the Idaho Department of Lands (IDL). The public hearing was conducted in conjunction with the processing of an encroachment permit (L-95-S-5303) in Cougar Bay on Lake Coeur d'Alene, a navigable lake in Idaho. The application proposes a ten (10) acre area for the winter storage of docks and for the temporary storage of other structures prior to dismantling and off-lake disposal.

Jurisdiction in this matter rests with IDL pursuant to Idaho Code § 58-1303, which empowers the State Board of Land Commissioners to regulate, control, and permit encroachments on, in, or above the beds or waters of the navigable lakes of Idaho.

### **II. FINDINGS OF FACT**

1. On July 28, 2008, North Idaho Maritime and Murphy Marine (Applicants) submitted to IDL an encroachment permit application (L-95-S-5303) requesting approval to construct an encroachment on Lake Coeur d'Alene. The application is incorporated into this document by reference.

2. Brix Maritime Co., formerly Foss Maritime, currently has the log storage area proposed to be used by North Idaho Maritime under encroachment permits 95-S-0164 and L-95-S-3009 and submerged lands lease B-2186.



3. L-95-S-5303 proposes to reconfigure existing log booms and pilings in Cougar Bay to serve as a ten (10) acre storage area. Other structures, such as boat garages and float homes, would also be temporarily stored for dismantling and then removal from the lake for disposal. Each applicant would use a five (5) acre area.

4. IDL initiated the processing of L-95-S-5303 as an encroachment pursuant to the Lake Protection Act (Idaho Code § 58-1306) and the associated Rules (IDAPA 20.03.04.030). On August 4<sup>th</sup>, 2008 and August 11<sup>th</sup>, 2008, IDL published the required Notice of Application in the Coeur d'Alene Press newspaper for the encroachment permit applications submitted by Applicants. The Notice of Application is incorporated into this document by reference.

5. In a letter dated July 30<sup>th</sup>, 2008, IDL notified several agencies, organizations, and persons of the encroachment permit applications submitted by Applicants and requested that the parties provide comments to IDL. Those notified included:

- Idaho Department of Fish and Game
- Idaho Department of Environmental Quality
- Idaho Department of Water Resources
- U.S. Army Corps of Engineers
- Panhandle Health District #1
- Kootenai County Parks, Recreation, and Waterways
- Kootenai County Marine Division
- Kootenai County Building, Planning and Zoning
- Kootenai Environmental Alliance
- Lakes Commission
- Eight (8) littoral landowners in and adjacent to Cougar Bay

The letter is incorporated into this document by reference.

6. IDL received a letter dated August 27<sup>th</sup>, 2008 from North Idaho Maritime stating that the primary use of the storage area would be for winter storage of docks from Fall to Spring. Debris collected from the lake would also be stored for a few days until it was removed. New docks would also be staged for a few days until they were ready to be installed. Temporary permits would be obtained for demolition of boat garages as they are acquired.

7. IDL received a letter on August 28<sup>th</sup>, 2008 from Janet Robnett representing Rick Powers, a littoral landowner in Cougar Bay, objecting to the application and requesting a hearing. The letter stated that the proposed encroachment was a hazard to navigation, interfered with the littoral rights of the adjacent land owners, and did not meet the standards required for a nonnavigational encroachment in IDAPA 20.03.04.030.02. The letter is incorporated into this document by reference.

8. IDL received a letter dated September 16<sup>th</sup>, 2008 from North Idaho Maritime stating that they would be interested in continuing debris clean up on the lake and river to offset any leasing fees.



9. IDL received 14 letters from other adjacent littoral owners, agencies, and members of the public. Objections included a lack of specificity regarding the duration of storage, lack of construction details for the log booms, boat garages and float homes on the north side of Cougar Bay that are outside the designated storage area, development of a floating junkyard by allowing demolition work, poor choice of location in front of existing homes, the location is too far from North Idaho Maritime's facility at Blackwell Island, impacts to navigation, impacts to littoral rights of adjacent land owners, impacts to visual aesthetics, impacts to wildlife, impacts to water quality, existing storage without an appropriate permit, lack of consistency in what the application proposes, lack of adjacent land for removal of debris, lack of detail about debris removal, lack of interaction with the Lake Management Plan, excessive size based on past storage use, nonnavigational nature of the proposal, and the changed uses of the Foss Maritime area require a closer look at any new proposed uses. Supporting comments stated a need for Kootenai County Parks and Waterways to temporarily store structures, a need for seasonal dock storage, water depths were better suited at the proposed location than the previously proposed location, and the location away from nearby conservation areas is an improvement over previously suggested locations. These letters are incorporated into this document by reference.

10. Based on the request by Ms. Robnett, and in accordance with IDAPA 20.03.04.030, IDL initiated a public hearing process for the proposed encroachment. The public hearing was scheduled for October 16<sup>th</sup>, 2008 at 6:00 pm at the IDL office in Coeur d'Alene. On September 27<sup>th</sup>, 2008 and October 4<sup>th</sup>, 2008 IDL published the required Notice of Hearing in the Coeur d'Alene Press. The Notice of Hearing is incorporated into this document by reference.

11. A letter from IDL dated September 23<sup>rd</sup>, 2008 notified the following agencies and individuals of the scheduled hearing:

- Idaho Department of Fish and Game
- Idaho Department of Environmental Quality
- Idaho Department of Water Resources
- U.S. Army Corps of Engineers
- Panhandle Health District #1
- Kootenai County Parks, Recreation, and Waterways
- Kootenai County Marine Division
- Kootenai County Building, Planning, and Zoning
- Kootenai Environmental Alliance
- Lakes Commission
- Eight (8) littoral landowners in and adjacent to Cougar Bay

The letter is incorporated into this document by reference.

12. This application was originally assigned the number L-95-S-3615C. This number assignment was in error, and a memo in the file dated September 4<sup>th</sup>, 2008 indicates the new number for the permit is L-95-S-5303. This does not materially affect the



application, the public involvement process, or the review of the application.

13. On October 16<sup>th</sup>, 2008 IDL held a public hearing at 6:00 pm in IDL's Coeur d'Alene office. Mr. Eric Wilson, Navigable Waters/Minerals Program Manager, served as hearing coordinator. In attendance were Jarrod Kovosh, IDL Navigable Waters Technician; Mike Denney, IDL Mica Supervisory Area Manager; Mr. John Condon, representing Applicant North Idaho Maritime; Mr. Fred "Skip" Murphy, representing Applicant Murphy Marine Construction; and forty five (45) members of the public. The public hearing was recorded on audio tape and was subsequently transcribed. The transcript of the public hearing is incorporated into this document by reference.

a. The Applicants, through the testimony of Mr. Condon and Mr. Murphy, provided a brief overview of the project. Mr. Condon stated that the Applicants want to provide a service and create some jobs by creating a dock storage area where log storage formerly occurred. Ninety percent (90%) of North Idaho Maritime's revenue was gone with the closed sawmills. The log storage area would be cleaned up, and they would keep ten (10) acres for dock storage use. The exact location of the storage area is not too important. Permission from Brix Maritime would be obtained for the use of the piling. The prevailing currents and winds bring debris into Cougar Bay from the rest of the lake. A temporary permit was obtained this year for disposal of boat garages and other structures. Lights in the log storage area are not maintained as they once were due to the expense and lack of log storage income. Dock demolition at sites around the lake is not generally feasible because those work areas are not confined and the debris would not be contained. A location closer to their land facility would be better, but public input from the previous application caused him to relocate it to the previously used area. Mr. Condon believes the permit is for a navigational encroachment. Mr. Murphy stated that he has stored docks since 1941. The weather prevents year-long dock use at many sites around the lake. Approximately 100 to 150 docks are stored per year from mid-October through mid-May. The docks are boomed up in Cougar Bay. Permission was obtained from Foss Maritime seven (7) to eight (8) years ago. They have used the same location as that in the proposed permit. Noncommercial uses of the lakes are escalating to the detriment of commercial lake uses. Barges or tugs are needed to access many houses around the lake. The dock companies' access points are limited. Log booms in Cougar Bay have historically prevented development of this area. They need water depths of at least ten (10) feet for dock storage. Debris in Cougar Bay located outside of the booms has drifted in from other sources on the lake. While the location of the storage area is not too critical, the back of the bay (west side) is too shallow and fragile to be effectively used. Murphy's existing site in Casco Bay will be used as a construction area.

b. Testimony in opposition to the project was presented by fourteen (14) agency representatives, adjacent littoral owners, and members of the public.

i. Joanne Wing stated that she did not support any part of the proposed project, but many others supported the concept of dock storage



somewhere in Cougar Bay. Buddy Paul, Robyn Miller, Jerry Carlson, Keith Kroetch, Rick Powers, Edwin Haglund, Donald Gross, Anni Meyer, and Bob MacDonald testified in support of seasonal dock storage somewhere in Cougar Bay. Mr. Haglund stated that docks have been stored in this bay for seven (7) years. Janet Robnett stated that a proper location for the storage area is a key issue, and the proposed location is not appropriate. Mr. Carlson and John Reinhardt suggested moving the storage area northward closer to the North Idaho Maritime facility at Blackwell Island, and placing it more within the bay (westward) so it did not extend out into the lake. Mr. Kroetch stated that the storage area would need water at least ten (10) feet deep so the tugboats could access it. Mr. Gross stated that a temporary permit was issued earlier in the year for storage of sheds and other structures. Mr. Powers questioned whether or not some of the currently stored materials were functional docks, and showed many photos of half-sunk and broken docks. He also stated that the current activities in Cougar Bay are unpermitted.

- ii. Several objectors mentioned the proposed encroachments effect on navigation. Mr. Powers, an adjacent littoral owner, stated that the only access to his property, and others in Cougar Bay, is by boat. Mr. Carlson, Mr. Powers, Mr. Reinhardt, and Ms. Meyer stated the proposed storage area interfered with navigation and the north end of the lake has a lot of boat traffic. Mr. Reinhardt also stated that the log booms are especially a hazard to navigation for boat traffic between Blackwell Island and Casco Bay. He also stated that the lights on the booms are not working on a regular basis, and he has seen frequent accidents involving the log booms and their escaped contents. Mr. Powers stated that he frequently runs into debris that has broke loose from the log booms. Mr. Haglund stated that the log booms and no wake zone make Cougar Bay a safe and desirable location for small watercraft.
- iii. Some testimony indicated that the historic uses in the bay should not be used to justify the proposed use. Ms. Wing and Ms. Robnett stated that the historic log storage was a different use than the dock storage. Mr. Paul, Mr. Gross, and Ms. Robnett stated that the boat garage and float home rebuilding or demolition is a departure from the historic use of the area, and would likely increase the amount of debris that accumulates in the bay. Mr. Powers stated that the current activities in the permitted log storage area are not related to log storage.
- iv. Debris in the bay was a common concern due to environmental impacts to the lake and adverse impacts to aesthetics. Kurt Pavlat stated that the Bureau of Land Management cannot support the current application because the debris situation in Cougar Bay would get worse if the application was approved. Mr. Gross stated that the booms sometimes break and release their contents, and that some structures fall apart when being towed to the storage area. This debris may have a negative impact



on the lake. Ronald Fritz stated that the debris generated from the proposed activities was his main concern, and not the dock storage area. Ms. Miller, Ms. Meyer, and Greg Delavan suggested requiring the permittee to continue cleaning up debris as Foss Maritime has done over the last few years. Mr. Paul, Ms. Miller, Mr. Carlson, Mr. Kroetch, and Mr. MacDonald stated that they did not support the storage and dismantling of boat garages and float homes due to the visual impacts and potential environmental impacts of demolition activities. Mr. Paul stated that a debris portal was needed, but he did not think this was the best place. Mr. Powers and Ms. Wing stated that the barges, cranes, docks under construction, and other equipment stored in the bay were unsightly. Ms. Wing stated that the equipment stored in the bay was a potential source of pollution due to the oil, fuel, and hydraulic fluids they use. Mr. Reinhardt stated the potential for pollution from fuel and oil was great with all the equipment storage.

- v. Wildlife impacts were frequently mentioned partly due to the many osprey that nest and perch on the piling. Mr. Carlson stated that osprey fledged at the site this fall. Mr. Haglund stated that 22 osprey nests were present this year. He also stated that Foss Maritime had helped to create nesting platforms in the log storage area. Ms. Miller stated that a bald eagle nest is within a quarter mile of the proposed site. A nature preserve is present in the back part of the bay and many of those testifying stated that the storage area should be kept away from it. Ms. Miller and Mr. Pavlat stated that the Nature Conservancy, the Bureau of Land Management, and others have invested a considerable amount of time, effort, and money in protecting Cougar Bay, and the proposed encroachment puts these investments at risk.
- vi. Some testimony related to technical aspects of the proposed encroachment. Roberta Larsen and Janet Robnett stated that the application lacked specificity and consistency, especially in sections 6 and 8. Ms. Miller stated that the permit was too vague. Ms. Larsen also stated that time frames and disposal methods are needed for the structures. Ms. Robnett stated that the encroachment is nonnavigational and therefore has a higher standard for approval. Mr. Powers also stated the log booms were nonnavigational and should be removed because they offer no benefit to the public trust.
- vii. Many different opinions on the future use of Cougar Bay were presented in testimony. Ms. Robnett stated that a more holistic approach for management of Cougar Bay is needed. Ms. Miller stated that all the piling in Cougar Bay must be kept and protected. Mr. Haglund stated that the piling in the bay was good for the osprey. Brett Bowers stated that removing the piling would greatly increase boat speeds in the area, which is a no-wake zone. Mr. Powers stated that all the log booms should be removed from the bay, and a larger scale plan for Cougar Bay is needed.



Mr. Reinhardt stated that the booms and piling outside the bay should be removed. Ms. Wing stated that all piling in the bay should be removed.

c. Six (6) members of the public spoke in support of the project. Bob Bjelland, Mark Hall, and Oscar Mooney stated that Cougar Bay has worked well in the past for the proposed activities and should continue to be used. A storage area for docks and debris is needed at the north end of the lake. Kurtis Robinson stated that log storage has occurred in Cougar Bay for over 90 years. Growth in the area has increased demand for docks and construction services. Mr. Robinson also stated that three other dock storage areas are permitted in Harrison Slough, Powderhorn Bay, and Rockford Bay, but the nearest storage area is fourteen (14) miles from Coeur d'Alene. Mr. Mooney stated that docks and debris have always come down the lake and accumulated in Cougar Bay, especially during floods. Cougar Bay is a no wake zone, and the proposed activities will not affect wildlife. According to Mr. Mooney, the Osprey are tolerant of slow moving, or working, boats. They do not, however, like fast moving boats.

d. Several letters, slideshows, maps, and photos were given to IDL prior to and during the public hearing. All of these materials are incorporated into this document by reference. Many of these materials were from those who testified, and they generally restated the testimony described above. Some of the submitted materials were from those who did not testify. The written testimony is summarized as follows:

- i. As with the oral testimony, many people supported the concept of dock storage somewhere in Cougar Bay. Elizabeth Cowles and David Larsen testified in support of seasonal dock storage somewhere in Cougar Bay. Ms. Cowles suggested placing the storage area more within the bay (westward) so it did not extend out into the lake. John Brewer stated that the storage area should be closer to North Idaho Maritime's marina. Julie Dalsaso stated that dock storage should take place on uplands owned by the Applicants. Pat Behm stated that no storage should take place without specific plans to remove trash that accumulates.
- ii. The other proposed uses in the application were not supported. Mr. Larsen stated that except for temporary dock storage, the uses proposed will turn the area into a long-term junkyard. Joan Murphy stated that demolition activities should not take place in the bay, and derelict docks should not be stored. Barry Rosenberg stated that the proposed permit had no tangible public benefit. Ms. Dalsaso and Jeri Sahlin stated that debris should be removed from the bay, and not stored in it. Mr. Behm stated that existing debris floating unsecured in Cougar Bay came from materials that escaped from the storage area over the years.
- iii. Several objectors mentioned the proposed encroachments effect on navigation. Ms. Cowles stated that the existing log booms are a hazard



and boating accidents were common in the past. Mr. Rosenberg and Joan Murphy stated that the storage area would be a navigational hazard. Ms. Sahlin stated that the construction traffic generated on the lake would be a safety hazard for those recreating on the lake.

- iv. Aesthetics were also raised as an issue for year-long storage. Ms. Cowles stated that tourism and property values could be negatively affected by the storage area. Ms. Murphy and Mr. Brewer also stated that their property values could be negatively affected in Cougar Bay. Mr. Behm and Ms. Sahlin stated that machinery storage and construction activities should not take place in Cougar Bay.
  - v. Water quality and impacts to wildlife were mentioned in many of the written materials. Eric Thomson of the Bureau of Land Management, Mr. Rosenberg, and Ms. Sahlin stated that the proposed use will add to the pollution and degradation of Cougar Bay. Ms. Murphy stated that a commercial operation in the bay could have negative environmental impacts. Ms. Dalsaso stated concerns about pollution from treated wood products, petroleum spills, and demolition debris associated with the proposed activities.
  - vi. A lack of specificity in the application was mentioned by Mr. Larsen. He stated that sections 6 and 8 of the application are too vague. He also stated that the permit mentions nothing about corralling loose and broken logs, although it was mentioned in a newspaper article.
- e. In conjunction with the public hearing, several attendance cards were filled out with comments. The comments on the cards stated the same concerns and views that were stated in the previously described written and oral comments. These cards are incorporated into this document by reference.
14. The proposed storage area has been used for at least seven (7) years to store docks over the winter. This was stated by both the Applicants and some objectors. No mention was made of complaints regarding previous seasonal dock storage.
15. A need for winter dock storage is demonstrated through the testimony given and the fact that it has occurred for the last seven (7) years.
16. The proposed location is in front of several littoral owners. The diagram provided by Mr. Reinhardt shows the dock storage area 260 feet offshore of the closest adjacent littoral owner.
17. The single-family docks south of the proposed storage area extend approximately 100 feet into to the lake.
18. Many of the objectors, including some of the adjacent littoral owners, support the



concept of winter dock storage in Cougar Bay.

19. Cougar Bay has some unique public trust values such as wildlife and recreation use due to the nature preserves created on the west side of the bay, the designation as a no-wake zone, and the presence of a log storage area.

20. No assignments of permits or the lease have been made from Brix Maritime Co. to North Idaho Maritime.

21. The proposed storage of docks and other structures is a different use than that of the current log storage use permitted to Brix Maritime Co.

22. Aerial photos and photos from the lake show a small storage area enclosed by log booms is located on the eastern shoreline of the Nature Conservancy's Cougar Bay Preserve. This appears to be outside the boundaries of the permitted log storage area and the proposed dock storage area, and is unpermitted.

23. Equipment storage and other unpermitted uses are present based on written and oral testimony from Mr. Powers, Mr. Reinhardt, Mr. Behm, Ms. Wing, and Ms. Sahlin.

24. A temporary permit was issued by IDL to North Idaho Maritime this summer for the temporary storage and demolition of boat garages and float homes.

25. The existing piling and booms extend outside the confines of Cougar Bay, as shown in the presentations and photos given by Mr. Powers and Mr. Reinhardt.

26. Warning lights on the log booms or piling are not being maintained as they once were based on testimony from Mr. Condon, the applicant, and Mr. Reinhardt.

27. Mr. Powers and Mr. Reinhardt testified that the log booms in Cougar Bay have been involved with many boating accidents through the years.

28. No details were provided in the application regarding how the piling and log booms would be maintained, replaced, or repositioned.

### **III. CONCLUSIONS OF LAW**

1. The Idaho Board of Land Commissioners (Board) is designated in Idaho Code § 58-104(9) and § 58-1303 to regulate, control and permit encroachments on, in, or above the beds of navigable lakes in the state of Idaho. IDL is the administrative agency of the Board, as per Idaho Code § 58-119.

2. Lake Coeur d'Alene is a navigable lake as defined by Idaho Code § 58-1302(a). Pursuant to IDAPA 20.03.04.012.02, encroachments of any kind on, in, or above the beds of a navigable lake require a permit prior to encroaching on the lake.



3. Pursuant to Idaho Code § 58-1301, lake encroachments must be regulated to protect property and the lake value factors of navigation, fish and wildlife habitat, aquatic life, recreation, aesthetic beauty, and water quality. These values must be given due consideration and weighed against the navigational or economic necessity or justification for, or benefit to be derived from, the proposed encroachment.
4. IDL shall make decisions on proposed encroachments in accordance with the Public Trust Doctrine as set forth in Idaho Code § 58-1201 through 1203. This statute protects the property rights of private land owners, including the ability to utilize their riparian rights as a means to access the waters of the navigable lakes of Idaho.
5. IDL shall also make decisions on proposed encroachments in accordance with the Public Trust Doctrine as explained by the Idaho Supreme Court in Kootenai Environmental Alliance, Inc. v. Panhandle Yacht Club, Inc., 105 Idaho 622, 671 P.2d 1085 (1983) (KEA) and subsequent cases. The Supreme Court in KEA determined that public trust uses include those of fish and wildlife habitat, recreation, aesthetic beauty, and water quality. The court in KEA also stated that mere compliance of IDL with its' legislative authority is not sufficient to determine if their actions comport with the requirements of the Public Trust Doctrine.
6. The Applicants' letters dated August 27<sup>th</sup> and September 16<sup>th</sup>, 2008 did not substantively alter the application, and the public involvement process was not significantly affected by the submission. Many of the public comments stated concerns that these letters addressed.
7. Idaho Code § 58-1302(h) and IDAPA 20.03.04.010.15 define navigational encroachments as docks, piers, jet ski and boat lifts, buoys, pilings, breakwaters, boat ramps, channels or basins, and other facilities used to support water craft and moorage on, in, or above the beds or waters of a navigable lake.
8. Idaho Code § 58-1302(i) and IDAPA 20.03.04.010.16 define nonnavigational encroachments as all encroachments on, in, or above the beds or waters of a navigable lake, including landfills, bridges, utility and power lines, or other structures not constructed primarily for use in aid of navigation.
9. IDAPA 20.03.04.030.02 states that nonnavigational encroachments will normally not be approved by the Department and will be considered only in cases involving major environmental, economic, or social benefits to the general public, and approval under those circumstances is authorized only when consistent with the public trust doctrine and when there is no other feasible alternative with less impact on public trust values.
10. IDAPA 20.03.04.015.05.a states that boat garages are nonnavigational encroachments.
11. Float homes do not support water craft or moorage, and are therefore



nonnavigational encroachments.

12. The proposed encroachment appears to have characteristics of both navigational and nonnavigational encroachments. The winter storage of docks supports moorage on Lake Coeur d'Alene and is a navigational encroachment. Boat garages and float homes, however, are nonnavigational encroachments and storage, demolition, and reconstruction of them is therefore a nonnavigational activity. While the Applicants believe the encroachment is navigational, the rationale set forth by Ms. Robnett and Mr. Powers supports the designation of the proposed encroachment as nonnavigational.

13. The nonnavigational uses of the proposed encroachment do not provide major environmental, economic, or social benefits to the general public, and other alternatives with less impact on public trust values are feasible. Both the Applicants' own facilities that have associated upland properties and these facilities could be used for the nonnavigational uses. This would also move these activities approximately one-half mile away from several adjacent littoral owners and eliminate the visual blight the activities create.

14. Idaho Code § 58-1302(g) and IDAPA 20.03.04.010.20 define the line of navigability as a line located at such distance waterward of the low water mark established by the length of existing legally permitted encroachments, water depths waterward of the low water mark, and by other relevant criteria determined by the board when a line has not already been established for the body of water in question.

15. IDAPA 20.03.04.010.34 states that littoral right lines extend out to the line of navigation.

16. The existing single-family docks near the proposed storage area indicate that the line of navigability is approximately 100 feet from the ordinary high water mark. The proposed storage area is approximately 260 feet offshore of the closest adjacent littoral area, which places it beyond the littoral right lines of the littoral owners. The proposed storage area is outside of the objectors' littoral rights, and as a result the proposed storage area does not interfere with the objectors' littoral rights.

17. The existing piling and log booms are currently under permit to Brix Maritime Co., formerly Foss Maritime, for log storage. Overlapping permits for the same pilings and log booms, but for different uses, would confuse the issues of ownership and responsibility for the removal or upkeep of the encroachments.

18. The small storage area along the eastern shoreline of the nature preserve is not permitted. Other unpermitted uses exist in the bay, as stated by Mr. Powers.

19. Applicant and IDL satisfied all procedural requirements in the processing of the application included in Idaho Code § 58-1306 and IDAPA 20.03.04.



#### IV. HEARING COORDINATOR CONCLUSIONS AND RECOMMENDATIONS

As stated by some of the hearing participants, an overall plan is needed to address the existing encroachments in Cougar Bay. Piecemeal permitting runs a risk of failing to address specific issues and concerns. In addition, some of the current activities are unpermitted. These noncompliance issues must be addressed prior to any new encroachment permit applications being considered. A real need for seasonal dock storage is demonstrated, but a different permanent location is needed for this storage. More details about the storage and how it will be designed and managed are also needed. Any application that may meet IDL's standards for approval of an encroachment permit should contain the following information:

- A clear transfer of authority over, and responsibility for, the respective piling and log booms from Brix Maritime to the local companies;
- Storage area that was confined to Cougar Bay and did not extend into the lake;
- A lighting plan;
- Log boom construction details;
- Maintenance plan for log booms and lights;
- Information on impacts to existing Osprey nest and planned mitigation;
- Lake cleanup to help offset the use of public trust lands;
- Timelines for storage and removal of structures and debris, especially debris that accumulates in Cougar Bay.

Based upon the information provided to me as the hearing coordinator, the fact that the piling and log booms are already permitted to a different company, the fact that potential violations are occurring in Cougar Bay, and the fact that the application does not meet the requirements of Idaho Code § 58-1301 *et. seq.* (the Lake Protection Act) and IDAPA 20.03.04.030.02, I recommend that the Director of IDL issue a Final Order stating that the Mica Supervisory Area of IDL should **deny** the encroachment permit application submitted by the Applicants. Furthermore, the Mica Supervisory Area should issue a temporary permit to authorize the current use as a seasonal dock storage area from November of 2008 through May of 2009 pending a long term resolution of this issue. Except for log and debris storage activities that have been performed by Foss/Brix Maritime Co. in the past, and any outstanding Temporary Permits, no other uses are authorized. All other nonnavigational structures and equipment must be removed from the permitted log storage area within 60 days of this decision. Lastly, I recommend that IDL pursue a comprehensive plan for management or removal of the piling and log booms in Cougar Bay.

DATED this 6th day of November, 2008.



ERIC WILSON  
Hearing Coordinator



## CERTIFICATE OF SERVICE

I HEREBY CERTIFY that on this 17<sup>th</sup> day of November, 2008, I caused to be served a true and correct copy of the foregoing document, by the method indicated:

Steve Schuster Idaho Department of Lands 300 N. 6 <sup>th</sup> St. Ste. 103 PO Box 83720 Boise, ID 83720-0050	<input type="checkbox"/> U.S. Mail, postage prepaid <input checked="" type="checkbox"/> Hand Delivery <input type="checkbox"/> Federal Express <input type="checkbox"/> Facsimile: _____ <input type="checkbox"/> Statehouse Mail
John J. Condon 4837 Mill River Ct. Coeur d'Alene, ID 83814	<input checked="" type="checkbox"/> U.S. Mail, postage prepaid <input type="checkbox"/> Hand Delivery <input type="checkbox"/> Federal Express <input type="checkbox"/> Facsimile: _____ <input type="checkbox"/> Statehouse Mail
Fred and Susan Murphy 448 Casco Bay Shore Coeur d'Alene, ID 83814-8934	<input checked="" type="checkbox"/> U.S. Mail, postage prepaid <input type="checkbox"/> Hand Delivery <input type="checkbox"/> Federal Express <input type="checkbox"/> Facsimile: _____ <input type="checkbox"/> Statehouse Mail
Ronald M. Fritz 2516 S. Highway 95 Coeur d'Alene, ID 83814-7816	<input checked="" type="checkbox"/> U.S. Mail, postage prepaid <input type="checkbox"/> Hand Delivery <input type="checkbox"/> Federal Express <input type="checkbox"/> Facsimile: _____ <input type="checkbox"/> Statehouse Mail
Buddy Paul 2772 W. Lutherhaven Rd. Coeur d'Alene, ID 83814-8227	<input checked="" type="checkbox"/> U.S. Mail, postage prepaid <input type="checkbox"/> Hand Delivery <input type="checkbox"/> Federal Express <input type="checkbox"/> Facsimile: _____ <input type="checkbox"/> Statehouse Mail
Robyn Miller 530 S. Asbury, STE 2 Moscow, ID 83843	<input checked="" type="checkbox"/> U.S. Mail, postage prepaid <input type="checkbox"/> Hand Delivery <input type="checkbox"/> Federal Express <input type="checkbox"/> Facsimile: _____ <input type="checkbox"/> Statehouse Mail
Jerry S. Carlson PO Box 2257 Hayden, ID 83835	<input checked="" type="checkbox"/> U.S. Mail, postage prepaid <input type="checkbox"/> Hand Delivery <input type="checkbox"/> Federal Express <input type="checkbox"/> Facsimile: _____ <input type="checkbox"/> Statehouse Mail



Kurt E. Pavlat  
3815 N. Schreiber Way  
Coeur d'Alene, ID 83815-8362

- ☒ U.S. Mail, postage prepaid  
☐ Hand Delivery  
☐ Federal Express  
☐ Facsimile: \_\_\_\_\_  
☐ Statehouse Mail

Bob Bjelland  
5500 N. Government Way  
Coeur d'Alene, ID 83816

- ☒ U.S. Mail, postage prepaid  
☐ Hand Delivery  
☐ Federal Express  
☐ Facsimile: \_\_\_\_\_  
☐ Statehouse Mail

Keith Kroetch  
3402 S. Highway 95  
Coeur d'Alene, ID 83814

- ☒ U.S. Mail, postage prepaid  
☐ Hand Delivery  
☐ Federal Express  
☐ Facsimile: \_\_\_\_\_  
☐ Statehouse Mail

Rick S. Powers  
PO Box 2173  
Coeur d'Alene, ID 83816-2173

- ☒ U.S. Mail, postage prepaid  
☐ Hand Delivery  
☐ Federal Express  
☐ Facsimile: \_\_\_\_\_  
☐ Statehouse Mail

Kurtis W. Robinson  
1210 E. Singing Hills Dr.  
Post Falls, ID 83854-9087

- ☒ U.S. Mail, postage prepaid  
☐ Hand Delivery  
☐ Federal Express  
☐ Facsimile: \_\_\_\_\_  
☐ Statehouse Mail

Joanne M. Wing  
3222 W. Baywods Road  
Coeur d'Alene, ID 83814

- ☒ U.S. Mail, postage prepaid  
☐ Hand Delivery  
☐ Federal Express  
☐ Facsimile: \_\_\_\_\_  
☐ Statehouse Mail

Oscar N. Mooney  
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Janet D. Robnett  
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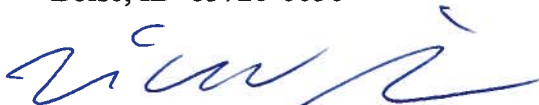
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ERIC WILSON  
IDL Program Manager - Navigable Waters and Minerals



## Exhibit 8

GEORGE B. BACON  
Director  
Idaho Department of Lands  
300 N. 6<sup>th</sup> St., STE 103  
P.O. Box 83720  
Boise, Idaho 83720-0050

BEFORE THE STATE BOARD OF LAND COMMISSIONERS  
STATE OF IDAHO

In the Matter of:

Encroachment Permits No. L-95-S-3615D  
Murphy Marine Construction - Applicant

## FINAL ORDER

## I. NATURE OF PROCEEDINGS/ISSUES

A public hearing was held on January 10, 2011 at 6:00 pm PST at the IDL Staff Office in Coeur d'Alene, Idaho. Mike Murphy served as Hearing Coordinator. The Hearing Coordinator issued his recommendation on February 9, 2011.

My responsibility is to render a decision on the behalf of the State Board of Land Commissioners based on the record reviewed in the context of my personal expertise gained through education, training, and experience. In making this determination I have relied on the record provided. Specifically;

- I have read the transcript of the public hearing conducted in Coeur d'Alene, Idaho on January 10, 2011.
- I have reviewed the record including all documents and exhibits.
- I have examined the Hearing Coordinator's Recommendations in light of the entire record.

Encroachments, including piling and log booms, placed on navigable waters require a permit issued by the Idaho Department of Lands pursuant to the requirements of Title 58, Chapter 13, Idaho Code, and the Rules for the Regulation of Beds, Waters and Airspace over Navigable Lakes in the State of Idaho, IDAPA 20.03.04, as promulgated by the State Board of Land Commissioners.



## **II. FINDINGS OF FACT**

I concur with the Findings of Fact presented by the Hearing Coordinator.

## **III. CONCLUSIONS OF LAW**

I concur with the Conclusions of Law presented by the Hearing Coordinator.

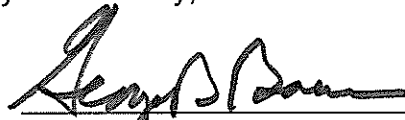
## **IV. FINAL ORDER**

On the basis of the record, it is my order that Encroachment Permit L-95-S-5615D be approved. Furthermore, it is my order that the Mica Supervisory Area shall issue an encroachment permit to Applicant with the following conditions:

- Applicant may provide dock storage only between October and May of each season, but allow for IDL pre-approved adjustments based on specific weather conditions.
- Applicant shall provide IDL with construction details and a maintenance plan for log booms and safety lighting prior to permit issuance.

This is a final order of the agency. If the Applicant, or a party who appeared at the hearing, is aggrieved by the director's final decision, they shall have the right to have the proceedings and final decision of the director reviewed by the district court in the county in which the encroachment is proposed. A notice of appeal must be filed within thirty (30) days from the date of the final decision in accordance with IDAPA 20.03.04.030.09.

DATED this 9 day of February, 2011.



\_\_\_\_\_  
GEORGE B. BACON  
Director



## CERTIFICATE OF SERVICE

I HEREBY CERTIFY that on this 15<sup>th</sup> day of February, 2011, I caused to be served a true and correct copy of the foregoing document, by the method indicated:

Steve Schuster  
Idaho Department of Lands  
300 N. 6<sup>th</sup> St. Ste. 103  
PO Box 83720  
Boise, ID 83720-0050

- ☐ U.S. Mail, postage prepaid
- ☒ Hand Delivery
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Dave Yadon  
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Coeur d'Alene Id 83814

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Fred and Susan Murphy  
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Coeur d'Alene, ID 83814

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Spokane WA 99224

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Mike Denney  
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MIKE MURPHY  
IDL Bureau Chief – Surface and Mineral Resources



**BUREAU OF SURFACE AND  
MINERAL RESOURCES**  
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PO Box 83720  
Boise ID 83720-0050  
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GEORGE B. BACON, DIRECTOR  
EQUAL OPPORTUNITY EMPLOYER

**STATE BOARD OF LAND COMMISSIONERS**  
*C. L. "Butch" Otter, Governor*  
*Ben Ysursa, Secretary of State*  
*Lawrence G. Wasden, Attorney General*  
*Donna M. Jones, State Controller*  
*Tom Luna, Sup't of Public Instruction*

February 9, 2011

## **MEMORANDUM**

TO: George B. Bacon, Director

FROM: Mike Murphy, Bureau Chief – Surface and Mineral Resources

SUBJECT: Public Hearing – Encroachment L-95-S-3615D for Murphy Marine Construction Co.

### **I. INTRODUCTION**

The following document, which includes a recommendation for your consideration, was prepared following a public hearing conducted by the Idaho Department of Lands (IDL). The public hearing was conducted in conjunction with the processing of an encroachment permit (L-95-S-3615D) for a winter dock storage facility within Cougar Bay on Lake Coeur d'Alene, a navigable lake in Idaho.

Jurisdiction in this matter rests with IDL pursuant to Idaho Code § 58-1303, which empowers the State Board of Land Commissioners to regulate, control, and permit encroachments on, in, or above the beds or waters of the navigable lakes of Idaho.

### **II. FINDINGS OF FACT**

1. On October 13, 2010, Mr. Fred Murphy - Murphy Marine Construction Company (Applicant) submitted to IDL an encroachment permit application (L-95-S-3615D) requesting approval to construct and operate a winter dock storage facility within Cougar Bay on Lake Coeur d'Alene. The application is incorporated into this document by reference.
2. IDL initiated the processing of L-95-S-3615D as an encroachment pursuant to the Lake Protection Act (Idaho Code § 58-1306) and the associated Rules (IDAPA 20.03.04.030). On October 16, 2010, October 23, 2010, December 6, 2010 and December 13, 2010, IDL published the required Notice of Application in the Coeur d'Alene Press newspaper for the encroachment permit applications submitted by



Applicants. The Notice of Application is incorporated into this document by reference.

3. In letters dated October 13, 2010 and December 1, 2010, IDL notified several agencies, organizations, and persons of the encroachment permit applications submitted by Applicants and requested that the parties provide comments to IDL. Those notified included:

- Idaho Department of Fish and Game
- Idaho Department of Environmental Quality
- Idaho Department of Water Resources
- U.S. Army Corps of Engineers
- Panhandle Health District #1
- Kootenai County Parks, Recreation, and Waterways
- Kootenai County Marine Division
- Kootenai County Building, Planning and Zoning
- Kootenai Environmental Alliance
- Lakes Commission
- Littoral landowners in and adjacent to Cougar Bay

The letter is incorporated into this document by reference.

4. IDL received a letter dated November 15, 2010 from Paul W. Daugharty, an attorney representing Don Gross (Objector), objecting to the application and requesting a hearing. The letter stated that the proposed encroachment citing concerns about potential activities beyond dock storage. The letter is incorporated into this document by reference.

5. IDL received 58 letters from members of the public in support of the proposed encroachment and one letter opposed to the proposed encroachment. Those in support cited benefits to the public and benefits to the lake (preventing dock damage). The letter opposed cited concerns about activities outside of dock storage and visual impacts.

6. Based on the request by Mr. Daugharty, and in accordance with IDAPA 20.03.04.030, IDL initiated a public hearing process for the proposed encroachment. The public hearing was scheduled for January 10th, 2011 at 6:00 pm at the IDL office in Coeur d'Alene. On December 27<sup>th</sup>, 2010 and January 3<sup>rd</sup>, 2011 IDL published the required Notice of Hearing in the Coeur d'Alene Press. The Notice of Hearing is incorporated into this document by reference.

7. A letter from IDL dated December 23<sup>rd</sup>, 2010 notified the following agencies and individuals of the scheduled hearing:

- Idaho Department of Fish and Game
- Idaho Department of Environmental Quality



- Idaho Department of Water Resources
- U.S. Army Corps of Engineers
- Panhandle Health District #1
- Kootenai County Parks, Recreation, and Waterways
- Kootenai County Marine Division
- Kootenai County Building, Planning, and Zoning
- Kootenai Environmental Alliance
- Lakes Commission
- Applicant
- Objector
- Littoral landowners in and adjacent to Cougar Bay

The letter is incorporated into this document by reference.

12. On January 10th, 2011 IDL held a public hearing at 6:00 pm in IDL's Coeur d'Alene office. Mr. Mike Murphy, Bureau Chief of Surface and Mineral Resource, served as hearing coordinator via video conferencing from Boise, Idaho. In attendance were Carl Washburn, IDL Navigable Waters Specialist; Mike Denney, IDL Mica Supervisory Area Manager; Mr. Fred Murphy, representing Murphy Marine Construction Company (Applicant); Mr. Paul Daugharty, representing Objector; Mr. Don Gross (Objector) and twenty-five (25) members of the public. The public hearing was recorded on audio tape and was subsequently transcribed. The transcript of the public hearing is incorporated into this document by reference.

- a. Applicant provided a brief overview of the project. Applicant stated that his operation has provided the same dock storage service for more 60 years around Lake Coeur d'Alene (10-15 years within Cougar Bay in association with Foss Maritime). Applicant indicated the location of the proposed facility will be more toward the center of Cougar Bay to minimize impacts to boating
- b. Testimony in opposition to the project was presented by Mr. Daugharty and Objector. Collectively their objections related to the completeness of the application; concerns with water quality; impacts to wildlife; concerns with full-year use as opposed to seasonal use; concerns with activities beyond dock storage (e.g. construction, repair and the use of hazardous materials with the potential to impact water quality); and concerns with the activities of potential sublessees under the submerged lands lease that would be issued subsequent to the encroachment permit.
- c. Upon questioning by the Hearing Coordinator, Applicant stated that the only activity that would occur would be seasonal dock storage (which would also apply to any sublessees).
- d. The Hearing Officer then asked Objector, "If the permit that would be authorized by the Department was limited to dock storage only for the



Cougar Bay Area as was described by Mr. Murphy, do you have objections that still remain?" Objector responded, "I would have no objections, if it was seasonal and dock storage only, I have no questions at all, and I'm fine with that."

- e. Testimony followed from members of the public. Ten members of the public testified in favor of the proposed encroachment citing benefits to the public based the concept of eliminating damaged docks and providing a service to the community. Seasonal dock storage was supported by these members of the public, including kayakers and members of the public that support osprey nesting within Cougar Bay. Three members of the public testified in opposition to the proposed encroachment citing concerns related to activities outside of dock storage that might occur, aesthetics and the concerns about protection of Cougar Bay based on historical uses (e.g. log storage, dock repair, orphan dock collection, uses of hazardous materials). Much of this testimony related to historical activities that were adverse to Cougar Bay. Applicant rebutted near the end of the public hearing, "I'd just like to point out that all the evidential pictures that have been put into the meeting here, if you'll look at them, I can guarantee that none of that stuff belongs to me, none of the equipment that is pictured, none of docks, none of the boat houses, everything that has been put into evidence here does not belong to my company and that wouldn't be part of what we are doing."

13. No specific details were provided in the application regarding how the proposed new piling and log booms would be maintained, replaced, or repositioned. In addition no details were provided in the application regarding safety lighting.

### **III. CONCLUSIONS OF LAW**

1. The Idaho Board of Land Commissioners (Board) is designated in Idaho Code § 58-104(9) and § 58-1303 to regulate, control and permit encroachments on, in, or above the beds of navigable lakes in the state of Idaho. IDL is the administrative agency of the Board. Idaho Code § 58-119.

2. Lake Coeur d'Alene is a navigable lake as defined by Idaho Code § 58-1302(a). Pursuant to IDAPA 20.03.04.012.02, encroachments of any kind on, in, or above the beds of a navigable lake require a permit prior to encroaching on the lake.

3. Pursuant to Idaho Code § 58-1301, lake encroachments must be regulated to protect property and the lake value factors of navigation, fish and wildlife habitat, aquatic life, recreation, aesthetic beauty, and water quality. These values must be given due consideration and weighed against the navigational or economic necessity or justification for, or benefit to be derived from, the proposed encroachment.



4. IDL shall make decisions on proposed encroachments in accordance with the Public Trust Doctrine as set forth in Idaho Code § 58-1201 through 1203. This statute protects the property rights of private land owners, including the ability to utilize their riparian rights as a means to access the waters of the navigable lakes of Idaho.

5. IDL shall also make decisions on proposed encroachments in accordance with the Public Trust Doctrine as explained by the Idaho Supreme Court in Kootenai Environmental Alliance, Inc. v. Panhandle Yacht Club, Inc., 105 Idaho 622, 671 P.2d 1085 (1983) (KEA) and subsequent cases. The Supreme Court in KEA determined that public trust uses include those of fish and wildlife habitat, recreation, aesthetic beauty, and water quality. The court in KEA also stated that mere compliance of IDL with its' legislative authority is not sufficient to determine if their actions comport with the requirements of the Public Trust Doctrine.

6. Idaho Code § 58-1302(h) and IDAPA 20.03.04.010.15 define navigational encroachments as docks, piers, jet ski and boat lifts, buoys, pilings, breakwaters, boat ramps, channels or basins, and other facilities used to support water craft and moorage on, in, or above the beds or waters of a navigable lake.

7. The winter storage of docks supports moorage on Lake Coeur d'Alene and is a navigational encroachment.

8. Applicant has littoral rights on Lake Coeur d'Alene.

9. Applicant and IDL satisfied all procedural requirements in the processing of the application included in Idaho Code § 58-1306 and IDAPA 20.03.04.

#### **IV. HEARING COORDINATOR CONCLUSIONS AND RECOMMENDATIONS**

Applicant has provided a reasonable and limited proposal to manage a dock storage facility within Cougar Bay on Lake Coeur d'Alene. Such operations have historically been located in this approximate location and have provided a service to members of the public that have sought protection of their docks during winter conditions. Much of the testimony during the hearing supported this operation and acknowledged the benefits of not having docks be destroyed by winter conditions and thus creating navigational hazards.

During the hearing Applicant addressed the concerns of Objector and other members of the public related to other activities that might be included with the dock storage operation. Applicant stated clearly that no activities beyond dock storage, including dock construction; dock repair; or the storage or use of hazardous materials, are proposed or would occur. Applicant indicated any subleasing would be similarly limited.

During the hearing, Objector testified that he had no objection to the proposed encroachment once he heard Applicant proposed no activities outside of seasonal dock storage. Testimony during the hearing also indicated that the proposed encroachment




had the support of kayakers and members of the public that support osprey nesting within the bay.

Based upon the information provided to me as the hearing coordinator and the fact that the application meets the requirements of Idaho Code § 58-1301 *et. seq.* (the Lake Protection Act) and IDAPA 20.03.04, I recommend that the Director of IDL issue a Final Order stating that the Mica Supervisory Area of IDL should **approve** the encroachment permit application submitted by Applicant with the following conditions:

- Applicant may provide dock storage only between October and May of each season, but allow for IDL pre-approved adjustments based on specific weather conditions.
- Applicant shall provide IDL with construction details and a maintenance plan for log booms and safety lighting prior to permit issuance.

I also recommend that the Mica Supervisory Area consider issuing a submerged lands lease associated with this encroachment permit that includes incentives for lake clean-up consistent with the Land Board's historical policy related to log storage facilities. The policy provides log storage companies a dollar for dollar rental credit for documented lake cleanup expenses which can reduce submerged land lease payments down to the base rent of \$250.00 per year.

DATED this   9th   day of February 2011.

  
MIKE MURPHY  
Hearing Coordinator



## CERTIFICATE OF SERVICE

I HEREBY CERTIFY that on this 10<sup>th</sup> day of February, 2011, I caused to be served a true and correct copy of the foregoing document, by the method indicated:

Steve Schuster  
Idaho Department of Lands  
300 N. 6<sup>th</sup> St. Ste. 103  
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2516 S. Highway 95  
Coeur d'Alene, ID 83814-7816

- ☒ U.S. Mail, postage prepaid
- ☐ Hand Delivery
- ☐ Federal Express
- ☐ Facsimile: \_\_\_\_\_
- ☐ Statehouse Mail

Roger D Wing  
3222 W Baywood Rd  
Coeur d'Alene ID 83814

- ☒ U.S. Mail, postage prepaid
- ☐ Hand Delivery
- ☐ Federal Express
- ☐ Facsimile: \_\_\_\_\_
- ☐ Statehouse Mail

Scott S Dickinson  
411 S 12<sup>th</sup>  
Coeur d'Alene ID 83814

- ☒ U.S. Mail, postage prepaid
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- ☐ Facsimile: \_\_\_\_\_
- ☐ Statehouse Mail

Dwight and Martha McCain  
5537 Nina Ct  
Coeur d'Alene ID 83815

- ☒ U.S. Mail, postage prepaid
- ☐ Hand Delivery
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- ☐ Facsimile: \_\_\_\_\_
- ☐ Statehouse Mail



Dennis Liming  
1053 A St  
Coeur d'Alene ID 83814

- ☒ U.S. Mail, postage prepaid
- ☐ Hand Delivery
- ☐ Federal Express
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- ☐ Statehouse Mail

Mary S Duff  
1899 W Blackwell Mill Road  
Coeur d'Alene ID 83814

- ☒ U.S. Mail, postage prepaid
- ☐ Hand Delivery
- ☐ Federal Express
- ☐ Facsimile: \_\_\_\_\_
- ☐ Statehouse Mail

Greg K Delavan  
3665 Boothe Park Rd  
Coeur d'Alene ID 83814

- ☒ U.S. Mail, postage prepaid
- ☐ Hand Delivery
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- ☐ Facsimile: \_\_\_\_\_
- ☐ Statehouse Mail

Sue Flammia  
Po Box 1117  
Coeur d'Alene ID 83816

- ☒ U.S. Mail, postage prepaid
- ☐ Hand Delivery
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- ☐ Facsimile: \_\_\_\_\_
- ☐ Statehouse Mail

Andy Porter  
15702 N Mckinnon  
Mead, Wa 99021

- ☒ U.S. Mail, postage prepaid
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- ☐ Statehouse Mail

Michael Jensen  
625 E Ichabod Ln  
Coeur d'Alene ID 83815

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Gail L Greendyke  
2857 W Baywoods Rd  
Coeur d'Alene ID 83814

- ☒ U.S. Mail, postage prepaid
- ☐ Hand Delivery
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- ☐ Facsimile: \_\_\_\_\_
- ☐ Statehouse Mail



Keith Laing  
4367 Echo Glenn Ln  
Coeur d'Alene ID 83815

- ☒ U.S. Mail, postage prepaid
- ☐ Hand Delivery
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- ☐ Facsimile: \_\_\_\_\_
- ☐ Statehouse Mail

Terry J Harris  
408 Sherman Ave  
Coeur d'Alene ID 83814

- ☒ U.S. Mail, postage prepaid
- ☐ Hand Delivery
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- ☐ Facsimile: \_\_\_\_\_
- ☐ Statehouse Mail

Bret Bowers  
Po Box 3923  
Coeur d'Alene ID 83816

- ☒ U.S. Mail, postage prepaid
- ☐ Hand Delivery
- ☐ Federal Express
- ☐ Facsimile: \_\_\_\_\_
- ☐ Statehouse Mail

Frank J Jessick  
703 N 20<sup>th</sup>  
Coeur d'Alene ID 83814

- ☒ U.S. Mail, postage prepaid
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- ☐ Federal Express
- ☐ Facsimile: \_\_\_\_\_
- ☐ Statehouse Mail

Joanne M Wing  
3222 W Baywoods Rd  
Coeur d'Alene ID 83814

- ☒ U.S. Mail, postage prepaid
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- ☐ Federal Express
- ☐ Facsimile: \_\_\_\_\_
- ☐ Statehouse Mail

Bill A Delyea  
607 S 12<sup>th</sup>  
Coeur d'Alene ID 83814

- ☒ U.S. Mail, postage prepaid
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- ☐ Federal Express
- ☐ Facsimile: \_\_\_\_\_
- ☐ Statehouse Mail

Marty Coulter Laing  
4367 N Echo Glenn  
Coeur d'Alene ID 83815

- ☒ U.S. Mail, postage prepaid
- ☐ Hand Delivery
- ☐ Federal Express
- ☐ Facsimile: \_\_\_\_\_
- ☐ Statehouse Mail

Kenneth Egbert  
7232 Rude  
Dalton Gardens ID 83815

- ☒ U.S. Mail, postage prepaid
- ☐ Hand Delivery
- ☐ Federal Express
- ☐ Facsimile: \_\_\_\_\_
- ☐ Statehouse Mail



Everett B Coulter  
2938 W 21<sup>st</sup> St  
Spokane WA 99224

- ☒ U.S. Mail, postage prepaid
- ☐ Hand Delivery
- ☐ Federal Express
- ☐ Facsimile: \_\_\_\_\_
- ☐ Statehouse Mail

Donald D Gross  
2808 Baywoods Dr  
Coeur d'Alene ID 83815

- ☒ U.S. Mail, postage prepaid
- ☐ Hand Delivery
- ☐ Federal Express
- ☐ Facsimile: \_\_\_\_\_
- ☐ Statehouse Mail

Paul W Daugharty  
309 Fernan  
Coeur d'Alene ID 83814

- ☒ U.S. Mail, postage prepaid
- ☐ Hand Delivery
- ☐ Federal Express
- ☐ Facsimile: \_\_\_\_\_
- ☐ Statehouse Mail

Mike Denney  
Idaho Department of Lands  
3706 Industrial Avenue South  
Coeur d'Alene, ID 83815

- ☐ U.S. Mail, postage prepaid
- ☐ Hand Delivery
- ☐ Federal Express
- ☐ Facsimile: \_\_\_\_\_
- ☒ Statehouse Mail

George B. Bacon  
Idaho Department of Lands  
300 N. 6th St. Ste. 103  
PO Box 83720  
Boise, ID 83720-0050

- ☐ U.S. Mail, postage prepaid
- ☒ Hand Delivery
- ☐ Federal Express
- ☐ Facsimile: \_\_\_\_\_
- ☐ Statehouse Mail



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MIKE MURPHY

IDL Bureau Chief – Surface and Mineral Resources



## Exhibit 9

### Eric Wilson

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**From:** Andrew Smyth  
**Sent:** Tuesday, January 05, 2021 12:11 PM  
**To:** Kaufmann, Angela; Mick Thomas; Eric Wilson  
**Cc:** Mike Ahmer  
**Subject:** FW: Idaho Department of Lands allowing Cougar Bay being used as a Dump Site  
**Attachments:** 12-28 barge work good one plus.JPG; 11-16 tool storage in bay.JPG; 12-12 pilings stored in bay.JPG

Another email from Mr. Stach regarding NIM's use of Cougar Bay.

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**From:** William Stach <rodsandystach1027@outlook.com>  
**Sent:** Tuesday, January 05, 2021 11:56 AM  
**To:** Andrew Smyth <asmyth@idl.idaho.gov>; Mike Ahmer <mahmer@idl.idaho.gov>  
**Cc:** dnorcini@earthlink.net; Pamela Sweeney <pamelasweeney08@gmail.com>; DAVID & PAMELA ASHCOM <ashcom12@comcast.net>; Dick Sheldon <dicksheldon@earthlink.net>; Agreeindyke11@gmail.com; krisj1216@gmail.com; Carri Hammett <cwhammett@yahoo.com>; Corey Stach <seestach@msn.com>; jimhurley123@att.net; Greg Grillo <drgreg55@gmail.com>; William Stach <RODSANDYSTACH1027@OUTLOOK.COM>  
**Subject:** Re: Idaho Department of Lands allowing Cougar Bay being used as a Dump Site

Good Morning Andrew,

I and several of my fellow HOA members (The Ridge) along with a neighboring HOA group (Cougar Estates) continue to be frustrated with the perception that the Cougar Bay residents are not being supported by our Idaho State Department of Lands. Perception can be very powerful.

Every day, and I've included some pictures as examples, the 118 residents of Cougar Bay look out and see the continued disregard by John Condone and North Idaho Maritime for Idaho's Laws governing the use of its Lakes and Streams along for his disregard for the residents who must look at this activity on a daily basis..

Mr. Condone, in the Nov. 4th hearing admitted, "lack of government approval has not caused North Idaho Maritime to cease its unauthorized use of the Lake." This is evident even today as he continues to work, store construction material, dispose of floating junk docks and boat houses in Cougar Bay.

Like I said in the hearing; "A man's integrity is defined by what he does NOT by what he says". Mr. Condone has shown his integrity many times over with his defiance of the Law and that same quote applies to the Idaho Department of Lands regarding enforcement of our Laws as the Steward of Idaho's Lakes and Streams.

Many of my fellow Cougar Bay residents are expressing the perception of "lack of movement - Idaho Department of Lands not doing anything" during meetings and conversations. They do not want this to go another year, no less several years, as what has been afforded Mr. Condone for the last, self-admitted in the hearing, 12 years, all at the expense of the residents of Idaho.

We, the residents of Cougar Bay, would like to know when we will see the Idaho Department of Lands enforce our State Laws that will STOP this activity by NIM and who, if not you, will be the enforcing Agency?

Thank You.  
Stay Safe.  
Sincerely,

William Stach  
1260 Conservation Court  
Coeur d'Alene, Idaho 83814





Steel pipe used for  
piling - storage  
platform

Steel tool storage  
platform installed by  
North Idaho Maritime

12.28.2020 14:30





Recently built steel tool  
storage platform

11.16.2020 12:27





Another group of steel  
pipe being stored for  
future pilings

12.12.2020 10:43