

DIRECTOR'S OFFICE
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DUSTIN MILLER, DIRECTOR
EQUAL OPPORTUNITY EMPLOYER

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

October 15, 2021

Frey Dock & Barge Inc.
PO Box 942
Hayden, ID 83835

SUBJECT: State of Idaho Lease B220174 Rockford Bay

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 an individual, both you and your spouse need to sign on the lines indicated for Lessee. If you are a single person, have the notary make that notation in the notary public acknowledgement block.
- 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.)
- If the lease is in the name of a trust have the legal representative sign for the trust.
- If the lease is in the name of a partnership, please write your standing in the partnership next to your name (Example: John Doe, General Partner)

Have all signatures acknowledged by a Notary Public and return the lease, with all attachments, to this office by **November 15, 2021**, in the enclosed, self-addressed envelope.

In accordance with your lease provisions, please return your 2021 annual rental in the amount of \$1,500.00, with your signed, notarized lease. The removal and upland disposal of the five piling and associated debris previously used for winter dock storage is required by June 1, 2022, along with the removal from the lake and lakeshore any stray docks or dock debris where the past dock storage occurred. The removal of any sunken dock parts from the lakebed under the vicinity of the storage area is required by December 1, 2022.

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

Please contact the Mica area office at 208-769-1577 if you have any questions concerning your lease.

A handwritten signature in blue ink, appearing to read "Eric Wilson".

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

Enclosure(s)

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

SUBMERGED LANDS LEASE

Lease No. B220174

Frey Dock & Barge Inc.,
an Idaho corporation

SUMMARY OF LEASE PROVISIONS:

Lessor: STATE OF IDAHO
By and through the State Board of Land Commissioners, whose administrative agency is the Idaho Department of Lands
300 North 6th Street, Suite 103
PO Box 83720
Boise ID 83720-0050

Lessee: Frey Dock & Barge Inc., an Idaho corporation
PO Box 942
Hayden, ID 83835

Lease Term: Commencement Date: January 1, 2021
Expiration Date: December 31, 2030

Use of Leased Premises The Leased Premises are used as seasonal dock storage. Use terms are more particularly described in *Section 3, Use of Premises* and *Attachment C, Approved Application Plan*.

Rent: The annual base rent payment is due on January 1 of each year, and gross receipts rent, if any, is due on April 1 of the year following that in which the gross receipts were earned.

Use	Annual Base Rent
Seasonal dock storage	\$1,500
Total Annual Base Rent	\$1,500

Legal Description of Leased Premises: See Attached Exhibit A, incorporated herein by reference.

Liability Insurance: \$1,000,000 Commercial General Liability and Umbrella Liability Insurance
Property insurance
Workers compensation and employer's liability insurance

Insurance terms are more particularly described in *Section 4, Insurance*.

Special Terms and Conditions None.

Lease Index: SUMMARY OF LEASE PROVISIONS
LEASE PROVISIONS
SIGNATURE PAGE
ATTACHMENT A – LEGAL DESCRIPTION OF LEASED PREMISES
ATTACHMENT B – SITE MAP(S)
ATTACHMENT C – APPROVED APPLICATION PLAN
ATTACHMENT D – YEARLY INSPECTION AND CLEAN UP REPORT

***This Summary of Lease Provisions (“Summary”) is for convenience and ease of review only. The information stated in the Summary is intended to be accurate and consistent with the contract terms set forth in the following Lease. In the event any information stated in the Summary is inconsistent with the Lease Provisions or Attachments, the Lease Provisions and Attachments will control.**

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LEASE PROVISIONS

1. Lessor does hereby lease and demise unto Lessee, at the rate and for the use specified in Sections 2 and 3 below, the lands described in Attachments A and B, located on Coeur d'Alene Lake in Kootenai County, State of Idaho.

2. Rent.

Lessee shall pay to Lessor, as rent for the Leased Premises, the following amounts, determined and payable in the manner and at the time set forth herein, without abatement, offset or deduction of any kind, unless allowed by this Lease. All rent shall be paid in lawful money of the United States of America forwarded to Lessor or as otherwise directed by Lessor in writing.

- A. Base Rent for Seasonal Dock Storage. Annual base rent for seasonal dock storage shall be one thousand five hundred dollars (\$1,500.00), due on or before January 1 of each successive year.
- B. Annual Base Rent Subject to Modification. Lessor reserves the right to increase or decrease the annual base rent to be paid by Lessee. The increase or decrease for each year shall be effective as of January 1 and payable by January 1. Lessor shall provide Lessee written notification of any changes in the rent amount one hundred and eighty (180) calendar days prior to the effective date of the change.
- C. Accrual of Interest and Late Payment Charges. In the event any rent or other financial obligation due by Lessee to Lessor under the terms of this Lease is not paid in full when due, Lessee shall also pay: 1) interest accruing thereon at the statutory rate of interest as provided by law until payment is made in full; and, 2) a late charge which shall accrue in full as of the first day of each and every calendar month of any such delinquency, until payment is made in full, in the amount of twenty-five dollars (\$25.00) or an amount equal to one percent (1%) of the unpaid principal obligation(s), whichever is greater. All payments shall be applied first to the payment of accrued interest and to accrued late charges, and then to the reduction of unpaid principal. There shall be no compounding of accrued interest or late charges. The parties acknowledge and agree that the late charge described herein is a reasonable attempt to estimate and to compensate Lessor for higher administration costs associated with administering late payments, and is not intended as a penalty. By assessing interest and late charges, Lessor does not waive any right to declare a breach, or to pursue any right or remedy available to Lessor by reason of such breach available at law or in equity, after the expiration of any applicable notice or cure period.
- D. Lien. The amount of any unpaid rent and accruing late charges and interest shall be a lien in favor of Lessor against all of Lessee's improvements and other property on the Leased Premises.

3. Use of Premises.

- A. The period of use for this Lease is from October 1 of each year to June 1 of the succeeding year. Lessee may not store floating encroachments prior to October 1 nor after June 1 of any year. If weather conditions or other circumstances beyond Lessee's control require deviations to this schedule, Lessee must notify Lessor in writing at least one week prior to the necessary deviation and must obtain advance approval from Lessor.
- B. This Lease is contingent upon Lessee continually maintaining and complying with the provisions contained in all applicable laws and rules, including, but not limited to the Rules Governing Leases on State-Owned Submerged Lands and Formerly Submerged Lands, IDAPA 20.03.07.000 *et seq.*; the Stream Channel Protection Act, Title 42, Chapter 38, Idaho Code; and the Stream Channel Alteration Rules, IDAPA 37.03.07.000 *et seq.*
- C. Any change of or new use of the Leased Premises by Lessee requires Lessee's prior written request and Lessor's prior written amendment of this Lease.
- D. When requested by Lessor, Lessee will furnish technical information concerning the equipment located on the Leased Premises.
- E. This Lease does not convey the State's title to nor jurisdiction or management of lands lying below the natural or ordinary high water mark.
- F. Lessee's construction and operation of the Leased Premises and any encroachments authorized under this Lease must follow details and specifications shown on the application, plans, and drawings provided by

Lessee, attached hereto as Attachment C and incorporated herein by reference. Should such information prove to be materially false, incomplete and/or inaccurate, or if Lessee's construction and operation on the Leased Premises and encroachments are not in compliance with the application, plans and drawings or with any term of this Lease, Lessor may issue a notice of violation, or amend or cancel the Lease in accordance with IDAPA 20.03.17.060. At any time, and prior to any modification to the application, plans, drawings or use, Lessee must consult with the Lessor to determine appropriate authorization.

- G. Lessee shall maintain the structure or work authorized herein in a good and safe condition and in accordance with the approved application, plans and drawings. Lessee must contact Lessor at least ten (10) days prior to the planned start date of any maintenance or replacement activities.
- H. Lessee is responsible for all work done by any contractor, subcontractor, employee or agent. Lessee shall provide any contractor or subcontractor with a copy of this Lease. Lessee shall ensure any contractor who performs the work is informed of and follows all the terms and conditions of this Lease.
- I. Construction barges or other watercraft may not be grounded on the lakebed for any reason and may not be parked in the Leased Premises for more than fourteen (14) consecutive days.
- J. No equipment, boats, barges or associated machinery may be allowed to create petroleum product sheen on the water or otherwise create a release of petroleum or petroleum products due to petroleum products handling, use or storage. Lessee shall maintain an adequate supply of petroleum absorbent pads. Lessee must ensure that the Emergency Response Team phone number, 1-800-632-8000, is readily available at all times.
- K. Lessee may not operate or allow operation of excavation equipment below the ordinary high water mark without prior written authorization from Lessor.
- L. By June 1, 2022, Lessee must remove the 5 pre-existing piling that are located between the three new piling and the Marina at Blackrock and any attached debris from Coeur d'Alene Lake, and dispose of such debris and waste at an upland location approved in advance by Lessor and any other government entity with jurisdiction. No demolition debris shall be allowed to fall to the lakebed or be dragged to shore. In the event inert demolition debris falls into the lake, a diver shall be deployed to retrieve the material within five (5) calendar days. If the material is toxic or hazardous it must be immediately removed from the water.
- M. Lessee must ensure that foam flotation is completely encased in a manner that will maintain the structural integrity of the foam. The encasement must be resistant to the entry of rodents and must be replaced if cracked, damaged, or similarly compromised.
- N. It is illegal to possess or transport Quagga or Zebra mussels into or through Idaho, and to launch infested watercraft. Lessee must inspect used boat lifts, docks and other materials from waterbodies other than Coeur d'Alene Lake for invasive species and ensure that they are free from such species prior to storage or installation. Lessee must provide Lessor with proof of inspection by an authorized inspector prior to installing the used boat lifts, docks and other materials and/or placing them in the water. Prior to installation call 877-336-8676 for decontamination.
- O. Construction materials must be natural or pressure treated utilizing only those preservative chemicals registered for the specific uses by the U.S. Environmental Protection Agency (EPA). All treated wood materials must be produced in compliance with "Best Management Practices (BMPs) For the Use of Treated Wood in Aquatic and other Sensitive Environments" issued by the Western Wood Preservers Institute (WWPI) 2012. Treated materials not in contact with the water must be completely dry before use near navigable waters. Use of Chromated Copper Arsenate (CCA) treated wood must adhere to the EPA recommendations regarding use of arsenate treated wood. Contact Idaho Department of Environmental Quality for information on acceptable treatment methods and materials.
- P. All construction shall meet the standards of the Uniform Building and International Fire Codes. Lessee shall contact the appropriate body of jurisdiction concerning these codes prior to installation.
- Q. If any excavation or pile driving occurs Lessor and anyone acting on Lessor's behalf must comply with the provisions of the Underground Facilities Damage Prevention Law (Idaho Code Title 55, Chapter 22). The one-call locator service number is 811.

- R. Lessee must submit a lighting plan to Lessor prior to any dock storage or other activities pursuant to this Lease. The lighting plan must meet applicable United States Coast Guard and/or Kootenai County regulations and requirements.
- S. Lessee must submit a maintenance plan to Lessor prior to any dock storage and/or other activities undertaken pursuant to this Lease. The maintenance plan must address the means by which Lessee will secure docks to piling. The plan must also include customer notification of the need to remove or secure all items on or attached to the dock or they risk losing them to the lake and at least two inspections by the Lessee per winter season to ensure that all of the floating encroachments are secured. Inspections must be documented in writing with a copy to Lessor by January 1 and April 1 of each year. Lastly, boom logs must be plainly visible to boaters. Logs that lose buoyancy and are no longer plainly visible must be replaced in a timely manner.
- T. Lessee must remove floating dock debris associated with the Leased Premises or washed up on the adjacent shoreline by June 1 each year.
- U. Lessee must inspect the lakebed under the storage area annually for sunken debris associated with the Leased Premises, and the sunken debris removed from the lake and disposed of at an upland location in compliance with local, state, and federal regulations. A yearly report on when this inspection and removal occurs, and what is removed from the lakebed, must be submitted with the yearly rental payment. See Attachment D.

4. **Insurance.**

Lessee shall purchase and keep in force all insurance required by this Lease. Any failure to comply with any of the terms of this Section shall be grounds for immediate cancellation of this Lease.

- A. **Commercial General Liability and Umbrella Liability Insurance.** Lessee shall obtain, at Lessee's expense, and keep in effect during the term of this Lease, Commercial General Liability Insurance and, if necessary, Commercial Umbrella Insurance with a combined limit of not less than One Million Dollars (\$1,000,000). Each annual aggregate limit shall not be less than Two Million Dollars (\$2,000,000), when applicable. The policy(ies) shall include personal injury and property damage resulting from the occupancy, use, and operations of any other activity on the Leased Premises carried on by Lessee, its assigns, agents, operators or contractors. This insurance shall also include contractual liability coverage for the indemnity provided under this Lease.
- B. **Property Insurance.** Lessee shall, throughout the term of this Lease and at its own expense, keep and maintain in full force and effect, property insurance for what is commonly referred to as "All Risk" coverage, excluding earthquake and flood, on Lessee's improvements and personal property.
- C. **Workers' Compensation.** Lessee shall maintain Workers' Compensation Insurance and Employer's Liability Insurance in accordance with Idaho law, together with all other coverages required therefor. If Lessee is exempt from the obligation to carry worker's compensation in accordance with Idaho law, Lessee can provide proof of such exemption to Lessor.
- D. **Additional Insured.** The liability insurance coverage required for performance of the Lease shall include the State of Idaho, the Board of Land Commissioners, and the Department of Lands, its officers, agents, and employees as additional insureds, but only with respect to Lessee's activities (including the activities of Lessee's agents, operators, employees or contractors) relating to this Lease and/or any such activities upon, or related to, the Leased Premises. If the land surface and/or the improvements thereon covered by the Lease have been sold or leased by Lessor, then any such new owner or leaseholder of the surface rights and/or improvements shall also be an additional insured.
- E. **Insurance Policy Requirements.** All policies required under this Section shall be written as primary policies and not contributing to or in excess of any coverage Lessor may choose to maintain. All insurance shall be with insurers rated A-, VII, or better in the latest Bests Rating Guide, and be in good standing and authorized to do business in the State of Idaho. There shall be no cancellation, material change, potential exhaustion of aggregate limits or intent not to renew insurance coverage without thirty (30) days written notice from Lessee and its insurer to Lessor; provided however, that if such prior advanced written notice cannot reasonably be provided, then Lessee shall immediately notify Lessor as soon as either becomes aware of any such cancellation, termination, material change, or intent not to renew. In any event, Lessee shall immediately notify Lessor of any such notice of cancellation, termination, material change, or intent not to renew any policy

required by this Lease and shall deliver to Lessor a copy of any such notice upon receipt thereof from any insurer.

- F. **Proof of Insurance.** Prior to taking occupancy or commencing operations or construction, and at least annually thereafter, Lessee shall furnish Lessor with a certificate of insurance executed by a representative of each insurer duly authorized to bind coverage, together with a copy of any applicable policy and policy endorsement showing compliance with all insurance requirements set forth herein including evidencing Lessor as additional insured. Lessee shall provide certified copies of all insurance policies required above within fifteen (15) days of Lessor's written request for certified copies. Failure of Lessor to demand such certificate or other evidence of full compliance with these insurance requirements or failure of Lessor to identify a deficiency from evidence that is provided shall not be construed as a waiver of Lessee's obligation to maintain such insurance.
- G. **No Limitation of Liability.** By requiring insurance herein, Lessor does not represent that coverage and limits will necessarily be adequate to protect Lessee, and such coverage and limits shall not be deemed as a limitation on Lessee's liability pursuant to this Lease.

5. Lease Term and Renewal Conditions.

- A. Lessor grants to Lessee the option to renew this Lease for a term of ten (10) years or as determined by Lessor commencing upon the expiration of the original Lease or subsequent Leases, provided that Lessee shall submit an application for renewal by April 30 of the year of expiration of the Lease. Lessee understands and agrees that Lessor has the sole discretion relating to the terms and conditions offered in any renewed lease and understands and agrees that the terms and conditions in a renewed lease may be materially different than this Lease.
- B. Lessee will not be eligible for a lease renewal unless the following conditions have been met:
 - i. All rent due has been paid in full;
 - ii. Lessee has complied with all provisions of this Lease and fully and faithfully performed all obligations herein.

6. Sublease, Assignment, Mortgage, Lien and Encumbrance.

- A. **No Sublease or Assignment Without Consent.** Lessee shall not sublease all or any part of the Leased Premises, or sublease all or any part of Lessee's improvements, or assign this Lease, or subject Lessee's improvements or Lessee's leasehold interest in this Lease to a mortgage or deed of trust or otherwise encumber without first obtaining the written consent of Lessor, which consent may be withheld in Lessor's sole discretion. All non-state-owned improvements are currently and shall remain in the name of the Lessee throughout the term of this Lease, unless otherwise provided herein.
- B. **No Liens or Encumbrances.** Lessee has no authority to and shall not place or allow a lien upon or otherwise encumber state land or state-owned improvements. Lessee shall not place or allow a lien or otherwise encumber Lessee's leasehold interest or Lessee-owned improvements without the prior written consent by Lessor.
- C. **Necessary Forms.** Any request for approval of a sublease, assignment, mortgage, or deed of trust must be in writing, on forms provided by Lessor and accompanied by the processing fee established by Lessor. Any attempt by Lessee to sublease Lessee's interest in all or any part of the land, Lessee's leasehold interest, or all or any part of Lessee's improvements, or to assign this Lease, or to subject Lessee's improvements or Lessee's leasehold interest in this Lease to a mortgage or deed of trust without the prior written consent of Lessor shall be void and shall constitute a default of this Lease.
- D. **Good Standing Required.** No request for Lessor's approval of any assignment, sublease or mortgage will be considered unless all rent due, late payment fees, and interest have been paid in full, and Lessee is in good standing under the terms of the Lease.
- E. **Sublease, Assignment, Mortgage and Encumbrance Subject to Terms.** Any sublease, assignment, mortgage, or encumbrance shall be subject to all of the terms and provisions of this Lease and shall be terminated and of no further force or effect if this Lease is cancelled for any reason.

- F. Specific Transaction Only. Any consent by Lessor herein contained or hereafter given to any act, sublease, assignment, mortgage, pledge, or encumbrance shall be held to apply only to the specific transaction hereby or thereby approved.
- G. Proof of Assignment. In cases of assignment due to the sale of Lessee's interest, Lessee must provide to Lessor one copy of the purchase agreement or contract of sale signed and acknowledged by the buyer (Assignee) and seller (Assignor), together with true and correct copies of all assignment documents. In the case of assignment without a sale, appropriate transfer documentation must be provided to Lessor establishing that the Lease should be assigned. This may include, but not be limited to, a deed and bill of sale from Lessee indicating the transfer of the Lease and Lessee-owned improvements as a gift; a divorce decree; or a copy of a probate order. Lessor may require additional proof as necessary. Title to Lessee's improvements (all non-state-owned improvements) must be in the same name as Lessee.
- H. Upon Lessor's prior written approval, Lessee may sublease all or part of the Leased Premises; provided that each such sublease shall be subject to all terms of this Lease, including termination of Lessee's interest under this Lease. Any such sublease shall be subject to and subordinate to the rights of Lessor under this Lease, and any such sublease shall include, but not be limited to, the following:
 - i. No sublease shall relieve Lessee of its responsibility to pay rents, fees, interest and any charges due, and perform all of its obligations under this Lease.
 - ii. The term of the sublease may not exceed the term of this Lease.
 - iii. Lessor is not liable for acts or omissions of Lessee.
 - iv. Sublessee will abide by all terms of this Lease.
 - v. Lessor is not liable for pre-payment, security deposits or other pre-paid charges made to Lessee by sublessees should this Lease be cancelled.

Lessor may, in its sole discretion, impose additional requirements as a condition of approving the sublease request.

7. Lessee's Compliance with Applicable Laws and Rules.

- A. Full Compliance. Lessee's use of the Leased Premises and all improvements constructed thereon, shall fully comply with all statutes, ordinances, rules, regulations, and laws of applicable federal, state, and local governmental authorities. Lessee shall comply with all applicable rules and regulations and standards currently in effect or hereafter adopted by Lessor.
- B. No Waste or Nuisance. Lessee shall not use the Leased Premises in any manner that would constitute waste, nor shall Lessee allow the same to be committed thereon. Lessee shall not do anything or allow any action which will create a nuisance or a danger to persons or property.
- C. Noxious Weeds and Invasive Species. It is understood and agreed that Lessee shall take measures to control noxious weeds within the Leased Premises in accordance with Title 22, Chapter 24, Idaho Code and rules promulgated thereunder. Lessee shall also comply with the requirements of the Idaho Invasive Species Act of 2008, Title 22, Chapter 19, Idaho Code and rules promulgated thereunder. Lessee shall cooperate with applicable federal, state and local agencies or entities authorized to undertake programs for control and/or eradication of noxious weeds and invasive species. Failure to comply with those laws and rules will be considered a breach of this Lease and shall be considered a default pursuant to Section 16 herein.

8. Environmental, Safety, and Sanitary Requirements.

- A. Sanitary Requirements. Lessee shall at all times keep the Leased Premises in a clean and sanitary condition, free of trash, noxious weeds, garbage and litter, so that the Leased Premises is maintained in as nearly natural state as possible. Lessee shall not dispose of sewage except in conformity with applicable federal, state, and local laws, rules and regulations pertinent to Lessee's use. Lessee shall store and dispose of all trash and garbage in conformity with all applicable federal, state, and local laws, rules and regulations. Lessee is responsible for all costs associated with sewage, garbage, and litter disposal.

- B. Fire and Safety Regulations. Lessee shall comply with all applicable state laws and the rules of the Department of Lands for fire protection and prevention of fire. Lessee agrees to keep the Leased Premises free from fire hazards. Lessee is prohibited from burning garbage or household trash. The burning of wood or other debris requires the prior written permission of Lessor and any burning must comply with applicable federal, state, or local law, regulation, rule, or ordinance.
- C. No Hazardous Materials. Lessee shall neither use nor permit upon the Leased Premises the use, placement, transport or disposal of any hazardous waste or any other substance that is or is suspected to be a hazardous substance or material except in compliance with all applicable federal, state and local laws, rules, regulations and ordinances. Lessee shall be responsible, at its own expense, for removing or taking other appropriate remedial action regarding such wastes, substances, or materials which Lessee may cause to be introduced, in accordance with applicable federal, state, and local laws, rules, regulations, and ordinances.

9. No Warranty of Suitability.

- A. No Warranty. Lessee acknowledges that neither Lessor, nor any agent or designee of Lessor, has made any representation or warranty with respect to the Leased Premises or concerning the suitability of the Leased Premises for the uses intended by Lessee. Lessee acknowledges that it has accepted the Leased Premises in "AS IS CONDITION," and accepts liability for its condition.
- B. Quiet Enjoyment. Lessor agrees that Lessee, upon payment of the rent and full performance of the terms and conditions of this Lease, may quietly have, hold, and enjoy the Leased Premises during the term hereof.

10. Payment of Taxes and Assessments.

On or before any due dates, Lessee agrees to pay any and all real or personal property taxes, assessment or fees that may be assessed or levied by a governmental authority asserting such authority over the Leased Premises or its improvements. Lessee shall make such payment directly to the taxing authority and hold Lessor harmless from any claim or assessment.

11. Construction and Improvements.

- A. Construction of Improvements. Lessee may construct improvements upon the Leased Premises under limited circumstances in accordance with the following:
 - i. Lessee must first obtain the prior written consent of Lessor.
 - ii. Lessee must furnish a complete set of construction plans and an accurate plot plan of all proposed improvements contemplated by Lessee and submit those plans and drawings to Lessor.
 - iii. After the construction plans and plot plan have been approved in writing by Lessor, construction of the improvements must be in full compliance with all conditions under this Lease and any plans submitted to Lessor, and shall be in compliance with all applicable federal, state and local laws, rules and regulations.
- B. Treatment of Facilities and Improvements. Upon Lease Expiration without renewal, or upon cancellation of the Lease for any reason:
 - i. Lessor may, in its sole discretion, require Lessee to remove all non-state-owned facilities improvements placed upon the Leased Premises, and to require Lessee to restore the Leased Premises to its natural or previous condition, all at Lessee's sole cost and expense.
 - ii. Lessor may, in its sole discretion, enter the Leased Premises and remove any of the non-state-owned improvements, or otherwise dispose of such improvements, and to restore the Leased Premises to its natural or previous condition, and charge the cost of removal and/or disposal and restoration to Lessee.
 - iii. Lessee shall also be responsible for all collection costs, including legal fees and interest.
 - iv. Lessor reserves the right, in its sole discretion, to purchase any of the approved improvements from Lessee at appraised value.

- v. Upon expiration, cancellation, or default of the Lease, Lessor will provide Lessee with a specific, date, not to exceed six months from the date of expiration, cancellation, or default, by which Lessee must remove any and all non-Lessor owned facilities and improvements. Failure to remove any and all non-Lessor owned facilities and improvements by the set date shall be deemed a trespass. If removal of Lessee's improvements has not occurred by the set date, then all rights, title and interest of Lessee to any of the improvements shall, upon thirty (30) days written notice to Lessee or at a date determined at the sole discretion of Lessor, but not less than thirty (30) days, be deemed to transfer or revert to the State of Idaho, and shall be considered abandoned in place by Lessee.

12. Relations of the Parties.

Lessee is not an officer, employee, or agent of Lessor. Lessee covenants that it will satisfy and hold Lessor harmless against any claim, lien, judgment, or encumbrance filed or made against the Leased Premises, Lessee's leasehold interest in the Lease, Lessor-owned improvements, or Lessee's improvements, at Lessee's sole and separate cost or expense.

13. Indemnification.

- A. Lessee will indemnify, defend, and save harmless Lessor, the State of Idaho, and their officers, agents and employees from and against any liability, claims, damages, debts, demands, losses, costs, expenses, actions, obligations, settlements, judgments for damages, or injury to persons or property including, but not limited to, reasonable attorneys' fees and costs caused by or arising out of the use or occupation of the Leased Premises by Lessee, or Lessee's agents, officers or employees, or any person's failure to comply with any applicable state, federal, or local laws, statutes, rules, or regulations.
- B. Upon receipt of Lessor's tender of indemnity and defense, Lessee shall immediately take all reasonable actions necessary, including, but not limited to, providing a legal defense for Lessor, to begin fulfilling its obligation to indemnify, defend, and save harmless Lessor. Lessee's indemnification and defense liabilities described herein shall apply regardless of any allegations that a claim or suit is attributable in whole or in part to any act or omission of Lessor under this Agreement. However, if it is determined by a final judgment that Lessor's negligent act or omission is the sole proximate cause of a suit or claim, Lessor shall not be entitled to indemnification from Lessee with respect to such suit or claim, and Lessor, in its discretion, may reimburse Lessee for reasonable defense costs attributable to the defense provided by any Special Deputy Attorney General appointed pursuant to Section 13.C.
- C. Any legal defense provided by Lessee to Lessor under this Section must be free of any conflicts of interest, even if retention of separate legal counsel for Lessor is necessary. Any attorney appointed to represent Lessor must first qualify as and be appointed by the Attorney General of the State of Idaho as a Special Deputy Attorney General pursuant to Idaho Code §§ 67-1401(13) and 67-1409(1).

14. Inspection and Audit Rights.

- A. Inspection by Lessor. Lessee shall permit Lessor or Lessor's authorized agent or designee to enter and inspect the Leased Premises and any improvements therein or thereupon at any reasonable time.
- B. Audit Rights. Lessor shall have the right to audit, in such a manner, and at all reasonable times as it deems appropriate, all activities of Lessee arising in the course of its operation under this Lease. Lessee must maintain its books, records, documents, and other evidence of accounting in accordance with generally accepted accounting principles so as to properly and accurately reflect its business. At Lessor's sole discretion, an audit of Lessee's books or the supporting tax documents that have been filed with the Internal Revenue Service or the State Sales Tax Report may be performed by a Certified Public Accountant or an agent of Lessor. If an audit of gross receipts shows a discrepancy of ten percent (10%) or more, then Lessee shall pay to Lessor any additional rental owed, and the entire cost of the audit, within thirty (30) days of notice to Lessee.

15. Reservations by Lessor.

Lessor expressly reserves and excepts the following rights from the Lease:

- A. To enter upon the Leased Premises, or any portion thereof, during the term of the Lease for any purpose, including inspecting the Leased Premises or any improvements.

- B. All timber rights, rights for oil and gas, geothermal rights, mineral rights, easements and rights-of-way, fee title to the Leased Premises, and title to all appurtenances and improvements placed thereon by Lessor.
- C. The right to grant easements over the Leased Premises, providing said easements do not conflict in a material way with the approved improvements installed, maintained or operated by Lessee upon the Leased Premises.
- D. The right to require that changes be made to the sanitation or other facilities for the protection of public health, safety or preservation of the Leased Premises.
- E. The right to issue leases for exploration and development of oil, gas, geothermal and mineral resources or any other lease, so long as such other use does not materially interfere with the authorized use under this Lease.
- F. To reserve, as its sole property, any and all water from any source arising on state land and to hold the water rights for any beneficial use that may develop as a result of this Lease.
- G. Right of ingress and egress over, under, through and across the Leased Premises for itself and its assigns.

16. Lessee's Default.

- A. Lessee's breach of any of the terms of this Lease is a default and is a basis for cancellation of the Lease. Lessor shall provide Lessee written notice of the breach or violation and, if applicable, the corrective action required of Lessee. The notice shall specify the reasonable time to make a correction or cure the violation or breach. If the corrective action or cure is not taken within the specified time or does not occur, then Lessor may cancel the Lease effective on the date specified in the written cancellation notice; provided however, that the notice shall be provided to Lessee no later than thirty (30) calendar days prior to the effective date of such cancellation.
- B. Lessee agrees to relinquish possession of the Leased Premises upon any cancellation of the Lease for any reason.
- C. In addition to the rights and remedies specifically granted to Lessor under this Lease, Lessor shall have such other rights and remedies as against Lessee as may be available at law or in equity, and Lessor's pursuit of any particular remedy for breach or default shall not, in and of itself, constitute a waiver or relinquishment of any other available claim of Lessor against Lessee.

17. Notices.

- A. All notice(s), including, but not limited to, a change in address, given in connection with the Lease shall reference the Lease number, shall be in writing and shall be delivered either by hand or by regular United States Mail to Lessor at the address listed in the Summary of Lease Provisions, and to Lessee at the address listed in Summary of Lease Provisions.
- B. Any notice or correspondence mailed to Lessee at the last identified address shall be deemed effective delivery. It is Lessee's duty to notify Lessor, in writing, of any change in Lessee's mailing address.

18. Waiver.

The waiver by Lessor of any breach of any term, covenant, or condition of this Lease shall not be deemed to be a waiver of any past, present, or future breach of the same or any other term, covenant, or condition of this Lease. The acceptance of rent by Lessor hereunder shall not be construed to be a waiver of any term of this Lease or breach thereof. No payment by Lessee of a lesser amount than shall be due according to the terms of this Lease shall be deemed or construed to be other than a partial payment on account of the most recent rent due, nor shall any endorsement or statement of any check or letter accompanying any payment be deemed to create an accord and satisfaction.

19. Attorneys' Fees and Costs.

In the event either party initiates a legal proceeding of any kind instituted under this Lease or to obtain performance of any kind under this Lease, the prevailing party shall be awarded such additional sums as the court may adjudge for reasonable attorney's fees (including fees from the Office of the Attorney General of the State of Idaho) and to pay all costs and disbursements incurred in such proceeding, including, but not limited to, accountants' fees and fees of appraisers or other experts.

20. Officials, Agents and Employees Not Personally Liable.

In no event shall any official, officer, employee or agent of the State be in any way personally liable or responsible for any covenant or obligation contained in this Lease, express or implied, nor for any statement, representation or warranty made in connection herewith.

21. Miscellaneous.

- A. Modification. This Lease, excluding the rent adjustments, may be modified only by the prior written consent of the authorized representatives of Lessor and Lessee.
- B. Complete Statement of Terms. No other understanding, whether oral or written, whether made prior to or contemporaneously with this Lease, shall be deemed to enlarge, limit, or otherwise effect the operation of this Lease.
- C. Lessee's Non-Discrimination. Lessee shall not discriminate against any person because of race, creed, religion, color, sex, national origin or disability.
- D. Paragraph Headings. The paragraph headings, titles, and captions used in this Lease are not to be construed as interpretations of the text but are inserted for convenience and reference only.
- E. Entire Agreement. This Lease contains the entire agreement between the parties as of the date concerning the subject matter hereof and supersedes all prior agreements. The execution of this Lease has not been induced by either party, or any agent of either party, by representations, promises, or undertakings whatsoever between the respective parties concerning this Lease except those which are expressly contained herein.
- F. Governing Law and Forum. This Lease shall be construed in accordance with and governed by the laws of the State of Idaho, and the parties consent to the jurisdiction of Idaho State Courts located in Ada County in the event of any dispute with respect to this Lease.
- G. Binding on Heirs and Successors. It is understood and agreed that all terms, covenants, and conditions hereof shall be binding upon the approved subleases, approved assignees and Lessee's heirs or successors-in-interest.
- H. Severability. In the event any provision of this Lease shall be held invalid or unenforceable according to law, for any reason whatsoever, then the validity, legality or enforceability of the remaining provisions shall not in any way be affected or impaired.
- I. License/Authorizations. Lessee shall be responsible for paying any fees for any license or authorizations that may be required from other entities as required in the course of doing business as it relates to this Lease.

[Remainder of page intentionally left blank]

ATTACHMENT A

LEGAL DESCRIPTION OF LEASED PREMISES

Instrument Number	Township	Range	Section	Legal Description	County	Endowment	Acres	Navigable Water Name
B220174	48N	04W	18	Bed of Coeur d'Alene Lake, Rockford Bay, adj to Gov Lot 2	Kootenai	ND	1.5	Coeur d'Alene Lake

ATTACHMENT B

MAP(S)

163'

400'

ATTACHMENT C

Approved Application Plan

As for my company we have been spring docs since the late-1940s in the same locations on Hayden Lake and Lake Coeur d'Alene. What follows is the proposal for LAKE COEUR D'ALENE DOCK STORAGE:

1. On Lake Coeur d'Alene we have been storing in Rockford Bay for this time with a State-provided permit, although the placement of the storage and the corresponding work area seem confusing.
2. Rockford Bay storage is attached to a line of piling and log boom in front of a commercial marina inside a no wake zone and is visible from all sides. The State has had documented evidence in their records for as long as they have had aerial photos of the area.
 - a. The docks are tied to each other at 4 points.
 - b. The docks are cabled around the perimeter.
 - c. The docks are attached by rope and cable to the log boom, which is attached to the piling.
 - d. Solar lighting will be attached to the top of both pilings.
 - e. The docks will be checked regularly as they already are by employees and the company owner.

MINERALS, PUBLIC TRUST, OIL AND GAS DIVISION
RESOURCE PROTECTION & ASSISTANCE BUREAU
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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

Memorandum

Date: September 29, 2021

To: Dustin T. Miller, Director

From: Eric Wilson, Resource Protection and Assistance Bureau Chief

Question:

Shall the Idaho Department of Lands ("IDL") approve Frey Dock & Barge Inc.'s application for Submerged Land Lease B220174?

I.

Background

A. Procedural Background

Previously, IDL issued a Notice of Noncompliance to Frey Dock & Barge Inc. (Frey) dated April 20, 2020 due to winter dock storage in Rockford Bay on Coeur d'Alene Lake in violation of encroachment permit L-95-S-3436 and without a submerged lands lease. This notice is attached as **Exhibit 1**. Frey submitted an encroachment application on September 28, 2020 and supplemental information on November 20, 2020. All of Frey's application is combined into **Exhibit 2**. A public hearing on the application was scheduled for December 9, 2020, but was stayed due to a hearing decision on a similar application submitted by North Idaho Maritime. The Frey application was then dismissed.

The North Idaho Maritime application was the result of similar Notice of Noncompliance for their winter dock storage in Cougar Bay on Coeur d'Alene Lake. On December 3, 2020, IDL Director Dustin Miller issued a Final Order denying North Idaho Maritime's encroachment permit application for the Cougar Bay winter dock storage. 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 3** 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).

Following the L-95-S-5884 Order for North Idaho Maritime and dismissal of Frey's application for encroachment permit L-95-S-3436, IDL instructed Frey to apply for a submerged lands lease to resolve their Notice of Noncompliance for winter dock storage in Rockford Bay. On July 8, 2021, IDL received an application for a submerged land lease from Frey. The application is attached hereto as **Exhibit 4** and

incorporated herein by reference. In this application, Frey seeks to lease approximately one and one-half (1.5) acres in Rockford Bay on Coeur d'Alene Lake for winter dock storage.

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 5** hereto. In general, the 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 lakebed 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. Winter dock storage on Coeur d'Alene Lake is needed because of the effects of wind and ice and winter water levels that drop up to eight feet. Rec 5:40. Several marine contractors on these lakes, including Frey, 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. Past Rockford Bay Dock Storage

Rockford Bay has been used for dock storage over many decades. This upper part of the bay is sheltered from the winds, is already a no wake zone, and has deep water. Rec 47:01. Ice may form in the bay but it does not get pushed from the wind. Rec 4:53. Item 16 on Page 2 of **Exhibit 2** states that winter dock storage has occurred since the 1960's. Lisa Armstrong submitted comments last year dated October 15, 2020 on behalf of the Rockford Bay Property Owners & Residents during the comment period for permit L-95-S-3436. This is attached as **Exhibit 6**. Included in these comments were a historical photo that shows dock storage east of the Marina at Blackrock and against the north shore. Rec 20:00 and **Exhibit 6**, page 34. No date is given for this photo, but a search for the photo indicates it was from 1968. **Exhibit 7**. The lease application stated that the company started storing docks here in the late 1940s. **Exhibit 4**, page 5. Frey stated that dock storage started in 1956. Rec 0:20. Encroachment permit L-95-S-3436 was issued to Timothy D. Reeves for one year of dock storage in 1989, with the requirement that a lease be obtained. **Exhibit 6**, pages 11 to 14. No lease was ever obtained and the permit apparently expired in 1990. **Exhibit 1** and Rec 21:05. Permit L-95-S-3436 was for a 60' x 200' winter dock storage area immediately east of the Marina at Blackrock and along the shoreline. **Exhibit 6**, pages 11 and 14. Page 5 of **Exhibit 4** states that dock storage has been done under a state-provided permit, but the permit is not

in Frey's name. This permit is still in Mr. Reeves' name, but it was purchased as part of the company about 28 years ago. Rec 2:15.

Some snapshots of storage activity in Rockford Bay are shown in **Exhibit 8** via fifteen (15) aerial images from 1998 through 2020. The original permit area east of the Marina at Blackrock has been occupied by several single-family docks since at least 1998 and has not been used for winter dock storage. **Exhibit 8**, page 1. Frey stated that he has never used the work area along the shore shown in encroachment permit L-95-S-3436. Rec 3:13. The area south of the Marina at Blackrock in the middle of the bay has apparently been used for winter dock storage since at least 1998. **Exhibit 8**, page 1. Frey purchased the business in 1994 from Jim and Colleen Chase. **Exhibit 2**, pages 9 and 10. This makes a total of twenty seven (27) years of winter dock storage for Frey.

Docks or a work barge can be seen before, during, or after the winter dock storage season during most years. Docks are present during the storage season on pages 5, 10, and 11 of **Exhibit 8**. Docks are present after the storage season in pages 1, 2, 4, 6, and 12 of **Exhibit 8**. Docks are present before the storage season in pages 3, 7, 8, and 9 of **Exhibit 8**. Frey denied that year round storage occurred when specifically asked about it. Rec 9:00.

A barge is present in pages 1, 5, 8, 9, 10, 11, 13, and 15 of **Exhibit 8**. Frey stated that he does park a barge in the storage area but it is not related to winter dock storage. Rec 9:10. He does not think barge parking is a commercial use of the lake because they just drop their spud and park. Rec 10:10. Frey stated that barge parking in Rockford Bay has been occurring off and on for twenty five (25) years. Rec 9:25. They only have one (1) barge on Coeur d'Alene Lake, HDB Marine has three (3), Murphy Maritime has two (2), and North Idaho Maritime has three (3) (Rec 58:38). These other operators may also park their barge in Rockford Bay. Rec 55:27. Each barge has a spud they lower to keep anchored and they do not tie up to piling. Rec 56:15 and 57:23. Frey also stated the spuds are lit on top (Rec 57:38), but at least one comment was received regarding improper lighting of the barge, crane, and tugboat. **Exhibit 6**, page 2. Lisa Armstrong stated that barges, cranes, tugs are present all year. Rec 18:15. One barge stays more than it is gone, and other dock builders also park there. Rec 26:30 and 26:44. Fran deTar stated that two cranes on barges were parked from May 7 and on into summer during 2020. Rec 29:34. Maureen deTar provided a photo of the two barges. **Exhibit 9**, page 3. Cary Williams stated that year long dock storage and barges are common, and definitely a commercial use of the bay. Rec 42:26.

Frey stated that log booms were in place for at least 30 years and were used by the prior owner, Jim Chase. Rec 1:35. They are currently used to keep things from floating into the Marina at Blackrock. Rec 53:45. Log booms are visible in all images from 2005 to 2020. They may be present in the 1998 and 2004 images, but the resolution is not sufficient to identify log booms with any certainty. Page 13 of Exhibit 6 shows the west end of the log boom detached and trailing off to the northwest. Fran deTar stated that log booms have broken free in the past and swung out into the bay. Rec 30:39. Vonda Long also mentioned that the log booms are a hazard. Rec 35:40. Lisa Armstrong refers to a "mooring line" which is the log boom, and she describes it as a hazard when it is untethered or broken. **Exhibit 6**, page 2.

Five or six pilings have been installed in the bay. Rec 11:42. Mr. Chase apparently placed one or more of the original pilings south of the Marina at Blackrock. Rec 48:10. These pilings are located in the middle of the bay between the Marina at Blackrock and the south shore of the bay. **Exhibit 8**. Frey stated that the five pilings in the middle of the bay were on the original L-95-S-3436 permit and the area near the shore

and east of the marina was a work area. Rec 0:48 and 3:55. The permit, however, only mentions “a surface area 60’ x 200’ for dock storage”. The drawing submitted for the L-95-S-3436 permit clearly shows the 60’ x 200’ area east of the marina. It does show four pilings south of the marina, but they are not labeled, and they are not included in the permit. The marina is also shown in the drawing, as is a public boat ramp and another dock between the marina and the storage area. None of these other features in the drawing are mentioned in the permit except for the 60’ x 200’ storage area.

Three new pilings were driven in September of 2019 approximately 100 feet south of the existing pilings. Rec 20:28, 39:20, and 1:01:52; pages 2 and 29, **Exhibit 6**; and pages 13-14, **Exhibit 8**. Frey stated that John Magnuson, owner of the adjacent Marina at Blackrock, requested that the dock storage be moved farther south away from his Blackrock marina. The existing dock storage area also had water depth issues. Rec 1:01:52. Some of the old pilings may have been removed as stated on page 2 of **Exhibit 6**, but pages 13-15, **Exhibit 8** suggest that some old pilings remain. Fran deTar stated that some pilings have tipped and may not be visible but are still navigational hazards. Rec 30:28 and 30:59.

Approximately fifty (50) customers have been served by this winter dock storage location. Rec 1:21 and 12:12. Frey prefers to collect docks for storage when the lake is down about 1 to 1.5 feet from ordinary levels so that most of the docks are still floating. The usual storage season is approximately October 1st to late May depending on water levels and spring runoff. Rec 7:02. Customers are charged \$425 each for winter dock storage, depending on the size of the dock. Rec 11:03. In addition to the storage, this includes removing the ramp and any jet ski port, and other towing preparations, towing the dock to and from storage, and reinstallation of the dock. Rec 11:15. Frey’s website advertises free dock storage for a year with the purchase of a dock. **Exhibit 10**.

Some unauthorized disposal of other docks takes place in Rockford Bay, but less than occurs at the Hayden Lake dock storage location. Rec 12:32. One comment was received objecting to dock construction in the storage area. **Exhibit 6**, page 2.

D. Potential Remedies for Noncompliance Issues

Encroachment permit L-95-S-3436 was for a 60’ x 200’ winter dock storage area immediately east of the Rockford Bay Marina and along the shoreline. **Exhibit 6**, pages 11 to 14. That permit expired in 1990. The location shown in that permit is now occupied by several single-family docks and has not been used for winter dock storage since at least 1994. This contradicts the statement in item 16 on Page 2 of **Exhibit 2** “My Company and the previous owners of the company have been storing docks in this same location since the early 1960s and have been permitted in that areas since 1989.” The area south of Rockford Bay Marina in the middle of the bay has been used for dock storage since at least 1994. In October 2019 IDL became aware that three (3) new pilings were installed in the winter dock storage area. These piling are unpermitted encroachments, and Idaho Code § 58-1308 and 1309 provide remedies for IDL to address unpermitted encroachments. The use of those piling for commercial purposes requires a submerged lands lease, and Idaho Code § 58-1203(1) and IDAPA 20.03.17 provide remedies for IDL to address lease related violations. More specifically:

- A. Idaho Code § 58-1308(1) allows for injunctive relief due to encroachments without a permit.
- B. Idaho Code § 58-1308(1) allows for a \$2,500 civil penalty for violations of Idaho Code § 58-13.

- C. Idaho Code § 58-1308(2) allows for an additional civil penalty of either \$10,000 or \$1,000 per day for violations that cause harm to water quality, fisheries, or other public trust values. If the piling were used for 27 years, that is a total of 9,855 days. This suggests a civil penalty of up to \$9,855,000 is allowable under statute.
- D. Idaho Code § 58-1308(3) allows for recovery of expenses incurred by the state in enforcing the chapter, or in enforcing or terminating any nuisance, source of environmental degradation, cause of sickness or health hazard. Several IDL and Attorney General staff have been working on this issue in Rockford Bay for over a year. Dozens of hours would be a conservative estimate with an overall cost of \$7,000 or more.
- E. Idaho Code § 58-1309 allows the Board to recommend to a court that the responsible party undertake restoration of the lake. This could include removal of all unauthorized encroachments such as piling and log booms.
- F. Idaho Code § 58-1203(1) grants the Board the authority to “approve, modify or reject all activities involving the alienation or encumbrance of the beds of navigable waters in accordance with the public trust doctrine.”

II.

Analysis of Frey Lease Application

The Frey lease application is **Exhibit 4** hereto. It proposes a winter dock storage area, but does not specify the size or exact location. The 2020 application for encroachment permit L-95-S-3436 included a drawing of a storage area 140' x 400' on page 6 and describes a storage area 140' x 400', or 1.3 acres, on page 13. **Exhibit 2**. The application then shows a storage area measuring 120' x 400', or 1.1 acres, on pages 15 and 16. **Exhibit 2**. Pages 10 and 11 of **Exhibit 8** suggest that the actual area used is almost two (2) acres, with the long dimension approximately parallel to the north shore of Rockford Bay and the Marina at Blackrock. All of these dimensions exceed the 60' x 200' winter dock storage area in the 1989 permit for L-95-S-3436. **Exhibit 6**, pages 11 and 14. Since the historic use exceeds the size shown in **Exhibit 2**, the number of stored docks is not anticipated to change, and the size was not specified in the lease application, a size of 1.5 acres is assumed for the requested lease.

The location of the proposed storage area is presumably adjacent to and south of the new piling and log boom location shown on pages 13 to 15 of **Exhibit 8**. Page 16 of **Exhibit 2** shows a location 200 feet south of the Marina at Blackrock on the east end of the storage area, 250 feet south of the Marina at Blackrock on the west end of the storage area, 327 feet northeast of the Woodland Park community dock, and 206 feet north of the nearest single family dock. Assuming the north boundary of the storage area is the existing log boom and the storage area is approximately 140 feet wide, the actual distances as measured in aerial imagery is 275 feet south of the Marina at Blackrock on the east end of the storage area, 320 feet south of the Marina at Blackrock on the west end of the storage area, 240 feet east of the Woodland Park community dock, and 120 feet north of the nearest single family dock. **Exhibit 8**, page 15. This is further from the Marina at Blackrock and closer to the south shore docks than shown in **Exhibit 2**.

Frey proposes to use the existing piling to secure the stored docks. This presumably means the new piling installed in 2019 and shown on pages 13 to 15 of **Exhibit 8** with the log booms attached and adjacent to the barge. Concrete blocks cannot be used in this location due to the muddy lake bottom

that would swallow the blocks and prevent seasonal detachment of buoys. Rec 13:46. Docks would be attached by rope at 4 points, and a cable would encircle the perimeter of the stored docks. **Exhibit 4**, page 5, Rec 1:30. All storage activity would be outside the line of navigability. Water depths at full pool are 20 feet on the east end of the storage area, and 14 feet on the west end. Water depths at low water are 12 feet on the east end of the storage area, and 6 feet on the west end. **Exhibit 2**, page 6.

Fran deTar suggested that Cougar Bay may be a better location for winter dock storage due to the larger bay and smaller number of residents. Rec 28:42. Fran deTar stated some concerns with the new storage location being closer to the Woodland swimming area and concentrating the boat traffic in a smaller area. Rec 31:55. Vonda Long stated that barge storage is not compatible in this busy bay. Rec 36:28. Cary Williams stated that the common year round dock and barge storage is not aesthetic. Rec 42:30.

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.

Cary Williams stated that Rockford Bay might be within the Coeur d’Alene reservation and therefore the lakebed in this area is not owned by the State of Idaho. Rec 40:12. An examination of the tribal boundary indicates that the tribal boundary follows the shoreline in Rockford Bay and Windy Bay to the south, and therefore the state of Idaho does own the lakebed in Rockford Bay. **Exhibit 11**. Because the state owns the bed and banks of Coeur d’Alene Lake in Rockford Bay below the OHWM, including the area that Frey proposes to use 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 use 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.

B. Winter Dock Storage Area

Frey's proposed winter dock storage would be a commercial use of a navigable waterway –Coeur d'Alene Lake. A need for winter dock storage is demonstrated by the twenty seven (27) years Frey has conducted winter storage at this location, and the thirty (30) or more years his predecessor did before him. Several letters of support were received in support of the 2020 encroachment permit application. Winter dock storage at this location 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. Several comments and photos document ongoing issues related to unauthorized piling, loose and half-sunk log booms, constricted boat traffic, and year round usage for dock and barge storage. Only one comment mentioned the stored docks breaking free. **Exhibit 6**, page 2. With the appropriate lease terms in place and resolution of twenty seven (27) years of unpermitted and unleased usage, winter dock storage does not appear to present a substantial impairment to the public trust values. As to the specific public trust doctrine factors:

1. Navigation

Docks are navigational encroachments and having a location to safely store them during the winter months enhances navigation. Wind and ice are likely to break up docks that are left on some parts of Coeur d'Alene Lake over the winter. Storing them prevents this break up and the resulting dock debris. Several neighbors and members of the public expressed concern about the unpermitted piling, log booms, barges, and all year storage restricting navigation at the back of Rockford Bay. Improper lighting and mostly sunk boom logs are often cited as hazards.

Concerns were also expressed about the high amount of boat usage getting squeezed by the dock storage area between the Marina at Blackrock and the Woodland Park community dock. This issue has worsened for the Woodland Park users due to the new piling placed 100 feet farther south in 2019. Docks and barges have also been stored outside of the winter storage season in the past. Rec 18:15, **Exhibit 8**.

The dock storage occurs primarily from October to early May as described in the application. 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 4**) and the Woodland Shores users can go north around the proposed storage area instead of between the storage area and the south shore. **Exhibit 8**, page 15. Clean up and removal of unused piling would benefit navigation by removing these hazards. More lighting is needed to improve navigation as proposed on page 5 of **Exhibit 4**. (see Lease, section 3.S). More maintenance of the log boom is also needed to ensure visibility. (see Lease, section 3.T). Summertime dock storage was not included in the lease application, and would not be allowed under the lease. Dock construction can and should occur at the location where the new dock will be installed, and should not be conducted in the winter dock storage area.

Barge storage or parking is a more difficult issue. Frey stated that the barge anchors itself with a spud and is unrelated to winter dock storage. Rec 9:10 and 10:10. While that may be the case, a barge is often parked in the dock storage area for weeks at a time as shown in **Exhibit 8** and as reported by many local residents. Rec 26:30. While it may often be Frey's barge, it may also be a barge owned by another contractor. Rec 26:44. This is an all year commercial use of the storage area that would otherwise be served by a commercial encroachment. Frey does not appear to own a commercial lot adjacent to the lake so it is unclear where he would normally park his barge or tugboat. It is certainly convenient for a contractor to leave a barge staged in Rockford and not pay mooring fees, but this type of commercial use of state owned lakes beyond the line of navigability should be approved through a lease. Simply leaving it for weeks at a time externalizes that cost of doing business and unfairly burdens the residents and recreationists in Rockford Bay.

As a result, the proposed winter dock storage does not appear to substantially impair navigation in Coeur d'Alene Lake. 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 June 1 of the succeeding year, thus avoiding the presence of dock storage during the busier boating season. In addition, IDL is requiring that Frey remove the other unused piling; scan the lakebed and beach for dock debris and remove all of it; ensure that any docks that are stored are secured to the log boom or piling; and that a maintenance plan be submitted and implemented, including at least two inspections during the storage season and regular inspections of the log boom. (see Lease, sections 3.L, 3.T, 3.U, and 3.VI). Lastly, barge or tug parking for more than fourteen (14) consecutive days in Rockford Bay further constricts navigation and is an unauthorized commercial use of the lakebed. (see Lease, section 3.I)

2. Fish and Wildlife

The Idaho Department of Fish and Game submitted comments on the 2020 application for encroachment permit L-95-S-3436. They were concerned about the proximity to the Fighting Creek channel. This may have been addressed by the movement of the storage area 100' farther south as they did not submit comments on the lease application. The outlet for Fighting Creek comes in under the gas dock at the Marina at Blackrock, which is why they move it every winter to the southeast end of the marina. Rec 44:50 and **Exhibit 8**, page 11. Lisa Armstrong stated that anglers use Rockford Bay all year. Rec 25:49. Winter dock storage is not expected to unreasonably restrict fishing in Rockford Bay.

Comments regarding invasive species in regards to the 2020 encroachment permit L-95-S-3436 application were received from the Kootenai Environmental Alliance and Woodland Park, Inc. Potential issues with noxious weeds and invasive species in the proposed submerged lands lease are addressed by requiring that Frey comply with noxious weeds and invasive species laws (see Lease, section 7.C), and by requiring that Frey conduct inspections and otherwise ensure that it is not introducing quagga or zebra mussels into Coeur d'Alene Lake. (See Lease, section 3.N).

3. Water Quality

The Idaho Department of Environmental Quality submitted comments on the 2020 application for encroachment permit L-95-S-3436 and expressed concerns about petroleum products, dock debris, and wood preservatives. They recommended the operator having absorbent pads to address any spills or releases, removal of dock debris without dragging it across the lakebed, and following published

guidance for using wood preservatives in aquatic environments. Kevin and Catherine Thomas also submitted comments in 2020 on this same application and stated that they had observed oil slicks around the parked barge. Fran deTar with Woodland Shores Water and Sewer Association stated that Woodland residents have a domestic water intake from Rockford Bay and are concerned about the effect of barges and increased activity on water quality. Rec 29:00 and 32:14. Potential issues regarding petroleum products and spills are addressed in the lease (*see* Lease, sections 3.J, 3.L, and 3.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 Coeur d'Alene Lake. 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 Rockford Bay are boating (both motorized and non-motorized) and fishing. 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 requiring that unused piling be removed and providing a safe place for dock owners to store their docks for the winter. Dock storage enhances recreational opportunities for those dock owners, and provides a benefit for all lake users by minimizing the amount of debris in the lake due to dock breakage, etc.

5. Aesthetics

Several nearby residents expressed strong concern about the impact of dock and barge storage on the aesthetic component of the public trust doctrine. Most of those concerns focused on the docks and barges present outside the normal storage season. Aesthetic values are often subjective, so it is difficult to factor those values into a public trust doctrine evaluation. IDL understands that the past storage practices outside of any IDL approved permit or lease resulted in some docks being stored during the summer and barges being parked for extended periods of time. However, as noted above, the change to only winter dock storage and elimination of other commercial uses should eliminate most concerns.

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 Frey be offered a submerged lands lease for winter dock storage, on the terms and conditions set forth in the lease.

III. Conclusions

1. Approve the application to lease one and one-half acres for winter dock storage with sufficient conditions to ensure safe operation of the storage area and as otherwise determined by IDL staff.
2. Require the removal and upland disposal of the five piling and associated debris previously used for winter dock storage by June 1, 2022.
3. Require the removal from the lake and lakeshore any stray docks or dock debris along the shoreline where the past dock storage occurred by June 1, 2022. The removal of any sunken

dock parts from the lakebed under the vicinity of the storage area must occur by December 1, 2022.

Exhibits:

- Exhibit 1 April 20, 2020 Notice of Noncompliance to Frey Dock & Barge Inc.
- Exhibit 2 2020 L-95-S-3436 Encroachment Application and supplemental maps
- Exhibit 3 Preliminary and Final Orders regarding Application for Encroachment Permit L-95-S-5884
- Exhibit 4 Application for Submerged Lands Lease B220174
- Exhibit 5 References for Winter Dock Storage
- Exhibit 6 Lisa Armstrong letter dated October 15, 2020
- Exhibit 7 Historical photo of dock storage in 1968
- Exhibit 8 Aerial Photos from 1998 through 2020
- Exhibit 9 Maureen deTar comment and photos
- Exhibit 10 Page from Frey's website
- Exhibit 11 Boundary of Coeur d'Alene Tribal Reservation

MICA SUPERVISORY AREA
3258 West Industrial Loop
Coeur d'Alene ID 83815
Phone (208) 769-1577
Fax (208) 769-1597



DUSTIN T. MILLER, DIRECTOR
EQUAL OPPORTUNITY EMPLOYER

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

April 20, 2020

Tommy Frey
Frey Dock and Barge
10364 N Morris Rd
Hayden, ID 83835

CERTIFIED RETURN RECEIPT
and REGULAR MAIL
7011 3500 0002 7543 9971

Re: Notice of Non-Compliance - L-95-S-3436
Winter Dock Storage in Rockford Bay

Dear Mr. Frey:

This Notice of Noncompliance is being sent pursuant to Rule 80.02 of The Regulation of Beds, Waters, and Airspace Over Navigable Lakes in the State of Idaho, IDAPA 20.03.04.000et seq. ("Rules"). The noncompliance is as follows:

1. The dock storage area in Rockford Bay appears to be larger and not in the location that was originally approved and permitted by Idaho Department of Lands (IDL) back in 1989.

IDAPA 20.03.04.012.02. No Encroachments Without Permit. No encroachment on, in or above the beds or waters of any navigable lake in the state shall hereafter be made unless approval therefore has been given as provided in these rules. An encroachment permit does not guarantee the use of public trust lands without appropriate compensation to the state of Idaho.

IDAPA 20.03.04.060.03. Compliance with Permit. All work shall be done in accordance with these rules, and the application submitted, and is subject to any condition specified in the permit.

Encroachment Permit L-95-S-3436 was issued on December 4, 1989 and allowed for "a surface area 60'x200' for dock storage" along the north shoreline of Rockford Bay, adjacent to the current Blackrock Marina (attachment 1). However, current dock storage is taking place out in the middle, and towards the south shore, of Rockford Bay. A 2016 image from GoogleEarth shows the dock storage area at approximately 500'x180' in size, much larger than what was permitted and well away from the north shoreline of Rockford Bay (attachment 2). Additionally, IDL was alerted in late October 2019 that 3 new piling were installed at the dock storage area in Rockford Bay without going through the application and permitting process.

Please note that IDAPA 20.03.04.020.02 states in part, "[o]nly persons who are littoral owners or lessees of a littoral owner shall be eligible to apply for encroachment

permits." IDL has observed dock storage areas within the line of navigability and beyond the line of navigability. For dock storage areas beyond the line of navigability, IDL will consider applications from persons who are littoral owners, but may not own the littoral property immediately adjacent to the dock storage area. For dock storage areas within the line of navigability, IDL will only consider applications if the applicant owns, or otherwise has been granted, the littoral rights associated with the property immediately adjacent to the dock storage areas.

Additionally, IDL will hold public hearings for the encroachment permit applications for dock storage areas pursuant to Idaho Code § 58-1306(c).

If an encroachment permit is granted for the dock storage area, a term of the permit will be to obtain a submerged land lease. Annual rent for a submerged land lease is typically \$1,000 per acre or fraction thereof. The size and rent will be based on the area described in the application and authorized in the permit.

In order to come into compliance and avoid permit revocation and other penalties outlined in Idaho Code §§ 58-1308 and -1309 and IDAPA 20.03.04.080, please submit a plan by the close of business **May 20, 2020**, to remove any infrastructure, docks, or debris associated with winter dock storage by June 1, 2020 and cease future dock storage operations, or submit an encroachment permit application if you choose to continue providing winter dock storage services for your customers. If you have any questions or concerns regarding this matter, please contact Mike Ahmer or me at (208) 769-1577, or mahmer@idl.idaho.gov or esjoquist@idl.idaho.gov respectively.

Sincerely,



Erik Sjoquist, Area Manager Mica Supervisory Area

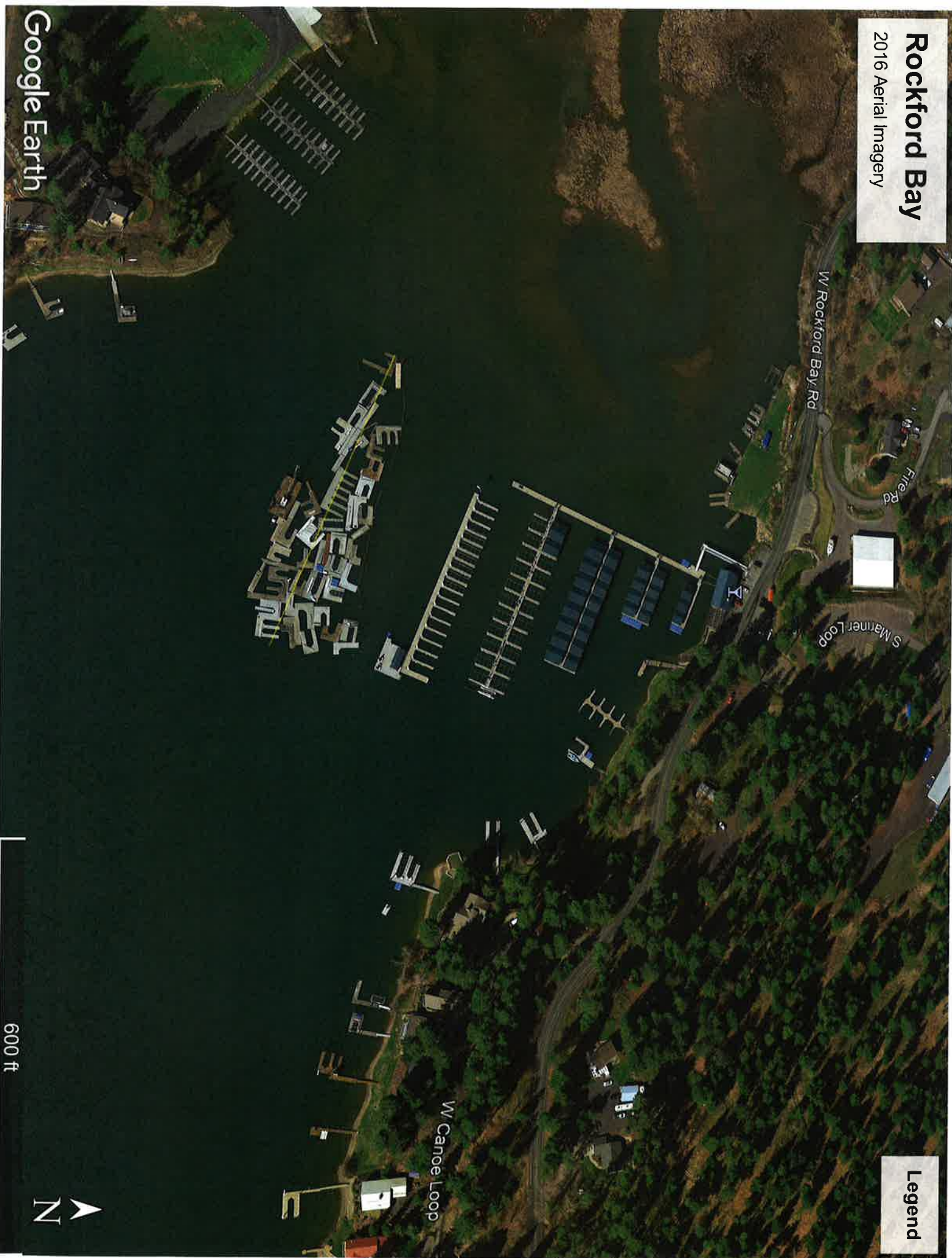
ma

Enclosures: 1 - Encroachment Permit L-95-S-3436
2- Aerial Imagery

cc: Andrew Smyth/ Public Trust Program Manager - Boise

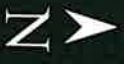
Rockford Bay

2016 Aerial Imagery



Legend

600 ft



STANLEY F. HAMILTON
DIRECTOR

ENCROACHMENT PERMIT NO. L-95-S-3436

Permission is hereby granted to TIMOTHY D. REEVES
of HC 12 Box 296 Coeur d'Alene, ID 83814 to construct and maintain
a surface area 60' x 200' for dock storage
to be located as follows: Coeur d'Alene Lake, Rockford Bay, Section 18,
Township 50 North, Range 3 West, Boise Meridian.

1. All applicable provisions of the Rules for Regulation of Beds, Waters, and Airspace over Navigable Lakes and Streams in the State of Idaho are incorporated herein by reference and made a part hereof.
2. Construction will follow details and specifications shown on the approved drawings and data provided by the applicant. Should such information and data prove to be materially false, incomplete and/or inaccurate, this authorization may be modified, suspended, or revoked upon notice and hearing as provided for in the adopted rules.
3. This permit does not convey the State's title to or jurisdiction or management of lands lying below the natural or ordinary high water mark.
4. Acceptance of this permit constitutes permission by the Permittee for representatives of the Department of Lands to come upon Permittee's lands at all reasonable times to inspect the encroachment authorized by this permit.
5. The Permittee assumes all liability for damages which may result from the exercise of this permit.
6. This permit does not relieve the Permittee from obtaining additional local or federal permits as required.
7. This permit is not valid until the enclosed permit tag is displayed on the outermost area of the encroachment.
8. If the activity authorized herein is not completed on or before the 4th day of December, 1992 (three years from the date of issuance), this permit shall automatically expire unless it was previously revoked or otherwise extended.

BOARD OF LAND
COMMISSIONERS
CECIL D. ANDRUS
Governor
PETE T. CENARRUSA
Secretary of State
JIM JONES
Attorney General
J.D. WILLIAMS
State Auditor
JERRY L. EVANS
Sup't of Public
Instruction

ENCROACHMENT PERMIT NO. L-95-S-3436

December 4, 1989

Page two

9. This permit shall be valid for the period December 1, 1989, to December 1, 1990. The permit shall then be reviewed for an extension of one year.
10. In the event the permit is terminated, the permittee shall be solely responsible for removal of the encroachment within 60 days of the cancellation.
11. This permit is issued contingent upon the permittee's agreement to enter into a sovereign land lease when notified by the director that a lease is necessary to occupy state-owned lake or riverbeds. The lease will be consistent with other sovereign land leases and policy adopted by the State Board of Land Commissioners.
12. The permittee shall maintain the structure or work authorized herein in a good and safe condition and in accordance with the plans and drawings attached hereto.

FOR THE DIRECTOR

By:



W. R. PITMAN, PE

Lake Protection Act Manager

mc

Identification No. L-955 3436

Area _____

STATE OF IDAHO
DEPARTMENT OF LANDS

APPLICATION FOR A PERMIT TO MAKE AN ENCROACHMENT
ON A NAVIGABLE LAKE OR RESERVOIR

Pursuant to Adopted Rules
And Applicable Statutes
(TYPE OR PRINT IN INK)

TIMOTHY D. REEVES

X 1. Name of applicant: _____

X Post office address: HC 12 Box 296 Coeur d'Alene, ID 83814

Telephone Number: (208) 664-6931

2. Name of lake or stream: Coeur d'Alene Lake

3. Name and address of contractor: William A Robins

HC 12 Box 406 Coeur d'Alene, Idaho 83814

4. Proposed starting date of construction and installation: AS SOON AS POSSIBLE

5. Property description: 18--48N--04W Rymer's Parkwood Park

Lot No's 11, 12, 13, Lot A EX Tryon's Blk 4 Parcel # 0-1900-004-00A

X in GOVT. LOT #1 (1/16 or Lot No.) of Section 18, Township 48N, Range 04W, S.M.

6. Type of structure proposed: (Please check and attach a descriptive drawing.)
INITIAL CONSTRUCTION YES NO

Breakwater _____ Dock _____ Bulkhead _____

Filing _____ Boathouse _____ Fill _____

Excavation Commercial Dock Storage Other (Please specify)

7. Length of encroachment waterward from the ordinary highwater mark: 50 feet

8. Width of encroachment at ordinary highwater mark: 200', at maximum length: 200'

9. Water depth at maximum length: 15 feet

X 10. Signature of applicant: Timothy Reeves Date: 9/2/89

X 11. STATEMENTS OF ADJACENT PROPERTY OWNERS

I, TIMOTHY REEVES am the owner of riparian or littoral property adjacent to the property listed in this application. I am familiar with the scope and location of the proposed encroachment as evidenced by accompanying plans which I have initialed and I offer no objection to the encroachment.

9/2/89
Date

Timothy Reeves
Name
HC 12, Box 296 CDA, ID 83814
Address

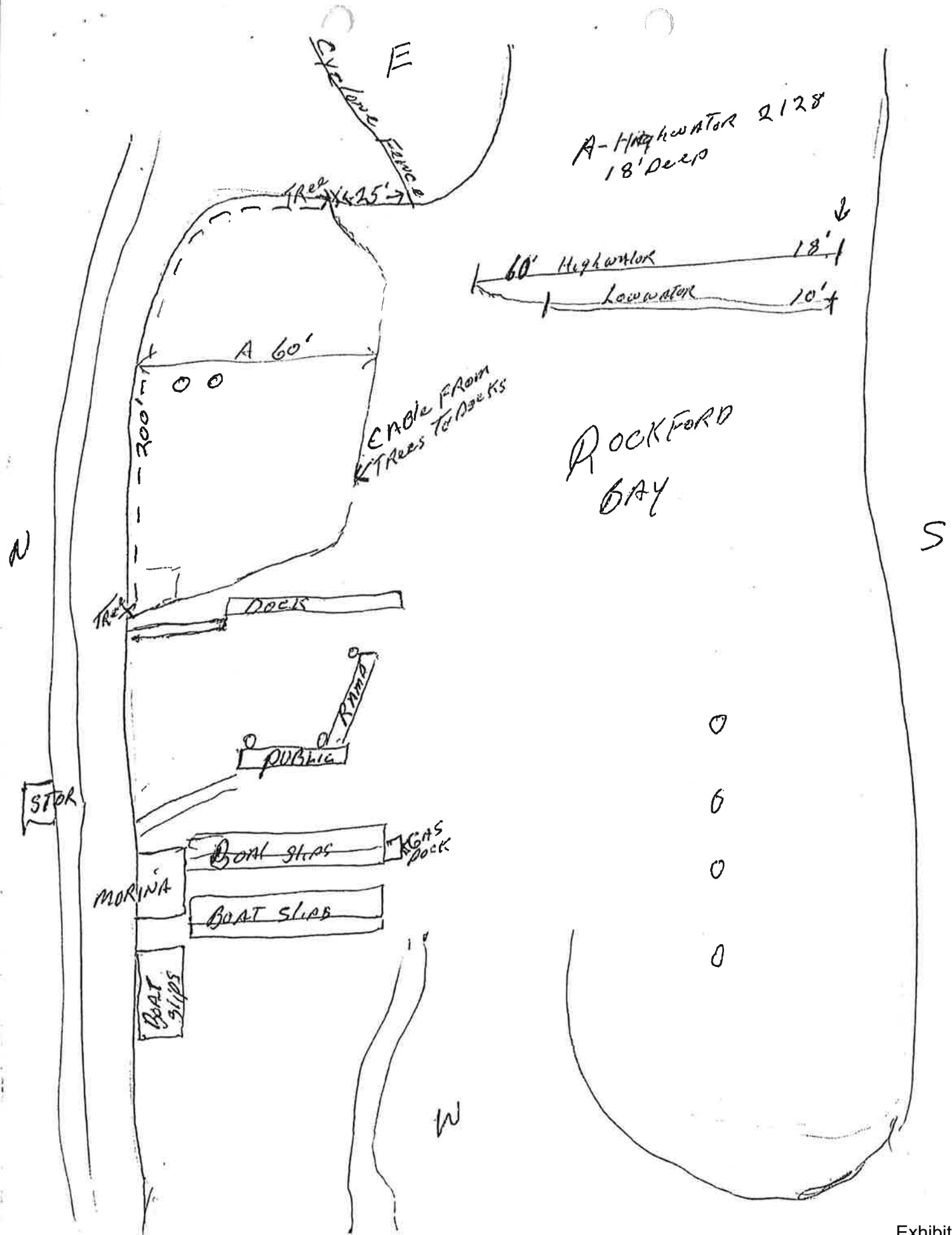
X I, TIMOTHY REEVES am the owner of riparian or littoral property adjacent to the property listed in this application. I am familiar with the scope and location of the proposed encroachment as evidenced by accompanying plans which I have initialed and I offer no objection to the encroachment.

9/2/89
Date

Timothy Reeves
Name
HC 12, Box 296 CDA, ID 83814
Address

Application approved by _____ Date _____

Permit issued by _____ Date _____



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 (8 1/2"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. L95S3436B	Date Received: 9/28/20	<input checked="" type="checkbox"/> Fee Received \$1075 DATE: 9-28 #24639	Receipt No.: OK# 24639 \$1075					
INCOMPLETE APPLICATIONS MAY NOT BE PROCESSED								
1. CONTACT INFORMATION - APPLICANT Required:				2. CONTACT INFORMATION - AGENT:				
Name:				Name:				
Company: FREY DOCK AND BARGE INC				Company:				
Mailing Address: P.O. BOX 942				Mailing Address:				
City: HAYDEN LAKE		State: ID	Zip Code: 83835	City:		State:	Zip Code:	
Phone Number (include area code): 208-664-5362		E-mail: freydock@gmail.com		Phone Number (include area code):		E-mail:		
3. PROJECT NAME or TITLE: DOCK STORAGE				4. PROJECT STREET ADDRESS: NONE				
5. PROJECT COUNTY: KOOTENAI		6. PROJECT CITY: CDA		7. PROJECT ZIP CODE: 83814		8. NEAREST WATERWAY/WATERBODY: LAKE CDA		
9. TAX PARCEL ID#: 021600010100		10. LATITUDE: LONGITUDE:		11a. 1/4:	11b. 1/4:	11c. SECTION: 03	11d. TOWNSHIP: 49N	11e. RANGE: 03W
12a. ESTIMATED START DATE: OCT 1		12b. ESTIMATED END DATE: MAY 1		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. 95 SOUTH TO ROCKFORD BAY RD				RECEIVED				
				SEP 28 2020				
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				Idaho Dept. of Lands Mica Supervisory Area				
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.								
DOCK STORAGE FOR ALL OF THE LOCAL PEOPLE IN ROCKFORD BOTH NORTH AND SOUTH SIDES AND STORAGE FOR ALL PEOPLE IIN WINDY BAY TO PREVENT DOCK DAMAGE, DOCKS, AND DOCK PIECES FOR GOING INTO MAIN BODY OF THE LAKE.								

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 DOCK STORAGE, WE ARE MAKING APPLICATION TO CONFIRM OUR ORIGINAL STORAGE FOR ROCKFORD BAY (permit # 95-34-36) MY COMPANY AND THE PREVIOUS OWNERS OF THE COMPANY HAVE BEEN STORING DOCKS IN THIS SAME LOCATION SINCE THE EARLY 1960s AND HAVE BEEN PERMITTED IN THAT AREA SINCE 1989 PLEASE SEE ATTACHED PHOTOS AND NOTE THE LOCATION. BECAUSE OF WATER LEVELS DROPPING AFTER THE LABOR DAY WEEKEND MANY OF THESE DOCKS GO A GROUND OR PARTIALLY AGROUND DURING THIS TIME PERIOD MAKING DAMAGE TO THE DOCKS, SHORE LINE AND THEN RELEASING THIS DEBRIS INTO THE LAKE A REAL HAZZARD FOR BOTH THE HOMEOWNER AND THE GENERAL PUBLIC. WE AS A COMPANY TAKE THE DOCKS FROM THIR RESPECTIVE PROPERTY TIE THEM TOGETHER AND STORE THEM ALONG THE PILING IN THE BACK OF ROCKFORD BAY THAT ALLOWS THEM TO FLOAT YEAR AROUND. PLEASE SEE ALL LETTERS WRITTEN BY HOME OWNERS BEGGING FOR STORAGE TO CONTINUE IN THIS CONTROLLED AND SAFE ENVIROMENT.

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.

AS STATED ABOVE DOCK STORAGE IS A NECESSITY TO PROTECT BOTH THE DOCK OWNERS BUT EVEN MORE SO THE PUBLIC AND THE LAKE. IF DOCKS ARE NOT STORED THEY WILL COME APART AND THE DEBRIS WILL WIND UP IN THE LAKE. HAVING THE DOCKS REMAIN ON THE BEACH ALL WINTER WILL ALSO CAUSE MASSIVE SHORE LINE CHANGES AS NO WATER FLOW WILL BE ALLOWED TO FLOW BETWEEN THE BEACHED DOCK AND WATER LINE CAUSING SEDIMENT BUILD UP ON ONE SIDE AND EROSION ON THE OTHER BOTH OF WHICH WILL BE PUSHED IN THE LAKE IN SPRING HIGH WATER. AS FOR THE PLACEMENT OF OUR STORAGE AREA IT IS IN THE BEST LOCATION POSSIBLE, IT DOES NOT IMPEDE NAVIGATION IN ANY WAY AS IT IS IN A SLOW NO WAKE AREA AT THE END OF THE BAY IN FRONT OF A COMMERICAL MARINA THE HAS ALSO BEEN THERE FOR DECADES. THE STORAGE OF DOCKS IN THE BAY IN NO WAY AFFECTS THE WATER QUALITY AS WE ARE JUST MOVING DOCKS FROM ONE POINT OF THE BAY TO ANOTHER, BUT IN GOOD FAITH WE AS A COMPANY ARE MORE THAN WILLING TO CONSULT WITH THE IDAHO DEPT OF NOXIOUS WEEDS TO SEE IF THERE IS ANYTHING ELSE THEY WOULD LIKE TO SEE. AS STATED BEFORE THIS STORAGE AREA HAS BEEN IN CONTINUAL USE FOR WINTER DOCK STORAGE SINCE THE 1960s AND HAS BEEN PERMITTED SINCE 1989

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.

N/A

RECEIVED

SEP 28 2020

Idaho Dept. of Lands
Moa Supervisory Area

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

Dirt or Topsoil: _____ cubic yards

Dredged Material: _____ cubic yards

Clean Sand: _____ cubic yards

Clay: _____ cubic yards

Gravel, Rock, or Stone: _____ cubic yards

Concrete: _____ cubic yards

Other (describe): _____ : _____ cubic yards

Other (describe): _____ : _____ cubic yards

TOTAL: _____ cubic yards

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

Filling: _____ acres _____ sq ft. _____ cubic yards

Backfill & Bedding: _____ acres _____ sq ft. _____ cubic yards

Land Clearing: _____ acres _____ sq ft. _____ cubic yards

Dredging: _____ acres _____ sq ft. _____ cubic yards

Flooding: _____ acres _____ sq ft. _____ cubic yards

Excavation: _____ acres _____ sq ft. _____ cubic yards

Draining: _____ acres _____ sq ft. _____ cubic yards

Other: _____ : _____ acres _____ sq ft. _____ cubic yards

TOTALS: _____ acres _____ sq ft. _____ cubic yards

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

YES WE HAVE BEEN STORING DOCKS IN ROCKFORD SINCE THE 1960s

22. LIST ALL PREVIOUSLY ISSUED PERMIT AUTHORIZATIONS:

STORAGE PERMIT 95-34-36

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: _____ 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

PLEASE SEE ABOVE LINES 17 AND 18 WE WOULD ALSO LIKE TO MENTION THAT THIS AREA IS THE BEST AREA FOR STORAGE FOR THE ROCKFORD BAY AREA AS IT IS A SHORTER TOW FOR ALL THE DOCKS AND MINIMUMIZES THE AMOUNT OF DEBRIS THAT CAN COME OUT FROM UNDER THE DOCKS (extra floatation) FROM A LONG TOW.

RECEIVED
SEP 28 2020
 Idaho Dept. of Lands
 Mica Supervisory Area

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
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)
TOTAL WETLAND IMPACTS (Square Feet):				

LEASE AGREEMENT

I Thomas Frey the owner of 32897 E. Coeur d'Alene Lake shore, (legal description Emerald Shores Lot 10 Blk 1 0349N03W) do hereby lease said property to Frey Dock and Barge Inc. for the term of 10 years or until both entities decide other. The lease shall be in the amount of \$10 per year and shall include all riparian rights including but not limited to the dock and shoreline.

Thomas Frey



10/24/20

Frey dock and Barge Inc.



RECEIVED

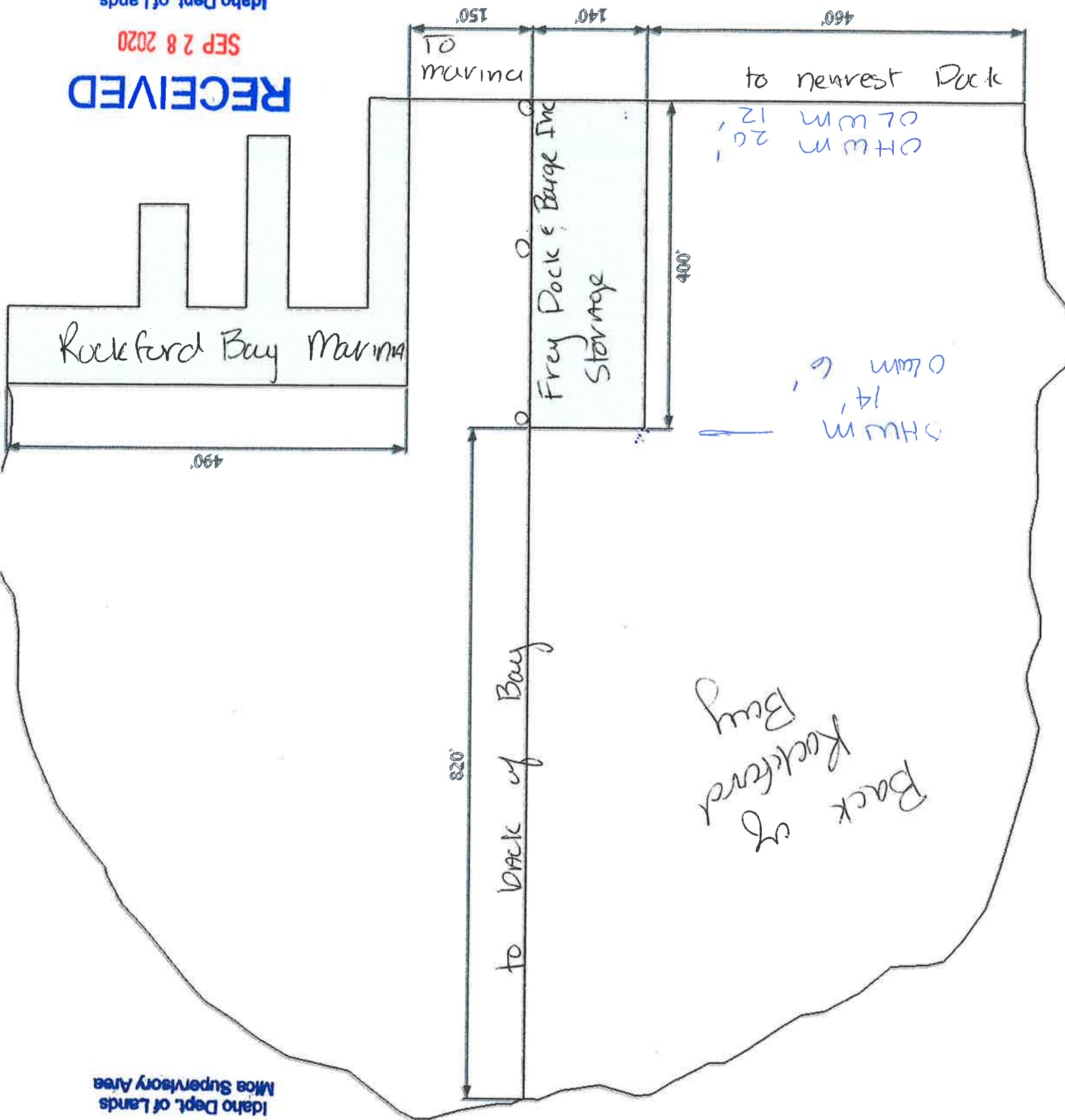
OCT 27 2020

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

Idaho Dept. of Lands
Mica Supervisory Area

SEP 28 2020

RECEIVED



Idaho Dept. of Lands
Mica Supervisory Area

SEP 14 2020

RECEIVED

Kootenai County, Idaho

generated on 9/23/2020 12:56:09 PM CDT

Parcel

Parcel Number	AIN	Situs Address	Data as of
021600010100	116464	32897 E COEUR D ALENE LAKE SHR, HARRISON	9/19/2020

Owner Information

Owner Name	FREY THOMAS FREY STACEY
Owner Address	PO BOX 942 HAYDEN ID 83835-0942
Transfer Date	01/01/2019
Document #	
Deed Book/Page	

Location / Description

Tax Authority Group	021000	Current Legal Desc.	EMERALD SHORE LOTS, LT 10 BLK 1 0349N03W
Situs Address	32897 E COEUR D ALENE LAKE SHR, HARRISON		
Acreage	.5540		

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Mca Supervisory Area

Parcel Type

Property Class Code	537- Imp res rural sub
Neighborhood Code	6116 CDA LAKE E SIDE-BEAUTY BAY/WLF

Assessment Information

Appraisal Date	07-13-2020	Current Year	2020	Prior Year	2019
Market Value Land	\$38,961	Homeowners Eligible Amt Land	\$0	Homeowners Eligible Amt Land	\$0
Market Value Improvement	\$0	Homeowners Eligible Amt Imp	\$0	Homeowners Eligible Amt Imp	\$0
Total Market Value	\$38,961	Sum Homeowners Eligible Amt	\$0	Sum Homeowners Eligible Amt	\$0
		Homeowners Exemption Allowed	\$0	Homeowners Exemption Allowed	\$0
Acreage	0.5540	Total Market Value	\$38,961	Total Market Value	\$32,443
		Homeowners Exemption Allowed	\$0	Homeowners Exemption	\$0
		Ag/Timber Exemption	\$0	Ag/Timber Exemption	\$0
		Other Exemptions	\$0	Other Exemptions	\$0
		Net Taxable Value	\$38,961	Net Taxable Value	\$32,443

Legend



600 ft

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Public Dock, Jet Lines
Water Department of Alameda

Rockford Bay

2016 Aerial Imagery

W Rockford Bay Rd

Fire Rd

S Mariner Loop

W Canoe Loop

Google Earth

AGREEMENT FOR SALE AND PURCHASE OF ASSETS

THIS AGREEMENT, dated Dec 21, 1994, is made and entered into by and between JIM CHASE AND COLLEEN CHASE, husband and wife, (" Seller") and FREY DOCK & BARGE, INC., an Idaho Corporation (" Buyer").

In consideration of the mutual covenants hereinafter contained, the parties hereby agree as follows:

1. **Sale and Purchase of Assets** : Subject to the terms and conditions of this Agreement, Seller shall sell, assign and deliver to Buyer, and Buyer shall purchase from Seller, the following Assets (the "Subject Assets") of Seller:

(a) All of the tools, equipment, boats, rigging, trucks, automobiles, cranes, barges and other equipment as described in Exhibit A attached hereto and which is hereby incorporated by reference. The attached list also specifically includes all parts, supplies, spare keys and any other items associated with any of the trucks, boats, barges or machinery (collectively, the "Tools").

(b) All present customers or accounts of Seller, including all contracts or other rights in connection therewith (collectively, the "Accounts"), for dock storage or dock construction.

(c) All interest in and to that certain leases with the State of Idaho and private parties located under the waters of Lake Cocur d'Alene, a copy of said lease being attached

AGREEMENT FOR SALE AND
PURCHASE OF ASSETS

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ORIGINAL

BILL OF SALE

KNOW ALL MEN BY THESE PRESENTS that JIM CHASE AND COLLEEN CHASE, husband and wife, herein referred to as the Seller, for and in consideration of a certain sum of money paid and other good and valuable consideration to them in hand paid by FREY DOCK & BARGE INC., herein referred to as the Purchaser, the receipt of which is hereby acknowledged by these presents, grant, sell, transfer and convey unto the said Purchaser, their heirs and assigns forever, the following described personal property situated in Kootenai County, Idaho, to wit:

See Exhibit "A", attached hereto

TO HAVE AND TO HOLD the same unto the Purchaser, their heirs and assigns forever. The Seller warrants the foregoing free and clear of all encumbrances to date.

IN WITNESS WHEREOF, the Seller has hereunto caused this instrument to be executed this 21ST day of December, 1994.

Jim Chase
JIM CHASE

Colleen F Chase
COLLEEN CHASE

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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)
- Community dock
 - Commercial marina
 - Bank stabilization
 - Other – describe: Dock Storage
 - Float home
 - Boat garage
 - Mooring buoy(s)

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: _____

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

- 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 # 95-34-36 Date of Construction: 1960's

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? 140x400 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.**
- _____ **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 ft² per Littoral Front Foot?

- No
 - Yes
- Total square footage: _____ ft²

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

- Yes
 - No
- Total front footage: _____ feet

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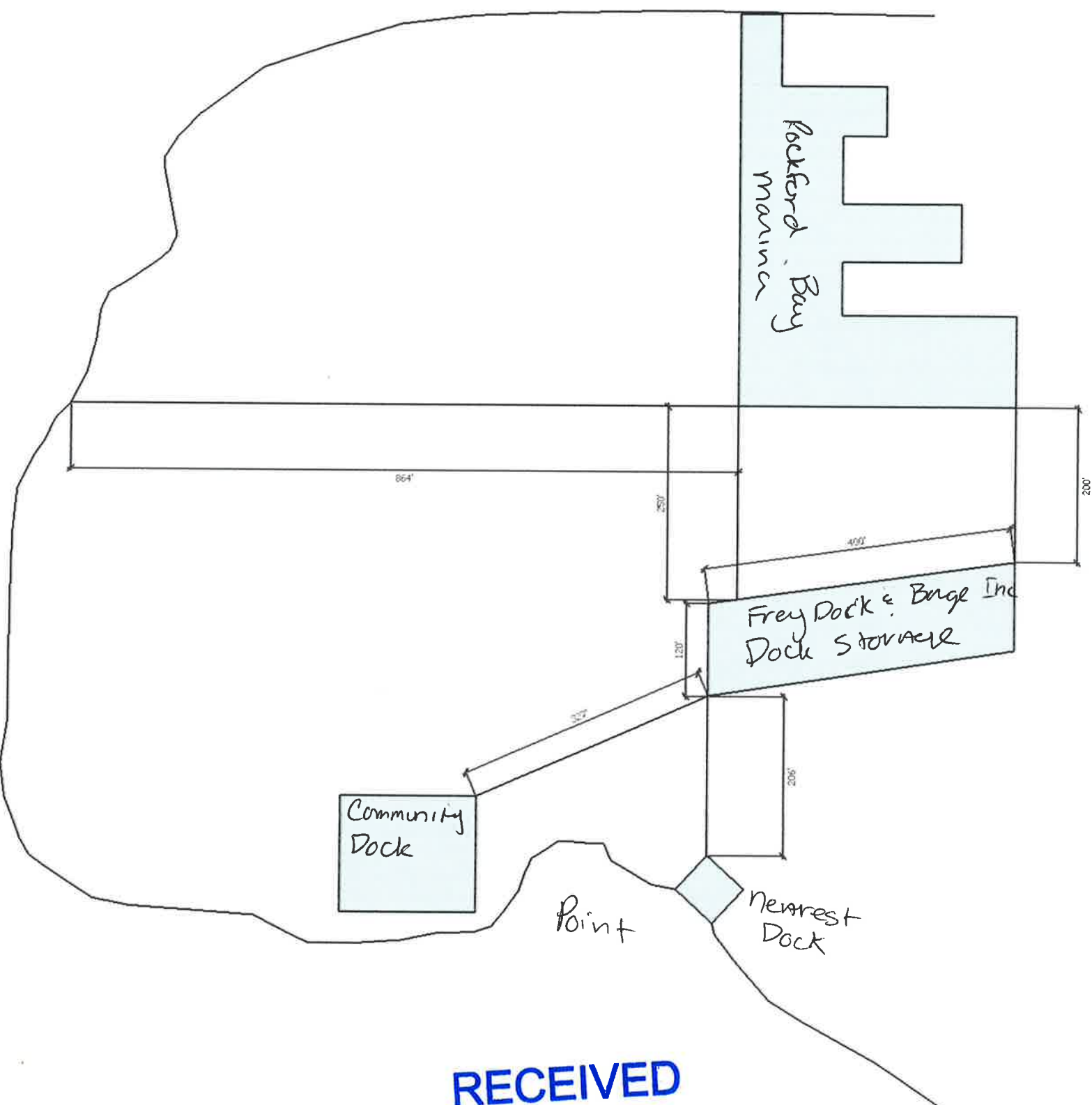
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As Director of IDL, my responsibility is to render a decision pursuant to Idaho Code § 58-1306(c) and IDAPA 20.03.04.030 on behalf of the State Board of Land Commissioners and based on the record, which I have reviewed in the context of my personal 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

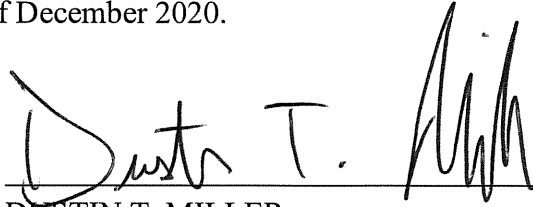
I conclude that the hearing coordinator's Preliminary Order is based on substantial evidence in the record, and I adopt the Preliminary Order's Factual and Procedural Background and Conclusions of Law as my decision in this matter. I hereby incorporate by reference the Preliminary Order's Factual and 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 3rd 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

CERTIFICATE OF MAILING

I hereby certify that on this 4th day of December 2020. I caused to be served a true and correct copy of the foregoing by the method indicated below, and addressed to the following:

North Idaho Maritime
c/o John Condon
4020 N. Huetter Rd
Coeur d'Alene, ID 83814

- U.S. Mail, postage prepaid
 Hand Delivery
 Email: John@northidahomaritime.com

North Idaho Maritime
c/o Colton Carlson
4020 N. Huetter Rd
Coeur d'Alene, ID 83814

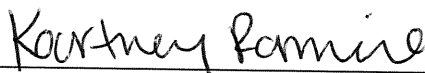
- U.S. Mail, postage prepaid
 Hand Delivery
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Angela Schaer Kaufmann
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Kourtney Romine *on behalf of*
Michele Andersen, Hearing Coordinator

- U.S. Mail, postage prepaid
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Kourtney Romine, Workflow Coordinator

Copy sent via email and/or regular U.S. Mail, postage prepaid to Those Who Have Provided Comments.

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c/o Bill Roberson
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Senator Mary Souza
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Tom & Peg Carver
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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,)	PRELIMINARY ORDER
)	
Applicant.)	
)	
)	
)	

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-19¹, 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

¹ 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).²

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

² “[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.³

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 navigability⁴ – 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.

³ 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.”

⁴ 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.



Michele Andersen
Hearing Coordinator

CERTIFICATE OF MAILING

I hereby certify that on this 23 day of November, 2020. I caused to be served a true and correct copy of the foregoing by the method indicated below, and addressed to the following:

Idaho Department of Lands
Dustin Miller, Director
c/o Renee Jacobsen
300 N 6th Street, Suite 103
Boise, ID 83702-0050

- U.S. Mail, postage prepaid
- Hand Delivery
- Email: rjacobsen@idl.idaho.gov

Kristina Fugate
Office of the Attorney General
P.O. Box 83720
Boise, ID 83720-0010

- Statehouse Mail
- Hand Delivery
- Email: kristina.fugate@ag.idaho.gov

Kourtney Romine

Kourtney Romine
Workflow Coordinator



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: Frey Dock & Barge Inc

Legal status:

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

Name of primary contact: Tom Frey

Mailing address: P.O. Box 942

City: Hayden State: Id. Zip: 8381

Contact phone number: 208-669-5362 Phone number type: Work Home Cell

Email address: freydock@gmail.com

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

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: NA

Physical Address:

City: State: Zip:

County: AIN/Parcel ID:

Government Lot: Section: Township: Range:

Body of water: LAKE CDA

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
- Commercial marina
- Restaurant
- Other(s): winter dock storage
- Two-family dock
- Store
- Swim area
- Community dock
- Boat ramp
- Fill

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.



PO Box 942 Hayden, Idaho 83835
(208) 664-5362
freydock@gmail.com

July 8, 2021

To the Idaho Department of Lands,

As a 30-year marine contractor that took over a 75-year-old marine business on Lake Coeur d'Alene and Hayden Lake, I would like to inform you of the following:

As dock storage seems to be limited to lakes in North Idaho, I would like to address the reasons for its necessity.

1. If docks are not stored in certain areas around both Hayden Lake and Lake Coeur d'Alene in the winter months, low water combined with the steep rocky shorelines of the lakes make it impossible for the dock to rest on the shore. Add in winter storms, ice flow, and spring flooding and there is a lethal conjunction for both the docks and the lake.
 - a. At first, both the dock and piling would be on the exposed shoreline, damaging what is there. In the spring, the water runoff rises the lake levels and sweeps all shore debris into the lake. This not only destroys lake quality, it also creates hazards for boating as debris cannot always be seen by boaters and causes wrecks.
2. Fixed pier docks are not used on Hayden Lake, and have limited usage on Lake Coeur d'Alene for the following reasons:

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Idaho Dept. of Lands
Mica Supervisory Area

a. Hayden Lake has an OHWN of 2,239. As of July 8, 2021 the lake is 6 feet below normal for this time of year (this needs to be

addressed). The lake **NEVER** stays at a stable elevation throughout the year making a fixed dock unusable year round.

- b. The State also has to remember that there are many places on both Lake Coeur d'Alene and Hayden Lake where driving piling is necessary. The rocks and other lake bottom make-up make it impossible to drive piling consistently and put a pier dock in wherever and whenever anyone pleases.

I would encourage the State to review the over 250 letters submitted to them demanding the need for dock storage. I have attached separate amendments proposing Hayden Lake storage and Lake Coeur d'Alene storage

Best Regards,

Thomas Frey

Owner, Frey Dock & Barge, Inc.

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As for my company we have been spring docs since the late-1940s in the same locations on Hayden Lake and Lake Coeur d'Alene. What follows is the proposal for LAKE COEUR D'ALENE DOCK STORAGE:

1. On Lake Coeur d'Alene we have been storing in Rockford Bay for this time with a State-provided permit, although the placement of the storage and the corresponding work area seem confusing.
2. Rockford Bay storage is attached to a line of piling and log boom in front of a commercial marina inside a no wake zone and is visible from all sides. The State has had documented evidence in their records for as long as they have had aerial photos of the area.
 - a. The docks are tied to each other at 4 points.
 - b. The docks are cabled around the perimeter.
 - c. The docks are attached by rope and cable to the log boom, which is attached to the piling.
 - d. Solar lighting will be attached to the top of both pilings.
 - e. The docks will be checked regularly as they already are by employees and the company owner.

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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>

From: lisauriguen@gmail.com
To: [Mick Thomas](#)
Cc: rmendive@house.idaho.gov; twisniewski@house.idaho.gov; dcheatham@senate.idaho.gov; mthomas@kcgov.us; [Martinez, William E BOSN2](#)
Subject: Frey Dock & Barge
Date: Thursday, October 15, 2020 01:27:07 PM
Attachments: [Commissioners" Letter.pdf](#)
[Frey Current Application.pdf](#)
[Frey Dock Non Compliance Notice.pdf](#)
[Frey Dock Petition Signed.pdf](#)
[Frey IDL SA.pdf](#)

Hello Mick,

Attached please find the Rockford Bay neighborhood letter that we request be delivered to the Commissioners in anticipation of the Land Board meeting scheduled for next Tuesday, October 20, 2020. We have also attached all pertinent documentation & photographs mentioned in the letter, for the Commissioners' review.

As you and I discussed earlier this week, within the letter we have officially requested a public hearing on the Frey Dock issues. I believe by requesting this hearing we are required to deposit and pay the costs associated with your office publishing a "notice of hearing". Please let me know the procedure for providing those funds.

Please let me know if there is anything further that you or the Commissioners require. Your assistance in distributing the attached documents in a timely manner is greatly appreciated.

Regards,
Lisa Armstrong

October 15, 2020

Idaho State Board of Land Commissioners
Honorable Governor Brad Little
Honorable Secretary of State Lawrence Denney
Honorable Attorney General Lawrence Wasden
Honorable State Controller Brandon Woolf
Honorable Superintendent of Public Instruction Sherri Ybarra
Mr. Dustin T. Miller, Secretary to the Board

Re: Frey Dock & Barge

Dear Commissioners,

We appreciate the opportunity to inform the Commissioners of the challenges and frustrations we have experienced with Frey Dock & Barge's unrestricted use of Rockford Bay on Lake Coeur d'Alene. For over two decades we have witnessed Frey Dock:

1. Use Rockford Bay for winter dock storage without a permit or lease from IDL.
2. Create a mooring line without obtaining any permit or lease from IDL.
3. Move the mooring line and create hazards in the center of Rockford Bay.
4. Allow untethered/broken mooring line to create boating hazards.
5. Allow stored docks to break loose and float freely in the bay.
6. Moor the barge, crane and tugboat without proper lighting.
7. Leave docks stored on the mooring line throughout the summers.
8. Encourage barge loaded with garbage to use the mooring line.
9. Allow people to use the stored docks as fishing docks.
10. Allow people to get into and on the docks, crane and barge.
11. Permanently moor the rusted barge, crane and tugboat in Rockford Bay.
12. Drill and place unauthorized pilings.

After receiving a Non-Compliance letter from IDL in April, 2020 Frey Dock continued to ignore IDL's authority and proceeded to:

1. Remove pilings from the old mooring line without the permission of IDL.
2. Moor old docks on the illegal mooring line.
3. Moor their rusted barge and crane on the new unauthorized line in the Bay until late August 2020.
4. Conduct dock construction in Rockford Bay.
5. Allow boaters to tie to the dock(s) on the mooring line.
6. Negligently allow the unauthorized mooring line to be untethered/broken and create a boating hazard.
7. Encourage other barges, tug boats and cranes to use Rockford Bay for storage, without proper lighting.

Frey entered into a Settlement Agreement with IDL for a temporary winter dock storage permit for the 2020/21 season, while knowingly disregarding the terms of the Agreement:

1. Frey signed the Settlement Agreement on September 2nd, approximately 31 days after they were required to sign.
2. Frey's signature was not notarized.
3. Frey was in breach of the terms of the agreement at time of signature because the barge and tugboat were tied to the mooring line until late August 2020.
4. Frey stored dock(s) in the bay during the summer of 2020 and was doing so when the settlement agreement was signed on September 2nd, again in breach of the terms of the agreement.

Under the Settlement Agreement with IDL, Frey Dock submitted its permit application on September 28, 2020. The application is **incomplete and inaccurate**:

1. Drawings and photographs submitted are not up-to-date and do not demonstrate the current state of the Frey mooring line and the intended area for dock storage.
2. Rockford Bay neighbors' docks are closer than 460 feet from Frey's winter dock storage and Shooters Marina is probably closer than 150 feet to the Frey dock storage. It is our understanding that Shooters Marina plans a southern expansion of their marina, which will definitely encroach into the 150 feet projection to the stored docks.
3. Frey misinforms regarding encroachment permit No. L-95-S-3436. That permit was issued to Timothy Reeves – not Frey Dock & Barge. The permit was issued for one year, expiring December 1990 and the required submerged land lease was never obtained. Further, the Reeves permit was intended for dock storage on the northeast **shoreline** of Rockford Bay. Please see attached historic photo.
4. Although Frey Dock did not complete the information on the application it appears that they are requesting a lease for approximately 56,000 square feet of dock storage. This total square footage is excessive based on the waterfront property on the application. Additionally, the waterfront property identified in the application is at least 20 miles Northeast of Rockford Bay.
5. The silt runoff into Rockford Bay has increased dramatically over the decades. Not all the docks brought into Rockford Bay by Frey Dock float throughout the winter as Frey states in the application. Some docks sit on silt & mud in Rockford Bay throughout the winter. This fact is in direct opposition to Frey's position as stated in section 17 of the application.
6. Frey's statement that his commercial entity does not impede navigation is grossly inaccurate. The barge and mooring line are located directly in the center of Rockford Bay. Hazards notwithstanding, the mere location of the barge & mooring line makes it a navigational impediment. Frey points out that Rockford Bay is a no-wake zone but does not volunteer that a no-wake zone increases water sport traffic, i.e., year-round fishing, paddle boarding, kayaking, swimming, canoeing, etc. People attempting to enjoy their water sports in the no-wake zone of Rockford Bay must constantly

navigate around the dangerous untethered and broken mooring line, and the large, unsightly and unlit barges, tugboats and cranes.

Much like the rest of Idaho, we have seen an exponential growth in new homes and boat traffic in Rockford Bay. Shooters Bar & Grill is a popular boating destination on Coeur d' Alene Lake and the Shooters Marina operates one of the few gas docks on the Lake. Rockford Bay encompasses two busy marinas; one at Shooters and one across the Bay which belongs to the Woodland Park Inc Homeowner's Association (WPI). The boat traffic in Rockford Bay is constant and each year gets more crowded. Frey's use of the back bay impedes watercraft traffic and is a dangerous hazard and **a Public Nuisance as defined by Idaho State Statute 18-5901.**

Frey Dock has ignored the rules and regulations of IDL for decades and has no regard for public waterway use of Rockford Bay. Based on the hazards to public safety and the navigational obstructions it creates, we respectfully assert that Frey Dock no longer be allowed to store docks, barges, tugboats and cranes in Rockford Bay. We hereby officially request that the issues pertaining to Frey Dock and Barge and their commercial use of Rockford Bay be presented at a public hearing.

Your thoughtful consideration is appreciated.

Respectfully,
Rockford Bay Property Owners & Residents

cc: Kootenai County Sheriff's Dept.
US Coast Guard
US Senate
US Representatives

It is the opinion of the undersigned that Frey Dock & Barge has been illegally using the waterways of Rockford Bay for decades. Frey Dock's continuous encroachment has created an unsafe public nuisance in the back bay at Rockford Bay. The undersigned demand that the Idaho Department of Lands, the Kootenai County Sheriff's Department and the US Coast Guard take the necessary steps to ensure the safety of our bay and stop the obstruction of free passageway of our waterway by immediately and permanently removing the commercial barges, tugboats, cranes and dock storage.

Mark & Martha D'Augustino
Mark & Martha D'Augustino

Lorraine Branson
Lorraine Branson

Carey Learn
Carey Learn

Steve & Sherry Young
Steve & Sherry Young

Rick & Lisa Armstrong
Rick & Lisa Armstrong

Jerry & Lynette Widener
Jerry & Lynette Widener

John & Julie Kuhlmann
John & Julie Kuhlmann

Gary & Kate Herold
Gary & Kate Herold

SH
Steve Herold

Jim & Teresa Nicholson

Jim & Teresa Nicholson

Kevin & Catherine Thomas

Kevin & Cathy Thomas

Sky & Lisa Smick

Sky & Lisa Smick

Nick & Debbie Herman

Nick & Debbie Herman

John & Renee Grandinetti

John & Renee Grandinetti

Fran & Maureen DeTar

Fran & Maureen DeTar

Vonda Long

Vonda Long

Bob & Dottie Howell

Bob and Dottie Howell

Paul & Suzanne Markham

Paul & Suzanne Markham

Edith Ware

Edith Ware

Anthony & Kandi Teeters

Anthony & Kandi Teeters

Roger & Joyce Bippes
Roger & Joyce Bippes

Erick & Cherie Van Wechel

Erick & Cherie Van Wechel

Dan Raiman

Dan Raiman

George Cain

George Cain

Blaine & Pam French

Blaine & Pam French

Julie Shiflett

Julie Shiflett

Gary & Charlene Smick

Gary & Charlene Smick

MICA SUPERVISORY AREA
3258 West Industrial Loop
Coeur d'Alene ID 83815
Phone (208) 769-1577
Fax (208) 769-1597



DUSTIN T. MILLER, DIRECTOR
EQUAL OPPORTUNITY EMPLOYER

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

April 20, 2020

Tommy Frey
Frey Dock and Barge
10364 N Morris Rd
Hayden, ID 83835

CERTIFIED RETURN RECEIPT
and REGULAR MAIL
7011 3500 0002 7543 9971

Re: Notice of Non-Compliance - L-95-S-3436
Winter Dock Storage in Rockford Bay

Dear Mr. Frey:

This Notice of Noncompliance is being sent pursuant to Rule 80.02 of The Regulation of Beds, Waters, and Airspace Over Navigable Lakes in the State of Idaho, IDAPA 20.03.04.000et seq. ("Rules"). The noncompliance is as follows:

1. The dock storage area in Rockford Bay appears to be larger and not in the location that was originally approved and permitted by Idaho Department of Lands (IDL) back in 1989.

IDAPA 20.03.04.012.02. No Encroachments Without Permit. No encroachment on, in or above the beds or waters of any navigable lake in the state shall hereafter be made unless approval therefore has been given as provided in these rules. An encroachment permit does not guarantee the use of public trust lands without appropriate compensation to the state of Idaho.

IDAPA 20.03.04.060.03. Compliance with Permit. All work shall be done in accordance with these rules, and the application submitted, and is subject to any condition specified in the permit.

Encroachment Permit L-95-S-3436 was issued on December 4, 1989 and allowed for "a surface area 60'x200' for dock storage" along the north shoreline of Rockford Bay, adjacent to the current Blackrock Marina (attachment 1). However, current dock storage is taking place out in the middle, and towards the south shore, of Rockford Bay. A 2016 image from GoogleEarth shows the dock storage area at approximately 500'x180' in size, much larger than what was permitted and well away from the north shoreline of Rockford Bay (attachment 2). Additionally, IDL was alerted in late October 2019 that 3 new piling were installed at the dock storage area in Rockford Bay without going through the application and permitting process.

Please note that IDAPA 20.03.04.020.02 states in part, "[o]nly persons who are littoral owners or lessees of a littoral owner shall be eligible to apply for encroachment

permits." IDL has observed dock storage areas within the line of navigability and beyond the line of navigability. For dock storage areas beyond the line of navigability, IDL will consider applications from persons who are littoral owners, but may not own the littoral property immediately adjacent to the dock storage area. For dock storage areas within the line of navigability, IDL will only consider applications if the applicant owns, or otherwise has been granted, the littoral rights associated with the property immediately adjacent to the dock storage areas.

Additionally, IDL will hold public hearings for the encroachment permit applications for dock storage areas pursuant to Idaho Code § 58-1306(c).

If an encroachment permit is granted for the dock storage area, a term of the permit will be to obtain a submerged land lease. Annual rent for a submerged land lease is typically \$1,000 per acre or fraction thereof. The size and rent will be based on the area described in the application and authorized in the permit.

In order to come into compliance and avoid permit revocation and other penalties outlined in Idaho Code §§ 58-1308 and -1309 and IDAPA 20.03.04.080, please submit a plan by the close of business **May 20, 2020**, to remove any infrastructure, docks, or debris associated with winter dock storage by June 1, 2020 and cease future dock storage operations, or submit an encroachment permit application if you choose to continue providing winter dock storage services for your customers. If you have any questions or concerns regarding this matter, please contact Mike Ahmer or me at (208) 769-1577, or mahmer@idl.idaho.gov or esjoquist@idl.idaho.gov respectively.

Sincerely,



Erik Sjoquist, Area Manager Mica Supervisory Area

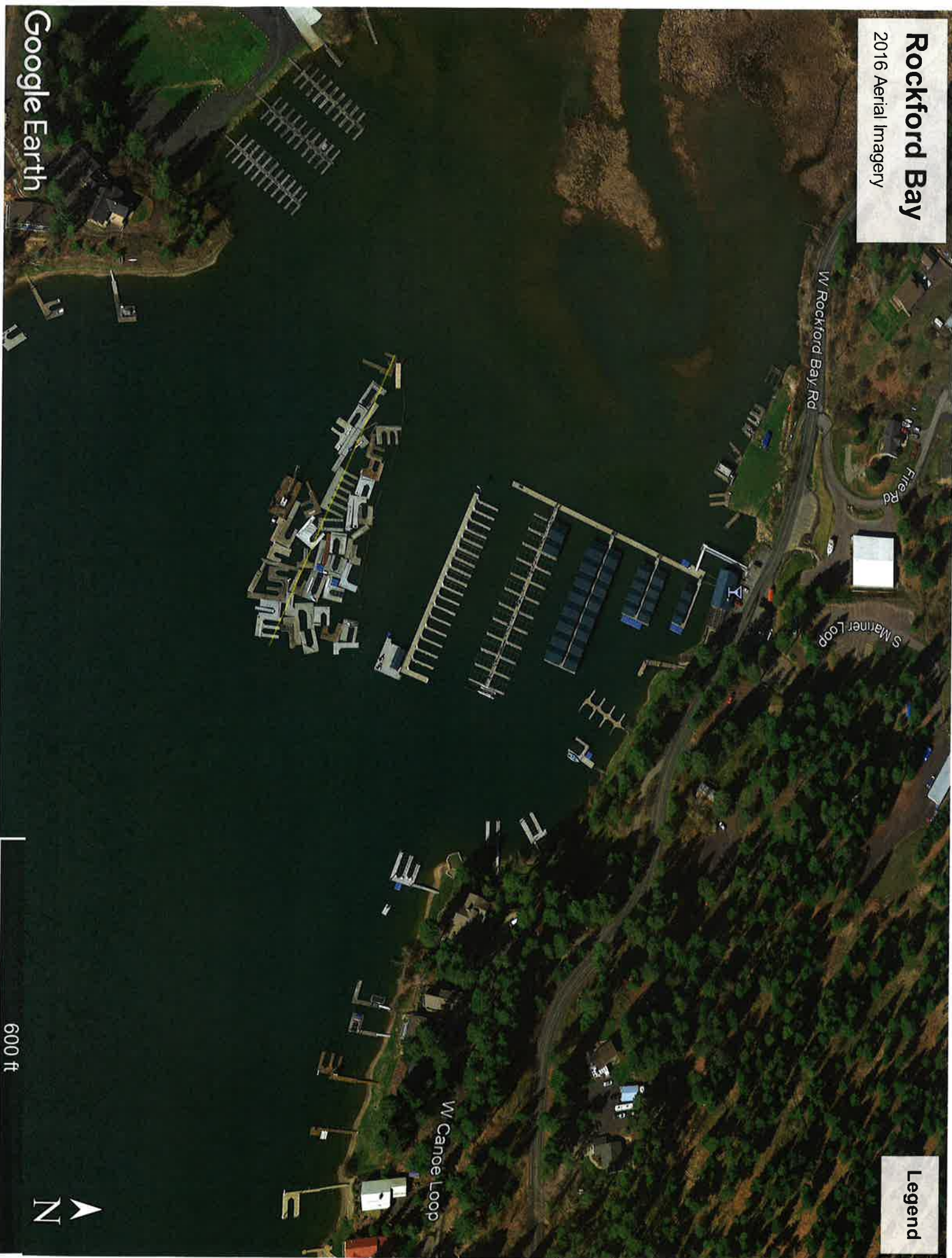
ma

Enclosures: 1 - Encroachment Permit L-95-S-3436
2- Aerial Imagery

cc: Andrew Smyth/ Public Trust Program Manager - Boise

Rockford Bay

2016 Aerial Imagery



Legend

Google Earth

600 ft



STANLEY F. HAMILTON
DIRECTOR

ENCROACHMENT PERMIT NO. L-95-S-3436

Permission is hereby granted to TIMOTHY D. REEVES
of HC 12 Box 296 Coeur d'Alene, ID 83814 to construct and maintain
a surface area 60' x 200' for dock storage
to be located as follows: Coeur d'Alene Lake, Rockford Bay, Section 18,
Township 50 North, Range 3 West, Boise Meridian.

1. All applicable provisions of the Rules for Regulation of Beds, Waters, and Airspace over Navigable Lakes and Streams in the State of Idaho are incorporated herein by reference and made a part hereof.
2. Construction will follow details and specifications shown on the approved drawings and data provided by the applicant. Should such information and data prove to be materially false, incomplete and/or inaccurate, this authorization may be modified, suspended, or revoked upon notice and hearing as provided for in the adopted rules.
3. This permit does not convey the State's title to or jurisdiction or management of lands lying below the natural or ordinary high water mark.
4. Acceptance of this permit constitutes permission by the Permittee for representatives of the Department of Lands to come upon Permittee's lands at all reasonable times to inspect the encroachment authorized by this permit.
5. The Permittee assumes all liability for damages which may result from the exercise of this permit.
6. This permit does not relieve the Permittee from obtaining additional local or federal permits as required.
7. This permit is not valid until the enclosed permit tag is displayed on the outermost area of the encroachment.
8. If the activity authorized herein is not completed on or before the 4th day of December, 1992 (three years from the date of issuance), this permit shall automatically expire unless it was previously revoked or otherwise extended.

BOARD OF LAND
COMMISSIONERS
CECIL D. ANDRUS
Governor
PETE T. CENARRUSA
Secretary of State
JIM JONES
Attorney General
J.D. WILLIAMS
State Auditor
JERRY L. EVANS
Sup't of Public
Instruction

ENCROACHMENT PERMIT NO. L-95-S-3436

December 4, 1989

Page two

9. This permit shall be valid for the period December 1, 1989, to December 1, 1990. The permit shall then be reviewed for an extension of one year.
10. In the event the permit is terminated, the permittee shall be solely responsible for removal of the encroachment within 60 days of the cancellation.
11. This permit is issued contingent upon the permittee's agreement to enter into a sovereign land lease when notified by the director that a lease is necessary to occupy state-owned lake or riverbeds. The lease will be consistent with other sovereign land leases and policy adopted by the State Board of Land Commissioners.
12. The permittee shall maintain the structure or work authorized herein in a good and safe condition and in accordance with the plans and drawings attached hereto.

FOR THE DIRECTOR

By:



W. R. PITMAN, PE

Lake Protection Act Manager

mc

Identification No. L-955 3436

Area _____

STATE OF IDAHO
DEPARTMENT OF LANDS

APPLICATION FOR A PERMIT TO MAKE AN ENCROACHMENT
ON A NAVIGABLE LAKE OR RESERVOIR

Pursuant to Adopted Rules
And Applicable Statutes
(TYPE OR PRINT IN INK)

TIMOTHY D. REEVES

X 1. Name of applicant: _____

X Post office address: HC 12 Box 296 Coeur d'Alene, ID 83814

Telephone Number: (208) 664-6931

2. Name of lake or stream: Coeur d'Alene Lake

3. Name and address of contractor: William A Robins

HC 12 Box 406 Coeur d'Alene, Idaho 83814

4. Proposed starting date of construction and installation: AS SOON AS POSSIBLE

5. Property description: 18--48N--04W Ryer's Parkwood Park

Lot's 11, 12, 13, Lot A EX Tryon's Blk 4 Parcel # 0-1900-004-00A

X in GOVT. LOT #1 (1/16 or Lot No.) of Section 18, Township 48N, Range 04W, S.M.

6. Type of structure proposed: (Please check and attach a descriptive drawing.)

INITIAL CONSTRUCTION YES NO

Breakwater _____ Dock _____ Bulkhead _____

Filing _____ Boathouse _____ Fill _____

Excavation Commercial Dock Storage Other (Please specify) _____

7. Length of encroachment waterward from the ordinary highwater mark: 50 feet

8. Width of encroachment at ordinary highwater mark: 200', at maximum length: 200'

9. Water depth at maximum length: 15 feet

X 10. Signature of applicant: Timothy Reeves Date: 9/2/89

X 11. STATEMENTS OF ADJACENT PROPERTY OWNERS

I, TIMOTHY REEVES am the owner of riparian or littoral property adjacent to the property listed in this application. I am familiar with the scope and location of the proposed encroachment as evidenced by accompanying plans which I have initialed and I offer no objection to the encroachment.

9/2/89
Date

Timothy Reeves
Name
HC 12, Box 296 CDA, ID 83814
Address

X I, TIMOTHY REEVES am the owner of riparian or littoral property adjacent to the property listed in this application. I am familiar with the scope and location of the proposed encroachment as evidenced by accompanying plans which I have initialed and I offer no objection to the encroachment.

9/2/89
Date

Timothy Reeves
Name
HC 12, Box 296 CDA, ID 83814
Address

Application approved by _____ Date _____

Permit issued by _____ Date _____

MICA SUPERVISORY AREA
3258 West Industrial Loop
Coeur d'Alene ID 83815
Phone (208) 769-1577
Fax (208) 769-1597



DUSTIN T. MILLER, DIRECTOR
EQUAL OPPORTUNITY EMPLOYER

STATE BOARD OF LAND COMMISSIONERS
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Lawrence G. Wasden, Attorney General
Brandon D Woolf, State Controller
Sherri Ybarra, Sup't of Public Instruction

July 29, 2020

Tommy Frey
Frey Dock and Barge Inc.
10364 N Morris Rd
Hayden Lake, ID 83835

CERTIFIED RETURN RECEIPT
and REGULAR MAIL
7011 3500 002 7543 7977

RECEIVED

SEP 11 2020

Idaho Dept. of Lands
Mica Supervisory Area

Re: Notice of Non-Compliance Settlement Agreement
Unpermitted Winter Dock Storage near Rockford Bay

Dear Mr. Frey:

On April 20, 2020, the Idaho Department of Lands ("IDL") sent you a Notice of Noncompliance regarding your unpermitted winter dock storage in Rockford Bay on Lake Coeur d'Alene (attached). You sent a response in to IDL on May 18, 2020, requesting additional time to resolve the issue due the dock season already being underway (attached). IDL is able to grant an extension conditioned upon your acceptance of and agreement to abide by the following terms and conditions:

1. You will not store any floating encroachments out in the lake after June 30, 2020. Additionally, you are not allowed to store any docks, debris or your vessels/barges on the logboom line in Rockford Bay until winter dock storage commences October 1, 2020.
2. You must file an encroachment permit application for winter dock storage with IDL no later than October 1, 2020.
3. You must submit a request for a temporary permit to store docks in Rockford Bay on Lake Coeur d'Alene between October 1, 2020 through June 15, 2021, with a fee of \$1,000 per acre or fraction thereof of storage space. This fee is based on the annual rent for commercial nonnavigational encroachments as outlined in the April 20, 2020 Notice of Noncompliance. Along with your request for temporary permit, you must provide IDL with a map and drawing of your storage area with the dimensions listed, so IDL can verify overall size. After receiving the request and fee, and verifying the overall size of your temporary dock storage area, IDL will grant the non-renewable temporary permit that would commence on September 15, 2020 and expire on June 15, 2021.
4. If you do not obtain an encroachment permit and submerged land lease before the 2021 winter dock storage season begins, you will not be allowed to store docks in Rockford Bay on Lake Coeur d'Alene or any other navigable

lake in the State of Idaho until you do obtain an encroachment permit and lease.

If you cannot accept the terms of this settlement agreement for this upcoming winter dock storage season, then you will not be allowed to store docks in Rockford Bay on Lake Coeur d'Alene this season (2020/2021). Additionally, IDL will perform a site inspection the week of August 3, 2020 to confirm there is no more dock debris at the storage location. Finally, if you do not comply with the terms set forth above, IDL will seek all remedies available under the LPA and IDAPA 20.03.04.000 *et seq.*, including but not limited to civil penalties, permit revocation, and injunctive relief.

Please indicate your acceptance of and agreement to the terms set forth above by signing below, and returning this letter with your signature to IDL no later than July 31, 2020. If you have any questions or concerns regarding this matter, please contact Mike Ahmer or me at (208) 769-1577, or mahmer@idl.idaho.gov or esjoquist@idl.idaho.gov respectively.

Sincerely,



Erik Sjoquist, Area Manager Mica Supervisory Area

ma

Enclosures:

1. Notice of Non-Compliance
2. Frey Response

cc: Andrew Smyth/ Public Trust Program Manager - Boise

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Mica Supervisory Area

I, Thomas E. Frey, for and on behalf of Frey Dock & Barge Inc., and in consideration of the mutual promises and agreements set forth therein, agree to the terms and conditions set forth above,

Frey Dock & Barge Inc.,
an Idaho corporation

Date: 9/10/20



THOMAS E. FREY
President

STATE OF IDAHO)
)ss.
County of _____)

On this ___ day of _____, 2020, before me a notary public in and for said state, personally appeared **THOMAS E. FREY**, known or identified to me to be the President of **Frey Dock & Barge Inc.**, an Idaho corporation, the corporation that executed the instrument or the person who executed the instrument on behalf of said corporation, and acknowledged to me that such corporation executed the same.

IN WITNESS WHEREOF, I have hereunto set my hand and affixed by official seal the day and year first above written.

(seal)

Notary Public
Residing at: _____
My Commission Expires: _____

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Idaho Dept. of Lands
Mica Supervisory Area

MICA SUPERVISORY AREA
3258 West Industrial Loop
Coeur d'Alene ID 83815
Phone (208) 769-1577
Fax (208) 769-1597



DUSTIN T. MILLER, DIRECTOR
EQUAL OPPORTUNITY EMPLOYER

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

April 20, 2020

Tommy Frey
Frey Dock and Barge
10364 N Morris Rd
Hayden, ID 83835

CERTIFIED RETURN RECEIPT
and REGULAR MAIL
7011 3500 0002 7543 9971

Re: Notice of Non-Compliance - L-95-S-3436
Winter Dock Storage in Rockford Bay

Dear Mr. Frey:

This Notice of Noncompliance is being sent pursuant to Rule 80.02 of The Regulation of Beds, Waters, and Airspace Over Navigable Lakes in the State of Idaho, IDAPA 20.03.04.000et seq. ("Rules"). The noncompliance is as follows:

1. The dock storage area in Rockford Bay appears to be larger and not in the location that was originally approved and permitted by Idaho Department of Lands (IDL) back in 1989.

IDAPA 20.03.04.012.02. No Encroachments Without Permit. No encroachment on, in or above the beds or waters of any navigable lake in the state shall hereafter be made unless approval therefore has been given as provided in these rules. An encroachment permit does not guarantee the use of public trust lands without appropriate compensation to the state of Idaho.

IDAPA 20.03.04.060.03. Compliance with Permit. All work shall be done in accordance with these rules, and the application submitted, and is subject to any condition specified in the permit.

Encroachment Permit L-95-S-3436 was issued on December 4, 1989 and allowed for "a surface area 60'x200' for dock storage" along the north shoreline of Rockford Bay, adjacent to the current Blackrock Marina (attachment 1). However, current dock storage is taking place out in the middle, and towards the south shore, of Rockford Bay. A 2016 image from GoogleEarth shows the dock storage area at approximately 500'x180' in size, much larger than what was permitted and well away from the north shoreline of Rockford Bay (attachment 2). Additionally, IDL was alerted in late October 2019 that 3 new piling were installed at the dock storage area in Rockford Bay without going through the application and permitting process.

Please note that IDAPA 20.03.04.020.02 states in part, "[o]nly persons who are littoral owners or lessees of a littoral owner shall be eligible to apply for encroachment

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permits." IDL has observed dock storage areas within the line of navigability and beyond the line of navigability. For dock storage areas beyond the line of navigability, IDL will consider applications from persons who are littoral owners, but may not own the littoral property immediately adjacent to the dock storage area. For dock storage areas within the line of navigability, IDL will only consider applications if the applicant owns, or otherwise has been granted, the littoral rights associated with the property immediately adjacent to the dock storage areas.

Additionally, IDL will hold public hearings for the encroachment permit applications for dock storage areas pursuant to Idaho Code § 58-1306(c).

If an encroachment permit is granted for the dock storage area, a term of the permit will be to obtain a submerged land lease. Annual rent for a submerged land lease is typically \$1,000 per acre or fraction thereof. The size and rent will be based on the area described in the application and authorized in the permit.

In order to come into compliance and avoid permit revocation and other penalties outlined in Idaho Code §§ 58-1308 and -1309 and IDAPA 20.03.04.080, please submit a plan by the close of business **May 20, 2020**, to remove any infrastructure, docks, or debris associated with winter dock storage by June 1, 2020 and cease future dock storage operations, or submit an encroachment permit application if you choose to continue providing winter dock storage services for your customers. If you have any questions or concerns regarding this matter, please contact Mike Ahmer or me at (208) 769-1577, or mahmer@idl.idaho.gov or esjoquist@idl.idaho.gov respectively.

Sincerely,



Erik Sjoquist, Area Manager Mica Supervisory Area

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Enclosures: 1 - Encroachment Permit L-95-S-3436
2- Aerial Imagery

cc: Andrew Smyth/ Public Trust Program Manager - Boise

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Mica Supervisory Area

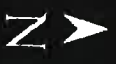


Legend

Idaho Dept. of Lands
Mica Supervisory Area

Google Earth

600 ft



STANLEY F. HAMILTON
DIRECTOR

BOARD OF LAND
COMMISSIONERS
CECIL D. ANDRUS
Governor
PETE T. CENARRUSA
Secretary of State
JIM JONES
Attorney General
J.D. WILLIAMS
State Auditor
JERRY L. EVANS
Sup't of Public
Instruction

ENCROACHMENT PERMIT NO. L-95-S-3436

Permission is hereby granted to TIMOTHY D. REEVES
of HC 12 Box 296 Coeur d'Alene, ID 83814 to construct and maintain
a surface area 60' x 200' for dock storage
to be located as follows: Coeur d'Alene Lake, Rockford Bay, Section 18,
Township 50 North, Range 3 West, Boise Meridian.

1. All applicable provisions of the Rules for Regulation of Beds, Waters, and Airspace over Navigable Lakes and Streams in the State of Idaho are incorporated herein by reference and made a part hereof.
2. Construction will follow details and specifications shown on the approved drawings and data provided by the applicant. Should such information and data prove to be materially false, incomplete and/or inaccurate, this authorization may be modified, suspended, or revoked upon notice and hearing as provided for in the adopted rules.
3. This permit does not convey the State's title to or jurisdiction or management of lands lying below the natural or ordinary high water mark.
4. Acceptance of this permit constitutes permission by the Permittee for representatives of the Department of Lands to come upon Permittee's lands at all reasonable times to inspect the encroachment authorized by this permit.
5. The Permittee assumes all liability for damages which may result from the exercise of this permit.
6. This permit does not relieve the Permittee from obtaining additional local or federal permits as required.
7. This permit is not valid until the enclosed permit tag is displayed on the outermost area of the encroachment.
8. If the activity authorized herein is not completed on or before the 4th day of December, 1992 (three years from the date of issuance), this permit shall automatically expire unless it was previously revoked or otherwise extended.

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KEEP IDAHO GREEN
PREVENT WILDFIRE

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Idaho Dept. of Lands
Mica Supervisory Area

ENCROACHMENT PERMIT NO. L-95-S-3436
December 4, 1989
Page two

9. This permit shall be valid for the period December 1, 1989, to December 1, 1990. The permit shall then be reviewed for an extension of one year.
10. In the event the permit is terminated, the permittee shall be solely responsible for removal of the encroachment within 60 days of the cancellation.
11. This permit is issued contingent upon the permittee's agreement to enter into a sovereign land lease when notified by the director that a lease is necessary to occupy state-owned lake or riverbeds. The lease will be consistent with other sovereign land leases and policy adopted by the State Board of Land Commissioners.
12. The permittee shall maintain the structure or work authorized herein in a good and safe condition and in accordance with the plans and drawings attached hereto.

FOR THE DIRECTOR

By:


W. R. PITMAN, PE

Lake Protection Act Manager

mc

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Idaho Dept. of Lands
Mica Supervisory Area

Identification No. L-955 3436

Area _____

STATE OF IDAHO
DEPARTMENT OF LANDS

APPLICATION FOR A PERMIT TO MAKE AN ENCROACHMENT
ON A NAVIGABLE LAKE OR RESERVOIR

Pursuant to Adopted Rules
And Applicable Statutes
(TYPE OR PRINT IN INK)

TIMOTHY D. REEVES

- X 1. Name of applicant: _____
- X Post office address: HC 12- Box 296 Coeur d'Alene, ID 83814
Telephone Number: (208) 664-6931
- 2. Name of lake or stream: Coeur d'Alene Lake
- 3. Name and address of contractor: William A Robbins
HC 12 Box 406 Coeur d'Alene, ID 83814
AS SOON AS POSSIBLE
- 4. Proposed starting date of construction and installation: _____
- 5. Property description: 18 - N 8 N - 0 4 W Ryer's Reversion Deed
Lot No's 11, 12, 13. Lot A EX Tynan Bkky Parcel # 0-1700-004. aka A
in Govt Lot #1 (1/16 or Lot No.) of Section 18, Township 18 N, Range 04 W, B.M.
- X 6. Type of structure proposed: (Please check and attach a descriptive drawing.)
INITIAL CONSTRUCTION YES NO
Breakwater _____ Dock _____ Bulkhead _____
Piling _____ Boathouse _____ Fill _____
Excavation Commercial Dock Storage Other (Please specify) _____
- 7. Length of encroachment waterward from the ordinary highwater mark: 50 feet
- 8. Width of encroachment at ordinary highwater mark: 200', at maximum length: 200'
- 9. Water depth at maximum length: 10 feet
- X 10. Signature of applicant: Timothy Reeves Date: 9/2/89

X 11. STATEMENTS OF ADJACENT PROPERTY OWNERS

I, TIMOTHY REEVES am the owner of riparian or littoral property adjacent to the property listed in this application. I am familiar with the scope and location of the proposed encroachment as evidenced by accompanying plans which I have initialed and I offer no objection to the encroachment.

Date: 9/2/89 Name: Timothy Reeves
Address: HC 12, Box 296 CDA, ID 83814

X I, TIMOTHY REEVES am the owner of riparian or littoral property adjacent to the property listed in this application. I am familiar with the scope and location of the proposed encroachment as evidenced by accompanying plans which I have initialed and I offer no objection to the encroachment.

Date: 9/2/89 Name: Timothy Reeves
Address: HC 12, Box 296 CDA, ID 83814

Application approved by _____ Date _____
Permit issued by _____ Date _____

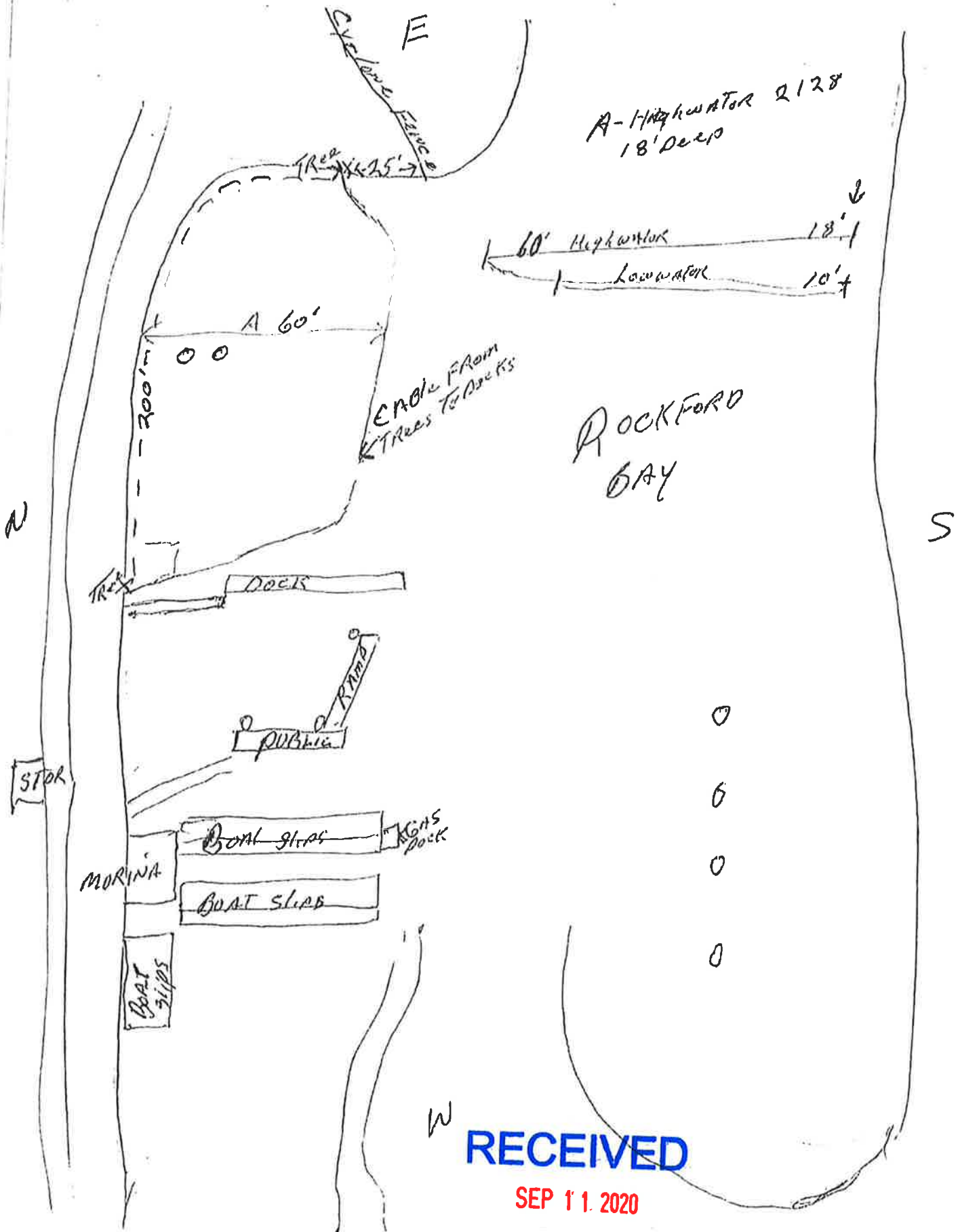
DL-1750

INSTRUCTIONS ON REVERSE SIDE

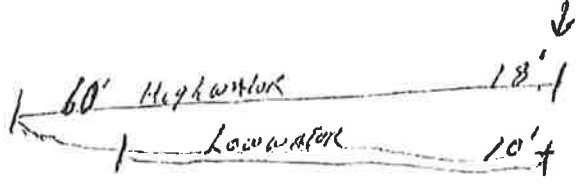
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A-Highwater 2128
18' Deep



ROCKFORD BAY

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Frey Dock & Barge
Custom Docks

May 18, 2020

Mica Supervisory Area
3258 W Industrial Loop
Coeur d' Alene, Id 83815

RE: Notice of Non-compliance

To Whom It May Concern,

This is in response to the letters of non-compliance and incomplete application letter sent to Frey Dock and Barge Inc on April 20th, 2020. We request an extension of all dock storage until spring of 2021, and an extension of the time frame to deal with all storage permits including but not limited to permit numbers: L-95-S-3865, and L-95-S-3436.

Our company has been storing docks in these three locations since 1947 although we understand what the state is trying to accomplish and agree with getting this all settled as soon as possible, the timing could not be worse. We started this process last fall with the state and everything came to an abrupt halt on the states side of things. As a result I would request that permits and all reviews including hearings be put off until late fall or early winter 2020.

Best Regards,

Tommy Frey



President

Frey Dock and Barge Inc

PO box 942

Hayden Id 83835

208-664-5362

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Idaho Dept. of Lands
Mica Supervisory Area

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MAY 19 2020

Idaho Dept. of Lands
Mica Supervisory Area

208-664-5362
PO Box 942 Hayden Lake ID 83835

Can you please stamp
this in then call me
with an confirmation
thanks

Tommy
208-660-5208

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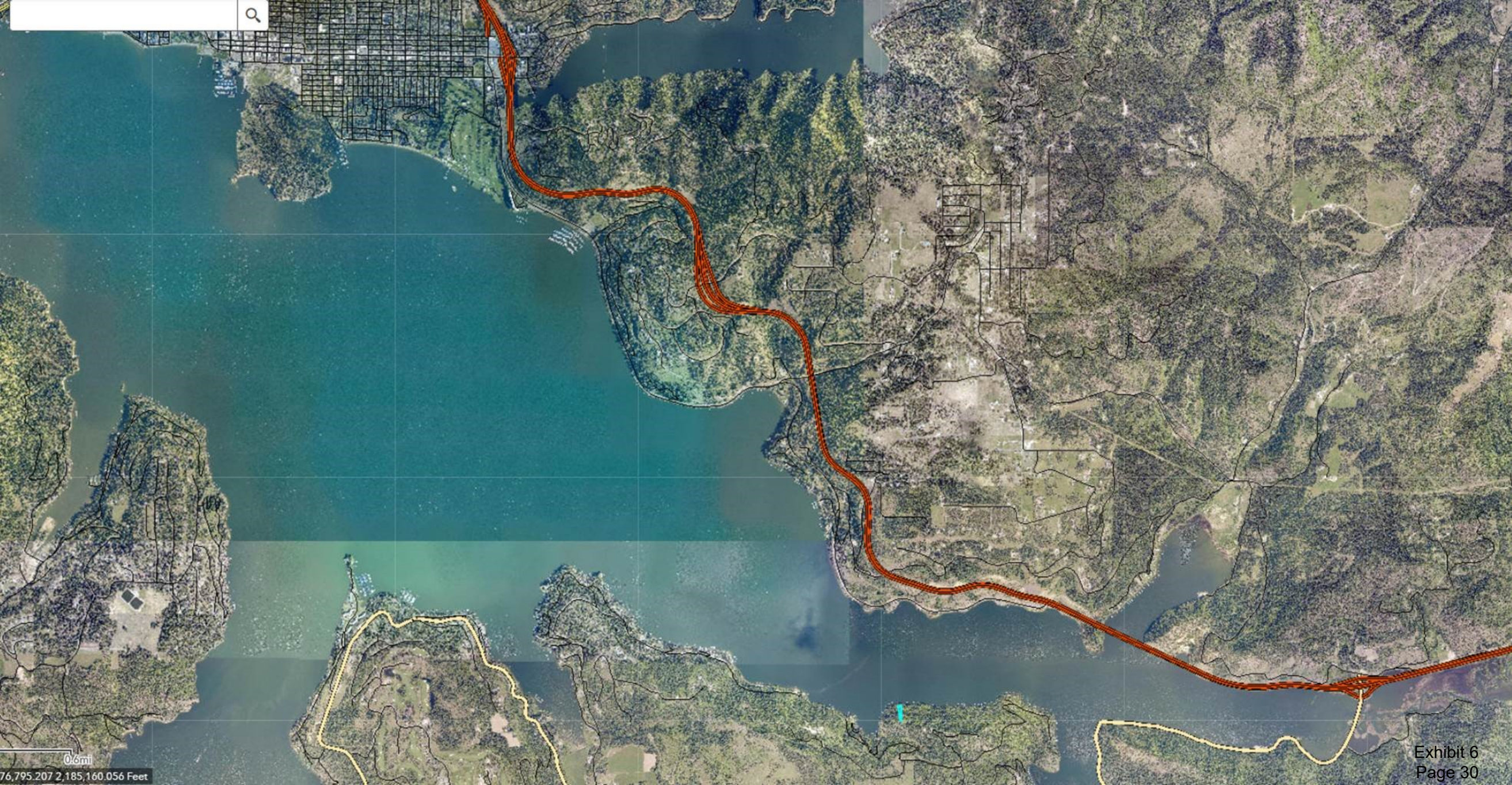
SEP 11 2020

Idaho Dept. of Lands
Mica Supervisory Area









0.6mi
76,795,207 2,185,160.056 Feet







HISTORICIMAGES



HISTORICIMAGES

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 (8 1/2"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. L95S3436B	Date Received: 9/28/20	<input checked="" type="checkbox"/> Fee Received \$1075 DATE: 9-28 #24639	Receipt No.: OK# 24639 \$1075					
INCOMPLETE APPLICATIONS MAY NOT BE PROCESSED								
1. CONTACT INFORMATION - APPLICANT Required:				2. CONTACT INFORMATION - AGENT:				
Name:				Name:				
Company: FREY DOCK AND BARGE INC				Company:				
Mailing Address: P.O. BOX 942				Mailing Address:				
City: HAYDEN LAKE		State: ID	Zip Code: 83835	City:		State:	Zip Code:	
Phone Number (include area code): 208-664-5362		E-mail: freydock@gmail.com		Phone Number (include area code):		E-mail:		
3. PROJECT NAME or TITLE: DOCK STORAGE				4. PROJECT STREET ADDRESS: NONE				
5. PROJECT COUNTY: KOOTENAI		6. PROJECT CITY: CDA		7. PROJECT ZIP CODE: 83814		8. NEAREST WATERWAY/WATERBODY: LAKE CDA		
9. TAX PARCEL ID#: 021600010100		10. LATITUDE: LONGITUDE:		11a. 1/4:	11b. 1/4:	11c. SECTION: 03	11d. TOWNSHIP: 49N	11e. RANGE: 03W
12a. ESTIMATED START DATE: OCT 1		12b. ESTIMATED END DATE: MAY 1		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. 95 SOUTH TO ROCKFORD BAY RD				RECEIVED				
				SEP 28 2020				
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				Idaho Dept. of Lands Mica Supervisory Area				
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.								
DOCK STORAGE FOR ALL OF THE LOCAL PEOPLE IN ROCKFORD BOTH NORTH AND SOUTH SIDES AND STORAGE FOR ALL PEOPLE IIN WINDY BAY TO PREVENT DOCK DAMAGE, DOCKS, AND DOCK PIECES FOR GOING INTO MAIN BODY OF THE LAKE.								

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 DOCK STORAGE, WE ARE MAKING APPLICATION TO CONFIRM OUR ORIGINAL STORAGE FOR ROCKFORD BAY (permit # 95-34-36) MY COMPANY AND THE PREVIOUS OWNERS OF THE COMPANY HAVE BEEN STORING DOCKS IN THIS SAME LOCATION SINCE THE EARLY 1960s AND HAVE BEEN PERMITTED IN THAT AREA SINCE 1989 PLEASE SEE ATTACHED PHOTOS AND NOTE THE LOCATION. BECAUSE OF WATER LEVELS DROPPING AFTER THE LABOR DAY WEEKEND MANY OF THESE DOCKS GO A GROUND OR PARTIALLY AGROUND DURING THIS TIME PERIOD MAKING DAMAGE TO THE DOCKS, SHORE LINE AND THEN RELEASING THIS DEBRIS INTO THE LAKE A REAL HAZZARD FOR BOTH THE HOMEOWNER AND THE GENERAL PUBLIC. WE AS A COMPANY TAKE THE DOCKS FROM THIR RESPECTIVE PROPERTY TIE THEM TOGETER AND STORE THEM ALONG THE PILING IN THE BACK OF ROCKFORD BAY THAT ALLOWS THEM TO FLOAT YEAR AROUND. PLEASE SEE ALL LETTERS WRITTEN BY HOME OWNERS BEGGING FOR STORAGE TO CONTINUE IN THIS CONTROLLED AND SAFE ENVIROMENT.

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.

AS STATED ABOVE DOCK STORAGE IS A NECESSITY TO PROTECT BOTH THE DOCK OWNERS BUT EVEN MORE SO THE PUBLIC AND THE LAKE. IF DOCKS ARE NOT STORED THEY WILL COME APART AND THE DEBRIS WILL WIND UP IN THE LAKE. HAVING THE DOCKS REMAIN ON THE BEACH ALL WINTER WILL ALSO CAUSE MASSIVE SHORE LINE CHANGES AS NO WATER FLOW WILL BE ALLOWED TO FLOW BETWEEN THE BEACHED DOCK AND WATER LINE CAUSING SEDIMENT BUILD UP ON ONE SIDE AND EROSION ON THE OTHER BOTH OF WHICH WILL BE PUSHED IN THE LAKE IN SPRING HIGH WATER. AS FOR THE PLACEMENT OF OUR STORAGE AREA IT IS IN THE BEST LOCATION POSSIBLE, IT DOES NOT IMPEDE NAVIGATION IN ANY WAY AS IT IS IN A SLOW NO WAKE AREA AT THE END OF THE BAY IN FRONT OF A COMMERICAL MARINA THE HAS ALSO BEEN THERE FOR DECADES. THE STORAGE OF DOCKS IN THE BAY IN NO WAY AFFECTS THE WATER QUALITY AS WE ARE JUST MOVING DOCKS FROM ONE POINT OF THE BAY TO ANOTHER, BUT IN GOOD FAITH WE AS A COMPANY ARE MORE THAN WILLING TO CONSULT WITH THE IDAHO DEPT OF NOXIOUS WEEDS TO SEE IF THERE IS ANYTHING ELSE THEY WOULD LIKE TO SEE. AS STATED BEFORE THIS STORAGE AREA HAS BEEN IN CONTINUAL USE FOR WINTER DOCK STORAGE SINCE THE 1960s AND HAS BEEN PERMITTED SINCE 1989

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.

N/A

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

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

Dirt or Topsoil: _____ cubic yards

Dredged Material: _____ cubic yards

Clean Sand: _____ cubic yards

Clay: _____ cubic yards

Gravel, Rock, or Stone: _____ cubic yards

Concrete: _____ cubic yards

Other (describe): _____ : _____ cubic yards

Other (describe): _____ : _____ cubic yards

TOTAL: _____ cubic yards

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

Filling: _____ acres _____ sq ft. _____ cubic yards

Backfill & Bedding: _____ acres _____ sq ft. _____ cubic yards

Land Clearing: _____ acres _____ sq ft. _____ cubic yards

Dredging: _____ acres _____ sq ft. _____ cubic yards

Flooding: _____ acres _____ sq ft. _____ cubic yards

Excavation: _____ acres _____ sq ft. _____ cubic yards

Draining: _____ acres _____ sq ft. _____ cubic yards

Other: _____ : _____ acres _____ sq ft. _____ cubic yards

TOTALS: _____ acres _____ sq ft. _____ cubic yards

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

YES WE HAVE BEEN STORING DOCKS IN ROCKFORD SINCE THE 1960s

22. LIST ALL PREVIOUSLY ISSUED PERMIT AUTHORIZATIONS:

STORAGE PERMIT 95-34-36

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: _____ 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

PLEASE SEE ABOVE LINES 17 AND 18 WE WOULD ALSO LIKE TO MENTION THAT THIS AREA IS THE BEST AREA FOR STORAGE FOR THE ROCKFORD BAY AREA AS IT IS A SHORTER TOW FOR ALL THE DOCKS AND MINIMUMIZES THE AMOUNT OF DEBRIS THAT CAN COME OUT FROM UNDER THE DOCKS (extra floatation) FROM A LONG TOW.

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 Idaho Dept. of Lands
 Mica Supervisory Area

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
TOTAL STREAM IMPACTS (Linear Feet):				

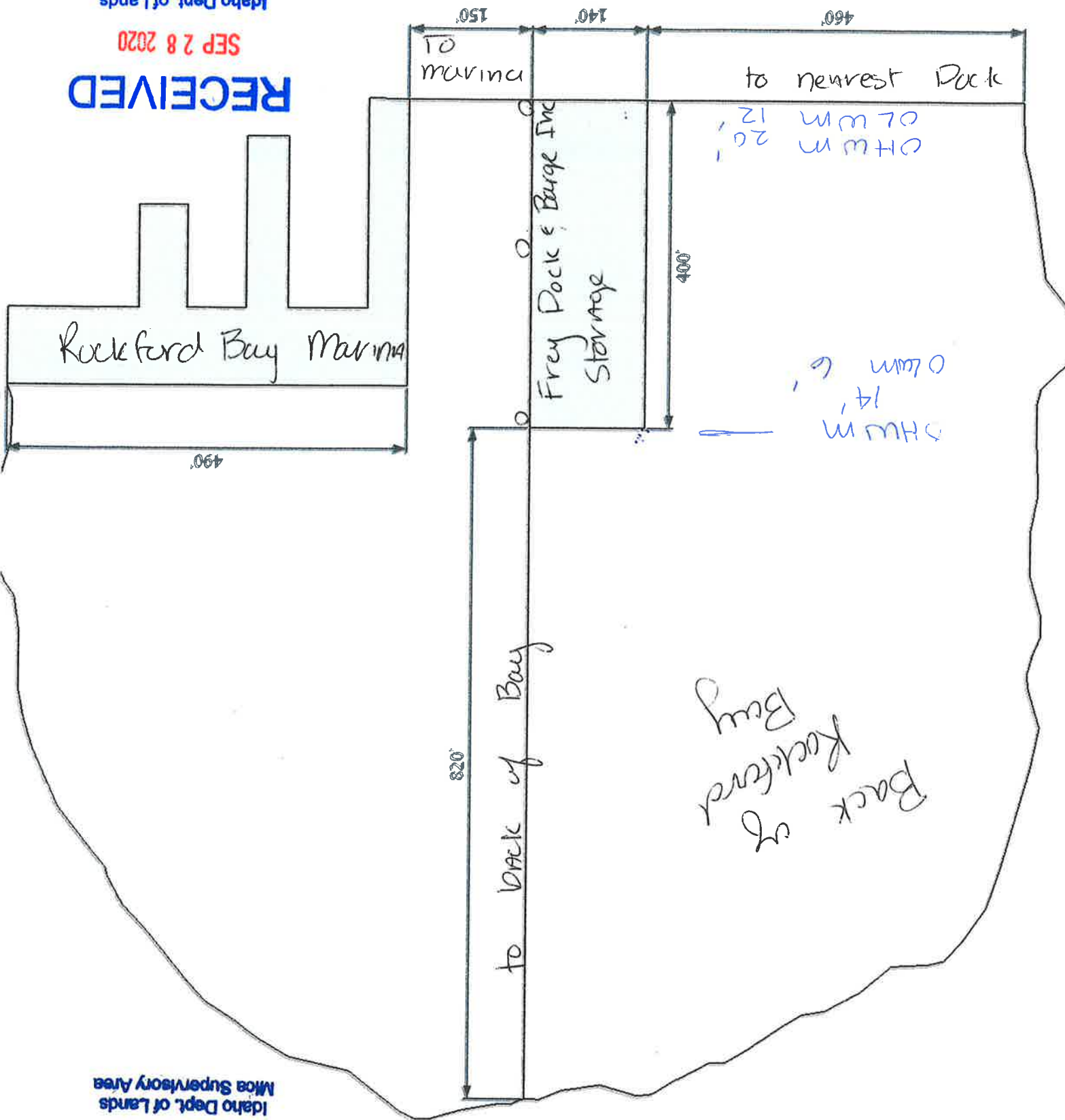
28. LIST EACH WETLAND IMPACT include mechanized clearing, fill excavation, flood, drainage, etc. Attach site map with each impact location.

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)
TOTAL WETLAND IMPACTS (Square Feet):				

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Mica Supervisory Area

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Mica Supervisory Area

SEP 14 2020

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Kootenai County, Idaho

generated on 9/23/2020 12:56:09 PM CDT

Parcel

Parcel Number	AIN	Situs Address	Data as of
021600010100	116464	32897 E COEUR D ALENE LAKE SHR, HARRISON	9/19/2020

Owner Information

Owner Name	FREY THOMAS FREY STACEY
Owner Address	PO BOX 942 HAYDEN ID 83835-0942
Transfer Date	01/01/2019
Document #	
Deed Book/Page	

Location / Description

Tax Authority Group	021000	Current Legal Desc.	EMERALD SHORE LOTS, LT 10 BLK 1 0349N03W
Situs Address	32897 E COEUR D ALENE LAKE SHR, HARRISON		
Acreage	.5540		

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SEP 28 2020

Idaho Dept. of Lands
Mca Supervisory Area

Parcel Type

Property Class Code	537- Imp res rural sub
Neighborhood Code	6116 CDA LAKE E SIDE-BEAUTY BAY/WLF

Assessment Information

Appraisal Date	07-13-2020	Current Year	2020	Prior Year	2019
Market Value Land	\$38,961	Homeowners Eligible Amt Land	\$0	Homeowners Eligible Amt Land	\$0
Market Value Improvement	\$0	Homeowners Eligible Amt Imp	\$0	Homeowners Eligible Amt Imp	\$0
Total Market Value	\$38,961	Sum Homeowners Eligible Amt	\$0	Sum Homeowners Eligible Amt	\$0
		Homeowners Exemption Allowed	\$0	Homeowners Exemption Allowed	\$0
Acreage	0.5540	Total Market Value	\$38,961	Total Market Value	\$32,443
		Homeowners Exemption Allowed	\$0	Homeowners Exemption	\$0
		Ag/Timber Exemption	\$0	Ag/Timber Exemption	\$0
		Other Exemptions	\$0	Other Exemptions	\$0
		Net Taxable Value	\$38,961	Net Taxable Value	\$32,443

Legend



600 ft

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Public Dock, Jet Lines
Water Department of Alton

Rockford Bay

2016 Aerial Imagery

W Rockford Bay Rd

Fire Rd

S Mariner Loop

W Canoe Loop

Google Earth

Exhibit 6

Page 41

AGREEMENT FOR SALE AND PURCHASE OF ASSETS

THIS AGREEMENT, dated Dec 21, 1994, is made and entered into by and between JIM CHASE AND COLLEEN CHASE, husband and wife, (" Seller") and FREY DOCK & BARGE, INC., an Idaho Corporation (" Buyer").

In consideration of the mutual covenants hereinafter contained, the parties hereby agree as follows:

1. **Sale and Purchase of Assets** : Subject to the terms and conditions of this Agreement, Seller shall sell, assign and deliver to Buyer, and Buyer shall purchase from Seller, the following Assets (the "Subject Assets") of Seller:

(a) All of the tools, equipment, boats, rigging, trucks, automobiles, cranes, barges and other equipment as described in Exhibit A attached hereto and which is hereby incorporated by reference. The attached list also specifically includes all parts, supplies, spare keys and any other items associated with any of the trucks, boats, barges or machinery (collectively, the "Tools").

(b) All present customers or accounts of Seller, including all contracts or other rights in connection therewith (collectively, the " Accounts"), for dock storage or dock construction.

(c) All interest in and to that certain leases with the State of Idaho and private parties located under the waters of Lake Cocur d'Alene, a copy of said lease being attached

AGREEMENT FOR SALE AND
PURCHASE OF ASSETS

PAGE 1

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Idaho Dept. of Lands
Mica Supervisory Area

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JAN 27 2020

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Mica Supervisory Area

ORIGINAL

BILL OF SALE

KNOW ALL MEN BY THESE PRESENTS that JIM CHASE AND COLLEEN CHASE, husband and wife, herein referred to as the Seller, for and in consideration of a certain sum of money paid and other good and valuable consideration to them in hand paid by FREY DOCK & BARGE INC., herein referred to as the Purchaser, the receipt of which is hereby acknowledged by these presents, grant, sell, transfer and convey unto the said Purchaser, their heirs and assigns forever, the following described personal property situated in Kootenai County, Idaho, to wit:

See Exhibit "A", attached hereto

TO HAVE AND TO HOLD the same unto the Purchaser, their heirs and assigns forever. The Seller warrants the foregoing free and clear of all encumbrances to date.

IN WITNESS WHEREOF, the Seller has hereunto caused this instrument to be executed this 21ST day of December, 1994.

Jim Chase
JIM CHASE

Colleen F Chase
COLLEEN CHASE

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Idaho Dept. of Lands
Mica Supervisory Area

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JAN 27 2020

Idaho Dept. of Lands
Mica Supervisory Area



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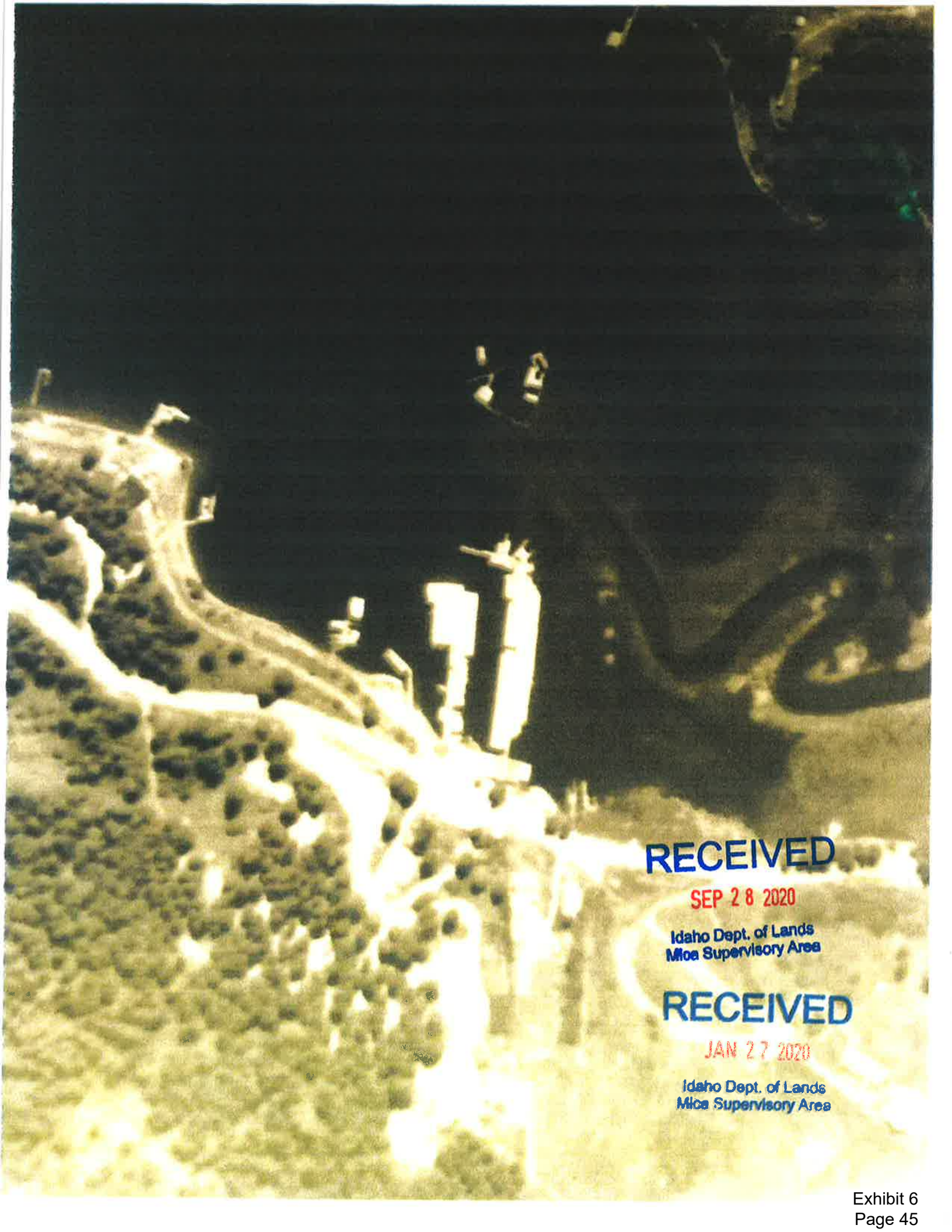
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**Idaho Dept. of Lands
Mica Supervisory Area**



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)
- Community dock
 - Commercial marina
 - Bank stabilization
 - Other – describe: Dock Storage
 - Float home
 - Boat garage
 - Mooring buoy(s)

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: _____

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

- 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 # 95-34-36 Date of Construction: 1960's

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? 140x400 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.**
- _____ **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 ft² per Littoral Front Foot?

- No
 - Yes
- Total square footage: _____ ft²

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

- Yes
 - No
- Total front footage: _____ feet

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Idaho Dept. of Lands
Mica Supervisory Area

Exhibit 7: 1968 Photo of Rockford Bay Dock storage to the right (east) of the marina



Home > Products > 1968 Press Photo Aerial view of Rockford Bay Marina bought by Mr & Mrs Hamilton

ABOUT THIS PHOTO +



1968 PRESS PHOTO AERIAL VIEW OF ROCKFORD BAY MARINA BOUGHT BY MR & MRS HAMILTON

spa74441

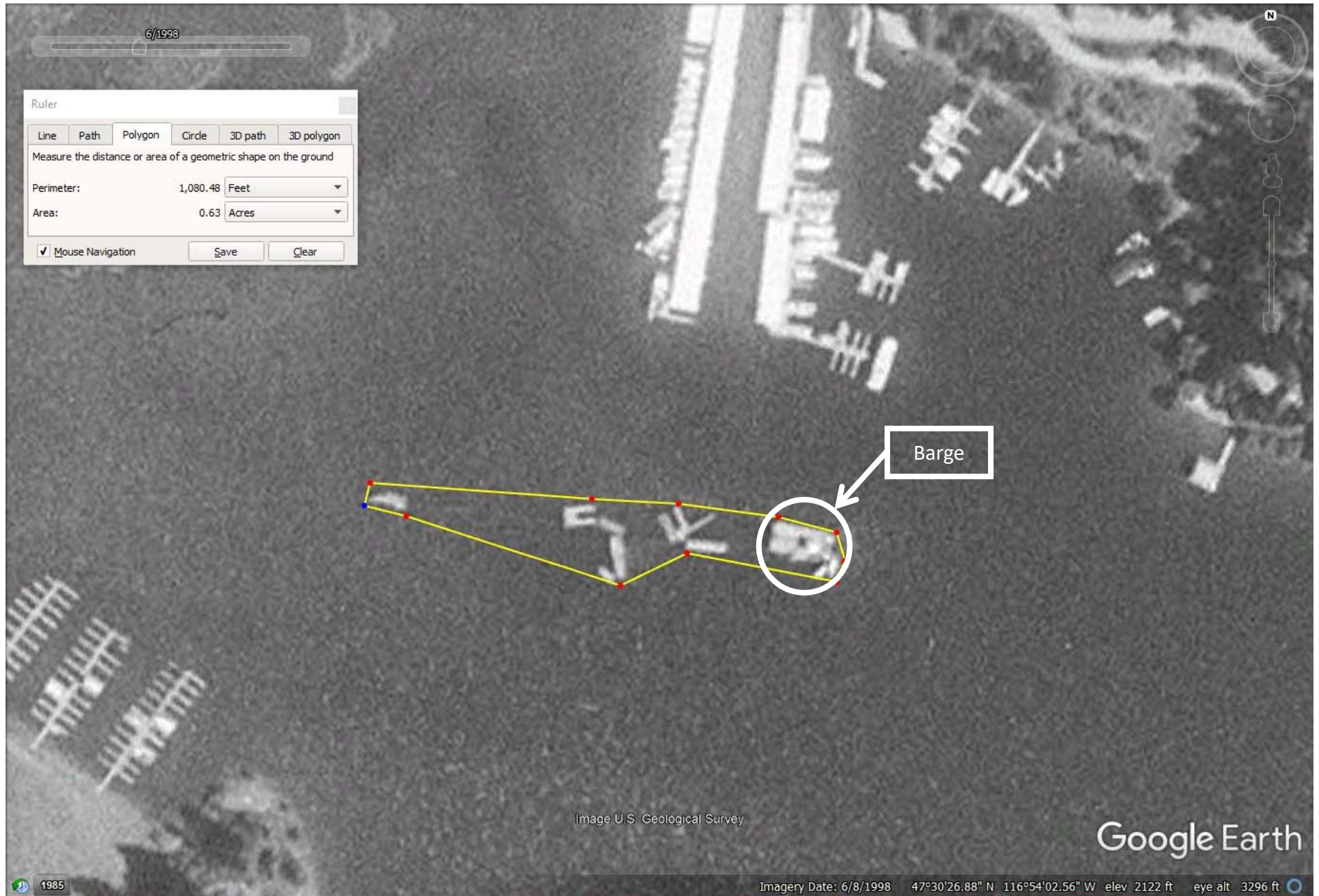
\$11.00

Photo measures 9.75 x 7.5 inches. Photo is dated 4/28/1968.

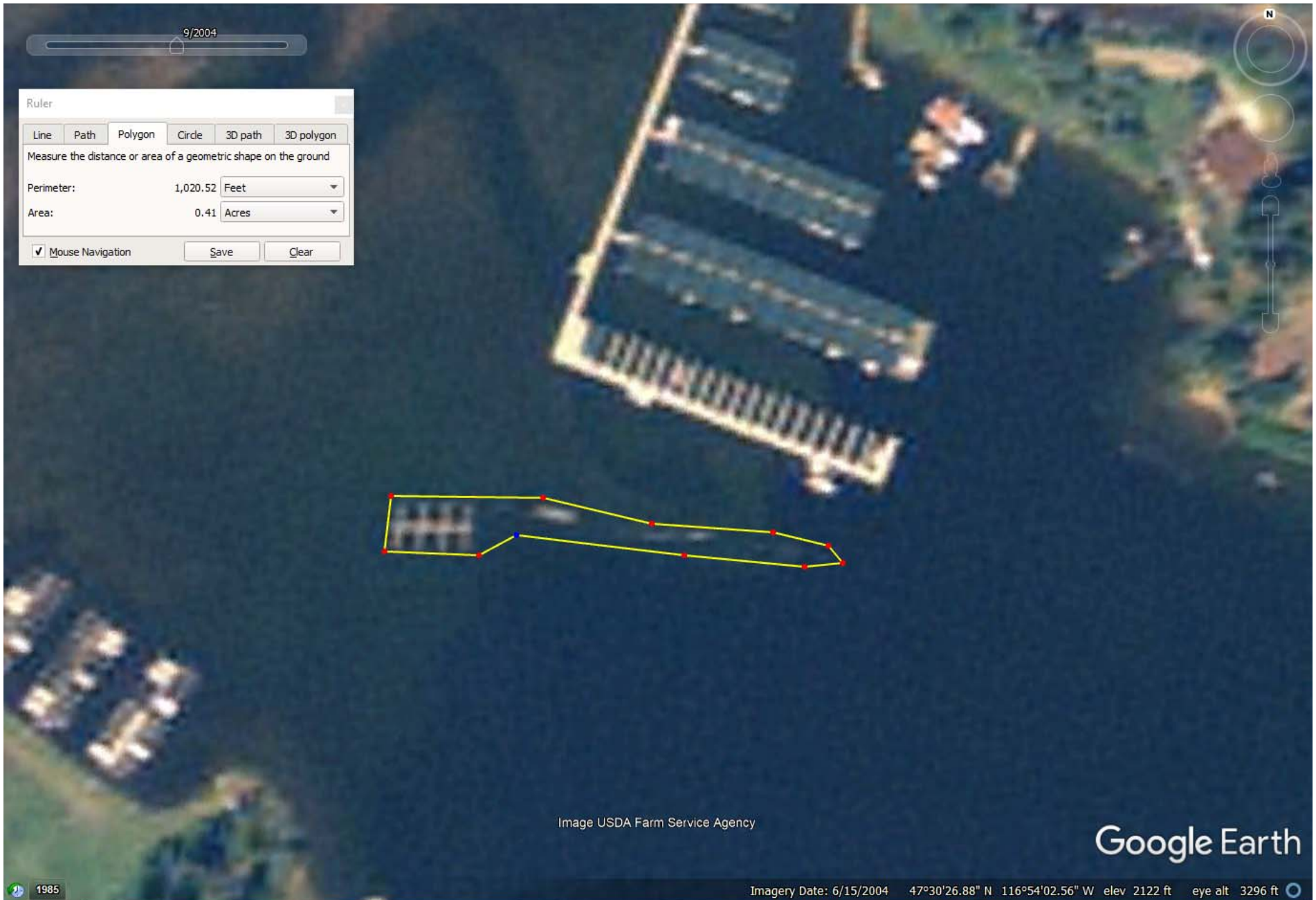
Photo back:



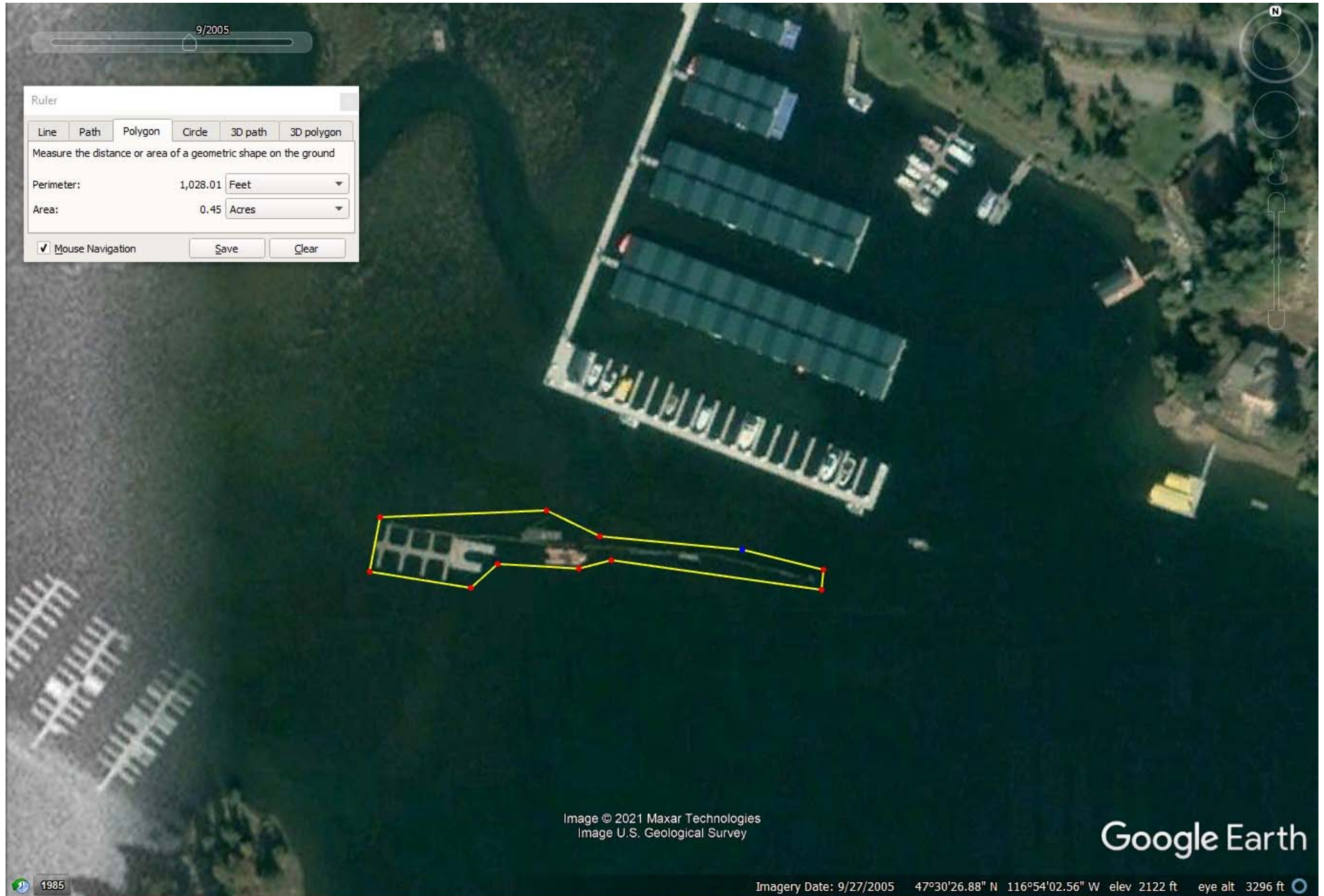
Frey Dock & Barge Inc.'s Rockford Bay Activity, 6/8/1998
After storage season. Barge and a few docks present on 0.63 acres of lake.



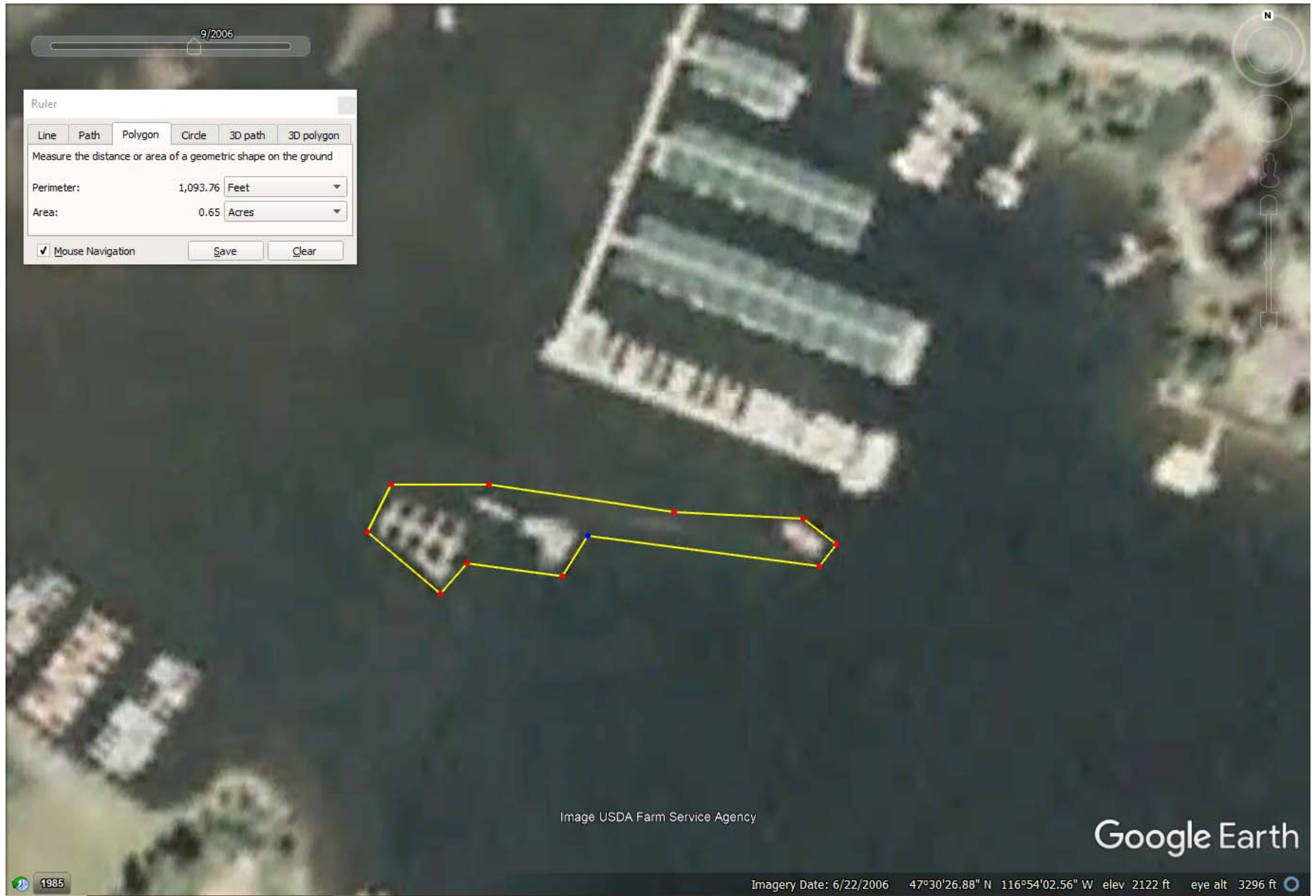
Frey Dock & Barge Inc.'s Rockford Bay Activity, 6/15/2004
After storage season. One dock present on 0.41 acres of lake.



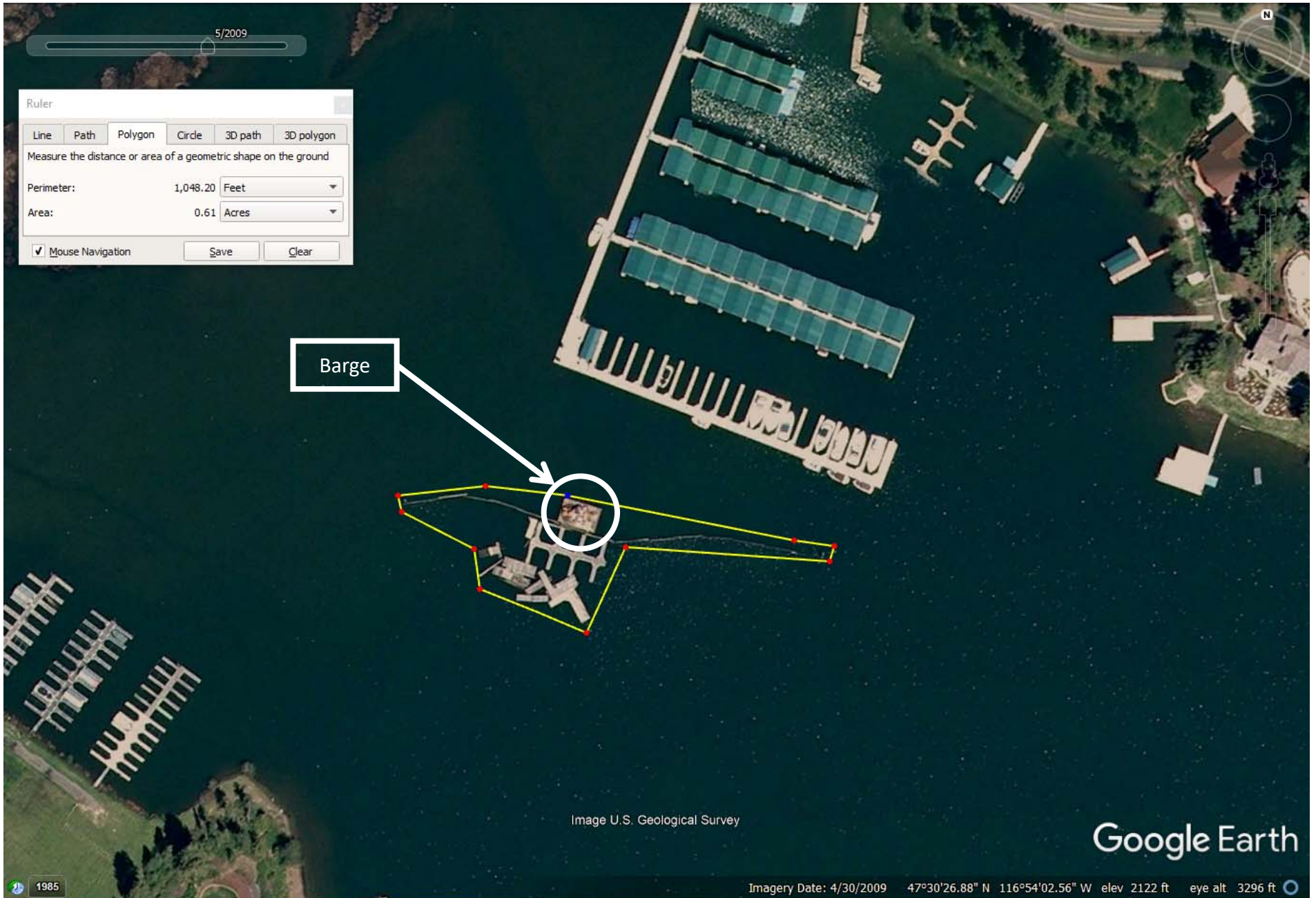
Frey Dock & Barge Inc.'s Rockford Bay Activity, 9/27/2005
Before storage season. A few docks present on 0.45 acres of lake.



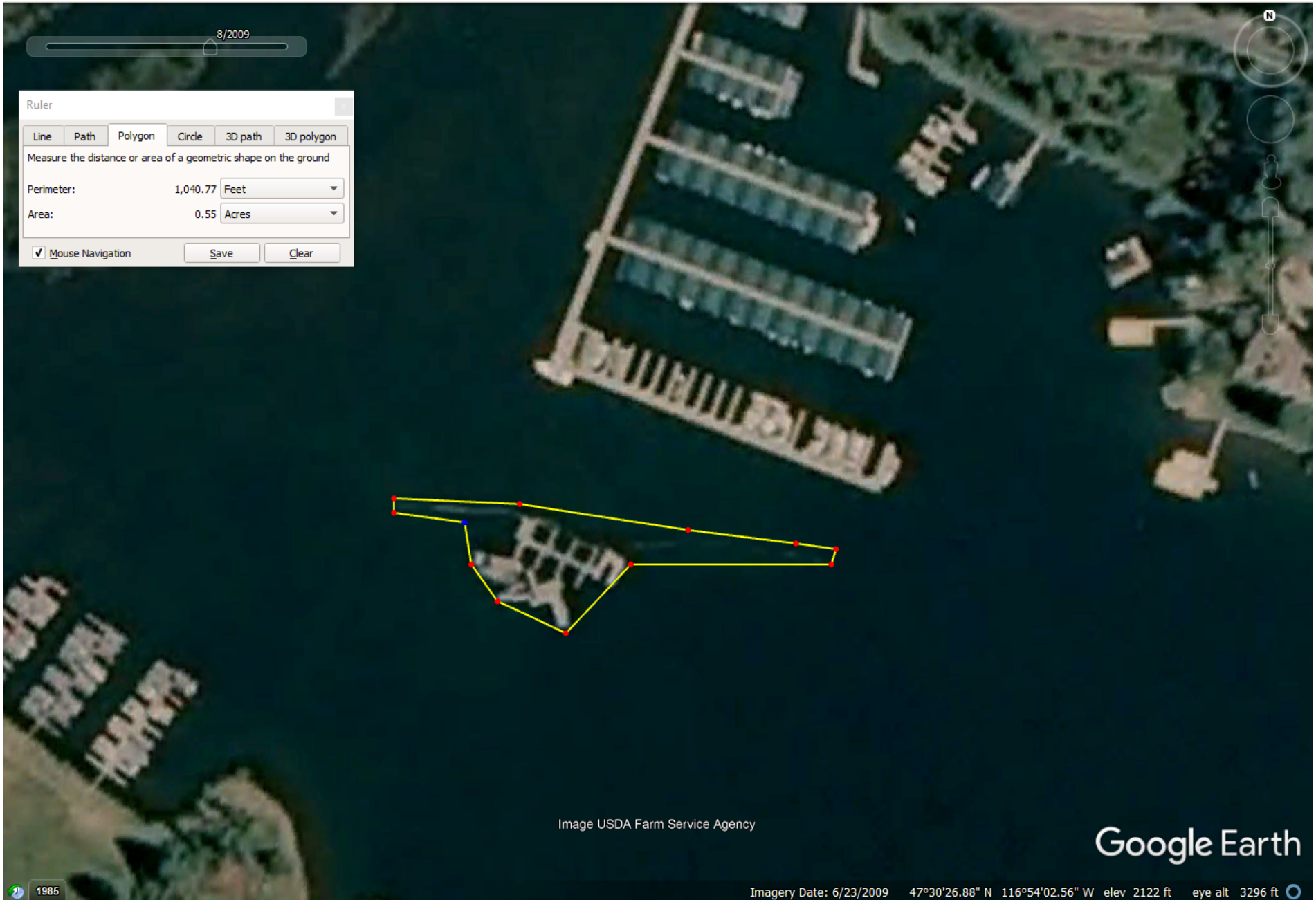
Frey Dock & Barge Inc.'s Rockford Bay Activity, 6/22/2006
After storage season. A few docks present on 0.65 acres of lake.



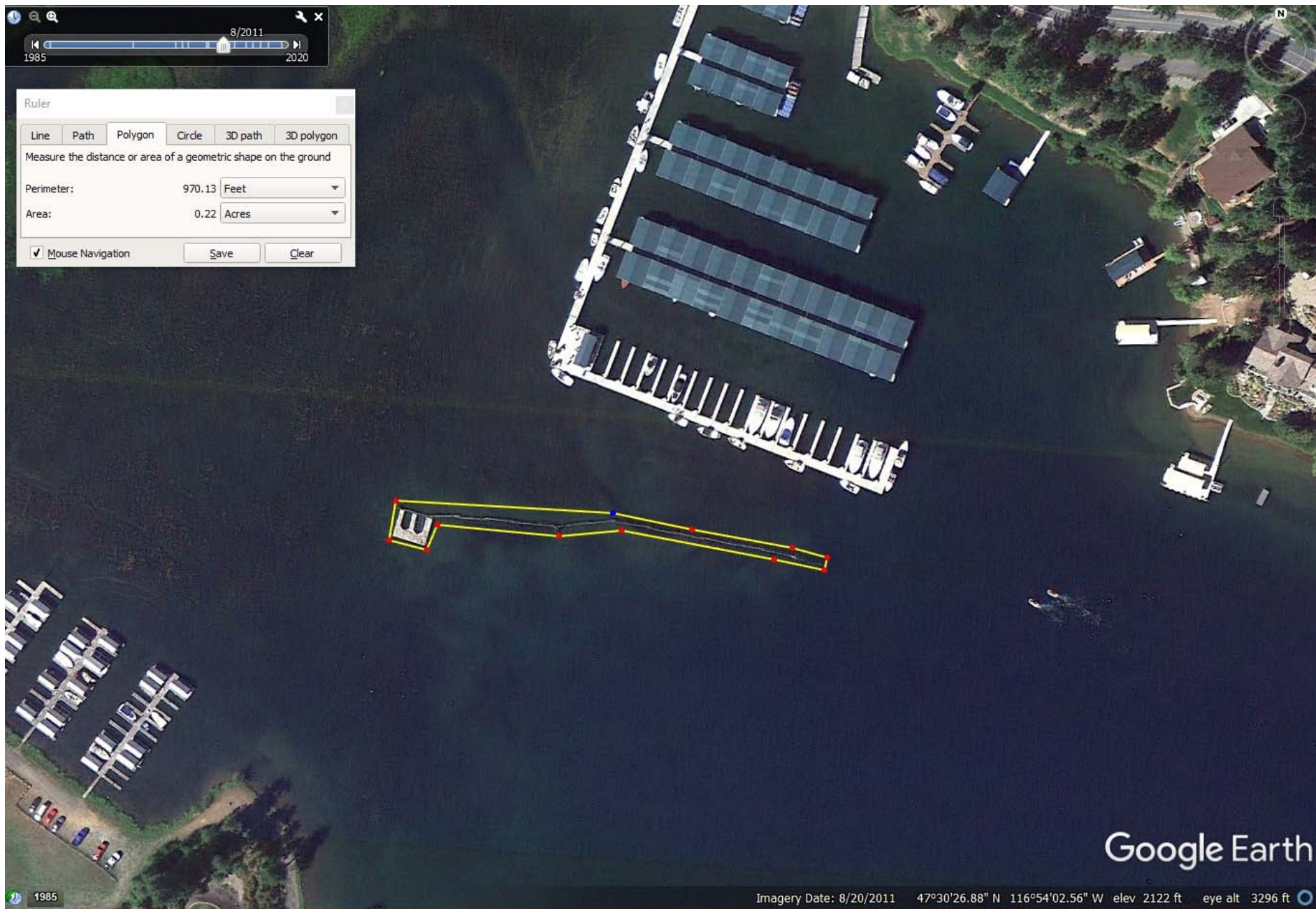
Frey Dock & Barge Inc.'s Rockford Bay Activity, 4/30/2009
Near end of storage season. Several docks and barge present on 0.61 acres of lake.



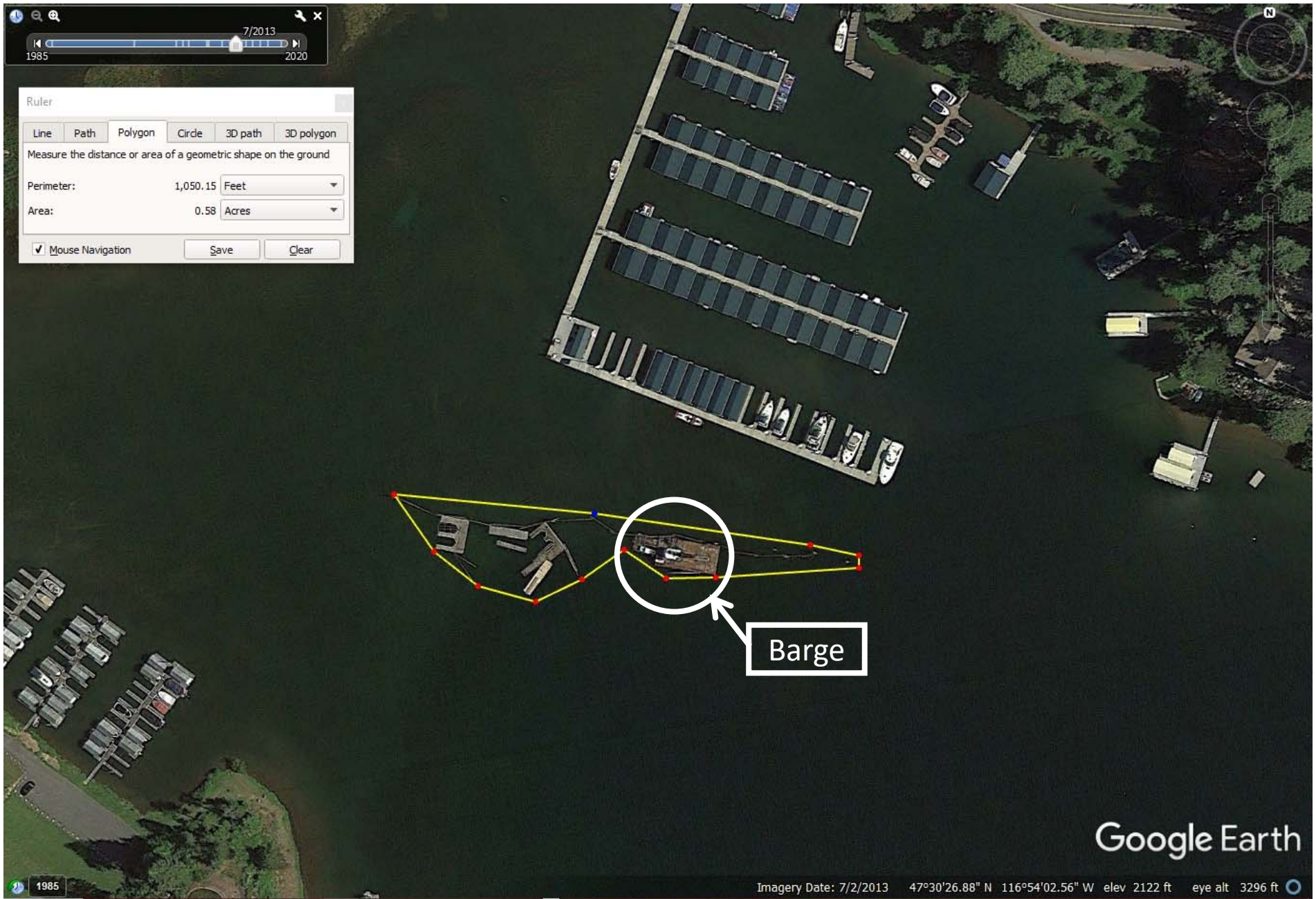
Frey Dock & Barge Inc.'s Rockford Bay Activity, 6/23/2009
After storage season. A few docks present on 0.55 acres of lake.



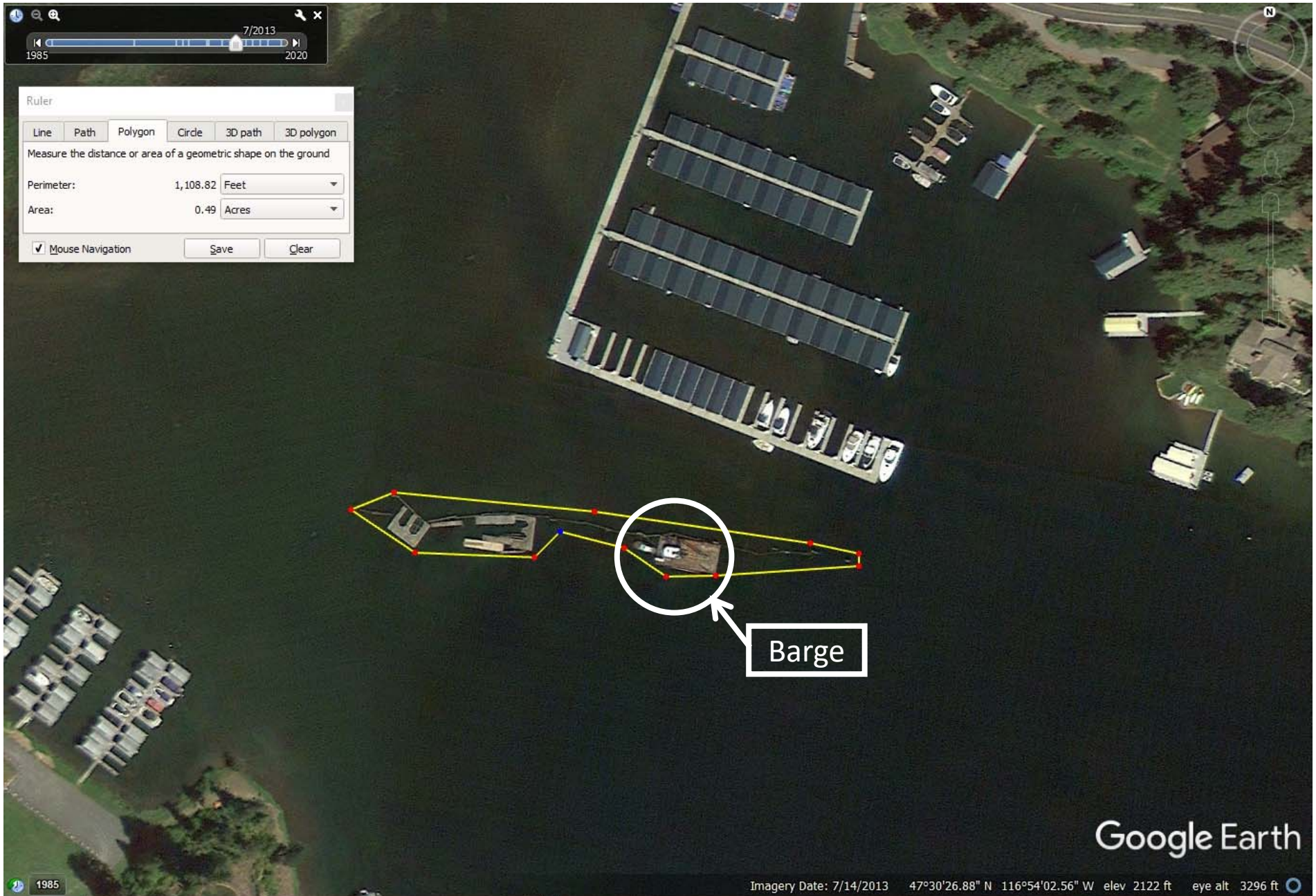
Frey Dock & Barge Inc.'s Rockford Bay Activity, 8/20/2011
Before storage season. One dock present on 0.22 acres of lake.



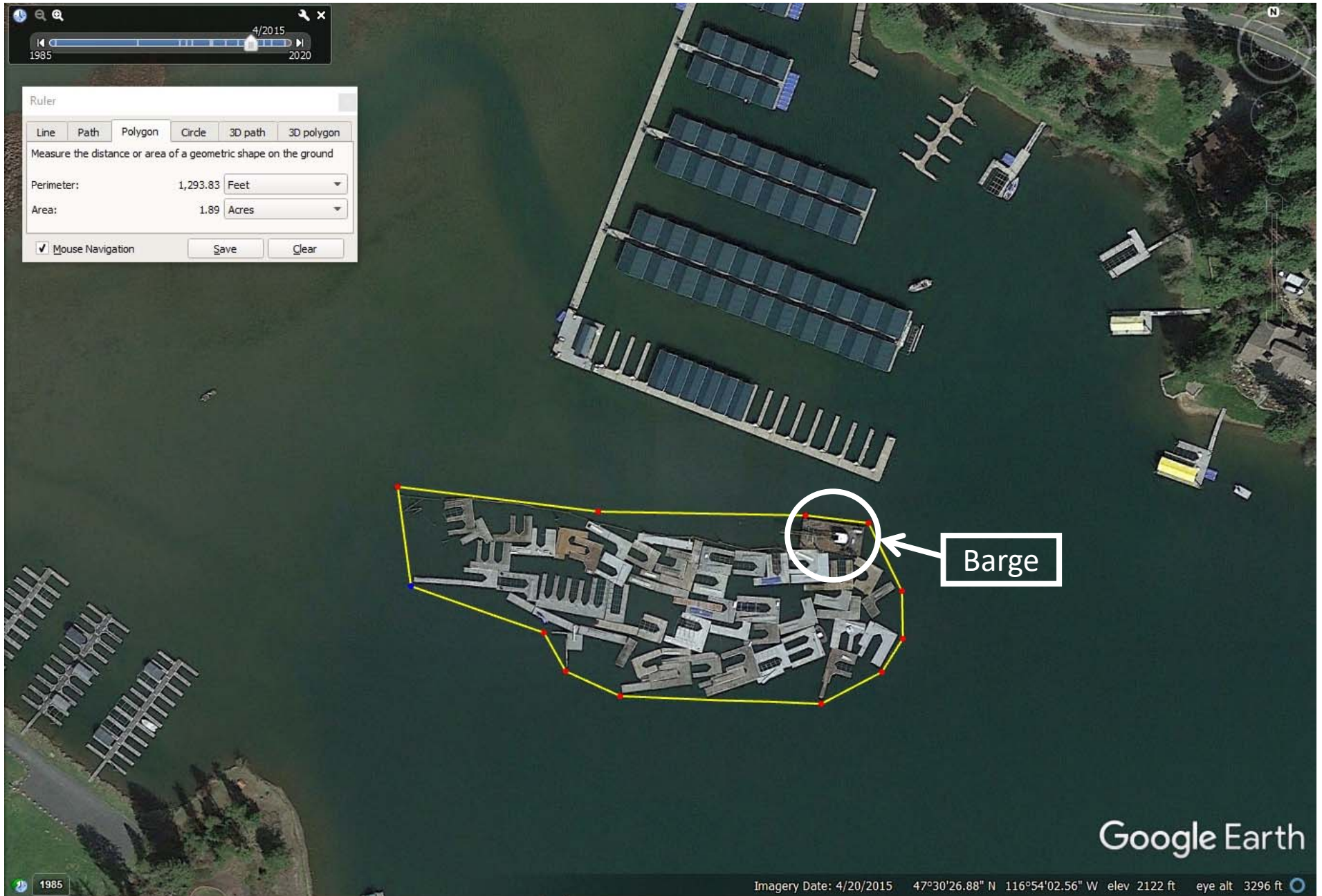
Frey Dock & Barge Inc.'s Rockford Bay Activity, 7/2/2013
Before storage season. A few docks and a barge present on 0.58 acres of lake.



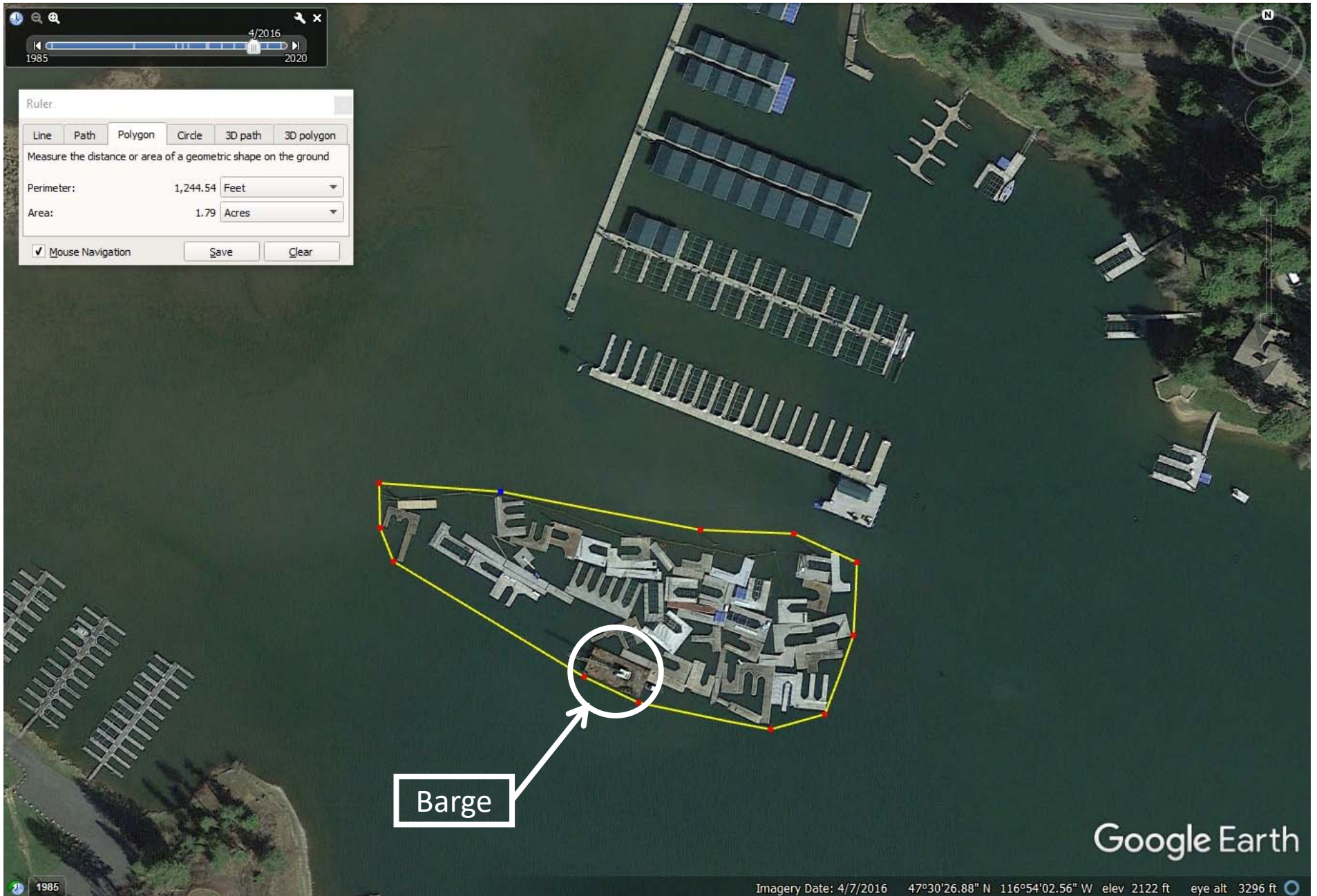
Frey Dock & Barge Inc.'s Rockford Bay Activity, 7/14/2013
Before storage season. A few docks and a barge present on 0.49 acres of lake.



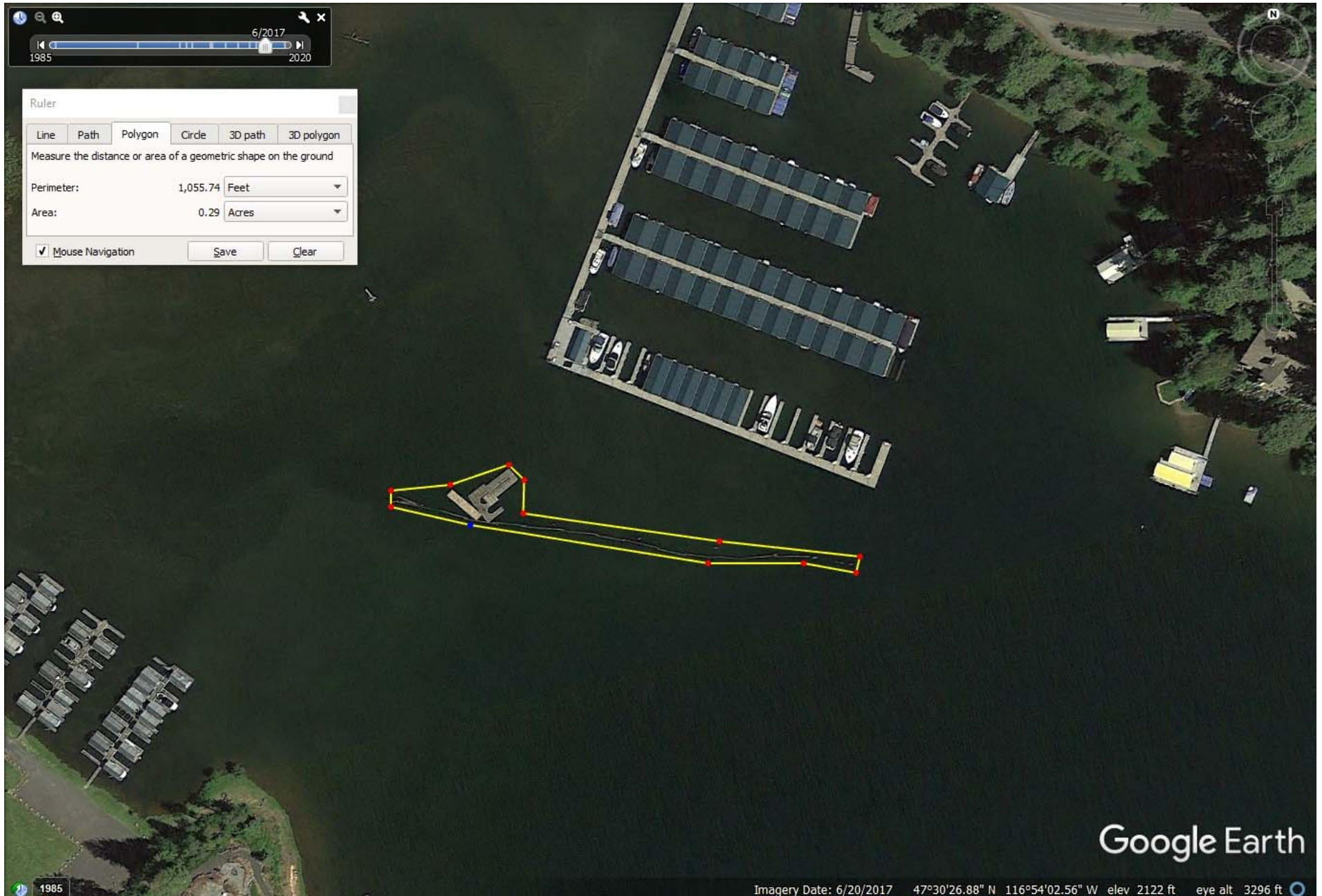
Frey Dock & Barge Inc.'s Rockford Bay Activity, 4/20/2015
During storage season. Many docks and a barge present on 1.89 acres of lake.



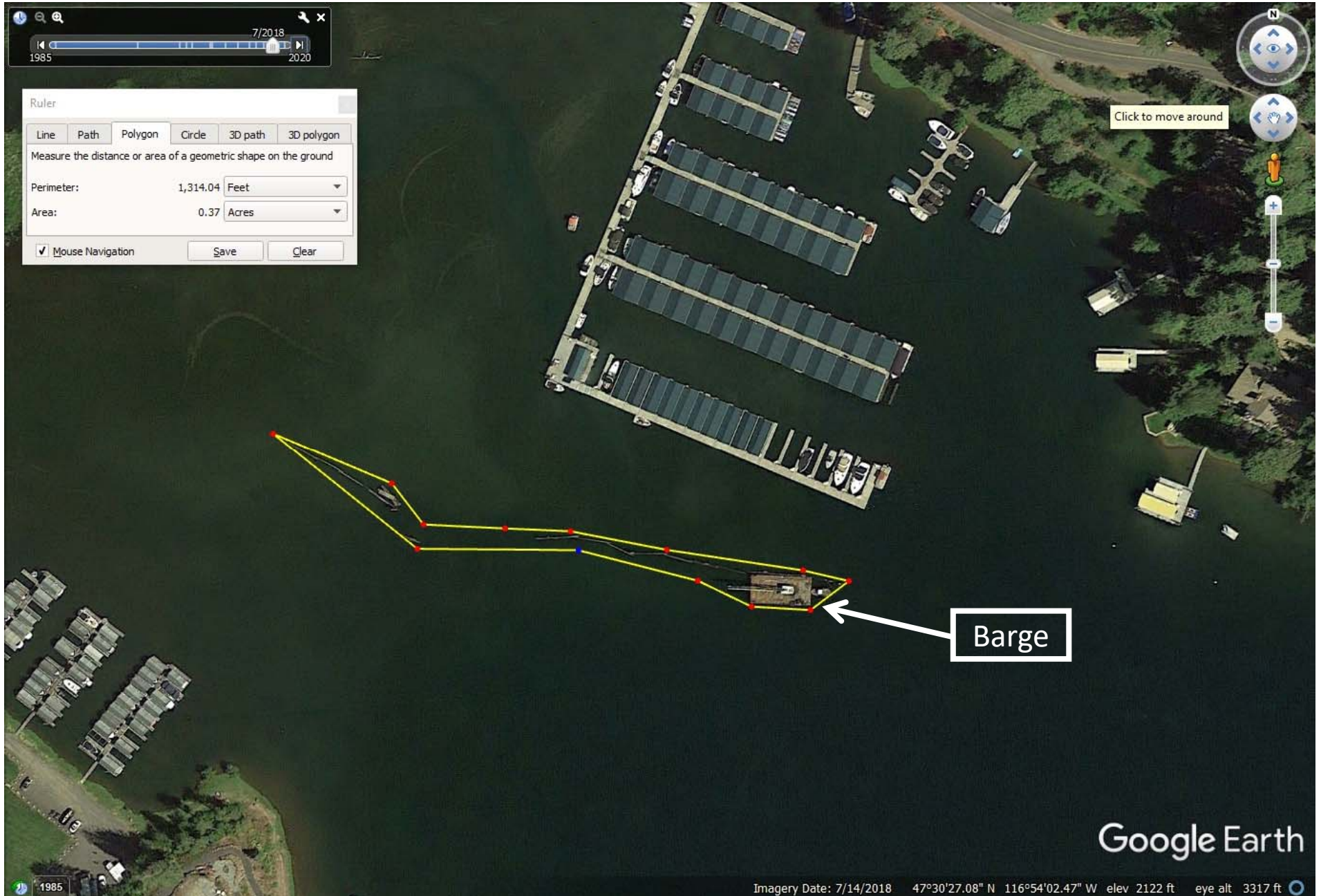
Frey Dock & Barge Inc.'s Rockford Bay Activity, 4/7/2016
During storage season. Many docks and a barge present on 1.79 acres of lake.



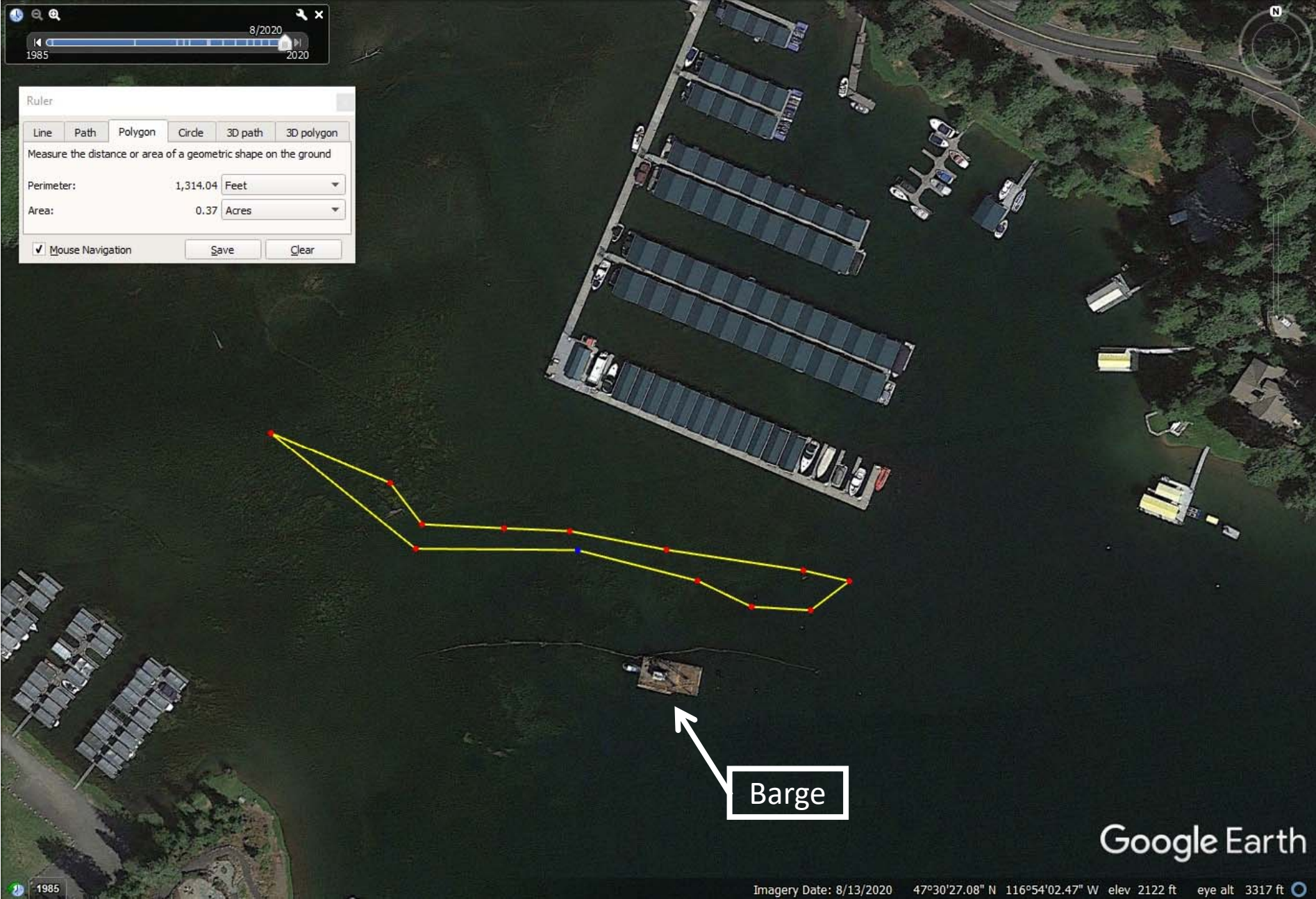
Frey Dock & Barge Inc.'s Rockford Bay Activity, 6/20/2017
After storage season. A few docks present on 0.29 acres of lake.



Frey Dock & Barge Inc.'s Rockford Bay Activity, 7/18/2018
Before storage season. A barge is present on 0.37 acres of lake.



Frey Dock & Barge Inc.'s Rockford Bay Activity, 8/13/2020
Yellow outline shows location of storage area in 2018. Barge and log boom are secured to the three new piling installed in 2019 located about 100 feet south of the older piling.



Frey Dock & Barge Inc.'s Rockford Bay Activity, 8/13/2020

Before storage season. Yellow outline is 1.69 acres and includes the old piling to the north and the 2019 piling with log boom and barge. Red outline is proposed 140' x 400' storage area south of the new log boom.



From: [Maureen deTar](#)
To: [Comments: Mick Thomas](#)
Subject: Re: Frey Dock and Barge Public Comments Rockford Bay
Date: Thursday, July 29, 2021 09:57:57 AM

I failed to give some time reference to the photographs. The first was taken in August of 2020 when we had two barges parked all summer long and into fall in Rockford Bay. The second photograph labeled docks.pdf is a picture taken May 13th of 2021 showing the docks corralled in the bay. Our boat was in the water on the 8th. Thank you.

On Wed, Jul 28, 2021 at 10:46 PM Maureen deTar <modetar@gmail.com> wrote:

Hello. My name is Maureen deTar. After attending the hearing last night, I felt compelled to write my personal comments about the storage of winter docks and the year-round unsightly and dangerous storage of the Frey barge and tugboat in Rockford Bay. My husband and I have lived in Woodland Shores for two years and owned our property for four years which enables us to use the Woodland Park areas and our own boat slip at our community private docks.

We have many grandchildren who live locally and swim and fish with us in our bay. We bird watch on our kayaks and from shore and have been enjoying the wetland in the west end of the bay, observing our three resident bald eagles, a Golden Eagle, the families of Canadian Geese, Heron, swallows, and a lone Grebe who return every year. We notice that these birds stay away from the barge and when kayaking, have seen oil and gas on the surface of the water which I imagine keeps them away as they are bio-hazardous pollutants. I am worried that the resident and migrating birds will suffer due to the quality of the water when they fish and nest in this area.

While swimming, boating, and kayaking, we have been navigating around the docks, barge and broken and unmaintained pilings and logs used in winter to corral the docks for years. We witnessed the moving of the pilings to the south of the bay from our deck in September of 2019. This was done without permits, a hearing, or in fact, any knowledge of the IDL or those affected, in keeping with the modus operandi of Frey Dock and Barge industrial business.

Why is that Mr. Frey feels compelled by Mr. Magnuson to move these pilings without informing IDL, ignoring the permitting process (and the law) because he is “a good friend”? He knowingly broke the law and when that came to light in the hearing, I was dismayed at the laughter of the representatives of the IDL in the room. Did I miss something? Is this a joking matter? Is someone immune from the law and the legal processes followed by the rest of the citizens because they are friends with Mr. Magnuson? I cannot imagine that any other local Idaho citizen would be afforded decades of ignoring the law, permitting fees, or the anchoring of an industrial commercial barge and tugboat in Rockford Bay without any consequences. Mr. Frey has amply demonstrated his disregard for the law, the residents of Rockford Bay, and the Idaho Department of Lands. Please do not grant him any more favors.

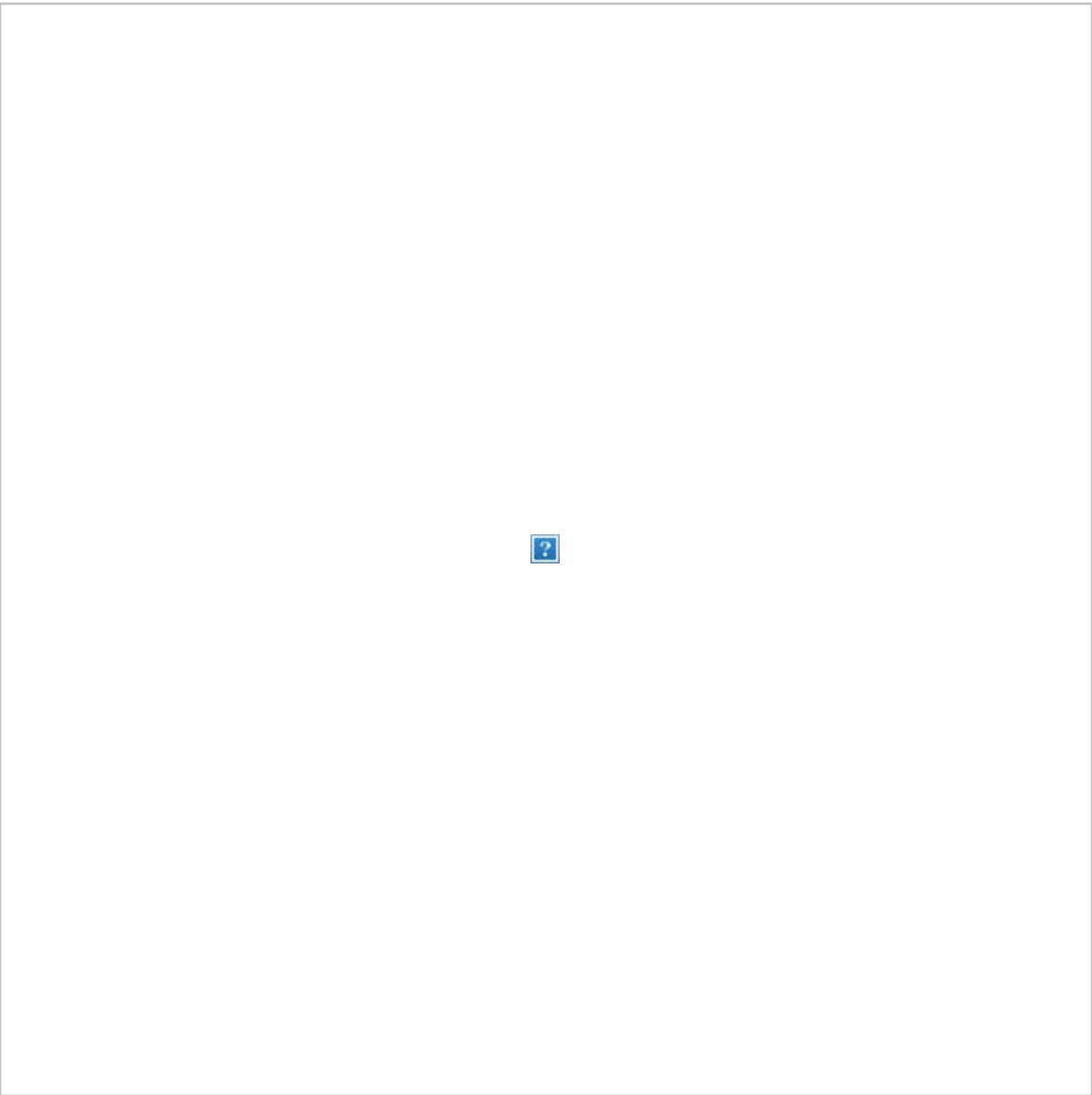






Exhibit 10: Frey Dock & Barge Webpage
8/27/2021, Advertising free dock storage for a year with purchase of a new dock (circled).

The screenshot shows a web browser window with the URL freydockandbarge.com. The page features a navigation menu with links for Home, Services, Location, Contact Us, and Gallery. A large banner at the top displays the company logo and a photograph of a dock structure on a lake. Below the banner, the text reads "Custom Docks in Coeur d'Alene, Idaho" and describes the company's history and services. A section titled "Beyond Docks" lists various services, including a circled offer for "FREE Storage for a Year with the Purchase of a New Dock". To the right, there is a "Contact Us Today:" form with fields for Name, Phone, and Message, and a "Contact" button. The browser's address bar and taskbar are visible at the top and bottom of the page.

and Your Budget

Coeur d'Alene ID 83835

FREY DOCK & BARGE

Home Services Location Contact Us Gallery

Custom Docks in Coeur d'Alene, Idaho

Create the perfect addition to your waterfront home with the help of **Frey Dock & Barge**, your source for custom docks in [Coeur d'Alene, Idaho](#), since 1947. Work closely with our experts to design a dock that is safe, functional, and attractive.

Beyond Docks

As our name suggests, we specialize in more than dock construction. **Frey Dock & Barge** offers a number of exclusive services to meet your waterfront needs, including:

- Custom Hardware**—Canopies, Swim Ladders, and Tie Rings
- Pile Driving**—Ensure That Your Dock Is Secure
- Barge Services**—Helping You Move Supplies and Materials

A Tradition of Quality Service

Since beginning with a single tug in 1947, **Frey Dock & Barge**

Contact Us Today:

Name

Phone

Message

Contact

FREE
Storage for a Year with
the Purchase of a New Dock

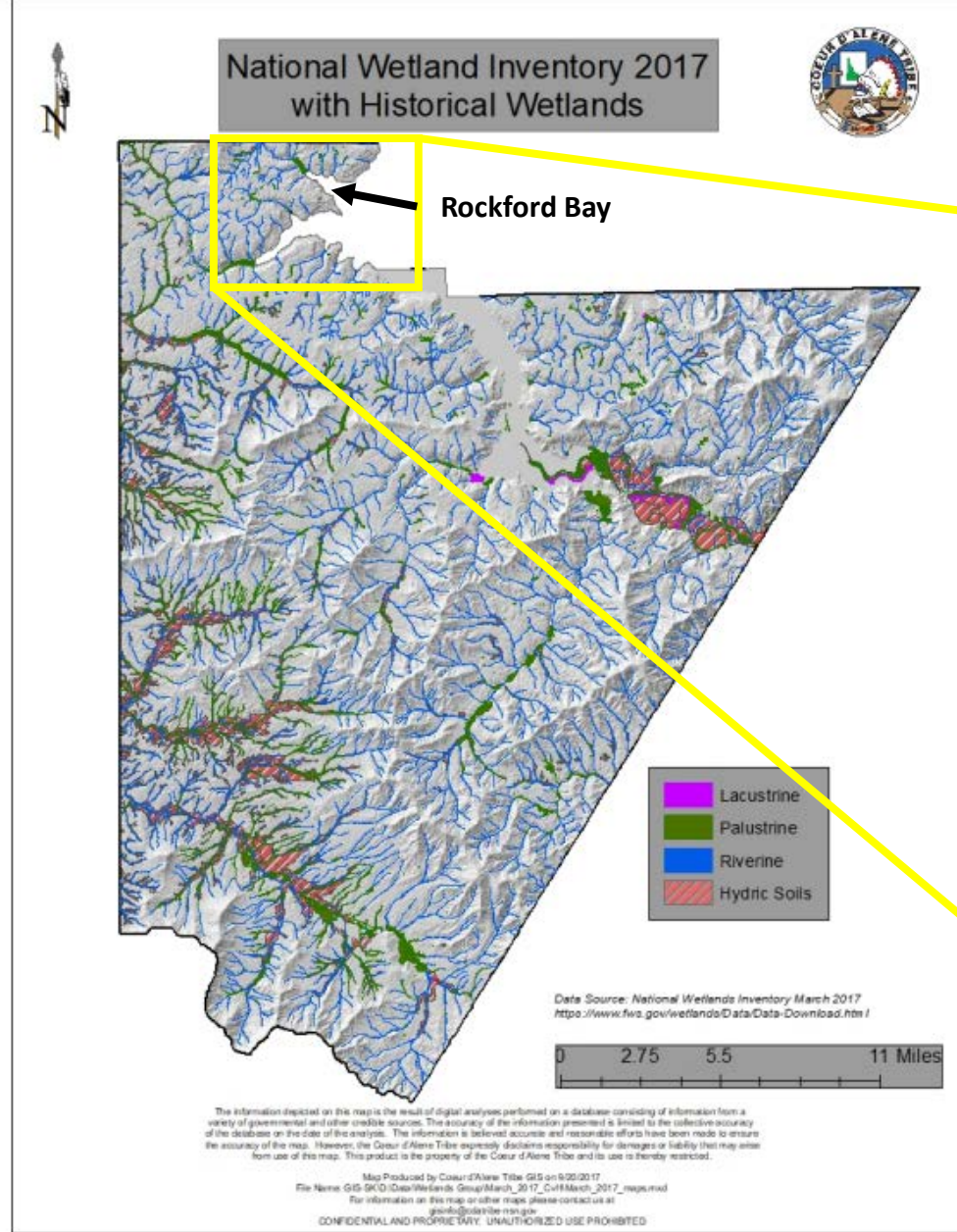
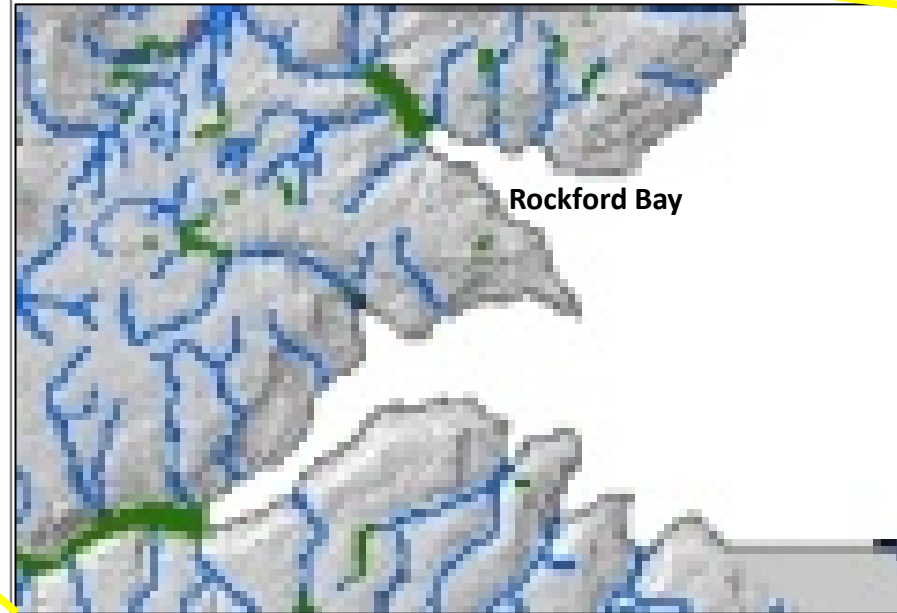


Exhibit 11: Boundary of Coeur d'Alene Reservation
 Rockford Bay shown in inset. Note tribal boundaries follow the shoreline in Rockford Bay, indicating state ownership of the lakebed. This is in contrast to the lower third of the lake shown within the tribal boundary and not under state ownership.



Source: EPA Webpage
https://www.epa.gov/sites/default/files/2019-03/documents/cour_dalene_final_wetland_program_plan_december_2017.pdf

Downloaded 8/27/2021, shows full boundary of Coeur d'Alene Tribe.

Figure 4. Current wetlands on the Coeur d'Alene Reservation compared with estimated historic wetlands