

FRED FINNEY and DIANE FINNEY
FINNEY BOAT WORKS, INC.
7014 E. Maplewood Avenue
Post Falls, ID 83854
Phone: (208) 755-5690
finneydianek@gmail.com

Applicant

BEFORE THE STATE BOARD OF LAND COMMISSIONERS
STATE OF IDAHO

IN THE MATTER OF

Encroachment Permit Application No.
L95S3071A

Fred Finney dba Finney Boat Works, Inc.,

Applicant,

Agency Case No. PH-2025-NAV-22-004

OAH Case No. 25-320-06

**POST-HEARING ARGUMENT ON
BEHALF OF APPLICANT FINNEY
BOAT WORKS, INC.**

Applicant Finney Boat Works, Inc., through its representatives and owners Fred Finney and Diane Finney, respectfully submits this closing argument pursuant to the Hearing Officer's direction following the October 28, 2025 hearing in this matter.

I. EVIDENCE INTRODUCED AT THE HEARING.

1. The term "Finney" as used herein shall collectively refer to Finney Boat Works, Inc., Fred Finney and Diane Finney unless otherwise specified.
2. The Finney property that is the subject of this application has been zoned industrial use for decades.

3. The adjacent properties owned by Objectors Schlotthauer and Cherokee were previously owned by Finney.

4. Fred Finney is a descendent of Captain John F. Finney who ushered in the tour boat industry on Lake Coeur d'Alene in 1926, when he built his first boat, the Seeweewana, for public transportation on Lake Coeur d'Alene. That vessel could carry 65 passengers.

5. Ultimately, Fred built or modified the Coeur d'Alene Resort's entire tour boat fleet and personally operated it for decades. The Coeur d'Alene Resort, owned by Hagadone Hospitality Company, now has a tour boat fleet consisting of seven vessels, all built, serviced, or maintained by Finney at the Finney property.

6. Hagadone Hospitality Co. operates its resort fleet through a division known as Hagadone Marine Group (HMG). HMG currently operates a fleet that consists of seven tour boats. The boats have varying capacities, from 49 people up to 400 people. HMG employs 85 individuals during the summer season to assist with tour operations. Those operations have expanded to include time frames extending through the holidays and to New Year's with holiday cruises.

7. Annually, the HMG tour boats serviced by Finney make 3600 cruises and transport 165,000 passengers, from all over the world, creating a significant economic and employment contribution to Idaho.

8. HMG's fleet of cruise ships, in service for over 40 years, requires regular service, maintenance, and U.S. Coast Guard safety inspections, and the like, which have been performed by Finney at the subject property for nearly 39 years.

9. In 1986, Encroachment Permit No. L-95-S-3071 was issued to Finney and the subject Finney property. The permit specifically states:

There is a recognized need for a commercial boat service for large-sized vessels on Lake Coeur d'Alene. No such facility is presently available. The encroachment distance into the river is acceptable when compared with existing encroachment by the DAW Mill just upstream from this site.

Contemporaneous with the issuance of the permit, Finney executed a submerged lands lease which authorized Finney to "proceed with installation of the boat weigh in the Spokane River." The 1986 permit remains in effect today as does the submerged lands lease.

10. From 1986 through 2016, Finney continued to use the lawfully permitted commercial permit to service the "recognized need" for "a commercial boat service for large-sized vessels on Lake Coeur d'Alene." Those vessels included the fleet owned and operated by Hagadone Marine Group. There are no other facilities available on Lake Coeur d'Alene or the Spokane River that could service the two largest vessels of HMG, and this was established by the testimony offered at the hearing.

11. Attached hereto as Exhibit A are three aerial photographs received at the hearing through HMG's witness, John Magnuson. These three photographs, which Schlotthauer identified as having been of recent vintage, i.e., in the past two or three weeks, show alternative views of the HMG vessel named "the Mish-an-Nock" as it is moored on the downriver side of the Finney encroachment as it awaits removal to Finney's upland property for maintenance, inspection, and servicing.

12. IDL does not regulate vessels on the shores of inland navigable lakes or rivers. Although the parking of vessels of this size at the Finney encroachment was clearly envisioned by the 1986 permit (No. L-95-S-3071), there are no IDL prohibitions that would otherwise apply to the moorage of vessels of this size at a lawfully permitted commercial dock "for large sized vessels on Lake Coeur d'Alene."

13. When river currents presented navigational difficulties for bringing in HMG's large vessels to the Finney encroachment, which requires precision maneuverability and docking for proper positioning on the boat weigh, Finney would position a downriver tug boat to hold the large vessels in place adjacent to the Finney dock so that they could be accurately and precisely positioned for removal using the boat weigh.

14. The original Finney encroachment permit (No. L-95-S-3071) authorized seven pilings. Finney did not install seven pilings when the original encroachment was constructed based upon the 1986 permit.

15. In 2016, in good faith and in order to obviate the need for utilizing a downriver tug to hold the large vessels in place adjacent to the permitted dock, Finney installed two pilings to stabilize large cruise ships and vessels as they were positioned onto a cart that carries them up the boat weigh and into dry dock for maintenance, repair, and safety inspections.

16. The location of these two pilings downriver from the Finney dock are shown on Exhibit A hereto. Testimony at trial indicated that the two pilings are approximately one foot each downriver from the Mish-an-Nock as it is parked at the Finney dock. In other words, there are no prohibitions on parking the Mish-an-Nock, or any other vessel, at the Finney encroachment, and in fact the parking of such vessels was clearly contemplated by the 1986 permit. The two pilings only expanded this otherwise permissible parking area by perhaps one foot at most.

17. If a subsequently constructed larger vessel was parked at the Finney dock for removal with the boat weigh, it too would be a permissible use over which IDL has no regulatory intent. Accordingly, the placement of the two pilings does little if anything to expand the otherwise permissible uses of Finney under the existing 1986 encroachment permit and submerged lands lease.

18. Finney installed these two pilings without a permit and in good faith believing that they were authorized under the existing 1986 permit, which authorized more pilings than Finney had originally put into service in constructing the 1986 improvements based upon the 1986 permit.

19. IDL employs the "chorded method" for determining the extent of each littoral owner's respective littoral zone.

20. Mr. Magnuson testified that HMG had engaged Welch-Comer to perform an independent survey to depict and measure the respective littoral zones of Finney and the two objecting parties. Mr. Magnuson testified that using the chorded method, the Finney pilings are 15.1 and 19.4 feet from the riparian boundary between the Finney and Schlotthauer properties. It should be noted that there is no objection, nor could there be, to the parking of the Mish-an-Nock at the Finney dock. That vessel, when parked, is located approximately 16.1 and 20.4 feet from the extended common riparian boundary between the Finney and Schlotthauer properties.

21. In 2016, Finney sold the adjacent upriver property to Cherokee. It should be noted that Cherokee purchased his property after Finney's encroachment had been permitted and in place for 30 years. The two pilings at issue are between the Finney and Schlotthauer properties (and within Finney's extended riparian zone) and have absolutely no effect whatsoever on the upriver Cherokee property. Cherokee himself did not testify at the hearing so as to offer any specific articulation of any adverse effect his property is alleged to have had as a result of the permitted Finney encroachment or the Finney pilings to which this application pertains.

22. In 2016, Schlotthauer's predecessor-in-interest (Tom Mort) acquired his property, downriver from Finney, also 30 years after Finney's encroachment permit had been issued and placed into use.

23. When Mr. Mort made application for the current Schlotthauer encroachment permit, he submitted documentation of the parties' respective littoral (riparian) zones in a manner that did not use the chorded method. This can be seen by IDL Exhibit 19, page 12. What Mort did was to simply project the upland property lines straight into the river, which is not an accepted methodology for determining the boundaries of the parties' littoral zones. By utilizing this incorrect methodology, Mort showed the current Schlotthauer dock as being 10 feet from the extended common riparian boundary between the Finney and Schlotthauer properties. This was not accurate.

24. Mr. Magnuson testified that based upon the Welch-Comer survey commissioned by HMG, and utilizing the chorded method, the Mort/Schlotthauer encroachment is 7.2 feet from the common riparian boundary line rather than 10 feet.

25. During public testimony, Mike Hathaway, a Professional Land Surveyor employed with Welch-Comer, offered the results of his survey which are consistent to those to which Mr. Magnuson testified (as described above). A copy of the summary sheet of Mr. Hathaway's survey, showing the alternative zones based upon the accepted and preferred "chorded method" and based upon the perpendicular method (disfavored) was offered by Mr. Hathaway during the public testimony portion of the hearing and is attached hereto as Exhibit B for the Hearing Officer's convenience.

26. At the hearing, Schlotthauer offered lengthy testimony with little pertinent value to the issues at hand. Attached hereto as Exhibit C is a summary of the majority of Schlotthauer's "issues" with his neighbor, Finney. All of these issues relate to disagreements between neighbors as to upland uses and have virtually nothing to do with any issue under IDL's jurisdiction.

27. Schlotthauer personally assailed Mr. Finney while airing grievances of an immaterial

and irrelevant nature.

28. Schlotthauer did produce a photograph of a dock that was once tied to the two pilings at issue. Testimony from Diane and Fred Finney indicated that the dock had been constructed by Finney Boat Works, Inc. at the request of Kootenai County Waterways and was tied to the piling for one day before it was transported to Kootenai County for its intended use. This was an isolated instance and will not be repeated.

29. Schlotthauer also appeared to object to Finney's periodic moorage in a perpendicular nature at the end of his dock during periods of low water. An illustrative exhibit was offered by Schlotthauer and a copy is attached hereto as Exhibit D. It is unclear whether Schlotthauer objects to the two pilings that are the subject of this request because Finney ties the downstream end of his vessel to the most waterward of the two pilings as shown on Exhibit D.

30. The mooring of Finney's vessel in a perpendicular manner during periods of low water (which can be seen on the December 24, 2024 photograph attached as Exhibit D, as evidenced by the dock partially resting on the shore during low water) is an issue outside of IDL's regulatory mission. IDL does not regulate watercraft. Regardless of the nature of Finney's encroachment permit, if he moored a vessel of this nature in the manner depicted within the extended bounds of his riparian zone, then he would be acting in an entirely lawful manner.

31. Supporting authority is found in West v. Smith, 95 Idaho 550, 511 P.2d 1326 (1973). In West v. Smith, the Idaho Supreme Court held that a "littoral owner's right of access to the lake, free from unreasonable interference, attaches to all points of his shoreline...." West v. Smith, 95 Idaho at 556, 511 P.2d at 1332. The Finney vessel, as depicted in Exhibit E, regardless of the two pilings, is located within the entire extended littoral zone of the Finney property under either the

chorded method (favored) or the right-angle method (disfavored). The two pilings have nothing to do with this moorage and Schlotthauer's objections in this regard are not well put.

32. Although he offered no testimony at the hearing, Cherokee seemed to predicate his objections on his viewshed, notwithstanding the fact that he bought his property with an already permitted commercial encroachment in place on the adjacent Finney property for decades. Schlotthauer appeared to echo these sentiments as well. In Newton v. MJK/BJK, LLC, 167 Idaho 236, 242, 469 P.3d 23, 29 (2020), the Idaho Supreme Court held: "Notably, nothing in the LPA's definition of littoral rights confers the right to a particular view."

II. APPLICABLE STANDARDS.

As noted by IDL in its Pre-Hearing Statement, "The LPA Rule governing General Encroachment Standards provide a rebuttable presumption that commercial navigational encroachments and non-navigational encroachments will have an adverse effect upon adjacent littoral rights if located closer than twenty-five (25) feet to adjacent littoral rights lines. IDAPA 20.03.04.015.13.e."

Finney respectfully submits that the presumption has been more than adequately rebutted by the facts admitted at hearing. First, the Application deals with two pilings. The existing encroachment has already been permitted and has been permitted since 1986. Regardless, IDL confirms that the existing "commercial dock appears to provide a forty (40) foot buffer to the littoral line to the west, and a fifty (50) foot buffer to the littoral line to the east." See IDL's Pre-Hearing Statement at p. 7 and IDL-2 at 5, 6.

Second, the two pilings at issue are within 15.1 and 19.4 feet of the common riparian zone which Schlotthauer determined using the chorded method. However, since this is a commercial dock

that was specifically approved ago for large cruise vessels, including HMG's "Mish-an-Nock," it was clearly anticipated and has been the practice for 39 years that vessels moored on the downriver side of the permitted dock, for ingress and egress via the boat weigh, would extend to a point within 25 feet of the Schlotthauer/Finney common riparian line determined using the chorded method.

Third, these two pilings add approximately one foot to the established practice of mooring HMG's vessels. They do not constitute any further impact within the 25 foot zone other than of a *de minimis* nature.

Fourth, Schlotthauer knew of the existence of the previously permitted Finney encroachments, anticipated the moorage of vessels of a size such as the Mish-an-Nock, and chose to purchase the next door property, and to then build an encroachment that was permitted using the disfavored "right line" projection, closer than ten feet to the common Finney/Schlotthauer riparian line. Any minor or *de minimis* inconvenience to Schlotthauer was of Schlotthauer's own creation.

Fifth, Schlotthauer's primary objections, other than the irrelevant upland disputes with Finney and the assaults on Finney's character, relate to the one day moorage of a dock constructed by Finney for Kootenai County Waterways. This will not be repeated. They also relate to Finney's low-water moorage on a perpendicular basis at the end of the permitted encroachment which is necessitated by a lack of adequate draft on the dock during periods of low water. Even so, IDL does not regulate vessels on the lake or the river, and the moorage of Finney's vessel in a perpendicular manner during low water is entirely within the extended riparian zone of Finney and specifically acknowledged to be a valid exercise by the Idaho Supreme Court in West v. Smith, *supra*.

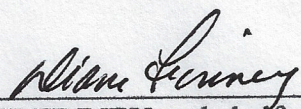
In summary, Schlotthauer has offered no evidence, by a preponderance of the evidence standard, that these two pilings will cause any impact on a recognized right of Schlotthauer, based

upon a weighing of the facts admitted at hearing. As for Cherokee, he has articulated no objection to his upland interest other than an alleged impairment of his view. This is not a cognizable interest protectable under Idaho law. See Newton v. MJK/BJK, LLC, supra.

III. CONCLUSION.

Based upon the reasons and authorities set forth above, and the facts admitted at hearing, Finney respectfully requests that the requested permit be granted.

DATED this 4th day of November, 2025.



DIANE FINNEY on behalf of
FINNEY BOAT WORKS, INC.

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that on the ____ day of November, 2025, I caused a true and correct copy of the foregoing document to be served in the following method to:

Ross Schlotthauer 6980 E. Maplewood Avenue Post Falls, ID 83854 208\755-8687 <i>Objector</i>	<u>E-MAIL TRANSMISSION:</u> ross@burlyproducts.com
George Cherokee 931 Cindy Jo Court Medical Lake, WA 99022 509\998-7550 <i>Objector</i>	<u>E-MAIL TRANSMISSION:</u> george@fcontrol.com
Idaho Department of Lands John Richards, General Counsel Kayleen Richter, Counsel 300 N. Sixth Street, Suite 103 Boise, ID 83702 208\334-0200 <i>Counsel for IDL</i>	<u>E-MAIL TRANSMISSION:</u> jrichards@idl.idaho.gov krichter@idl.idaho.gov
Amidy Fuson <i>Lands Resource Specialist-Navigable Waters</i> Marde Mensinger <i>Program Manager for Navigable Waters</i>	<u>E-MAIL TRANSMISSION:</u> afuson@idl.idaho.gov mmensinger@idl.idaho.gov
Kourtney Romine Rachel King Kayla Dawson <i>Service Contacts for IDL</i>	<u>E-MAIL TRANSMISSION:</u> kromine@idl.idaho.gov rking@idl.idaho.gov kdawson@idl.idaho.gov

OAH - General Government Division
P.O. Box 83720
Boise, ID 83720-0104
208\605-4300

E-MAIL TRANSMISSION:
filings@oah.idaho.gov
scott.zanzig@oah.idaho.gov

Scott Zanzig 11-4-25

FINNEY.BRIEF-POST HRG.wpd

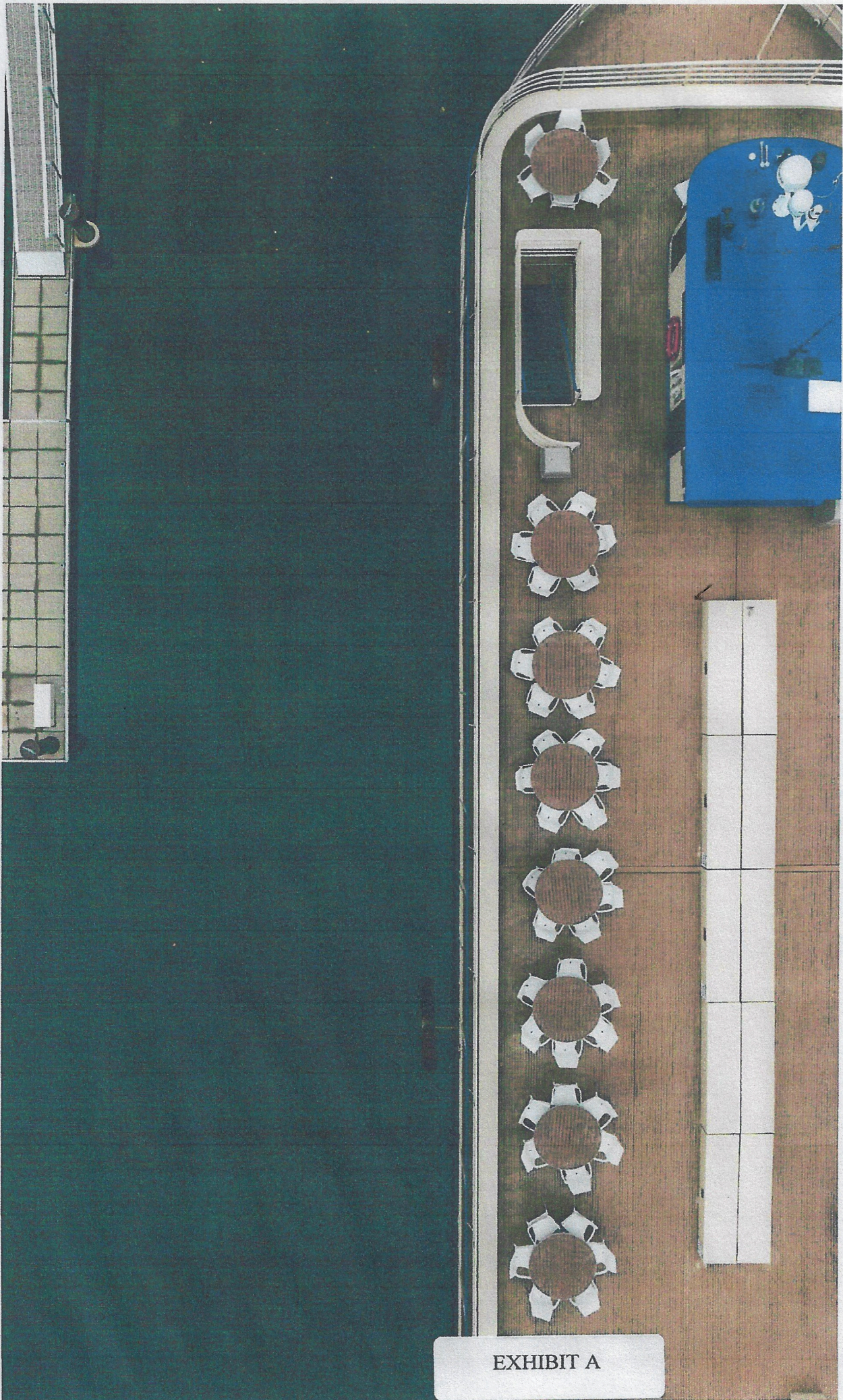
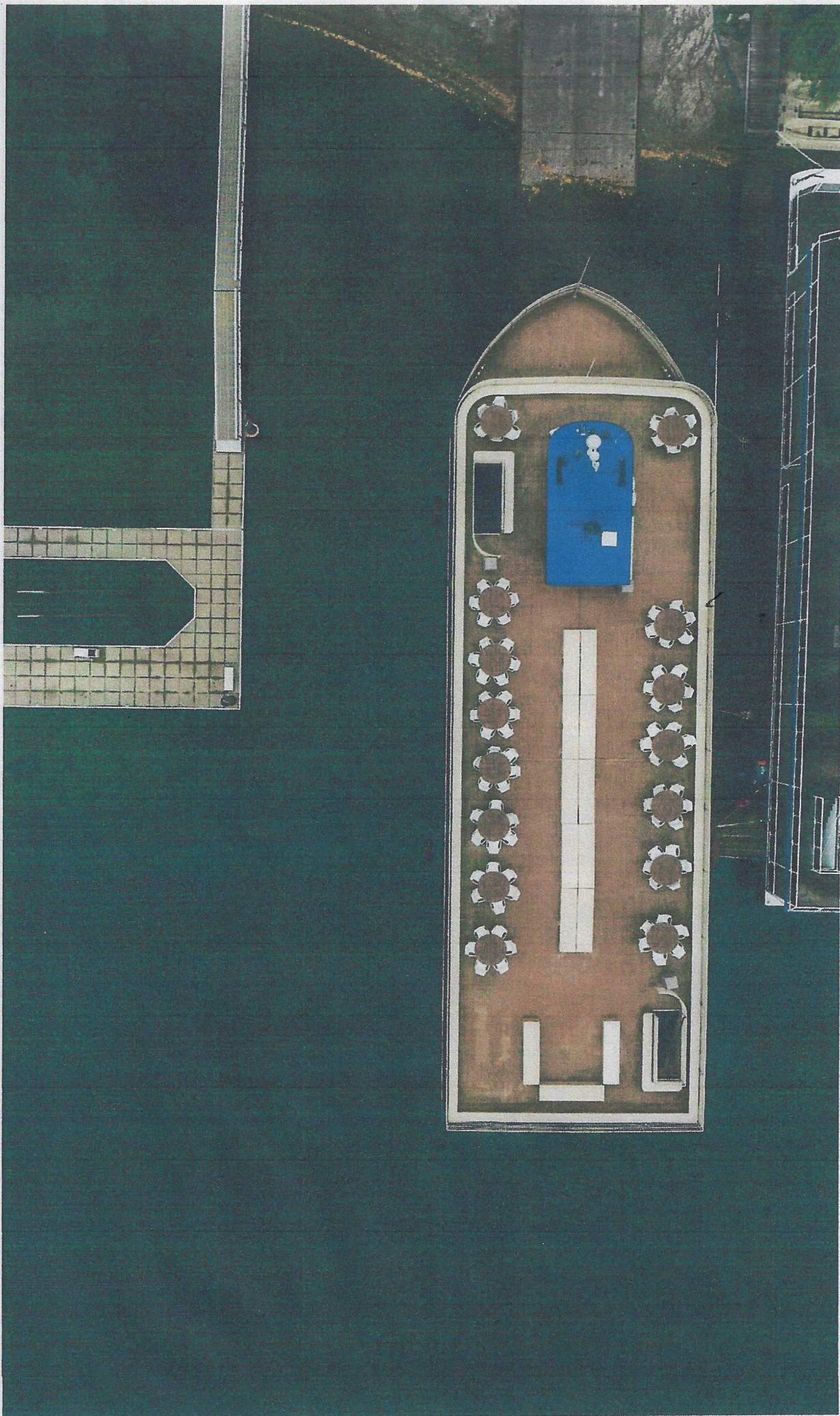


EXHIBIT A





BOISE MERIDIAN, KOOTENAI COUNTY, IDAHO

ROSS SCHLOTTHAUER
PARCEL NO. 50N04WB0450

FRED FINNEY
PARCEL NO. 50N04WB0475

GEORGE CHEROKEE
PARCEL NO. 50N04WB0500

LINE CONNECTING PROPERTY
LINE/OHW INTERSECTION FOR
CHORD METHOD

EDGE OF WATER
10-10-25

ORDINARY HIGH
WATERLINE (OHW)

CHORD METHOD
LITTORAL LINE

EXTENSION OF LOT LINE

PERPENDICULAR TO OHW

PILING

EXTENSION OF LOT LINE

15.1'

17.8'

7.2'

3.6'

19.4'

23.7'

SCALE: 1"=20'

PROFESSIONAL LAND SURVEYOR
MICHAEL LYNN HATHAWAY
STATE OF IDAHO
No. 2025.10.2
Exp. 06-02-0700

NOTES:
SURVEY AND AERIAL IMAGERY WERE CONDUCTED ON 10-10-25.
THIS IS NOT A BOUNDARY SURVEY

WELCH-COMER
ENGINEERS | SURVEYORS

www.welchconer.com
330 E. Lakeside Ave, Suite 101
Coeur d'Alene, ID 83814
(toll free) 877-315-5672
208-864-9382
(fax) 208-864-5946

COPYRIGHT 2025
Welch-Corner & Associates, Inc.
This document, and ideas and designs
corporate herein, as an instrument
professional service, is the property
of Welch-Corner & Associates, Inc.,
and is not to be used in whole or in
part for any other project without the
written authorization of Welch-Corner
& Associates, Inc.

SURVEY EXHIBIT OVERVIEW OF
CHORDED AND PERPENDICULAR METHOD
PARCEL NO. 50N04W080475
KOOTENAI COUNTY, IDAHO

PROJECT NUMBER: 41262
DESIGNED BY: MLH
DRAWN BY: MLH
DRAWING NAME: 41262 TOPOC.DWG
DATE: 20JUN04
SHEET NO: 1 OF 3

30

Finney Schlotthauer Financial History

- 1.) Shared Driveway Landscaping – Paid for by Schlotthauer, Maintained by Schlotthauer, Irrigated by Schlotthauer, Zero help from Finney.
- 2.) Shared Driveway Fencing – Paid for by Schlotthauer, Zero help from Finney.
- 3.) Shared Driveway – Paid for by Schlotthauer, Maintained By Schlotthauer, Seal Coating Paid by Schlotthauer, Zero help from Finney.
- 4.) Shared Driveway Landscaping – Paid for by Schlotthauer, Maintained by Schlotthauer, Irrigated by Schlotthauer, Zero help from Finney.
- 5.) Dog Invisible Fence Location as requested by Finney to protect all properties.
- 6.) Dog Invisible Fence Location requested by Finney when Father in Law brought poodle to visit.
- 7.) Subsequent fence section required by Finney, Finney Paid Half of Cost (Only ever financial contribution).
- 8.) Shared Beach Requested by Finney – Schlotthauer Paid all costs, Sand donated by mutual friend, Zero help from Finney.
- 9.) Shared Patio Area Requested by Finney – Schlotthauer paid all costs, maintenance, Finney shared an old fire pit.
- 10.) Property Line Dead Tree needing Removal – Schlotthauer paid all costs, Zero help from Finney.
- 11.) Property line Fence Finney Demanded – Schlotthauer paid all costs, Zero help from Finney.

2-24-2024 02:38:10 PM

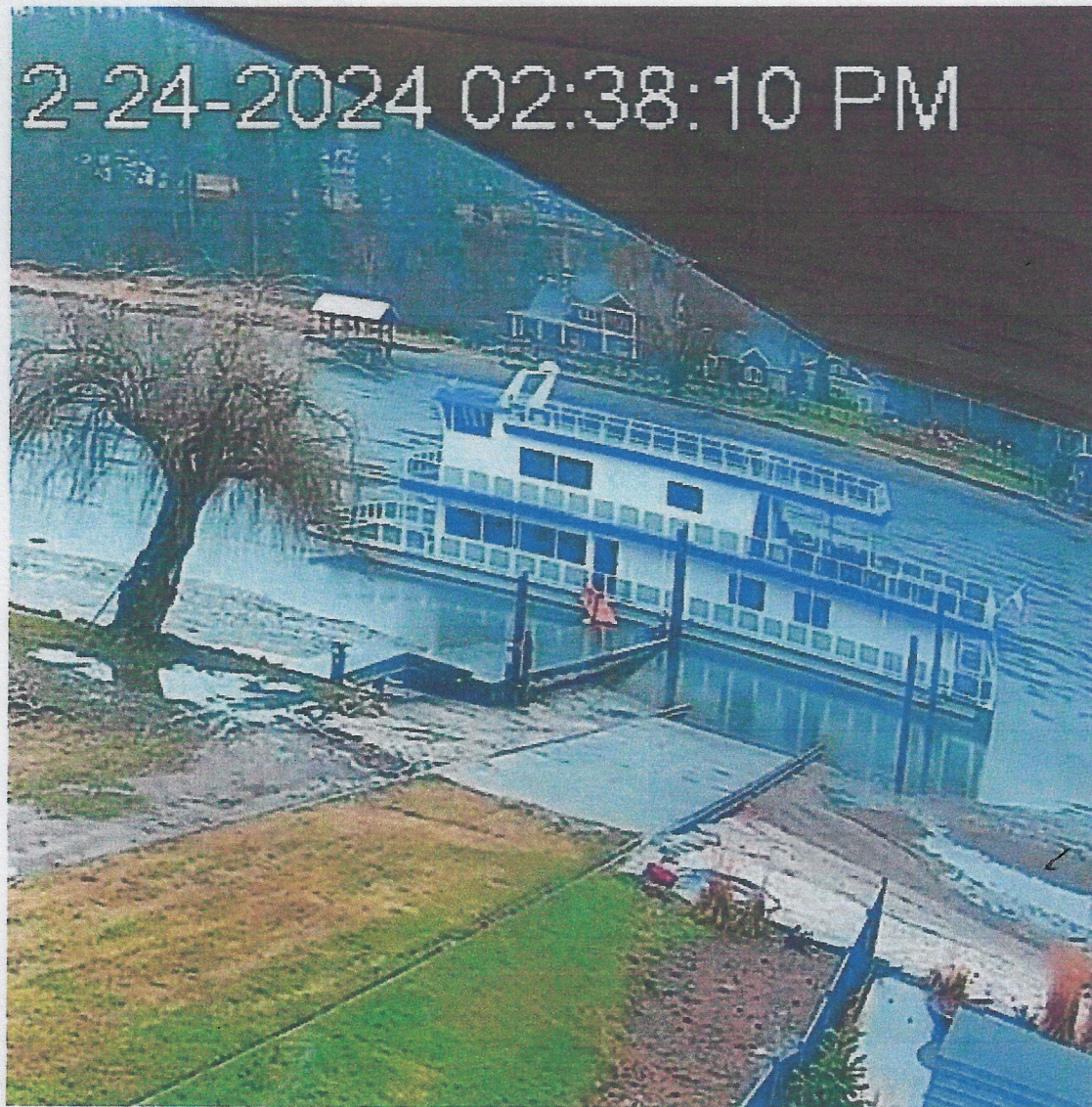


EXHIBIT D