

RESOLUTION 2018 - 7

A RESOLUTION ACCEPTING THE SETTLEMENT AGREEMENT AND MUTUAL RELEASE OF CLAIMS IN THE MATTER OF JOHN R. (JACK) LIEN, DAWN LIEN v. TIMOTHY P. REDMOND, CAROL MARIE REDMOND, JOHN DOES 1-5 v. LEWIS AND CLARK COUNTY v. GLENN AND LESLIE VAN DYKE, DDV-2014-408

WHEREAS, Lewis and Clark County filed a Motion to Intervene in the district court action DDV-2014-408 to establish with the court certain plat restrictions and covenants that were in effect and being violated by the parties such as disturbing areas within the non-disturbance setback, and the Court granted the Motion; and


WHEREAS, the County determined reaching a settlement agreement would be in the best interest of the County; and

WHEREAS, the parties have now reached a settlement agreement in this matter that resolves all claims identified in said agreement; and

NOW, THEREFORE, BE IT RESOLVED that the Board of County Commissioners hereby accepts the Settlement Agreement and Mutual Release of Claims attached hereto as Exhibit A.

Dated this 18 day of January, 2018.

BOARD OF COUNTY COMMISSIONERS
LEWIS AND CLARK COUNTY


Andy Hunthausen, Chair



ATTEST:


Paulette J. DeHart, Clerk of Board



SETTLEMENT AGREEMENT AND MUTUAL RELEASE OF CLAIMS

PARTIES: John R. (Jack) Lien and Dawn S. Lien ("Liens"), and their heirs, personal representatives, successors, assigns, and agents

Timothy P. Redmond and Carol M. Redmond ("Redmonds"), and their heirs, personal representatives, successors, assigns, and agents

Lewis and Clark County ("the County"), and its heirs, personal representatives, successors, assigns, and agents

Glenn and Leslie Van Dyke ("Van Dykes"), and their heirs, personal representatives, successors, assigns, and agents

DATE OF CASUALTY: Any date on or before the date of this Release.

DESCRIPTION OF CASUALTY:

(1) All claims related to the validity and scope of Liens' "Easement for Ingress and Egress," which was first recorded in the records of the Lewis and Clark County Clerk and Recorder on February 7, 2005, as Document 3078852 ("First Easement") and later amended and recorded in the records of the Lewis and Clark County Clerk and Recorder on June 15, 2017, as Document 3306684 ("Amended Easement"); and

(2) All claims related to the validity and scope of Van Dykes' "Easement for Ingress and Egress," which was recorded in the records of the Lewis and Clark County Clerk and Recorder on December 26, 2017, as Document 3316241; and

(3) All claims related to the enforcement of any alleged violations of plat restrictions, restrictive covenants, and/or the Settlement Agreement in Cause No. CDV-2008-698.

CIVIL ACTIONS: *Lien v. Weeden et al.*, DDV-2014-408 (Montana First Judicial District Court); *Lewis and Clark County v. Dowson*, CDV-2008-698 (Montana First Judicial District Court).

1. **Settlement Consideration.** This paragraph sets forth the consideration given and received by all Parties to secure full and final resolution of all claims identified herein:

a. The County will not require any remediation or removal or restriction on the continued use of existing landmarks and improvements of Tract 2B of the Holter Lake View Tracts as shown on COS 258650/E ("Tract 2B"), including the parking areas, existing road to the lakeshore, two existing dock heads and attached docks, and the Liens' separate existing dock, gangplank, stairs and narrow pedestrian trail. The "baseline" for any future enforcement actions should be the property as it currently exists as of November 1, 2017, and any future enforcement action should not attempt to remedy or remediate any existing conditions on the property. The current condition of the property is most accurately depicted in the 2017 Updated Engineer's Drawing (attached hereto as Exhibit 1 and incorporated as though set forth herein).

b. The Redmonds will provide the original executed Amended Easement to the Liens to be re-recorded to include the maps identified as "Exhibit A" and "Exhibit B" (attached hereto). The Redmonds will provide this original document to the Liens within 15 days of their execution of this Settlement Agreement.

c. The Redmonds and any future owners of Tract 2B shall sign dock applications for approval of existing docks by the Army Corps of Engineers and Lewis and Clark County Conservation District (attached hereto as Exhibit 2). The Redmonds will sign and return Exhibit B to the Liens within 15 days of their execution of this Settlement Agreement.

d. The Redmonds will perform the following remediation/revegetation on Tract 2B:

- (1) Redmonds will revegetate the area within the setback disturbed by Dowson's RV park development. Redmonds agree to add sufficient top soil to revegetate the entire area within the setback disturbed by the RV park, then broadcast dry land grass mix and then rake over to secure the seed.
- (2) Redmonds will hydro mulch or install appropriate erosion netting or mat on the cut slope above parking area B as described in the easements issued for Tract 2B.

e. The Liens will withdraw the *Lis Pendens* they recorded against Tract 2B on August 11, 2014, as Document 3261577 within 15 days of their execution of this Settlement Agreement.

f. The Parties will jointly stipulate to dismiss with prejudice Cause No. DDV-2014-408. The County also shall dismiss with prejudice Cause No. CDV-2008-698, and hereby agrees that the Settlement Agreement entered into with John and Angela Dowson arising from CDV 2008-698 has been fully discharged and settled and of no further legal effect or obligation to the Parties.

g. Any Party with a legal right to possess or use Tract 2B will be required to comply with the existing covenants and restrictions on the property, including the restrictions prohibiting development within the 400 building setback line beyond that necessary for revegetation and erosion control. A Party who violates any such covenants and restrictions shall be individually liable for such violation, the enforcement action, and any required remediation and shall indemnify, defend, and hold harmless other owners or easement holders from any claims related to such person's unlawful actions.

h. The Parties shall relinquish their rights to any claims for attorney's fees and other costs, including costs associated with any public records request.

i. The Parties will submit this Settlement Agreement to the Court to have it entered as a judgment in this case.

2. Mutual Release

In exchange for the consideration set forth above, the receipt of which is hereby acknowledged, the Parties fully and forever release and discharge each other and their heirs, personal representatives, successors, assigns, agents, partners, employees and attorneys from any and all actions, claims, causes of action, demands, or expenses for damages or injuries, whether asserted or unasserted, known or unknown, foreseen or unforeseen, arising out of the allegations within the scope of this Settlement and Release, as set forth above.

3. Future Damages

Inasmuch as the injuries, damages, and losses resulting from the events described herein may not be fully known and may be more numerous or more serious than it is now understood or expected, the Parties hereto agree, as a further consideration of this Agreement, that this Release applies to any and all injuries, damages and losses resulting from the event described herein, even though now unanticipated, unexpected and unknown, as well as any and all injuries, damages and losses which have already developed and which are now known or anticipated.

4. No Admission of Liability

It is understood that the promises set forth in the Settlement Agreement and Mutual Release are accepted as the sole consideration for full satisfaction and accord to compromise a disputed claim, and that neither the mutual promises of the Parties nor the negotiations for settlement shall be considered as an admission of liability by any Party.

5. No Additional Claims

The Parties represent that no additional claims are contemplated against any other Party potentially liable for the losses, damages, and injuries for which this Release is given. In the event any additional claim is made which directly or indirectly results in additional liability exposure to the Parties for the losses, injuries, and damages for which this Release is given, the Parties covenant and agree to indemnify and save each other harmless from all such claims and demands, including reasonable attorneys' fees and all other expenses necessarily incurred.

6. Disclaimer

The Parties have carefully read the foregoing, discussed its legal effect with their attorney, understand the contents thereof, and sign the same of each Party's own free will and accord.

7. Binding Effect


This Agreement shall be binding upon the each Party's heirs, successors, personal representatives, members, and assigns.

8. Counterparts


This Agreement may be executed in one or more counterparts or duplicates, each of which shall be deemed an original copy of this Agreement and all of which, when taken together, shall be deemed to constitute one and the same Agreement.

DATED this 8th day of January, 2018.

CAUTION: READ BEFORE SIGNING!



John R. Lien



Dawn S. Lien

Timothy P. Redmond

Carol M. Redmond

5. **No Additional Claims**

The Parties represent that no additional claims are contemplated against any other Party potentially liable for the losses, damages, and injuries for which this Release is given. In the event any additional claim is made which directly or indirectly results in additional liability exposure to the Parties for the losses, injuries, and damages for which this Release is given, the Parties covenant and agree to indemnify and save each other harmless from all such claims and demands, including reasonable attorneys' fees and all other expenses necessarily incurred.

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DATED this ____ day of January, 2018.

CAUTION: READ BEFORE SIGNING!

John R. Lien

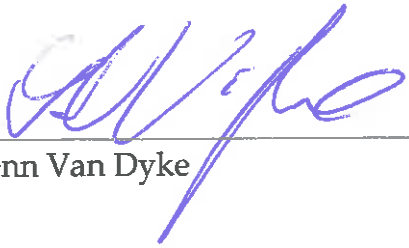
Dawn S. Lien



Timothy P. Redmond



Carol M. Redmond



Glenn Van Dyke



Leslie Van Dyke

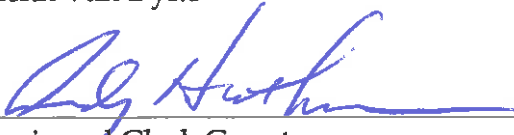
Lewis and Clark County

By:

Its:

Glenn Van Dyke

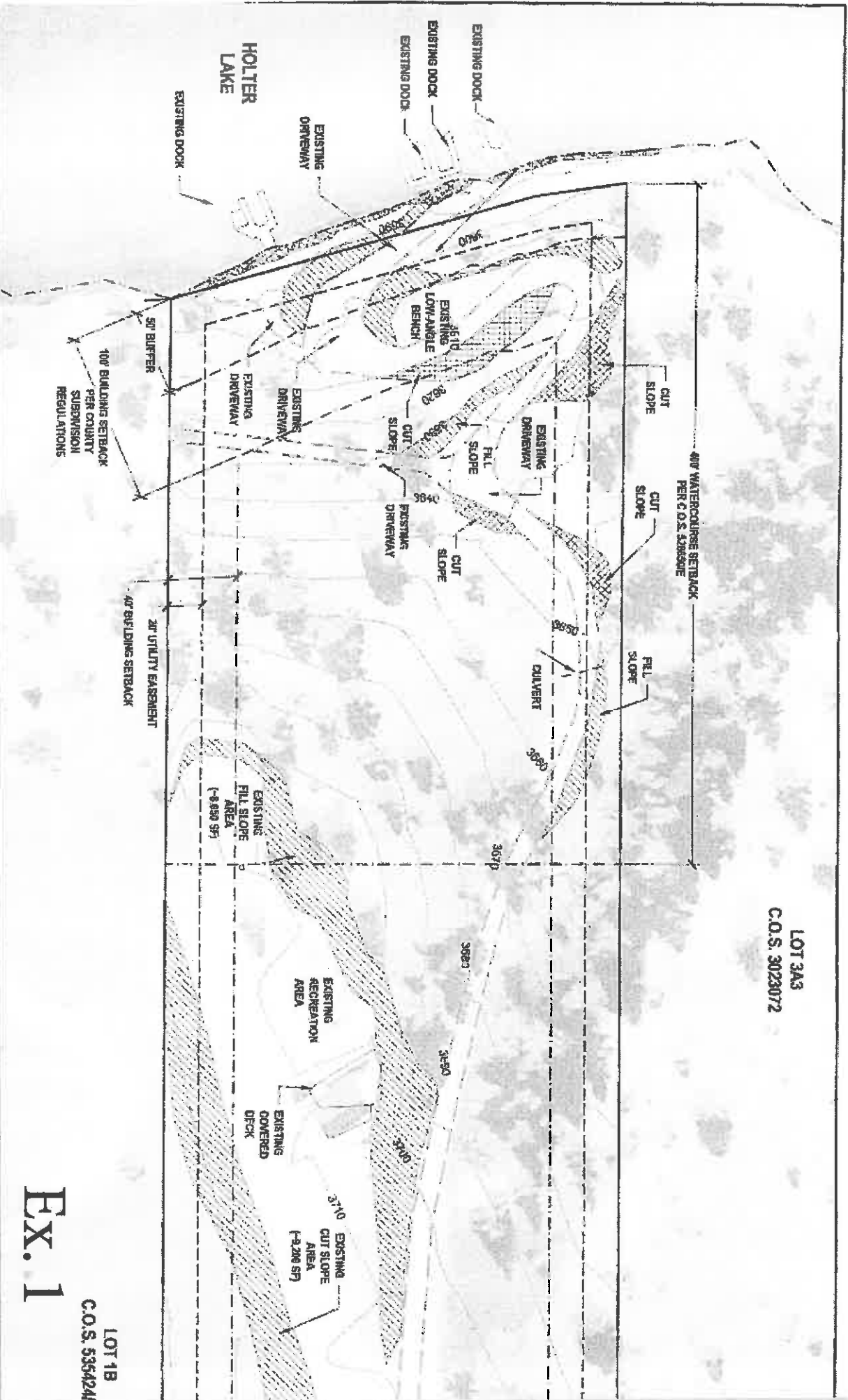
Leslie Van Dyke



Lewis and Clark County

By: Andy Hunthausen

Its: Chair, Board of Commissioners



LOT 3A3
C.O.S. 3023072

LOT 1B
C.O.S. 5364241

EX. 1

Revised: 6/5/15 (310 form 270). Form may be downloaded from: www.dnrc.mt.gov/licenses-and-permits/stream-permitting

AGENCY USE ONLY: Application # _____ Date Received _____
 Date Accepted _____ / Initials _____ Date Forwarded to DFWP _____

This space is for all Department of Transportation and SPA 124 permits (government projects).

Project Name _____
 Control Number _____ Contract letting date _____
 MEPA/NEPA Compliance Yes No If yes, #14 of this application does not apply.

JOINT APPLICATION FOR PROPOSED WORK IN MONTANA'S STREAMS, WETLANDS, FLOODPLAINS, AND OTHER WATER BODIES

Use this form to apply for one or all local, state, or federal permits listed below. The applicant is the responsible party for the project and the point of contact unless otherwise designated. "Information for Applicant" includes agency contacts and instructions for completing this application. To avoid delays, submit all required information, including a project site map and drawings. Incomplete applications will result in the delay of the application process. Other laws may apply.

The applicant is responsible for obtaining all necessary permits and landowner permission before beginning work.

<input type="checkbox"/>	<u>PERMIT</u>	<u>AGENCY</u>	<u>FEE</u>
<input checked="" type="checkbox"/>	310 Permit	Local Conservation District	No fee
<input type="checkbox"/>	SPA 124 Permit	Department of Fish, Wildlife and Parks	No fee
<input type="checkbox"/>	Floodplain Permit	Local Floodplain Administrator	Varies by city/county (\$25 - \$500+)
<input type="checkbox"/>	Section 404 Permit, Section 10 Permit	U. S. Army Corps of Engineers	Varies (\$0 - \$100)
<input type="checkbox"/>	318 Authorization 401 Certification	Department of Environmental Quality	\$250 (318); \$400 - \$20,000 (401)
<input type="checkbox"/>	Navigable Rivers Land Use License, Lease, or Easement	Department of Natural Resources and Conservation, Trust Lands Management Division	\$50, plus additional fee

A. APPLICANT INFORMATION

NAME OF APPLICANT (person responsible for project): John & Dawn Lien
 Has the landowner consented to this project? Yes No
 Mailing Address: 3505 Jasper Rd Great Falls, MT 59404
 Physical Address: 1795 Beartooth Rd Wolf Creek, MT 59648
 Day Phone: 406-788-0711 Evening Phone: 406-453-3586 E-Mail: jlien@mt.net

NAME OF LANDOWNER (if different from applicant): Timothy P. Redmond
 Mailing Address: P.O. Box 266 Wolf Creek, MT 59648
 Physical Address: 1770 Beartooth Rd Wolf Creek, MT 59648
 Day Phone: 239-292-7043 Evening Phone: 239-292-7043 E-Mail: N/A

NAME OF CONTRACTOR/AGENT): N/A
 Mailing Address: N/A
 Physical Address: N/A
 Day Phone: N/A Evening Phone: N/A E-Mail: N/A

B. PROJECT SITE INFORMATION

NAME OF STREAM or WATER BODY at project location Holter Lake Nearest Town Wolf Creek, MT
 Address/Location: 1770 Beartooth Rd Geocode (if available): 05-2342-10-3-01-08-0000
 Choose. 1/4 Choose. 1/4 Choose. 1/4, Section 10, Township 14N, Range 3W County Lewis & Clark
 Longitude -111.97772, Latitude 46.97842

The state owns the beds of certain state navigable waterways. Is this a state navigable waterway? Yes If yes, send copy of this application to appropriate DNRC land office – see Information for Applicant.

ATTACH A PROJECT SITE MAP OR A SKETCH that includes: 1) the water body where the project will take place, roads, tributaries, landmarks; 2) a circled "X" representing the exact project location. **IF NOT CLEARLY STATED ON THE MAP OR SKETCH, PROVIDE WRITTEN DIRECTIONS TO THE SITE.**

C. PROJECT INFORMATION

1. TYPE OF PROJECT (check all that apply)

- | | | |
|---|---|--|
| <input type="checkbox"/> Bridge/Culvert/Ford Construction | <input type="checkbox"/> Fish Habitat | <input type="checkbox"/> Mining |
| <input type="checkbox"/> Bridge/Culvert/Ford Removal | <input checked="" type="checkbox"/> Recreation (docks, marinas, etc.) | <input type="checkbox"/> Dredging |
| <input type="checkbox"/> Road Construction/Maintenance | <input type="checkbox"/> New Residential Structure | <input type="checkbox"/> Core Drill |
| <input type="checkbox"/> Bank Stabilization/Alteration | <input type="checkbox"/> Manufactured Home | <input type="checkbox"/> Placement of Fill |
| <input type="checkbox"/> Flood Protection | <input type="checkbox"/> Improvement to Existing Structure | <input type="checkbox"/> Diversion Dam |
| <input type="checkbox"/> Channel Alteration | <input type="checkbox"/> Commercial Structure | <input type="checkbox"/> Utilities |
| <input type="checkbox"/> Irrigation Structure | <input type="checkbox"/> Wetland Alteration | <input type="checkbox"/> Pond |
| <input type="checkbox"/> Water Well/Cistern | <input type="checkbox"/> Temporary Construction Access | <input type="checkbox"/> Debris Removal |
| <input type="checkbox"/> Excavation/Pit | <input type="checkbox"/> Other _____ | |

2. PLAN OR DRAWING of the proposed project **MUST** be attached. **This plan or drawing must include:**

- a plan view (looking at the project from above)
- dimensions of the project (height, width, depth in feet)
- location of storage or stockpile materials
- drainage facilities
- an arrow indicating north
- a cross section or profile view
- an elevation view
- dimensions and location of fill or excavation sites
- location of existing or proposed structures, such as buildings, utilities, roads, or bridges

3. IS THIS APPLICATION FOR an annual maintenance permit? Yes No
(If yes, an annual plan of operation must be attached to this application – see "Information for Applicant")
Boat docks (floating EZ Docks) will be installed and removed seasonally

4. PROPOSED CONSTRUCTION DATE. Include a project timeline. Start date seasonal
Finish date seasonal Is any portion of the work already completed? Yes No
(If yes, describe the completed work.)
This is not a construction "project". It is an application for a seasonal recreational dock permit.

5. WHAT IS THE PURPOSE of the proposed project?

Seasonal recreational dock for personal use.

6. PROVIDE A BRIEF DESCRIPTION of the proposed project.

Install using manpower of seasonal floating EZ Dock boat docks and six 2 inch galvanized posts with auger tips into the lake bed.

7. WHAT IS THE CURRENT CONDITION of the proposed project site? Describe the existing bank condition, bank slope, height, nearby structures, and wetlands.
The existing bank is rock riprap that is 3 to 5 feet in height in good condition.

8. PROJECT DIMENSIONS. How many linear feet of bank will be impacted? How far will the proposed project encroach into and extend away from the water body?

The walkway ramp is 3 feet in width and extends 3 to 4 feet onto the shore.

9. **VEGETATION.** Describe the vegetation present on site. How much vegetation will be disturbed or covered with fill material during project installation? (Agencies require that only vegetation necessary to do the work be removed.) Describe the revegetation plan for all disturbed areas of the project site in detail.

No fill material will be placed on the existing grass vegetation on the shore.

10. **MATERIALS.** Describe the materials proposed to be used. Note: This may be modified during the permitting process. It is recommended you do not purchase material until all permits are issued.

Cubic yards/Linear feet
n/a

Size and Type
n/a

Source
n/a

11. **EQUIPMENT.** List all equipment that will be used for construction of the project. How will the equipment be used on the bank and/or in the water? Note: Make sure equipment is clean and free of weeds, weed seeds, and excess grease before using it in the water waterway. To prevent the spread of aquatic invasive species, to the extent practical, remove mud and aquatic plants from heavy machinery and other equipment before moving between waters and work sites, especially in waters known to be infested with aquatic invasive species. Drain water from machinery and let dry before moving to another location.

No equipment will be used in installing the docks. Manpower will be used to "auger" the 2 inch galvanized poles into the lakebed.

12. **DESCRIBE PLANNED EFFORTS TO MINIMIZE PROJECT IMPACTS.** Consider the impacts of the proposed project, even if temporary. What efforts will be taken to:

- Minimize erosion, sedimentation, or turbidity?

The 2 inch galvanized poles with auger tips will be installed carefully with manpower to reduce turbidity. No powered equipment will be used in the installation.

- Minimize stream channel alterations?

N/A

- Minimize effects to stream flow or water quality caused by materials used or removal of ground cover?

N/A

[Click here to enter text.](#)

- Minimize effects on fish and aquatic habitat?

The 2 inch galvanized poles with auger tips will be installed carefully with manpower to reduce turbidity. No powered equipment will be used in the installation.

- Minimize risks of flooding or erosion problems upstream and downstream?

N/A

- Minimize vegetation disturbance, protect existing vegetation, and control weeds?

Care will be taken to not disturb any existing vegetation

13. **WHAT ARE THE NATURAL RESOURCE BENEFITS** of the proposed project?

N/A

14. **LIST ALTERNATIVES** to the proposed project. Why was the proposed alternative selected?

[Click here to enter text.](#)

D. ADDITIONAL INFORMATION FOR SECTION 404, SECTION 10, AND FLOODPLAIN PERMITS ONLY.

If applying for a Section 404 or Section 10 permit, fill out questions 1-3. If applying for a floodplain permit, fill out questions 3-6. (Additional information is required for floodplain permits – See “Information for Applicant.”)

1. Will the project involve placement of dredged (excavated) and/or fill material below the ordinary high water mark, in a wetland, or other waters of the US? If yes, what is the surface area to be filled? How many cubic yards of fill material will be used? Note: Wetland delineations are required if wetlands are affected.

N/A

2. Description of avoidance, mitigation, and compensation (see Information for Applicant). Attach additional sheets if necessary.

N/A

3. List the names and address of landowners adjacent to the project site. This includes properties adjacent to and across from the project site. (Some floodplain communities require certified adjoining landowner lists).

1790 Beartooth Rd Donna Plant P.O. Box 6476, Great Falls, MT 59406

1714 Beartooth Rd Holter Lake Property LLC; P.O. Box 240 Palo Alto, CA 94302-0246

4. List all applicable local, state, and federal permits and indicate whether they were issued, waived, denied, or pending. Note: All required local, state, and federal permits, or proof of waiver must be issued prior to the issuance of a floodplain permit.

N/A

5. Floodplain Map Number [Click here to enter map number or N/A.](#)

6. Does this project comply with local planning or zoning regulations? Yes No

E. SIGNATURES/AUTHORIZATIONS – Each agency must have original signatures signed in blue ink.

After completing the form, make the required number of copies and **then sign each copy.** Send the copies with original signatures and additional information required directly to each applicable agency.

The statements contained in this application are true and correct. The applicant possess' the authority to undertake the work described herein or is acting as the duly authorized agent of the landowner. The applicant understands that the granting of a permit does not include landowner permission to access land or construct a project. Inspections of the project site after notice by inspection authorities are hereby authorized.

APPLICANT (Person responsible for project):

LANDOWNER:

Print Name: John Lien

Print Name: Timothy Redmond

John Lien 9/18/17
Signature of Applicant Date

Signature of Landowner Date

*CONTRACTOR/AGENT:

Print Name: n/a

Signature of Contractor/Agent Date

*Contact agency to determine if contractor signature is required.

ATTACH A PROJECT SITE MAP OR A SKETCH that includes: 1) the water body where the project will take place, roads, tributaries, landmarks; 2) a circled "X" representing the exact project location. IF NOT CLEARLY STATED ON THE MAP OR SKETCH, **PROVIDE WRITTEN DIRECTIONS TO THE SITE.**

C. PROJECT INFORMATION

1. **TYPE OF PROJECT** (check all that apply)

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| <input type="checkbox"/> Excavation/Pit | <input type="checkbox"/> Other _____ | |

2. **PLAN OR DRAWING** of the proposed project **MUST** be attached. **This plan or drawing must include:**

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- drainage facilities
- an arrow indicating north
- a cross section or profile view
- an elevation view
- dimensions and location of fill or excavation sites
- location of existing or proposed structures, such as buildings, utilities, roads, or bridges

3. **IS THIS APPLICATION FOR** an annual maintenance permit? Yes No

(If yes, an annual plan of operation must be attached to this application – see "Information for Applicant")

Boat docks (floating EZ Docks) will be installed and removed seasonally

4. **PROPOSED CONSTRUCTION DATE.** Include a project timeline. Start date seasonal

Finish date seasonal Is any portion of the work already completed? Yes No

(If yes, describe the completed work.)

This is not a construction "project". It is an application for a seasonal recreational dock permit.

5. **WHAT IS THE PURPOSE** of the proposed project?

Seasonal recreational dock for personal use.

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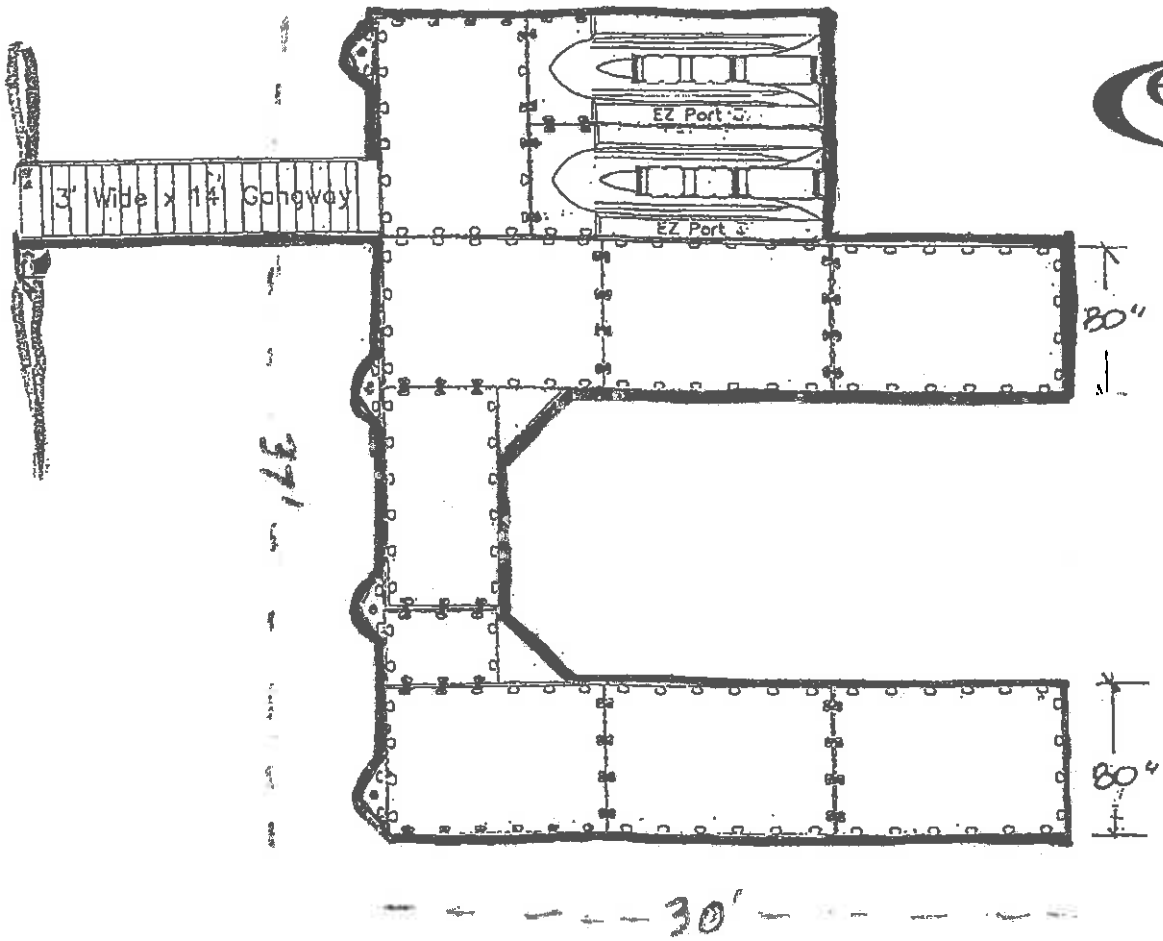
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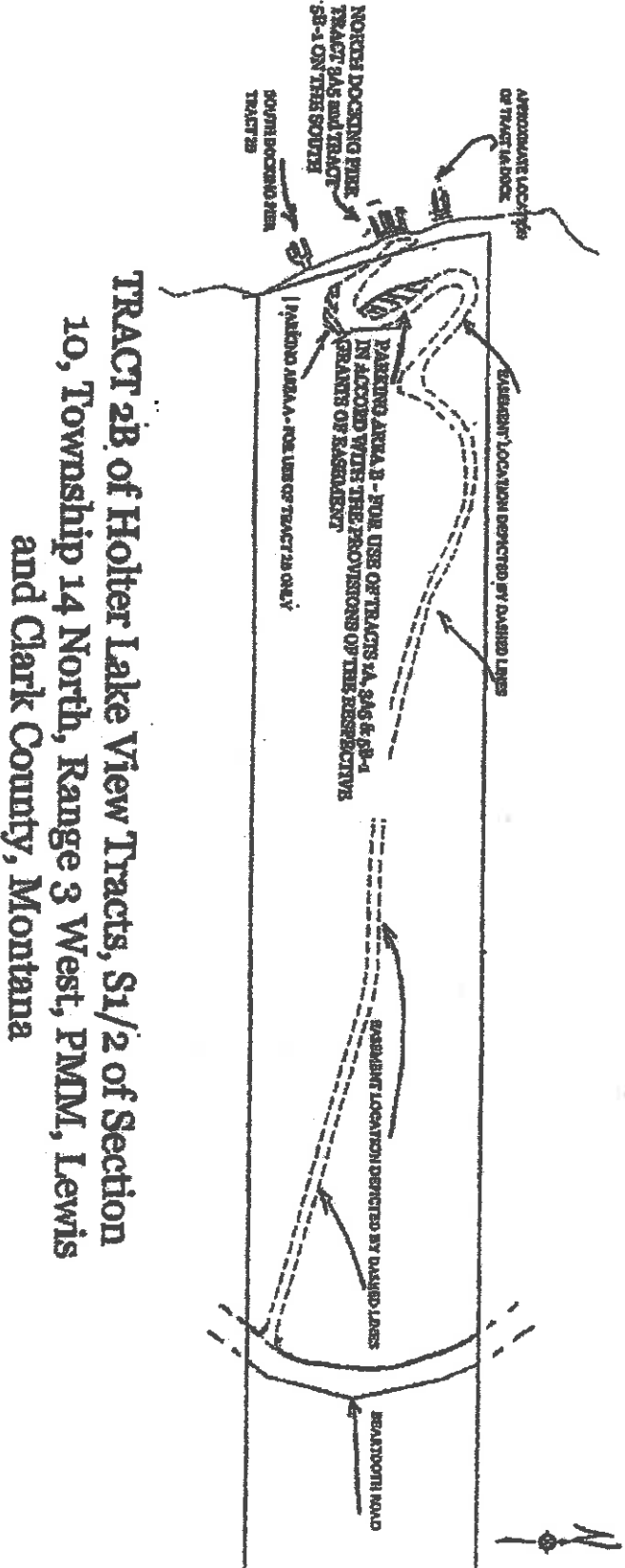
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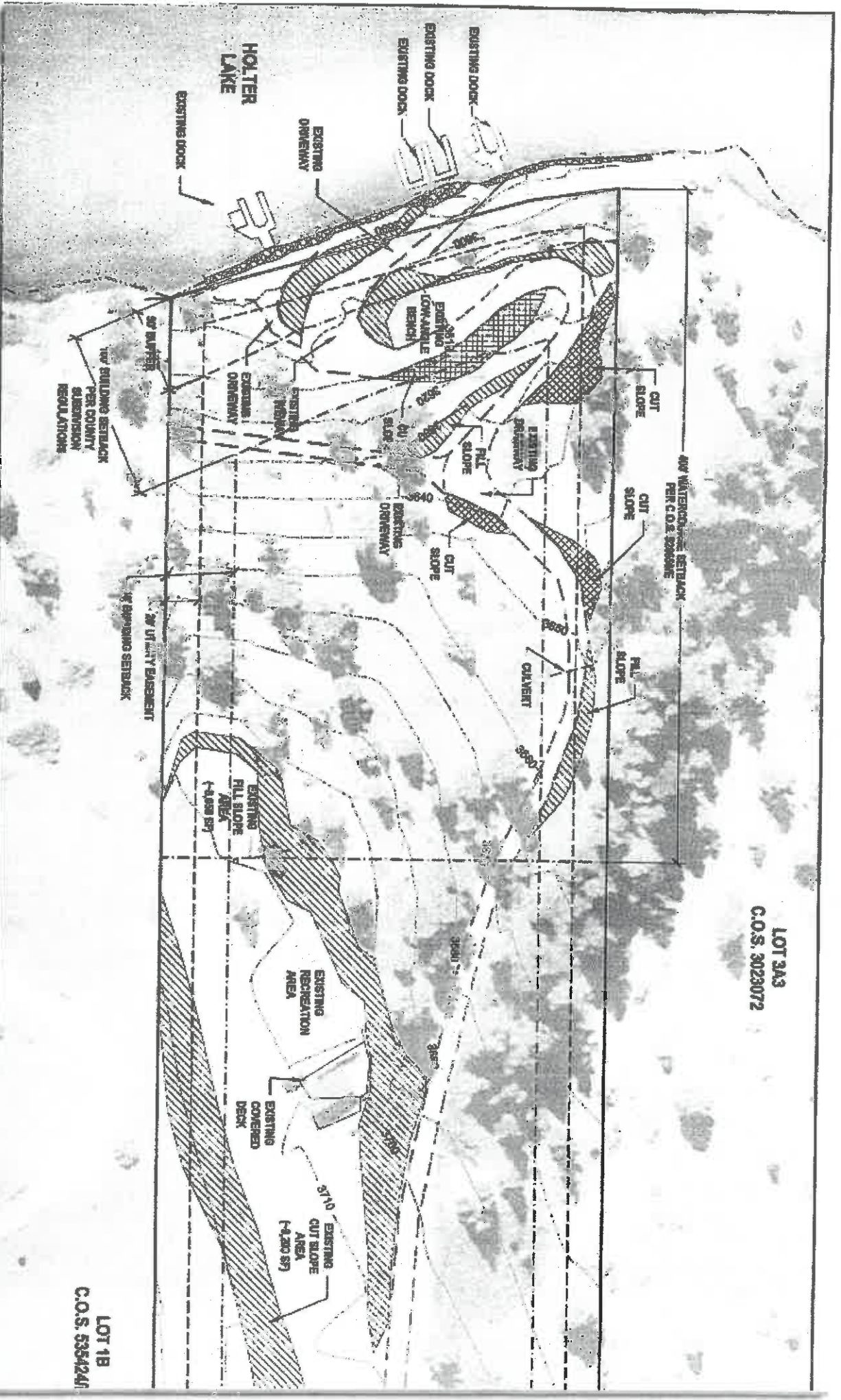
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The walkway ramp is 3 feet in width and extends 3 to 4 feet onto the shore.





TRACT 2B of Holter Lake View Tracts, S1/2 of Section 10, Township 14 North, Range 3 West, P1M1, Lewis and Clark County, Montana



EXHIBIT

B