

GEORGE BACON
Interim Director
Idaho Department of Lands
954 W. Jefferson Street
P.O. Box 83720
Boise, Idaho 83720-0050

BEFORE THE STATE BOARD OF LAND COMMISSIONERS
STATE OF IDAHO

In the Matter of;)
)
Line of Navigability) **FINAL ORDER**
Lower Twin Lake)
)
)
)
_____)

I. NATURE OF PROCEEDINGS/ISSUES

A public hearing was held on May 2, 2007 at 6:00 pm PST at the Idaho Department of Lands office in Coeur d'Alene, Idaho. Michael J. Murphy served as Hearing Coordinator. The Hearing Coordinator issued his Recommendation on May 25, 2007.

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

- I have read the transcript of the public hearing conducted in Coeur d'Alene, Idaho on May 2, 2007.
- I have reviewed the record including all documents and exhibits.
- I have examined the Hearing Coordinator's Recommendation in light of the entire record.

II. FINDINGS OF FACT

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

III. CONCLUSIONS OF LAW

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

IV. FINAL ORDER

On the basis of the record, it is my order that the line of navigability in the area of Applicant's proposed community dock on the western side of Lower Twin Lake be established at 70 feet from the shoreline at low water.

This is a final order of the agency. Any party may file a motion for reconsideration of this final order within twenty (20) days of the date of this final order. The agency will dispose of the petition for reconsideration within thirty (30) days of its receipt, in accordance with IDAPA 20.03.04.030.09.

DATED this 30th day of May, 2007.

For Robert M. Branner, AD, LMR
GEORGE BACON
Interim Director

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that on this 30th day of May 2007, I caused to be served a true and correct copy of the foregoing document, by the method indicated:

Nick Crema
Idaho Department of Lands
954 W. Jefferson
Boise, ID 83720-0050

- U.S. Mail, postage prepaid
- Hand Delivery
- Federal Express
- Facsimile: _____
- Statehouse Mail

Mr. Marty Franz
P.O Box 1401
Rathdrum, ID 83858

- U.S. Mail, postage prepaid
- Hand Delivery
- Federal Express
- Facsimile: _____
- Statehouse Mail

Mr. Ronald Halsted
21962 N. Molly Lane
Twin Lakes Village, ID 83858

- U.S. Mail, postage prepaid
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Mr. Jonathon Franz
2667 N. Sparrow Loop
Rathdrum, ID 83858

- U.S. Mail, postage prepaid
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- Facsimile: _____
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Mr. Eric A. Carlson
2617 S. Bowdish Rd
Spokane, WA 99206

- U.S. Mail, postage prepaid
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- Federal Express
- Facsimile: _____
- Statehouse Mail

Mr. Ralph Ward
5591 W. Racquet Road
Rathdrum, ID 83858

- U.S. Mail, postage prepaid
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Mr. Michael E. Reagan
1044 NW Blvd Suite D
Coeur d'Alene, ID 83814


- U.S. Mail, postage prepaid
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- Federal Express
- Facsimile: _____
- Statehouse Mail

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

- U.S. Mail, postage prepaid
- Hand Delivery
- Federal Express
- Facsimile: _____
- Statehouse Mail

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Idaho Department of Lands
954 W. Jefferson
Boise, ID 83720-0050

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- Federal Express
- Facsimile: _____
- Statehouse Mail

for 
MICHAEL J. MURPHY
Bureau Chief
Bureau of Surface and Mineral Resources
Idaho Department of Lands

**BUREAU OF SURFACE
AND MINERAL
RESOURCES**

954 West Jefferson
Post Office Box 83720
Boise ID 83720-0050
Phone (208) 334-0200
Fax (208) 334-2330



GEORGE B. BACON
INTERIM DIRECTOR
EQUAL OPPORTUNITY EMPLOYER

STATE BOARD OF LAND COMMISSIONERS

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

May 25, 2007

MEMORANDUM

TO: George Bacon, Director

FROM: Mike Murphy, Bureau Chief

SUBJECT: Line of Navigability Hearing – Lower Twin Lake

I. INTRODUCTION AND BACKGROUND

The following document, which includes a recommendation for your consideration, was prepared following a public hearing conducted by the Idaho Department of Lands (IDL). The purpose of the public hearing was to establish the line of navigability for a portion of Lower Twin Lake in accordance with your Final Order dated February 16, 2007. The Final Order was issued in conjunction with the processing of a community dock encroachment permit application (L-95-S-5117).

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

II. FINDINGS OF FACT

1. On July 6, 2006, Twin Lakes Heights Owners Association, Inc. (Applicant) submitted to IDL an encroachment permit application (L-95-S-5117) requesting the approval to construct a community dock on Lower Twin Lake.
2. IDL processed the encroachment permit application as a navigational encroachment pursuant to the Lake Protection Act (Idaho Code § 58-1306) and the associated Rules (IDAPA 20.03.04.030).
3. Based on a request from the public and in accordance with IDAPA 20.03.04.030, IDL initiated a public hearing process for the proposed community dock. A public hearing was held on January 17, 2007 at 6:00 p.m. at the IDL office in Coeur d'Alene. Mr. Michael Murphy, IDL Bureau Chief, coordinated the public hearing.

4. Subsequent to the public hearing and based on the recommendation of the hearing coordinator, you, as the Director of IDL, issued a Final Order dated February 16, 2007 denying the permit application. The Final Order also directed IDL to conduct a public hearing in order to establish the line of navigability for the portion of Lower Twin Lake in the area of the proposed community dock. The record from the public hearing is incorporated into this document by reference.
5. On April 21, 2007 and April 28, 2007, IDL published a Notice of Hearing in the Coeur d'Alene Press for a line of navigability hearing. The Notice of Hearing is incorporated into this document by reference.
6. On May 2, 2007, IDL held a public hearing at 6:00 pm at the IDL office in Coeur d'Alene. Mr. Michael Murphy, IDL Bureau Chief, coordinated the public hearing. In attendance were Mr. Mike Denney, IDL; Mr. Carl Washburn, IDL; Mr. Jim Newton, IDL; Mr. Marty Franz and Mr. Jonathon Frantz, representing Applicant; and three members of the public. The public hearing was recorded on audio tape and was subsequently transcribed. The transcript of the public hearing is incorporated into this document by reference.
7. During the public hearing Mr. Carl Washburn of IDL related the details of seven lakebed profiles completed by IDL staff on the western shoreline of Lower Twin Lake near the proposed community dock. Mr. Washburn provided data tables that are incorporated into this document by reference. Based on the results of the data and his knowledge of the eastern shoreline, Mr. Washburn concluded that the line of navigability in the area of the proposed community dock should be 80 feet from the shoreline at high water. Mr. Washburn stated the docks on the eastern shoreline extend approximately 100 feet waterward. Mr. Washburn indicated that based on his knowledge the lakebed has a shallower gradient on the eastern side. Mr. Murphy, hearing coordinator, requested that Mr. Washburn complete lakebed profiles along the eastern shoreline of Lower Twin Lake to confirm the difference in gradient.

Subsequent to the public hearing Mr. Washburn completed three lakebed profiles on the eastern side of Lower Twin Lake which confirmed Mr. Washburn's conclusion regarding the difference in gradient between the eastern and western sides of the lake. The data tables from these three lakebed profiles are incorporated into this document by reference.

8. During the public hearing Mr. Eric Carlson indicated that according to Idaho Code the line of navigability should be measured from low water and that the discussions related to 80 feet related to the high water measurement.


III. CONCLUSIONS OF LAW

1. The Idaho Board of Land Commissioners (Board) is designated in Idaho Code § 58-104(9) and § 58-1303 to regulate, control and permit encroachments on, in or above the beds of navigable lakes in the state of Idaho. IDL is the administrative agency of the Board, Idaho Code § 58-119.
2. Lower Twin Lake is a navigable lake as defined by Idaho Code § 58-1302(a). Pursuant to IDAPA 20.03.04.011.02, encroachments of any kind on, in or above the beds of Lower Twin Lake require a permit prior to encroaching on the lake.
3. Pursuant to Idaho Code § 58-1301, lake encroachments must be regulated to protect property and the lake value factors of navigation, fish and wildlife habitat, aquatic life, recreation, aesthetic beauty and water quality and these values must be given due consideration and weighed against the navigational or economic necessity or justification for, or benefit to be derived from, the proposed encroachment.
4. IDL shall make decisions on proposed encroachments in accordance with the Public Trust Doctrine as set forth by the Idaho Supreme Court in Kootenai Environmental Alliance, Inc. v. Panhandle Yacht Club, Inc., 105 Idaho 622, 671 P.2d 1085 (1983) and subsequent cases and Idaho Code §§ 58-1201 through 1203.
5. Idaho Code § 58-1302(g) defines the "line of navigability" as a line located at a 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 Land Board when a line has not already been established for the body of water in question.
6. Idaho Code § 58-1201 *et. seq.*, and the Public Trust Doctrine, protects the property rights of private landowners, including the ability to utilize their riparian rights as a means to access the waters of the navigable lakes of Idaho.
7. Kootenai County Waterways Ordinance No. 279D, Section 6 – Limits for Certain Waterways establishes a 5 mph "no-wake" zone within one hundred (100) feet of shoreline, docks, and structures for Lower Twin Lake.
8. IDAPA 20.03.04.060.03 establishes that encroachments may extend to a length that will provide access to a water depth that will afford sufficient draft for water craft customarily in use on the particular body of water during the normal low water period, except that no structure may extend beyond the normal accepted line of navigability established through use unless additional length is authorized by permit, or order of the director. If a normally accepted line of navigability has not been established through use, the director may from time to time, as he deems necessary, after public hearing, designate a line of navigability for the purpose of effective administration of these rules.

IV. HEARING COORDINATOR CONCLUSIONS AND RECOMMENDATIONS

Based upon the information provided to me as the hearing coordinator, I recommend that the Director of IDL issue a Final Order stating that the line of navigability in the area of Applicant's proposed community dock on the western side of Lower Twin Lake be established at 70 feet from the shoreline at low water. This distance corresponds to Mr. Washburn's recommendation of 80 feet from the shoreline at high water.

DATED this 25th day of May, 2007.



MICHAEL J. MURPHY
Hearing Coordinator

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that on this 30th day of May 2007, I caused to be served a true and correct copy of the foregoing document, by the method indicated:

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Michael J. Murphy

MICHAEL J. MURPHY
Bureau Chief
Bureau of Surface and Mineral Resources
Idaho Department of Lands