

STATE BOARD OF LAND COMMISSIONERS

August 15, 2023
Information Agenda

Subject

Proposed Rule for IDAPA 20.05.01 *Rules Pertaining to the Recreational Use of Endowment Land*

Background

The Idaho Department of Lands (Department) manages 2.5 million acres of state endowment trust land, with more than 96% of all endowment land accessible by foot, watercraft, or vehicle. About 2.3 million acres are available for recreation purposes, such as hunting, fishing, hiking, or camping. While not the primary purpose, recreation can occur on endowment lands so long as those activities do not degrade the land, interfere with management activities, or otherwise negatively affect the long-term financial return to beneficiaries. Unfortunately, there are several examples of public mistreatment of endowment lands, causing damage to rangelands and marketable timberlands. Destructive behaviors on endowment lands reduce revenue generation potential of the land and cost money to mitigate.

For those damaging endowment land, Idaho law provided only severe remedies - misdemeanor or felony criminal trespass charges - until the Legislature passed Senate Bill 1049, which became effective on July 1, 2023. The new law, Section 58-156, Idaho Code, allows POST certified Idaho law enforcement to issue warnings/citations for minor offenses and help deter destructive behaviors on endowment land. Rulemaking is required under the new law before a warning or infraction ticket may be written.

Negotiated rulemaking for a new rule chapter related to the recreational use of endowment land was approved by the Land Board on April 18, 2023 (Attachment 1).

Discussion

The Department's outreach for negotiated rulemaking included the following:

- Published the Notice of Negotiated Rulemaking in the Idaho Administrative Bulletin.
- Created a rulemaking webpage to post the draft rule, scheduling information, and comments.
- Issued a press release: Help Be Part of the Solution in Keeping Endowment Land Open for Recreation.
- Posted rulemaking meeting notices and details on social media.
- Posted rulemaking notices to Townhall Idaho.
- Emailed 2,457 customers and other interested parties.

The Department held two negotiated rulemaking public meetings with options for in person or virtual participation. Eleven participants attended the June 22 meeting in Boise, and seven participants attended the July 10 meeting in Coeur d'Alene. The comment period ended on July 19, and the Department received written comments from 15 groups and individuals. Multiple responses expressed support for the rules, while some responses expressed specific concerns with the rule language as initially drafted. The Department made many changes to the draft rules based on comments received. A summary of negotiated rulemaking comments and the Department's responses is included in Attachment 2.

Attachment 3 is the draft text that will be submitted for publication in the Administrative Bulletin as a proposed rule. The proposed rule will be open for public comment upon publication on October 4, 2023.

After the proposed rulemaking public comment period, the Department will present the rule to the Land Board for adoption as a pending rule for review by the 2024 Idaho Legislature.

Attachments

1. April 18, 2023 Approved Memo
2. Summary of Negotiated Rulemaking Comments
3. Proposed Rule Text

STATE BOARD OF LAND COMMISSIONERS

April 18, 2023
Regular Agenda

Subject

Negotiated rulemaking to promulgate a new rule chapter related to recreational use of endowment land and implement Senate Bill 1049

Question Presented

Shall the Land Board authorize the Department to initiate negotiated rulemaking for a new rule chapter related to recreational use of endowment land (IDAPA 20.05.01)?

Background

The Idaho Department of Lands (Department) manages 2.5 million acres of state endowment trust land, with more than 96% of all endowment land accessible by foot, watercraft, or vehicle. About 2.3 million acres are available for hunting, fishing, hiking, camping, or other recreation.

State Board of Land Commissioners' (Land Board) policy allows for public recreation on endowment land, provided those activities do not degrade the land, interfere with management activities, or otherwise negatively affect the long-term financial return to beneficiaries (Attachment 1). The Land Board seeks to keep endowment land open for recreational use by the public when such use does not impede the Land Board's constitutional mandate to maximize long-term returns for the beneficiaries.

Unfortunately, bad actors sometimes damage endowment land and degrade its potential for making money for the beneficiaries. Repairing the land can be expensive. While most recreational users behave responsibly, occasionally members of the public cause substantial damage to gates, fences, timber, or areas closed to motorized vehicles. Currently, the only charges available for law enforcement to bring when there is abuse of endowment land are heavy-handed misdemeanor or felony charges.

Discussion

During the 2023 regular session, the Idaho Legislature passed Senate Bill 1049, a stakeholder-sponsored bill designed to curb recreational impacts on endowment land (Attachment 2). A diverse group of stakeholders, including the Idaho State ATV Association, Idaho Sportsmen, Idaho Recreation Council, Idaho Farm Bureau Federation, and Idaho Outfitters and Guides Association developed the legislation.

Authored principally by David Claiborne of Idaho Recreation Council, Senate Bill 1049 seeks to disincentivize the abuse or misuse of endowment land, preserving its revenue-

generating potential for the beneficiaries. The legislation, which was signed into law by the Governor on March 20, 2023, creates a new section of Idaho Code that will become effective on July 1, 2023.

The legislation requires rulemaking to specify prohibited activities that are subject to a warning ticket for minor first offenses, with second violations under the statute being punished with an infraction and \$250 fine.

Citizens' due process rights are further protected by requiring the Department to post visible signage in the area where recreation use restrictions may apply, publish the restrictions on the agency's website, and make the information available at the Department's nearest Supervisory Area office.

If approved by the Land Board, the Department will engage stakeholders in the negotiated rulemaking process and post rule drafts on our website to keep participants well informed. The Department will seek to reach consensus on the rule text to meet deadlines for review by the 2024 Idaho Legislature. A proposed timeline for the rulemaking process is provided in Attachment 3.

Recommendation

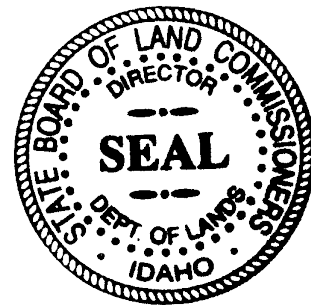
Authorize the Department to initiate negotiated rulemaking for a new rule chapter related to recreational use of endowment land (IDAPA 20.05.01).

Board Action

A motion was made by Controller Woolf that the Land Board authorize the Department to initiate negotiated rulemaking for a new rule chapter related to recreational use of endowment land (IDAPA 20.05.01). Superintendent Critchfield seconded the motion. The motion carried on a vote of 5-0.

Attachments

1. Land Board Recreation Policy (August 18, 2018)
2. Senate Bill 1049 with Statement of Purpose and Fiscal Note
3. Draft rulemaking timeline



Response to Comments on Draft Rule – Negotiated Rulemaking
 IDAPA 20.05.01, Rules Pertaining to the Recreational Use of Endowment Land

The Idaho Department of Lands appreciates the written comments received on the draft rule and the public participation and discussion at the two public meetings. Oral comments from the June 22 and July 10 negotiated rulemaking meetings were also reflected in the written comments. The written comments are summarized in the table below with the Department's responses.

Topic	Comment	Affiliation	Commentor	Response to comments
Letter of Support	Letter of Support	Idaho Sportsmen	Benn Brocksome	Your support for the Department Recreation Rule is greatly appreciated.
Letter of Support	Letter of Support	Private Citizen	Brenda Stibal	Your support for the Department Recreation Rule is greatly appreciated.
Letter of Support	Letter of Support	Private Citizen	Jack Wassard	Your support for the Department Recreation Rule is greatly appreciated.
Letter of Support	Letter of concern/support for better regulation	Private Citizen	Jim Mclver	Your support for the Department Recreation Rule is greatly appreciated. Most of the regulations in your letter are already addressed in other statutes and IDAPA rules. Unauthorized trail construction is addressed in the Recreation Rules.
Letter of Support	Support 100%	Boise ATV /UTV Trail Riders	Jim Maxey	Your support for the Department Recreation Rule is greatly appreciated.

ATTACHMENT 2

Topic	Comment	Affiliation	Commentor	Response to comments
Letter of Support	Wants stronger violations and a reward for people turning others in	Idaho Chukar Foundation	Drew Wahlin	The new rule if passed will address your concerns with a graduated approach, by increasing penalties for repeat offenders.
Add to definitions	What is the understanding of what creating a trail is? What constitutes creating a trail? Is it cutting brush? Is it cutting dirt? Suggest a definition of what constitutes as creating a trail.	Inland Empire Paper	Paul Buckland	An additional definition was added to the document, defining what is considered constructing a road or trail travel way.
Definition of Endowment Lands	Does this definition include lands the state has traded? Is it limited to the lands granted at statehood? A better definition please.	Idaho Outfitter and Guides	Jeff Britton	The definition was modified to cover a broader definition of endowment lands.
Camping	In Section 020.02, the IDL should consider adding a specific statement that 'residing on endowment lands is not permitted'	Theodore Roosevelt Conservation Partnership	Rob Thornberry	Camping on endowment lands was clarified in the definitions and under <u>Regulated Uses of Endowment Land</u> , under 01. and 02.
Camping Limits	IDL should investigate rules for camping limits on nearby federally managed public lands and match its language for Camping limits with that of federal agencies.	Theodore Roosevelt Conservation Partnership	Rob Thornberry	Both camping limits and relocation distances vary from area to area for both federal and state land management. The rule was adjusted to reflect the most common time and distances.
Camping	IDL should investigate rules for camping limits on nearby federally managed public lands and match its language for Camping limits with that of federal agencies.	Idaho Wildlife Foundation and Trout Unlimited	Garrett Visser and Michael Gibson	Both camping limits and relocation distances vary from area to area for both federal and state land management. The rule

Topic	Comment	Affiliation	Commentor	Response to comments
				was adjusted to reflect the most common time and distances.
Additional Camping Language	Residing on IDL lands is not permitted, unless a lease permits such activity.	Idaho Wildlife Foundation and Trout Unlimited	Garrett Visser and Michael Gibson	The recreation rule scope was adjusted to identify that permits and leases are not regulated under this rule.
Continued Camping	Consider adding "or under permit" at the end. Many Outfitters will have a permit which allows for a longer period of use.	Idaho Outfitter and Guides	Jeff Bitton	The recreation rule scope was adjusted to identify that permits and leases are not regulated under this rule.
Roads and Trails Additional Subsection	It does not explicitly state that motorized and mechanized travel is <i>only</i> permitted on IDL-designated roads and trails, meaning that these forms of recreation are not permitted off any IDL-designated road or trail. We recommend the addition of a separate subsection that clarifies this, with language such as "Motorized/Mechanized Use: Motorized and mechanized travel is permitted only on Idaho Department of Lands designated roads and trails."	Idaho Wildlife Foundation and Trout Unlimited	Garrett Visser and Michael Gibson	An additional Subsection Motorized and Mechanized use was added to address use restrictions.
Roads and Trails	"Motorized/Mechanized Use: Motorized and mechanized travel is permitted only on Idaho Department of Lands designated roads and trails."	Idaho Wildlife Foundation and Trout Unlimited	Garrett Visser and Michael Gibson	An additional Subsection Motorized and Mechanized use was added to address use restrictions.

Topic	Comment	Affiliation	Commentor	Response to comments
Roads and Trails	In Section 020.03, the TRCP encourages IDL to be more direct, adding language that makes it clear motorized and mechanized travel is limited to designated routes.	Theodore Roosevelt Conservation Partnership	Rob Thornberry	An additional Subsection Motorized and Mechanized use was added to address use restrictions.
Roads and Trails	Consider adding "unless otherwise permitted" at the end. Many Outfitters will have a permit for the use of roads after the normal road closure time. IE cougar hunts, wolf hunting, over snow use.	Idaho Outfitter and Guides	Jeff Bitton	The recreation rule scope was adjusted to identify that permits and leases are not regulated under this rule.
Roads and Trails	Wants some sort of distance like 150' for off trail travel to retrieve game or camp during hunting season.	Idaho Recreation Council	David Claiborne	The recreation rule scope was adjusted to identify that permits and leases are not regulated under this rule.
Gates and Fences	Add livestock movement to 020.03(f) so as prevent livestock from freely moving down a trail or road. Obstructions will occur, but if a person is intentionally moving the livestock in the wrong direction, it can be a significant detriment. Additionally, IWGA would encourage either the word "corral" or "livestock handling equipment" to be added to 020.03 (Gates and Fences). This would clear any confusion if a recreator or user of endowment land parked a vehicle in front of a corral or damaged a corral	Idaho Wool Growers Association	John Peterson, Patxi Larrocea-Philips, and Liz Wilder	Gates and fences are addressed in statute 18-7012. This section of rule was modified to address the concern of blocking access.

Topic	Comment	Affiliation	Commentor	Response to comments
	or any other livestock handling equipment located on public lands.			
Gates and Fences	"Corral" or "livestock handling equipment" to be added to section 020.03 (Gates and Fences). This would clear any confusion if a recreator or user of endowment land parked a vehicle in front of a corral or damaged a corral or any other livestock handling equipment located on public lands.	Idaho Cattle Association	Kim Burton Brackett and Morgan Lutgen	Gates and fences are addressed in statute 18-7012. This section of rule was modified to address the concern of blocking access.
Fire Additional Topic	We recommend that IDAPA 20.05.01 include the following provision to incorporate by reference the Idaho Fire Restriction Plan and issue warnings or citations to those who engage in prohibited acts during Stage 1 and Stage 2 restrictions. Currently, Idaho law does not penalize those who engage in prohibited actions under the plan on endowment land.	Idaho Firewise	Ivy Dickenson	Fire restrictions were added to the draft for a proactive rather than reactive approach to unwanted fire related activities occurring during stage 1 and stage 2 fire restrictions.

Topic	Comment	Affiliation	Commentor	Response to comments
Fire Additional Topic	07. Fire Restrictions. Prohibited acts enumerated in the annual Idaho Fire Restrictions Plan for Stage 1 and Stage 2 fire restrictions apply to endowment land.	Idaho Fire Council	Heather Heward	Fire restrictions were added to the draft for a proactive rather than reactive approach to unwanted fire related activities occurring during stage 1 and stage 2 fire restrictions.
Addition/Comment	A monitoring system, so that these abuses of our lands CAN BE REPORTED.....EASILY.	Private Citizen	Georgene Moore	The recreation rule defines regulated recreation actions allowed on Idaho endowment lands. A system of reporting to monitor abuses will have to be developed outside of the rulemaking process.
Addition/Comment	Would like a system for easy reporting of endowment land abuse.	Private Citizen	Suzan Drumheller	The recreation rule defines regulated recreation actions allowed on Idaho endowment lands. A system of reporting to monitor abuses will have to be developed outside of the rule making process.

IDAPA 20.05.01 – RULES PERTAINING TO THE RECREATIONAL USE OF ENDOWMENT LAND

000. LEGAL AUTHORITY. Sections 58-104(6), 58-105, and 58-156, Idaho Code.

001. SCOPE. These rules govern the closure, restriction, regulation, or prohibition of certain regulated recreational uses on Idaho endowment lands, that are subject to a warning ticket, citation, or misdemeanor pursuant to Idaho Code Section 58-156. Nothing in these rules precludes enforcement under any other applicable state statutes, including enforcement under Sections 18-7031, 18-3906, 18-7012, 18-7001, 18-7008, and 31-4410, Idaho Code. Uses of endowment land authorized by lease or permit are not regulated under this rule.

010. DEFINITIONS

01. Camping. To use a location as a temporary or with the intent to use as a permanent place of dwelling, lodging or living accommodation. Indicators of camping may include, but are not limited to, storing personal belongings, using tents or other temporary structures for storing personal belongings or for sleeping, carrying on cooking activities, laying out bedding or making any fire.

02. Creation of a Trail or Road. Modifying the natural condition of the landscape by manipulating rocks, vegetation, soils or other materials to purposely create a travel way.

03. Department. The Idaho Department of Lands.

04. Endowment Lands. Lands held in trust by the State of Idaho and managed for the benefit of specific endowment beneficiaries.

020. REGULATED USES OF ENDOWMENT LAND.

01. Camping. Permanent camping is prohibited. Temporary camping on endowment land is allowed, provided:

a. Camping in one location is limited to a total of fourteen (14) days within a period of twenty-eight (28) consecutive days. Continued camping on endowment lands beyond fourteen (14) days is allowed if the camp, all camping equipment, and all personal belongings are moved outside of a five (5) mile radius of the prior site, and if the campers otherwise comply with the requirements of Subsection 20.01.

b. Campers must not leave any personal property unattended for more than forty-eight (48) hours;

c. The location is not posted as “closed to camping”; and

d. Campfires are contained within a ring no wider than three (3) feet in diameter.

02. Roads and Trails. Using roads and trails on endowment land is allowed, provided users:

a. May not create any roads or trails.

b. Follow vehicle width, weight, length, and type limitations.

- c. Comply with any posted road or trail closures.
- d. Follow road and trail limitations and closures posted at trailheads, gates, and local Department offices, as shown on maps and the Department website (www.idl.idaho.gov).
- e. May not block, obstruct, or interfere with vehicular or pedestrian traffic, with vehicles or by any other means.

03. Motorized and Mechanized use. Motorized and mechanized travel is permitted on department designated roads, trails, and cross-country travel areas.

04. Gates and Fences. Blocking gates, fence access points, or livestock handling equipment is prohibited.

05. Litter. Depositing any debris, paper, litter, glass bottles, glass, nails, tacks, hooks, hoops, cans, barbed wire, boards, trash, garbage, or other waste substances on endowment land is prohibited.

a. When toilet facilities are unavailable, solid human waste must be disposed of at least two hundred (200) feet from water sources, trails, parking areas and campsites. Waste can either be bagged and carried out or buried in a hole at least six (6) inches deep.

b. Any construction or placement of restroom facilities must be temporary in nature. All concentrations of solid human waste must be packed out.

06. Signs. Interfering with or damaging signs is prohibited.

07. Fire Restrictions. Prohibited acts enumerated in the annual Idaho Fire Restrictions Plan for Stage 1 and Stage 2 fire restrictions apply to endowment land.