

# STATE BOARD OF LAND COMMISSIONERS

September 16, 2025

Regular Agenda

## Subject

Adoption of Pending Rule, IDAPA 20.03.08, Easements on State-Owned Lands

## Question Presented

Shall the Land Board adopt the pending rule for IDAPA 20.03.08?

## Background

IDAPA 20.03.08 provides guidance for rights-of-way for public utility lines, highway, and other purposes. The State Board of Land Commissioners (Land Board) is empowered to grant, over and upon any land owned or controlled by the State of Idaho, rights-of-way for railroad, telegraph, telephone and electric lines, pipelines for natural and manufactured gas, rights-of-way for highway purposes, and rights-of-way for any other public or private purpose or beneficial use.

The Idaho Department of Lands (Department) administers IDAPA 20.03.08 Easements on State-Owned Lands on behalf of the Land Board. The Right of Way program is responsible for granting and acquiring easements on state endowment lands. Activities are authorized by Idaho Code Title 58, Chapter 6—Rights of Way Over State Lands.

Negotiated rulemaking for these rules was approved by the Land Board on December 17, 2024. Following Executive Order 2020-01, Zero-Based Regulation, this rule chapter is scheduled to be repealed and replaced in 2025 for review during the 2026 legislative session.

## Discussion

Outreach by the Department for negotiated rulemaking included the following:

- Published the Notice of Negotiated Rulemaking in the Idaho Administrative Bulletin
- Created a [rulemaking webpage](https://www.idl.idaho.gov/rulemaking/docket-20-0308-2501) to post documents, scheduling information, and comments (<https://www.idl.idaho.gov/rulemaking/docket-20-0308-2501>)
- Cooperative Road Use Agreement members, and Cost Share ROW partners
- Posted meeting notices to Townhall Idaho

The Department held three public negotiated rulemaking meetings in 2025 with options for in-person or virtual participation. These meetings were held on March 20 (Coeur D'Alene), March 25 (Idaho Falls), and April 10 (Boise). There was some discussion and oral public comments provided during the meetings. The initial written comment period ended April 16. Two written comments were

received from The Idaho Conservation League and PotlatchDeltic. A summary of negotiated rulemaking is included in Attachment 1.

The Notice of Proposed Rulemaking was published in the August 6, 2025, Idaho Administrative Bulletin (Attachment 2). No public hearing was requested or held. There were no written comments received during the open comment period.

Upon further review, staff noticed the inadvertent deletion of the words "and survey" in section 21.05. Minimum Compensation. Attachment 3 has the draft Pending Rule consisting of the Proposed Rule with the engrossed changes highlighted in yellow.

The proposed rule reduces the overall regulatory burden by reducing the total word count (14.3% reduction) and the number of restrictive words. The proposed rule includes the following changes:

- Supplements definition of "Endowment Lands" to include historical context and constitutional purpose.
- Defines "Assignment:" Assignment of a valid easement in good standing is the administrative transfer of the instrument, its rights and obligations.
- The minimum compensation for any easement is at the discretion of the Land Board, not including appraisal and survey costs. Applicant shall bear the cost of appraisal and survey.
- Supplements definition of "Emergency Work" to incorporate vandalism as an emergency situation.
- Deletes easement assignment fee of \$50.00.
- Deletes easement application fee of \$100.00.
- Inserts the following language related to compensation for easements: "a commensurate portion of the value created by the right-of-way, as determined by the director or supported by specific data such as an appraisal."

If approved by the Land Board, the Department will submit the attached Notice of Adoption of Pending Rule (Attachment 4) to the Office of the Administrative Rules Coordinator for the 2026 legislative session.

### **Recommendation**

Adopt the pending rule for IDAPA 20.03.08 Easements on State Owned Land.

### **Board Action**

### **Attachments**

1. Negotiated Rulemaking Summary
2. Notice of Proposed Rulemaking with Text
3. Draft Pending Rule
4. Draft Notice of Adoption of Pending Rule

## **Negotiated Rulemaking Summary**

### **IDAPA 20.03.08, Easements on State-Owned Lands**

Docket No. 20-0308-2501

Following Executive Order 2020-01: Zero-Based Regulation, this rule chapter is scheduled for review during the 2026 legislative session.

IDAPA 20.03.08, under authority of Idaho Code § 58-603, provides guidance for rights of way for public utility lines, highway, and other purposes. The state board of land commissioners is empowered to grant, over and upon any land owned or controlled by the state of Idaho, rights of way for railroad, telegraph, telephone and electric lines, pipelines for natural and manufactured gas, rights of way for highway purposes, and rights of way for any other public or private purpose or beneficial use.

Negotiated rulemaking for these rules was approved by the Land Board on December 17, 2024. The Notice of Intent to Promulgate Rules – Zero-Based Regulation Negotiated Rulemaking was published in the Idaho Administrative Bulletin on March 5, 2025.

#### **Stakeholder Outreach**

The Idaho Department of Lands' (IDL) outreach for negotiated rulemaking included the following:

- Published the Notice of Negotiated Rulemaking in the Idaho Administrative Bulletin
- Created a rulemaking webpage to post documents, scheduling information, and comments (<https://www.idl.idaho.gov/rulemaking/docket-20-0308-2501>)
- Cooperative Road Use Agreement members, and Cost Share ROW partners
- Posted meeting notices to Townhall Idaho

#### **Negotiated Rulemaking Public Meetings**

Negotiated rulemaking meetings were held on March 20, March 25, and April 10, 2025. A total of 11 non-Department affiliated people attended these meetings.

The Idaho Conservation League (ICL) initiated discussion during the negotiated rulemaking meeting held on March 20, 2025, regarding the proposed amendment to the definition of Endowment Lands. ICL recommended keeping the current expanded definition of Endowment Lands. After consideration of the comment, IDL has decided to retain the current expanded definition of Endowment Lands. During the same meeting, ICL recommended referencing "vandalism" in the Emergency Work section. IDL agrees and has added reference to vandalism to further clarify the intentions of the Emergency Work section.

In the meeting held on April 10, 2025: Ben Ballard, Potlatch-Deltic commented that the minimum compensation going from \$500 to \$10,000 is a substantial increase. IDL provided clarity the change is for easements and not permits, and that appraisal or negotiated easement project determines the consideration charged for an easement. Further, IDL provided clarity there are no proposed changes to the Rules section on Co-op Agreements in which all the sections on appraisal, applications and fees do not apply. IDL recommends the following language: "the minimum compensation for any easement is at the discretion of the Land Board, not including appraisal and survey costs." Applicant shall bear the cost of appraisal and survey.

Additionally, Ben Ballard, Potlatch Deltic commented easements (035.040) need to be transferable to be an easement and proposed Assignments are the only transferable instrument. IDL does not propose any changes within Rule regarding Assignments yet has decided to provide brief clarification within a definition stating "Assignment is the complete transfer of rights and obligations of an easement in good standing from holder to succeeding right holder (assignor), acknowledged by IDL (servient estate)."

Next, Brant Steigers, Potlatch Deltic, had questions about new paragraph 021.02. He understands receiving compensation for the increase in property value generated by the easement is common practice. Brant asked what the percentage would be tied to and if it would be codified? Zane Lathim, IDL, commented it would probably be tied to an appraisal. Brant Steigers asked if it could be negotiated. Zane Lathim replied, "Yes." IDL recommends the following language "A commensurate portion of the value created by the right of way, as determined by the Director and supported by specific data such as an appraisal."

### **Written Comments**

Two written comments were received during the open comment period.

1. The Idaho Conservation League submitted a written comment supporting the current definition of Endowment Lands in IDAPA 20.03.08 "Land grants made to the state of Idaho by the Congress of the United States, or real property subsequently acquired through land exchange or purchase, for the sole use and benefit of the public schools and certain other institutions of the state, comprising nine (9) grants all together" instead of the proposed definition of "Lands held in trust by the State of Idaho and managed for the benefit of specific endowment beneficiaries."
2. Brant Steigers, Potlatch Deltic, expressed concern about new paragraph 021.02. stating he "understand[s] that receiving compensation for the increase in property value generated by the easement is common practice, but not codifying what that percentage would be in advance will make this process risky and unpredictable for the grantee. Is it 5% or 50%? For a large development, it could equate to a substantial sum of money."

These comments were posted for public review.

### **Concluding Negotiated Rulemaking**

IDL concluded the negotiated rulemaking process and submitted the rule changes for publication as a proposed rule in the August 6, 2025, edition of the Idaho Administrative Bulletin. Key documents from the rulemaking record are available at <https://www.idl.idaho.gov/rulemaking/docket-20-0308-2501/>, including research materials, and the proposed rule text in track changes format to allow the reader to easily identify changes.

**Response to Comments on Negotiated Rule**  
IDAPA 20.03.08, Rules Governing Easements on State Lands

**THESE ARE THE RESOLVED ITEMS**

Commenter	Comment	Rule Section	Response
Idaho Conservation League	<p>In Section 010. Definitions, the most significant proposed change is to the definition of "Endowment Lands," and the majority of the text that is redlined for removal refers to the history and background of endowment lands. As a member of United Payette, a coalition of individuals and organizations working to conserve the endowment lands that surround Payette and Little Payette Lakes, I know firsthand that despite our numerous efforts to help educate the public on the differences between endowment lands, state-owned lands, and public lands, many people still do not understand the intrinsic differences regarding land ownership and management in Idaho. While the proposed definition, "Lands held in trust by the State of Idaho and managed for the benefit of specific endowment beneficiaries," is wholly accurate, it does not provide the full context for the endowment lands, leaving many to believe that endowment lands are indistinguishable from state-owned lands, or even federally owned public lands. We recommend that IDL reincorporate a portion of the existing definition, with the updated version reading, "Lands granted to the State of Idaho by the United States Congress on statehood that are held in trust by the State of Idaho and managed for the benefit of specific endowment beneficiaries." We believe that reincorporating these few words can have an impact on land ownership and management comprehension for citizens or organizations considering an easement application.</p>	010.06.	<p>IDL agreed. The comments were meaningful and directly related to the Rules. The details provided were considered. The proposed Rules should retain the existing definition and include further clarity on Endowment Lands.</p> <p>The definition should be thorough for the benefit of public, customers, and endowment trust beneficiaries. Retain and supplement the definition, including historical context and constitutional purpose. Attempt to add further distinction between public lands and endowment trust lands.</p>

Commenter	Comment	Rule Section	Response
Idaho Conservation League	We also recommend that IDL add a definition for "Assignments", which is covered in Section 040. While many familiar with real estate terminology may possess a working knowledge of the term, many do not, and we did not find an associated definition	040.	Assignment definition: Assignment of a valid easement in good standing is the administrative transfer of the instrument, its rights and obligations.
	In Section 021. Fees and Compensation, in subsection 07, we note that the textual reference to "five hundred" remains in place, while the numerical reference (\$500) is redlined for removal. We recommend removing the textual reference for consistency and clarity.	021.07.	IDL agreed, incorporated.
	Regarding Section 030. Emergency Work, we recommend adding vandalism as an emergency situation that could require an easement grantee to access adjoining grantor-controlled lands. Examples could be damage to a trail or direction sign when repair/replacement is best accomplished by working from outside the easement (the emergency being public health and safety) or if a water/gas line within an easement develops a leak and repairs are best accomplished by working from outside the easement. Natural disasters such as wildfire and flood are certainly cause for providing emergency access.	030.	IDL agreed, incorporated vandalism as an emergency situation.
Potlatch-Deltic	Ben Ballard, Potlatch-Deltic, in-meeting comment regarding minimum compensation going from \$500 to \$10,000 as a substantial increase. IDL provided clarity the change is for easements and not permits, and that appraisal or negotiated easement project determines the consideration charged for an easement. Further, IDL provided clarity there are no proposed changes to the Rules section on Co-op Agreements in which all the sections on appraisal, applications and fees do not apply.	021.07.	IDL recommends the following language "the minimum compensation for any easement is at the discretion of the Land Board, not including appraisal and survey costs." Applicant shall bear the cost of appraisal and survey.

Commenter	Comment	Rule Section	Response
Potlatch-Deltic	Brant Steigers had concerns about the new paragraph 021.02. "I understand that receiving compensation for the increase in property value generated by the easement is common practice, but not codifying what that percentage would be in advance will make this process risky and unpredictable for the grantee. Is it 5% or 50%? For a large development, it could equate to a substantial sum of money."	021.02.	IDL recommends the following language: "A commensurate portion of the value created by the right of way, as determined by the Director or supported by specific data such as an appraisal."
	Deleting the \$50 assignment fee.  Deleting the \$100 Easement Application Fee		Assignment can be processed without a collected fee. A \$50 fee creates delays and requires customer and staff resources to process. Removing the fee is better business.  Applications can be processed without a collected fee. A \$100 fee is nominal and creates delays and requires customer and staff resources to process. Removing the fee is better business.

**Conclusion:**

IDL concluded the negotiated rulemaking process and will submit the rule changes for publication as a proposed rule in the August 6, 2025, edition of the Idaho Administrative Bulletin. Key documents from the rulemaking record are available at <https://www.idl.idaho.gov/rulemaking/docke20-0308-2501/>, including research materials, and the proposed rule text in legislative format to allow the reader to easily identify changes.

**IDAPA 20 – IDAHO DEPARTMENT OF LANDS**  
**20.03.08 – EASEMENTS ON STATE-OWNED LANDS**  
**DOCKET NO. 20-0308-2501 (ZBR CHAPTER REWRITE)**  
**NOTICE OF RULEMAKING – PROPOSED RULE**

**AUTHORITY:** In compliance with Section 67-5221(1), Idaho Code, notice is hereby given that this agency has initiated proposed rulemaking procedures. The action is authorized pursuant to Section(s) 58-104 and 58-105, Idaho Code.

**PUBLIC HEARING SCHEDULE:** Public hearing(s) concerning this rulemaking will be scheduled if requested in writing by twenty-five (25) persons, a political subdivision, or an agency, not later than August 20, 2025.

The hearing site(s) will be accessible to persons with disabilities. Requests for accommodation must be made not later than five (5) days prior to the hearing, to the agency address below.

**DESCRIPTIVE SUMMARY:** The following is a nontechnical explanation of the substance and purpose of the proposed rulemaking:

The Idaho Department of Lands initiated this rulemaking in compliance with [Executive Order 2020-01: Zero-Based Regulation](#). This rule chapter is scheduled for a comprehensive review in 2025 and legislative review in 2026 with the goal of simplifying and streamlining the rules for increased clarity and ease of use.

The regulatory burden has been reduced by decreasing both the total word count 14.3% and the number of restrictive words 26.7% in the proposed rule. No changes were made that changed the context of the previous rule.

**FEE SUMMARY:** The following is a specific description of the fee or charge imposed or increased: N/A.

**FISCAL IMPACT:** The following is a specific description, if applicable, of any negative fiscal impact on the state general fund greater than ten thousand dollars (\$10,000) during the fiscal year resulting from this rulemaking: N/A.

**NEGOTIATED RULEMAKING:** Pursuant to Section 67-5220(1), Idaho Code, negotiated rulemaking was conducted. The Notice of Intent to Promulgate Rules - Negotiated Rulemaking was published in the March 5, 2025 Idaho Administrative Bulletin, [Vol. 25-3, pages 19-21](#).

**INCORPORATION BY REFERENCE:** Pursuant to Section 67-5229(2)(a), Idaho Code, the following is a brief synopsis of why the materials cited are being incorporated by reference into this rule: N/A.

**ASSISTANCE ON TECHNICAL QUESTIONS, SUBMISSION OF WRITTEN COMMENTS:** For assistance on technical questions concerning the proposed rule, contact Lawson Tate at (208) 263-5104 or [ltate@idl.idaho.gov](mailto:ltate@idl.idaho.gov).

Anyone may submit written comments regarding this proposed rulemaking. All written comments must be directed to the undersigned and must be delivered on or before August 27, 2025.

DATED this 2nd day of July, 2025.

Lawson Tate, Right-of-Way Program Manager  
2550 Highway 2 West  
Sandpoint, Idaho 83864  
Phone: (208) 263-5104  
[ltate@idl.idaho.gov](mailto:ltate@idl.idaho.gov)



THE FOLLOWING IS THE PROPOSED TEXT OF DOCKET NO. 20-0308-2501  
(ZBR Chapter Rewrite.)

20.03.08 – EASEMENTS ON STATE-OWNED LANDS

000. LEGAL AUTHORITY.

~~These rules are promulgated pursuant to and are to be construed in a manner consistent with the duties and responsibilities of the Idaho State Board of Land Commissioners as set forth in Idaho Code Title 58, Chapters 1 and 6, and Article IX, Sections 7 and 8 of the Idaho Constitution.~~ Title 58, Chapter 1, Idaho Code, Title 58, Chapter 3, Idaho Code. (3-18-22)( )

001. ~~TITLE AND SCOPE.~~

~~01. Title.~~ These rules are titled IDAPA 20.03.08, “Easements on State-Owned Lands.” (3-18-22)

~~02. Scope.~~ These rules set forth procedures concerning the issuance of easements on all lands within the jurisdiction of the Idaho State Board of Land Commissioners except for state-owned ~~submerged lands and formerly submerged lands~~ navigable waterways. ~~Further, these rules do not apply to easements for hydroelectric projects.~~ (3-18-22)( )

~~03. Valid Existing Rights.~~ These rules are not to be construed as affecting any valid existing rights. (3-18-22)( )

002. ADMINISTRATIVE APPEALS.

An applicant aggrieved by a decision of the Director under these rules may request a hearing before the Board, but must do so within thirty (30) days after receipt ~~of written notice~~ of the Director’s decision. (3-18-22)( )

003. -- 009. (RESERVED)

010. DEFINITIONS.

~~01. Assignment.~~ The complete transfer of rights and obligations of an easement in good standing from holder to succeeding right holder (assignor), acknowledged by the Department (servient estate). ( )

~~02. Board.~~ The Idaho State Board of Land Commissioners or ~~such representative as may be designated by the Board~~ its designee. (3-18-22)( )

~~03. Damage or Impairment of Rights to the Remainder of the Property.~~ The diminution of the market value of the remainder area, in the case of a partial taking. (3-18-22)

~~04. Department.~~ The Idaho Department of Lands. (3-18-22)

~~05. Director.~~ The Director of the Idaho Department of Lands or ~~such representative as may be designated by the Director~~ its designee. (3-18-22)( )

~~06. Easement.~~ A non-possessory interest in land for a specific purpose. Such interest may be limited to a specified term. (3-18-22)

~~07. Endowment Lands.~~ ~~Land grants made to the state of Idaho by the Congress of the United States, or real property subsequently acquired through land exchange or purchase, for the sole use and benefit of the public schools and certain other institutions of the state, comprising nine (9) grants altogether~~ Land grants made to the state

of Idaho by the Congress of the United States, or real property subsequently acquired through land exchange or purchase, for the sole use and benefit of the public schools and certain other institutions of the state, comprising nine (9) grants altogether. (3-18-22)( )

**08. Grantee.** The person or entity receiving the property right or permission. ( )

**09. Grantor.** The person or entity transferring, selling, or giving the property right or permission. Herein the Department or Board granting a right-of-way, easement or permit. ( )

**0710. Market Value.** The most probable price at a specified date, in cash, or on terms reasonably equivalent to cash, for which that the property should bring in a competitive and open market under all conditions requisite to a fair sale an arm's length sale, the buyer and seller each acting prudently and knowledgeably, and assuming the price is not affected by undue stimulus. (3-18-22)( )

**11. Right-of-Way.** The area on, below, or above a road, highway, street, waterway, or utility easement over which a legal right of passage exists for the benefit of a specific purpose. Such passage and use rights may be limited as defined and limited to a specified term. ( )

**0812. State-Owned Lands.** All lands within the jurisdiction of the Idaho State Board of Land Commissioners except for state-owned submerged lands or formerly submerged lands navigable waterways. (3-18-22)( )

**0913. Temporary Permit.** An instrument authorizing a specific use on state land usually issued for five (5) years or less, but that may be issued for up to ten twenty (4020) years. (3-18-22)( )

011. -- 019. (RESERVED)

## 020. POLICY.

**01. Easements Required.** Easements are required for all rights-of-way of a permanent nature over state-owned land. Easements will not be granted when temporary permits will serve the required intended purpose or when a lease is appropriate. (3-18-22)( )

**02. Prior Grants.** The Director will recognize easements on state endowment lands by grant of the federal government, or subsequent landowners, prior to title vesting with the State or by eminent domain. (3-18-22)

**03. Existing Easements.** These rules do not apply to any use, facility or structure described in an existing easement. For amendment of an existing easement, see Section 025. (3-18-22)

**04. Director's Discretion.** The Director may grant an a temporary permit or easement over state-owned land for any legitimate public or private purpose upon payment of appropriate compensation. (3-18-22)( )

**05. Reciprocal Easements.** The Director may seek reciprocal easements for access to state-owned lands from applicants for easements over state-owned lands. The value of the easement acquired by the state may be applied towards the cost of the easement acquired from the state. (3-18-22)

**06. Interest Granted.** An easement grants only such interest to the grantee as is specified in the instrument, including the right to use the property for the specified purpose without interference by the grantor. The right to use the property for all other purposes not inconsistent with aside from the grantee's limited interest remains with the grantor. (3-18-22)( )

**07. Limit of Director's Discretion.** The Director may grant and renew all easements in all cases except when the compensation will exceed twenty five thousand dollars (\$25,000) the limits as delegated by the Board exclusive of the value of timber and payment for any damage or impairment of rights to the remainder of the property. (3-18-22)( )

**08. Width of Easement.** The width of any easement granted may not be less than eight (8) feet.

(3-18-22)

**09. Recordation.** The Department will record the easement, or easement release, with the appropriate county recorder's office. (3-18-22)

**10. Term Easement.** The Director may grant an easement ~~that is issued~~ for a specific time period of ten (10) to fifty-five (55) years. (3-18-22)( )

**021. FEES AND COMPENSATION.**

~~**01. Application Fee.** The application fee for new, renewed, or amended easements is one hundred dollars (\$100) and is collected from all applicants. This application fee is in addition to the easement compensation and appraisal costs, and is non-refundable unless the Director determines that the land applied for is not under the jurisdiction of the Board.~~ (3-18-22)

~~**02. Easement Fee.** The compensation for permanent easements over state-owned lands covered by these rules is as follows:~~

	COMPENSATION
Highways, roads, railroads, reservoirs, trails, canals, ditches, or any other improvements that require long term, exclusive or near exclusive use and occupation of the right of way	Up to 100% of land value plus payment for any damage or impairment of rights to the remainder of the property as determined by the Director and supported by specific data such as an appraisal
Overhead transmission and power lines	Up to 100% of land value depending on the exclusivity of use as determined by the Director and supported by specific data such as an appraisal plus payment for any damage or impairment of rights to the remainder of the property as determined by the Director and supported by data such as an appraisal
Buried installations—cables, pipelines, sewerlines, waterlines	Up to 100% of land value, depending on the exclusivity use as determined by the Director and supported by specific data such as an appraisal plus payment for any damage or impairment of rights to the remainder of the property, as determined by the Director and supported by specific data such as an appraisal

(3-18-22)

~~**03. Appraisal Required.** An appraisal of an easement may be required where, in the opinion of the Director, the easement value will exceed the minimum compensation fee of five hundred dollars (\$500).~~ (3-18-22)

**01. Easement Fee.** The compensation for easements over state-owned lands: Up to one hundred percent (100%) of market value, plus payment for any damage or impairment of rights to the remainder of the property, and proportional payment for any existing improvements within the right-of-way, such as a road, road surfacing, culverts, and bridges, as determined by the Director and supported by specific data such as an appraisal. ( )

**a.** A commensurate portion of the value created by the right of way, as determined by the Director and supported by specific data such as an appraisal. ( )

~~**042. Performance of Appraisal.** The appraisal of the easement ~~will normally be~~ may be performed by qualified Department staff or as determined by the Director. ~~If so desired by the applicant, and agreed to by the Director, the applicant may provide the appraisal that is acceptable to and meets the specifications set by the Director.~~ (3-18-22)( )~~

~~**053. Appraisal Costs.** An Applicant shall bear the costs of an appraisal. Where the appraisal is~~

performed by ~~the Department staff, the appraisal is two hundred fifty dollars (\$250) for a market analysis, five hundred dollars (\$500) for a short form appraisal, and one thousand dollars (\$1,000) for appraisals of easements requiring Board approval. The appraisal cost is in addition to those costs outlined in Subsections 021.01 and 021.02. In no case will~~, an applicant will not be charged more than one thousand dollars (\$1000) for an appraisal ~~of an easement conducted by departmental staff.~~ (3-18-22)(    )

**064. Term Easements.** Compensation for term easements will be established by appraisal or as determined by the Director. (3-18-22)(    )

**075. Minimum Compensation.** The minimum compensation for any easement is ~~five hundred dollars (\$500), at the discretion of the Land Board,~~ not including the ~~application fee and~~ appraisal costs. (3-18-22)(    )

**022. -- 024. (RESERVED)**

**025. EASEMENT AMENDMENT.**

Amendment of an existing easement must be processed in the same manner as a new application. Amendment includes change of use, widening the easement area, or changing the location of the easement area. Amendment does not include ordinary maintenance, repair, or replacement of existing structures such as poles, wires, cables, and culverts. (3-18-22)

**026. -- 029. (RESERVED)**

**030. EMERGENCY WORK.**

The grantee is authorized to enter ~~upon~~ endowment ~~lands~~ and other state-owned lands ~~managed by the Department for the purpose of to performing~~ emergency repairs ~~on an easement~~ for damage due to vandalism, floods, fire, high winds and other acts of God, provided that the grantee provides written notice to the ~~Director~~ Department within forty-eight (48) hours of the time work commences. ~~Thereupon, the~~ The Director is authorized to assess any damages to the state lands and seek reimbursement. (3-18-22)(    )

**031. -- 034. (RESERVED)**

**035. COOPERATIVE USE AND RECIPROCAL USE AGREEMENTS.**

**01. Joint Agreements.** The Director may, subject to the approval of the Board, enter into joint ownership and use agreements with persons, entities, other state, federal, or tribal agencies for roads providing access to ~~state~~ endowment lands and other state-owned lands managed by the Department. Such agreements must provide that all landowners share proportionately in the cost of building and maintaining the shared road. The proportionate shares are calculated on timber volume, acreage or other unit of value. (3-18-22)(    )

**02. Reciprocal Use Agreements.** The Director may enter into reciprocal use agreements with persons, entities, or other state agencies for existing roads where such agreements will enhance the management of ~~state~~ endowment lands or other state-owned lands ~~managed by the Department.~~ (3-18-22)(    )

**03. Applicability.** Where the Director has entered into such agreements mentioned in Subsections 035.01 and 035.02 above, Sections 021, 040, and 046 do not apply. (3-18-22)

**036. -- 039. (RESERVED)**

**040. ASSIGNMENTS.**

**01. FeeForm.** Easements issued by the Director or by the Board are assignable provided that the assignor and assignee complete the Department's standard assignment form ~~and forward it and the non-refundable assignment fee of fifty dollars (\$50) to any department office.~~ (3-18-22)(    )

**02. Prior Written Consent.** An assignment is not valid without the prior written consent of the Director. Such consent will not be unreasonably withheld. (3-18-22)

**03. Multiple Assignments.** ~~If a~~ All state easements held by a grantee ~~are~~ may be assigned at one time; ~~only one (1) assignment fee is required.~~ (3-18-22)(    )

**041. ABANDONMENT, RELINQUISHMENT, AND TERMINATION.**

**01. Section 58-603, Idaho Code.** The provisions of Idaho Code Section 58-603 apply to all easements over state-owned lands. (3-18-22)

**02. Non-Use.** An easement not used for the purpose for which it was granted, for five (5) consecutive years, is presumed abandoned and automatically terminates. The Director will notify the grantee in writing of the termination. The grantee has thirty (30) days from the date of notification to reply in writing to the Director to show cause why the easement should be reinstated. Within sixty (60) days of receipt of the statement to show cause, the Director will notify the grantee in writing as to the Director's decision concerning reinstatement. The grantee has thirty (30) days of receipt of the Director's decision to appeal an adverse decision to the Board. (3-18-22)

**03. Removal of Improvements.** Upon termination, the grantee has twelve (12) months from the date of final notice to remove any facilities and improvements. (3-18-22)

**04. Voluntary Relinquishment.** The grantee may voluntarily relinquish the easement at any time by completing an easement relinquishment form provided by the Department. ~~The Department will pay the grantee one dollar (\$1) for the relinquishment.~~ (3-18-22)(    )

**042. -- 045. (RESERVED)**

**046. PROCEDURE.**

**01. Contents of Application.** ~~An easement~~ A right-of-way application contains: (3-18-22)(    )

a. ~~A letter of request~~ narrative description stating necessity and the purpose of the ~~easement~~ right-of-way; (3-18-22)(    )

b. A map of the requested right-of-way ~~in triplicate~~; and (3-18-22)(    )

c. ~~One (1) copy of an acceptable~~ An accurate written legal description based on a centerline survey or a metes and bounds survey of the perimeter of the easement tract. The applicant may also describe the area occupied by existing uses, facilities or structures by platting the state-owned land affected by and occupied by the proposed use and showing surveyed or scaled ties (to a legal corner) at the points where the use enters, occupies and leaves the parcel. (3-18-22)(    )

**02. Engineer Certification.** ~~As required in Section 58-601, Idaho Code, for a~~ Any application for a ditch, canal or reservoir, the plats and field notes must be certified by the engineer under whose direction such surveys or plans were made and four (4) copies filed with the Department and one (1) copy with the Director, Department of Water Resources as required in Section 58-601, Idaho Code. (3-18-22)(    )

**03. Where to Submit Application.** An ~~easement~~ application may be submitted to any office of the Department. (3-18-22)(    )

**04. Notification of Approval.** If approved, the applicant will be notified of the amount due to the Department. (3-18-22)

**05. Notification of Denial.** If the application is denied, the applicant will be notified in writing of such decision. (3-18-22)

**~~047. EASEMENTS ON STATE LAND UNDER LAND SALE CONTRACT.~~**

**~~01. Approval of Contract Purchaser.~~** ~~The Director will not approve an easement on lands under contract of sale (land sale certificate) without the approval of the contract sale purchaser or without reviewing the~~

~~consideration received to insure that the state's interests are protected.~~ (3-18-22)

~~**02. Compensation.** The compensation for easements on lands under land sale contract will be as set out in Section 021 except that "land value" may be the sale value. These moneys will be applied to the principal balance on the land sale contract. Additionally, the Department will collect the one hundred dollar (\$100) application fee.~~ (3-18-22)

~~**03. Co-Signature of Contract Purchaser.** The contract sale purchaser must co-sign the easement to validate the document.~~ (3-18-22)

~~0487.~~ -- 999. (RESERVED)

## 20.03.08 – EASEMENTS ON STATE-OWNED LANDS

### 00. LEGAL AUTHORITY.

~~These rules are promulgated pursuant to and are to be construed in a manner consistent with the duties and responsibilities of the Idaho State Board of Land Commissioners as set forth in~~ Idaho Code Title 58, Chapters 1 and 6, and Article IX, Sections 7 and 8 of the Idaho Constitution. Title 58, Chapter 1, Idaho Code, Title 58, Chapter 3, Idaho Code. (3-18-22)( )

### 01. TITLE AND SCOPE.

~~01. Title.~~ These rules are titled IDAPA 20.03.08, “Easements on State-Owned Lands.” (3-18-22)

~~02. Scope.~~ These rules set forth procedures concerning the issuance of easements on all lands within the jurisdiction of the Idaho State Board of Land Commissioners except for state-owned ~~submerged lands and formerly submerged lands~~ navigable waterways. ~~Further, t~~ These rules do not apply to easements for hydroelectric projects. (3-18-22)( )

~~031.~~ **Valid Existing Rights.** These rules are not to be construed as affecting any valid existing rights. (3-18-22)( )

### 02. ADMINISTRATIVE APPEALS.

An applicant aggrieved by a decision of the Director under these rules may request a hearing before the Board, but must do so within thirty (30) days after receipt ~~of written notice~~ of the Director’s decision. (3-18-22)( )

### 03. -- 009. (RESERVED)

### 10. DEFINITIONS.

~~01.~~ **Assignment.** The complete transfer of rights and obligations of an easement in good standing from holder to succeeding right holder (assignor), acknowledged by the Department (servient estate). ( )

~~012.~~ **Board.** The Idaho State Board of Land Commissioners or ~~such representative as may be designated by the Board~~ its designee. (3-18-22)( )

~~023.~~ **Damage or Impairment of Rights to the Remainder of the Property.** The diminution of the market value of the remainder area, in the case of a partial taking. (3-18-22)

~~034.~~ **Department.** The Idaho Department of Lands. (3-18-22)

~~045.~~ **Director.** The Director of the Idaho Department of Lands or ~~such representative as may be designated by the Director~~ its designee. (3-18-22)( )

~~056.~~ **Easement.** A non-possessory interest in land for a specific purpose. Such interest may be limited to a specified term. (3-18-22)

~~067.~~ **Endowment Lands.** ~~Land grants made to the state of Idaho by the Congress of the United States, or real property subsequently acquired through land exchange or purchase, for the sole use and benefit of the public schools and certain other institutions of the state, comprising nine (9) grants altogether~~ Land grants made to the state

of Idaho by the Congress of the United States, or real property subsequently acquired through land exchange or purchase, for the sole use and benefit of the public schools and certain other institutions of the state, comprising nine (9) grants altogether. (3-18-22)( )

**08. Grantee.** The person or entity receiving the property right or permission. ( )

**09. Grantor.** The person or entity transferring, selling, or giving the property right or permission. Herein the Department or Board granting a right-of-way, easement or permit. ( )

**0710. Market Value.** The most probable price at a specified date, in cash, or on terms reasonably equivalent to cash, ~~for which that~~ the property should bring in a competitive and open market under all conditions requisite to ~~a fair sale~~ an arm's length sale, the buyer and seller each acting prudently and knowledgeably, and assuming the price is not affected by undue stimulus. (3-18-22)( )

**11. Right-of-Way.** The area on, below, or above a road, highway, street, waterway, or utility easement over which a legal right of passage exists for the benefit of a specific purpose. Such passage and use rights may be limited as defined and limited to a specified term. ( )

**0812. State-Owned Lands.** All lands within the jurisdiction of the Idaho State Board of Land Commissioners except for state-owned ~~submerged lands or formerly submerged lands~~ navigable waterways. (3-18-22)( )

**0913. Temporary Permit.** An instrument authorizing a specific use on state land usually issued for five (5) years or less, but that may be issued for up to ~~ten~~ twenty (~~10~~20) years. (3-18-22)( )

**011. -- 019. (RESERVED)**

## **20. POLICY.**

**01. Easements Required.** Easements are required for all rights-of-way of a permanent nature over state-owned land. Easements will not be granted when temporary permits ~~will~~ serve the ~~required~~ intended purpose or when a lease is appropriate. (3-18-22)( )

**02. Prior Grants.** The Director will recognize easements on state endowment lands by grant of the federal government, or subsequent landowners, prior to title vesting with the State or by eminent domain. (3-18-22)

**03. Existing Easements.** These rules do not apply to any use, facility or structure described in an existing easement. For amendment of an existing easement, see Section 025. (3-18-22)

**04. Director's Discretion.** The Director may grant ~~an~~ a temporary permit or easement over state-owned land for any legitimate public or private purpose upon payment of appropriate compensation. (3-18-22)( )

**05. Reciprocal Easements.** The Director may seek reciprocal easements for access to state-owned lands from applicants for easements over state-owned lands. The value of the easement acquired by the state may be applied towards the cost of the easement acquired from the state. (3-18-22)

**06. Interest Granted.** An easement grants only such interest ~~to the grantee~~ as is specified in the instrument, including the right to use the property for the specified purpose ~~without interference by the grantor~~. The right to use the property for all other purposes ~~not inconsistent with~~ aside from the grantee's limited interest remains with the grantor. (3-18-22)( )

**07. Limit of Director's Discretion.** The Director may grant and renew all easements ~~in all cases~~ except when the compensation will exceed ~~twenty five thousand dollars (\$25,000)~~ the limits as delegated by the Board exclusive of the value of timber and payment for any damage or impairment of rights to the remainder of the property. (3-18-22)( )

**08. Width of Easement.** The width of any easement granted may not be less than eight (8) feet.



(3-18-22)

**09. Recordation.** The Department will record the easement, or easement release, with the appropriate county recorder's office. (3-18-22)

**10. Term Easement.** The Director may grant an easement ~~that is issued~~ for a specific time period of ten (10) to fifty-five (55) years. (3-18-22)( )

**21. FEES AND COMPENSATION.**

~~**01. Application Fee.** The application fee for new, renewed, or amended easements is one hundred dollars (\$100) and is collected from all applicants. This application fee is in addition to the easement compensation and appraisal costs, and is non-refundable unless the Director determines that the land applied for is not under the jurisdiction of the Board.~~ (3-18-22)

~~**02. Easement Fee.** The compensation for permanent easements over state-owned lands covered by these rules is as follows:~~

	COMPENSATION
Highways, roads, railroads, reservoirs, trails, canals, ditches, or any other improvements that require long term, exclusive or near exclusive use and occupation of the right of way	Up to 100% of land value plus payment for any damage or impairment of rights to the remainder of the property as determined by the Director and supported by specific data such as an appraisal
Overhead transmission and power lines	Up to 100% of land value depending on the exclusivity of use as determined by the Director and supported by specific data such as an appraisal plus payment for any damage or impairment of rights to the remainder of the property as determined by the Director and supported by data such as an appraisal
Buried installations—cables, pipelines, sewerlines, waterlines	Up to 100% of land value, depending on the exclusivity use as determined by the Director and supported by specific data such as an appraisal plus payment for any damage or impairment of rights to the remainder of the property, as determined by the Director and supported by specific data such as an appraisal

(3-18-22)

~~**03. Appraisal Required.** An appraisal of an easement may be required where, in the opinion of the Director, the easement value will exceed the minimum compensation fee of five hundred dollars (\$500).~~ (3-18-22)

**01. Easement Fee.** The compensation for easements over state-owned lands: Up to one hundred percent (100%) of market value, plus payment for any damage or impairment of rights to the remainder of the property, and proportional payment for any existing improvements within the right-of-way, such as a road, road surfacing, culverts, and bridges, as determined by the Director and supported by specific data such as an appraisal. ( )

**a.** A commensurate portion of the value created by the right of way, as determined by the Director and supported by specific data such as an appraisal. ( )

**042. Performance of Appraisal.** The appraisal of the easement ~~will normally be~~ may be performed by qualified ~~Department staff~~ or as determined by the Director. ~~If so desired by the applicant, and agreed to by the Director, the applicant may provide the appraisal that is acceptable to and meets the specifications set by the Director.~~ (3-18-22)( )

**053. Appraisal Costs.** An Applicant shall bear the costs of an appraisal. Where the appraisal is

performed by ~~the Department staff, the appraisal is two hundred fifty dollars (\$250) for a market analysis, five hundred dollars (\$500) for a short form appraisal, and one thousand dollars (\$1,000) for appraisals of easements requiring Board approval. The appraisal cost is in addition to those costs outlined in Subsections 021.01 and 021.02. In no case will,~~ an applicant will not be charged more than one thousand dollars (\$1000) for an appraisal ~~of an easement conducted by departmental staff.~~ (3-18-22)( )

**064. Term Easements.** Compensation for term easements will be established by appraisal or as determined by the Director. (3-18-22)( )

**075. Minimum Compensation.** The minimum compensation for any easement is ~~five hundred dollars (\$500), at the discretion of the Land Board,~~ not including the ~~application fee and~~ appraisal and survey costs. (3-18-22)( )

22. -- 024. (RESERVED)

25. EASEMENT AMENDMENT.

Amendment of an existing easement must be processed in the same manner as a new application. Amendment includes change of use, widening the easement area, or changing the location of the easement area. Amendment does not include ordinary maintenance, repair, or replacement of existing structures such as poles, wires, cables, and culverts. (3-18-22)

26. -- 029. (RESERVED)

30. EMERGENCY WORK.

The grantee is authorized to enter ~~upon~~ endowment ~~lands~~ and other state-owned lands ~~managed by the Department for the purpose of to performing~~ emergency repairs ~~on an easement~~ for damage due to vandalism, floods, fire, high winds and other acts of God, provided that the grantee provides written notice to the ~~Director~~ Department within forty-eight (48) hours of the time work commences. ~~Thereupon, the~~ The Director is authorized to assess any damages to the state lands and seek reimbursement. (3-18-22)( )

31. -- 034. (RESERVED)

35. COOPERATIVE USE AND RECIPROCAL USE AGREEMENTS.

**01. Joint Agreements.** The Director may, subject to the approval of the Board, enter into joint ownership and use agreements with persons, entities, other state, federal, or tribal agencies for roads providing access to ~~state~~ endowment lands and other state-owned lands managed by the Department. Such agreements must provide that all landowners share proportionately in the cost of building and maintaining the shared road. The proportionate shares are calculated on timber volume, acreage or other unit of value. (3-18-22)( )

**02. Reciprocal Use Agreements.** The Director may enter into reciprocal use agreements with persons, entities, or other state agencies for existing roads where such agreements will enhance the management of ~~state~~ endowment lands or other state-owned lands ~~managed by the Department.~~ (3-18-22)( )

**03. Applicability.** Where the Director has entered into such agreements mentioned in Subsections 035.01 and 035.02 above, Sections 021, 040, and 046 do not apply. (3-18-22)

36. -- 039. (RESERVED)

40. ASSIGNMENTS.

**01. FeeForm.** Easements issued by the Director or by the Board are assignable provided that the assignor and assignee complete the Department's standard assignment form ~~and forward it and the non-refundable assignment fee of fifty dollars (\$50) to any department office.~~ (3-18-22)( )

**02. Prior Written Consent.** An assignment is not valid without the prior written consent of the Director. Such consent will not be unreasonably withheld. (3-18-22)

**03. Multiple Assignments.** ~~If a~~ All state easements held by a grantee ~~are~~ may be assigned at one time; ~~only one (1) assignment fee is required.~~ (3-18-22)(    )

**41. ABANDONMENT, RELINQUISHMENT, AND TERMINATION.**

**01. Section 58-603, Idaho Code.** The provisions of Idaho Code Section 58-603 apply to all easements over state-owned lands. (3-18-22)

**02. Non-Use.** An easement not used for the purpose for which it was granted, for five (5) consecutive years, is presumed abandoned and automatically terminates. The Director will notify the grantee in writing of the termination. The grantee has thirty (30) days from the date of notification to reply in writing to the Director to show cause why the easement should be reinstated. Within sixty (60) days of receipt of the statement to show cause, the Director will notify the grantee in writing as to the Director's decision concerning reinstatement. The grantee has thirty (30) days of receipt of the Director's decision to appeal an adverse decision to the Board. (3-18-22)

**03. Removal of Improvements.** Upon termination, the grantee has twelve (12) months from the date of final notice to remove any facilities and improvements. (3-18-22)

**04. Voluntary Relinquishment.** The grantee may voluntarily relinquish the easement at any time by completing an easement relinquishment form provided by the Department. ~~The Department will pay the grantee one dollar (\$1) for the relinquishment.~~ (3-18-22)(    )

**42. -- 045. (RESERVED)**

**46. PROCEDURE.**

**01. Contents of Application.** ~~An easement~~ A right-of-way application contains.:- (3-18-22)(    )

**a.** A ~~letter of request~~ narrative description stating necessity and the purpose of the ~~easement right-of-~~ way; (3-18-22)(    )

**b.** A map of the requested right-of-way ~~in triplicate~~; and (3-18-22)(    )

**c.** ~~One (1) copy of an acceptable~~ An accurate written legal description based on a centerline survey or a metes and bounds survey of the perimeter of the easement tract. The applicant may also describe the area occupied by existing uses, facilities or structures by platting the state-owned land affected by and occupied by the proposed use and showing surveyed or scaled ties (to a legal corner) at the points where the use enters, occupies and leaves the parcel. (3-18-22)(    )

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**04. Notification of Approval.** If approved, the applicant will be notified of the amount due to the Department. (3-18-22)

**05. Notification of Denial.** If the application is denied, the applicant will be notified in writing of such decision. (3-18-22)

**47. ~~EASEMENTS ON STATE LAND UNDER LAND SALE CONTRACT.~~**

**01. ~~Approval of Contract Purchaser.~~** ~~The Director will not approve an easement on lands under contract of sale (land sale certificate) without the approval of the contract sale purchaser or without reviewing the~~

~~consideration received to insure that the state's interests are protected.~~

~~(3-18-22)~~

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~~(3-18-22)~~

~~**03. Co-Signature of Contract Purchaser.** The contract sale purchaser must co-sign the easement to validate the document.~~

~~(3-18-22)~~

**0487. -- 999. (RESERVED)**

## **IDAPA 20.03.08 – Idaho Department of Lands**

### **20.03.08 - RULES GOVERNING EASEMENTS ON STATE LAND**

**DOCKET NO. 20-0308-2501**

#### **NOTICE OF RULEMAKING - ADOPTION OF PENDING RULE**

**EFFECTIVE DATE:** This rule has been adopted by the agency and is now pending review by the 2026 Idaho State Legislature and must be approved by concurrent resolution of the Legislature to go into effect, in accordance with Section 67-5224(2)(c), Idaho Code. Should the pending rule be approved, it will become final and effective on July 1 following the Second Regular Session of the Sixty-eighth Idaho Legislature, unless the concurrent resolution states a different effective date.

**AUTHORITY:** In compliance with Section 67-5224, Idaho Code, notice is hereby given that this agency has adopted a pending rule. The action is authorized pursuant to Section 58-104 and 58-105, Idaho Code, and Title 58 Chapter 6, Idaho Code.

**DESCRIPTIVE SUMMARY:** The following is a concise explanatory statement of the reasons for adopting the pending rule and a statement of any change between the text of the proposed rule and the text of the pending rule with an explanation of the reasons for the change:

The text of the pending rule has been amended in accordance with Section 67-5227, Idaho Code. Only those sections that have changes that differ from the proposed text are printed in this bulletin. The complete text of the proposed rule was published in the August 6, 2025, Idaho Administrative Bulletin, Vol. 25-8, pages 156-162.

The change in the pending rule was to correct an inadvertent deletion of the words "and survey" in section 21.05. Minimum Compensation.

**FEE SUMMARY:** Pursuant to Section 67-5224(2)(d), Idaho Code, a pending fee rule shall not become final and effective unless affirmatively approved by concurrent resolution of the Legislature. The following is a description of the fee or charge imposed or increased in this rulemaking: N/A

**FISCAL IMPACT:** The following is a specific description, if applicable, of any negative fiscal impact on the state general fund greater than ten thousand dollars (\$10,000) during the fiscal year: N/A

**ASSISTANCE ON TECHNICAL QUESTIONS:** For assistance on technical questions concerning this pending rule, contact Lawson Tate at 208-920-6865.

DATED this October 3, 2025.

Lawson Tate, Right-of-Way Program Manager  
2550 Highway 2 West  
Sandpoint, Idaho 83864  
Phone: (208) 263-5104  
ltate@idl.idaho.gov