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**IDAPA 20
TITLE 03
CHAPTER 17**

**20.03.17 - RULES GOVERNING LEASES ON STATE-OWNED SUBMERGED
LANDS AND FORMERLY SUBMERGED LANDS**

000. AUTHORITY.

These rules are promulgated pursuant to, and shall 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, Chapters 1, 3, and 6, Title 58, and the Public Trust Doctrine. (7-1-97)

001. TITLE AND SCOPE.

01. Application Of Rules. These rules set forth procedures concerning the issuance of leases on state-owned submerged lands. (7-1-97)

02. Additional Application Of Rules. These rules also apply to state-owned islands raised from submerged lands, or filled submerged lands, or other formerly submerged lands that are no longer covered by water at any time during an ordinary year. (7-1-97)

03. State's Rights. While the state asserts the right to issue leases for all encroachments, navigational or non-navigational, upon, in or above the beds or waters of navigable lakes and rivers, nothing in these rules shall be construed to vest in the state of Idaho any property, right or claim of such right to any private lands lying above the natural or ordinary high water mark of any navigable lake or river. (7-1-97)

002. WRITTEN INTERPRETATIONS.

There are no written interpretations of these rules. (7-1-97)

003. ADMINISTRATIVE APPEALS.

This chapter does not provide for appeal of the administrative requirements for agencies. (7-1-97)

004. -- 009. (RESERVED).

010. DEFINITIONS.

01. Artificial High Water Mark. The high water elevation above the natural or ordinary high water mark resulting from construction of man-made dams or control work and impressing a new and higher vegetation line. (Section 58-1302(d), Idaho Code). (7-1-97)

02. Board. The Idaho State Board of Land Commissioners or such representative as may be designated by the board. (7-1-97)

03. Commercial Navigational Encroachment. A navigational encroachment for the use of which patrons pay a fee. (7-1-97)

04. Community Dock Or Multiple Family Dock. Structures that provide moorage facilities for more than two riparian/littoral property owners. A community dock shall be considered a commercial navigational aid. (7-1-97)

05. Department. The Idaho Department of Lands. (7-1-97)

06. Director. The director of the Department of Lands or such representative as may be designated by the director. (7-1-97)

07. Dock Surface Area. Includes docks, slips, piers, and ramps and is calculated in square feet. Dock surface area does not include piles, submerged anchors or breakwaters. (7-1-97)

08. Encroachment In Aid Of Navigation. Includes docks, piers, floats, pilings, breakwaters, boat ramps, channels or basins, log storage, public boardwalks and other such aids to navigability on, in, or above the beds or waters of a navigable lake, river or stream. The term “encroachment(s) in aid of navigation” may be used interchangeably herein with the term “navigational encroachment(s)”. (7-1-97)

09. Encroachments Not In Aid Of Navigation. Includes all other encroachments on, in, or above the beds or waters of a navigable lake, river or stream, such as fills into waterways, bridges, floating restaurants, bars, stores or other structures not constructed primarily for use in aid of navigation. It shall also include float homes moored permanently or in any one place for a substantial period of time and used as either a permanent or temporary place of abode or residence. The term “encroachments not in aid of navigation” may be used interchangeably herein with the term “non-navigational encroachment(s)”. (7-1-97)

10. Formerly Submerged Lands. The beds of navigable lakes, rivers, and streams that have either been filled or subsequently become uplands because of human activities including construction of dikes, berms, and seawalls. Also included are islands that have been created on submerged lands through natural processes or human activities since statehood, July 3, 1890. (7-1-97)

11. Market Value. For purposes of these rules only, the per acre market value of the state owned submerged lands shall be the same as the per acre value of the adjacent uplands for which the submerged or formerly submerged land shall serve as a substitute. The per acre value of the adjacent upland may be the county assessed value or may be appraised, as determined by the Director. (7-1-97)

12. Natural Or Ordinary High Water Mark. The line that the water impresses upon the soil by covering it for a sufficient period of time to deprive the soil of its vegetation and destroy its value for agricultural purposes (Section 58-104 and 58-1302(c), Idaho Code). If, however, the soil, configuration of the surface, or vegetation has been altered by man’s activity, the ordinary high water mark shall be located where it would have been if the alteration had not occurred. (7-1-97)

13. Person. An individual, partnership, association, or corporation qualified to do business in the state of Idaho, and any federal, state, county or local unit of government. (7-1-97)

14. Riparian Or Littoral Rights. Only the rights of owners or lessees of land adjacent to navigable lakes, rivers or streams to maintain their adjacency to the lake, river or stream and to make use of their rights as riparian or littoral owners or lessees in building or using aids to navigation but does not include any right to make any consumptive use of the waters or to remove state-owned bed materials. (Section 58-1302(f), Idaho Code). (7-1-97)

15. Single Family Dock. A structure that provides moorage facilities to one (1) riparian/littoral owner. (7-1-97)

16. Submerged Lands. The state-owned beds of navigable lakes, rivers and streams lying below the natural or ordinary high water marks. (7-1-97)

17. Uplands. The land bordering on navigable lakes, rivers and streams. (7-1-97)

011. -- 019. (RESERVED).

020. APPLICABILITY.

Leases shall be required for all encroachments on, in, or over state-owned submerged land except: (7-1-97)

01. Single Or Multiple Family Docks. Single or multiple family docks that were constructed on or before July 1, 1993, occupying less than eleven hundred (1,100) square feet of dock surface area lakeward of the ordinary high water mark, and for which all required permits and approvals have been obtained. (7-1-97)

02. Single Family Docks. Single family docks that were constructed after July 1, 1993, occupying less than seven hundred (700) square feet of dock surface area lakeward of the ordinary high water mark, and for which all required permits and approvals have been obtained. (7-1-97)

03. Multiple Family Docks. Multiple family docks that were constructed after July 1, 1993, occupying less than eleven hundred (1,100) square feet of dock surface area lakeward of the ordinary high water mark, and for which all required permits and approvals have been obtained. (7-1-97)

04. Encroachments Free To The Public. Encroachments in aid of navigation for which the complete use is offered free to the public. (7-1-97)

05. Temporary Permits Or Easements. Uses or encroachments that are customarily authorized by temporary permits or easements, such as roads, railroads, overhead utility lines, submerged cables, and pipelines. (See IDAPA 20.03.09, Easements on State-owned Submerged Lands and Formerly Submerged Lands.) (7-1-97)

021. -- 024. (RESERVED).

025. POLICY.

01. Policy Of The State Of Idaho. It is the policy of the state of Idaho to regulate and control the use and disposition of lands in the beds of navigable lakes, rivers and streams to the natural or ordinary high water mark thereof, so as to provide for their commercial, navigational, recreational or other public use; provided that the board shall take no action in derogation of or seeking to interfere with the riparian or littoral rights of the owners of upland property abutting or adjoining such lands. (Section 58-104, Idaho Code). (7-1-97)

02. Director May Grant Leases. The director may grant leases for uses that are in the public interest and consistent with these rules. (7-1-97)

03. Requests Or Inquiries Regarding Navigability. The state owns the beds of all lakes, rivers, and streams that are navigable in fact. The department will respond to requests or inquiries as to which lakes, rivers, and streams are deemed navigable in fact. Additional information about streams deemed navigable by the State of Idaho is available from the department. (7-1-97)

04. Stream Channel Alteration Permit Or Encroachment Permit. Issuance of a lease shall be contingent upon the applicant obtaining a stream channel alteration permit if required by the Idaho Department of Water Resources, pursuant to Chapter 38, Title 42, Idaho Code, or an encroachment permit if required by the department pursuant to the Lake Protection Act, Chapter 13, Title 58, Idaho Code and compliance with local planning and zoning regulations if applicable. (7-1-97)

05. Other Permits And Licenses. Issuance of a lease shall not relieve an applicant from acquiring other permits and licenses that are required by law. (7-1-97)

06. Submerged Lands Lease Required Upon Notification. All persons using submerged lands in a manner that requires a submerged land lease shall obtain such a lease from the director when notified to do so. (7-1-97)

07. Term Of Lease, Renewal Of Lease. Leases shall be issued for a term not to exceed ten (10) years, and shall be renewed for additional ten (10) year periods upon satisfactory performance during the present term. Renewals shall be processed with a minimum of procedural requirements and shall not be denied except in the most unusual circumstances or noncompliance with the terms and conditions of the previous lease. Lease renewals shall be initiated by the director. (7-1-97)

08. Director's Authorization To Issue And Renew Leases. The director is authorized to issue and renew leases for the use of submerged lands in accordance with these rules. (7-1-97)

09. Rights Granted. The lease grants only such rights as are specified in the lease. The right to use the property for all other purposes that do not interfere with the rights authorized in the lease remains with the state. (7-1-97)

10. Rules Applicable To All Existing And Proposed Uses And Encroachments. These rules shall apply to all existing and proposed uses and encroachments, whether or not authorized by permit under the Lake

Protection Act or the Stream Channel Protection Act. These rules provide that a lease may be required in addition to existing permits. See Subsection 020.01 through 020.05 for information about exceptions to lease requirements.

(7-1-97)

11. Waiver Of Lease Requirements. The director may, in his discretion, waive lease requirements for single or multiple family dock encroachments whose dock surface areas exceed square footages described in Subsection 020.01 through 020.03 when the additional dock surface area square footage is necessary to gain or maintain access to water of sufficient depth to sustain dock use for water craft customarily in use on that particular lake.

(7-1-97)

026. -- 029. (RESERVED).

030. LEASE APPLICATION, FEE, AND PROCEDURE.

01. Fee Determined By Board. The lease application fee shall be determined by the Board. (7-1-97)

02. Fee May Not Be Required. A lease application and fee may not be required if an encroachment permit application for a new or changed encroachment is filed simultaneously. In these cases, the encroachment permit application and fee will also serve as a lease application and fee.

(7-1-97)

03. Fee Shall Be Required. A lease application and fee shall be required for existing encroachments unless application for a new encroachment permit is filed simultaneously. A lease application fee shall be required for leases that are renewed upon expiration.

(7-1-97)

04. Encroachment Permit Application Fees. Information on encroachment permit application fees may be found in IDAPA 20.03.04, "Rules for the Regulation of Beds, Waters and Airspace over Navigable Lakes in the State of Idaho".

(7-1-97)

05. Application To Lease And Fee. The lease application and fee shall be submitted with a letter of request stating the purpose of the lease; a scale drawing of the proposed lease area with plans detailing all intended improvements, including reference to the nearest known property corner(s); the permit number of each existing applicable encroachment permit(s); and the required rent.

(7-1-97)

06. Submittal Of Application To Lease And Fee. The lease application and fee may be submitted to any office of the department.

(7-1-97)

07. Notification Of Approval/Denial. The applicant shall be notified in writing if the lease application is approved or denied. The applicant shall also be notified of any additional requirements.

(7-1-97)

08. Request For Reconsideration. Any applicant aggrieved with the director's determination of rent or denial of a lease application may request reconsideration by the Director.

(7-1-97)

031. -- 034. (RESERVED).

035. RENTAL.

01. Rental Rates Determined By The Board. The rental rates for submerged land leases shall be set by the board.

(7-1-97)

02. Modification Of Rent. The director may temporarily reduce or waive annual lease rent for commercial submerged lands leases for a period not to exceed two (2) years upon showing by the lessee that irreversible financial harm will occur if the rent is not temporarily modified.

(7-1-97)

036. -- 039. (RESERVED).

040. LATE PAYMENT, EXTENSIONS OF PAYMENT.

01. Penalty For Late Payment Of Rent. Rent not paid by the due date shall be considered late. A penalty, calculated from the day after which payment was due, shall be added to the rent. The penalty shall be determined by the Board for the first month or any portion thereof and one percent (1%) of the rent due, including penalty, per month thereafter. (7-1-97)

02. Extension In Time For Payment Of Rent. An extension in time in which to submit payment of rent may be granted for commercial submerged lands leases only. Such extensions may not exceed two (2) successive years (Section 58-305, Idaho Code). (7-1-97)

03. Request For Extension In Time For Payment Of Rent. Lessees must request extensions on forms supplied by the lessor and pay an extension fee to be determined by the Board. The lessee must also provide a statement from his banker or accountant verifying that money is not available for the payment of rent. (7-1-97)

04. Interest Rate For Extension In Time For Payment Of Rent. If an extension is granted, rent plus interest at a rate established by the board will be due no later than October 1 of the rent year. Specifically, interest will be the average monthly rate for conventional mortgages as quoted in the Federal Reserve Statistical Report; the rate to be rounded downward to the nearest one quarter percent (1/4%) on the tenth of each month following the release of data. (7-1-97)

041. -- 044. (RESERVED).

045. APPRAISAL PROCEDURES.

01. Appraisal. An appraisal normally will be performed by qualified department staff. If desired by the applicant and agreed to by the director, the applicant may ask the department for an independent contract appraisal. Any appraisal must be under the control of the department. (7-1-97)

02. Cost Of Appraisal. If the appraisal is performed by department staff or by an independent contract appraiser, the appraisal costs shall be the actual cost for department personnel plus transportation, including per diem and administrative overhead or the bid amount for the contract appraiser. An itemized statement of these costs shall be provided to the applicant. The cost of the appraisal shall be in addition to those costs outlined in Subsections 035.01 and 035.02 and shall be billed separately from the application fee and rent. (7-1-97)

046. -- 049. (RESERVED).

050. LEASE MODIFICATION OR AMENDMENT.

01. Encroachment Amendment. A lease modification or amendment must first be permitted through an amendment to the lake encroachment permit or stream alteration permit. (7-1-97)

02. Modification Of Existing Lease. Modification or amendment of an existing lease will be processed in the same manner as a new application. Modification or amendment includes change of use, location, size or scope of the lease site, but does not include ordinary maintenance, repair or replacement of existing structures or facilities. (7-1-97)

03. Modification Of Interior Facilities. Changes in the interior arrangement of existing facilities that do not constitute a change of use and do not alter or enlarge the exterior dimensions, shall not be deemed a modification under this rule. However, the lessee must give written notice to the department ten (10) days in advance of making such changes. The lessee shall also furnish one (1) set of as-built plans to the department within thirty (30) days following completion of changes. (7-1-97)

051. -- 054. (RESERVED).

055. ASSIGNMENTS, ASSIGNMENT FEE.

01. Assignment Of Lease. Leases may be assigned upon approval of the director provided that the lease conforms with Subsection 025.02 and all other provisions of these rules. The assignor and assignee must

complete the department's standard assignment form and forward it to any department office. (7-1-97)

02. Assignment Fee. The assignment fee shall be determined by the Board and shall be paid at the time the assignment is submitted to the department. (7-1-97)

03. Permit Transfer. The encroachment permit/stream alteration permit pertinent to a lease must be transferred to a purchaser simultaneously with a lease assignment. A lease assignment will not be approved unless the permit is transferred. (7-1-97)

04. Approval Required For Assignment. An assignment is not valid until it has been approved by the director. (7-1-97)

056. -- 059. (RESERVED).

060. CANCELLATION.

01. Cancellation Of Lease For Violation Of Terms. Any violation of the terms of the lease by the lessee, including non-payment of rent or any violation by lessee of any rule now in force or hereafter adopted by the board may subject the lease to cancellation. The lessee shall be provided written notification of any violation. The letter shall specify the violation, corrective action necessary, and specify a reasonable time to make the correction. If the corrective action is not taken within the specified reasonable period of time, the department shall notify the lessee of cancellation of the lease; provided, however, that the notice shall be provided to lessee no later than thirty (30) days prior to the effective date of such cancellation. (7-1-97)

02. Reinstatement Of Lease. A lease may be reinstated within thirty (30) days after cancellation for non-payment by paying the rental, plus interest, and a reinstatement fee to be determined by the Board. (7-1-97)

03. Cancellation Of Lease For Use Other Than Intended Purpose. A lease not used for the purpose for which it was granted may be canceled. The department shall notify the lessee in writing of any proposed cancellation. The lessee shall have thirty (30) days to reply in writing to the department to show cause why the lease should not be cancelled. Within sixty (60) days, the department shall notify the lessee in writing as to the department's decision concerning cancellation. The lessee will have thirty (30) days to appeal an adverse decision to the director. (7-1-97)

04. Removal Of Improvements Upon Cancellation. Upon cancellation, the director shall provide the lessee with a specific, but reasonable, amount of time, not to exceed six (6) months from the date of final notice, to remove any facilities and improvements. Failure to remove any facilities or structures within such time period established by the director shall be deemed a trespass on submerged or formerly submerged lands. (7-1-97)

061. -- 064. (RESERVED).

065. BOND.

01. Bond Requirement Determined By Director. Bonds may be required for commercial non-navigational leases. The need for bond shall be at the discretion of the director who shall consider the potential for abandonment of the facility, harm to state-owned submerged land and water resources, the personal and real property of adjacent upland owners and the personal and real property owned by the encroachment owner that is appurtenant to and supportive of the encroachment. (7-1-97)

02. Performance Bond. In the event a bond is necessary, the lessee shall submit a performance bond in favor of the state of Idaho and in a format acceptable to the director before a lease is issued. Acceptable bonds include surety, collateral, and letters of credit. The amount of bond shall be the estimated cost of restoration as established by the director in consultation with the lease applicant on a case by case basis. To determine restoration costs, the director may consider the potential for damage to land, to improvements, and the cost of structure removal. (7-1-97)

066. -- 069. (RESERVED).

070. LIABILITY AND INDEMNITY.

A lessee shall indemnify and hold harmless the lessors, its departments, agencies and employees for any and all claims, actions, damages, costs, and expenses which may arise by reason of lessee's occupation of the leased premises, or the occupation of the leased premises by any of the lessee's agents, or by any person occupying the same with the lessee's permission. (7-1-97)

071. -- 074. (RESERVED).

075. RULES AND LAWS OF THE STATE.

The lessee shall comply with all applicable rules and laws of the state of Idaho insofar as they affect the use of the lands described in the lease. (7-1-97)

076. -- 079. (RESERVED).

080. BINDING ON HEIRS.

All of the terms, covenants, and conditions in a state lease shall be binding upon the heirs, executors, and assigns of the lessee. (7-1-97)

081. -- 084. (RESERVED).

085. CIVIL RIGHTS.

The lessee shall not discriminate against any person on the basis of such person's race, creed, color, sex, national origin or handicap. (7-1-97)

086. -- 999. (RESERVED).

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