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**IDAPA 20
TITLE 03
CHAPTER 08**

20.03.08 - EASEMENTS ON STATE OWNED LANDS

000. LEGAL 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 Title 58, Chapters 1 and 6, and Article IX, Sections 7 and 8 of the Idaho Constitution. (9-9-86)

001. TITLE AND 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. Further, these rules shall not apply to easements for hydroelectric projects. (9-9-86)

01. Valid Existing Rights. These rules shall not be construed as affecting any valid existing rights. (9-9-86)

002. (RESERVED).

003. 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. (9-9-86)

004. -- 009. (RESERVED).

010. DEFINITIONS.

01. Board. The Idaho State Board of Land Commissioners or such representative as may be designated by the board. (9-9-86)

02. 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. (9-9-86)

03. Department. The Idaho Department of Lands. (9-9-86)

04. Director. The Director of the Department of Lands or such representative as may be designated by the director. (9-9-86)

05. Easement. A non-possessory interest held by one (1) person in land of another person whereby the first person is accorded partial use of such land for a specific purpose. (9-9-86)

06. Endowment Lands. Land grants made to the state of Idaho by the Congress of the United States for the sole use and benefit of the public schools and certain other institutions of the state, comprising nine (9) grants altogether. (9-9-86)

07. Exclusive Use. That use specified in the easement precludes the grantor from using the easement area for any other uses. (9-9-86)

08. Fair Market Value. The amount in cash, or on terms reasonably equivalent to cash, for which in all probability the property would be sold by a knowledgeable owner willing but not obligated to sell to a knowledgeable purchaser who desired but is not obligated to buy. (9-9-86)

09. Grantee. The party to whom the easement is granted and their assigns and successors in interest. (9-9-86)

10. Grantor. The state of Idaho and its assigns and successors in interest. (9-9-86)

11. 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. (9-9-86)

12. Specific Term Easement. An easement that is issued for a specific time period of ten (10) to fifty-five (55) years. (9-9-86)

13. 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. (9-9-86)

14. Temporary Permit. An instrument authorizing a specific use on state land usually issued for five (5) years or less, but which may be issued for up to ten (10) years. (9-9-86)

011. POLICY.

01. Easements Required. Easements shall be required for all rights-of-way of a permanent nature over state-owned land. Easements shall not be granted where temporary permits will serve the required purpose or where a lease is more usual and customary. (9-9-86)

02. No Adverse Possession. An easement cannot be established by adverse possession on state endowment land, no matter how long the adverse use has been in existence. (9-9-86)

03. Prior Grants. The director shall recognize easements on state endowment lands by grant of the federal government prior to title vesting with the State or by eminent domain. (9-9-86)

04. Existing Easements. These rules shall not apply to any use, facility or structure described in an existing easement. For modification of an existing easement, see Section 025. (9-9-86)

05. Director's Discretion. The director may grant an easement over state-owned land for any legitimate public or private purpose upon payment of appropriate compensation. (9-9-86)

06. 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. (9-9-86)

07. 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 the grantee's interest remains with the grantor. (9-9-86)

08. Limit of Director's Discretion. The director may grant and renew easements in all cases except when the compensation will exceed ten thousand dollars (\$10,000) exclusive of the value of timber and payment for any damage or impairment of rights to the remainder of the property. (9-9-86)

09. Width of Easement. The width of any easement granted shall not be less than eight (8) feet. (9-9-86)

012. -- 019. (RESERVED).

020. FEES AND COMPENSATION.

01. Application Fee. The application fee for new, renewed, or amended easements is fifty dollars (\$50) and shall be collected from all applicants. This application fee shall be 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. (9-9-86)

02. Easement Fee. The compensation for permanent easements over state-owned lands covered by

these rules shall be 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

(7-1-93)

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 two hundred fifty dollars (\$250). (9-9-86)

04. Performance of Appraisal. The appraisal of the easement will normally be performed by qualified departmental staff. If so desired by the applicant and agreed to by the director, the applicant may provide the appraisal which must be acceptable to and meet the specifications set by the director. (9-9-86)

05. Appraisal Costs. Where the appraisal is performed by departmental staff, the appraisal costs shall be assessed at actual cost and shall be in addition to those costs outlined in Subsections 020.01 and 020.02. These costs shall include transportation, personnel costs (including per diem), and administrative overhead. An itemized statement of these costs shall be provided to the applicant. In no case shall an applicant be charged more than five hundred dollars (\$500) for an appraisal of an easement conducted by departmental staff. (9-9-86)

06. Fixed Term Easements. Compensation for specific term easement--ten (10) to fifty-five (55) years--shall be established by appraisal. (9-9-86)

07. Timber. The grantee shall pay fair market value for all timber cut from easement unless the director elects to sell the timber through the department's timber sale program. All timber remaining uncut on the easement area shall revert to the State upon completion of any construction on the easement area and may not be cut or disturbed without first obtaining written consent from the director and payment of fair market value for the timber. (9-9-86)

08. Minimum Compensation. The minimum compensation for any easement shall be two hundred fifty dollars (\$250), not including the application fee and appraisal costs. (9-9-86)

021. -- 024. (RESERVED).

025. EASEMENT MODIFICATION. Modification of an existing easement shall be processed in the same manner as a new application. Modification includes change of use, widening the easement area, or changing the location of the easement area. Modification does not include ordinary maintenance, repair, or replacement of existing structures such as poles, wires, cables, and

culverts. (9-9-86)

026. -- 029. (RESERVED).

030. EMERGENCY WORK.

The grantee is authorized to enter upon endowment lands and other lands managed by the department for the purpose of performing emergency repairs on an easement for damage due to floods, high winds and other acts of God, provided that the grantee provides written notice to the director within forty-eight (48) hours of the time work commences. Thereupon, the director is authorized to assess any damages to the state lands and seek reimbursement. (9-9-86)

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 for roads providing access to state endowment lands and other 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 shall be calculated on timber volume, acreage or other unit of value. (9-9-86)

02. Reciprocal Use Agreements. The director may enter into reciprocal use agreements with persons for existing roads where such agreements will enhance the management of state endowment lands or other lands managed by the department. (9-9-86)

03. Applicability. Where the director has entered into such agreements mentioned in Subsections 035.01 and 035.02 above, Sections 020, 040, and 046 shall not apply. (9-9-86)

036. -- 039. (RESERVED).

040. ASSIGNMENTS.

01. Fee. 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. (9-9-86)

02. Prior Written Consent. An assignment is not valid without the written consent of the director. Such consent will not be unreasonably withheld. (9-9-86)

03. Multiple Assignments. If all state easements held by a grantee are assigned at one time, only one (1) assignment fee shall be required. (9-9-86)

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. (9-9-86)

02. Non-Use. An easement not used for the purpose for which it was granted, for five (5) consecutive years, is presumed abandoned and shall automatically terminate. The director shall notify the grantee in writing of the termination. The grantee shall have 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 shall notify the grantee in writing as to the director's decision concerning reinstatement. The grantee shall have thirty (30) days of receipt of the director's decision to appeal an adverse decision to the board. (9-9-86)

03. Removal of Improvements. Upon termination, the grantee shall have twelve (12) months from the date of final notice to remove any facilities and improvements. (9-9-86)

04. Voluntary Relinquishment. The grantee may voluntarily relinquish the easement at any time by completing an easement relinquishment form. The department shall pay the grantee one dollar (\$1) for the relinquishment. (9-9-86)

042. -- 045. (RESERVED).

046. PROCEDURE.

01. Contents of Application. An easement application shall contain. (7-1-93)

a. A letter of request stating the purpose of the easement; (7-1-93)

b. A plat of right-of-way in triplicate; and (7-1-93)

c. One (1) copy of an acceptable written description based on a survey of the centerline, or a metes and bounds survey 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 the use and showing surveyed or scaled ties (to a legal corner) at the points where the use enters and leaves the parcel. (9-9-86)

02. Engineer Certification. As required in Section 58-601, Idaho Code, for any application for a ditch, canal or reservoir, the plats and field notes shall 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. (9-9-86)

03. Where to Submit Application. An easement application may be submitted to any office of the department. (9-9-86)

04. Notification of Approval. If approved, the applicant shall be notified of the amount due to the department. (9-9-86)

05. Notification of Denial. If the application is denied, the applicant shall be notified in writing of such decision. (9-9-86)

047. EASEMENTS ON STATE LAND UNDER LAND SALE CONTRACT.

01. Approval of Contract Purchaser. The director shall 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. (9-9-86)

02. Compensation. The compensation for easements on lands under land sale contract shall be as set out in Section 020 except that "land value" may be the sale value. These moneys shall be applied to the principal balance on the land sale contract. Additionally, the department shall collect the fifty dollar (\$50) application fee. (9-9-86)

03. Co-Signature of Contract Purchaser. The contract sale purchaser must co-sign the easement to validate the document. (9-9-86)

048. -- 999. (RESERVED).

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