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**IDAPA 26
TITLE 01
CHAPTER 10**

26.01.10 - RULES GOVERNING THE ADMINISTRATION OF TEMPORARY PERMITS ON LANDS OWNED BY THE IDAHO DEPARTMENT OF PARKS AND RECREATION

000. LEGAL AUTHORITY.

These rules set forth procedures concerning the issuance of temporary permits on all lands owned by the Idaho Department of Parks and Recreation. Requests for permits on lands administered, but not owned by IDPR must be made directly to the land owner. These rules are promulgated pursuant to Idaho Code Section 67-4223(a) and shall be construed in a manner consistent with the duties and responsibilities of the Idaho Park and Recreation Board as set forth in Idaho Code Title 67, Chapter 42. These rules shall not be construed as affecting any valid existing rights.

(7-1-93)

001. -- 002. (RESERVED).

003. APPEALS.

A person aggrieved by a decision of the Director under these rules may submit a written request to appear before the Board pursuant to IDAPA 26.01.01.250, "Rules of Administrative Procedure of the Idaho Park and Recreation Board," but must do so within thirty (30) days after receipt of written notice of the Director's decision. Decisions to grant or deny a temporary permit are within the absolute discretion of the Board, and no appeal may be taken therefrom.

(7-1-93)

004. -- 009. (RESERVED).

010. DEFINITIONS.

01. Board. The Idaho Park and Recreation Board or such representative as may be designated by the board. (7-1-93)

02. Department and IDPR. The Idaho Department of Parks and Recreation. (7-1-93)

03. Director. The Director of the Idaho Department of Parks and Recreation or such representative as may be designated by the Director. (7-1-93)

04. Grantee. The party to whom a temporary permit is granted and their assigns and successors in interest. (7-1-93)

05. Grantor. The State of Idaho and its assigns and successors in interest. (7-1-93)

06. Park Manager. The person responsible for administering and supervising a specific state park area, or department owned land not yet a state park, as designated by the Director of the Idaho Department of Parks and Recreation. (7-1-93)

07. 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. (7-1-93)

08. Temporary Permit. An instrument authorizing a temporary use of IDPR owned land for the construction, operation and maintenance of specific typically linear elements including but not limited to power and telephone lines, roadways, driveways, sewer lines, natural gas lines and water lines. (7-1-93)

011. -- 049. (RESERVED).

050. POLICY.

01. Issuing Authority. Temporary permits are issued by the Director in lieu of easements, and shall be required for all activities on or over IDPR owned land. (7-1-93)

02. Discretion. The Board retains absolute discretion to grant or withhold a temporary permit on land which it owns. (7-1-93)

03. Consent Required. Temporary permits, their amendment, renewal and assignment and all subsequent actions are not valid without the written consent of the Director. (7-1-93)

04. Modifications. Temporary permits and subsequent modifications, assignments and renewals require a formal application, and payment of a processing fee to reimburse the agency for staff time devoted to processing the request. (7-1-93)

05. Purpose Compatible. The purpose for which the temporary permit is sought must not interfere with the existing or anticipated values, objectives, or operation of department owned lands. (7-1-93)

06. Compensation. An appropriate compensation for use of department-owned lands, as set out in Section 150 of this chapter, shall be paid to the IDPR in cash or in the form of offsetting benefits to be determined by the Director. (7-1-93)

07. Control. At all times the control of gates, roads and park lands shall be retained by the State. The permit granted shall be for the Grantee's use only, shall be revocable for cause, shall be issued for a specific period of time, not to exceed ten (10) years, but usually five (5) years or less, and shall automatically expire if not used for a period of one (1) year. (7-1-93)

051. -- 099. (RESERVED).

100. PROCESSING FEES.

01. Issuance or Modification. The processing fee for a new temporary permit, or modification of an existing temporary permit, is one-hundred dollars (\$100), which must be received from all applicants before processing can proceed. The processing fees are designed to offset processing costs and are nonrefundable. (7-1-93)

02. Assignment or Renewal. The processing fee for assignment or renewal of an existing temporary permit is twenty-five dollars (\$25), and must be received before processing can proceed. The processing fees are designed to offset processing costs and are nonrefundable. (7-1-93)

101. -- 149. (RESERVED).

150. COMPENSATION.

01. Payable in Advance. Cash compensation for the entire term of the temporary permit shall be collected from the applicant prior to issuance. (7-1-93)

02. Cost per Acre. Cash compensation for a temporary permit shall be charged at a rate of fifty dollars (\$50) per acre of IDPR land utilized per year or any portion thereof, and shall be specified in the temporary permit. Temporary permits of less than one (1) year in duration will not be prorated. (7-1-93)

03. Noncash Compensation. Offsetting (non-cash) compensation for a temporary permit may be approved on an individual basis by the Director, and the terms of the agreement shall be outlined in the temporary permit. (7-1-93)

04. Nonrefundable. Compensation to IDPR for a temporary permit is non-refundable, except as set out in Subsection 200.08 of this chapter. (7-1-93)

151. -- 199. (RESERVED).

200. STANDARD CONDITIONS.

All temporary permits issued shall be subject to the following standard conditions: (7-1-93)

01. Term Limited. The use and term of a temporary permit is limited solely to that specifically stated in the instrument. (7-1-93)

02. Utilities. Except under special circumstances with approval of the Director, all utilities shall be installed underground. (7-1-93)

03. Construction, Operation and Maintenance. The Grantee shall construct, maintain and operate at Grantee's sole expense the facility for which the temporary permit is granted, and maintain the permit site in a condition satisfactory to the Park Manager. (7-1-93)

04. Compliance with Laws. The Grantee will comply with all applicable state and local laws, rules, and ordinances, including but not limited to: State fire laws and all rules of the State Land Board pertaining to forest and watershed protection, and with the Stream Channel Protection Act as designated in Chapter 38, Title 42 of the Idaho Code. (7-1-93)

05. Wetlands. The Grantee will comply with all State and Federal statutes, rules, and regulations pertaining to wetlands protection. (7-1-93)

06. Land and Water Conservation Fund. Temporary permits on land located within Land and Water Conservation Fund 6(f) boundaries, their amendment, renewal, assignment and all subsequent actions shall be subject to the terms and the requirements of the Land and Water Conservation Fund Act of 1965 (P.L. 88-578, 16 U.S.C.S. Section 4601-4 et seq.). (7-1-93)

07. Hold Harmless. The Grantee, its agents and contractors shall indemnify and hold harmless the Department, the state of Idaho and its representatives against and from any and all demands, claims or liabilities of every nature whatsoever, arising directly or indirectly from or in any way connected with the use authorized under the temporary permit. (7-1-93)

08. Withdrawal for Park Use. Should the land be needed for park development or recreation use, the Director reserves the right to order the change of location or the removal of any structure(s) or facility(ies) authorized by a temporary permit at any time. Any such change or removal will be made at the sole expense of the Grantee, its successors or assigns. When a temporary permit is terminated prior to its stated expiration date pursuant to this provision, the grantee will receive a pro-rata refund of compensation paid. (7-1-93)

09. Permits Not Exclusive. The temporary permit is not exclusive to the Grantee, and shall not prohibit the Department from granting other permits or franchise rights of like or other nature to other public or private entities, nor shall it prevent the Department from using or constructing roads and structures over or near the lands encompassed by the temporary permit, or affect the Department's right to full supervision or control over any or all lands which are part of the temporary permit. (7-1-93)

10. Cancellation. The Director may cancel the temporary permit or amend any of the conditions of the temporary permit if the Grantee fails to comply with any or all of the provisions, or requirements set forth or through willful or unreasonable neglect, fails to heed or comply with notices given. (7-1-93)

11. Removal of Facilities. Upon termination of the temporary permit for any reason including cancellation, expiration, or relinquishment, the Grantee shall have thirty (30) days from the date of termination to remove any facilities and improvements constructed by the Grantee, and shall restore the permit site to the satisfaction of the Park Manager. Upon written request, and for good cause shown, the Director may allow a reasonable additional time for the removal of improvements and facilities and the restoration of the site. (7-1-93)

201. -- 249. (RESERVED).

250. SPECIAL CONDITIONS.

Special conditions addressing unique situations may be included in the temporary permit to protect natural or park resources, or to safeguard public health, safety or welfare. (7-1-93)

251. -- 299. (RESERVED).

300. APPLICATION PROCEDURE.

01. Contents of Application. A temporary permit application shall contain: (7-1-93)

- a.** A Temporary Permit Application/Action form; (7-1-93)
- b.** A plat of the proposed permit location; (7-1-93)
- c.** The appropriate application fee; (7-1-93)
- d.** An acceptable written legal description based on a survey of the centerline, or a metes and bounds survey of the temporary permit tract. The survey shall be performed by a Registered Professional Land Surveyor as required by Idaho Code Section 54-1229. (7-1-93)

02. Engineering 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, Idaho Department of Water Resources. (7-1-93)

03. Application Submission. Temporary permit applications shall be submitted to the Park Manager of the park in which the permit is requested. The Park Manager will forward it for processing as outlined in Section 800. of this chapter. (7-1-93)

301. -- 349. (RESERVED).

350. MODIFICATION OF EXISTING TEMPORARY PERMIT.

A modification of an existing temporary permit shall be processed in the same manner as a new application. Modification includes change of use, enlarging the permit area, or changing the location of the permit area. Modification does not include ordinary maintenance, repair, or replacement of existing facilities. (7-1-93)

351. -- 399. (RESERVED).

400. ASSIGNMENT.

Temporary Permits issued by the Director cannot be assigned without the approval of the Director. To request approval of an assignment, the Assignor and Assignee shall complete the Department's standard Temporary Permit Application/Action form and forward it and the assignment fee to the Park Manager, for processing as outlined in Section 800 of this chapter. (7-1-93)

401. -- 449. (RESERVED).

450. RENEWAL.

Renewal of temporary permits may be sought by completing a Temporary Permit Application/Action form and forwarding it together with the renewal fee to the Park Manager for processing as outlined in Section 800 of this chapter. Renewal applications must be submitted at least forty-five (45) days prior to the expiration date of the temporary permit. (7-1-93)

451. -- 499. (RESERVED).

500. ABANDONMENT.

A Temporary Permit not used for the purpose for which it was granted for a period of one (1) year 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 the written notice to reply in writing to the Director to show cause why the Temporary Permit should be reinstated. Within thirty (30) 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 after receipt of the Director's decision to request to appear before the board as outlined in Section 003 of this chapter. Removal of property from and restoration of the site is governed by Subsection 200.11 of

this chapter.

(7-1-93)

501. -- 549. (RESERVED).

550. RELINQUISHMENT.

The Grantee may voluntarily relinquish a temporary permit any time by submitting a Temporary Permit Application/Action Form to the Park Manager. Upon relinquishment, removal of property from and restoration of the site is governed by Subsection 200.11 of this chapter.

(7-1-93)

551. -- 599. (RESERVED).

600. EXPIRATION.

Upon expiration, and absent a request for renewal of the temporary permit, removal of property from and restoration of the site is governed by Subsection 200.11 of this chapter.

(7-1-93)

601. -- 649. (RESERVED).

650. CANCELLATION.

The Director may cancel a temporary permit if the Grantee fails to comply with any or all of its provisions, terms, conditions, or rules; or through willful or unreasonable neglect, fails to heed or comply with notices given.

(7-1-93)

651. -- 699. (RESERVED).

700. ENFORCEMENT.

Should it become necessary to enforce the terms of a temporary permit in a court of law and the Grantor prevails, the Grantee shall pay all costs and fees.

(7-1-93)

701. -- 749. (RESERVED).

750. ADMINISTRATION.

01. Bureau Responsible. The IDPR Development Bureau shall be responsible for uniform statewide administration of all IDPR temporary permits.

(7-1-93)

02. Disposition of Fees. All processing and compensation fees collected from applicants shall be sent to the fiscal section for deposit into the appropriate account.

(7-1-93)

03. Status Report. The IDPR Development Bureau shall maintain an up-to-date status report on all temporary permits issued.

(7-1-93)

751. -- 799. (RESERVED).

800. PROCESSING.

01. Receipt of Application. Upon receipt of a properly filed Temporary Permit Application/Action form and the appropriate application fee, the Park Manager shall review the application and forward it, together with his comments, to the Region Supervisor. The Region Supervisor shall review the application and forward his comments along with the Temporary Permit Application/Action package, to the Chief, Development Bureau, IDPR for processing.

(7-1-93)

02. Time. Processing of Temporary Permit Application/Action Forms shall not exceed one hundred twenty (120) days from the date of acceptance of a complete application by the Park Manager. Applications not acted on within one hundred twenty (120) days are deemed denied.

(7-1-93)

03. Notification. All applicants shall be notified in writing, by the development bureau chief, of the approval or denial of their application.

(7-1-93)

801. -- 999. (RESERVED).

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