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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. LEGAL AUTHORITY.

This Chapter is adopted under the legal authorities of Title 58, Chapter 1, Idaho Code, Sections 58-104(6), 58-104(9), and 58-105; Title 58, Chapter 3, Idaho Code, Sections 58-304 through 58-312; Title 58, Chapter 6, Idaho Code; Title 58, Chapter 12; and Title 67, Chapter 52, Idaho Code. (3-26-08)

001. TITLE AND SCOPE.

01. Title. These rules shall be cited as IDAPA 20.03.17, "Rules Governing Leases on State-Owned Submerged Lands and Formerly Submerged Lands." (3-26-08)

02. Scope. These rules govern the issuance of leases on state-owned submerged lands. (3-26-08)

a. 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. (3-26-08)

b. 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. (3-26-08)

002. WRITTEN INTERPRETATIONS.

The Idaho Department of Lands maintains written interpretations of its rules which may include, but may not be limited to, written procedures manuals and operations manuals, Attorney General formal and informal opinions, and other written guidance, which pertain to the interpretation of the rules of this chapter. Copies of the procedures manuals and operations manuals, Attorney General opinions, and other written interpretations, if applicable, are available for public inspection and copying at the director's office of the Idaho Department of Lands, Boise, Idaho, or are available on the Internet at www.idl.idaho.gov. (3-26-08)

003. ADMINISTRATIVE APPEALS.

Any person aggrieved by any final decision or order of the board shall be entitled to judicial review pursuant to the provisions of Title 67, Chapter 52, Idaho Code, and IDAPA 20.01.01, "Rules of Practice and Procedure Before the State Board of Land Commissioners." (3-26-08)

004. INCORPORATION BY REFERENCE.

There are no documents that have been incorporated by reference into this rule. (3-26-08)

005. OFFICE -- OFFICE HOURS -- MAILING ADDRESS AND STREET ADDRESS.

The principal place of business of the Idaho Department of Lands is 300 North 6th Street, Suite 103, Boise, Idaho and it is open from 8 a.m. to 5 p.m., Monday through Friday, except legal holidays. The mailing address is: Idaho Department of Lands, P.O. Box 83720, Boise, Idaho 83720-0050. The telephone number of the office is (208) 334-0200 and the fax number is (208) 334-2339. (3-26-08)

006. PUBLIC RECORDS ACT COMPLIANCE.

The rules contained herein have been promulgated according to the provisions of Title 67, Chapter 52, Idaho Code, and are public records. (3-26-08)

007. -- 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 works and impressing a new and higher vegetation line. (3-26-08)
- 02. Board.** The Idaho State Board of Land Commissioners or its designee. (3-26-08)
- 03. Commercial Marina.** A commercial navigational encroachment whose primary purpose is to provide moorage for rental or for free to the general public. (3-26-08)
- 04. Commercial Navigational Encroachment.** A navigational encroachment used for commercial purposes. (3-26-08)
- 05. Community Dock.** A structure that provides private moorage for more than two (2) adjacent littoral owners, or other littoral owners possessing a littoral common area with littoral rights including, but not limited to, homeowners' associations. No public access is required for a community dock. (3-26-08)
- 06. Department.** The Idaho Department of Lands or its designee. (3-26-08)
- 07. Director.** The head of the Idaho Department of Lands or his designee. (3-26-08)
- 08. Dock Surface Area.** Includes docks, slips, piers, and ramps and is calculated in square feet. Dock surface area does not include pilings, submerged anchors, or undecked breakwaters. (3-26-08)
- 09. Encroachments in Aid of Navigation.** Includes docks, piers, jet ski and boat lifts, buoys, pilings, breakwaters, boat ramps, channels or basins, and other facilities used to support water craft and moorage on, in, or above the beds or waters of a navigable lake, river or stream. The term "encroachments in aid of navigation" may be used interchangeably herein with the term "navigational encroachments." (3-26-08)
- 10. 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, including landfills, bridges, utility and power lines, or other structures not constructed primarily for use in aid of navigation. It shall also include float homes and floating toys. The term "encroachments not in aid of navigation" may be used interchangeably herein with the term "non-navigational encroachments." (3-26-08)
- 11. Formerly Submerged Lands.** The beds of navigable lakes, rivers, and streams that have either been filled or subsequently became 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)
- 12. Market Value.** The most probable price at a specified date, in cash, or on terms reasonably equivalent to cash, for which the property should bring in a competitive and open market under all conditions requisite to a fair sale, the buyer and seller each acting prudently and knowledgeably, and assuming the price is not affected by undue stimulus. (3-26-08)
- 13. 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. 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. (3-26-08)
- 14. Person.** A partnership, association, corporation, natural person, or entity qualified to do business in the state of Idaho and any federal, state, tribal, or municipal unit of government. (3-26-08)
- 15. Riparian or Littoral Rights.** 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. (3-26-08)

16. Single-Family Dock. A structure providing noncommercial moorage that serves one (1) waterfront owner whose waterfront footage is no less than twenty-five (25) feet. (3-26-08)

17. Submerged Lands. The state-owned beds of navigable lakes, rivers, and streams below the natural or ordinary high water marks. (3-26-08)

18. Two-Family Dock. A structure providing noncommercial moorage that serves two (2) adjacent waterfront owners having a combined waterfront footage of no less than fifty (50) feet. Usually the structure is located on the common littoral property line. (3-26-08)

19. Upland. The land bordering on navigable lakes, rivers, and streams. (3-26-08)

011. ABBREVIATIONS.

01. IDAPA. Idaho Administrative Procedure Act. (3-26-08)

012. -- 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 -Family or Two-Family Docks. Single-family or two-family docks that were constructed on or before July 1, 1993, that occupy 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. (3-26-08)

02. Single-Family Docks. Single-family docks that were constructed after July 1, 1993, that occupy 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. (3-26-08)

03. Two-Family Docks. Two-family docks that were constructed after July 1, 1993, that occupy 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. (3-26-08)

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. Information on easements can be found in IDAPA 20.03.09, "Easements on State-Owned Submerged Lands and Formerly Submerged Lands." (3-26-08)

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. (3-26-08)

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 were navigable in fact at statehood. 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. (3-26-08)

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 Title 42, Chapter 38, Idaho Code, or an encroachment permit if required by the Department pursuant to the Lake Protection Act, Title 58, Chapter 13, 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 of ten (10) years or as determined by the board. Leases may be renewed for additional periods to be determined by the department based 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 department. (3-26-08)

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 submerged or formerly submerged lands for all other purposes that do not interfere with the rights authorized in the lease remains with the state. (3-29-10)

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, Title 58, Chapter 13, Idaho Code, or the Stream Channel Protection Act, Title 42, Chapter 38, Idaho Code. These rules provide that a lease may be required in addition to existing permits. See Section 020 of these rules for information about exceptions to lease requirements. (3-26-08)

11. Waiver of Lease Requirements. The director may, in his discretion, waive lease requirements for single-family or two-family dock encroachments whose dock surface areas exceed square footages described in Subsections 020.01 through 020.03 of these rules 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. (3-26-08)

12. Private Moorage at Commercial Marinas. (3-26-08)

a. This Subsection (025.12) does not apply to community docks. (3-26-08)

b. Private moorage at commercial marinas is allowed as long as the requirements of IDAPA 20.03.04, "Rules for the Regulation of Beds, Waters, and Airspace Over Navigable Lakes in the State of Idaho," Subsection 015.03 are met. (3-26-08)

c. The sale, lease, or rental of private moorage is in no way an encumbrance on any underlying public trust land. All transactions related to private moorage are subject to the limitations of the associated submerged lands lease. (3-26-08)

d. Acquisition of private moorage must be documented with a disclosure that the transaction does not convey public trust lands and only conveys the right to use the designated portion of the marina. (3-26-08)

e. The department shall make no policy regarding the cost of private moorage and the resolution of disputes between the involved parties. (3-26-08)

026. -- 029. (RESERVED).

030. LEASE APPLICATION, FEE, AND PROCEDURE.

- 01. Fee.** The lease application fee shall be one hundred fifty dollars (\$150). (3-26-08)
- 02. Fee Shall Be Required.** A lease application and nonrefundable fee shall be required for new and existing encroachments. A lease application fee shall be required for leases that are renewed upon expiration. (3-26-08)
- 03. Application to Lease and Fee.** The lease application and fee shall be submitted with the information from Subsections 030.03.a. through 030.03.c., in sufficient detail for the department to determine an appropriate lease rate based on numbers of slips, square footage, or other permit information: (3-26-08)
- a.** A letter of request stating the purpose of the lease. (3-26-08)
- b.** A scale drawing of the proposed lease area with plans detailing all intended improvements, including reference to the nearest known property corner(s). An encroachment permit may satisfy this requirement. (3-26-08)
- c.** The permit number of each existing applicable encroachment permit. (3-26-08)
- 04. Submittal of Application to Lease and Fee.** The lease application and fee shall be filed in the local office of the department, whose location is available on the Internet at www.idl.idaho.gov, or the director's office in Boise. (3-26-08)
- 05. Notification of Approval or 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. (3-26-08)
- 06. 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.

The rental rate policy for submerged land leases shall be set by the Board. This policy is available on the Internet at www.idl.idaho.gov. (3-26-08)

- 01. Standardized Rental Rates.** The board shall set standard submerged land lease rental rates for common uses such as commercial marinas, community docks, floathomes, restaurants, and retail stores. Rental rates for commercial marinas and other uses which produce revenue for the lessee will commonly be calculated as a percentage of gross receipts, however, other methods may be used as determined appropriate by the board. (3-29-10)
- 02. Nonstandard Rental Rates.** The board shall direct the department to use a percentage of market value or gross receipts, or other methods determined appropriate by the board, as the submerged lands lease rental rate for uses that are uncommon, especially for non-navigational encroachments. (3-26-08)

036. YEARLY REPORTING.

- 01. Annual Report.** Lessees shall provide an annual report to the department which shall include: (3-26-08)
- a.** A schedule of moorage rental rates, including moorage sizes and types. (3-26-08)
- b.** The number and size of all public boat and float home moorages. (3-26-08)

- c. The number and size of all private boat and float home moorages. (3-26-08)
- d. Current proof of insurance that is required by the lease. (3-26-08)

02. Failure to Report. Failure to provide the annual report information will be a violation of these rules. (3-26-08)

037. -- 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, as required by Title 58, Chapter 3, Idaho Code, Section 58-305. (3-26-08)

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.

Appraisals may be used to determine the market value of adjacent uplands for calculating submerged lease rental rates. (3-26-08)

01. Appraisal. An appraisal will either be performed by qualified department staff or an independent contract appraisal. Any appraisal must be under the control of the Department. (3-26-08)

02. Cost of Appraisal. 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 Section 035 of these rules and shall be billed separately from the application fee and rent. (3-26-08)

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, if needed. (3-26-08)

02. Modification of Existing Lease. Modification or amendment of an existing lease will be processed in the same manner as a new lease application, but no fee will be required. 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. (3-29-10)

03. Modification of Interior Facilities. If the proposed changes to a facility do not require a new encroachment permit, a lease modification may still be needed as described in Subsection 050.02 of these rules. The lessee must give written notice to the Department at least ten (10) days in advance of making such changes. The department shall determine if a lease modification is needed due to the proposed changes. When requested, the lessee shall also furnish one (1) set of as-built plans to the Department within thirty (30) days following completion of changes. (3-29-97)

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 one hundred fifty dollars (\$150). (3-26-08)

03. Permit Assignment. The encroachment permit/stream alteration permit pertinent to a lease must be assigned to a purchaser simultaneously with a lease assignment. A lease assignment will not be approved unless the permit is assigned. (3-26-08)

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 AND ADDITIONAL REMEDIES.

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 ninety (90) days after cancellation for non-payment by paying the rental, plus interest, and a reinstatement fee to be determined by the Board. (3-26-08)

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)

05. Additional Remedies Available. In addition to termination of the lease for the material default of the lessee, the lease may provide for other remedies to non-monetary breach of the lease, including, but not limited to: (3-26-08)

a. Civil penalties as determined by the board and to be collected as additional rent; (3-26-08)

b. The reasonable costs of remedial action undertaken by the department as a result of the lessee's failure to perform a requirement of the lease, These costs will be collected as additional rent; and (3-26-08)

c. Such other remedies as the board shall deem appropriate. (3-26-08)

061. -- 064. (RESERVED).

065. BOND.

01. Bond Requirement Determined by Director. Bonds may be required for commercial navigational, community dock, and nonnavigational 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. (3-26-08)

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. OTHER RULES AND LAWS.

The lessee shall comply with all applicable state, federal, and local rules and laws insofar as they affect the use of the lands described in the lease. (3-26-08)

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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