IDAPA 20 – IDAHO DEPARTMENT OF LANDS

Real Estate Services Bureau

20.03.08 – Easements on State-Owned Lands

Who does this rule apply to?

- Easement applicants for all lands within the jurisdiction of the Idaho State Board of Land Commissioners (except for state-owned submerged lands or formerly submerged lands and hydroelectric projects)
- Easement holders

What is the purpose of this rule?
This rule sets procedures for issuing easements on lands within the jurisdiction of the State Board of Land Commissioners. An easement is a non-possessory interest in land for a specific purpose.

What is the legal authority for the agency to promulgate this rule?
This rule implements the following statutes passed by the Idaho Legislature:

Public Lands -
- Title 58, Chapter 1, et seq., Idaho Code – Department of Lands
- Title 58, Chapter 6, et seq., Idaho Code – Rights of Way Over State Lands

Who do I contact for more information on this rule?

Idaho Department of Lands
300 N. 6th Street, Suite 103
P.O. Box 83720
Boise, Idaho 83720-0050
Phone: (208) 334-0200
Fax: (208) 334-3698
Email: rulemaking@idl.idaho.gov
https://www.idl.idaho.gov/

Table of Contents

20.03.08 – Easements on State-Owned Lands

000. Legal Authority. 3
001. Title And Scope. 3
002. Administrative Appeals. 3
003. -- 009. (Reserved) 3
010. Definitions. 3
011. -- 019. (Reserved) 3
020. Policy. 3
021. Fees And Compensation. 4
022. -- 024. (Reserved) 5
025. Easement Amendment. 5
026. -- 029. (Reserved) 5
030. Emergency Work. 5
031. -- 034. (Reserved) 5
035. Cooperative Use And Reciprocal Use Agreements. 5
036. -- 039. (Reserved) 6
040. Assignments. 6
041. Abandonment, Relinquishment, And Termination. 6
042. -- 045. (Reserved) 6
046. Procedure. 6
047. Easements On State Land Under Land Sale Contract. 7
048. -- 999. (Reserved) 7

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. (3-20-20)T

001. TITLE AND SCOPE.

01. Title. These rules are titled IDAPA 20.03.08, "Easements on State-Owned Lands." (3-20-20)T

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. Further, these rules do not apply to easements for hydroelectric projects. (3-20-20)T

03. Valid Existing Rights. These rules are not be construed as affecting any valid existing rights. (3-20-20)T

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. (3-20-20)T

003. -- 009. (RESERVED)

010. DEFINITIONS.

01. Board. The Idaho State Board of Land Commissioners or such representative as may be designated by the Board. (3-20-20)T

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. (3-20-20)T

03. Department. The Idaho Department of Lands. (3-20-20)T

04. Director. The Director of the Department of Lands or such representative as may be designated by the Director. (3-20-20)T

05. Easement. A non-possessory interest in land for a specific purpose. Such interest may be limited to a specified term. (3-20-20)T

06. 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. (3-20-20)T

07. 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. (3-20-20)T

08. 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. (3-20-20)T

09. 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 (10) years. (3-20-20)T

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 purpose or when a lease is appropriate. (3-20-20)T

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. (3-20-20)T

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. (3-20-20)T

04. 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. (3-20-20)T

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. (3-20-20)T

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 the grantee's interest remains with the grantor. (3-20-20)T

07. Limit of Director's Discretion. The Director may grant and renew easements in all cases except when the compensation will exceed twenty-five thousand dollars ($25,000) exclusive of the value of timber and payment for any damage or impairment of rights to the remainder of the property. (3-20-20)T

08. Width of Easement. The width of any easement granted may not be less than eight (8) feet. (3-20-20)T

09. Recordation. The Department will record the easement, or easement release, with the appropriate county recorder's office. (3-20-20)T

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. (3-20-20)T

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. (3-20-20)T

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

	COMPENSATION
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

(3-20-20)T

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). (3-20-20)T

04. Performance of Appraisal. The appraisal of the easement will normally be performed by qualified department staff. 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. (3-20-20)T

05. Appraisal Costs. Where the appraisal is performed by 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 be charged more than one thousand dollars ($1000) for an appraisal of an easement conducted by departmental staff. (3-20-20)T

06. Term Easements. Compensation for term easements will be established by appraisal. (3-20-20)T

07. Minimum Compensation. The minimum compensation for any easement is five hundred dollars ($500), not including the application fee and appraisal costs. (3-20-20)T

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. (3-20-20)T

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. (3-20-20)T

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 are calculated on timber volume, acreage or other unit of value. (3-20-20)T

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. (3-20-20)T

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. (3-20-20)T

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. (3-20-20)T

02. **Prior Written Consent**. An assignment is not valid without the prior written consent of the Director. Such consent will not be unreasonably withheld. (3-20-20)T

03. **Multiple Assignments**. If all state easements held by a grantee are assigned at one time, only one (1) assignment fee is required. (3-20-20)T

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. (3-20-20)T

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. (3-20-20)T

03. **Removal of Improvements**. Upon termination, the grantee has twelve (12) months from the date of final notice to remove any facilities and improvements. (3-20-20)T

04. **Voluntary Relinquishment**. The grantee may voluntarily relinquish the easement at any time by completing an easement relinquishment form. The Department will pay the grantee one dollar ($1) for the relinquishment. (3-20-20)T

042. -- 045. (RESERVED)

046. PROCEDURE.

01. **Contents of Application**. An easement application contains. (3-20-20)T

a. A letter of request stating the purpose of the easement; (3-20-20)T

b. A map of right-of-way in triplicate; and (3-20-20)T

c. One (1) copy of an acceptable written 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 the use and showing surveyed or scaled ties (to a legal corner) at the points where the use enters and leaves the parcel. (3-20-20)T

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 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. (3-20-20)T

03. Where to Submit Application. An easement application may be submitted to any office of the Department. (3-20-20)T

04. Notification of Approval. If approved, the applicant will be notified of the amount due to the Department. (3-20-20)T

05. Notification of Denial. If the application is denied, the applicant will be notified in writing of such decision. (3-20-20)T

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. (3-20-20)T

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. (3-20-20)T

03. Co-Signature of Contract Purchaser. The contract sale purchaser must co-sign the easement to validate the document. (3-20-20)T

048. -- 999. (RESERVED)

Subject Index

A

Abandonment, Relinquishment, & Termination 6
- Non-Use 6
- Removal of Improvements 6
- Section 58-603, Idaho Code 6
- Voluntary Relinquishment 6

Administrative Appeals 3

Assignments 6
- Fee 6
- Multiple Assignments 6
- Prior Written Consent 6

C

Cooperative Use & Reciprocal Use Agreements 5
- Applicability 6
- Joint Agreements 5
- Reciprocal Use Agreements 5

D

Definitions 3
- Board 3
- Damage or Impairment of Rights to the Remainder of the Property 3
- Department 3
- Director 3
- Easement 3
- Endowment Lands 3
- Market Value 3
- State-Owned Lands 3
- Temporary Permit 3

E

Easement Modification 5

Easements On State Land Under Land Sale Contract 7
- Approval of Contract Purchaser 7
- Compensation 7
- Co-Signature of Contract Purchaser 7

Emergency Work 5

F

Fees & Compensation 4
- Application Fee 4
- Appraisal Costs 5
- Appraisal Required 5
- Easement Fee 4
- Minimum Compensation 5
- Performance of Appraisal 5
- Term Easements 5

L

Legal Authority 3

P

Policy 3
- Director's Discretion 4
- Easements Required 3
- Existing Easements 4
- Interest Granted 4
- Limit of Director's Discretion 4
- Prior Grants 4
- Reciprocal Easements 4
- Recordation 4
- Term Easement 4
- Width of Easement 4

Procedure 6
- Contents of Application 6
- Engineer Certification 6
- Notification of Approval 7
- Notification of Denial 7
- Where to Submit Application 7

T

Title & Scope 3