

SECTION 50 - SUBMERGED LANDS LEASING

A. Submerged Lands Leases

Leasing Scenarios

Some uses of state owned submerged lands require leases in addition to any encroachment permits or stream channel alteration permits. Permits control or regulate what occurs on, in or above navigable waterways, but a lease requires payment of rental to use state-owned public trust land. The following uses over state-owned submerged lands generally require a submerged lands lease ([IDAPA 20.03.17.020](#)):

- Community docks;
- Commercial navigational facilities including commercial marinas, dock construction or storage, tour boat docks, moorage associated with commercial lodging facilities, etc.
- Non-navigational encroachments such as restaurants, floating greens, log storage, decks, boardwalks, swimming areas, float homes, etc.
- Single family docks in excess of 700 feet where not justified, cite rule

Area staff should contact the Bureau if questions arise about the necessity of a submerged lands lease.

Artificial High Water Marks

Area personnel administering leases on lakes with artificial high water marks should be aware that a submerged land lease will only cover that portion of the encroachment which lies waterward of the ordinary high water mark ([IDAPA 20.03.17.020](#)). For instance, a marina that lies over private submerged lands and state owned public trust lands will only require a lease for the moorage that is waterward of the ordinary high water mark. A marina located completely landward of the ordinary high water mark would require an encroachment permit, but not a submerged land lease.

Lease Inspections

An inspection shall be made by the appropriate Supervisory Area to determine if, and what type of lease shall be required for the encroachment ([IDAPA 20.03.17.020](#) and [20.03.17.025](#)).

Lease Applications

If a lease is required for an encroachment, Areas shall provide a lease application form ([Attachment 20](#)) to the applicant. The lease application shall be processed and approved subsequent to the approval of the encroachment permit or stream channel alteration permit. A separate application fee (\$150) shall be required for the lease ([IDAPA 20.03.17.030](#)).

Lease Data Sheet

The Area shall conduct a site inspection and complete a Submerged Land Data Sheet ([Attachment 21](#)). The Data Sheet shall be forward to the Bureau for lease preparation. Information on the data sheet shall include:

- Encroachment permit number (with copy of permit attached to data sheet);
- Intended use of lease;
- Number, size, and type of moorage;
- Recommended rental, including average moorage rates that are no more than five years old;
- Recommended lease provisions;
- Miscellaneous comments;
- Insurance requirements;
- Bond recommendations if needed; and
- Date of Inspection.

Lease Document Development

The Bureau shall draft a lease ([Attachment 22](#)) and allow for Area review prior to sending two copies of the lease for applicant signature(s). The cover letter shall request the applicants to sign the leases, provide insurance information and submit payment for the first year's rent (pro-rated as necessary).

Upon receipt of the two signed lease documents, the Bureau will obtain the signatures of the appropriate state officials.

The Bureau will send one original lease to the lessee, retain one original, and submit a copy to the Area.

Rental Rates

Rental rates were established and adopted by the Land Board and are included in Section 51. For unusual encroachments, negotiations may be required to determine rent on a site-by-site basis.

Average Moorage Rates

Average moorage rate data for commercial facilities shall be collected with annual gross receipts reports

from lessees ([IDAPA 20.03.17.036](#)). The Area shall compare this data with the existing average moorage rates used to calculate the community dock lease rates and consider whether an increase in the lease rates are justified. This comparison should be completed at least every five years or more often when significant average moorage rate increases are observed.

Liability Insurance Requirements

Commercial facilities:

- \$1,000,000 commercial general liability
- Worker's Compensation insurance
- Property damage insurance

Community docks and floathomes

- \$1,000,000 commercial general liability
- Property damage insurance

Single and two-family docks do not require insurance.

B. Submerged Lands Lease Transactions

Submerged Land Lease Assignments

Lessees requesting to assign submerged land leases shall complete an assignment form in duplicate ([Attachment 29](#)) and may submit both original forms and the assignment fee to the Areas or the Bureau. If received by the Area, the form and proof of payment shall be forwarded to the Bureau for processing.

After receiving properly completed and original assignment forms, the assignment fee of one hundred fifty dollars (\$150) ([IDAPA 20.03.17.055.02](#)), and the original lease or an "Affidavit of Loss" ([Attachment 23](#)), the Bureau shall request the Area to inspect the lease site and review the lease files to ensure that the current lessee is in compliance with all provisions of the lease and Department policies. Proof of insurance should be submitted with the above information. If not submitted, the Department shall request such documentation within 30 days, and continue with the processing of the assignment.

If the lessee is not in compliance with the lease terms, the lessee shall be notified in writing of the deficiencies and any corrective action that must be completed before the assignment can be processed ([IDAPA 20.03.17.055.01](#)). The Area shall notify the

Bureau of compliance issues and indicate if the Bureau should proceed with assignment, or what actions are needed prior to completing the assignment.

Upon satisfactory review or satisfactory completion of corrective action, and after receiving all necessary documentation and fees, the Area shall submit their recommendations in writing to the Bureau.

Upon fully executing the assignment, the Bureau shall send the new lessee an original or certified copy of the lease, including a copy of the executed assignment form. The Bureau shall keep an original assignment form and forward a copy of the signature page of the lease and a copy of the assignment form to the Area.

Lake encroachment permits or stream channel alteration permits related to a lease must also be transferred. Separate assignment fees for permits and leases will be collected.

Submerged Land Lease Renewals

Submerged land lease renewals shall follow the flow chart in [Attachment 24](#).

An application fee of one hundred fifty dollars \$150 shall be collected for lease renewals ([IDAPA 20.03.17.030.02](#)).

Submerged Land Lease Adjustments

Changes to an encroachment with an existing submerged land lease will first need to be permitted through a new encroachment permit or stream alteration permit prior to adjustments to the lease ([IDAPA 20.03.17.050.01](#)). Minor modifications that do not require a new permit should still be reviewed by Area personnel to determine if a lease adjustment is needed.

Modification of an existing lease shall be processed by completing a lease adjustment form ([Attachment 25](#)). Modifications include changes in use, location, size, or scope of the lease site. It does not include ordinary maintenance, repair, or replacement of existing structures or facilities ([IDAPA 20.03.17.050.02](#)).

All lease adjustment forms shall be completed by the Area office and forwarded to the Bureau for final approval.

C. Submerged Land Lease Compliance

Authority

Violations that relate to provisions in the encroachment permit or [IDAPA 20.03.04](#) (Lake Protection Rules) should be resolved using the remedies of IDAPA 20.03.04 and [Title 58, Chapter 13](#), Idaho Code. Any violation of the provisions of the lease by the lessee may be cause for cancellation including, but not limited to nonpayment of the rent or any violation of the provisions of the lease, rules in force, or policy adopted by the Board ([IDAPA 20.03.17.060.01](#)).

Minor Violations (other remedies, not cancellation)

The Department should respond to minor violations of the lease terms, such as failure to provide annual reporting or proof of insurance, by the Area sending the lessee a 30-day notice of non-compliance letter ([Attachment 26](#)). The letter should state the reasons for non-compliance, the steps necessary to resolve the matter, and the corresponding deadlines.

Second Notice

Failure of the lessee to respond to the 30-day notice of non-compliance letter shall cause the Area to issue a second 30-day notice of non-compliance stating that civil penalties may be assessed or the lease may be cancelled.

Major Violations (cancellation)

The Department should respond to major violations of the lease terms, such as failure to pay annual rent or failure to provide gross receipts reports or payments, by the Bureau sending the lessee a late billing notice.

Second Notice

Failure of the lessee to respond to the first late billing notice shall cause the Bureau to issue a second late billing notice with copy to the Area. The Area will then follow up directly with the lessee to resolve the matter. Continued failure to comply will result in the Area issuing a 30-day notice of cancellation letter with a copy sent to the Deputy Attorney General. If the 30-day period passes the Deputy Attorney General may send a letter notifying the lessee that the lease is cancelled and that the lessee should contact the Area office to arrange removal of improvements from the leased area. Removal should occur as arranged or within 6 months, whichever is less ([IDAPA 20.03.17.060.04](#)). Failure to remove any

improvements within this set timeframe shall be considered a trespass and the case should be referred to the Attorney General's Office.

Other Violations

The Department should respond to a lessee's use of the leased area for purposes beyond those granted by the Area sending the lessee a notice of lease violation. Failure to respond within 30 days will result in the Deputy Attorney General issuing a notice of cancellation (certified mail). The lease cancellation will be effective 30 days from the receipt of the letter. The lessee shall have 30 days to appeal an adverse decision of the Department. If the lessee responds to the first notice of lease violation the Area and lessee shall attempt to resolve the violation.