

# 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 ([IDAPA 20.03.17.020.02](#) and [IDAPA 20.03.17.025.11](#)).

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 follow Section 100 of the Uniform Procedures. The 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 Setup Sheet**

The Area shall enter the following information on the Lease Setup Sheet in addition to the standard information requested on the sheet:

- Encroachment permit number under the Other Related Instrument space. A copy of the permit should be attached as supporting documentation;
- Intended use or uses of lease should be listed in the Activity Code or Codes space.
- Community docks should enter the \$/slip rate in the “Base or Annual Rent” space, and then list the number of slips in the “Use or Commodity Within the Above Activity Code” space;
- Swim areas, private boat ramps, float homes, and other additional charges should be on their own “Base or Annual Rent” space. Additional rental spaces can be added as needed.

## **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 via

the LMR Document Exchange.

**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**

Section 400 of the Uniform Procedures shall be followed for all lease assignments. The assignment fee is one hundred fifty dollars (\$150) ([IDAPA 20.03.17.055.02](#)).

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 Expiration**

Submerged land leases that will expire shall enter the lease expiration process as described in Section 100 of the Uniform Procedures.

An application fee of one hundred fifty dollars \$150 shall be collected for lease applications associated with expiring leases ([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 follow Section 300 of the Uniform Procedures. 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](#)).

## **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.