



## Submerged Lands Leases Procedures

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In accordance with [Executive Order 2020-02, Transparency in Agency Guidance Documents](#), guidance documents promulgated by the department are not new laws. They represent an interpretation of existing law, except as authorized by Idaho Code or incorporated into a contract.

### Agency Contact

Public Trust Program Manager, Boise Staff Office

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## Section 50 – Submerged Lands Leases

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## I. Submerged Lands Leases

### A. 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):

1. Community docks
2. Commercial navigational facilities including commercial marinas, dock construction or storage, tour boat docks, moorage associated with commercial lodging facilities, etc.
3. Non-navigational encroachments such as restaurants, floating greens, log storage, decks, boardwalks, swimming areas, float homes, etc.
4. 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.

### B. 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.

### **C. 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).

### **D. Lease Applications**

The lease application shall be processed following the approval of the encroachment permit or stream channel alteration permit. A separate application fee (\$150) is required for the lease (IDAPA 20.03.17.030).

### **E. Lease Setup Sheet**

The Area shall complete the Lease Setup Sheet for Submerged Land Leases.

### **F. Lease Document Development**

The Bureau shall draft a lease using the most current template and allow for Area review, Program Manager Review, and Legal review prior to sending the lease to the applicant to sign and notarize. 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 signed lease, the Bureau will obtain the signatures of the appropriate state officials.

The Bureau will keep the original executed lease, mail a certified copy of the lease to the lessee, and submit a copy to the Area.

### **G. Rental Rates**

Rental rates were established and adopted by the Land Board and are summarized in the Submerged Land Lease Rent Schedule (Attachment 1). For unusual encroachments, negotiations may be required to determine rent on a site-by-site basis.

### **H. Average Moorage Rates**

Average moorage rate data for commercial facilities shall be collected with Commercial Marina Annual Reports from commercial marinas (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.

### **I. Liability Insurance Requirements**

1. Commercial facilities:
  - i. \$1,000,000 commercial general liability
  - ii. Worker's Compensation insurance

- iii. Property damage insurance
2. Community docks and float homes
  - i. \$1,000,000 general liability
  - ii. Property damage insurance
3. Single and two-family docks do not require insurance.

## **II. Submerged Lands Lease Transactions**

### **A. Submerged Land 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.

### **B. Submerged Land Lease Expiration**

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).

### **C. 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.

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).

## **III. Submerged Lands Lease Compliance**

### **A. 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).

### **B. Non-financial Noncompliances**

1. The Department should respond to noncompliances with the lease terms, such as failure to provide annual reports or proof of insurance, by the Area sending the lessee a notice of non-compliance letter (Attachment 2). The letter should state the reasons for non-compliance, the applicable lease term or rule, the steps necessary to resolve the matter, and the corresponding deadlines.

2. Failure of the lessee to respond to the 30-day notice of non-compliance letter shall cause the Area to issue a notice of proposed lease cancellation.

### **C. Financial Default**

1. If rent is not received by the due date, the Department should send the lessee a second billing notice by certified mail.
2. If a lessee fails to respond to the second billing notice, Bureau staff will forward the lease file to the Attorney General's Office to initiate the lease cancellation process.
3. If a lease is cancelled for an encroachment on a lake, IDL will pursue revoking the encroachment permit as well.
4. Within 30 days of a lease cancellation, the lessee may submit a request for reinstatement along with a \$50 reinstatement fee and evidence that all necessary corrective actions have or will be taken within an acceptable period of time.
5. After the 30-day reinstatement period has passed, the lessee must apply for a new lease if they wish to continue using the submerged lands. All prior charges must be paid in addition to a new lease fee. A new lease number will be assigned, but the lease will have the same expiration date as the former lease. Additional terms and conditions may be added to the new lease.

### **D. Other Violations**

Failure to respond within 30 days will result in the Area office issuing a notice of cancellation (certified and regular US 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.



# Submerged Land Lease Rent Schedule

Rental rates for submerged land leases are set by the Land Board pursuant to IDAPA 20.03.17.035. The table below outlines the current rental rates for common uses. Rental rates for other uses may be determined using other methods on a case-by-case basis. The minimum annual rent for any use is \$250 after any applicable discounts and/or credits have been applied.

Use	Flat Rent	Base Rent	Gross Receipts Rate
Single/two-family dock	\$250.00	N/A	N/A
Boat ramp	\$250.00	N/A	N/A
Swim area	\$250.00	N/A	N/A
Multi-family/Community dock	Calculated <sup>1</sup>	N/A	N/A
Log storage	Calculated <sup>2</sup>	N/A	N/A
Noncommercial nonnavigational	Calculated <sup>3</sup>	N/A	N/A
Float home not moored at a marina	Calculated <sup>4</sup>	N/A	N/A
Commercial marina (public boat moorage)	N/A	\$250.00	3.75% <sup>5</sup>
Commercial marina (private boat/float home moorage)	Calculated <sup>6</sup>	N/A	N/A
Commercial marina (public float home moorage)	N/A	\$250.00 ea	3.75% <sup>5</sup>
Store	N/A	\$250.00	1% <sup>7</sup>
Restaurant	N/A	\$250.00	1.5%

- 1 Multi-family dock/community dock: The number of moorages x 5% x the average moorage rate charged by commercial facilities in same geographic area with similar size and type of moorages.
- 2 Log storage: \$150 per acre (or fraction thereof). Log storage operators may apply for a rent credit by submitting proof of lake clean-up expenses.
- 3 Noncommercial nonnavigational: Multiply the greater of 2.5% of the per acre value of adjacent uplands or \$1,000 per acre by the number of acres (or fraction thereof) of the encroachment. Value of adjacent upland may be the county assessed value or appraised, as determined by the director.
- 4 Float home not moored at a marina: Multiply 3.75% by the average moorage rate charged for float homes moored at marinas. Note, rent for float homes moored at a commercial marina is collected through the rent for the float home moorage from the marina.
- 5 Commercial marinas may qualify for one of the following discounts:
  - a. 25%: If all facilities are available to the public on a first come, first served basis.
  - b. 50%: If all facilities are available to the public on a first come, first served basis AND at least half of the boat slips are dedicated for day use only.
- 6 Private moorage at Commercial Marina: The number of private moorages x 5% x the average moorage rate charged by commercial facilities in same geographic area with similar size and type of moorages.
- 7 Includes gross receipts from all rentals and sales, but excludes gross receipts from the sale of gasoline.

## Sample Letter for Lease Violation

Letterhead

Date

Permittee

Address

SUBJECT: Violation of Submerged Lands Lease and Leasing Rules, B-XXXX

The Idaho Department of Lands has determined that you are in violation of Term XXX of Submerged Lands Lease B-XXXX and IDAPA 20.03.17, the Rules Governing Leases on State-Owned Submerged Lands and Formerly Submerged Lands. [Description of the violation and why it is a violation must be written here.](#) [The applicable Rules and lease terms must also be cited here.](#)

To resolve these noncompliance issues, the following actions must be taken:

[Description of the steps needed to resolve the violation, and deadlines for their completion.](#)

If the above actions are not taken within the timeframes given, the department may pursue other remedies including assessment of civil penalties and lease cancellation. These remedies are authorized by Subsections 060.01 and 060.05 of IDAPA 20.03.17. If the lease is cancelled, the department may order all encroachments associated with this lease removed from the lake within 6 months as authorized by Subsection 060.02 of IDAPA 20.03.17.

Thank you for your assistance in resolving this situation. If you have any questions, please call me at [Phone Number](#).

Sincerely,

Name

Title

cc: Navigable Waters Program Manager  
Deputy Attorney General