

## Negotiated Rulemaking Summary

### IDAPA 20.03.09 – Easements on State-Owned Navigable Waterways

Previous chapter title: *Easements on State-Owned Submerged Lands and Formerly Submerged Lands*

Docket No. 20-0309-2101

Following Executive Order 2020-01, Zero-Based Regulation, this rule chapter is scheduled to be repealed and replaced in 2021 for review during the 2022 legislative session.

The Idaho Department of Lands manages the beds of navigable lakes and rivers for the benefit of the public. IDAPA 20.03.09 establishes a consistent process to authorize specific uses of state-owned submerged lands. These uses include bridges, utility crossings, and some dams.

Negotiated rulemaking for these rules was approved by the State Board of Land Commissioners on February 16, 2021. The Notice of Intent to Promulgate Rules – Negotiated Rulemaking was published in the Idaho Administrative Bulletin on April 7, 2021.

#### Stakeholder Outreach

The department's outreach for negotiated rulemaking included the following:

- Published the Notice of Negotiated Rulemaking in the Idaho Administrative Bulletin
- Created a rulemaking webpage to post documents, scheduling information, and comments
- Issued a press release
- Emailed 51 customers and other interested parties
- Mailed postcards to 81 customers

#### Negotiated Rulemaking

Negotiated rulemaking meetings were held on April 28 and May 5, 2021. A total of three non-agency affiliated people attended these meetings.

Some minor changes to the initial draft were made based on comments received and internal discussions. The draft text posted on the rulemaking webpage on June 11 received no comments, and that is the proposed rule submitted for publication in the Administrative Bulletin. It is in legislative format to allow the reader to easily identify changes to the rule.

#### Written Comment

The department received one written comment on the draft rules on May 5, 2021. The comments were not incorporated into the draft rule, and the department's responses are attached (Attachment 1).

#### Concluding Negotiated Rulemaking

With no issues left unresolved, the department concluded the negotiated rulemaking process and submitted the rule changes for publication as a proposed rule in the September 1, 2021, edition of the Idaho Administrative Bulletin.

The rulemaking record is available for review upon request, and key documents are available at <https://www.idl.idaho.gov/rulemaking/docket-20-0309-2101/>.

| <p align="center"><b>Response to Comments on Draft Negotiated Rule</b><br/>IDAPA 20.03.09, Easements on Submerged Lands and Formerly Submerged Lands</p> |              |  |          |                |
|--|--------------|--|----------|----------------|
| Comment  | Rule Section | Response   | Date     | Author         |
| Replacing "Submerged Lands and Formerly Submerged Lands" with "Navigable Waters" makes for a clearer and more concise rule.                              | General      | IDL agrees.  | 5-May-21 | Austin D. Lowe |
| The term "arm's length sale" detracts from clarity and should be omitted.  | 010.09       | The term "arm's length" is commonly used in real estate and business transactions. This term provides necessary clarity on the desired nature of transactions. The IDL has encountered entities conducting transactions within their ownership groups and a requirement for "arm's length sale" ensures a fair transaction. References added to the research materials and posted on the IDL website at <a href="https://www.idl.idaho.gov/wp-content/uploads/sites/2/2021/05/Arms-Length-References.pdf">https://www.idl.idaho.gov/wp-content/uploads/sites/2/2021/05/Arms-Length-References.pdf</a> .  | 5-May-21 | Austin D. Lowe |
| "Information is available from the Department" could be clearer if it specified where or how to get the information.                                     | 011.02       | All posted rules are now prefaced with a cover sheet that provides information regarding that rule. Regarding the information specific to Subsection 011.02, that information is currently available on IDL's website at: <a href="https://www.idl.idaho.gov/wp-content/uploads/sites/2/2020/01/list-navigable-lakes-rivers-1-1.pdf">https://www.idl.idaho.gov/wp-content/uploads/sites/2/2020/01/list-navigable-lakes-rivers-1-1.pdf</a>  | 5-May-21 | Austin D. Lowe |
| Raising the application fee from \$300 to \$500 does not seem to be best course of action in the current COVID-19 economy.                               | 020.01       | These easements are part of a self-funded program that receives no taxpayer funds. As a result, the program must try to recoup the cost of each transaction that occurs from the applicants. The fee has been \$300 since at least 1992. Adjusting for inflation alone, a \$300 fee in 1992 would now cost approximately \$580. Executive Order 2020-01 establishes a five-year review cycle for fee rules; if the shortfall in covering transaction costs is not addressed now, it cannot be revisited for another five years. While the timing with COVID-19 is unfortunate, fees must be raised now or the cost of completing easements will be carried by other functions within this program. | 5-May-21 | Austin D. Lowe |