

**From:** [Loren Moore](#)  
**To:** [Rule Making](#)  
**Subject:** IDAPA 20.03.17 Rulemaking Comment  
**Date:** Monday, May 2, 2022 9:40:04 AM  
**Attachments:** [image001.png](#)  
[Notice of Negotiated Rulemaking for Leases on Navigable Waterways.pdf](#)  
[Lake Protection Act.pdf](#)  
[IDAPA rule change 2022.docx](#)  
[20220408\\_Draft-Rule-Text\\_docket-20-0317-2201.docx](#)

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I am forwarding comments regarding Rulemaking for IDAPA 20.03.17 Submerged Land Leases



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**From:** Ralph Sletager <Ralph@sandpointwaterfront.com>  
**Sent:** Monday, May 2, 2022 9:32 AM  
**To:** Loren Moore <LMoore@idl.idaho.gov>  
**Subject:** RE: Loren Moore - IDL

**Hi Loren,**

Nice to visit with you this morning.

I received a post card notice from the IDL on the rule changes. Please consider my comments.

I am concerned that the proposed rule changes exceed the state's authority and conflict with the Lake protection Act 58-1301, Idaho code 42-101, Idaho code 58-1201 the Public Trust Doctrine, Idaho code 58-1310, Idaho Code 58-1311 and the State Constitution by asserting ownership of private property.

The fundamental flaw in the proposed rules is the overreach related to the Ordinary High Water. The state's ownership is only the lands lying below the natural or ordinary high water mark of navigable waters.

58-1201. FINDINGS. The legislature hereby finds and declares:

(1) Upon admission of the state of Idaho into the union, **the title to the beds of navigable waters** became state property, and subject to its jurisdiction and disposal under the equal footing doctrine.

The state received the title to the **beds** of navigable waters by admission to the union. The **beds** were defined as those lands lying below the natural or ordinary high water mark" of navigable waters".

58-1202. DEFINITIONS. For the purposes of this chapter, the following definitions apply:

- (1) "Beds of navigable waters" means those lands lying under or below the "natural or ordinary high water mark" of navigable waters.
- (2) (2) "Natural or ordinary high water mark" means the line that water impresses on the soil by covering it for sufficient periods to deprive the soil of its vegetation and destroy its value for agricultural purposes. When the soil, configuration of the surface, or vegetation has been altered by man's activity, the natural or ordinary high water mark shall be located where it would have been if no alteration had occurred.
- (3) (3) "Navigable waters" means those waters that were susceptible to being used, in their ordinary condition, as highways for commerce on the date of statehood, under the federal test of navigability.
- (4) (4) "Private property rights" means the property rights located above the beds of navigable waters.
- (5) (5) "Public trust doctrine" means the common law rule relating to the title to the beds of navigable waters adopted by inference in section 73-116, Idaho Code. "This code states that English Common Law is in force"
- (6) History:
- (7) [58-1202, added 1996, ch. 342, sec. 1, p. 1148.]

Natural or ordinary high water mark" means the line that water impresses on the soil by covering it for sufficient periods to deprive the soil of its vegetation and destroy its value for agricultural purposes. When the soil, configuration of the surface, or vegetation has been altered by man's activity, the natural or ordinary high water mark shall be located where it would have been if no alteration had occurred.

The public Trust Doctrine defines as "Private property rights" means the property rights located above the beds of navigable waters. The proposed IDA rules affect private property.

The LPA defines the rights of owners/private property as "Riparian or littoral rights" means only the rights of owners or lessees of land adjacent to navigable waters of the lake to maintain their adjacency to the lake and to make use of their rights as riparian or littoral owners or lessees in building or using aids to navigation but does not include any right to make any consumptive use of the waters of the lake.

Public trust doctrine" means the common law rule relating to the title to the beds of navigable waters adopted by inference in section 73-116, Idaho Code. "This code states that English Common Law is in force"

The LPA (Lake Protection Act) defines:

"Natural or ordinary high water mark" means the high water elevation in a lake over a period of years, uninfluenced by man-made dams or works, at which elevation the water impresses a line on the soil by covering it for sufficient periods to deprive the soil of its vegetation and destroy its value for agricultural purposes.

The LPA defines Artificial High Water Mark. "The high water elevation above the natural or ordinary high water mark resulting from construction of man-made dams or control works and impressing a new and higher vegetation line."

58-1311. DISCLAIMER OF STATE PROPERTY RIGHTS IN PRIVATE LANDS. While the state asserts the right to regulate and control all encroachments, navigational or nonnavigational, upon, in or above the beds or waters of navigable lakes as provided for in this act, nothing contained in this act shall be construed to vest in the state of Idaho any

property right or claim of such right to any private lands lying above the natural or ordinary high water mark of any navigable lake.

58-1310. EXISTING RIGHTS UNAFFECTED. This act shall not operate or be so construed as to impair, diminish, control or divest any existing or vested water rights acquired under the laws of the state of Idaho or the United States, nor to interfere with the diversion of water from lakes under existing or vested water rights or water right permits for irrigation, domestic, commercial or other uses as recognized and provided for by Idaho water laws nor shall permit be required from a water user or his agent to clean, maintain or repair any existing diversion structure or works provided the board is notified of the work proposed to be done and the work is done as nearly as possible in a manner conforming to rules and regulations of the board for work done under permit nor shall this act be construed to impair existing encroachments in aid of navigation or any right heretofore granted an applicant by the director of the Idaho department of water resources or the director of the department of lands, nor shall this act be construed to impair existing nonnavigational encroachments not extending beyond the natural or ordinary high water mark if they have been in existence at least five (5) years prior to the effective date of this act nor any other existing nonnavigational encroachment unless action to abate the same by legal proceedings be instituted by the board within three (3) years of the effective date of this act. If abatement proceedings be instituted by the board, the court shall hear such evidence as would be pertinent upon an original application and shall consider also the length of time the encroachment has existed and its general acceptance

42-101. NATURE OF PROPERTY IN WATER. Water being essential to the industrial prosperity of the state, and all agricultural development throughout the greater portion of the state depending upon its just apportionment to, and economical use by, those making a beneficial application of the same, its control shall be in the state, which, in providing for its use, shall equally guard all the various interests involved. All the waters of the state, when flowing in their natural channels, including the waters of all natural springs and lakes within the boundaries of the state are declared to be the property of the state

Navigable waters" means those waters that were susceptible to being used, in their ordinary condition, as highways for commerce on the date of statehood, under the federal test of navigability.

"Navigable lake" means any permanent body of relatively still or slack water, including man-made reservoirs, not privately owned and not a mere marsh or stream eddy, and capable of accommodating boats or canoes. This definition does not include man-made reservoirs where the jurisdiction thereof is asserted and exclusively assumed by a federal agency

I have cut and pasted the conflicting language from the Lake Protection Act and other statute in green on the word document titled IDAPA rule change.

The 2<sup>nd</sup> attached word document is the Draft rule change without my comments.

I have also included the Lake Protection Act for your convenience.

Thanks again rs

Unofficial Copy for Negotiated Rulemaking Purposes Only **Rulemaking Meeting Dates:** April 27, 2022 and May 18, 2022 **Deadline for written comments on this draft:** June 17, 2022

58-1311. DISCLAIMER OF STATE PROPERTY RIGHTS IN PRIVATE LANDS. While the state asserts the right to regulate and control all encroachments, navigational or nonnavigational, upon, in or above the beds or waters of navigable lakes as provided for in this act, nothing contained in this act shall be construed to vest in the state of Idaho any property right or claim of such right to any private lands lying above the natural or ordinary high water mark of any navigable lake.

**20.03.17 – RULES GOVERNING LEASES ON STATE-OWNED  
~~SUBMERGED LANDS AND FORMERLY SUBMERGED LANDS~~  
NAVIGABLE WATERWAYS**

**Legal Authority?**

Can the state treat lakes, rivers and streams the same? For example, on Lake Pend Oreille there is an easement to store water on private property in between the Ordinary High Water and the Artificial High Water in the summer. Many docks and encroachments are over private land not public land. Riparian owners have the "right" to wharf out to the line of navigability to exercise their riparian rights. These rights date back to English common law. Can the state charge rent for a property owner using his/her property?

**00. LEGAL AUTHORITY.**

This Chapter is adopted under the legal authorities of Title 58, Chapter 1, Idaho Code, Sections 58-104(6), 58-104(9), and 58-105; Title 58, Chapter 3, Idaho Code, Sections 58-304 through 58-312; Title 58, Chapter 6, Idaho Code; Title 58, Chapter 12; and Title 67, Chapter 52, Idaho Code. (3-20-20)T

**01. ~~TITLE AND SCOPE.~~**

~~01. **Title.** These rules are titled IDAPA 20.03.17, "Rules Governing Leases on State-Owned Submerged Lands and Formerly Submerged Lands." (3-20-20)T~~

~~21. **Scope.** These rules govern the issuance of leases on state-owned submerged lands navigable waterways. (3-20-20)T ( )~~

~~Definition of navigable water ways? Different than navigable waters. Clean water Act? Idaho code 36-1601 was an attempt to change the navigable water definition. Navigable waters was defined in 1890 at statehood. See 58-1201 below.~~

~~a. These rules also apply to state-owned islands raised from submerged lands, or filled submerged lands, or other formerly submerged lands that are no longer covered by water at any time during an ordinary year.~~

(3-20-20)T

b. While the State asserts the right to issue leases for all encroachments, navigational or non-navigational, upon, in or above the beds or waters of navigable lakes and rivers, nothing in these rules may be construed to vest in the state of Idaho any property, right or claim of such right to any private lands lying above the natural or ordinary high water mark of any navigable lake or river. ~~(3-20-20)T(L~~

58-1310. EXISTING RIGHTS UNAFFECTED. This act shall not operate or be so construed as to impair, diminish, control or divest any existing or vested water rights acquired under the laws of the state of Idaho or the United States, nor to interfere with the diversion of water from lakes under existing or vested water rights or water right permits for irrigation, domestic, commercial or other uses as recognized and provided for by Idaho water laws nor shall permit be required from a water user or his agent to clean, maintain or repair any existing diversion structure or works provided the board is notified of the work proposed to be done and the work is done as nearly as possible in a manner conforming to rules and regulations of the board for work done under permit nor shall this act be construed to impair existing encroachments in aid of navigation or any right heretofore granted an applicant by the director of the Idaho department of water resources or the director of the department of lands, nor shall this act be construed to impair existing nonnavigational encroachments not extending beyond the natural or ordinary high water mark if they have been in existence at least five (5) years prior to the effective date of this act nor any other existing nonnavigational encroachment unless action to abate the same by legal proceedings be instituted by the board within three (3) years of the effective date of this act. If abatement proceedings be instituted by the board, the court shall hear such evidence as would be pertinent upon an original application and shall consider also the length of time the encroachment has existed and its general acceptance

**02. Rules Applicable to All Existing and Proposed Uses and Encroachments.** These rules apply to all existing and proposed uses and encroachments, whether or not authorized by permit under the Lake Protection Act, Title 58, Chapter 13, Idaho Code, or the Stream Channel Protection Act, Title 42, Chapter 38, Idaho Code. These rules provide that a lease may be required in addition to existing permits. See Section 020 of these rules for information about exceptions to lease requirements.

### 03. CHAPTER 12

#### 04. PUBLIC TRUST DOCTRINE

05. 58-1201. FINDINGS. The legislature hereby finds and declares:

06. (1) Upon admission of the state of Idaho into the union, the title to the beds of navigable waters became state property, and subject to its jurisdiction and disposal under the equal footing doctrine. According to the United States supreme court's decision in *Shively v. Bowlby*, the state has the right to dispose of the beds of navigable waters, "in such manner as [it] might deem proper, ... subject only to the paramount right of navigation and commerce." The state has the right to determine for itself "to what extent it will preserve its rights of ownership in them, or confer them on others," *Shively v. Bowlby*, 152 U.S. 1, 56 (1893); and
07. (2) Since the admission of the state of Idaho into the union, article XV of the constitution of the state of Idaho has governed the appropriation and use of the waters of Idaho. Pursuant to article XV of the constitution of the state of Idaho, the legislature of the state of Idaho has enacted a comprehensive system of laws for the appropriation, transfer and use of the waters of Idaho, which addresses the public interest therein; and

- 08. (3) Upon admission of the state of Idaho into the union, the state was granted certain lands by the United States government as an endowment for designated institutions. Article IX of the constitution of the state of Idaho, and laws enacted pursuant thereto, establish a comprehensive system of laws for the management of state endowment lands, which addresses the public interest therein; and
- 09. (4) The common law doctrine known as the public trust doctrine, adopted by inference in section 73-116, Idaho Code, has guided the alienation or encumbrance of the title to the beds of navigable waters held in trust by the state. The public trust doctrine has been cited in court decisions and pleadings in ways that have created confusion in the administration and management of the waters and endowment lands; and
- 10. (5) The public's interest in the environment is protected in other parts of Idaho's constitutional or statutory law; and
- 11. (6) The purpose of this act is to clarify the application of the public trust doctrine in the state of Idaho and to expressly declare the limits of this common law doctrine in accordance with the authority recognized in each state to define the extent of the common law.
- 12. History:
- 13. [58-1201, added 1996, ch. 342, sec. 1, p. 1147.]

**14. CHAPTER 12**

**15. PUBLIC TRUST DOCTRINE**

- 16. 58-1202. DEFINITIONS. For the purposes of this chapter, the following definitions apply:
- 17. (1) "Beds of navigable waters" means those lands lying under or below the "natural or ordinary high water mark" of navigable waters.
- 18. (2) "Natural or ordinary high water mark" means the line that water impresses on the soil by covering it for sufficient periods to deprive the soil of its vegetation and destroy its value for agricultural purposes. When the soil, configuration of the surface, or vegetation has been altered by man's activity, the natural or ordinary high water mark shall be located where it would have been if no alteration had occurred.
- 19. (3) "Navigable waters" means those waters that were susceptible to being used, in their ordinary condition, as highways for commerce on the date of statehood, under the federal test of navigability.
- 20. (4) "Private property rights" means the property rights located above the beds of navigable waters.
- 21. (5) "Public trust doctrine" means the common law rule relating to the title to the beds of navigable waters adopted by inference in section 73-116, Idaho Code.
- 22. History:
- 23. [58-1202, added 1996, ch. 342, sec. 1, p. 1148. ]

(

)Why would they eliminate the appeals?

**01. ~~ADMINISTRATIVE APPEALS.~~**

Any person aggrieved by any final decision or order of the Board is entitled to judicial review pursuant to the provisions of Title 67, Chapter 52, Idaho Code, and IDAPA 20.01.01, "Rules of Practice and Procedure Before the State Board of Land

~~0032~~. -- 009. (RESERVED)

10. DEFINITIONS.

**Why drop this definition when it is consistent with the Lake Protection Act?**

~~01~~. **Artificial High Water Mark.** The high water elevation above the natural or ordinary high water mark resulting from construction of man-made dams or control works and impressing a new and higher vegetation line. (3-20-20)T

~~02~~01. **Board.** The Idaho State Board of Land Commissioners or its designee. (3-20-20)T

~~03~~02. **Commercial Marina.** A commercial navigational encroachment whose primary purpose is to provide moorage for rental or for free to the general public. (3-20-20)T

~~04~~03. **Commercial Navigational Encroachment.** A navigational encroachment used for commercial

purposes.

(3-20-20)T

**0504. Community Dock.** A structure that provides private moorage for more than two (2) adjacent littoral owners, or other littoral owners possessing a littoral common area with littoral rights including, but not limited to, homeowners' associations. No public access is required for a community dock. (3-20-20)T

**0605. Department.** The Idaho Department of Lands or its designee. (3-20-20)T

**0706. Director.** The director of the Idaho Department of Lands or his designee. (3-20-20)T

**0807. Dock Surface Area.** Includes docks, slips, piers, and ramps and is calculated in square feet. Dock surface area does not include pilings, submerged anchors, or undecked breakwaters. (3-20-20)T

**0908. Encroachments in Aid of Navigation.** Includes docks, piers, jet ski and boat lifts, buoys, pilings, breakwaters, boat ramps, channels or basins, and other facilities used to support water craft and moorage on, in, or above the beds or waters of a navigable lake, river or stream. The term "encroachments in aid of navigation" ~~may be is~~ used interchangeably ~~herein~~ with ~~the term~~ "navigational encroachments." (3-20-20)T( )

**1009. Encroachments Not in Aid of Navigation.** Includes all other encroachments on, in, or above the beds or waters of a navigable lake, river or stream, including landfills, bridges, utility and power lines, or other structures not constructed primarily for use in aid of navigation. It also includes float homes and floating toys. The term "encroachments not in aid of navigation" ~~may be is~~ used interchangeably ~~herein~~ with ~~the term~~ "non-navigational encroachments." (3-20-20)T( )

~~11. Formerly Submerged Lands. The beds of navigable lakes, rivers, and streams that have either been filled or subsequently became uplands because of human activities including construction of dikes, berms, and seawalls. Also included are islands that have been created on submerged lands through natural processes or human activities since statehood, July 3, 1890. (3-20-20)T~~

**1210. 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

LPA---c) "Natural or ordinary high water mark" means the high water elevation in a lake over a period of years, **uninfluenced by man-made dams or works**, at which elevation the water impresses a line on the soil by covering it for sufficient periods to deprive the soil of its vegetation and destroy its value for agricultural purposes.

**4311. Natural or Ordinary High Water Mark.** The line that the water impresses upon the soil by covering it for a sufficient **period of time-----** to deprive the soil of its vegetation and destroy its value for agricultural purposes. If, however, the soil, configuration of the surface, or vegetation has been altered by man's activity, the ordinary high water mark is located where it would have been if the alteration had not occurred. (3-20-20)T

Are out of state people not qualified to do business qualify for a permit?

**4412. Person.** An individual, corporation, partnership, limited liability company, association, corporation, natural person, or entity trust, unincorporated organization or other legal entity qualified to do business in the state of Idaho and any federal, state, tribal, or municipal unit of government. (3-20-20)T ( )

LPA (f) "Riparian or littoral rights" means **only the rights of owners** or lessees of land adjacent to navigable waters of the lake to maintain their adjacency to the lake and to make use of their rights as riparian or littoral owners or lessees in building or using aids to navigation but does not include any right to make any consumptive use of the waters of the lake.

**4513. Riparian or Littoral Rights.** The rights of owners or lessees of land adjacent to navigable lakes, rivers or streams to maintain their adjacency to the lake, river, or stream and to make use of their rights as riparian or littoral owners or lessees in building or using aids to navigation but does not include any right to make any consumptive use of the waters. (3-20-20)T

**4614. Single-Family Dock.** A structure providing noncommercial moorage that serves one (1) waterfront owner whose waterfront footage is no less than twenty-five (25) feet. (3-20-20)T

) "Beds of navigable lakes" means the lands lying under or below the "natural or ordinary high water mark" of a navigable lake and, for purposes of this act only, the lands lying between the natural or ordinary high water mark and the artificial high water mark, if there be one. (c) "Natural or ordinary high water mark" means the high water elevation in a lake over a period of years, uninfluenced by man-made dams or works, at which elevation the water impresses a line on the soil by covering it for sufficient periods to deprive the soil of its vegetation and destroy its value for agricultural purposes.

**15. State-Owned Navigable Waterways and Navigable Waterways.**  
As used in these rules, the beds of all navigable waterways up to the natural or ordinary high water mark as of the date Idaho was admitted into statehood. This includes any

such bed that was formerly submerged and subsequently filled and is now uplands because of human activity (e.g., dikes, berms, jetties) or by natural processes, and includes islands within navigable waterways resulting from human activity or by natural processes. ( )

LPA-- In recognition of continuing private property ownership of lands lying between the natural or ordinary high water mark and the artificial high water mark, the board shall consider unreasonable adverse effect upon adjacent property and undue interference with navigation the most important factors to be considered in granting or denying an application for a nonnavigational encroachment, a commercial navigational encroachment, or a community navigational encroachment not extending below the natural or ordinary high water mark. If no objections have been filed to the application and no hearing has been requested or ordered by the board, or, if upon reconsideration of a decision disallowing a permit, or following a hearing, the board determines that the benefits, whether public or private, to be derived from allowing such encroachment exceed its detrimental effects, it shall grant the permit. As a condition of the permit, the board may require a lease or easement for use of any part of the state owned bed of the lake

**16. Submerged Lands.** The state-owned beds of navigable lakes, rivers, and streams below the natural or ordinary high water marks. (3-20-20)T

5 or 10 years is not bankable or enough time to recoup a commercial investment. What difference does it make to the state? Why not a longer-term plan?

**17. Temporary Permit.** A revocable instrument authorizing a specific use on navigable waterways usually issued for five (5) years or less, but that may be issued for up to ten (10) years. ( )

**18. Two-Family Dock.** A structure providing noncommercial moorage that serves two (2) adjacent waterfront owners having a combined waterfront footage of no less than fifty (50) feet. Usually the structure is located on the common littoral property line. (3-20-20)T

**19. Uplands.** The land bordering on navigable lakes, rivers, and streams waterways. (3-20-20)T( )

11. -- 019. (RESERVED)

20. **APPLICABILITY.**

Leases are required for all encroachments on, in, or defined in subsections 010.08 and 010.09 that are above, across, over, state-owned submerged land in, through, upon, and under the beds of navigable waterways except:

(3-20-20)T( )

**01. Single-Family or Two-Family Docks.** Single-family or two-family docks that were constructed: on or before July 1, 1993, that occupy less than eleven hundred (1,100) square feet of dock surface area lakeward of the ordinary high water mark, and for which all required permits and approvals have been obtained. (3-20-20)T

a. On or before July 1, 1993, that occupy less than eleven hundred (1,100) square feet of dock surface area for which all required permits and approvals have been obtained. ( )

b. After July 1, 1993, that occupy less than seven hundred (700) square feet of dock surface area for which all required permits and approvals have been obtained. ( )

**02. Single-Family Docks.** Single-family docks that were constructed after July 1, 1993, that occupy less than seven hundred (700) square feet of dock surface area lakeward of the ordinary high water mark, and for which all required permits and

approvals have been obtained.  
(3-20-20)T

(3-20-

**032. Two-Family Docks.** Two-family docks ~~that were constructed after July 1, 1993,~~ that occupy less than eleven hundred (1,100) square feet of dock surface area lakeward of the ordinary high water mark, and for which all required permits and approvals have been obtained. (3-20-20)T( )

**043. Noncommercial Encroachments Free to the Public.** ~~Noncommercial~~ encroachments ~~in aid of navigation owned by any municipality, county, state, or federal agency~~ for which the complete use is offered free to the public. (3-20-20)T( )

**054. Temporary Permits or Easements.** Uses or encroachments that are customarily authorized by temporary permits or easements, such as roads, railroads, overhead utility lines, submerged cables, and pipelines. Information on easements can be found in IDAPA 20.03.09, "Easements on State-Owned ~~Submerged Lands and Formerly Submerged Lands~~ Navigable Waterways." (3-20-20)T( )

21. -- 024. (RESERVED)

25. **POLICY.**

**01. Policy of the State of Idaho.** It is the policy of the state of Idaho to regulate and control the use and disposition of ~~lands in~~ the beds of navigable ~~lakes, rivers and streams to the natural or ordinary high water mark thereof,~~ waterways so as to provide for their commercial, navigational, recreational or other public use; provided that the Board will take no action in derogation of or seeking to interfere with the riparian or littoral rights of ~~the owners of upland property abutting or adjoining such lands~~ landowners. (3-20-20)T( )

**02. Director May Grant Leases.** The Director may grant leases for uses that are in the public interest and consistent with these rules. (3-20-20)T

**Requests or Inquiries Regarding Navigability.** The State owns the beds of all lakes, rivers, and streams that were navigable in fact at statehood. ~~The Department will respond to requests or inquiries as to which lakes, rivers, and streams are deemed navigable in fact. Additional information~~ about lakes, rivers, and streams deemed navigable by the State of Idaho is available from the Department. (3-20-20)T( )

In recognition of continuing private property ownership of lands lying between the natural or ordinary high water mark and the artificial high water mark, the board shall consider unreasonable adverse effect upon adjacent property and undue interference with navigation the most important factors to be considered in granting or denying an application for a nonnavigational encroachment, a commercial navigational encroachment, or a community navigational encroachment not extending below the natural or ordinary high water mark.

**03.**

**04. Stream Channel Alteration Permit or Encroachment Permit.** Issuance of a lease is contingent upon the applicant obtaining a stream channel alteration permit if required by the Idaho Department of Water Resources, pursuant to Title 42, Chapter 38, Idaho Code, or an encroachment permit if required by the Department pursuant to the Lake Protection Act, Title 58, Chapter 13, Idaho Code, ~~and compliance with local planning and zoning regulations if applicable.~~ (3-20-20)T( )

~~**05. Other Permits and Licenses.** Issuance of a lease does not relieve an applicant from acquiring other permits and licenses that are required by law. (3-20-20)T~~

~~**0605. Submerged Lands Lease Required Upon Notification.** All persons using submerged lands in a manner that requires a submerged land lease must obtain such a lease from the Director when notified to do so. (3-20-20)T~~

~~**0706. Term of Lease, Renewal of Lease.** Leases are issued for a term of ten (10) years or as determined by the Board. Leases may be renewed for additional periods to be determined by the Department based upon satisfactory performance during the present term. Renewals will be processed with a minimum of procedural requirements and will not be denied except in the most unusual circumstances or noncompliance with the terms and conditions of the previous lease. A lease application fee is required for leases that are renewed upon expiration. Lease renewals are initiated by the Department. (3-20-20)T( )~~

~~08. Director's Authorization to Issue and Renew Leases.~~ The Director is authorized to issue and renew leases for the use of submerged lands in accordance with these rules. (3-20-20)T

~~0907. Rights Granted.~~ The lease grants only such rights as are specified in the lease. The right to use the ~~submerged or formerly submerged lands~~ navigable waterways for all other purposes that do not interfere with the rights authorized in the lease remains with the state. (3-20-20)T( )

~~10. Rules Applicable to All Existing and Proposed Uses and Encroachments.~~ These rules apply to all existing and proposed uses and encroachments, whether or not authorized by permit under the Lake Protection Act, Title 58, Chapter 13, Idaho Code, or the Stream Channel Protection Act, Title 42, Chapter 38, Idaho Code. These rules provide that a lease may be required in addition to existing permits. See Section 020 of these rules for information about exceptions to lease requirements. (3-20-20)T

(g) "Line of navigability" means a line located at such distance waterward of the low water mark established by the length of existing legally permitted encroachments, water depths waterward of the low water mark, and by other relevant criteria determined by the board when a line has not already been established for the body of water in question.

~~1108. Waiver of Lease Requirements.~~ The Director may, in his discretion, waive lease requirements for single-family or two-family dock encroachments whose dock surface areas exceed square footages described in Subsections 020.01 through 020.0302 of these rules when the additional dock surface area square footage is necessary to gain or maintain access to water of sufficient depth to sustain dock use for water craft customarily in use on that particular lake. (3-20-20)T( )

"Low water mark" means that line or elevation on the bed of the lake marked or located by the average low water elevations over a period of years and marks the point to which the riparian rights of adjoining landowners extend as a matter of right, in aid of their right to use the waters of the lake for purposes of navigation.

~~1209. Private Moorage at Commercial Marinas.~~ (3-20-20)T

a. This Subsection ~~(025.12)~~ does not apply to community docks. (3-20-20)T( )

b. Private moorage at commercial marinas is allowed as long as the requirements of IDAPA 20.03.04, "Rules for the Regulation of Beds, Waters, and Airspace Over Navigable Lakes in the State of Idaho," Subsection

015.03 are met.  
20)T

(3-20-

c. The sale, lease, or rental of private moorage is in no way an encumbrance on ~~any underlying public trust land~~ navigable waterways. All transactions related to private moorage are subject to the limitations of the associated submerged lands lease. (3-20-20)T( )

d. Acquisition of private moorage must be documented with a disclosure that the transaction does not convey ~~public trust lands~~ navigable waterways and only conveys the right to use the designated portion of the marina. (3-20-20)T(-)

e. The Department will make no policy regarding the cost of private moorage and the resolution of disputes between the involved parties. (3-20-20)T

26. -- 029. (RESERVED)

30. LEASE APPLICATION, FEE, AND PROCEDURE.

01. Fee. The non-refundable lease application fee is ~~one hundred fifty four~~ hundred twenty-five dollars (~~\$150~~425) for new and existing encroachments. (3-20-20)T( )

~~02. Fee Is Required. A lease application and nonrefundable fee is required for new and existing encroachments. A lease application fee is required for leases that are renewed upon expiration.~~ (3-20-20)T

32. **Application to Lease and Fee.** The lease application and fee must be submitted with the following information ~~from Subsections 030.03.a. through 030.03.c.,~~ in sufficient detail for the Department to determine an appropriate lease rate ~~based on numbers of slips, square footage, or other permit information:~~ (3-20-20)T( )

a. ~~A letter of request stating the purpose of the lease~~ completed application form. (3-20-20)T(-)

b. A scale drawing of the proposed lease area with plans detailing all intended improvements, including reference to the nearest known property corner(s). An encroachment or stream channel alteration permit may satisfy this requirement. (3-20-20)T( )

~~c. The permit number of each existing applicable encroachment permit.~~ (3-20-20)T

~~04. Submittal of Application to Lease and Fee. The lease application and fee must be filed in the local office of the Department or the Director's office. (3-20-20)T~~

~~05~~**03. Notification of Approval or Denial.** The applicant will be notified in writing if the lease application is approved or denied. The applicant will also be notified of any additional requirements. (3-20-20)T

~~06. Request for Reconsideration. Any applicant aggrieved with the Director's determination of rent or denial of a lease application may request reconsideration by the Director. (3-20-20)T~~

31. -- 034. (RESERVED)

35. **RENTAL.**

The rental rate policy for submerged land leases is set by the Board. This policy is available on the Department website at <http://www.idl.idaho.gov/>. (3-20-20)T

**01. Standardized Rental Rates.** The Board sets standard submerged land lease rental rates for common uses such as commercial marinas, community docks, floathomes, restaurants, and retail stores. Rental rates for commercial marinas and other uses that produce revenue for the lessee will commonly be calculated as a percentage of gross receipts, however, other methods may be used as determined appropriate by the Board. (3-20-20)T

**02. Nonstandard Rental Rates.** The Board directs the Department to use a percentage of market value or gross receipts, or other methods determined appropriate by the Board, as the submerged lands lease rental rate for

uses that are uncommon, especially for non-navigational encroachments. (3-20-20)T

**36. YEARLY REPORTING.**

**01. Annual Report.** Lessees must provide an annual report to the Department that includes: (3-20-20)T

a. A schedule of moorage rental rates, including moorage sizes and types. (3-20-20)T

b. The number and size of all public boat and float home moorages. (3-20-20)T

c. The number and size of all private boat and float home moorages. (3-20-20)T

d. Current proof of insurance that is required by the lease. (3-20-20)T

**02. Failure to Report.** Failure to provide the annual report information is a violation of these rules. (3-20-20)T

**37. -- 039. (RESERVED)**

**40. LATE PAYMENT, ~~EXTENSIONS OF PAYMENT.~~**

**01. ~~Penalty for Late Payment of Rent.~~** Rent not paid by the due date is considered late. ~~A penalty, calculated from the day after which payment was due, will be added to the rent. The penalty will be determined by the Board for the first month or any portion thereof and one percent (1%) of the rent due, including penalty, per month thereafter.~~ (3-20-20)T

**02. ~~Extension in Time for Payment of Rent.~~** ~~An extension in time in which to submit payment of rent may be granted for commercial submerged lands leases only. Such extensions may not exceed two (2) successive years, as required by Title 58, Chapter 3, Idaho Code, Section 58-305.~~ (3-20-20)T

~~**03. Request for Extension in Time for Payment of Rent.** Lessees must~~

request extensions on forms supplied by the lessor and pay an extension fee to be determined by the Board. The lessee must also provide a statement from his banker or accountant verifying that money is not available for the payment of rent. (3-20-20)T

~~04. Interest Rate for Extension in Time for Payment of Rent.~~ If an extension is granted, rent plus interest at a rate established by the Board will be due no later than October 1 of the rent year. Specifically, interest will be the average monthly rate for conventional mortgages as quoted in the Federal Reserve Statistical Report; the rate to be rounded downward to the nearest one quarter percent (1/4%) on the tenth of each month following the release of data. (3-20-20)T

~~and will result in the following monthly charges. ( )~~

- ~~a. A late charge of \$25.00 or 1% of the unpaid principal obligation, whichever is greater. ( )~~
- ~~b. An interest charge of 1% on the unpaid principal obligation. ( )~~

~~02. Late Charge Accrual.~~ The Department will send monthly statements with the outstanding balance that will remain on the account and will continue to accrue late charges and interest each month, or any portion of a month, until the balance is paid in full. All payments will be applied first to accrued interest and late charges, and then to principal. ( )

41. -- 044. (RESERVED)

45. **APPRAISAL PROCEDURES.**

Appraisals may be used to determine the market value of adjacent uplands for calculating submerged lease rental rates. (3-20-20)T

~~01. **Appraisal.** An appraisal will either be performed by qualified Department staff or an independent contract appraisal. Any appraisal must be under the control of the Department be conducted by a licensed appraiser selected by the Department, although the applicant may propose an appraiser to the Department. The Department will provide appraisal instructions. The appraisal will be performed in a timely manner, and a copy sent to the Department and the applicant. The expense of the appraisal will be borne by the applicant. (3-20-20)T(~~

~~02. **Cost of Appraisal.** The appraisal costs are the actual cost for Department personnel plus transportation, including per diem and administrative overhead, or the bid amount for the contract appraiser. An itemized statement of these costs will be provided to the applicant. The cost of the appraisal is in addition to those costs outlined in Section 035 of these rules and is billed separately from the application fee and rent. (3-20-20)T~~

46. -- **049. (RESERVED)**

50. **LEASE MODIFICATION OR AMENDMENT.**

01. **Encroachment Amendment.** A lease modification or amendment must first be permitted through an amendment to the lake encroachment permit or stream alteration permit, if needed. (3-20-20)T

02. **Modification of Existing Lease.** Modification or amendment of an existing lease will be processed in the same manner as a new lease application, but no fee will be required. Modification or amendment includes change of use, location, size or scope of the lease site, but does not include ordinary maintenance, repair or replacement of existing structures or facilities. (3-20-20)T

03. **Modification of Interior Facilities.** If the proposed changes to a facility do not require a new encroachment permit, a lease modification may still be needed as described in Subsection 050.02 of these rules. The lessee must give written notice to the Department at least ten (10) days in advance of making such changes. The Department will determine if a lease modification is needed due to the proposed changes. When requested, the lessee must also furnish one (1) set of as-built plans to the Department within thirty (30) days following completion of changes. (3-20-20)T

51. -- **054. (RESERVED)**

55. **ASSIGNMENTS, ASSIGNMENT FEE.**

01. **Assignment of Lease.** Leases may be assigned upon approval of the Director provided that the lease conforms with Subsection 025.02 and all other provisions of these rules. The assignor and assignee must complete the Department's standard assignment form and forward it to any Department office. (3-20-20)T

02. **Assignment Fee.** The assignment fee is ~~one hundred fifty dollars~~ two hundred dollars (~~\$150~~200). (3-20-20)T( )

03. **Permit Assignment.** The encroachment permit/stream alteration permit pertinent to a lease must be assigned to a purchaser simultaneously with a lease assignment. A lease assignment will not be approved unless the permit is assigned. (3-20-20)T

04. **Approval Required for Assignment.** An assignment is not valid until it has been approved by the Director. (3-20-20)T

56. -- 059. (RESERVED)

60. **CANCELLATION AND ADDITIONAL REMEDIES.**

01. **Cancellation of Lease for Violation of Terms.** Any violation of the terms of the lease by the lessee, including non-payment of rent or any violation by lessee of any rule now in force or hereafter adopted by the Board may subject the lease to cancellation. The lessee will be provided written notification of any violation. The letter will

specify the violation, corrective action necessary, and specify a reasonable time to make the correction. If the corrective action is not taken within the specified reasonable period of time, the Department will notify the lessee of cancellation of the lease; provided, however, that the notice is provided to lessee no later than thirty (30) days prior to the effective date of such cancellation. (3-20-20)T

**02. Reinstatement of Lease.** A lease may be reinstated within ninety (90) days after cancellation for non-payment by paying the rental, plus interest, and a reinstatement fee to be determined by the Board. (3-20-20)T

**03. Cancellation of Lease for Use Other Than Intended Purpose.** A lease not used for the purpose for which it was granted may be canceled. The Department will notify the lessee in writing of any proposed cancellation. The lessee has thirty (30) days to reply in writing to the Department to show cause why the lease should not be canceled. Within sixty (60) days, the Department will notify the lessee in writing as to the Department's decision concerning cancellation. The lessee has thirty (30) days to appeal an adverse decision to the Director. (3-20-20)T

**04. Removal of Improvements Upon Cancellation.** Upon cancellation, the Director will provide the lessee with a specific amount of time, not to exceed six (6) months from the date of final notice, to remove any facilities and improvements. Failure to remove any facilities or structures within such time period established by the Director will be deemed a trespass on ~~submerged or formerly submerged lands~~ navigable waterways. (3-20-20)T(\_\_\_\_)

**05. Additional Remedies Available.** In addition to termination of the lease for the material default of the lessee, the lease may provide for other remedies to non-monetary breach of the lease including, but not limited to: (3-20-20)T

a. Civil penalties as determined by the Board and to be collected as additional rent; (3-20-20)T

b. The reasonable costs of remedial action undertaken by the Department as a result of the lessee's failure to perform a requirement of the lease. These costs will be collected as additional rent; and (3-20-20)T

c. Such other remedies as the Board deems appropriate. (3-20-20)T

**61. -- 064. (RESERVED)**

**65. BOND.**

**01. Bond Requirement Determined by Director.** Bonds may be required for commercial navigational, community dock, and nonnavigational leases. The need for bond will be at the discretion of the Director who will consider the potential for abandonment of the facility, harm to state-owned submerged land and water resources, the personal and real property of adjacent upland owners and the personal and real property owned by the encroachment owner that is appurtenant to and supportive of the encroachment. (3-20-20)T

**02. Performance Bond.** In the event a bond is necessary, the lessee must submit a performance bond in favor of the state of Idaho and in a format acceptable to the Director before a lease is issued. Acceptable bonds include surety, collateral, and letters of credit. The amount of bond is the estimated cost of restoration as established by the Director in consultation with the lease applicant on a case by case basis. To determine restoration costs, the Director may consider the potential for damage to land, to improvements, and the cost of structure removal. (3-20-20)T

~~66.—069.—(RESERVED)~~

~~070.—LIABILITY AND INDEMNITY.~~

~~A lessee will indemnify and hold harmless the lessors, its departments, agencies and employees for any and all claims, actions, damages, costs, and expenses that may arise by reason of lessee's occupation of the leased premises, or the occupation of the leased premises by any of the lessee's agents, or by any person occupying the same with the lessee's permission. (3-20-20)T~~

~~071.~~ ~~066.~~ ~~--~~ 074. (RESERVED)

**075. OTHER RULES AND LAWS.**

The lessee will comply with all applicable state, federal, and local rules and laws insofar as they affect the use of the lands described in the lease. (3-20-20)T

**076. – ~~079~~ 999. (RESERVED)**

80. ~~Binding On Heirs.~~

~~All of the terms, covenants, and conditions in a state lease are binding upon the heirs, executors, and assigns of the lessee. (3-20-20)T~~

~~81. – 084. (RESERVED)~~

85. ~~Civil Rights.~~

~~The lessee may not discriminate against any person on the basis of such person's race, creed, color, sex, national origin or handicap. (3-20-20)T~~

86. ~~-- 999. (RESERVED)~~

**Rulemaking Meeting Dates:** April 27, 2022 and May 18, 2022

**Deadline for written comments on this draft:** June 17, 2022

**20.03.17 – RULES GOVERNING LEASES ON STATE-OWNED ~~SUBMERGED LANDS AND FORMERLY SUBMERGED LANDS~~ NAVIGABLE WATERWAYS**

**00. LEGAL AUTHORITY.**

This Chapter is adopted under the legal authorities of Title 58, Chapter 1, Idaho Code, Sections 58-104(6), 58-104(9), and 58-105; Title 58, Chapter 3, Idaho Code, Sections 58-304 through 58-312; Title 58, Chapter 6, Idaho Code; Title 58, Chapter 12; and Title 67, Chapter 52, Idaho Code. (3-20-20)T

**01. ~~TITLE AND SCOPE.~~**

~~01. **Title.** These rules are titled IDAPA 20.03.17, “Rules Governing Leases on State-Owned Submerged Lands and Formerly Submerged Lands.” (3-20-20)T~~

~~21. **Scope.** These rules govern the issuance of leases on state-owned ~~submerged lands~~  navigable waterways. (3-20-20)T(\_\_\_\_\_)~~

~~a. **These rules also apply to state-owned islands raised from submerged lands, or filled submerged lands, or other formerly submerged lands that are no longer covered by water at any time during an ordinary year.** (3-20-20)T~~

~~b. While the State asserts the right to issue leases for all encroachments, navigational or non-navigational, upon, in or above the beds or waters of navigable lakes and rivers, nothing in these rules may be construed to vest in the state of Idaho any property, right or claim of such right to any private lands lying above the natural or ordinary high water mark of any navigable lake or river. (3-20-20)T(\_\_\_\_\_)~~

~~02. **Rules Applicable to All Existing and Proposed Uses and Encroachments.** These rules apply to all existing and proposed uses and encroachments, whether or not authorized by permit under the Lake Protection Act, Title 58, Chapter 13, Idaho Code, or the Stream Channel Protection Act, Title 42, Chapter 38, Idaho Code. These rules provide that a lease may be required in addition to existing permits. See Section 020 of these rules for information about exceptions to lease requirements. (\_\_\_\_\_)T~~

**02. ADMINISTRATIVE APPEALS.**

~~Any person aggrieved by any final decision or order of the Board is entitled to judicial review pursuant to the provisions of Title 67, Chapter 52, Idaho Code, and IDAPA 20.01.01, “Rules of Practice and Procedure Before the State Board of Land Commissioners.” (3-20-20)T~~

~~0032. -- 009. (RESERVED)~~

**10. DEFINITIONS.**

~~01. **Artificial High Water Mark.** The high water elevation above the natural or ordinary high water mark resulting from construction of man-made dams or control works and impressing a new and higher vegetation line. (3-20-20)T~~

~~0201. **Board.** The Idaho State Board of Land Commissioners or its designee. (3-20-20)T~~

~~0302. **Commercial Marina.** A commercial navigational encroachment whose primary purpose is to provide moorage for rental or for free to the general public. (3-20-20)T~~

~~0403. **Commercial Navigational Encroachment.** A navigational encroachment used for commercial~~

purposes. (3-20-20)T

**0504. Community Dock.** A structure that provides private moorage for more than two (2) adjacent littoral owners, or other littoral owners possessing a littoral common area with littoral rights including, but not limited to, homeowners' associations. No public access is required for a community dock. (3-20-20)T

**0605. Department.** The Idaho Department of Lands or its designee. (3-20-20)T

**0706. Director.** The director of the Idaho Department of Lands or his designee. (3-20-20)T

**0807. Dock Surface Area.** Includes docks, slips, piers, and ramps and is calculated in square feet. Dock surface area does not include pilings, submerged anchors, or undecked breakwaters. (3-20-20)T

**0908. Encroachments in Aid of Navigation.** Includes docks, piers, jet ski and boat lifts, buoys, pilings, breakwaters, boat ramps, channels or basins, and other facilities used to support water craft and moorage on, in, or above the beds or waters of a navigable lake, river or stream. The term "encroachments in aid of navigation" ~~may be~~ is used interchangeably ~~herein~~ with ~~the term~~ "navigational encroachments." (3-20-20)T( )

**1009. Encroachments Not in Aid of Navigation.** Includes all other encroachments on, in, or above the beds or waters of a navigable lake, river or stream, including landfills, bridges, utility and power lines, or other structures not constructed primarily for use in aid of navigation. It also includes float homes and floating toys. The term "encroachments not in aid of navigation" ~~may be~~ is used interchangeably ~~herein~~ with ~~the term~~ "non-navigational encroachments." (3-20-20)T( )

~~11. Formerly Submerged Lands. The beds of navigable lakes, rivers, and streams that have either been filled or subsequently became uplands because of human activities including construction of dikes, berms, and seawalls. Also included are islands that have been created on submerged lands through natural processes or human activities since statehood, July 3, 1890. (3-20-20)T~~

**1210. 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

**1311. Natural or Ordinary High Water Mark.** The line that the water impresses upon the soil by covering it for a sufficient period of time to deprive the soil of its vegetation and destroy its value for agricultural purposes. If, however, the soil, configuration of the surface, or vegetation has been altered by man's activity, the ordinary high water mark is located where it would have been if the alteration had not occurred. (3-20-20)T

**1412. Person.** ~~An individual, corporation,~~ partnership, limited liability company, association, ~~corporation,~~ natural person, or entity trust, unincorporated organization or other legal entity qualified to do business in the state of Idaho and any federal, state, tribal, or municipal unit of government. (3-20-20)T( )

**1513. Riparian or Littoral Rights.** The rights of owners or lessees of land adjacent to navigable lakes, rivers or streams to maintain their adjacency to the lake, river, or stream and to make use of their rights as riparian or littoral owners or lessees in building or using aids to navigation but does not include any right to make any consumptive use of the waters. (3-20-20)T

**1614. Single-Family Dock.** A structure providing noncommercial moorage that serves one (1) waterfront owner whose waterfront footage is no less than twenty-five (25) feet. (3-20-20)T

15. State-Owned Navigable Waterways and Navigable Waterways. As used in these rules, the beds of all navigable waterways up to the natural or ordinary high water mark as of the date Idaho was admitted into statehood. This includes any such bed that was formerly submerged and subsequently filled and is now uplands because of human activity (e.g., dikes, berms, jetties) or by natural processes, and includes islands within navigable waterways resulting from human activity or by natural processes. ( )

~~17~~**16. Submerged Lands.** The state-owned beds of navigable lakes, rivers, and streams below the natural or ordinary high water marks. (3-20-20)T

~~17. Temporary Permit.~~ A revocable instrument authorizing a specific use on navigable waterways usually issued for five (5) years or less, but that may be issued for up to ten (10) years. ( )

**18. Two-Family Dock.** A structure providing noncommercial moorage that serves two (2) adjacent waterfront owners having a combined waterfront footage of no less than fifty (50) feet. Usually the structure is located on the common littoral property line. (3-20-20)T

~~19. Uplands.~~ The land bordering on navigable ~~lakes, rivers, and streams~~ waterways. (3-20-20)T( )

11. -- 019. (RESERVED)

**20. APPLICABILITY.**

Leases are required for all encroachments ~~on, in, or~~ defined in subsections 010.08 and 010.09 that are above, across, over, ~~state-owned submerged land~~ in, through, upon, and under the beds of navigable waterways except: (3-20-20)T( )

~~01. Single-Family or Two-Family Docks.~~ Single-family ~~or two-family~~ docks that were constructed: ~~on or before July 1, 1993, that occupy less than eleven hundred (1,100) square feet of dock surface area lakeward of the ordinary high water mark, and for which all required permits and approvals have been obtained.~~ (3-20-20)T

a. ~~On or before July 1, 1993, that occupy less than eleven hundred (1,100) square feet of dock surface area for which all required permits and approvals have been obtained.~~ ( )

b. ~~After July 1, 1993, that occupy less than seven hundred (700) square feet of dock surface area for which all required permits and approvals have been obtained.~~ ( )

~~02. Single-Family Docks.~~ Single family docks that were constructed after July 1, 1993, that occupy less than seven hundred (700) square feet of dock surface area lakeward of the ordinary high water mark, and for which all required permits and approvals have been obtained. (3-20-20)T

~~03. Two-Family Docks.~~ Two-family docks that were constructed after July 1, 1993, that occupy less than eleven hundred (1,100) square feet of dock surface area lakeward of the ordinary high water mark, and for which all required permits and approvals have been obtained. (3-20-20)T( )

~~04. Noncommercial Encroachments Free to the Public.~~ ~~Noncommercial~~ encroachments in aid of navigation ~~owned by any municipality, county, state, or federal agency~~ for which the complete use is offered free to the public. (3-20-20)T( )

~~05. Temporary Permits or Easements.~~ Uses or encroachments that are customarily authorized by temporary permits or easements, such as roads, railroads, overhead utility lines, submerged cables, and pipelines. Information on easements can be found in IDAPA 20.03.09, "Easements on State-Owned ~~Submerged Lands and Formerly Submerged Lands~~ Navigable Waterways." (3-20-20)T( )

21. -- 024. (RESERVED)

**25. POLICY.**

**01. Policy of the State of Idaho.** It is the policy of the state of Idaho to regulate and control the use and disposition of ~~lands in~~ the beds of navigable ~~lakes, rivers and streams to the natural or ordinary high water mark thereof,~~ waterways so as to provide for their commercial, navigational, recreational or other public use; provided that the Board will take no action in derogation of or seeking to interfere with the riparian or littoral rights of ~~the owners of upland property abutting or adjoining such lands~~ landowners. (3-20-20)T( )

**02. Director May Grant Leases.** The Director may grant leases for uses that are in the public interest and consistent with these rules. (3-20-20)T

**03. Requests or Inquiries Regarding Navigability.** The State owns the beds of all lakes, rivers, and streams that were navigable in fact at statehood. ~~The Department will respond to requests or inquiries as to which lakes, rivers, and streams are deemed navigable in fact. Additional~~ Information about lakes, rivers, and streams deemed navigable by the State of Idaho is available from the Department. (3-20-20)T( )

**04. Stream Channel Alteration Permit or Encroachment Permit.** Issuance of a lease is contingent upon the applicant obtaining a stream channel alteration permit if required by the Idaho Department of Water Resources, pursuant to Title 42, Chapter 38, Idaho Code, or an encroachment permit if required by the Department pursuant to the Lake Protection Act, Title 58, Chapter 13, Idaho Code, ~~and compliance with local planning and zoning regulations if applicable.~~ (3-20-20)T( )

~~05. Other Permits and Licenses. Issuance of a lease does not relieve an applicant from acquiring other permits and licenses that are required by law. (3-20-20)T~~

**0605. Submerged Lands Lease Required Upon Notification.** All persons using submerged lands in a manner that requires a submerged land lease must obtain such a lease from the Director when notified to do so. (3-20-20)T

~~0706. Term of Lease, Renewal of Lease.~~ Leases are issued for a term of ten (10) years or as determined by the Board. Leases may be renewed for additional periods to be determined by the Department based upon satisfactory performance during the present term. Renewals will be processed with a minimum of procedural requirements and will not be denied except in the most unusual circumstances or noncompliance with the terms and conditions of the previous lease. A lease application fee is required for leases that are renewed upon expiration. Lease renewals are initiated by the Department. (3-20-20)T( )

~~08. Director's Authorization to Issue and Renew Leases. The Director is authorized to issue and renew leases for the use of submerged lands in accordance with these rules. (3-20-20)T~~

~~0907. Rights Granted.~~ The lease grants only such rights as are specified in the lease. The right to use the ~~submerged or formerly submerged lands~~ navigable waterways for all other purposes that do not interfere with the rights authorized in the lease remains with the state. (3-20-20)T( )

~~10. Rules Applicable to All Existing and Proposed Uses and Encroachments. These rules apply to all existing and proposed uses and encroachments, whether or not authorized by permit under the Lake Protection Act, Title 58, Chapter 13, Idaho Code, or the Stream Channel Protection Act, Title 42, Chapter 38, Idaho Code. These rules provide that a lease may be required in addition to existing permits. See Section 020 of these rules for information about exceptions to lease requirements. (3-20-20)T~~

~~1108. Waiver of Lease Requirements.~~ The Director may, in his discretion, waive lease requirements for single-family or two-family dock encroachments whose dock surface areas exceed square footages described in Subsections 020.01 through 020.03 ~~02~~ of these rules when the additional dock surface area square footage is necessary to gain or maintain access to water of sufficient depth to sustain dock use ~~for water craft customarily in use on that particular lake.~~ (3-20-20)T( )

~~1209. Private Moorage at Commercial Marinas. (3-20-20)T~~

a. This Subsection ~~(025.12)~~ does not apply to community docks. (3-20-20)T( )

b. Private moorage at commercial marinas is allowed as long as the requirements of IDAPA 20.03.04, "Rules for the Regulation of Beds, Waters, and Airspace Over Navigable Lakes in the State of Idaho," Subsection 015.03 are met. (3-20-20)T

c. The sale, lease, or rental of private moorage is in no way an encumbrance on ~~any underlying public trust land~~ navigable waterways. All transactions related to private moorage are subject to the limitations of the associated submerged lands lease. (3-20-20)T( )

d. Acquisition of private moorage must be documented with a disclosure that the transaction does not convey ~~public trust lands~~ navigable waterways and only conveys the right to use the designated portion of the marina. (3-20-20)T( )

e. The Department will make no policy regarding the cost of private moorage and the resolution of disputes between the involved parties. (3-20-20)T

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### 30. LEASE APPLICATION, FEE, AND PROCEDURE.

01. **Fee.** The non-refundable lease application fee is ~~one hundred fifty~~ four hundred twenty-five dollars (\$~~150~~425) for new and existing encroachments. (3-20-20)T( )

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32. **Application to Lease and Fee.** The lease application and fee must be submitted with the following information ~~from Subsections 030.03.a. through 030.03.e.~~, in sufficient detail for the Department to determine an appropriate lease rate based on numbers of slips, square footage, or other permit information: (3-20-20)T( )

a. A ~~letter of request stating the purpose of the lease~~ completed application form. (3-20-20)T( )

b. A scale drawing of the proposed lease area with plans detailing all intended improvements, including reference to the nearest known property corner(s). An encroachment or stream channel alteration permit may satisfy this requirement. (3-20-20)T( )

~~e. The permit number of each existing applicable encroachment permit.~~ (3-20-20)T

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~~05~~03. **Notification of Approval or Denial.** The applicant will be notified in writing if the lease application is approved or denied. The applicant will also be notified of any additional requirements. (3-20-20)T

~~06. **Request for Reconsideration.** Any applicant aggrieved with the Director's determination of rent or denial of a lease application may request reconsideration by the Director.~~ (3-20-20)T

31. -- 034. (RESERVED)

### 35. RENTAL.

The rental rate policy for submerged land leases is set by the Board. This policy is available on the Department website at <http://www.idl.idaho.gov/>. (3-20-20)T

01. **Standardized Rental Rates.** The Board sets standard submerged land lease rental rates for common uses such as commercial marinas, community docks, floathomes, restaurants, and retail stores. Rental rates for commercial marinas and other uses that produce revenue for the lessee will commonly be calculated as a percentage of gross receipts, however, other methods may be used as determined appropriate by the Board. (3-20-20)T

02. **Nonstandard Rental Rates.** The Board directs the Department to use a percentage of market value or gross receipts, or other methods determined appropriate by the Board, as the submerged lands lease rental rate for

uses that are uncommon, especially for non-navigational encroachments. (3-20-20)T

**36. YEARLY REPORTING.**

**01. Annual Report.** Lessees must provide an annual report to the Department that includes: (3-20-20)T

**a.** A schedule of moorage rental rates, including moorage sizes and types. (3-20-20)T

**b.** The number and size of all public boat and float home moorages. (3-20-20)T

**c.** The number and size of all private boat and float home moorages. (3-20-20)T

**d.** Current proof of insurance that is required by the lease. (3-20-20)T

**02. Failure to Report.** Failure to provide the annual report information is a violation of these rules. (3-20-20)T

**37. -- 039. (RESERVED)**

**40. LATE PAYMENT, EXTENSIONS OF PAYMENT.**

~~**01. Penalty for Late Payment of Rent.** Rent not paid by the due date is considered late. A penalty, calculated from the day after which payment was due, will be added to the rent. The penalty will be determined by the Board for the first month or any portion thereof and one percent (1%) of the rent due, including penalty, per month thereafter. (3-20-20)T~~

~~**02. Extension in Time for Payment of Rent.** An extension in time in which to submit payment of rent may be granted for commercial submerged lands leases only. Such extensions may not exceed two (2) successive years, as required by Title 58, Chapter 3, Idaho Code, Section 58-305. (3-20-20)T~~

~~**03. Request for Extension in Time for Payment of Rent.** Lessees must request extensions on forms supplied by the lessor and pay an extension fee to be determined by the Board. The lessee must also provide a statement from his banker or accountant verifying that money is not available for the payment of rent. (3-20-20)T~~

~~**04. Interest Rate for Extension in Time for Payment of Rent.** If an extension is granted, rent plus interest at a rate established by the Board will be due no later than October 1 of the rent year. Specifically, interest will be the average monthly rate for conventional mortgages as quoted in the Federal Reserve Statistical Report; the rate to be rounded downward to the nearest one quarter percent (1/4%) on the tenth of each month following the release of data. (3-20-20)T~~

~~and will result in the following monthly charges. ( )~~

~~**a.** A late charge of \$25.00 or 1% of the unpaid principal obligation, whichever is greater. ( )~~

~~**b.** An interest charge of 1% on the unpaid principal obligation. ( )~~

~~**02. Late Charge Accrual.** The Department will send monthly statements with the outstanding balance that will remain on the account and will continue to accrue late charges and interest each month, or any portion of a month, until the balance is paid in full. All payments will be applied first to accrued interest and late charges, and then to principal. ( )~~

**41. -- 044. (RESERVED)**

**45. APPRAISAL PROCEDURES.**

Appraisals may be used to determine the market value of adjacent uplands for calculating submerged lease rental rates. (3-20-20)T

~~01. **Appraisal.** An appraisal will either be performed by qualified Department staff or an independent contract appraiser. Any appraisal must be under the control of the Department be conducted by a licensed appraiser selected by the Department, although the applicant may propose an appraiser to the Department. The Department will provide appraisal instructions. The appraisal will be performed in a timely manner, and a copy sent to the Department and the applicant. The expense of the appraisal will be borne by the applicant. (3-20-20)T( )~~

~~02. **Cost of Appraisal.** The appraisal costs are the actual cost for Department personnel plus transportation, including per diem and administrative overhead, or the bid amount for the contract appraiser. An itemized statement of these costs will be provided to the applicant. The cost of the appraisal is in addition to those costs outlined in Section 035 of these rules and is billed separately from the application fee and rent. (3-20-20)T~~

46. -- 049. (RESERVED)

50. LEASE MODIFICATION OR AMENDMENT.

01. **Encroachment Amendment.** A lease modification or amendment must first be permitted through an amendment to the lake encroachment permit or stream alteration permit, if needed. (3-20-20)T

02. **Modification of Existing Lease.** Modification or amendment of an existing lease will be processed in the same manner as a new lease application, but no fee will be required. Modification or amendment includes change of use, location, size or scope of the lease site, but does not include ordinary maintenance, repair or replacement of existing structures or facilities. (3-20-20)T

03. **Modification of Interior Facilities.** If the proposed changes to a facility do not require a new encroachment permit, a lease modification may still be needed as described in Subsection 050.02 of these rules. The lessee must give written notice to the Department at least ten (10) days in advance of making such changes. The Department will determine if a lease modification is needed due to the proposed changes. When requested, the lessee must also furnish one (1) set of as-built plans to the Department within thirty (30) days following completion of changes. (3-20-20)T

51. -- 054. (RESERVED)

55. ASSIGNMENTS, ASSIGNMENT FEE.

01. **Assignment of Lease.** Leases may be assigned upon approval of the Director provided that the lease conforms with Subsection 025.02 and all other provisions of these rules. The assignor and assignee must complete the Department's standard assignment form and forward it to any Department office. (3-20-20)T

02. **Assignment Fee.** The assignment fee is ~~one hundred fifty dollars~~ two hundred dollars (\$~~150~~200). (3-20-20)T( )

03. **Permit Assignment.** The encroachment permit/stream alteration permit pertinent to a lease must be assigned to a purchaser simultaneously with a lease assignment. A lease assignment will not be approved unless the permit is assigned. (3-20-20)T

04. **Approval Required for Assignment.** An assignment is not valid until it has been approved by the Director. (3-20-20)T

56. -- 059. (RESERVED)

60. CANCELLATION AND ADDITIONAL REMEDIES.

01. **Cancellation of Lease for Violation of Terms.** Any violation of the terms of the lease by the lessee, including non-payment of rent or any violation by lessee of any rule now in force or hereafter adopted by the Board may subject the lease to cancellation. The lessee will be provided written notification of any violation. The letter will

specify the violation, corrective action necessary, and specify a reasonable time to make the correction. If the corrective action is not taken within the specified reasonable period of time, the Department will notify the lessee of cancellation of the lease; provided, however, that the notice is provided to lessee no later than thirty (30) days prior to the effective date of such cancellation. (3-20-20)T

**02. Reinstatement of Lease.** A lease may be reinstated within ninety (90) days after cancellation for non-payment by paying the rental, plus interest, and a reinstatement fee to be determined by the Board. (3-20-20)T

**03. Cancellation of Lease for Use Other Than Intended Purpose.** A lease not used for the purpose for which it was granted may be canceled. The Department will notify the lessee in writing of any proposed cancellation. The lessee has thirty (30) days to reply in writing to the Department to show cause why the lease should not be canceled. Within sixty (60) days, the Department will notify the lessee in writing as to the Department's decision concerning cancellation. The lessee has thirty (30) days to appeal an adverse decision to the Director. (3-20-20)T

**04. Removal of Improvements Upon Cancellation.** Upon cancellation, the Director will provide the lessee with a specific amount of time, not to exceed six (6) months from the date of final notice, to remove any facilities and improvements. Failure to remove any facilities or structures within such time period established by the Director will be deemed a trespass on ~~submerged or formerly submerged lands~~ navigable waterways. (3-20-20)T(\_\_\_\_)

**05. Additional Remedies Available.** In addition to termination of the lease for the material default of the lessee, the lease may provide for other remedies to non-monetary breach of the lease including, but not limited to: (3-20-20)T

a. Civil penalties as determined by the Board and to be collected as additional rent; (3-20-20)T

b. The reasonable costs of remedial action undertaken by the Department as a result of the lessee's failure to perform a requirement of the lease. These costs will be collected as additional rent; and (3-20-20)T

c. Such other remedies as the Board deems appropriate. (3-20-20)T

**61. -- 064. (RESERVED)**

**65. BOND.**

**01. Bond Requirement Determined by Director.** Bonds may be required for commercial navigational, community dock, and nonnavigational leases. The need for bond will be at the discretion of the Director who will consider the potential for abandonment of the facility, harm to state-owned submerged land and water resources, the personal and real property of adjacent upland owners and the personal and real property owned by the encroachment owner that is appurtenant to and supportive of the encroachment. (3-20-20)T

**02. Performance Bond.** In the event a bond is necessary, the lessee must submit a performance bond in favor of the state of Idaho and in a format acceptable to the Director before a lease is issued. Acceptable bonds include surety, collateral, and letters of credit. The amount of bond is the estimated cost of restoration as established by the Director in consultation with the lease applicant on a case by case basis. To determine restoration costs, the Director may consider the potential for damage to land, to improvements, and the cost of structure removal. (3-20-20)T

~~66. --069. (RESERVED)~~

~~070. LIABILITY AND INDEMNITY.~~

~~A lessee will indemnify and hold harmless the lessors, its departments, agencies and employees for any and all claims, actions, damages, costs, and expenses that may arise by reason of lessee's occupation of the leased premises, or the occupation of the leased premises by any of the lessee's agents, or by any person occupying the same with the lessee's permission. (3-20-20)T~~

~~071. – 066. -- 074. (RESERVED)~~

**075. OTHER RULES AND LAWS.**

The lessee will comply with all applicable state, federal, and local rules and laws insofar as they affect the use of the lands described in the lease. (3-20-20)T

~~076. – 079 999. (RESERVED)~~

~~80. Binding On Heirs.~~

~~All of the terms, covenants, and conditions in a state lease are binding upon the heirs, executors, and assigns of the lessee. (3-20-20)T~~

~~81. – 084. (RESERVED)~~

~~85. Civil Rights.~~

~~The lessee may not discriminate against any person on the basis of such person's race, creed, color, sex, national origin or handicap. (3-20-20)T~~

~~86. – 999. (RESERVED)~~

TITLE 58  
PUBLIC LANDS

CHAPTER 13  
NAVIGATIONAL ENCROACHMENTS

58-1301. ENCROACHMENT ON NAVIGABLE LAKES -- LEGISLATIVE INTENT. The legislature of the state of Idaho hereby declares that the public health, interest, safety and welfare requires that all encroachments upon, in or above the beds or waters of navigable lakes of the state be regulated in order that the protection of property, navigation, fish and wildlife habitat, aquatic life, recreation, aesthetic beauty and water quality be given due consideration and weighed against the navigational or economic necessity or justification for, or benefit to be derived from the proposed encroachment. No encroachment on, in or above the beds or waters of any navigable lake in the state shall hereafter be made unless approval therefor has been given as provided in this act.

[ (58-1301) I.C., sec. 58-142, as added by 1974, ch. 243, sec. 1, p. 1608; 1990, redesignated, ch. 362, sec. 1, p. 980.]

58-1302. ENCROACHMENT ON NAVIGABLE LAKES -- DEFINITIONS. (a) "Navigable lake" means any permanent body of relatively still or slack water, including man-made reservoirs, not privately owned and not a mere marsh or stream eddy, and capable of accommodating boats or canoes. This definition does not include man-made reservoirs where the jurisdiction thereof is asserted and exclusively assumed by a federal agency.

(b) "Beds of navigable lakes" means the lands lying under or below the "natural or ordinary high water mark" of a navigable lake and, for purposes of this act only, the lands lying between the natural or ordinary high water mark and the artificial high water mark, if there be one.

(c) "Natural or ordinary high water mark" means the high water elevation in a lake over a period of years, uninfluenced by man-made dams or works, at which elevation the water impresses a line on the soil by covering it for sufficient periods to deprive the soil of its vegetation and destroy its value for agricultural purposes.

(d) "Artificial high water mark" means the high water elevation above the natural or ordinary high water mark resulting from construction of man-made dams or control works and impressing a new and higher vegetation line.

(e) "Low water mark" means that line or elevation on the bed of the lake marked or located by the average low water elevations over a period of years and marks the point to which the riparian rights of adjoining landowners extend as a matter of right, in aid of their right to use the waters of the lake for purposes of navigation.

(f) "Riparian or littoral rights" means only the rights of owners or lessees of land adjacent to navigable waters of the lake to maintain their adjacency to the lake and to make use of their rights as riparian or littoral owners or lessees in building or using aids to navigation but does not include any right to make any consumptive use of the waters of the lake.

(g) "Line of navigability" means a line located at such distance waterward of the low water mark established by the length of existing legally permitted encroachments, water depths waterward of the low water mark, and by other relevant criteria determined by the board when a line has not already been established for the body of water in question.

(h) "Encroachments in aid of navigation" means and includes docks, piers, floats, pilings, breakwaters, boat ramps, channels or basins, and other such aids to the navigability of the lake, on, in or above the beds or waters of a navigable lake. The term "encroachments in aid of navigation" may be used interchangeably herein with the term "navigational encroachments."

(i) "Encroachments not in aid of navigation" means and includes all other encroachments on, in or above the beds or waters of a navigable lake, including landfills or other structures not constructed primarily for use in aid of the navigability of the lake. The term "encroachments not in aid of navigation" may be used interchangeably herein with the term "nonnavigational encroachments."

(j) "Board" means the board of land commissioners of the state of Idaho or its authorized representative.

(k) "Plans" means maps, sketches, engineering drawings, aerial and other photographs, word descriptions, and specifications sufficient to describe the extent, nature and approximate location of the proposed encroachment and the proposed method of accomplishing the same.

[(58-1302) 58-143, as added by 1974, ch. 243, sec. 2, p. 1608; 1990, redesignated, ch. 362, sec. 2, p. 980; am. 2006, ch. 111, sec. 1, p. 305; am. 2006, ch. 134, sec. 1, p. 389.]

58-1303. ENCROACHMENT ON NAVIGABLE LAKES -- POWERS OF STATE LAND BOARD. The board of land commissioners shall regulate, control and may permit encroachments in aid of navigation or not in aid of navigation on, in or above the beds or waters of navigable lakes as provided herein.

[(58-1303) 1974, ch. 243, sec. 3, p. 1608; 1990, redesignated, ch. 362, sec. 3, p. 981.]

58-1304. ENCROACHMENT ON NAVIGABLE LAKES -- RULES AND REGULATIONS. The board may adopt, revise and rescind such rules and regulations and issue such general orders as may be necessary to effectuate the purposes and policy of this chapter within the limitations and standards set forth in this chapter. Rules, regulations and orders adopted or issued pursuant to this section may include, but are not limited to, minimum standards to govern projects or activities for which a permit or permits have been received under this chapter and regulations governing procedures for processing applications and issuing permits under this chapter. Minimum standards shall not be adopted pursuant to this section until after they have been offered for review and comment to other state agencies having an interest in activities regulated under this chapter. Any standards, rules, regulations and general orders adopted or issued pursuant to this section shall be promulgated in accordance with the provisions of chapter 52, title 67, Idaho Code, to the extent that the provisions of chapter 52, title 67, Idaho Code, are not inconsistent herewith.

[(58-1304) I.C., sec. 58-145, as added by 1974, ch. 243, sec. 4, p. 1608; 1990, redesignated, ch. 362, sec. 4, p. 981.]

58-1305. NONCOMMERCIAL NAVIGATIONAL ENCROACHMENTS -- PROCEDURES -- REPAIRS -- FORMS. (a) Applications for construction or enlargement of navigational encroachments not extending beyond the line of navigability

nor intended primarily for commercial or community use shall be processed by the board with a minimum of procedural requirements and shall not be denied nor appearance required except in the most unusual of circumstances or if the proposed encroachment infringes upon or it appears it may infringe upon the riparian or littoral rights of an adjacent property owner.

(b) If the plans of the proposed encroachment indicate such infringement will or may occur, the board shall require that the applicant secure the consent of such adjacent owner or that he be given notice of the application by personal service or by certified or registered mail, return receipt requested, directed to him at his usual place of address, which, if not otherwise known, shall be the address shown on the records of the county treasurer or assessor, and such adjacent owner shall have ten (10) days from the date of personal service or receipt of certified or registered mail to file objection with the board. The application itself shall be deemed sufficient notice if the adjacent owner is the state of Idaho.

(c) In the event objection to the application is filed by an adjacent owner or if the board deems it advisable because of the existence of unusual circumstances, the board shall fix a time, no later than sixty (60) days from the date of filing application, and a place, for affording the applicant and the adjacent owner filing objection to appear and present evidence in support of or in opposition to the application and within forty-five (45) days thereafter shall render a decision and give notice thereof to the parties concerned who may thereafter resort to appellate procedures prescribed in section 58-1306, Idaho Code.

(d) A permit shall not be required for repair of an existing navigational encroachment.

(e) A permit shall not be required for replacement of an existing navigational encroachment if all the following conditions are met:

(1) The existing encroachment is covered by a valid permit in good standing.

(2) The existing encroachment meets the current requirements for new encroachments.

(3) The location and orientation of the replacement do not change from the existing encroachment.

(4) The replacement will be the exact same size or smaller and the same shape as the existing encroachment.

(5) The replacement will not be located closer to adjacent littoral right lines than the existing encroachment.

(f) Applications submitted under this section shall be upon forms to be furnished by the board and shall be accompanied by plans of the proposed navigational encroachment containing information required by section 58-1302(k), Idaho Code, and such other information as the board may by rule require in conformance with the intent and purpose of this chapter.

(g) If notice to an adjacent owner is not required or if the adjacent owner has consented to the proposed encroachment or has failed to file objection to the proposed encroachment within the time allowed following service of notice, the board shall act upon the application as expeditiously as possible but no later than sixty (60) days from receipt of the application and failure to act within such time shall constitute approval of the application.

(h) All permits issued for noncommercial navigational encroachments shall be recorded in the records of the county in which the encroachment is located and shall be a condition of issuance of a permit. Proof of recorda-

tion shall be furnished to the department by the permittee before a permit becomes valid. Such recordation shall be at the expense of the permittee. Recordation of an issued permit serves only to provide constructive notice of the permit to the public and subsequent purchasers and mortgagees, but conveys no other right, title or interest on the permittee other than validation of said permit.

[ (58-1305) 58-146, as added by 1974, ch. 243, sec. 5, p. 1608; 1990, am. and redesignated, ch. 362, sec. 5, p. 982; am. 2006, ch. 131, sec. 1, p. 382; am. 2006, ch. 132, sec. 1, p. 385; am. 2010, ch. 124, sec. 1, p. 270.]

58-1306. NONNAVIGATIONAL OR COMMERCIAL NAVIGATIONAL ENCROACHMENTS -- COMMUNITY NAVIGATIONAL ENCROACHMENTS -- NAVIGATIONAL ENCROACHMENTS BEYOND LINE OF NAVIGABILITY -- APPLICATION -- PROCEDURES -- PUBLICATION OF NOTICE -- HEARING -- APPEALS -- RECONSIDERATION -- CRITERIA PRIORITY. (a) Applications for construction, enlargement or replacement of a nonnavigational encroachment, a commercial navigational encroachment, a community navigational encroachment, or for a navigational encroachment extending beyond the line of navigability shall be submitted upon forms to be furnished by the board and accompanied by plans of the proposed encroachment containing information required by section 58-1302(k), Idaho Code, and such other information as the board may by rule require in conformance with the intent and purpose of this chapter. Applications for nonnavigational, community navigational, or commercial navigational encroachments must be submitted or approved by the riparian or littoral owner.

(b) Within ten (10) days of receipt of an application submitted under subsection (a) of this section, the board shall cause to be published in a newspaper having general circulation in the county in which the encroachment is proposed, once a week for two (2) consecutive weeks, a notice advising of the application and describing the proposed encroachment and general location thereof. Applications for installation of buried or submerged water intake lines and utility lines shall be exempt from the newspaper publication process. The board may also furnish copies of the application and accompanying plans to other state agencies having an interest in the lake to determine the opinion of such state agencies as to the likely effect of the proposed encroachment upon adjacent property and lake value factors of navigation, fish and wildlife habitat, aquatic life, recreation, aesthetic beauty or water quality. Within thirty (30) days following receipt of such copy of the application and plans from the board, such other state agency shall notify the board of its opinion and recommendations, if any, for alternate plans determined by such agency to be economically feasible to accomplish the purpose of the proposed encroachment without adversely affecting unreasonably adjacent property or other lake value factors.

(c) Any resident of the state of Idaho, or a nonresident owner or lessee of real property adjacent to the lake, or any state or federal agency may, within thirty (30) days of the first date of publication, file with the board an objection to the proposed encroachment and a request for a hearing on the application. If a hearing is requested, the same shall be held no later than ninety (90) days from the date of filing the application and notice of such hearing shall be given in the manner prescribed for publishing notice of application. The board may, in its discretion, within ten (10) days of filing the application, order a hearing in the first instance in which case, publication of notice of the application shall be dispensed with. All

such hearings shall be public and held under rules promulgated by the board under the provisions of chapter 52, title 67 of the Idaho Code. The board shall render a decision within thirty (30) days following conclusion of the hearing and a copy of the board's decision shall be mailed to the applicant and to each person or agency appearing at the hearing and giving testimony in support of or in opposition to the proposed encroachment. Any applicant or other aggrieved party so appearing at a hearing shall have the right to have the proceedings and decision of the board reviewed by the district court in the county where the encroachment is proposed by filing notice of appeal within thirty (30) days from the date of the board's decision. If the decision of the board be approval of a permit, the party or parties appealing shall file a bond on such appeal in an amount to be fixed by the court but not less than five hundred dollars (\$500) insuring payment to the applicant of damages caused by delay and costs and expenses, including reasonable attorney's fees, incurred on the appeal in the event the district court sustains the action of the board.

(d) In the event no objection to the proposed encroachment is filed with the board and no hearing is requested or ordered by the board, based upon its investigation and considering the economics of navigational necessity, justification or benefit, public or private, of such proposed encroachment as well as its detrimental effects, if any, upon adjacent real property and lake value factors, the board shall prepare and forward to the applicant by certified mail its decision and the applicant, if dissatisfied therewith, shall have twenty (20) days from the date of mailing of such decision to notify the board if he requests a reconsideration thereof and if such request is made, the board shall set a time and place for reconsideration, not to exceed thirty (30) days from receipt of such request, at which time and place the applicant may appear in person or by authorized representative. If aggrieved by the board's decision following reconsideration, the applicant may appeal to the district court in the same manner as that provided for following a hearing.

(e) In recognition of continuing private property ownership of lands lying between the natural or ordinary high water mark and the artificial high water mark, the board shall consider unreasonable adverse effect upon adjacent property and undue interference with navigation the most important factors to be considered in granting or denying an application for a nonnavigational encroachment, a commercial navigational encroachment, or a community navigational encroachment not extending below the natural or ordinary high water mark. If no objections have been filed to the application and no hearing has been requested or ordered by the board, or, if upon reconsideration of a decision disallowing a permit, or following a hearing, the board determines that the benefits, whether public or private, to be derived from allowing such encroachment exceed its detrimental effects, it shall grant the permit. As a condition of the permit, the board may require a lease or easement for use of any part of the state owned bed of the lake.

(f) All permits issued for nonnavigational encroachments, commercial navigational encroachments, and community navigational encroachments shall be recorded in the records of the county in which the encroachment is located and shall be a condition of issuance of a permit. Proof of recordation shall be furnished to the department by the permittee before a permit becomes valid. Such recordation shall be at the expense of the permittee. Recordation of an issued permit serves only to provide constructive notice of the permit to the public and subsequent purchasers and mortgagees, but conveys

no other right, title or interest on the permittee other than validation of said permit.

(g) A permit shall not be required for repair of an existing nonnavigational encroachment, commercial navigational encroachment, or community navigational encroachment.

[(58-1306) 58-147, as added by 1974, ch. 243, sec. 6, p. 1608; 1990, am. and redesignated, ch. 362, sec. 6, p. 983; am. 2006, ch. 131, sec. 2, p. 383; am. 2006, ch. 132, sec. 2, p. 386.]

58-1307. FEES FOR SPECIFIED PERMITS -- COSTS OF PUBLICATION. Application for a permit for any noncommercial navigational encroachment shall be accompanied by a nonrefundable fee of up to five hundred dollars (\$500). Application for a permit for any noncommercial nonnavigational encroachment for bank stabilization and erosion control or for fisheries and wildlife habitat improvements shall be accompanied by a nonrefundable fee of up to one thousand dollars (\$1,000). Application for a permit for any other nonnavigational or commercial navigational encroachment or navigational encroachment which extends beyond the line of navigability shall be accompanied by a nonrefundable base fee, not to exceed three thousand five hundred dollars (\$3,500). Provided however, the board shall charge applicants for permits for commercial navigational encroachments the actual costs of processing the application in the event the actual costs exceed three thousand five hundred dollars (\$3,500). In addition, the board shall charge the applicant with costs of publishing notice of the application which shall be refunded if such notice is not published. Any person or agency requesting a hearing upon the application shall deposit and pay to the board an amount sufficient to cover the cost of publishing notice of hearing.

[(58-1307) 58-148, added 1974, ch. 243, sec. 7, p. 1608; 1990, am. and redesign., ch. 362, sec. 7, p. 985; am. 1992, ch. 225, sec. 1, p. 675; am. 2006, ch. 133, sec. 1, p. 388; am. 2010, ch. 155, sec. 1, p. 330.]

58-1308. PENALTY FOR VIOLATION -- INJUNCTIVE RELIEF. (1) Any person who violates any of the provisions of this chapter or any valid and authorized regulation, rule, permit or order of the board, or, where notified by personal service or certified mail of such violation and thereafter fails to cease and desist therein or obey an order of the board within the time provided in such notification or within thirty (30) days of service of such notice if not otherwise provided, shall be subject to a civil penalty of not less than one hundred fifty dollars (\$150) nor more than two thousand five hundred dollars (\$2,500). Such civil penalty may be assessed by the board in conjunction with any other administrative action; provided, that no civil penalty shall be assessed unless the person was given notice and opportunity for a hearing pursuant to the administrative procedure act as set forth in chapter 52, title 67, Idaho Code. The board shall have authority and it shall be its duty to seek injunctive relief from the appropriate district court to restrain any person from encroaching on, in or above the beds or waters of a navigable lake until approval therefor has been obtained as provided in this chapter.

(2) In addition to the civil penalty set forth in subsection (1) of this section, any person who violates any of the provisions of this chapter or any valid and authorized regulation, rule, permit or order of the board, and the violation causes harm to water quality, fisheries, or other public trust

values, shall be liable for a civil penalty not to exceed ten thousand dollars (\$10,000) per violation or one thousand dollars (\$1,000) for each day of a continuing violation, whichever is greater. The method of recovery of said penalty shall be by a civil enforcement action in the district court in and for the county where the violation occurred. Parties to an administrative enforcement action may agree to a civil penalty as provided in this subsection.

(3) In addition to such civil penalties, any person who has been determined to have violated the provisions of this chapter or any valid and authorized regulation, rule, permit or order of the board, shall be liable for any expense incurred by the state in enforcing the chapter, or in enforcing or terminating any nuisance, source of environmental degradation, cause of sickness or health hazard.

(4) No action taken pursuant to the provisions of this chapter or of any other environmental protection law shall relieve any person from any civil action and damages that may exist for injury or damage resulting from any violation of this chapter or any valid and authorized regulation, rule, permit or order of the board.

[ (58-1308) 58-149, as added by 1974, ch. 243, sec. 8, p. 1608; am. and redesig. 1990, ch. 362, sec. 8, p. 985; am. 2008, ch. 334, sec. 1, p. 919.]

58-1309. RESTORATION -- MITIGATION OF DAMAGES. Any person legally found to be wrongfully encroaching on, in or above the beds or waters of a navigable lake shall, in lieu of or in addition to penalties provided herein, be directed by the court to restore the lake to as near its condition immediately prior to the unauthorized encroachment as possible or to effect such other measures as recommended by the board and ordered by the court toward mitigation of any damage caused by or resulting from such unlawful encroachment.

[ (58-1309) I.C., sec. 58-150, as added by 1974, ch. 243, sec. 9, p. 1608; 1990, redesignated, ch. 362, sec. 9, p. 985.]

58-1310. EXISTING RIGHTS UNAFFECTED. This act shall not operate or be so construed as to impair, diminish, control or divest any existing or vested water rights acquired under the laws of the state of Idaho or the United States, nor to interfere with the diversion of water from lakes under existing or vested water rights or water right permits for irrigation, domestic, commercial or other uses as recognized and provided for by Idaho water laws nor shall permit be required from a water user or his agent to clean, maintain or repair any existing diversion structure or works provided the board is notified of the work proposed to be done and the work is done as nearly as possible in a manner conforming to rules and regulations of the board for work done under permit nor shall this act be construed to impair existing encroachments in aid of navigation or any right heretofore granted an applicant by the director of the Idaho department of water resources or the director of the department of lands, nor shall this act be construed to impair existing nonnavigational encroachments not extending beyond the natural or ordinary high water mark if they have been in existence at least five (5) years prior to the effective date of this act nor any other existing nonnavigational encroachment unless action to abate the same by legal proceedings be instituted by the board within three (3) years of the effective

date of this act. If abatement proceedings be instituted by the board, the court shall hear such evidence as would be pertinent upon an original application and shall consider also the length of time the encroachment has existed and its general acceptance.

[(58-1310) I.C., sec. 58-151, as added by 1974, ch. 243, sec. 10, p. 1608; 1990, redesignated, ch. 362, sec. 10, p. 986.]

58-1311. DISCLAIMER OF STATE PROPERTY RIGHTS IN PRIVATE LANDS. While the state asserts the right to regulate and control all encroachments, navigational or nonnavigational, upon, in or above the beds or waters of navigable lakes as provided for in this act, nothing contained in this act shall be construed to vest in the state of Idaho any property right or claim of such right to any private lands lying above the natural or ordinary high water mark of any navigable lake.

[(58-1311) I.C., sec. 58-152, as added by 1974, ch. 243, sec. 11, p. 1608; 1990, redesignated, ch. 362, sec. 11, p. 986.]

58-1312. PERMITTING OF EXISTING ENCROACHMENTS. (1) Unless otherwise prohibited, every person seeking a permit for a navigational or nonnavigational encroachment constructed prior to January 1, 1975, shall provide the board with substantive documentation of the age of the encroachment and documentation that the encroachment has not been modified since 1974. Persons providing such documentation shall receive an encroachment permit and shall not be required to pay the application and publication fees established in this chapter. Such substantive documentation shall include dated aerial photographs, tax records, or other historical information deemed reliable by the board.

(2) Every person seeking a permit for a navigational or nonnavigational encroachment constructed, replaced or modified on or after January 1, 1975, shall submit a permit application and enter the same permitting process as required for new encroachments.

[(58-1312) 58-153, added 1974, ch. 243, sec. 12, p. 1608; 1990, am. & redesig., ch. 362, sec. 12, p. 986; am. 2006, ch. 135, sec. 1, p. 390.]



The Idaho Department of Lands (IDL) would value your participation and input in negotiated rulemaking for leases on navigable waterways covered under IDAPA 20.03.17.

## Notice of Negotiated Rulemaking for Leases on Navigable Waterways

### **IDAPA 20.03.17** — *Rules Governing Leases on State-Owned Submerged Lands and Formerly Submerged Lands*

Following Executive Order 2020-01, Zero-Based Regulation, this rule chapter is scheduled to be repealed and replaced in 2022 for review during the 2023 legislative session.

The major goals of this rulemaking are to:

1. Reduce the overall regulatory burden by:
  - a. Simplifying language,
  - b. Reducing total word count,
  - c. Reducing the number of restrictive words; and
2. Adjust fees to cover the actual costs of processing lease applications and assignments.

### **FAST FACTS:**

- ◇ 30 State-owned Navigable Rivers stretching 2,500 miles
- ◇ 61 State-owned Navigable Lakes covering 183,000 acres
- ◇ 156 Active Leases on Idaho's Navigable Waterways
- ◇ IDL's draft Lease Rule reduces total word count by 11%
- ◇ \$425\* Current cost to process an application for a lease;  
\$200\* Current cost to process a lease assignment
- ◇ \$150 Current application fee for a lease;  
\$150 Current fee for a lease assignment
- ◇ Leasing fees last updated in 2008

*\*This represents the average personnel costs associated with processing a lease application or assignment. This does not include overhead expenses.*

For more details, visit: <https://www.idl.idaho.gov/rulemaking/>

# Notice of Negotiated Rulemaking for Leases on Navigable Waterways

## KEY DATES:

- 
- April 6 Notice of Intent to Promulgate Rules posted on IDL's website at:  
<https://www.idl.idaho.gov/rulemaking/docket-20-0317-2201/>  
*Continue to check the website for supporting documents and updates to draft rule text.*
- 
- April 27 First public meeting starts at 10:00 a.m. (MT) at the Idaho First Community Bank, 475 Deinhard Lane, McCall, ID 83638  
*This is an in-person meeting only.*
- 
- May 18 Second public meeting starts at 10:00 a.m. (PT) at Idaho Department of Lands, Sundance Conference Room, 3284 Industrial Loop, Coeur d'Alene, ID  
To attend via Zoom: <https://zoom.us/join>  
To attend by telephone call: 1 (253) 215-8782  
Meeting ID: 860 7448 8476, Passcode: 231124
- 
- June 17 All comments must be received by close of business.
- 



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