



Navigable Waterways Easement Procedures

This guidance document is not a new law. This document is an agency interpretation of existing law, except as authorized by Idaho Code or incorporated into a contract.

Agency Contact

Navigable Waterways Program Manager, Boise Staff Office

I. Navigable Waterways Easement Procedures

Section 50 – Navigable Waterways Easements	2
--	---

II. Attachments

1. Navigable Waterways Easement Application.....	6
2. Easement Assignment Form.....	10
3. Relinquishment of Easement Form.....	13



Section 50 – Navigable Waterways Easements

This guidance document is not a new law. This document is an agency interpretation of existing law, except as authorized by Idaho Code or incorporated into a contract.

Agency Contact

Navigable Waterways Program Manager, Boise Staff Office

Contents

I.	Navigable Waterways Easements.....	2
II.	Easement Administration	4
III.	Easement Compliance.....	5

I. Navigable Waterways Easements

A. Scope

Easements are required for uses above, across, over, in, through, upon, and under the beds of state-owned navigable waterways (IDAPA 20.03.09.001). State-owned navigable waterways, or navigable waterways for the purposes of these procedures, are those at or below the natural or ordinary high water mark (IDAPA 20.03.09.010.12). Easements are generally needed for uses, facilities, or structures of a more permanent basis, or those uses classed as non-navigational encroachments (IDAPA 20.03.04.010.16). The following uses over navigable waterways generally require an easement:

1. Utility access including oil and gas, water, and power lines
2. Bridges
3. Hydroelectric facilities
4. Landfills
5. Shoreline stabilization and dredged or filled materials

The issuance of an easement on navigable waterways is contingent upon first obtaining an IDL Lake Encroachment Permit or a IDWR Stream Channel Alteration Permit. Permits control or regulate what occurs on, in, or above navigable waterways, but an easement requires compensation for the use of state-owned navigable waterways.

Area staff should contact the Bureau if questions arise about the necessity of a navigable waterways easement.

B. Natural or Ordinary High Water Mark

Area personnel administering easements on lakes with artificial high water marks should be aware that a navigable waterways easement will only cover that portion of the encroachment which lies waterward of the ordinary high water mark. For instance, a powerline that lies over private submerged lands and state-owned navigable waterways will only require an easement for the portion of the powerline that is waterward of the ordinary high water mark. A powerline located completely landward of the ordinary high water mark would require an encroachment permit, but not a navigable waterways easement.

C. Terms of Easement

General

Area staff will determine whether issued easements will be classified as a permanent use or a term easement. Permanent uses are typically bridges, utility crossings, highway fills, and dams (IDAPA 20.03.09.030.01). Impermanent structures may be approved under a term easement that typically span ten to fifty-five years. Easements will not be granted where temporary permits will serve the required purpose nor for uses with a lifespan of ten (10) years or less (IDAPA 20.03.09.001.04 & 05).

Hydroelectric Facilities

Hydroelectric facilities licensed under the Federal Energy Regulatory Commission (FERC) will have an easement term that runs concurrently with the FERC license up to a maximum period of fifty-five (55) years (IDAPA 20.03.09.030.03).

D. Easement Applications

The appropriate Area office will determine that an easement is required for the proposed use. An easement application (Attachment 1) shall include the most current template and the application fee. The applicant shall submit a letter of request stating the purpose of the easement, a plat or survey of the proposed easement, and a written description of the centerline or metes and bounds survey. Entry and exit points out of the navigable waterway should be tied to at least one legal corner. Additional information may be requested by the Area office.

Area staff will review the application for completeness and coordinate as needed with the applicant to obtain a complete application. When complete, Area staff will then submit the application and legal description to the Bureau through the Document Exchange. The Technical Records Specialist (TRS) will assign an easement number and send the application to GIS staff for metes and bounds description review. If problems are found with the metes and bounds description or survey, Area staff will request changes from the applicant. After approval by the GIS staff, the Area staff will draft the easement using the most currently template and send it to the Program Manager for review. If the draft easement is complete, the Program Manager will send it to legal staff for review. When the legal staff review is completed, the TRS will send the draft easement to the applicant for signature. After the applicant signs it, the Program Manager will send it to legal staff for a final review before getting Director and Land Board signatures. The

signed easement will then be recorded by the TRS and sent to the applicant. Easements may be denied if issuance is not consistent with Idaho law or rule. The applicant will be notified in writing of the Department's decision to issue an easement within six (6) months of application receipt (IDAPA 20.03.09.070.03).

E. Fees

1. Administration

A one-time, nonrefundable administration fee of five hundred dollars (\$500) will be paid at the time the application is turned in to the Area office (IDAPA 20.03.09.020.01).

2. Supplemental Compensation

If required, supplemental compensation, will be billed at the time of lease signature.

i. Hydroelectric Dams

Easements for dams in excess of ten (10) feet in height require compensation of one thousand dollars (\$1,000) plus five dollars (\$5) per megawatt of the nameplate rating (IDAPA 20.03.09.020.02.a).

ii. Substitution of Uses

Easements for uses that substitute navigable waterways over the use of uplands require supplemental compensation, based on the market value of the adjacent uplands (IDAPA 20.03.09.020.02.b).

3. Appraisals

A licensed appraiser, selected or approved by the Department, will conduct appraisals. Expenses of the appraisal are borne by the applicant.

II. Navigable Waterways Easement Administration

A. Navigable Waterways Easement Assignments

Easements will be assigned with the approval of the Director. The nonrefundable assignment fee is fifty dollars (\$50). Assignment forms (Attachment 2) should be completed within sixty (60) days of receipt of all required forms and associated information (IDAPA 20.03.09.050).

B. Navigable Waterways Easement Expiration

If the easement area is not used as described within five (5) years of being granted, then the easement shall be forfeited back to the state (Idaho Code § 58-603).

Easement relinquishment (Attachment 3) is a voluntary, unilateral abandonment and termination of an easement by a Grantee, which allows for the cessation of any obligation to maintain the easement.

Term easements will be inspected by Area staff two years prior to expiration. If any potential noncompliance issues are identified, Area staff will work with the grantee to have the issues addressed prior to expiration. If a new easement is needed, an application form will be sent out by Area staff approximately one year before expiration.

C. Navigable Waterways Easement Amendment

Changes to the existing use, facility or structure on an encroachment with an existing navigable waterways easement will first be permitted through a new encroachment permit or stream alteration permit, prior to any required amendments to the easement (IDAPA 20.03.09.040).

Minor modifications such as ordinary maintenance, repair, or replacement of existing structures will not require a new easement. Modifications such as expanding the easement area, moving the easement location, or adding more uses will require a new application and fee, but the same easement number will be retained. Any changes to an existing easement should be reviewed by Area personnel to determine if an easement modification is needed.

III. Navigable Waterways Easement Compliance

A. Authority

Violations that relate to provisions in the encroachment permit or IDAPA 20.03.04 (Lake Protection Rules) should be resolved using the remedies of IDAPA 20.03.04 and Title 58, Chapter 13, Idaho Code.

B. Noncompliance

1. The Department should respond to noncompliances with the easement terms by the Area sending the grantee a notice of non-compliance letter. The letter should state the reasons for non-compliance, the applicable easement term or rule, the steps necessary to resolve the matter, and the corresponding deadlines.
2. Failure of the grantee to respond to the 30-day notice of non-compliance letter shall cause the Area to issue a notice of proposed easement cancellation.

C. Other Violations

Failure to respond within 30 days will result in the Area office issuing a notice of cancellation (certified and regular US mail). The easement cancellation will be effective 30 days from the receipt of the letter. The grantee shall have 30 days to appeal an adverse decision of the Department. If the grantee responds to the first notice of easement violation, the Area and grantee shall attempt to resolve the violation.



IDAHO DEPARTMENT OF LANDS
NAVIGABLE WATERWAYS EASEMENT APPLICATION and INSTRUCTIONS
 (Not for use on Endowment Lands)

Navigable Waterways Easement applications must be completed and submitted to the appropriate Idaho Department of Lands (IDL) Supervisory Area Office. Incomplete applications and those requiring further information may take longer to process.

APPLICANT INFORMATION

Application must include the exact name(s) and address(s) to appear on the navigable waterways easement. Provide the full legal name of the Applicant or the entity name on file with the Idaho Secretary of State.

Applicant Name:	Authorized Representative (if applicable)
Street Address	Mailing Address (if different from Street Address)
Email Address(es)	Phone: ()
Website Address(es)	Cell/Mobile: ()

LOCATION OF PROPOSED USE

<u>Township</u>	<u>Range</u>	<u>Section</u>	<u>Description</u> <small>(to the quarter-quarter or Government Lot, if applicable)</small>	<u>County</u>	<u>Water Body</u>	<u>Acres</u>

(IDL Fund for Navigable Waterways is ND)

PROPOSED USE (list specific purpose, associated activities, and time frame(s); attach additional pages if necessary)

WHEN REQUIRED

Uses above, across, over, in, through, upon, and under the beds of state-owned navigable waterways may require a navigable waterways easement. Exceptions include those uses that are typically covered by leases, through a short duration permit, or involve small water delivery structures that draw less than five (5) cubic feet per second of water.

Uses that require a navigable waterways easement are dams, bridges, road fills, power lines, fiber optic cables, pipelines, boat ramps, and other infrastructure that is essentially permanent.

Navigable waterways easement rules- <https://adminrules.idaho.gov/rules/current/20/200309.pdf>

PROCEDURE

The procedure for acquiring a navigable waterways easement across state-owned navigable waterways is as follows:

1. Contact the appropriate IDL Supervisory Area Office to discuss the need and location of the proposed use. If the Supervisory Area Office determines that a navigable waterways easement is needed for the proposed use, the applicant may complete the application form and send in the \$500 application fee with the information required under item 3.
2. Checks for the \$500 application fee should be made out to IDAHO DEPARTMENT OF LANDS. Supplemental compensation may be required at a later date for dams and for uses that substitute state-owned navigable waterways over the adjacent uplands. See item 6 below.
3. Submit a letter of request stating the purpose of the navigable waterways easement with a Record of Survey showing the easement and a written description of the centerline or metes and bounds survey of the easement. The entry and exit points of the use in and out of the state-owned navigable waterway should each be tied to at least one legal corner. A digital copy of each of the following will speed the processing of the application:
 - The legal description as an MS Word file
 - A .pdf of the legal description signed and stamped by a Licensed Surveyor
 - Record of survey or exhibit as a .pdf
 - ESRI shapefiles of the easement (see CAD Drawing Standards for GIS Submittals)(Note: Other methods may be considered after consultation with IDL staff for guidance.)
4. Term easements for hydroelectric facilities are typically coordinated with the Federal Energy Regulatory Commission (FERC) license renewal.
5. General Liability Insurance may be required to protect the Grantee and the state from liabilities incurred through the use of state property. If required, proof of insurance must be submitted before the final documents are issued. The State of Idaho and Idaho Department of Lands must be listed as additional insured in the certificate of insurance.
6. Supplemental compensation, when required, will be due upon signature by the Applicant.
 - a. Navigable waterways easements for all hydroelectric dams and any dam in excess of ten (10) feet in height require supplemental compensation of one thousand dollars (\$1,000.00) plus five dollars (\$5.00) per megawatt of the nameplate rating for hydroelectric dams.
 - b. Navigable waterways easements for uses that substitute state-owned navigable waters over the use of uplands will require supplemental compensation based on the market value of the adjacent uplands.

NOTE:

This is not to be considered a complete summary of all the information IDL may require. Additional information may be required as needed on a case-by-case basis. Costs for supporting documents are the responsibility of the applicant. IDL staff will request supporting documentation when they deem it necessary.

I HEREBY REQUEST A NAVIGABLE WATERWAYS EASEMENT FROM THE STATE OF IDAHO AND ACKNOWLEDGE THAT I UNDERSTAND MY OBLIGATIONS DESCRIBED HEREIN.

APPLICANT(S) SIGNATURE: _____ DATE: _____
_____ DATE: _____

.....
*** Idaho Department of Lands Administrative Use Only ***

RECEIVED BY: _____ DATE: _____

\$500 Fee Submitted with Application

APPROVED or REJECTED BY AREA: _____ DATE: _____

Processing note: Upon complete application acceptance, the Area will drop Easement Application and "Attachment A" form into Lands and Waterways Processing Center (LWPC) Document Exchange via the LWPC In-Box into appropriate folder to obtain navigable waterways easement number.

Navigable Waterways Easement Number: _____

Prior Land Board approval required? >\$25K or unusual/complex? Yes No

Approval Checklist

1) _____
Land Records Staff Name (approval of legal description and exhibit map) Date approved

2) _____
Area Navigable Waterways Resource Specialist or Area Manager Date approved

3) _____
Navigable Waterways Program Manager/RPA Bureau Chief Date approved

Approvals must be obtained prior to obtaining applicant and Land Board signatures

Idaho Department of Lands Management Areas

Priest Lake Supervisory Area
4053 Cavanaugh Bay Road
Coolin, ID 83821
(208) 443-2516

Mica Supervisory Area
3258 West Industrial Loop
Coeur d'Alene, ID 83815
(208) 769-1577

St. Joe Supervisory Area
1806 Main Avenue
St. Maries, ID 83861
(208) 245-4551

Ponderosa Supervisory Area
3130 Highway 3
Deary, ID 83823
(208) 877-1121

Craig Mountain Forest Protective District
P.O. Box 68,
014 East Lorahama
Craigmont, ID 83523
(208) 924-5571

Payette Lakes Supervisory Area
555 Deinhard Lane
McCall, ID 83638
(208) 634-7125

Southwest Supervisory Area
8355 West State Street
Boise, ID 83714
(208) 334-3488

Kootenai Valley Forest Protective District
6327 Main Street
Bonners Ferry, ID 83805
(208) 267-5577

Pend Oreille Supervisory Area
2550 Highway 2 West
Sandpoint, ID 83864-7305
(208) 263-5104

Cataldo Forest Protective District
80 Hilltop Overpass Road
Kingston, ID 83839
(208) 682-4611

Clearwater Supervisory Area
10230 Highway 12
Orofino, ID 83544
(208) 476-4587

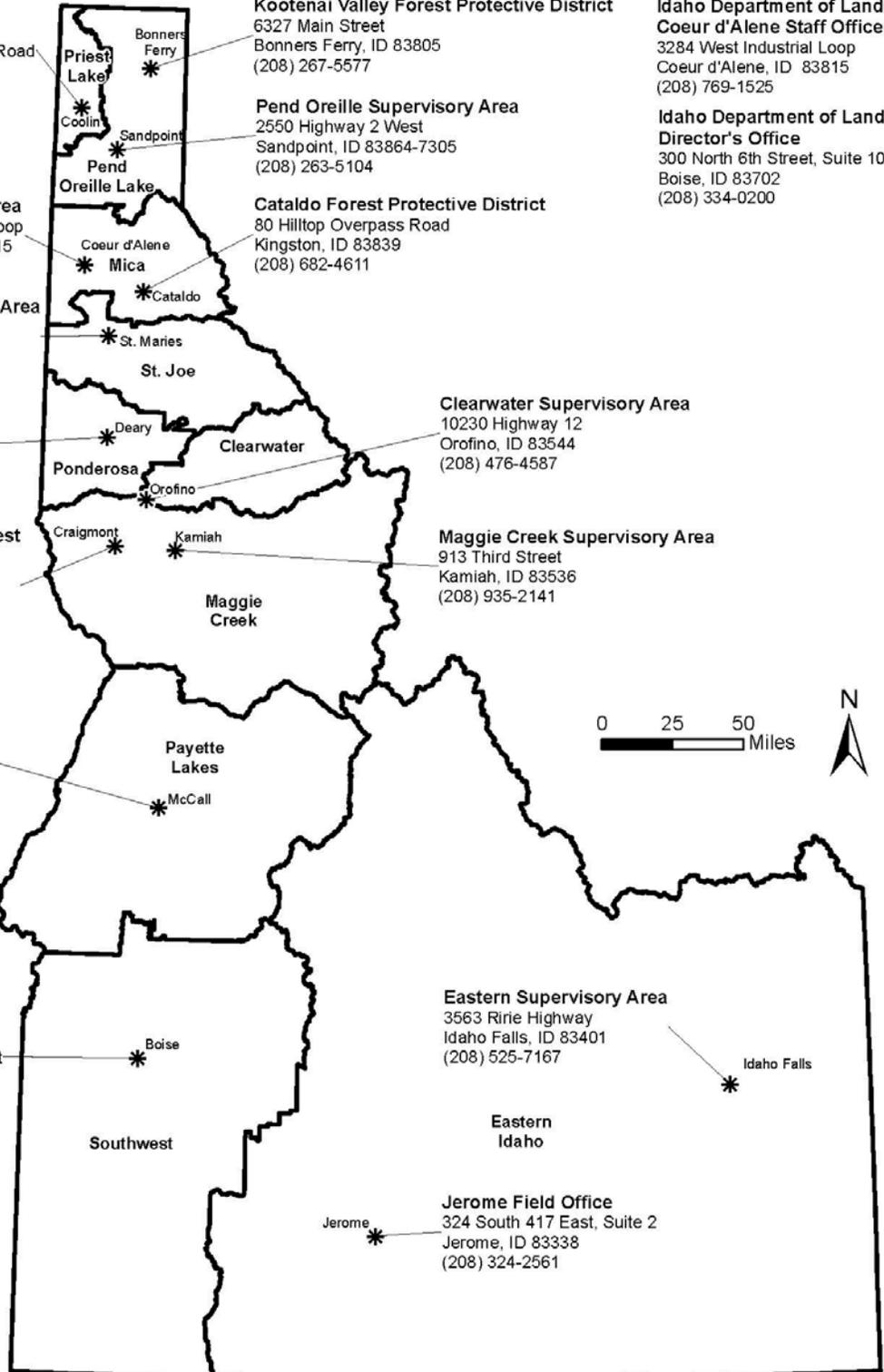
Maggie Creek Supervisory Area
913 Third Street
Kamiah, ID 83536
(208) 935-2141

Eastern Supervisory Area
3563 Ririe Highway
Idaho Falls, ID 83401
(208) 525-7167

Jerome Field Office
324 South 417 East, Suite 2
Jerome, ID 83338
(208) 324-2561

**Idaho Department of Lands
Coeur d'Alene Staff Office**
3284 West Industrial Loop
Coeur d'Alene, ID 83815
(208) 769-1525

**Idaho Department of Lands
Director's Office**
300 North 6th Street, Suite 103
Boise, ID 83702
(208) 334-0200





300 N. 6th St., Suite 103
PO Box 83720
Boise, Idaho 83720-0050
Phone (208) 334-0200 Fax (208) 334-3698

**ASSIGNMENT OF
STATE OF IDAHO
EASEMENT NO. _____**

For and in consideration of the assignment fee of **Fifty Dollars (\$50.00)** and receipt whereof is hereby acknowledged, _____ with a mailing address of _____, hereby sell, assign, and transfers unto, _____, with a mailing address of _____ all of its rights, title, and interest in and to the State of Idaho Easement No. _____, Instrument Number _____, recorded in _____ County, Idaho. This easement is an easement in gross.

WITNESS our hand this _____ day of _____, 20_____.

ABC, Inc.,
An Idaho corporation

JOHN DOE
President / Vice President / Secretary / Assistant Sec

STATE OF)
) ss.
County of)

On this _____ day of _____, 20_____, before me a Notary Public in and for said state personally appeared **JOHN DOE**, known or identified to me to be the President / Vice President / Secretary [choose one] of **ABC, Inc.**, an Idaho corporation, the corporation that executed the instrument or the person that executed the instrument on behalf of said corporation, and acknowledged to me that such corporation executed the same.

IN WITNESS WHEREOF, I have hereunto set my hand and affixed by official seal the day and year first above written.

(seal)

Notary Public
Residing at: _____
My Commission Expires: _____

Assignment
State of Idaho Easement No. _____
Page 1 of 3

STATE OF IDAHO
DEPARTMENT OF LANDS

Date: _____

DUSTIN T. MILLER, Director

STATE OF IDAHO)
) ss.
County of)

On this _____ day of _____, 20____, before me, a Notary Public in and for said State, personally appeared **DUSTIN T. MILLER**, the Director of the Idaho Department of Lands and Secretary of the State Board of Land Commissioners, and acknowledged to me that executed the within instrument as said Director and Secretary, and that the State Board of Land Commissioners and the State of Idaho executed the same.

IN WITNESS WHEREOF, I have hereunto set my hand and seal on the day and year last above written.

(seal)

Notary Public for State of Idaho
My Commission Expires: _____

**After Recording
Return to:**

Idaho Department of Lands
300 N. 6th Street Suite 103
Boise, Idaho 83720

**RELINQUISHMENT OF
STATE OF IDAHO EASEMENT NO. <<Number>>**

THIS RELINQUISHMENT OF EASEMENT is made by <<GRANTEE'S NAME>>, a <<State>> corporation, whose mailing address is <<Address>>, <<City>>, <<State Abbreviation>> <<Postal Code>>.

RECITALS

A. On or about <<Date easement granted>>, the State of Idaho, Board of Land Commissioners, as Grantor, granted an easement identified as State of Idaho Easement No. <<Number>> ("Easement"), to <<GRANTEE'S NAME>>, as Grantee, over and across certain real property in <<County name>> County, Idaho. The Easement was recorded in the records of <<County name>> County, Idaho, on <<Date easement recorded>>, as Instrument Number <<County record number>>.

B. <<GRANTEE'S NAME>> has a replacement easement that will serve the same purpose as the Easement would have provided. Accordingly, <<GRANTEE'S NAME>> now desires to voluntarily relinquish the Easement in its entirety pursuant to IDAPA 20.03.09.060.03.

RELINQUISHMENT

NOW, THEREFORE, for and in consideration of the recitals above, which are incorporated below, and for other good and valuable consideration, the receipt and sufficiency of which is hereby acknowledged, <<GRANTEE'S NAME>> hereby covenants and agrees as follows:

1. <<GRANTEE'S NAME>> hereby relinquishes the Easement in all respects from the lands subject thereto.

IN WITNESS WHEREOF, <<GRANTEE'S NAME>>, intending to be legally bound hereby, has caused this Relinquishment of Easement to be duly executed the day and year first above written.

<<GRANTEE'S NAME>>,
a <<State>> corporation

Dated: _____

[print name]
Its: _____
[authority]

STATE OF IDAHO)
) ss.
County of _____)

On this _____ day of _____, 2017, before me, the undersigned, a Notary Public in and for said State, personally appeared _____, known or identified to me to be the _____ of <<GRANTEE'S NAME>>, a Washington corporation, the person who executed the within and foregoing document, and acknowledged to me that such corporation executed the same.

IN WITNESS WHEREOF, I have hereunto set my hand and affixed my official seal the day and year first above written.

(SEAL)

Notary Public for Idaho
My commission expires: _____