

## **Negotiated Rulemaking Summary**

### **IDAPA 20.03.13, Administration of Cottage Site Leases on State Lands**

Docket No. 20-0313-2401

Following Executive Order 2020-01: Zero-Based Regulation, this rule chapter is scheduled for review during the 2025 legislative session.

IDAPA 20.03.13 provides guidance for residential cottage site leasing on state lands by establishing restrictions regarding assignments and describing how annual rent will be determined. The proposed changes seek to comply with Executive Order 2020-01.

Negotiated rulemaking for these rules was approved by the Land Board on January 16, 2024. The Notice of Intent to Promulgate Rules – Zero-Based Regulation Negotiated Rulemaking was published in the Idaho Administrative Bulletin on March 6, 2024.

#### **Stakeholder Outreach**

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

- Published the Notice of Negotiated Rulemaking in the Idaho Administrative Bulletin
- Created a rulemaking webpage to post documents, scheduling information, and comments (<https://www.idl.idaho.gov/rulemaking/docket-20-0313-2401/>)
- Posted rulemaking notices to Townhall Idaho
- Email and direct communication giving notice of negotiated rulemaking to stakeholders, including to current cottage site lessees

#### **Negotiated Rulemaking Public Meetings**

Negotiated rulemaking meetings were held on March 27 and April 8, 2024. A total of two, non-Department affiliated individuals attended both meetings. Various discussions occurred regarding updating and clarifying rule language.

#### **Written Comments**

One written comment was received from an individual. This comment has been posted for public review.

#### **Concluding Negotiated Rulemaking**

IDL concluded the negotiated rulemaking process and submitted the rule changes for publication as a proposed rule in the July 3, 2024, edition of the Idaho Administrative Bulletin. Key documents from the rulemaking record are available at <https://www.idl.idaho.gov/rulemaking/docket-20-0313-2401/>, including but not limited to the proposed rule text in legislative format to allow the reader to easily identify changes.

**Response to Comments on Negotiated Rule**  
IDAPA 20.03.13, Administration of Cottage Site Leases on State Lands

Comment	Rule Section	Response
<p>Comment Highlight: “The negotiated rulemaking has thus far been a façade. It is, rather than a negotiated rulemaking, simply a notice and opportunity to submit comments. Responses, discussions, or feedback by the IDL as part of the process are nonexistent.” Please visit rulemaking webpage for full comment.</p>	<p>Comment does not specify</p>	<p>The intent of negotiated rulemaking is to facilitate a process in which all interested persons and the agency seek consensus on the content of a rule. To facilitate this process, agencies follow Idaho’s Administrative Procedures Act, Title 67, Ch. 52, Idaho Code.</p> <p>i. Per Idaho Code, agencies are required to provide a comment period of not less than twenty-one (21) days for all proposed rulemakings. I.C. § 67-5222. Interested parties can submit written or verbal comments, each carrying the same weight. Here, a public comment period ran from March 6 to April 17, 2024. Within that time IDL hosted two public meetings at which oral comment was also accepted, which is discussed below.</p> <p>ii. Agencies are also required to consider all recommendations before the adoption of a pending rule. I.C. § 67-5220(3)(d). Consideration of a written comment does not mean that the comment will necessarily cause further amendment to the proposed rule, nor must it be incorporated into the text of the pending rule unless warranted. IDL has thoroughly considered all oral and written comments submitted in this matter.</p> <p>iii. Agencies are required to respond to comments and make available to the public all comments and agency responses. I.C. § 67-5225(2)(b). IDL engaged in lengthy discussions with Mr. Smith at both public meetings, which were recorded. IDL is also responding to Mr. Smith’s written comments within this document.</p> <p>iv. IDL also held two public meetings with in-person and virtual attendance options. The first took place on March 27, 2024. The</p>

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		<p>second on April 8, 2024. Oral comment on the rules was accepted at both. A general overview of the meetings can be found in the “Summary of Negotiated Meetings” section or on IDL’s website under “Meeting Notes”.</p> <p>1. At the first meeting Bruce Smith expressed concerns with removing “Lessee” from the rule’s definition section. See 20.03.13.010.05. IDL representatives explained that the term has a common enough meaning that the public, and potential courts, will know what “lessee” means from the context of the provision’s sentence. Given the common understanding and E.O. 2020-01, IDL will not make Mr. Smith’s suggested change.</p> <p>2. Mr. Smith also expressed concern regarding the definition of “Board”. See 20.03.13.010.02. Originally the sentence read “The State Board of Land Commissioners.” IDL proposed adding “or its designee” to the end of the sentence. The proposed addition makes this definition consistent with other IDL rules defining “Board”, therefore the proposed addition will be kept.</p> <p>3. Randy Fox also attended and commented that he has no concerns with the proposed rule and that the proposed rule’s changes appear to be consistent with E.O. 2020-01.</p>
<p>Comment Highlight: “Ostensibly announced as a means of complying with Executive Order 2020-1, the draft changes to the current regulations do not even attempt to comply with the order. The order requires a retrospective analysis of the current rule to ensure it is meeting its purposes. This is followed by a prospective analysis of any proposed changes or new rules to ensure the changes meet certain objectives. IDL acknowledges it did not do any</p>	<p>Comment does not specify</p>	<p>At the first public meeting, Mr. Smith asked IDL whether a prospective and retrospective analysis had been completed as required by E.O. 2020.01. Following this, the Division of Financial Management (DFM), was contacted regarding the two analyses. It was clarified to IDL that DFM has incorporated both the retrospective and prospective analyses into one form, the “Prospective analysis Form”, which can be found on IDL’s website (<a href="https://www.idl.idaho.gov/rulemaking/docket-20-0313-2401/">https://www.idl.idaho.gov/rulemaking/docket-20-0313-2401/</a>).</p>

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retrospective analysis, and the prospective analysis form posted by IDL is anything but an analysis. IDL admits its only effort was directed towards reducing the number of words in the existing rule. IDL's explanation? 'We just did what DFM told us.' It is not clear that anyone at IDL has even read the order." Please visit rulemaking webpage for full comment.		