

STATE BOARD OF LAND COMMISSIONERS

September 16, 2025

Regular Agenda

Subject

Adoption of Pending Rule, IDAPA 20.03.08, Easements on State-Owned Lands

Question Presented

Shall the Land Board adopt the pending rule for IDAPA 20.03.08?

Background

IDAPA 20.03.08 provides guidance for rights-of-way for public utility lines, highway, and other purposes. The State Board of Land Commissioners (Land Board) is empowered to grant, over and upon any land owned or controlled by the State of Idaho, rights-of-way for railroad, telegraph, telephone and electric lines, pipelines for natural and manufactured gas, rights-of-way for highway purposes, and rights-of-way for any other public or private purpose or beneficial use.

The Idaho Department of Lands (Department) administers IDAPA 20.03.08 Easements on State-Owned Lands on behalf of the Land Board. The Right of Way program is responsible for granting and acquiring easements on state endowment lands. Activities are authorized by Idaho Code Title 58, Chapter 6– Rights of Way Over State Lands.

Negotiated rulemaking for these rules was approved by the Land Board on December 17, 2024. Following Executive Order 2020-01, Zero-Based Regulation, this rule chapter is scheduled to be repealed and replaced in 2025 for review during the 2026 legislative session.

Discussion

Outreach by the Department for negotiated rulemaking included the following:

- Published the Notice of Negotiated Rulemaking in the Idaho Administrative Bulletin
- Created a [rulemaking webpage](https://www.idl.idaho.gov/rulemaking/docket-20-0308-2501) to post documents, scheduling information, and comments (<https://www.idl.idaho.gov/rulemaking/docket-20-0308-2501>)
- Cooperative Road Use Agreement members, and Cost Share ROW partners
- Posted meeting notices to Townhall Idaho

The Department held three public negotiated rulemaking meetings in 2025 with options for in-person or virtual participation. These meetings were held on March 20 (Coeur D'Alene), March 25 (Idaho Falls), and April 10 (Boise). There was some discussion and oral public comments provided during the meetings. The initial written comment period ended April 16. Two written comments were received from The Idaho Conservation League and PotlatchDeltic. A summary of negotiated rulemaking is included in Attachment 1.

The Notice of Proposed Rulemaking was published in the August 6, 2025, Idaho Administrative Bulletin (Attachment 2). No public hearing was requested or held. There were no written comments received during the open comment period.

Upon further review, staff noticed the inadvertent deletion of the words "and survey" in section 21.05. Minimum Compensation. Attachment 3 has the draft Pending Rule consisting of the Proposed Rule with the engrossed changes highlighted in yellow.

The proposed rule reduces the overall regulatory burden by reducing the total word count (14.3% reduction) and the number of restrictive words. The proposed rule includes the following changes:

- Supplements definition of "Endowment Lands" to include historical context and constitutional purpose.
- Defines "Assignment:" Assignment of a valid easement in good standing is the administrative transfer of the instrument, its rights and obligations.
- The minimum compensation for any easement is at the discretion of the Land Board, not including appraisal and survey costs. Applicant shall bear the cost of appraisal and survey.
- Supplements definition of "Emergency Work" to incorporate vandalism as an emergency situation.
- Deletes easement assignment fee of \$50.00.
- Deletes easement application fee of \$100.00.
- Inserts the following language related to compensation for easements: "a commensurate portion of the value created by the right-of-way, as determined by the director or supported by specific data such as an appraisal."

If approved by the Land Board, the Department will submit the attached Notice of Adoption of Pending Rule (Attachment 4) to the Office of the Administrative Rules Coordinator for the 2026 legislative session.

Recommendation

Adopt the pending rule for IDAPA 20.03.08 Easements on State Owned Land.

Board Action

A motion was made by Controller Woolf that the Land Board adopt the pending rule for IDAPA 20.03.08, Easements on State-Owned Land. Secretary of State McGrane seconded the motion. The motion carried on a vote of 5-0.

Attachments

1. Negotiated Rulemaking Summary
2. Notice of Proposed Rulemaking with Text
3. Draft Pending Rule
4. Draft Notice of Adoption of Pending Rule

