

Negotiated Rulemaking Summary

IDAPA 20.03.08, Rules Governing Easements on State-Owned Lands

Docket No. 20-0308-2501

Following Executive Order 2020-01: Zero-Based Regulation, this rule chapter is scheduled for review during the 2026 legislative session.

IDAPA 20.03.08, under authority of Idaho Code § 58-603, provides guidance for rights of way for public utility lines, highway, and other purposes. The state board of land commissioners 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.

Negotiated rulemaking for these rules was approved by the Land Board on December 17, 2024. The Notice of Intent to Promulgate Rules – Zero-Based Regulation Negotiated Rulemaking was published in the Idaho Administrative Bulletin on March 5, 2025.

Stakeholder Outreach

The Idaho Department of Lands' (IDL) 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-20-0308-2501>)
- Cooperative Road Use Agreement members, and Cost Share ROW partners
- Posted meeting notices to Townhall Idaho

Negotiated Rulemaking Public Meetings

Negotiated rulemaking meetings were held on March 20, March 25, and April 10, 2025. A total of 11 non-Department affiliated people attended these meetings.

The Idaho Conservation League (ICL) initiated discussion during the negotiated rulemaking meeting held on March 20, 2025, regarding the proposed amendment to the definition of Endowment Lands. ICL recommended keeping the current expanded definition of Endowment Lands. After consideration of the comment, IDL has decided to retain the current expanded definition of Endowment Lands. During the same meeting, ICL recommended referencing "vandalism" in the Emergency Work section. IDL agrees and has added reference to vandalism to further clarify the intentions of the Emergency Work section.

In the meeting held on April 10, 2025: Ben Ballard, Potlatch-Deltic commented that the minimum compensation going from \$500 to \$10,000 is a substantial increase. IDL provided clarity the change is for easements and not permits, and that appraisal or negotiated easement project determines the consideration charged for an easement. Further, IDL provided clarity there are no proposed changes to the Rules section on Co-op Agreements in which all the sections on appraisal, applications and fees do not apply. IDL recommends the following language: "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.

Additionally, Ben Ballard, Potlatch Deltic commented easements (035.040) need to be transferable to be an easement and proposed Assignments are the only transferable instrument. IDL does not propose any changes within Rule regarding Assignments yet has decided to provide brief clarification within a definition stating "Assignment is the complete transfer of rights and obligations of an easement in good standing from holder to succeeding right holder (assignor), acknowledged by IDL (servient estate)."

Next, Brant Steigers, Potlatch Deltic, had questions about new paragraph 021.02. He understands receiving compensation for the increase in property value generated by the easement is common practice. Brant asked what the percentage would be tied to and if it would be codified? Zane Lathim, IDL, commented it would probably be tied to an appraisal. Brant Steigers asked if it could be negotiated. Zane Lathim replied, "Yes." IDL recommends the following language "A commensurate portion of the value created by the right of way, as determined by the Director and supported by specific data such as an appraisal."

Written Comments

Two written comments were received during the open comment period.

1. The Idaho Conservation League submitted a written comment supporting the current definition of Endowment Lands in IDAPA 20.03.08 "Land grants made to the state of Idaho by the Congress of the United States, or real property subsequently acquired through land exchange or purchase, for the sole use and benefit of the public schools and certain other institutions of the state, comprising nine (9) grants all together" instead of the proposed definition of "Lands held in trust by the State of Idaho and managed for the benefit of specific endowment beneficiaries."
2. Brant Steigers, Potlatch Deltic, expressed concern about new paragraph 021.02. stating he "understand[s] that receiving compensation for the increase in property value generated by the easement is common practice, but not codifying what that percentage would be in advance will make this process risky and unpredictable for the grantee. Is it 5% or 50%? For a large development, it could equate to a substantial sum of money."

These comments were 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 August 6, 2025, edition of the Idaho Administrative Bulletin. Key documents from the rulemaking record are available at <https://www.idl.idaho.gov/rulemaking/docket-20-0308-2501/>, including research materials, and the proposed rule text in track changes format to allow the reader to easily identify changes.

Response to Comments on Negotiated Rule
 IDAPA 20.03.08, Rules Governing Easements on State Lands

THESE ARE THE RESOLVED ITEMS

| Commenter | Comment | Rule Section | Response |
|---------------------------|--|--------------|---|
| Idaho Conservation League | <p>In Section 010. Definitions, the most significant proposed change is to the definition of "Endowment Lands," and the majority of the text that is redlined for removal refers to the history and background of endowment lands. As a member of United Payette, a coalition of individuals and organizations working to conserve the endowment lands that surround Payette and Little Payette Lakes, I know firsthand that despite our numerous efforts to help educate the public on the differences between endowment lands, state-owned lands, and public lands, many people still do not understand the intrinsic differences regarding land ownership and management in Idaho. While the proposed definition, "Lands held in trust by the State of Idaho and managed for the benefit of specific endowment beneficiaries," is wholly accurate, it does not provide the full context for the endowment lands, leaving many to believe that endowment lands are indistinguishable from state-owned lands, or even federally owned public lands. We recommend that IDL reincorporate a portion of the existing definition, with the updated version reading, "Lands granted to the State of Idaho by the United States Congress on statehood that are held in trust by the State of Idaho and managed for the benefit of specific endowment beneficiaries." We believe that reincorporating these few words can have an impact on land ownership and management comprehension for citizens or organizations considering an easement application.</p> | 010.06. | <p>IDL agreed. The comments were meaningful and directly related to the Rules. The details provided were considered. The proposed Rules should retain the existing definition and include further clarity on Endowment Lands.</p> <p>The definition should be thorough for the benefit of public, customers, and endowment trust beneficiaries. Retain and supplement the definition, including historical context and constitutional purpose. Attempt to add further distinction between public lands and endowment trust lands.</p> |

| Commenter | Comment | Rule Section | Response |
|---------------------------|--|-------------------------|---|
| Idaho Conservation League | <p>We also recommend that IDL add a definition for "Assignments", which is covered in Section 040. While many familiar with real estate terminology may possess a working knowledge of the term, many do not, and we did not find an associated definition</p> <p>In Section 021. Fees and Compensation, in subsection 07, we note that the textual reference to "five hundred" remains in place, while the numerical reference (\$500) is redlined for removal. We recommend removing the textual reference for consistency and clarity.</p> <p>Regarding Section 030. Emergency Work, we recommend adding vandalism as an emergency situation that could require an easement grantee to access adjoining grantor-controlled lands. Examples could be damage to a trail or direction sign when repair/replacement is best accomplished by working from outside the easement (the emergency being public health and safety) or if a water/gas line within an easement develops a leak and repairs are best accomplished by working from outside the easement. Natural disasters such as wildfire and flood are certainly cause for providing emergency access.</p> | 040. 021.07. 030. | <p>Assignment definition: Assignment of a valid easement in good standing is the administrative transfer of the instrument, its rights and obligations.</p> <p>IDL agreed, incorporated.</p> <p>IDL agreed, incorporated vandalism as an emergency situation.</p> |
| Potlatch-Deltic | Ben Ballard, Potlatch-Deltic, in-meeting comment regarding minimum compensation going from \$500 to \$10,000 as a substantial increase. IDL provided clarity the change is for easements and not permits, and that appraisal or negotiated easement project determines the consideration charged for an easement. Further, IDL provided clarity there are no proposed changes to the Rules section on Co-op Agreements in which all the sections on appraisal, applications and fees do not apply. | 021.07. | IDL recommends the following language "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. |

| Commenter | Comment | Rule Section | Response |
|-----------------|--|--------------|---|
| Potlatch-Deltic | Brant Steigers had concerns about the new paragraph 021.02. "I understand that receiving compensation for the increase in property value generated by the easement is common practice, but not codifying what that percentage would be in advance will make this process risky and unpredictable for the grantee. Is it 5% or 50? For a large development, it could equate to a substantial sum of money." | 021.02. | IDL recommends the following language: "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." |
| | <p>Deleting the \$50 assignment fee.</p> <p>Deleting the \$100 Easement Application Fee</p> | | <p>Assignment can be processed without a collected fee. A \$50 fee creates delays and requires customer and staff resources to process. Removing the fee is better business.</p> <p>Applications can be processed without a collected fee. A \$100 fee is nominal and creates delays and requires customer and staff resources to process. Removing the fee is better business.</p> |

Conclusion:

IDL concluded the negotiated rulemaking process and will submit the rule changes for publication as a proposed rule in the August 6, 2025, edition of the Idaho Administrative Bulletin. Key documents from the rulemaking record are available at <https://www.idl.idaho.gov/rulemaking/docket20-0308-2501/>, including research materials, and the proposed rule text in legislative format to allow the reader to easily identify changes.