

## 1.8 Easement

Revision: ~~March 20~~November 5, 2015

The “Individual/Subsurface Sewage Disposal Rules” (IDAPA 58.01.03) provide that every owner of real property is responsible for storing, treating, and disposing of wastewater generated on that property. This responsibility includes obtaining necessary permits and approvals for installing an individual or subsurface sewage disposal system. Often the storage, treatment and disposal of wastewater remain solely on the real property from which it was generated. However, sometimes other real property is needed for the storage, treatment or disposal of that wastewater. When that is the case, an easement is required as part of the permit application. The real property from which the wastewater is generated is known as the dominant estate because it is entitled to the benefit of the easement. The other real property needed for storage, treatment or disposal is known as the servient estate. The servient estate is the real property subject to the easement. Therefore, a real property owner wishing to install an individual or subsurface sewage disposal system must obtain a permit under IDAPA 58.01.03 and any other necessary approval for installing the system, including any authorization needed to install the system on ~~another~~ real property that does not contain the wastewater-generating structure. The owner of the dominant estate may also own the servient estate, or the servient estate may be owned by another individual. This property may be owned by the same individual who owns the parcel with the wastewater-generating structure or another individual. Consistent with this requirement, IDAPA 58.01.03.005.04.1 requires a permit applicant to include in the application copies of legal documents relating to access to the system.

This section provides guidance regarding the circumstances under which the health district should permit a system when there is both a dominant estate and a servient estate to be located on another property that does not contain the wastewater-generating structure and the legal documents that must be included in or with an application for such a system.

1. The health district will consider allowing an owner to install a subsurface sewage disposal system on other property~~the installation of a subsurface sewage disposal system on another property (e.g., lot or parcel)~~. However, this option should be considered ~~a last resort for use~~ only when other practical solutions for subsurface sewage disposal are not available on the applicant’s property~~property where the wastewater is generated~~. In addition, the entire site (i.e., the area for both the primary and replacement drainfield) on the ~~other servient estate property~~ must be reviewed by the health district, and the site must meet all requirements of IDAPA 58.01.03.
2. The placement of an individual subsurface sewage disposal system on ~~another other~~ property requires that an easement be in place before subsurface sewage disposal permit issuance. Easements are required anytime a subsurface sewage disposal system is proposed on another property regardless of property ownership. With one exception, ~~e~~Easements must be obtained for each any real property, other than the wastewater-generating parcel that the application is submitted for, that upon which any portion of the subsurface sewage disposal system is proposed to be installed ~~upon~~. Easements are not necessary for any portion of the system located on the wastewater-generating parcel dominant estate that for which the application is submitted for. It is the applicant’s responsibility to include an easement that is prepared by an attorney and:

- a. Contains a sufficient description of the easement area and of the dominant estate property to be benefited by the easement (the real property of the applicant where wastewater is generated).
  - b. Contains language ensuring that the other property/servient estate can be used for the system, and that the applicant or a subsequent purchaser of the applicant's property/dominant estate has access to make repairs or perform routine maintenance until the system is abandoned. The language must ensure such use and access even when the applicant's property or the other property/dominant or servient estate is sold or otherwise transferred.
  - c. Contains language that restricts the use of the easement area in a manner that may have an adverse effect on the system functioning properly.
  - d. Is surveyed, including monumenting the corners of the entire easement area, to supply an accurate legal description of the easement area for both the primary and replacement drainfield areas and enable the health district to properly evaluate the site. The survey and monumenting of the easement area must be performed by an Idaho licensed professional land surveyor.
3. The applicant is responsible for ensuring that a legally sufficient document is prepared to establish the necessary easement ~~for the subsurface sewage disposal system located on another property. The applicant must submit the easement to the health district with the permit application. This document must be submitted to the health district with the permit application. The health district must ensure that an easement document is included in the application.~~ However, the health district does not have the expertise, nor is it the duty of the health district, to determine the legal adequacy of the easement document, and the issuance of a permit does not in any way represent or warrant that an easement has been properly created. To issue a permit that includes a system on another property/servient estate, the health district must ensure that it evaluates whether the easement document included with the application:
- a. Has been prepared by an attorney.
  - b. Includes a survey that was prepared and monumented by an Idaho licensed professional land surveyor.
  - ~~b~~c. Has been recorded in the county with jurisdiction. Evidence that the document has been recorded must be provided to the health district.

If the easement document meets the ~~two~~ two criteria described in 3.a-3.c above, the health district may issue a permit. It is not the health district's responsibility to ensure the easement document meets the requirements in item 2 above. The applicant and the applicant's attorney are responsible for ensuring that the easement is legally sufficient and will meet the requirements in item 2 above.

## Easement Restrictions

1. If easements for drainfields under separate ownership result in more than 2,500 GPD of effluent being disposed of on the same property, the drainfields must be designed as a large soil absorption system and undergo a nutrient-pathogen (NP) evaluation.

2. Easement boundaries that are not adjacent to the ~~permit applicant's/grantee's~~dominant estate's property line must meet the separation distance of 5 feet between the drainfield and/or septic tank and the easement boundary.