

**PROPOSED REGULATION OF
THE STATE LAND REGISTRAR**

LCB File No. R135-13

February 28, 2014

EXPLANATION – Matter in *italics* is new; matter in brackets ~~omitted material~~ is material to be omitted.

AUTHORITY: §§1-26, NRS 322.100 and 322.170 and NAC 445A.044, as amended by section 1 of LCB File No. R149-13.

A REGULATION relating to management of land; establishing the procedure for obtaining an authorization from the State Land Registrar for the use of certain lands; and providing other matters properly relating thereto.

Section 1. Chapter 322 of NAC is hereby amended by adding thereto the provisions set forth as sections 2 to 25, inclusive, of this regulation.

Sec. 2. *As used in this chapter, unless the context otherwise requires, the words and terms defined in sections 3 to 12, inclusive, of this regulation have the meanings ascribed to them in those sections.*

Sec. 3. *“Authorization” means:*

- 1. A permit, license, lease, easement, right of entry or any other document issued by the State Land Registrar for uses associated with the navigable bodies of water of this State; and*
- 2. A permit described in NRS 445A.170 issued by the State Land Registrar pursuant to NAC 445A.044.*

Sec. 4. *“Breakwater” means a man-made barrier which diminishes the force of waves to protect a harbor, marina, beach, shoreline or riverbank. The term includes a rock jetty, seawall, rock suppression or sheet piling.*

Sec. 5. *“Division” means the Division of State Lands of the State Department of Conservation and Natural Resources.*

Sec. 6. *“Littoral parcel” means a parcel of land which adjoins the bed of a navigable body of water of this State.*

Sec. 7. *“Multiple use” means the use of a facility owned or managed by more than one person for the exclusive benefit of the owners and their families and guests.*

Sec. 8. *“Navigational buoy” means a buoy which is maintained primarily for aiding navigation and is approved by the appropriate federal or state agency for that use.*

Sec. 9. *“Ordinary high-water mark” means the line to which high-water ordinarily rises on a bank or shore in a season. The term is synonymous with the mean high-water line.*

Sec. 10. *“Person” has the meaning ascribed to it in NRS 0.039 and includes a government, governmental agency or political subdivision of a government.*

Sec. 11. *“Shoreline” means the line marking the edge of a navigable body of water of this State.*

Sec. 12. *“Water intake line” means a pipe with appurtenances which conveys water from a river, lake, stream or other navigable body of water of this State to an area upland from that river, lake, stream or body of water for agricultural use, commercial use, industrial use, municipal use or residential use.*

Sec. 13. 1. *The State Land Registrar will issue authorizations for:*

(a) Uses associated with the navigable bodies of water of this State; and

(b) The purposes of NRS 445A.170.

2. *The State Land Registrar may issue a temporary authorization for dredging or construction associated with the navigable bodies of water of this State. An authorization may be required after the project to dredge or construct is completed.*

3. *The types of uses for which authorizations may be issued pursuant to this section include, without limitation, agricultural use, commercial use, industrial use, municipal use, residential use, multiple use, construction and dredging.*

Sec. 14. 1. *The Division shall not accept an application for an authorization which is not filled out properly.*

2. *The Division shall notify the applicant of any deficiency when the Division returns the application to the applicant for compliance.*

Sec. 15. 1. *An application for the issuance or renewal of an authorization must be stamped with the date and time of filing with the Division.*

2. *Except as otherwise provided in subsection 4, within 14 days after receiving a complete application, the Division shall send notice of the application and a request for comments or objections to:*

(a) Owners of adjacent property;

(b) Homeowners' associations and general or special improvement districts which may be affected by the authorization;

(c) Governmental bodies which the Division determines should be notified; and

(d) Persons who have informed the Division of their desire to be so notified.

3. *The Division shall consider comments or objections concerning an application only if they are:*

(a) Submitted in writing; and

(b) Except as otherwise provided in this paragraph, received by the Division within 30 days after the notice of application and request for comments or objections has been given. The Division may modify the time frame for the receipt of objections and comments concerning an application if the Division determines that such a modification is in the best interests of the public. Upon request, the Division may grant an extension of not more than 15 days for the submission of objections or comments.

4. The Division may waive the period for considering comments or objections for applications for the renewal of a permit if:

(a) The location of the structure that is the subject of the permit has not changed since the last permit was issued;

(b) The ownership of the adjacent littoral parcels has not changed since the last permit was issued; and

(c) The permittee has adhered to all of the conditions of the permit.

Sec. 16. 1. *Within 20 days after the period for considering objections or comments has expired pursuant to section 15 of this regulation, or 30 days after the notice of the application has been given if the period for considering objections or comments was waived, the Division may set a date and time for a public hearing. The public hearing must be held within 60 days after expiration of the applicable period.*

2. Within 30 days after the public hearing, the State Land Registrar will make a final decision on the application.

Sec. 17. *In determining whether to issue an authorization, the State Land Registrar will consider, without limitation, the following factors:*

1. *The location and density of existing piers, breakwaters, mooring buoys, water intake lines and other structures;*
2. *The effect of granting the authorization upon the stability of the shoreline;*
3. *The overall environmental integrity and recreational quality of the area in which the proposed structure or activity is to be located or will take place, including factors such as noise, visual esthetics, recreational potential and impacts to the quality of water;*
4. *The potential interference with navigability;*
5. *Conformance with any applicable requirements of law, regulation and policy;*
6. *The impacts to adjacent property owners;*
7. *Any environmental studies of the proposed use, if applicable;*
8. *The location or availability of existing use corridors; and*
9. *The private benefit to be obtained versus any loss of public benefit.*

Sec. 18. *1. An authorization is required for the construction of a pier, breakwater, mooring buoy, water intake line or other structure associated with a navigable body of water of this State and for the repair, reconstruction or alteration of such a structure if the repair, reconstruction or alteration would increase the size or change the location of the structure.*

2. If an unforeseen combination of circumstances calls for the immediate action of the State Land Registrar regarding the construction or alteration of a structure described in subsection 1, the State Land Registrar will consider the matter on an emergency basis. The construction or alteration of such a structure may be performed upon verbal consent from the Division, to be followed by written consent of the State Land Registrar. An application for an authorization and the appropriate fee must be submitted to the Division within 30 days after the date of receipt of the verbal consent.

Sec. 19. *With regard to Lake Tahoe:*

1. Except as otherwise provided in subsection 2, only a person who is the owner of a littoral parcel may apply for a permit to construct, install or modify a pier, breakwater, mooring buoy, water intake line or other structure.

2. An owner of a nonlittoral parcel may apply for a permit to modify a pier or breakwater if the pier or breakwater was functional before October 30, 1979, or the State Department of Conservation and Natural Resources previously issued a permit for the pier or breakwater. The State Land Registrar will not authorize any expansions or extensions of such a pier or breakwater. Each such pier or breakwater must be maintained in good repair.

Sec. 20. 1. *The State Land Registrar may cancel a permit for failure of the holder of the permit to comply with the provisions of this chapter or with any condition under which the permit was granted.*

2. The State Land Registrar will not cancel a permit until 30 days after the holder of the permit has been informed by certified mail of the State Land Registrar's intention to cancel the permit and the reason for the intended cancellation or until a hearing is held if a hearing has been requested in writing. If, within the 30-day period, the holder of the permit corrects all the violations which were grounds for the intended cancellation, his or her permit will not be cancelled. If the holder of the permit corrects those violations after the 30-day period, his or her permit may be reinstated.

Sec. 21. *A permit:*

1. Must be issued for not more than 20 years; and

2. Is not transferable.

Sec. 22. The decision by the State Land Registrar is the final administrative action on an application pursuant to the provisions of this chapter.

Sec. 23. 1. Unless otherwise provided in a permit issued by the State Land Registrar, a pier or similar structure:

(a) Must be constructed as closely to a right angle to the shore as possible; and

(b) Must be constructed so as not to interfere with existing structures.

2. Except as otherwise provided in this subsection, a pier or similar structure may extend only to a length that will allow access to the water depth necessary for boats customarily in use during a normal period of low water. If extenuating circumstances exist, the Division may allow an increase in the length or size of a pier or similar structure.

3. Except as otherwise provided in subsection 8, a structure or facility for:

(a) Commercial use must not be located closer than 25 feet from each adjacent property projection line.

(b) Residential use or multiple use must not be located closer than 10 feet from each adjacent property projection line.

4. The anchor of a mooring buoy must not be:

(a) Placed closer than 50 feet from the anchor of another mooring buoy.

(b) Placed in the water at a depth greater than that necessary for the safe accommodation of boats normally in use on the navigable body of water of this State.

(c) Located closer than 20 feet from each adjacent property projection line.

5. The anchor of a navigational buoy may be placed closer than 50 feet from the anchor of another navigational buoy.

6. Except as otherwise provided in this subsection, property projection lines must be extended at a right angle to the shore from the:

(a) Low water elevation (6,223 feet) of Lake Tahoe; and

(b) Ordinary high-water mark of a navigable body of water of this State other than Lake Tahoe.

↪ The Division may waive the requirements of this subsection if the Division determines that such a waiver would provide each owner of a littoral parcel with a reasonable distribution of the area.

7. Except as otherwise provided in subsection 8, if the placement of a pier or similar structure does not meet the setback distance required pursuant to subsection 3, the Division must receive written consent from the owner of the affected adjacent property before the State Land Registrar may issue a permit for the pier or similar structure.

8. The State Land Registrar may issue a permit for a pier or similar structure that does not meet the setback distance required pursuant to subsection 3 without requiring the applicants for the permit to secure consent from the owner of the affected adjacent property if the pier or similar structure was in existence before October 30, 1979, or if the State Department of Conservation and Natural Resources or the State Land Registrar previously issued a permit for the pier or similar structure.

9. A structure or facility must be designed and installed so that it will not be damaged by anticipated natural forces.

Sec. 24. *Unless otherwise authorized by the State Land Registrar, a bridge, utility crossing, irrigation diversion structure or modification of a bank of a navigable body of water of this State must be placed in a manner:*

1. So as not to conflict with any existing uses of the navigable bodies of water of this State;

2. That conforms with any applicable state, local and federal regulations; and

3. So as not to interfere with the navigability of that body of water.

Sec. 25. *1. With regard to the navigable bodies of water of this State, including Lake Tahoe:*

(a) The Division shall issue an identifying device which may be installed on each mooring buoy for which the Division issues a permit; and

(b) If the Division determines that a structure or facility might not be readily seen or might be a navigational hazard, the Division may issue an authorization for the structure or facility which includes the condition that a warning marker, approved by the appropriate agency, is installed on the structure or facility.

2. With regard to Lake Tahoe, a person shall not construct or place below the high water elevation (6,229.1 feet), any swimming buoy, rope, fence or other barrier which hinders navigation unless the Division determines that a safety hazard exists or a substantial public benefit will accrue from its construction or placement.

Sec. 26. This regulation becomes effective:

1. Upon filing with the Secretary of State; or

2. On the date on which LCB File No. R149-13 is filed with the Secretary of State,

↳ whichever occurs later.