

**ADOPTED REGULATION OF THE DIRECTOR OF
THE STATE DEPARTMENT OF CONSERVATION
AND NATURAL RESOURCES**

LCB File No. R149-13

Effective October 24, 2014

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

AUTHORITY: §§1 and 2, NRS 232.070 and 445A.170.

A REGULATION relating to the procedures of the State Department of Conservation and Natural Resources; requiring the State Land Registrar to issue certain permits and to take certain actions; repealing provisions governing the issuance by the Department of permits to construct piers, breakwaters and mooring buoys at Lake Tahoe; and providing other matters properly relating thereto.

Legislative Counsel's Digest:

Existing law requires the State Department of Conservation and Natural Resources to adopt regulations governing the issuance of permits to, among other things, construct a pier, breakwater or marina in or alter the shoreline of Lake Tahoe. (NRS 445A.170) Under existing law, the Department consists of the Director and several divisions, including the Division of State Lands. (NRS 232.090) Existing law provides, with limited exceptions, that the Director of the Department is: (1) responsible for the administration, through the divisions and other units of the Department, of all provisions of law relating to the functions of the Department; and (2) required to delegate to the executive heads of the divisions such authorities and responsibilities as the Director deems necessary for the efficient conduct of the business of the Department. (NRS 232.070) Existing law further provides that the executive head of the Division is the Administrator, who is also the ex officio State Land Registrar. (NRS 232.110)

Existing regulations adopted by the Department govern the issuance by the Department of permits to construct piers, breakwaters and mooring buoys at Lake Tahoe. (NAC 445A.028-445A.052) With one exception, **section 2** of this regulation repeals those provisions. **Section 1** of this regulation amends the existing regulation governing the process for such applications (NAC 445A.044) to instead require the State Land Registrar to issue permits pursuant to NRS 445A.170 and to take any other actions necessary to carry out the provisions of that section.

Section 1. NAC 445A.044 is hereby amended to read as follows:

445A.044 ~~{1.— Only a person who is the owner of a littoral parcel may apply for a permit to construct a pier, breakwater, mooring buoy or other structure.~~

~~—2.— A permit required by NRS 445A.170 for a pier, breakwater or other structure to be erected after July 1, 1979, may be requested by filing with the Department an application on a form provided by the Department.~~

~~—3.— An application form which is not filled out properly will not be accepted.~~

~~—4.— The Department will notify the applicant of any deficiency when it returns the application for compliance.~~

~~—5.— A permit will be issued for not more than 20 years.} *The State Land Registrar shall issue the permits required pursuant to NRS 445A.170 and take any other actions necessary to carry out the provisions of that section.*~~

Sec. 2. NAC 445A.028, 445A.029, 445A.030, 445A.031, 445A.032, 445A.033, 445A.034, 445A.035, 445A.036, 445A.037, 445A.038, 445A.039, 445A.040, 445A.041, 445A.042, 445A.043, 445A.045, 445A.046, 445A.047, 445A.048, 445A.049, 445A.050, 445A.051 and 445A.052 are hereby repealed.

TEXT OF REPEALED SECTIONS

445A.028 Definitions. As used in NAC 445A.028 to 445A.052, inclusive, unless the context otherwise requires, the words and terms defined in NAC 445A.029 to 445A.043, inclusive, have the meanings ascribed to them in those sections.

445A.029 “Breakwater” defined. (NRS 445A.170) “Breakwater” means a man-made barrier which diminishes the force of waves.

445A.030 “Commercial use” defined. (NRS 445A.170)

1. “Commercial use” means use of a structure or facility which is operated primarily for profit.

2. The term does not include use of any publicly owned structure.

445A.031 “Department” defined. (NRS 445A.170) “Department” means the State Department of Conservation and Natural Resources.

445A.032 “Director” defined. (NRS 445A.170) “Director” means the Director of the Department.

445A.033 “Dredging” defined. (NRS 445A.170) “Dredging” means removing or rearranging material which is located beneath the high water elevation and is in or under the water of Lake Tahoe.

445A.034 “Fill” defined. (NRS 445A.170) “Fill” means any material deposited by humans in Lake Tahoe.

445A.035 “Floating dock or platform” defined. (NRS 445A.170) “Floating dock or platform” means any structure designed to float on the water while anchored to the shore or bed of Lake Tahoe.

445A.036 “Industrial use” defined. (NRS 445A.170) “Industrial use” means any use which entails removing, transporting or stockpiling any materials or goods being processed.

445A.037 “Littoral parcel” defined. (NRS 445A.170) “Littoral parcel” means a parcel of land adjoining the bed of Lake Tahoe.

445A.038 “Multiple use” defined. (NRS 445A.170) “Multiple use” means use of a facility owned or managed by more than one person for the exclusive benefit of the owners and their families and guests.

445A.039 “Navigational structure” defined. (NRS 445A.170) “Navigational structure” means a device which is maintained primarily for aiding navigation and is approved by the appropriate federal or state agency for that use.

445A.040 “Permit” defined. (NRS 445A.170) “Permit” means a permit issued pursuant to the authority contained in NRS 445A.170.

445A.041 “Person” defined. (NRS 445A.170) “Person” includes any governmental entity.

445A.042 “Pier” defined. (NRS 445A.170) “Pier” means a fixed or floating structure or platform which:

1. Extends into or over the water of Lake Tahoe;
2. Is attached to pillars, piles, rocks or metal or is anchored to the bottom of the Lake; and
3. Affords convenient passage to and from watercraft or provides moorage of watercraft.

445A.043 “Salvage” defined. (NRS 445A.170) “Salvage” means removal of any goods or property from beneath the water of Lake Tahoe.

445A.045 Purposes for which permits may be issued; types of permits. (NRS 445A.170)
The Department will issue permits, upon the applicant’s compliance with NAC 445A.028 to 445A.052, inclusive, for the erection of any structure on or in Lake Tahoe or its shore, for the removal of gravel, sand or similar material from the bed of Lake Tahoe, for the alteration of the Lake Tahoe shoreline below the high water elevation or for depositing any fill or deleterious material into Lake Tahoe. The permits will be of the following types:

1. Commercial use.
2. Dredging use.
3. Industrial use.
4. Multiple use.
5. Private use.
6. Use by a public agency.

445A.046 Procedure upon receipt of application for permit. (NRS 445A.170)

1. An application will be stamped with the date and time of filing with the Department.
2. Within 10 days after receiving an application, the Department will send notice of the application to:

- (a) Owners of adjacent littoral property;
- (b) Homeowners’ associations and general or special improvement districts which may be affected;
- (c) Governmental bodies which the Department determines should be notified; and
- (d) Persons who have informed the Department of their desire to be so notified.

3. The Department will consider objections or comments concerning an application only if they are:

(a) In writing; and

(b) Received by the Department within 30 days after the notice of application has been given except that, upon request, the Department may grant an extension of not more than 15 days for submission of objections or comments.

4. Within 10 days after the period for considering objections or comments has expired, the Department may set a date and time for a public hearing. The date for the public hearing will be within 55 days after expiration of that period.

5. Within 10 days after the expiration of the period for considering objections or comments or within 10 days after the public hearing, whichever is later, the Department will make a final decision on the application.

6. If an unforeseen combination of circumstances calls for the Department's immediate action regarding construction or alteration, the Department will consider the matter on an emergency basis. Construction or alteration may be performed upon oral consent from the Department, to be followed by its written consent.

7. The decision by the Department is the final administrative action on an application under NAC 445A.028 to 445A.052, inclusive.

445A.047 Factors considered in issuance or denial of permit. (NRS 445A.170)

1. In determining whether to issue a permit, the Director will consider, but his or her consideration will not be limited to, the following factors:

(a) The location and density of existing piers and other structures;

(b) The effect of granting the permit upon the stability of the shoreline;

(c) The overall environmental integrity and recreational quality of the area in which the proposed structure or activity is to be located, including factors such as noise, visual esthetics and recreational potential;

(d) The private benefit to be obtained versus any loss of public benefit; and

(e) The economic and social effect upon the area.

2. In determining whether to deny a permit on the basis that the quality of the water of Lake Tahoe would be impaired by the structure or activity, the Department will consider any anticipated change in the clarity, temperature, color, taste and odor of the water and will compare those characteristics with federal and state water quality standards.

445A.048 Construction of dock, pier or similar structure: Location; warning marker; identifying device. (NRS 445A.170)

1. Unless otherwise permitted by the Department, a dock, 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. A structure or facility for:

(a) Commercial or industrial use must not be located closer than 25 feet from each adjacent property line extended lakeward at a right angle to the shore unless the Department has received written consent from the owner of the affected adjacent property.

(b) Any use other than as a buoy or other than a use specified in subsection 2 must not be located closer than 10 feet from each adjacent property line extended lakeward at a right angle to the shore unless the Department has received written consent from the owner of the affected adjacent property.

3. A buoy must not be:

(a) Placed closer than 50 feet from another buoy.

(b) Placed in the water at a depth greater than that necessary for safe accommodation of boats normally in use on Lake Tahoe.

(c) Located closer than 20 feet from each adjacent property line extended lakeward at a right angle to the shore unless the Department has received written consent from the owner of the affected adjacent property.

4. Except as provided in this subsection, a dock, 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 Department may allow an increase in the length or size of a dock, pier or similar structure.

5. If the Department determines that a structure or facility might not be readily seen or might be a navigational hazard, it may grant a permit for the structure or facility upon the condition that a warning marker, approved by the Department, is installed on the structure or facility.

6. A person shall not construct or place below the high water elevation of 6,229.1 feet, any swimming buoy, rope, fence or other barrier which hinders access to state land unless the Department determines that a safety hazard exists or a substantial public benefit will accrue from its construction or placement.

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

8. The Department will issue an identifying device which must be installed on each permitted structure or facility within 30 days after the permit is issued.

9. A public agency which is issued a permit pursuant to NAC 445A.028 to 445A.052, inclusive, shall permanently post at the site for which the permit is issued a statement specifying the public use and the conditions of use for that site.

445A.049 Permit required to repair or alter structure. (NRS 445A.170) A permit is required for any repair, reconstruction or alteration of an existing pier, breakwater or other structure which:

1. Would increase the size or change the location of the structure; or
2. Might impair the quality of the water of Lake Tahoe.

445A.050 Cancellation of permit. (NRS 445A.170)

1. The Department may cancel a permit for failure of the holder to comply with NAC 445A.028 to 445A.052, inclusive, or with any condition under which the permit was granted.

2. The Department will not cancel a permit until 30 days after the holder has been informed by certified mail of the Department'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 corrects all the violations which were grounds for the intended cancellation, his or her permit will not be cancelled. If the holder corrects those violations after the 30-day period, his or her permit may be reinstated.

445A.051 Renewal of permit. (NRS 445A.170) The Department will renew a valid permit at least 15 days before its expiration date if the holder is in compliance with the applicable statutes and regulations.

445A.052 Transfer of permit. (NRS 445A.170)

1. A permit is not transferable as to location.

2. With the written concurrence of the Department, a permit may be transferred from the holder to:

- (a) The executor or administrator of the estate of a deceased person;
- (b) The trustee of a trust; or
- (c) Any other person.

**LEGISLATIVE REVIEW OF ADOPTED REGULATIONS
AS REQUIRED BY NRS 233B.066**

LCB FILE 149-13

The following informational statement is submitted for adopted regulations pertaining to Nevada Administrative Code (NAC) 322.

1. A clear and concise explanation of the need for the adopted regulation: The Department of Conservation and Natural Resources (DCNR) has authority to issue permits for construction activities at Lake Tahoe under NRS 445A.170. The Nevada Division of State Lands (NDSL) has authority to authorize the use of state land, including the bed of Lake Tahoe, under NRS 322. The adopted regulation allows for the formal recognition of delegation of authority from DCNR to NDSL for uses of state land at Lake Tahoe. Additionally, the adopted regulation repeals sections of Nevada Administrative Code Chapter 445A which DCNR used to issue construction permits at Lake Tahoe. Replacement language has been adopted under LCB File 135-13 by NDSL.

2. A description of how public comments was solicited, a summary of public response, and an explanation of how other interested persons may obtain a copy of the summary: Copies of the proposed regulations, notice of public workshop and notice of intent to act upon the regulation were sent by U.S. mail and email to persons and other state and regulatory agencies who were known to have an interest in the subject of the use of state land beneath navigable waters. All documents were also made available at the website of the Division, <http://www.lands.nv.gov> and mailed to all county libraries in Nevada. Notices were also posted at the following locations:

Bryan State Office Building
901 S. Stewart Street
Carson City, Nevada 89701

Nevada State Library and Archives
100 S. Stewart Street
Carson City, Nevada 89701

Legislative Building
401 South Carson Street
Carson City, Nevada 89701

Tahoe Regional Planning Agency
128 Market Street
Stateline, Nevada 89449

Clark County Administrative Offices
101 Civic Way
Laughlin, Nevada 89028

A workshop was held on October 23, 2013 to solicit comments from the public and small businesses as the proposed regulation language was being drafted. The minutes and a summary of the discussion at the workshop are attached hereto as Exhibit A. This public workshop provided valuable input to the NDSL at the commencement of the regulation drafting process.

On July 22, 2014 a public adoption hearing was held regarding the proposed regulation to solicit comments once more from the public and small businesses. The minutes and a summary of the adoption hearing discussion are attached hereto as Exhibit B.

A copy of these summaries of the public response to the proposed regulation may be obtained from the Nevada Division of State Lands, 901 S. Stewart Street, Suite 5003, Carson City, Nevada 89701, (775) 684-2735, or email to erandles@lands.nv.gov.

3. The number of persons who:
 - (a) Attended the public workshop on October 23, 2013: 26
 - (b) Attended the public adoption hearing on July 22, 2014: 12
 - (c) Testified at the public adoption hearing on July 22, 2014: 2
 - (d) Submitted written statements regarding the proposed regulation: Workshop=3, Hearing=0
4. A list of names, telephone numbers, business address, business telephone number electronic mail address and name of the entity or organization represented, as provided to the Division, is attached as Exhibit C.
5. A description of how comment was solicited from affected businesses, a summary of their response and an explanation of how other interested person may obtain a copy of the summary: Comments were solicited from affected businesses in the same manner as they were solicited from the public. The summary may be obtained as instructed in the response to question #2.
6. If, after consideration of public comment, the regulation was adopted without changing any part of the proposed regulation, a summary of the reasons for adopting the regulation without change: The regulation was adopted on July 22, 2014 and included many of the suggestions brought forth from the public workshop held on October 23, 2013. No written comments were received prior to the public adoption hearing and no substantive comments were offered at the public adoption hearing beyond those in support of the language so the regulation was adopted in the version and format provided by the Legislative Counsel.
7. The estimated economic effect of the regulation on the business which it is to regulate and on the public:
 - (a) Both adverse and beneficial effects: The regulation will not have any adverse effects on businesses or the public as it only provides for a clear delegation of authority from DCNR to NDSL. The regulation has a beneficial effect in that it repeals duplicative language found in NAC 322 as adopted under LCB File No. 135-13.
 - (b) Both immediate and long-term effects: The regulation will provide an immediate effect by clearly providing the formal delegation of authority to NDSL to continue to authorize uses of state land at Lake Tahoe. No detrimental long-term effects associated with this regulation are noted.

8. The estimated cost to the agency for enforcement of the proposed regulation: There is no additional cost to the agency for enforcement of the proposed regulation.
9. A description of any regulations of other state or government agencies which the proposed regulations overlaps or duplicates and a statement why the duplication or overlapping is necessary. If the regulation overlaps or duplicates a federal regulation, the name of the regulating agency: The regulation repeals language found in sections currently found in NAC 445A. No other duplicative language exists.
10. If the regulation established a new fee or increases an existing fee, a statement indicating the total annual amount the agency expects to collect and the manner in which the money will be used: This regulation does not provide a new fee or an increase in an existing fee.