ADOPTED REGULATION OF

THE STATE LAND REGISTRAR

LCB File No. R135-13

§§1-26 become effective October 24, 2014 or when R149-13 is filed with the Secretary of State, whichever is later

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 procedures of the State Land Registrar; establishing the procedure for obtaining an authorization from the State Land Registrar for the use of certain lands associated with the navigable waters of this State; and providing other matters properly relating thereto.

Legislative Counsel's Digest:

Existing law prohibits a person from using or acquiring state land for any purpose unless the person first obtains written authorization from the State Land Registrar. (NRS 321.003) Existing law authorizes the State Land Registrar to: (1) issue a permit, license or other authorization for any lawful use of state land administered by the Division of State Lands of the State Department of Conservation and Natural Resources; and (2) charge a fee for the issuance of such a permit, license or other authorization. (NRS 322.100) Existing law further requires the State Land Registrar to adopt regulations necessary to carry out the provisions of NRS 322.100 to 322.160, inclusive, which include the provisions authorizing the State Land Registrar to issue a permit, license or other authorization for the lawful use of state land administered by the Division. (NRS 322.170)

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) 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 LCB File No. R149-13 repeals those provisions. Section 1 of LCB File No. R149-13 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 3 of this regulation defines an authorization as: (1) a permit, license, lease, easement, right of entry or any other document issued by the State Land Registrar for uses of land 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. **Section 13** of this regulation sets forth the purposes and types of uses for which authorizations and temporary authorizations may be issued.

Sections 14 and 15 of this regulation prescribe the application process for obtaining an authorization. **Section 16** of this regulation provides that the State Land Registrar may hold a public hearing on the application and provides the procedure for holding such a hearing. **Section 17** of this regulation sets forth factors that the State Land Registrar is required to consider in determining whether to issue an authorization.

Section 18 of this regulation requires an authorization to construct, place or alter a pier, breakwater, mooring buoy, water intake line or other structure associated with a navigable body of water of this State. **Section 18** also sets forth the State Land Registrar's procedure for considering an authorization on an emergency basis.

Section 19 of this regulation prescribes the eligibility requirements for obtaining a permit for a pier, breakwater, mooring buoy, water intake line or other structure at Lake Tahoe. **Section 20** of this regulation sets forth the grounds and procedure for cancellation of a permit. **Section 21** of this regulation provides: (1) the maximum duration for a permit; and (2) that a permit is not transferable.

Section 22 of this regulation provides that the decision by the State Land Registrar is the final administrative action on an application pursuant to the provisions of this regulation.

Sections 23 and 24 of this regulation establish, with certain exceptions, requirements relating to: (1) the construction, placement and setback distances of mooring buoys, navigational structures, piers, breakwaters, boat ramps, boat slips, boat fueling facilities, boat houses, boat hoists, water intake lines, decks or similar structures; and (2) the placement of a bridge, utility crossing or irrigation diversion structure and the modification of a bank of a navigable body of water of this State.

Section 25 of this regulation provides, with regard to the navigable bodies of water of this State, including Lake Tahoe, that the State Land Registrar: (1) will issue an identifying device which may be installed on a mooring buoy for which he or she issues a permit; and (2) may require a warning marker to be installed on a structure or facility for which he or she issues an

authorization. **Section 25** also prohibits a person from constructing or placing below the high water elevation (6229.1 feet) at Lake Tahoe certain barriers which hinder navigation.

Because the authority of the State Land Registrar to issue authorizations for the purposes of NRS 445A.170 is derived from NAC 445A.044, as amended by section 1 of LCB File No. 149-13, **section 26** of this regulation provides that the effective date of this regulation is the latter of two dates, either October 24, 2014, or the date on which LCB File No. R149-13 is filed with the Secretary of State.

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 of land 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. ***"Littoral parcel" means a parcel of land which adjoins the bed of a navigable body of water of this State.***

Sec. 6. *"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. 7. *"Navigable body of water" means a body of water which is declared navigable pursuant to NRS 537.010, 537.020 or 537.030 or which is determined to have been navigable on the date on which Nevada was admitted into statehood, including, without limitation, the Carson River, the Colorado River, Lake Tahoe, the Truckee River, the Virgin River, Walker Lake, Washoe Lake and Winnemucca Lake.*

Sec. 8. *"Navigational structure" means a structure 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. 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 may issue authorizations for:*

(a) Uses of land 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, placement of structures, or similar activities on land associated with the navigable bodies of water of this State.

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. An applicant for an authorization must submit a properly completed application to the State Land Registrar.*

2. If the State Land Registrar does not accept an application, the State Land Registrar will notify the applicant of any deficiency when he or she returns the application to the applicant for compliance.

Sec. 15. *1. An application for an authorization must be stamped with the date and time of filing with the State Land Registrar.*

2. Except as otherwise provided in subsection 4, within 14 days after receiving a complete application, the State Land Registrar will 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 State Land Registrar determines should be notified; and

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

3. Except as otherwise provided in subsection 4, the State Land Registrar will 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 State Land Registrar within 30 days after the notice of application and request for comments or objections has been given. The State Land Registrar may modify the time frame for the receipt of objections and comments concerning an application if the State Land Registrar determines that such a modification is in the best interests of the public. Upon request, the State Land Registrar may grant an extension of not more than 15 days for the submission of objections or comments.

4. The State Land Registrar may waive the requirements of subsections 2 and 3 for applications for 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, if any, for considering objections or comments has expired pursuant to section 15 of this regulation, the State Land Registrar may set a date and time for a public hearing. The public hearing must be held within 60 days after expiration of the period, if any, for considering objections or comments.*

2. The State Land Registrar will make a final decision on the application:

(a) If a public hearing is not held pursuant to subsection 1, within 30 days after the expiration of the period, if any, for considering objections or comments; or

(b) If a public hearing is held pursuant to subsection 1, within 30 days after the date of the public hearing.

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 or placement 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 State Land Registrar, 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 State Land Registrar within 30 days after the date of receipt of the verbal consent.

Sec. 19. *1. The provisions of this section apply only to Lake Tahoe.*

2. Except as otherwise provided in subsection 3, only a person who is the owner of a littoral parcel may apply for a permit for a pier, breakwater, mooring buoy, water intake line or other structure.

3. An owner of a nonlittoral parcel may apply for a permit for a pier or breakwater if the pier or breakwater was functional before October 30, 1979, and the State Department of Conservation and Natural Resources issued a permit for the pier or breakwater before October 24, 2014. 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 the 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, he or she may apply for a new permit.

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, breakwater, boat ramp, boat slip, boat fueling facility, boat house, boat hoist, water intake line or deck or similar structure must be constructed:*

(a) As closely to a right angle to the shore as possible; and

(b) So as not to interfere with existing structures.

2. Except as otherwise provided in this subsection, a structure described in subsection 1 other than a water intake line 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 State Land Registrar may allow an increase in the length or size of any such structure.

3. Except as otherwise provided in subsections 7 and 8, a structure described in subsection 1 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. Except as otherwise provided in subsection 7, 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 structure may be placed closer than 50 feet from the anchor of another navigational structure.

6. Except as otherwise provided in this subsection, property projection lines:

(a) In Lake Tahoe must be extended at a right angle to the shore from the low water elevation (6,223 feet) of Lake Tahoe.

(b) Of a navigable body of water of this State other than Lake Tahoe must be extended at a right angle to the shore from the ordinary high-water mark of the navigable body of water.

➥ The State Land Registrar may waive the requirements of this subsection if the State Land Registrar 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 structure described in subsection 1 or 4 does not meet the setback distance required pursuant to subsection 3 or 4, as applicable, the State Land Registrar must receive written consent from the owner of the affected adjacent property before the State Land Registrar issues a permit for the structure.

8. The State Land Registrar may issue a permit for a pier or breakwater that does not meet the setback distance required pursuant to subsection 3 without requiring the applicant for the permit to secure consent from the owner of the affected adjacent property if the pier or breakwater was functional before October 30, 1979, or if the State Department of Conservation and Natural Resources or the State Land Registrar issued a permit for the pier or breakwater before October 24, 2014.

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, without limitation, Lake Tahoe:*

(a) The State Land Registrar will issue an identifying device which may be installed on each mooring buoy for which the State Land Registrar issues a permit; and

(b) If the State Land Registrar determines that a structure or facility might not be readily seen or might be a navigational hazard, the State Land Registrar 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 State Land Registrar 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. On October 24, 2014; or

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

➥ whichever occurs later.