



TEMPORARY RULE-MAKING FINDINGS OF NEED

[Authority G.S. 150B-21.1]

OAH USE ONLY

VOLUME:

ISSUE:

1. Rule-Making Agency: NC Wildlife Resources Commission
2. Rule citation & name: 15A NCAC 10F .323 Burke County
3. Action: <input type="checkbox"/> Adoption <input checked="" type="checkbox"/> Amendment <input type="checkbox"/> Repeal
4. Was this an Emergency Rule: <input checked="" type="checkbox"/> Yes <input type="checkbox"/> No Effective date: 11/2/2020
5. Provide dates for the following actions as applicable: a. Proposed Temporary Rule submitted to OAH: 10/22/20 b. Proposed Temporary Rule published on the OAH website: 10/28/2020 c. Public Hearing date: 11/16/2020 d. Comment Period: 10/23/20 to 11/20/2020 e. Notice pursuant to G.S. 150B-21.1(a3)(2): 10/22/20 f. Adoption by agency on: 12/10/2020 g. Proposed effective date of temporary rule if other than effective date established by G.S. 150B- 21.1(b) and G.S. 150B-21.3: h. Rule approved by RRC as a permanent rule [See G.S. 150B-21.3(b2)]:
6. Reason for Temporary Action. Attach a copy of any cited law, regulation, or document necessary for the review. <input checked="" type="checkbox"/> A serious and unforeseen threat to the public health, safety or welfare. <input type="checkbox"/> The effective date of a recent act of the General Assembly or of the U.S. Congress. Cite: Effective date: <input type="checkbox"/> A recent change in federal or state budgetary policy. Effective date of change: <input type="checkbox"/> A recent federal regulation. Cite: Effective date: <input type="checkbox"/> A recent court order. Cite order: <input checked="" type="checkbox"/> Other: G.S. 150B-21.1(a)(7) Explain: A temporary no-wake zone in Burke County on Lake James at Mill Creek at Lake James State Park, shore to shore for 345 yards, and a safety zone in the north part of Mill Creek where vessel entry is prohibited, are needed to mitigate water safety hazards during construction of a pedestrian bridge connected with the new Lake James Visitor Center and Fonta Flora Trail. The construction project includes barges, cranes on barges and construction equipment including pre-fabricated metal overhead bridge parts that will pose hazards to any type of vessel in the water. The NCWRC has authority pursuant to G.S. 150B-21(a) to establish no-wake zones through temporary rulemaking.

7. Why is adherence to notice and hearing requirements contrary to the public interest and the immediate adoption of the rule is required?

An emergency rule for this area was effective November 2, 2020. The temporary rule must be adopted concurrently with an emergency rule and will expire with completion of the construction project.

8. Rule establishes or increases a fee? (See G.S. 12-3.1)

☐ Yes

Agency submitted request for consultation on:

Consultation not required. Cite authority:

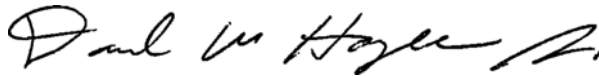
☒ No

9. Rule-making Coordinator: Carrie Ruhlman

Phone: 919-707-0011

E-Mail: carrie.ruhlman@ncwildlife.org

10. Signature of Agency Head*:



* If this function has been delegated (reassigned) pursuant to G.S. 143B-10(a), submit a copy of the delegation with this form.

Typed Name: David Hoyle, Jr.

Title: Chairman

E-Mail: davidwhoylejr@gmail.com

Agency contact, if any: Ashley Pekarul

Phone: 919-707-0014

E-Mail: Ashley.pekarul@ncwildlife.org

RULES REVIEW COMMISSION USE ONLY

Action taken:

Submitted for RRC Review:

☐ Date returned to agency:

1 15A NCAC 10F .0323 underlined text is amended under temporary procedures as follows:

2
3 **15A NCAC 10F .0323 BURKE COUNTY**

4 (a) Regulated Areas. This Rule applies only to the following waters or portions of waters in Burke County:

5 (1) Lake Hickory;

6 (2) Lake James, delineated by markers consistent with Paragraph (e) of this Rule, at the following
7 locations:

8 (A) Holiday Shores Subdivision;

9 (B) Lake James Campground;

10 (C) Laurel Pointe Subdivision;

11 (D) The waters of Boyd Moore Cove shore to shore, north of a line from a point on the
12 northwest shore at 35.76667 N, 81.82337 W to a point on the southeast shore at 35.76558
13 N, 81.82245 W;

14 (E) East Shores development;

15 (F) Eastern shore of Lake James at Mallard Cove;

16 (G) That portion of Lake James shore to shore, beginning 50 yards northeast of the NC
17 Highway 126 bridge at a line from a point on the north shore at 35.74398 N, 81.88426 W,
18 to a point on the south shore at 35.74334 N, 81.88383 W, and ending at a line 215 yards
19 southwest of the NC Highway 126 bridge, from a point on the northwest shore at 35.74257
20 N, 81.88679 W to a point on the southeast shore at 35.74160 N, 81.88516 W;

21 (H) Within 50 yards of the Canal Bridge Boating Access area dock;

22 (I) The waters within 50 yards of the end of the South Pointe Subdivision peninsula from a
23 point east of the peninsula at 35.76399 N, 81.83768 W, and surrounding the peninsula from
24 a point east of the peninsula at 35.76399 N, 81.83768 W, and surrounding the peninsula to
25 a point west of the peninsula at 35.76307 N, 81.83648 W; and

26 (J) The waters of Sherman's Hollow Cove shore to shore, and contiguous with those waters
27 beginning at a point on the west shore of the mouth of Sherman's Hollow Cove at 35.76423
28 N, 81.82748 W, extending northeast within 50 yards of Linville Point to a point on the
29 northeast shore of Linville Point at 35.76596 N, 81.82432 W.

30 (3) Lake Rhodhiss.

31 (b) Speed Limit. No person shall operate a vessel at greater than no-wake speed within 50 yards of any designated
32 public boat launching ramp, bridge, marina, boat storage structure, boat service area, dock, or pier; or while on
33 designated waters of the areas described in Paragraph (a) of this Rule.

34 (c) Speed Limit in Mooring Areas. No person shall operate a vessel at greater than no-wake speed while within a
35 marked mooring area on the regulated areas described in Paragraph (a) of this Rule.

36 (d) Restricted Swimming Areas. No person operating or responsible for the operation of a vessel shall permit it to
37 enter any marked public swimming area on the regulated areas described in Paragraph (a) of this Rule.

1 (e) Placement of Markers. The Board of Commissioners of Burke County is the designated agency for placement of
2 the markers implementing this Rule, subject to the approval of the United States Coast Guard and the United States
3 Army Corps of Engineers.

4 (f) Notwithstanding Paragraphs (a) through (e) of this Rule, no person shall operate a vessel at greater than no-wake
5 speed in the waters known as Mill Creek at Lake James State Park, on Lake James shore to shore, beginning 345 yards
6 northwest of a line from a point on the southwest shore at 35.76016 N, 81.87322 W to a point on the northeast shore
7 at 35.762040 N, 81.87150 W, and ending at a line from a point on the southwest shore at 35.76215 N, 81.87624 W to
8 a point on the northeast shore at 35.76343 N, 81.87442 W. Vessel entry not authorized by the North Carolina Wildlife
9 Resources Commission shall be prohibited by establishment of a safety zone in the waters of Mill Creek on Lake
10 James, northeast and northwest of a line from a point on the southwest shore at 35.76215 N, 81.87624 W to a point
11 on the northeast shore at 35.76343 N, 81.87442 W. The North Carolina Wildlife Resources Commission shall be the
12 designated agency for placement and maintenance of markers for this regulated area.

13
14 *History Note: Authority G.S. 75A-3; 75A-15; 102-1.1.*

15 *Eff. July 1, 1976;*

16 *Amended Eff. December 1, 1995; December 1, 1994; December 1, 1992; March 1, 1992;*

17 *Temporary Amendment Eff. April 1, 1999;*

18 *Amended Eff. July 1, 2000;*

19 *Temporary Amendment Eff. August 15, 2001;*

20 *Amended Eff. July 1, 2009; May 1, 2009; August 1, 2002;*

21 *Pursuant to G.S. 150B-21.3A, rule is necessary without substantive public interest Eff. December*
22 *6, 2016;*

23 *Amended Eff. November 1, 2017;*

24 *Emergency Amendment Eff. November 2, 2020.*

25 *Temporary Amendment Eff. December 30, 2020.*