

Burgos, Alexander N

Subject: FW: 07 NCAC 13C .0102

From: Avery, Jonathan <jonathan.avery@ncdcr.gov>
Sent: Thursday, January 12, 2023 12:15 PM
To: Peaslee, William W <bill.peaslee@oah.nc.gov>
Cc: Burgos, Alexander N <alexander.burgos@oah.nc.gov>; McGhee, Dana <dana.McGhee@oah.nc.gov>
Subject: RE: 07 NCAC 13C .0102

Hi Bill,
Yes, please make those corrections. I apologize for the oversight.
Thanks,
Jonathan

Jonathan Avery
Assistant General Counsel
N.C. Department of Natural and Cultural Resources
Physical Address: 109 East Jones Street | Raleigh, North Carolina 27699
Mailing Address: 4601 Mail Service Center | Raleigh, North Carolina 27699
P: 919-814-6771 (New phone number) | jonathan.avery@ncdcr.gov

E-mail correspondence to and from this address may be subject to the North Carolina Public Records Law and may be disclosed to third parties.

From: Peaslee, William W <bill.peaslee@oah.nc.gov>
Sent: Thursday, January 12, 2023 11:24 AM
To: Avery, Jonathan <jonathan.avery@ncdcr.gov>
Cc: Burgos, Alexander N <alexander.burgos@oah.nc.gov>; McGhee, Dana <dana.McGhee@oah.nc.gov>
Subject: 07 NCAC 13C .0102

Good morning!

It was brought to my attention that (9) of the above captioned rule has subparts which are incorrectly labeled (1,2,3 should be a,b,c)

Also, there should be quotation marks around the word being defined.

With your consent, the Rules Division will correct these errors. Please respond.

Thank you.

William W. Peaslee
Rules Review Commission Counsel / Legislative Liaison
Office of Administrative Hearings
1711 New Hope Church Road
Raleigh NC, 27609
(984) 236-1939

Bill.Peaslee@oah.nc.gov

Email correspondence to and from this address may be subject to the North Carolina Public Records Law and may be disclosed to third parties by an authorized state official.

Burgos, Alexander N

Subject: FW: 01. 2023 DNCR Request for Changes
Attachments: 07 ncac 13c .0102 Definitions (Final Publication Version - Tech Changes 2022.01.03).doc; 07 ncac 13c .0201 Commercial Enterprises and Activities (Final Publication Version - Tech Changes 2022.12.29).doc; 07 ncac 13c .0303 Permissible Structural Dimensions (Final Publication Version - Tech Changes 2022.12.29).doc; 07 ncac 13c .0307 Condition of Structures (Final Publication Version - Tech Changes 2022.01.03).doc; 07 ncac 13c .0406 Water Level, Discharge (Final Publication Version - Tech Changes 2022.12.29).doc; 07 ncac 13c .0407 Mooring Buoys (Final Publication Version - Tech Changes 2022.01.03).doc

From: Peaslee, William W <bill.peaslee@oah.nc.gov>
Sent: Monday, January 9, 2023 8:55 AM
To: Rules, Oah <oah.rules@oah.nc.gov>; Avery, Jonathan <jonathan.avery@ncdcr.gov>
Cc: Burgos, Alexander N <alexander.burgos@oah.nc.gov>
Subject: FW: 01. 2023 DNCR Request for Changes

Good morning Jonathan

Absent any objection from you, the attached rules are being filed as the final rules for RRC review.

As always, if you have any questions or concerns pleased do not hesitate to contact me.

William W. Peaslee
Rules Review Commission Counsel / Legislative Liaison
Office of Administrative Hearings
1711 New Hope Church Road
Raleigh NC, 27609
(984) 236-1939
Bill.Peaslee@oah.nc.gov

Email correspondence to and from this address may be subject to the North Carolina Public Records Law and may be disclosed to third parties by an authorized state official.

Burgos, Alexander N

Subject: FW: 01. 2023 DNCR Request for Changes
Attachments: 07 ncac 13c .0301 State Lake Permits (Final Publication Version - Tech Changes 2022.01.06 v2).doc

From: Avery, Jonathan <jonathan.avery@ncdcr.gov>
Sent: Friday, January 6, 2023 3:47 PM
To: Peaslee, William W <bill.peaslee@oah.nc.gov>
Cc: Burgos, Alexander N <alexander.burgos@oah.nc.gov>
Subject: RE: 01. 2023 DNCR Request for Changes

Hi Bill,

I talked with DNCR/DPR about this and we've edited (g)(2) down to just the first clause. I hope this will satisfy your concern. If you need anything further or would like to discuss, please let me know.

Thanks,
Jonathan

Jonathan Avery
Assistant General Counsel
N.C. Department of Natural and Cultural Resources
Physical Address: 109 East Jones Street | Raleigh, North Carolina 27699
Mailing Address: 4601 Mail Service Center | Raleigh, North Carolina 27699
P: 919-814-6771 (New phone number) | jonathan.avery@ncdcr.gov

E-mail correspondence to and from this address may be subject to the North Carolina Public Records Law and may be disclosed to third parties.

Email correspondence to and from this address may be subject to the North Carolina Public Records Law and may be disclosed to third parties by an authorized state official.

1 07 NCAC 13C .0301 is readopted **with changes** as published in 37:08 NCR 626 as follows:

2
3 **07 NCAC 13C .0301 STATE LAKE PERMITS**

4 ~~(a) No pier, boat ramp, seawall, boat stall, pavilion, platform, patio, or other structure shall be built or maintained~~
5 ~~upon the floor of, erected in, or floating upon any state lake without a state lake permit.~~

6 ~~(b) Applications for a state lake permit may be made by submitting a completed application to the park office that~~
7 ~~manages the state lake which will be the subject of the permit.~~

8 ~~(c) The following uses of Division property, as defined in 07 NCAC 13B .0101(2), on a state lake shall require a~~
9 ~~state lake permit authorized by the Division:~~

10 ~~(1) initial construction of a structure;~~

11 ~~(2) major modification of an existing structure; and~~

12 ~~(3) transfer of ownership rights or interest in an existing structure.~~

13 ~~(d) State lake permits shall be available only to the following classes of persons and only for the state lake~~
14 ~~appurtenant to the applicant's property interest:~~

15 ~~(1) owners of waterfront property;~~

16 ~~(2) owners of an exclusive right to use waterfront property; and~~

17 ~~(3) towns, municipalities, or county governments at a public beach or at the end of a dedicated street~~
18 ~~abutting upon the waters of a state lake.~~

19 ~~(e) Applicants shall obtain an approved state lake permit signed by the Park Superintendent or his or her designee~~
20 ~~prior to beginning construction or major modification of a structure. A completed application for a state lake permit~~
21 ~~shall include the following information:~~

22 ~~(1) the name, permanent address, and phone number of the applicant;~~

23 ~~(2) the address of the waterfront property for which the permit is requested;~~

24 ~~(3) the name, address, and phone number of a pier agent, if applicable;~~

25 ~~(4) a written description of the structure for which the permit is desired, or if the structure already~~
26 ~~exists, the modification to be made to the structure;~~

27 ~~(5) a drawing, photograph, diagram, or other illustration depicting the structure for which the permit is~~
28 ~~requested. The drawing, photograph, diagram, or other illustration shall locate the structure~~
29 ~~relative to the waterfront property which gives rise to the right to apply for the permit and show~~
30 ~~compliance with the requirements of Rule .0303 of this Section. If the application is for~~
31 ~~modification of an existing structure, the applicant shall also locate in the drawing, photograph,~~
32 ~~diagram or other illustration the proposed modification with respect to the existing structure. The~~
33 ~~Division may request the applicant to provide professional drawings created by a licensed~~
34 ~~engineer or architect if the Division is not able to determine if the structure will comply with the~~
35 ~~rules of this Subchapter from the submitted drawing, photograph, diagram or other illustration;~~
36 ~~and~~

1 (6) a copy of the waterfront-property deed to which the structure would be appurtenant, or if the
2 structure is not to be attached to the waterfront property at the water line, the waterfront property
3 which gives rise to the right to apply for the permit. If the applicant does not own the property,
4 applicant shall also provide proof of the applicant's property rights which authorize them to apply
5 for the permit.

6 (f) Except as prohibited in Rule .0407(h) of this Subchapter, applicants shall obtain an approved state lake permit
7 transfer signed by the Park Superintendent or his or her designee in order to transfer any permit for a structure
8 permitted under these Rules. A completed application to transfer a state lake permit shall include the following
9 information:

10 (1) the name, permanent address, and phone number of the transferee;

11 (2) the address of the waterfront property for which the permit is requested;

12 (3) the permit number of the structure for which the permit transfer is requested;

13 (4) the name, address, and phone number of the transferor;

14 (5) the name, address, and phone number of a pier agent, if applicable; and

15 (6) proof of the conveyance, devise, or other mode of transfer of title to the property giving rise to the
16 right to the permit.

17 (g) The Park Superintendent or their designee shall issue a state lake permit on receipt of a completed application
18 unless:

19 (1) the construction, modification, or transfer will threaten the ~~[health, safety, and welfare]~~ health or
20 safety of persons using the state lake;

21 (2) the construction, modification, or transfer would ~~[create conditions that are inconsistent with or~~
22 ~~are]~~be detrimental to the protection ~~[and]~~or use of state ~~[property or would cause harm to areas of~~
23 ~~natural, cultural, or archaeological significance;]~~property;

24 (3) the construction, modification, or transfer would constitute a violation of applicable law or rule;

25 (4) the applicant has an outstanding balance resulting from unpaid state lake permit fees; or

26 (5) the construction or modification of the structure does not comply with the Rules of this
27 Subchapter.

28 (h) All structures permitted under this Rule shall be subject to the following additional provisions:

29 (1) No structure or any portion thereof, except boat ramps, shall be located closer than 15 feet from
30 the corners of the property for which the structure is permitted. Where adjoining waterfront
31 properties do not conform to the 15-foot requirement, the owners of said property ~~[may]~~shall
32 submit an application for a joint private state lake permit, including ~~[proof]~~a copy of a written
33 agreement between the property owners to share the structure, and request a waiver of the 15-foot
34 requirement from the Division. The Division shall waive the 15-foot requirement unless a safety
35 hazard would be created by permitting the structure or granting the waiver would create
36 noncompliance with the Rules of this Subchapter;

1 (2) No structure may be located within 25 feet of another structure, except ~~where a structure extends~~
2 ~~from~~ a seawall;

3 (3) Permit holders shall not collect any charges or fees for the use of structures that are permitted
4 under private, joint private, or public state lake permits, except for a homeowner association in
5 accordance with Rule .0407(e) of this Subchapter;

6 (4) Boats shall not be moored or tethered to a boat ramp;

7 (5) Swim lines shall require a Special Activity Permit issued in accordance with 07 NCAC 13B
8 .0104(d)(7); ~~and~~

9 (6) All permitted structures shall prominently display the structure's assigned permit number at all
10 ~~times.~~times; and

11 ~~(7) The following items shall not be stored or installed in storage boxes, lofts, and compartments on~~
12 ~~any structure:~~

13 ~~(i) electrical appliances or their components;~~

14 ~~(ii) fireworks or other explosives; or~~

15 ~~(iii) gasoline, oil, or any other petroleum-based or hazardous materials.]~~

16 (i) All structures which meet the following requirements shall be considered non-conforming structures:

17 (1) existed on February 1, 1974;

18 (2) are not conforming to permissible structural dimensions, as set forth in Rule .0303 of this Section,
19 at the time of the adoption of this Rule; and

20 (3) have previously been permitted by the Division.

21 Notwithstanding subsection (k) of this Rule, non-conforming structures shall continue to be permitted as long as the
22 structure is not the subject of a major modification. If a non-conforming structure is subject to a major modification,
23 then the entire structure shall be brought into compliance with the dimension requirements set forth in Rule .0303 of
24 this Section. ~~Repairs to maintain the safety of the structure are allowed; should such structures] Should a non-~~
25 ~~conforming structure~~ be destroyed or substantially damaged (greater than 50 percent or more of the existing
26 structure) from any causes, the structure shall be brought into compliance with the dimension requirements set forth
27 in Rule .0303 of this Section.

28 (j) All permits issued in accordance with this Rule are valid for one year from the date of issuance. Permit holders
29 shall renew their state lake permits on an annual basis to remain valid. All permit fees shall be paid at the time of
30 issuance or renewal in order for the permit to remain valid.

31 (k) Permits issued in accordance with this Rule may be revoked by the Division for one or more of the following
32 reasons:

33 (1) failure to pay any permit fee within 60 days after the due date thereof; or

34 (2) failure to bring a permitted structure into compliance with Rules of this Subchapter, unless
35 excepted under subsection (i) of this Rule, or with any term or condition imposed by the permit
36 within 30 days after receipt of a notice from the Division setting forth the corrective measures, in
37 accordance with Rule .0315 of this Section.

1 ~~After February 1, 1974, no pier, boat ramp, seawall, boat stall, pavilion, platform, patio or other structure, which~~
2 ~~requires a permit to be constructed initially, may be modified or enlarged so as to alter the design of the pier or other~~
3 ~~structure without first obtaining approval of the Division based upon a Permit Amendment Application Form~~
4 ~~provided by the Division. Such application shall be in accordance with Regulation .0309 of this Section. Such~~
5 ~~desired modification or enlargement must conform to the requirements of the regulations now in force. All such~~
6 ~~structures which were in existence on February 1, 1974, shall apply for a permit under these regulations. If the~~
7 ~~structure so existing conforms to the specifications governing size and otherwise, application may be made under the~~
8 ~~terms of Regulation .0311(1) of this Section. If the existing structure is not within the specifications as prescribed in~~
9 ~~these rules and regulations, application must be made under the terms of Regulation .0311(2) of this Section.~~

10
11 *History Note: Authority G.S. 143B-135.16;*
12 *Eff. February 1, 1976;*
13 *Transferred from 15A NCAC 12C .0301 Eff. April 1, ~~2017-2017~~;*
14 *Readopted Eff. February 1, 2023.*

Burgos, Alexander N

Subject: FW: 01. 2023 DNCR Request for Changes

From: Peaslee, William W <bill.peaslee@oah.nc.gov>
Sent: Friday, January 6, 2023 3:28 PM
To: Avery, Jonathan <jonathan.avery@ncdcr.gov>
Cc: Burgos, Alexander N <alexander.burgos@oah.nc.gov>
Subject: RE: 01. 2023 DNCR Request for Changes

To memorialize our telephone conversation:

In 07 NCAC 13C .0301(g)(2),

Either archaeological sites, historic areas, sensitive or fragile natural areas, or habitats need to be more defined, or removed. What criteria would the Park Superintendent use to determine whether a structure is “historical”, or whether an area is “sensitive” or “fragile”. Absent some criteria, the judgement would be completely subjective which raises the specter of unequal application of the rule from lake to lake.

If they are state property, does not the first part of the sentence not already address the issue?

Consider “(2) the construction, modification, or transfer would harm or be detrimental to the use of state property.”

William W. Peaslee
Rules Review Commission Counsel / Legislative Liaison
Office of Administrative Hearings
1711 New Hope Church Road
Raleigh NC, 27609
(984) 236-1939
Bill.Peaslee@oah.nc.gov

Email correspondence to and from this address may be subject to the North Carolina Public Records Law and may be disclosed to third parties by an authorized state official.

Burgos, Alexander N

Subject: FW: 01. 2023 DNCR Request for Changes
Attachments: 07 ncac 13c .0301 State Lake Permits (Final Publication Version - Tech Changes 2022.01.06).doc

From: Avery, Jonathan <jonathan.avery@ncdcr.gov>
Sent: Friday, January 6, 2023 2:55 PM
To: Peaslee, William W <bill.peaslee@oah.nc.gov>
Cc: Burgos, Alexander N <alexander.burgos@oah.nc.gov>
Subject: RE: 01. 2023 DNCR Request for Changes

Hi Bill,

Yes, in .0301, page 3, line 8, that was meant to be a strikethrough to delete the “and”. I fixed it and have attached the corrected copy. I apologize for the oversight.

As for .0307, I was attempting to address your requested tech change about paragraph (a) being ambiguous. It’s important to DPR to have something in their rules requiring permit holders to maintain their structures to deter and deal with safety issues with dilapidated and dangerous structures. They would prefer the language that was previously put forward, but I’m not sure how to deal with your concern that it’s ambiguous. Thoughts?

Thanks,
Jonathan

Jonathan Avery
Assistant General Counsel
N.C. Department of Natural and Cultural Resources
Physical Address: 109 East Jones Street | Raleigh, North Carolina 27699
Mailing Address: 4601 Mail Service Center | Raleigh, North Carolina 27699
P: 919-814-6771 (New phone number) | jonathan.avery@ncdcr.gov

E-mail correspondence to and from this address may be subject to the North Carolina Public Records Law and may be disclosed to third parties.

1 07 NCAC 13C .0301 is readopted **with changes** as published in 37:08 NCR 626 as follows:

2
3 **07 NCAC 13C .0301 STATE LAKE PERMITS**

4 (a) No pier, boat ramp, seawall, boat stall, pavilion, platform, patio, or other structure shall be built or maintained
5 upon the floor of, erected in, or floating upon any state lake without a state lake permit.

6 (b) Applications for a state lake permit may be made by submitting a completed application to the park office that
7 manages the state lake which will be the subject of the permit.

8 (c) The following uses of Division property, as defined in 07 NCAC 13B .0101(2), on a state lake shall require a
9 state lake permit authorized by the Division:

10 (1) initial construction of a structure;

11 (2) major modification of an existing structure; and

12 (3) transfer of ownership rights or interest in an existing structure.

13 (d) State lake permits shall be available only to the following classes of persons and only for the state lake
14 appurtenant to the applicant's property interest:

15 (1) owners of waterfront property;

16 (2) owners of an exclusive right to use waterfront property; and

17 (3) towns, municipalities, or county governments at a public beach or at the end of a dedicated street
18 abutting upon the waters of a state lake.

19 (e) Applicants shall obtain an approved state lake permit signed by the Park Superintendent or his or her designee
20 prior to beginning construction or major modification of a structure. A completed application for a state lake permit
21 shall include the following information:

22 (1) the name, permanent address, and phone number of the applicant;

23 (2) the address of the waterfront property for which the permit is requested;

24 (3) the name, address, and phone number of a pier agent, if applicable;

25 (4) a written description of the structure for which the permit is desired, or if the structure already
26 exists, the modification to be made to the structure;

27 (5) a drawing, photograph, diagram, or other illustration depicting the structure for which the permit is
28 requested. The drawing, photograph, diagram, or other illustration shall locate the structure
29 relative to the waterfront property which gives rise to the right to apply for the permit and show
30 compliance with the requirements of Rule .0303 of this Section. If the application is for
31 modification of an existing structure, the applicant shall also locate in the drawing, photograph,
32 diagram or other illustration the proposed modification with respect to the existing structure. The
33 Division may request the applicant to provide professional drawings created by a licensed
34 engineer or architect if the Division is not able to determine if the structure will comply with the
35 rules of this Subchapter from the submitted drawing, photograph, diagram or other illustration;
36 and

1 (6) a copy of the waterfront-property deed to which the structure would be appurtenant, or if the
2 structure is not to be attached to the waterfront property at the water line, the waterfront property
3 which gives rise to the right to apply for the permit. If the applicant does not own the property,
4 applicant shall also provide proof of the applicant's property rights which authorize them to apply
5 for the permit.

6 (f) Except as prohibited in Rule .0407(h) of this Subchapter, applicants shall obtain an approved state lake permit
7 transfer signed by the Park Superintendent or his or her designee in order to transfer any permit for a structure
8 permitted under these Rules. A completed application to transfer a state lake permit shall include the following
9 information:

10 (1) the name, permanent address, and phone number of the transferee;

11 (2) the address of the waterfront property for which the permit is requested;

12 (3) the permit number of the structure for which the permit transfer is requested;

13 (4) the name, address, and phone number of the transferor;

14 (5) the name, address, and phone number of a pier agent, if applicable; and

15 (6) proof of the conveyance, devise, or other mode of transfer of title to the property giving rise to the
16 right to the permit.

17 (g) The Park Superintendent or their designee shall issue a state lake permit on receipt of a completed application
18 unless:

19 (1) the construction, modification, or transfer will threaten the ~~[health, safety, and welfare]~~ health or
20 safety of persons using the state lake;

21 (2) the construction, modification, or transfer would ~~[create conditions that are inconsistent with or~~
22 ~~are]~~ be detrimental to the protection and use of state property, or ~~[would]~~ cause harm to ~~[areas of~~
23 ~~natural, cultural, or]~~ archaeological ~~[significance;]~~ sites or other historic structures, sensitive or
24 fragile natural areas, or the habitats of threatened or endangered species;

25 (3) the construction, modification, or transfer would constitute a violation of applicable law or rule;

26 (4) the applicant has an outstanding balance resulting from unpaid state lake permit fees; or

27 (5) the construction or modification of the structure does not comply with the Rules of this
28 Subchapter.

29 (h) All structures permitted under this Rule shall be subject to the following additional provisions:

30 (1) No structure or any portion thereof, except boat ramps, shall be located closer than 15 feet from
31 the corners of the property for which the structure is permitted. Where adjoining waterfront
32 properties do not conform to the 15-foot requirement, the owners of said property ~~[may]~~ shall
33 submit an application for a joint private state lake permit, including ~~[proof]~~ a copy of a written
34 agreement between the property owners to share the structure, and request a waiver of the 15-foot
35 requirement from the Division. The Division shall waive the 15-foot requirement unless a safety
36 hazard would be created by permitting the structure or granting the waiver would create
37 noncompliance with the Rules of this Subchapter;

1 (2) No structure may be located within 25 feet of another structure, except ~~where a structure extends~~
2 ~~from~~ a seawall;

3 (3) Permit holders shall not collect any charges or fees for the use of structures that are permitted
4 under private, joint private, or public state lake permits, except for a homeowner association in
5 accordance with Rule .0407(e) of this Subchapter;

6 (4) Boats shall not be moored or tethered to a boat ramp;

7 (5) Swim lines shall require a Special Activity Permit issued in accordance with 07 NCAC 13B
8 .0104(d)(7); ~~and~~

9 (6) All permitted structures shall prominently display the structure's assigned permit number at all
10 ~~times.~~times; and

11 ~~(7) The following items shall not be stored or installed in storage boxes, lofts, and compartments on~~
12 ~~any structure:~~

13 ~~(i) electrical appliances or their components;~~

14 ~~(ii) fireworks or other explosives; or~~

15 ~~(iii) gasoline, oil, or any other petroleum-based or hazardous materials.]~~

16 (i) All structures which meet the following requirements shall be considered non-conforming structures:

17 (1) existed on February 1, 1974;

18 (2) are not conforming to permissible structural dimensions, as set forth in Rule .0303 of this Section,
19 at the time of the adoption of this Rule; and

20 (3) have previously been permitted by the Division.

21 Notwithstanding subsection (k) of this Rule, non-conforming structures shall continue to be permitted as long as the
22 structure is not the subject of a major modification. If a non-conforming structure is subject to a major modification,
23 then the entire structure shall be brought into compliance with the dimension requirements set forth in Rule .0303 of
24 this Section. ~~Repairs to maintain the safety of the structure are allowed; should such structures~~ Should a non-
25 conforming structure be destroyed or substantially damaged (greater than 50 percent or more of the existing
26 structure) from any causes, the structure shall be brought into compliance with the dimension requirements set forth
27 in Rule .0303 of this Section.

28 (j) All permits issued in accordance with this Rule are valid for one year from the date of issuance. Permit holders
29 shall renew their state lake permits on an annual basis to remain valid. All permit fees shall be paid at the time of
30 issuance or renewal in order for the permit to remain valid.

31 (k) Permits issued in accordance with this Rule may be revoked by the Division for one or more of the following
32 reasons:

33 (1) failure to pay any permit fee within 60 days after the due date thereof; or

34 (2) failure to bring a permitted structure into compliance with Rules of this Subchapter, unless
35 excepted under subsection (i) of this Rule, or with any term or condition imposed by the permit
36 within 30 days after receipt of a notice from the Division setting forth the corrective measures, in
37 accordance with Rule .0315 of this Section.

1 ~~After February 1, 1974, no pier, boat ramp, seawall, boat stall, pavilion, platform, patio or other structure, which~~
2 ~~requires a permit to be constructed initially, may be modified or enlarged so as to alter the design of the pier or other~~
3 ~~structure without first obtaining approval of the Division based upon a Permit Amendment Application Form~~
4 ~~provided by the Division. Such application shall be in accordance with Regulation .0309 of this Section. Such~~
5 ~~desired modification or enlargement must conform to the requirements of the regulations now in force. All such~~
6 ~~structures which were in existence on February 1, 1974, shall apply for a permit under these regulations. If the~~
7 ~~structure so existing conforms to the specifications governing size and otherwise, application may be made under the~~
8 ~~terms of Regulation .0311(1) of this Section. If the existing structure is not within the specifications as prescribed in~~
9 ~~these rules and regulations, application must be made under the terms of Regulation .0311(2) of this Section.~~

10
11 *History Note: Authority G.S. 143B-135.16;*
12 *Eff. February 1, 1976;*
13 *Transferred from 15A NCAC 12C .0301 Eff. April 1, ~~2017-2017~~;*
14 *Readopted Eff. February 1, 2023.*

Burgos, Alexander N

Subject: FW: 01. 2023 DNCR Request for Changes

From: Peaslee, William W <bill.peaslee@oah.nc.gov>
Sent: Friday, January 6, 2023 2:28 PM
To: Avery, Jonathan <jonathan.avery@ncdcr.gov>
Cc: Burgos, Alexander N <alexander.burgos@oah.nc.gov>
Subject: RE: 01. 2023 DNCR Request for Changes

In Rule .0301, Page 3, Line 8, why is there an “and” there? I think you may have intended to strike through the word.

In Rule .0307, if the codes and regulations are applicable, Paragraph (a) is unnecessary is it not?

William W. Peaslee
Rules Review Commission Counsel / Legislative Liaison
Office of Administrative Hearings
1711 New Hope Church Road
Raleigh NC, 27609
(984) 236-1939
Bill.Peaslee@oah.nc.gov

Email correspondence to and from this address may be subject to the North Carolina Public Records Law and may be disclosed to third parties by an authorized state official.

From: Avery, Jonathan <jonathan.avery@ncdcr.gov>
Sent: Friday, January 6, 2023 12:48 PM
To: Peaslee, William W <bill.peaslee@oah.nc.gov>
Cc: Burgos, Alexander N <alexander.burgos@oah.nc.gov>
Subject: RE: 01. 2023 DNCR Request for Changes

Hi Bill,

Attached you will find my responses to the requested tech changes as well as the rules with the corresponding edits. I've only included the rules that actually had tech changes, but if I need to include them all, please let me know. Thanks again for your help through the process and I hope they sail smoothly through RRC approval. If there is anything else you need from me, please let me know.

Thank you,
Jonathan

Jonathan Avery
Assistant General Counsel
N.C. Department of Natural and Cultural Resources
Physical Address: 109 East Jones Street | Raleigh, North Carolina 27699
Mailing Address: 4601 Mail Service Center | Raleigh, North Carolina 27699
P: 919-814-6771 (New phone number) | jonathan.avery@ncdcr.gov

E-mail correspondence to and from this address may be subject to the North Carolina Public Records Law and may be disclosed to third parties.

REQUEST FOR CHANGES PURSUANT TO G.S. 150B-21.10

AGENCY: NC Department of Natural and Cultural Resources

RULE CITATION: 07 NCAC 13C .0102

DEADLINE FOR RECEIPT: January 6, 2023

PLEASE NOTE: This request may extend to several pages. Please be sure you have reached the end of the document.

The Rules Review Commission staff has completed its review of this Rule prior to the Commission's next meeting. The Commission has not yet reviewed this Rule and therefore there has not been a determination as to whether the Rule will be approved. You may email the reviewing attorney to inquire concerning the staff recommendation.

In reviewing this Rule, the staff recommends the following changes be made:

Lines 5: strike “,but not limited to,”.

*Line 9, (2): Is an oar machinery?
No, DNCR would not consider an oar to be machinery.*

Line30, (10): Either define or delete “slow”.

Line 1, (14): “Permitted under a state lake permit” pursuant which rule?

Line 20, (22): Add a comma after “upon”.

Please retype the rule accordingly and resubmit it to our office at 1711 New Hope Church Road, Raleigh, North Carolina 27609.

William W. Peaslee
Commission Counsel

Date submitted to agency: December 19, 2022

REQUEST FOR CHANGES PURSUANT TO G.S. 150B-21.10

AGENCY: NC Department of Natural and Cultural Resources

RULE CITATION: 07 NCAC 13C .0201

DEADLINE FOR RECEIPT: January 6, 2023

PLEASE NOTE: This request may extend to several pages. Please be sure you have reached the end of the document.

The Rules Review Commission staff has completed its review of this Rule prior to the Commission's next meeting. The Commission has not yet reviewed this Rule and therefore there has not been a determination as to whether the Rule will be approved. You may email the reviewing attorney to inquire concerning the staff recommendation.

In reviewing this Rule, the staff recommends the following changes be made:

Line 11: Consider simply "(3) by the rules of this Subchapter." In the alternative, strike ";but not limited to,".

Please retype the rule accordingly and resubmit it to our office at 1711 New Hope Church Road, Raleigh, North Carolina 27609.

William W. Peaslee
Commission Counsel

Date submitted to agency: December 19, 2022

REQUEST FOR CHANGES PURSUANT TO G.S. 150B-21.10

AGENCY: NC Department of Natural and Cultural Resources

RULE CITATION: 07 NCAC 13C .0202

DEADLINE FOR RECEIPT: January 6, 2023

PLEASE NOTE: This request may extend to several pages. Please be sure you have reached the end of the document.

The Rules Review Commission staff has completed its review of this Rule prior to the Commission's next meeting. The Commission has not yet reviewed this Rule and therefore there has not been a determination as to whether the Rule will be approved. You may email the reviewing attorney to inquire concerning the staff recommendation.

In reviewing this Rule, the staff recommends the following changes be made:

No changes requested.

Please retype the rule accordingly and resubmit it to our office at 1711 New Hope Church Road, Raleigh, North Carolina 27609.

William W. Peaslee
Commission Counsel

Date submitted to agency: December 19, 2022

REQUEST FOR CHANGES PURSUANT TO G.S. 150B-21.10

AGENCY: NC Department of Natural and Cultural Resources

RULE CITATION: 07 NCAC 13C .0301

DEADLINE FOR RECEIPT: January 6, 2023

PLEASE NOTE: This request may extend to several pages. Please be sure you have reached the end of the document.

The Rules Review Commission staff has completed its review of this Rule prior to the Commission's next meeting. The Commission has not yet reviewed this Rule and therefore there has not been a determination as to whether the Rule will be approved. You may email the reviewing attorney to inquire concerning the staff recommendation.

In reviewing this Rule, the staff recommends the following changes be made:

*Lines 6 and 20: "By "application" does the agency mean a form?
Yes, the contents of which are outlined in section (e) of this rule.*

*Lines 17-23, (g): The standards listed in (1) & (2) are subjective and ambiguous.
DNCR has made edits based on conversation with RRC staff in (1) and (2) and more clearly defined the areas of potential harm in (2).*

Line 31, (h): Change "may" to "shall".

Line 32: (h)(1): Does the agency want "proof" of a written agreement, or a copy of the agreement?

Line 1, (h)(2): Is the rule waived as to all structures extending from the seawall? Or is one additional structure permitted in addition to the seawall? Sentence has been edited to address staff's concerns.

Line 19-20, (i): There does not appear to be a rule prohibiting repairs so this permissive language does not appear to be necessary. Consider re-writing lines 19-21 for clarity.

Please retype the rule accordingly and resubmit it to our office at 1711 New Hope Church Road, Raleigh, North Carolina 27609.

William W. Peaslee
Commission Counsel

Date submitted to agency: December 19, 2022

REQUEST FOR CHANGES PURSUANT TO G.S. 150B-21.10

AGENCY: NC Department of Natural and Cultural Resources

RULE CITATION: 07 NCAC 13C .0303

DEADLINE FOR RECEIPT: January 6, 2023

PLEASE NOTE: This request may extend to several pages. Please be sure you have reached the end of the document.

The Rules Review Commission staff has completed its review of this Rule prior to the Commission's next meeting. The Commission has not yet reviewed this Rule and therefore there has not been a determination as to whether the Rule will be approved. You may email the reviewing attorney to inquire concerning the staff recommendation.

In reviewing this Rule, the staff recommends the following changes be made:

Lines 5-6: strike “;but not limited to,”.

Lines 12-16, (7)(b): This subparagraph appears to be unrelated to Paragraph (7). Should it be its own Paragraph? Does it even belong in this Rule which addresses “structural dimensions? Per your concern, DNCR has moved subsection (b) to 07 NCAC 13C .0301(h)(7).

Please retype the rule accordingly and resubmit it to our office at 1711 New Hope Church Road, Raleigh, North Carolina 27609.

William W. Peaslee
Commission Counsel

Date submitted to agency: December 19, 2022

REQUEST FOR CHANGES PURSUANT TO G.S. 150B-21.10

AGENCY: NC Department of Natural and Cultural Resources

RULE CITATION: 07 NCAC 13C .0307

DEADLINE FOR RECEIPT: January 6, 2023

PLEASE NOTE: This request may extend to several pages. Please be sure you have reached the end of the document.

The Rules Review Commission staff has completed its review of this Rule prior to the Commission's next meeting. The Commission has not yet reviewed this Rule and therefore there has not been a determination as to whether the Rule will be approved. You may email the reviewing attorney to inquire concerning the staff recommendation.

In reviewing this Rule, the staff recommends the following changes be made:

*Lines 9-10: This sentence is facially ambiguous.
Sentence has been edited to address staff's concerns.*

Line 20: Replace "may" with "shall".

Please retype the rule accordingly and resubmit it to our office at 1711 New Hope Church Road, Raleigh, North Carolina 27609.

REQUEST FOR CHANGES PURSUANT TO G.S. 150B-21.10

AGENCY: NC Department of Natural and Cultural Resources

RULE CITATION: 07 NCAC 13C .0315

DEADLINE FOR RECEIPT: January 6, 2023

PLEASE NOTE: This request may extend to several pages. Please be sure you have reached the end of the document.

The Rules Review Commission staff has completed its review of this Rule prior to the Commission's next meeting. The Commission has not yet reviewed this Rule and therefore there has not been a determination as to whether the Rule will be approved. You may email the reviewing attorney to inquire concerning the staff recommendation.

In reviewing this Rule, the staff recommends the following changes be made:

No changes requested.

ease retype the rule accordingly and resubmit it to our office at 1711 New Hope Church Road, Raleigh, North Carolina 27609.

William W. Peaslee
Commission Counsel

Date submitted to agency: December 19, 2022

REQUEST FOR CHANGES PURSUANT TO G.S. 150B-21.10

AGENCY: NC Department of Natural and Cultural Resources

RULE CITATION: 07 NCAC 13C .0406

DEADLINE FOR RECEIPT: January 6, 2023

PLEASE NOTE: This request may extend to several pages. Please be sure you have reached the end of the document.

The Rules Review Commission staff has completed its review of this Rule prior to the Commission's next meeting. The Commission has not yet reviewed this Rule and therefore there has not been a determination as to whether the Rule will be approved. You may email the reviewing attorney to inquire concerning the staff recommendation.

In reviewing this Rule, the staff recommends the following changes be made:

Line 10: Strike "but not limited to".

Please retype the rule accordingly and resubmit it to our office at 1711 New Hope Church Road, Raleigh, North Carolina 27609.

William W. Peaslee
Commission Counsel

Date submitted to agency: December 19, 2022

REQUEST FOR CHANGES PURSUANT TO G.S. 150B-21.10

AGENCY: NC Department of Natural and Cultural Resources

RULE CITATION: 07 NCAC 13C .0407

DEADLINE FOR RECEIPT: January 6, 2023

PLEASE NOTE: This request may extend to several pages. Please be sure you have reached the end of the document.

The Rules Review Commission staff has completed its review of this Rule prior to the Commission's next meeting. The Commission has not yet reviewed this Rule and therefore there has not been a determination as to whether the Rule will be approved. You may email the reviewing attorney to inquire concerning the staff recommendation.

In reviewing this Rule, the staff recommends the following changes be made:

Line 6: Permitted by the Division pursuant to what rule or process?

Line 9: Replace "may" with "shall".

Line 24: Is the agency requiring mooring buoys to be maintained or stating a fact? If it is a requirement, define maintaining. If stating a fact, why is this paragraph necessary? [DNCR edited the rule to define maintaining.](#)

Please retype the rule accordingly and resubmit it to our office at 1711 New Hope Church Road, Raleigh, North Carolina 27609.

William W. Peaslee
Commission Counsel

Date submitted to agency: December 19, 2022

07 NCAC 13C .0102 is amended **with changes** as published in 37:08 NCR 626 as follows:

07 NCAC 13C .0102 DEFINITIONS

The following definitions apply to this Chapter:

- (1) Appliances means any major electrical, gas, heating, or cooling device **including, but not limited to,** including refrigerators, stoves, heaters, freezers, air conditioners, or any other device designed to be permanently situated or attached; Appliances shall not be construed to include lights or boats hoists;
- (2) Boat means any vessel equipped with any propulsion machinery, whether or not any such machinery is the principal source of propulsion;
- (3) Boat Ramp means any permanent or temporary structure which is placed on the floor of a state lake for the purpose of allowing boats to enter or be removed from a state lake;
- (4) Boat Slip means any structure adjoining, attached to, or part of a pier which has the capacity to store one boat;
- (5) Commercial means, when applied to any permit issued or application submitted under this Subchapter, that a structure or activity shall be used primarily for gain or profit;
- (6) Floor Level means the level of the structure closest to the water;
- (7) Joint Private means, when applied to any permit issued or application submitted under this Subchapter, that a structure is in joint ownership between two or more waterfront property owners and constructed on the owner’s waterfront property in accordance with Rule .0301(h)(1) of this Subchapter;
- (8) Major Modification means replacement of 50 percent or more of the existing structure, or a modification which would change the existing dimensions of the structure;
- (9) Mooring Buoy means a device to which a vessel can be moored consisting of
 - (1) a closed cell foam buoy with a hard shell,
 - (2) a screw anchor capable of attaching to the lake floor,
 - (3) a swivel device affixed into the anchoring, and
 - (4) chains capable of anchoring the buoy and a vessel;
- (10) No Wake Zone means, an area created in accordance with G.S. 75A-15, within which vessels are required to travel at a **slow** speed that creates no appreciable wake;
- (11) Owner means any person or entity owning, leasing, operating, or having the exclusive use of a structure or any waterfront property;
- (12) Patio means any floor area of a pier, whether covered or uncovered, which directly adjoins the shoreline without using a walkway, not including walkways;
- (13) Pavilion means any roofed structure erected above the floor level of a pier and which does not directly adjoin the shoreline other than via a walkway;

- 1 (14) Pier means an entire structure, permitted under a state lake ~~[permit,]permit pursuant to Rule .0301~~
2 of this Subchapter, leading out from the shore into a state lake, which may include walkways,
3 patios, platforms, pavilions, and boat slips;
- 4 (15) Pier Agent means a representative acting on behalf of a homeowner's association, corporation,
5 street association, or in a multiple-owner situation who is the sole contact and authority regarding
6 a permitted structure;
- 7 (16) Platform means any floor area of a pier, other than walkways, which does not directly adjoin the
8 shoreline;
- 9 (17) Private means, when applied to any permit issued or application submitted under this Subchapter,
10 that such structure shall be used for the primary enjoyment of the owner and his or her personal
11 guests, invitees, tenants, or lessees;
- 12 (18) Projected Property Lines means a linear projection of the property boundaries at each of the two
13 property corners touching at the mean high water mark of the shoreline;
- 14 (19) Public means, when applied to any permit issued under this Subchapter, a government-owned
15 structure or a structure open to the public with no fee;
- 16 (20) Seawall means a wall or embankment erected to prevent the water of a state lake from encroaching
17 on or eroding an area of land;
- 18 (21) State Lake means all property up to the mean high water mark, whether covered by water or not,
19 in any body of water identified in Rule .0101 of this Section;
- 20 (22) Structure means any pier, seawall, boat ramp, boat stall, mooring buoy, or other object constructed
21 over, upon, or attached to the floor of a state lake;
- 22 (23) Swim Line means a line or rope with a series of floatation devices used to delineate an area of
23 surface water for the purpose of swimming;
- 24 (24) Vessel means any watercraft, other than a seaplane on the water, used or capable of being used as
25 a means of transportation or habitation on the water;
- 26 (25) Walkway means the floored area of a pier, excluding a patio, platform, pavilion, and boat stall,
27 used for egress and ingress on the pier; and
- 28 (26) Waterfront Property means any real property abutting upon a state lake.
29 ~~State Lake. The term state lake or state lakes, unless specifically limited shall be deemed to~~
30 ~~include all property up to the mean high water mark, whether covered by water or not, in White~~
31 ~~Lake, Singletary Lake, Bay Tree Lake, Jones Lake, Salters Lake, Lake Waccamaw, and Lake~~
32 ~~Phelps;~~
- 33 (2) ~~Mean High Water Mark. The highest point on the shore of any lake to which water reaches under~~
34 ~~normal circumstances;~~
- 35 (3) ~~Regulations. Any regulation duly adopted by the Department of Natural Resources and~~
36 ~~Community Development, and posted as a state lakes regulation;~~

- 1 ~~(4) — Owner. Any person, firm, association, partnership, municipality, county, or corporation owning,~~
2 ~~leasing, operating or having the exclusive use of a pier, structure or any property under a lease or~~
3 ~~otherwise;~~
- 4 ~~(5) — Private. The term private when applied to any permit, shall be deemed to mean that such permit~~
5 ~~shall be used for the primary enjoyment of the owner's family, personal guests, invitees, tenants or~~
6 ~~lessees. With private permits, the owner may not collect any charge or fee for the use of any pier,~~
7 ~~boat, ramp or other structure which is the subject matter of the permit;~~
- 8 ~~(6) — Joint Private. The term joint private when applied to any permit means that the permitted structure~~
9 ~~is in joint ownership. Adjoining property owners who do not have sufficient land to meet the~~
10 ~~maximum measurement and limitations may apply for this permit. With joint private permits, the~~
11 ~~owners may not collect any charges or fees for the use of any pier, boat, ramp or other structure~~
12 ~~which is the subject matter of the permit. This term shall not be construed within the context of~~
13 ~~these regulations to mean any single family dwelling;~~
- 14 ~~(7) — Commercial. The term commercial when applied to any permit means that the permitted structure~~
15 ~~and activity shall be used primarily for gain or profit. This term shall not be construed within the~~
16 ~~context of these regulations to mean any single family dwelling;~~
- 17 ~~(8) — Permittee. Any person to whom a permit is issued;~~
- 18 ~~(9) — Pier. The entire structure, including walkway, patio, platform, pavilion and boat stall;~~
- 19 ~~(10) — Walkway. The floored area of a pier excluding the patio, platform, pavilion and boat stall, used for~~
20 ~~egress and ingress on the pier;~~
- 21 ~~(11) — Pavilion. Any roofed structure erected above the floor level of a pier;~~
- 22 ~~(12) — Platform. Any floor area of a pier other than walkways, wherever located;~~
- 23 ~~(13) — Patio. Any floor area of a pier, whether covered or uncovered, which adjoins that shoreline of a~~
24 ~~land area of the owner's real property, not including walkways;~~
- 25 ~~(14) — Boat Stall. Any structure adjoining or attached to a pier which has the capacity to store one boat;~~
- 26 ~~(15) — Appliances. Any major electrical, gas, heating, or cooling device including, but not being limited~~
27 ~~to, refrigerators, stoves, heaters, freezers, air conditioners, or any other device or devices designed~~
28 ~~to be permanently situated or attached; Appliances shall not be construed to include lights or boats~~
29 ~~hoists;~~
- 30 ~~(16) — Transfer. Any devolution of title to or interest in water front property by deed, will, intestate~~
31 ~~succession, or otherwise by operation of any instrument or law;~~
- 32 ~~(17) — Boat Ramp. Any permanent or temporary structure which is placed on the floor of a state lake for~~
33 ~~the purpose of allowing boats to enter or be removed from a state lake; Boat ramp shall not be~~
34 ~~interpreted to mean boat stall;~~
- 35 ~~(18) — Lake Front Property. Any property adjoining or abutting upon a state lake.~~

36
37 *History Note: Authority G.S. 143B-135.16;*

1 *Eff. February 1, 1976;*
2 *Amended Eff. August 1, 1988; April 4, 1979;*
3 *Transferred from 15A NCAC 12C .0102 Eff. April 1, 2017;*
4 *Pursuant to G.S. 150B-21.3A, rule is necessary without substantive public interest Eff. May 1,*
5 *2018-2018;*
6 *Amended Eff. February 1, 2023.*

1 07 NCAC 13C .0201 is readopted **with changes** as published in 37:08 NCR 626 as follows:

2

3 **07 NCAC 13C .0201 COMMERCIAL ENTERPRISES AND ACTIVITIES**

4 ~~No person, being without a permit shall, in or upon any state lake or within or upon any structure on the floor of any~~
5 ~~state lake, sell or offer for sale, hire, lease or let out, any object of merchandise, property, privilege, service or any~~
6 ~~other thing, or~~ No person shall engage in any businessbusiness, or erect any building or other structure
7 whatsoever for commercial purposes in or upon any state lake or within or upon any structure on or attached to the
8 floor of any state lake, except as authorized:

9 (1) by a permit issued in accordance with 07 NCAC 13B .0104;

10 (2) under a long-term contract with the State; or

11 (3) **[elsewhere in the rules of this Subchapter, including, but not limited to, Rules .0301 and .0407 of this**
12 **Subchapter.]**by the rules of this Subchapter.

13

14 *History Note: Authority G.S. 143B-135.16;*

15 *Eff. February 1, 1976;*

16 *Transferred from 15A NCAC 12C .0201 Eff. April 1, ~~2017~~2017;*

17 *Readopted Eff. February 1, 2023.*

1 07 NCAC 13C .0301 is readopted **with changes** as published in 37:08 NCR 626 as follows:

2
3 **07 NCAC 13C .0301 STATE LAKE PERMITS**

4 (a) No pier, boat ramp, seawall, boat stall, pavilion, platform, patio, or other structure shall be built or maintained
5 upon the floor of, erected in, or floating upon any state lake without a state lake permit.

6 (b) Applications for a state lake permit may be made by submitting a completed application to the park office that
7 manages the state lake which will be the subject of the permit.

8 (c) The following uses of Division property, as defined in 07 NCAC 13B .0101(2), on a state lake shall require a
9 state lake permit authorized by the Division:

10 (1) initial construction of a structure;

11 (2) major modification of an existing structure; and

12 (3) transfer of ownership rights or interest in an existing structure.

13 (d) State lake permits shall be available only to the following classes of persons and only for the state lake
14 appurtenant to the applicant's property interest:

15 (1) owners of waterfront property;

16 (2) owners of an exclusive right to use waterfront property; and

17 (3) towns, municipalities, or county governments at a public beach or at the end of a dedicated street
18 abutting upon the waters of a state lake.

19 (e) Applicants shall obtain an approved state lake permit signed by the Park Superintendent or his or her designee
20 prior to beginning construction or major modification of a structure. A completed application for a state lake permit
21 shall include the following information:

22 (1) the name, permanent address, and phone number of the applicant;

23 (2) the address of the waterfront property for which the permit is requested;

24 (3) the name, address, and phone number of a pier agent, if applicable;

25 (4) a written description of the structure for which the permit is desired, or if the structure already
26 exists, the modification to be made to the structure;

27 (5) a drawing, photograph, diagram, or other illustration depicting the structure for which the permit is
28 requested. The drawing, photograph, diagram, or other illustration shall locate the structure
29 relative to the waterfront property which gives rise to the right to apply for the permit and show
30 compliance with the requirements of Rule .0303 of this Section. If the application is for
31 modification of an existing structure, the applicant shall also locate in the drawing, photograph,
32 diagram or other illustration the proposed modification with respect to the existing structure. The
33 Division may request the applicant to provide professional drawings created by a licensed
34 engineer or architect if the Division is not able to determine if the structure will comply with the
35 rules of this Subchapter from the submitted drawing, photograph, diagram or other illustration;
36 and

1 (6) a copy of the waterfront-property deed to which the structure would be appurtenant, or if the
2 structure is not to be attached to the waterfront property at the water line, the waterfront property
3 which gives rise to the right to apply for the permit. If the applicant does not own the property,
4 applicant shall also provide proof of the applicant's property rights which authorize them to apply
5 for the permit.

6 (f) Except as prohibited in Rule .0407(h) of this Subchapter, applicants shall obtain an approved state lake permit
7 transfer signed by the Park Superintendent or his or her designee in order to transfer any permit for a structure
8 permitted under these Rules. A completed application to transfer a state lake permit shall include the following
9 information:

10 (1) the name, permanent address, and phone number of the transferee;

11 (2) the address of the waterfront property for which the permit is requested;

12 (3) the permit number of the structure for which the permit transfer is requested;

13 (4) the name, address, and phone number of the transferor;

14 (5) the name, address, and phone number of a pier agent, if applicable; and

15 (6) proof of the conveyance, devise, or other mode of transfer of title to the property giving rise to the
16 right to the permit.

17 (g) The Park Superintendent or their designee shall issue a state lake permit on receipt of a completed application
18 unless:

19 (1) the construction, modification, or transfer will threaten the ~~[health, safety, and welfare]~~ health or
20 safety of persons using the state lake;

21 (2) the construction, modification, or transfer would ~~[create conditions that are inconsistent with or~~
22 ~~are]~~be detrimental to the protection and use of state property, or ~~[would]~~cause harm to ~~[areas of~~
23 ~~natural, cultural, or]~~ archaeological ~~[significance;]~~sites or other historic structures, sensitive or
24 fragile natural areas, or the habitats of threatened or endangered species;

25 (3) the construction, modification, or transfer would constitute a violation of applicable law or rule;

26 (4) the applicant has an outstanding balance resulting from unpaid state lake permit fees; or

27 (5) the construction or modification of the structure does not comply with the Rules of this
28 Subchapter.

29 (h) All structures permitted under this Rule shall be subject to the following additional provisions:

30 (1) No structure or any portion thereof, except boat ramps, shall be located closer than 15 feet from
31 the corners of the property for which the structure is permitted. Where adjoining waterfront
32 properties do not conform to the 15-foot requirement, the owners of said property ~~[may]~~shall
33 submit an application for a joint private state lake permit, including ~~[proof]~~a copy of a written
34 agreement between the property owners to share the structure, and request a waiver of the 15-foot
35 requirement from the Division. The Division shall waive the 15-foot requirement unless a safety
36 hazard would be created by permitting the structure or granting the waiver would create
37 noncompliance with the Rules of this Subchapter;

1 (2) No structure may be located within 25 feet of another structure, except ~~where a structure extends~~
2 ~~from~~ a seawall;

3 (3) Permit holders shall not collect any charges or fees for the use of structures that are permitted
4 under private, joint private, or public state lake permits, except for a homeowner association in
5 accordance with Rule .0407(e) of this Subchapter;

6 (4) Boats shall not be moored or tethered to a boat ramp;

7 (5) Swim lines shall require a Special Activity Permit issued in accordance with 07 NCAC 13B
8 .0104(d)(7); ~~and~~

9 (6) All permitted structures shall prominently display the structure's assigned permit number at all
10 ~~times.~~times; and

11 ~~(7) The following items shall not be stored or installed in storage boxes, lofts, and compartments on~~
12 ~~any structure:~~

13 ~~(i) electrical appliances or their components;~~

14 ~~(ii) fireworks or other explosives; or~~

15 ~~(iii) gasoline, oil, or any other petroleum-based or hazardous materials.]~~

16 (i) All structures which meet the following requirements shall be considered non-conforming structures:

17 (1) existed on February 1, 1974;

18 (2) are not conforming to permissible structural dimensions, as set forth in Rule .0303 of this Section,
19 at the time of the adoption of this Rule; and

20 (3) have previously been permitted by the Division.

21 Notwithstanding subsection (k) of this Rule, non-conforming structures shall continue to be permitted as long as the
22 structure is not the subject of a major modification. If a non-conforming structure is subject to a major modification,
23 then the entire structure shall be brought into compliance with the dimension requirements set forth in Rule .0303 of
24 this Section. ~~Repairs to maintain the safety of the structure are allowed; should such structures] Should a non-~~
25 conforming structure be destroyed or substantially damaged (greater than 50 percent or more of the existing
26 structure) from any causes, the structure shall be brought into compliance with the dimension requirements set forth
27 in Rule .0303 of this Section.

28 (j) All permits issued in accordance with this Rule are valid for one year from the date of issuance. Permit holders
29 shall renew their state lake permits on an annual basis to remain valid. All permit fees shall be paid at the time of
30 issuance or renewal in order for the permit to remain valid.

31 (k) Permits issued in accordance with this Rule may be revoked by the Division for one or more of the following
32 reasons:

33 (1) failure to pay any permit fee within 60 days after the due date thereof; or

34 (2) failure to bring a permitted structure into compliance with Rules of this Subchapter, unless
35 excepted under subsection (i) of this Rule, or with any term or condition imposed by the permit
36 within 30 days after receipt of a notice from the Division setting forth the corrective measures, in
37 accordance with Rule .0315 of this Section.

1 ~~After February 1, 1974, no pier, boat ramp, seawall, boat stall, pavilion, platform, patio or other structure, which~~
2 ~~requires a permit to be constructed initially, may be modified or enlarged so as to alter the design of the pier or other~~
3 ~~structure without first obtaining approval of the Division based upon a Permit Amendment Application Form~~
4 ~~provided by the Division. Such application shall be in accordance with Regulation .0309 of this Section. Such~~
5 ~~desired modification or enlargement must conform to the requirements of the regulations now in force. All such~~
6 ~~structures which were in existence on February 1, 1974, shall apply for a permit under these regulations. If the~~
7 ~~structure so existing conforms to the specifications governing size and otherwise, application may be made under the~~
8 ~~terms of Regulation .0311(1) of this Section. If the existing structure is not within the specifications as prescribed in~~
9 ~~these rules and regulations, application must be made under the terms of Regulation .0311(2) of this Section.~~

10
11 *History Note: Authority G.S. 143B-135.16;*

12 *Eff. February 1, 1976;*

13 *Transferred from 15A NCAC 12C .0301 Eff. April 1, ~~2017-2017~~;*

14 *Readopted Eff. February 1, 2023.*

07 NCAC 13C .0303 is readopted **with changes** as published in 37:08 NCR 626 as follows:

07 NCAC 13C .0303 PERMISSIBLE STRUCTURAL DIMENSIONS

~~Permits shall be approved for piers, boat ramps, boat stalls, pavilions, platforms, patios and other structures subject to the following limitations:~~ Dimensions of a structure shall include all attachments to the structure, **including, but not limited to,** including lifts and floating docks. In order to be eligible for permit approval, all structures in or on state lakes shall conform to within the following structural dimensions:

- (1) Commercial Piers. Maximum measurements for a commercial pier shall be as follows:
 - (a) walkways, 16 feet wide;
 - (b) length of ~~pier structure, pier,~~ 375 feet;
 - (c) platform, pavilion; 32 feet in width;
 - (d) platform, pavilion; 50 feet in length;
 - (e) patio, 20 feet in length extending towards the water from the mean high water mark.
~~water mark.~~
- (2) ~~Private piers shall conform to the maximum requirements:~~ Private Piers. Maximum measurements for a private pier shall be as follows:
 - ~~(a) — Single family:~~
 - ~~(i)~~(a) walkways, 8 feet wide;
 - ~~(ii)~~(b) length of ~~pier structure, pier,~~ 225 feet;
 - ~~(iii)~~(c) platform, pavilion; 20 feet in width;
 - ~~(iv)~~(d) platform, pavilion; 32 feet in length;
 - ~~(v)~~(e) patio, 20 feet in length extending towards the water from the mean high water mark;
- ~~(b)(3)~~ Joint private piers shall be limited to the following maximum measurements: Joint Private Piers. Maximum measurements for a joint private pier shall be as follows:
 - ~~(i)~~(a) walkways, 16 feet wide;
 - ~~(ii)~~(b) length of ~~pier structure, pier,~~ 225 feet;
 - ~~(iii)~~(c) platform, pavilion; 32 feet in width;
 - ~~(iv)~~(d) platform, pavilion, 50 feet in length;
 - ~~(v)~~(e) patio, 20 feet in length extending towards the water from the mean high water mark.
- ~~(3)(4)~~ Public piers shall be subject to the following maximum measurements and limitations: Public Piers. Maximum measurements for a public pier shall be as follows:
 - (a) walkway, 16 feet wide;
 - (b) length of ~~pier structure, pier,~~ 225 feet;
 - (c) platform, pavilion; 32 feet in width;
 - (d) platform, pavilion; 50 feet in length;
 - (e) patio, 20 feet in length extending towards the water from the mean high water mark.

1 (4)(5) Boat Ramps. ~~The maximum limitation for the size of a boat ramp will be 25 feet by 25 feet~~
2 ~~square; boat ramps shall not be subject to location criteria of Regulation .0303(6)(a) of this~~
3 ~~Section. No boat ramp shall exceed 25 feet in length nor 25 feet in width.~~

4 (5)(6) Boat Stalls. ~~Slips. There shall be a limit of one boat stall per single family pier. Boat stalls will~~
5 ~~not be permitted on joint private, public, or commercial piers. A private pier shall not exceed one~~
6 ~~boat slip. The dimension of the boat slip shall not exceed 32 feet in length by 12 feet in width.~~
7 ~~Boat slips are prohibited on joint private, public, and commercial piers.~~

8 (6)(7) ~~[Maximum limits for structures of all types above the floor level shall be as follows:~~

9 (a) ~~]~~ ~~Overall structure height may not exceed 15 feet above the floor level, with the exception~~
10 ~~of flag poles, semaphores, and light poles which may extend to a height of 20 feet above~~
11 ~~the floor [level; and] level.~~

12 (b) ~~— The following items shall not be stored or installed in storage boxes, lofts, and~~
13 ~~compartments on any structure:~~

14 ~~(i) electrical appliances or their components;~~

15 ~~(ii) fireworks or other explosives; or~~

16 ~~(iii) gasoline, oil, or any other petroleum based or hazardous materials;]~~

17 (6) ~~— All permitted structures shall be subject to the following additional provisions:~~

18 (a) ~~— No structure or any portion thereof, except boat ramps, shall be located closer than 15~~
19 ~~feet from the property owners' corners in the shoreline. Adjoining property owners who~~
20 ~~own waterfront property may, by special agreement, waive this provision in unusual or~~
21 ~~hardship cases, and where no hazard is erected by the waiver, may submit an application~~
22 ~~for a joint private pier permit.~~

23 (b) ~~— Piers must be located so as to point to a location fixed by the Division.~~

24 (c) ~~— No pier, patio, platform, pavilion, or boat stall may be located within 25 feet of another~~
25 ~~structure.~~

26 (d) ~~— Where an applicant fails to comply with these regulations because of the noncompliance~~
27 ~~of an adjoining property owner who holds a permit for a structure erected prior to the~~
28 ~~effective date of these regulations, the applicant shall submit his application for approval~~
29 ~~to the Division. The Division may approve the application subject to conditions and~~
30 ~~modifications it imposes in the permit.~~

31
32 History Note: Authority G.S. 143B-135.16;
33 Eff. February 1, 1976;
34 Transferred from 15A NCAC 12C .0303 Eff. April 1, 2017-2017;
35 Readopted Eff. February 1, 2023.

1 07 NCAC 13C .0307 is readopted **with changes** as published in 37:08 NCR 626 as follows:

2
3 **07 NCAC 13C .0307 ~~CONDITION OF DOCKS; ETC.~~STRUCTURES**

4 ~~(a) All piers, boat ramps, seawalls, boathouses, pavilion, platform, patio or other structures on a state lake must~~
5 ~~without expense to the Department be kept by the owner in a good state of repair and in a clean, sanitary, safe and~~
6 ~~presentable condition. Owners shall comply with all laws, rules and regulations now existing or hereafter adopted~~
7 ~~by the state and county departments of health. Owners shall also comply with all zoning regulations of the local~~
8 ~~town, municipality, or county. The provisions of this Regulation shall be subject to the notice and hearing~~
9 ~~procedures set forth in Regulation .0315 of this Section.~~ **[All structures must be kept free of any defects in the**
10 **structure which may manifest in a risk of collapse or make the structure unsafe to occupy.] All structures must be**
11 **maintained in accordance with applicable state and local fire and building codes and regulations.**

12 ~~(b) At least one inspection of each structure shall be made annually by the Division.~~ Permit holders shall make their
13 respective structures available for inspection by the Division to ensure compliance with the terms and conditions of
14 their permit and the Rules of this Subchapter. Within 60 days of the date of ~~inspection~~inspection, a notice of the
15 results of such inspection shall be sent to the permit holder. This notice shall indicate either that the structure ~~meets~~
16 ~~with the requirements of these regulations or if it does not~~ is in compliance with the permit and the Rules of this
17 Subchapter or, if not, shall specify:

- 18 (1) what ~~problems~~noncompliance issues are ~~noted~~noted;
- 19 (2) the rules or statutes that give rise to the noncompliance; and
- 20 (3) what corrective actions are ~~recommended~~required in order to come into compliance.

21 Corrective actions ~~may~~**shall** include providing proof of inspection by a licensed inspector with regard to any
22 structural or electrical components of the structure within 60 days of the delivery of notice to the permit holder.

23 (c) Permit holders shall provide proof of inspection by a licensed inspector with regard to any structural or electrical
24 components of their structure to the Division within 60 days of completion of construction or modification of a
25 structure that is the subject of a permit for initial construction of a structure or major modification of an existing
26 structure.

27
28 *History Note: Authority G.S. 143B-135.16;*
29 *Eff. February 1, 1976;*
30 *Transferred from 15A NCAC 12C .0307 Eff. April 1, 2017-2017;*
31 *Readopted Eff. February 1, 2023.*

1 07 NCAC 13C .0406 is amended **with changes** as published in 37:08 NCR 626 as follows:

2

3 **07 NCAC 13C .0406 WATER ~~LEVEL~~LEVEL; DISCHARGE**

4 (a) No person shall in any way damage or alter drainage ditches, drainage ~~gates~~gates, or any other ~~inlet or~~ outlet
5 from ~~or inlet to~~ a state lake; nor in any way change the water level of a state lake. ~~Water level for purpose of~~
6 measuring the depth of water in the lake shall be determined by the Department.

7 (b) No person shall discharge any of the following into a state lake:

8 (1) wastewater, stormwater or anything that causes water pollution, as defined in G.S. 143-213;

9 (2) other unfiltered or untreated drainage; or

10 (3) fill material, including **[but not limited to,]** sand, rock, or gravel, except as permitted pursuant to the
11 Rules of this Subchapter.

12

13 *History Note: Authority G.S. 143B-135.16;*

14 *Eff. February 1, 1976;*

15 *Transferred from 15A NCAC 12C .0406 Eff. April 1, 2017;*

16 *Pursuant to G.S. 150B-21.3A, rule is necessary without substantive public interest Eff. May 1,*
17 *~~2018-2018~~;*

18 *Amended Eff. February 1, 2023.*

1 07 NCAC 13C .0407 is amended **with changes** as published in 37:08 NCR 626 as follows:

2
3 **07 NCAC 13C .0407 MOORING BUOYS**

4 ~~(a) No stakes, poles, or posts shall be driven or placed into the floor of any state lake for any purpose, except~~
5 ~~to anchor a lawfully placed mooring buoy. Mooring buoys may be placed upon the floor of state lakes for the~~
6 ~~purpose of mooring boats by permits issued by the Division.~~ a structure permitted by the **[Division.]Division**
7 **pursuant to Rule .0301 of this Subchapter.** ~~Mooring buoys placed upon state lakes shall meet the requirements of~~
8 ~~the Wildlife Resources Commission State Boating Regulations.~~

9 ~~(b) No mooring buoy~~ **may shall** ~~be placed outside any established safety zone, or posted no wake zone or, where a~~
10 ~~posted no wake zone does not exist, placed farther than 375 feet from shore where there is no established safety~~
11 ~~zone.~~ ~~the shore of the waterfront property for which the mooring buoy is permitted in accordance with Rule .0301 of~~
12 ~~this Subchapter. Where the permittee is an owner the buoy may be placed at any point within the safety zone. Where~~
13 ~~the permittee is not an owner, the buoy may not be placed within 25 feet of any structure or within 100 feet of the~~
14 ~~shore. However, in no case may a mooring buoy be placed within 25 feet of another legally permitted buoy.~~

15 ~~(c) The Division may authorize the temporary placement of mooring buoys for recreational purposes.~~ ~~such~~
16 ~~as shows, tournaments, and other recreational activities, through the Special Activity Permit process outlined in 07~~
17 ~~NCAC 13B .0104. The Division is to cooperate, whenever possible, with clubs, groups and other organizations~~
18 ~~seeking to promote or offer organized recreational activities or shows or tournaments.~~

19 ~~(d) Except as permitted in Paragraph (e) of this Rule, waterfront property owners may apply for and hold permits~~
20 ~~for no more than two mooring buoys.~~

21 ~~(e) Commercial waterfront property owners and homeowner associations may apply for and hold permits for more~~
22 ~~than two mooring buoys, in accordance with Rule .0301. All mooring buoys within the projected property lines of~~
23 ~~the permit holder must be owned and paid for by the waterfront property owner or homeowner association.~~

24 ~~(f) Mooring buoys are private property that shall be the responsibility of the owner to maintain.~~ **Maintaining a**
25 **mooring buoy shall mean ensuring that the mooring buoy remains in working order, free of rust or damage, and**
26 **securely fastened to the lake floor.**

27 ~~(g) In addition to the requirements of Rule .0301(h)(6), all permitted mooring buoys shall display the permit~~
28 ~~holder's full name and phone number at all times or the buoy shall be subject to removal by the Division.~~

29 ~~(h) Transfer of a state lake permit for a mooring buoy shall not be permitted.~~

30 ~~(i) When a state lake permit for a mooring buoy is terminated, the permit holder shall remove the mooring buoy~~
31 ~~from the state lake.~~

32
33
34 *History Note: Authority G.S. 143B-135.16;*

35 *Eff. February 1, 1976;*

36 *Transferred from 15A NCAC 12C .0407 Eff. April 1, 2017;*

1 *Pursuant to G.S. 150B-21.3A, rule is necessary without substantive public interest Eff. May 1,*
2 *~~2018-2018:~~*
3 *Amended Eff. February 1, 2023.*

Burgos, Alexander N

Subject: FW: 01. 2023 DNCR Request for Changes

From: Peaslee, William W <bill.peaslee@oah.nc.gov>
Sent: Thursday, January 5, 2023 2:25 PM
To: Avery, Jonathan <jonathan.avery@ncdcr.gov>
Cc: Burgos, Alexander N <alexander.burgos@oah.nc.gov>
Subject: RE: 01. 2023 DNCR Request for Changes

Good afternoon Jonathan,

Thank you for your email and for our telephone conversation this afternoon. This email will memorialize the substance of our conversation.

The agency is free to make the arguments made in your email to the RRC when and if I recommend objection, but I do not find them compelling. The RRC is not bound to approve ambiguous language that has slipped its attention in previously considered rules.

Who determines areas of natural, cultural, or archaeological significance? What criteria do they use?

If you feel this email did not adequately capture the substance of our conversation, please feel free to reply with any additions.

William W. Peaslee
Rules Review Commission Counsel / Legislative Liaison
Office of Administrative Hearings
1711 New Hope Church Road
Raleigh NC, 27609
(984) 236-1939
Bill.Peaslee@oah.nc.gov

Email correspondence to and from this address may be subject to the North Carolina Public Records Law and may be disclosed to third parties by an authorized state official.

Burgos, Alexander N

From: Avery, Jonathan
Sent: Thursday, January 5, 2023 11:46 AM
To: Peaslee, William W
Cc: Burgos, Alexander N
Subject: RE: 01. 2023 DNCR Request for Changes

Hi Bill,

I've nearly finished making edits to 07 NCAC 13C rules based on your requested tech changes, but there is one outstanding issue. In the requested changes for 07 NCAC 13C .0301, you write that "Lines 17-23, (g): The standards listed in (1) & (2) are subjective and ambiguous." However, the language of 07 NCAC 13C .0301(g)(1) and (2) is based on the same language that was approved in March 2022 in 07 NCAC 13B .0104(h) (2) and (5) regarding approval criteria for Special Activity and Special Use Permits. At that time, RRC staff provided no feedback and had no requested changes regarding the language when it reviewed .0104 prior to RRC approval. Rule .0104 was approved by the RRC with the language intact and was officially readopted on March 1, 2022, less than a year ago. Here's a link to Rule .0104 as published in the NCAC, if that helps: <http://reports.oah.state.nc.us/ncac/title%2007%20-%20natural%20and%20cultural%20resources/chapter%2013%20-%20parks%20and%20recreation%20area%20rules/subchapter%20b/07%20ncac%2013b%20.0104.pdf>

To change the criteria would create significant issues for Park staff to regulate structures on state lakes as well as create confusion among staff and the regulated public who have followed substantially these same criteria for many years. DNCR believes that this language should be allowed to remain as is and be approved in the same manner. Please let me know if you would like to discuss further before I send my final response with the requested technical changes tomorrow.

Thanks,
Jonathan

Jonathan Avery
Assistant General Counsel
N.C. Department of Natural and Cultural Resources
Physical Address: 109 East Jones Street | Raleigh, North Carolina 27699
Mailing Address: 4601 Mail Service Center | Raleigh, North Carolina 27699
P: 919-814-6771 (New phone number) | jonathan.avery@ncdcr.gov

E-mail correspondence to and from this address may be subject to the North Carolina Public Records Law and may be disclosed to third parties.

From: Peaslee, William W <bill.peaslee@oah.nc.gov>
Sent: Tuesday, January 3, 2023 11:36 AM
To: Avery, Jonathan <jonathan.avery@ncdcr.gov>
Cc: Burgos, Alexander N <alexander.burgos@oah.nc.gov>
Subject: RE: 01. 2023 DNCR Request for Changes

Thank you for your email.

If your agency decided to move the language to .0301, I would not recommend objection based on that being a substantial change in this instance.

William W. Peaslee
Rules Review Commission Counsel / Legislative Liaison
Office of Administrative Hearings
1711 New Hope Church Road
Raleigh NC, 27609
(984) 236-1939
Bill.Peaslee@oah.nc.gov

Email correspondence to and from this address may be subject to the North Carolina Public Records Law and may be disclosed to third parties by an authorized state official.

From: Avery, Jonathan <jonathan.avery@ncdcr.gov>
Sent: Tuesday, January 3, 2023 10:43 AM
To: Peaslee, William W <bill.peaslee@oah.nc.gov>
Subject: RE: 01. 2023 DNCR Request for Changes

Hi Bill,

In response to your tech changes requested for 07 NCAC 13C .0303, would it be permissible to move subparagraph (7)(b) (lines 12-16 on page 2) to .0301(h) by adding it as a new subparagraph (h)(7) or is that too much of a change for a tech change since it would be moving to a new rule? If that doesn't work, I'll likely just make it its own paragraph in .0303.

Thanks,
Jonathan

Jonathan Avery
Assistant General Counsel
N.C. Department of Natural and Cultural Resources
Physical Address: 109 East Jones Street | Raleigh, North Carolina 27699
Mailing Address: 4601 Mail Service Center | Raleigh, North Carolina 27699
P: 919-814-6771 (New phone number) | jonathan.avery@ncdcr.gov

E-mail correspondence to and from this address may be subject to the North Carolina Public Records Law and may be disclosed to third parties.

From: Peaslee, William W <bill.peaslee@oah.nc.gov>
Sent: Monday, December 19, 2022 3:59 PM
To: Avery, Jonathan <jonathan.avery@ncdcr.gov>
Cc: Neely, Alison <alison.neely@ncdcr.gov>
Subject: 01. 2023 DNCR Request for Changes

Good afternoon,

I'm the attorney who reviewed the Rules submitted by the Department of Natural and Cultural Resources for the January 2023 RRC meeting. The RRC will formally review these Rules at its meeting on Thursday, January 19, 2023, at 9:00 a.m. The meeting will be a hybrid of in-person and WebEx attendance, and an evite should be sent to you as we get closer to the meeting. If there are any other representatives from your agency who will want to attend virtually, let me know prior to the meeting, and we will get evites out to them as well.

Please submit the revised Rules and forms to me via email, no later than 5 p.m. on January 6, 2023.

In the meantime, please let me know if you have any questions or concerns.

William W. Peaslee
Rules Review Commission Counsel / Legislative Liaison
Office of Administrative Hearings
1711 New Hope Church Road
Raleigh NC, 27609
(984) 236-1939
Bill.Peaslee@oah.nc.gov

Email correspondence to and from this address may be subject to the North Carolina Public Records Law and may be disclosed to third parties by an authorized state official.