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Revised 7/2019

**TRANSMITTAL SHEET FOR
NOTICE OF INTENDED ACTION**

Control No. 220 Department or Agency: Conservation and Natural Resources

Rule No.: 220-4-.09

Rule Title: **Placement and Configuration of Piers and Other Improvements on State Submerged Lands.**

New Amend Repeal (of Existing Rule) Adopt by Reference

Would the absence of the proposed rule significantly harm or endanger the public health, welfare, or safety? Yes

Is there a reasonable relationship between the state's police power and the protection of the public health, safety, or welfare? Yes

Is there another, less restrictive method of regulation available that could adequately protect the public? No

Does the proposed rule have the effect of directly or indirectly increasing the costs of any goods or services involved and, if so, to what degree? Yes

Is the increase in cost, if any, more harmful to the public than the harm that might result from the absence of the rule? No

Are all facets of the rulemaking process designed solely for the purpose of, and so they have, as their primary effect, the protection of the public? Yes

Does the proposed action relate to or affect in any manner any litigation which the agency is a party to concerning the subject matter of the proposed rule? Yes

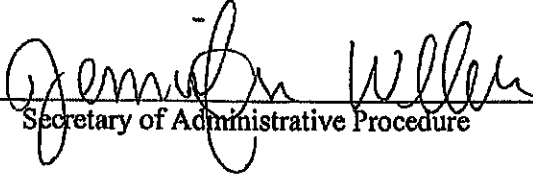
Does the proposed rule have any economic impact? Yes

If the proposed rule has an economic impact, the proposed rule is required to be accompanied by a fiscal note prepared in accordance with subsection (f) of Section 41-22-23, Code of Alabama 1975.

Certification of Authorized Official

I certify that the attached proposed rule has been proposed in full compliance with the requirements of Chapter 22, Title 41, Code of Alabama 1975 and that it conforms to all applicable filing requirements of the Alabama Administrative Procedure Division of the Legislative Services Agency.

Signature of Certifying Officer _____


Secretary of Administrative Procedure

Date _____

3-21-22

Department of Conservation and Natural Resources
State Lands Division

NOTICE OF INTENDED ACTION

AGENCY NAME: Department of Conservation and Natural Resources

RULE NO. & TITLE: 220-4-.09 Placement and Configuration of Piers and Other Improvements on State Submerged Lands.

INTENDED ACTION: Amend.

SUBSTANCE OF PROPOSED ACTION: To provide that renewals will be made under the current fee schedule. To clarify that any structures constructed after 2003, any structures that are substantially modified, altered or rebuilt, and any expansion of an existing activity shall be subject to the provisions of this rule. To define what substantially modified, altered or rebuilt means for purposes of that paragraph. To define "Commercial Facility" and "Department." To update the definitions of "Division," "Marina," "Ownership Oriented Facility," "Preempted Area," and "State Owned Submerged Lands." To update when compensation is required to be paid to the State Lands Division (Division) and how it's calculated. To update requirements for approval of reclamation activities and the information that the Department of Conservation and Natural Resources (Department) may consider when reviewing a request for approval of a proposed reclamation activity and establishing the timeframe to reclaim upland property at 5 years. To clarify what constitutes severance of materials. To clarify that a minimum setback of 10 feet from the riparian lines of adjacent property owners shall be required except as otherwise provided. To establish that setbacks from natural resources may also be required to ensure safety, facilitate enforcement abilities, or ensure resource management. To clarify that submission of a survey may be required in certain situations to ensure compliance with the provisions of this Rule, as determined by the Division and that the costs of the survey will be the responsibility of the riparian owner. To clarify that as binding determinations of riparian boundaries can only be made by agreement of affected parties or final court ruling, the acceptance of a survey and/or issuance of a lease or Easement does not prevent the Department from later requiring the removal or the relocation of any structure that may later be determined to encroach upon or interfere with adjacent upland owners' Riparian Rights or otherwise not be in compliance with this Rule. To update the standards and criteria for placement of structures or improvements on State Owned Submerged Lands. To update the forms of approval for placement of structures or improvements on State Owned Submerged Lands. To add that Consent of Use may be granted without payment to the Department for residential structures that preempt an area less than 5,000 square feet and for Ownership Oriented Facilities which preempt an area less than 5,000 sq. ft. and for reclamation projects approved in writing by the Department. To clarify that all final reclamation documents are to be recorded in the applicable county. To establish a \$100 administrative fee for all Request to Impact State Owned Submerged Lands applications. To clarify when a riparian Easement, Dredge Permit, and a Shellfish Aquaculture Easement are required and to add that those forms may be obtained by contacting the Division by phone or email. To update the fee formula for riparian Easements and proration of such fee for initial annual fee payments under new riparian Easements. To clarify that the easement grantee shall

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provide Division, upon request, any and all information in a certified form needed to calculate the Easement fee and to give some examples of what information may be requested. To modify the formula for calculating appraisal-based fees. To update minimum annual fees. To reduce late payment fees. To establish a fee formula for Dredge Permits and method of calculating Per Unit Fees, and to establish a minimum fee for Dredge Permits. To clarify that the Per Unit Fee or minimum fee is due prior to issuance of the Dredge Permit.

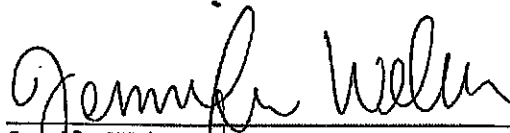
TIME, PLACE, MANNER OF PRESENTING VIEWS: Interested persons may present their views in writing to the Director of State Lands Division at any time during the period stated below, or orally if requested in writing 48 hours in advance to the Director of State Lands Division, and then by personally appearing at Room 474, Folsom Administrative Building, 64 North Union Street, Montgomery, Alabama, at 10:00 a.m., Friday, May 6, 2022.

If ADA accommodations are needed, please contact Daisy Perry at (334) 242-3165 or daisy.perry@dcnr.alabama.gov. Requests should be made as soon as possible but at least seven days prior to the date of a personal appearance to present views regarding the proposed rules.

FINAL DATE FOR COMMENT AND COMPLETION OF NOTICE:

Friday, May 6, 2022.

CONTACT PERSON AT AGENCY: Patricia Powell McCurdy, Director, State Lands Division, 4th Floor, 64 N. Union Street, Montgomery, Alabama 36130, 334-242-3484.



Jennifer Weber
Secretary of Administrative Procedure

Christopher M. Blankenship

220-4-.09 Placement and Configuration of Piers and Other Improvements on State Owned Submerged Lands.

(1) Purpose.

(a) To aid in fulfilling the duties and responsibilities of the Commissioner of the Alabama Department of Conservation and Natural Resources (Department) for the administration, management and control of State Owned Submerged Lands;

(b) To manage State Owned Submerged Lands so that the public may continue to enjoy traditional uses including, but not limited to, public recreation, navigation, fishing and swimming;

(c) To manage State Owned Submerged Lands, important for fish, shellfish and wildlife propagation and conservation; and,

(d) To ensure that all public and private activities on State Owned Submerged Lands which generate revenues, exclude or preempt traditional public uses and/or which sever materials from State Owned Submerged Lands provide just compensation for such privileges.

(2) Intent of Rules and Severability.

(a) These rules are to implement the administrative and management responsibilities of the Department regarding State Owned Submerged Lands. Responsibility for environmental permitting of activities and water quality protection on State Owned Submerged and other lands is vested with the Alabama Department of Environmental Management. These rules are considered cumulative.

(b) These rules shall not affect previous actions of the Commissioner concerning structures private docks or the prior issuance of any easement, lease or any disclaimer concerning State Owned Submerged Lands. Fee arrangements in existing leases and easements shall not be subject to the fees of this rule until expiration of the current term unless otherwise specified in the lease or Easement. Renewals will be done under the fee schedule in place at the time of the renewal.

(c) Any structures that are substantially modified, altered or rebuilt, and any expansion of an existing activity shall be subject to the provisions of this Rule. Substantially modified, altered or rebuilt for purposes of this paragraph shall mean more than 50% of the existing structure or any modification or alteration of the existing pilings.

(d) Any structures constructed after 2003 shall be subject to the provisions of this Rule.

(e) It is declared to be the intent of the Commissioner that if any section, subsection, sentence, clause, phrase, or provision of this rule is held invalid or unconstitutional, such invalidation or unconstitutionality shall not be construed as to render invalid or unconstitutional the remaining provisions of this rule.

(fe) The Commissioner may grant a waiver from any portion of this rule when the implementation of said portion of the rule may result in an unreasonable infringement upon the Riparian Rights of an upland riparian owner, or for the proposed activity is determined to have a de minimis impact on natural resources under the jurisdiction of the Alabama Department of Conservation and Natural Resources.

(3) Definitions.

When used in these rules, the following definitions shall apply unless the context clearly indicates otherwise:

(a) "Artificial Erosion" means the slow and imperceptible loss or washing away of sand, sediment, or other material from property caused by man-made projects and operations.

(b) "Avulsion" means the sudden loss of or addition to land by the action of water or the sudden or perceptible change in the bed of a water bottom lake or the course of a stream.

(c) "Consent of Use" means a nonpossessory interest in State Owned Submerged Lands created by an approval which allows the applicant the right to erect specific structures or conduct specific activities on said lands.

(d) "Commercial Facility" means any facility with monthly cash producing potential related to structures or improvements placed upon State Owned Submerged Lands associated with such as collection of usage fees from parties not possessing a real property or leasehold interest in the adjacent upland parcel including, but not limited to, Marinas, restaurants and retail operations constructed over State Owned Submerged Lands.

(e) "Commissioner" means the Commissioner of the Alabama Department of Conservation and Natural Resources.

(f) "Department" means the Alabama Department of Conservation and Natural Resources.

(d)(g) "Division" means the State Lands Division of the Alabama Department of Conservation and Natural Resources.

(e)(h) "Dock" means a fixed or floating structure, including moorings, used for the purpose of berthing buoyant vessels.

(f)(i) "Easement" means a non-possessory interest in State Owned Submerged Lands created by a grant or agreement which confers upon the applicant the limited right, liberty, and privilege to use said lands for a specific purpose and for a specific time.

(g)(j) "Marginal Docks" means a fixed or floating structure placed immediately contiguous and parallel to an established seawall, bulkhead or revetment.

(h)(k) "Marina" means a small watercraft harbor complex offering amenities including, but not limited to, used primarily for recreational (including charter) boat watercraft mooring, docking, fueling, or storage.

(i) ~~"Multi-slip docking facility" means any marina or dock designed to moor 10 or more boats, as determined by the Alabama Department of Conservation and Natural Resources.~~

(j)(l) "Ownership Oriented Facility" means Dock or other structures or improvements docking facilities where the use of the Dock or other structures or improvements docking facility requires some real property or leasehold interest in one or more residential units on the adjacent upland parcel and such use does not include operations or activities described for a Commercial Facility.

(k)(m) "Preempted Area" means the area of State Owned Submerged Lands from which the traditional public uses have been or would be excluded to any extent by an activity. The area may include, but is not limited to, the State Owned Submerged Lands occupied by the Docks and other structures or improvements, the area between the Docks and other structures or improvements and out to any mooring pilings, and the area between the Docks and other structures or improvements and the shoreline.

(l)(n) "Riparian Rights" means those rights incident to lands bordering upon navigable waters, as recognized by the courts and common law.

(m)(o) "Satisfactory Evidence of Sufficient Upland Interest" shall be demonstrated by documentation, such as a warranty deed; a certificate of title issued by a clerk of the court; a lease; an Easement; or condominium, homeowners or similar association documents that clearly demonstrate that the holder has control and interest in the riparian uplands adjacent to the project area and the Riparian Rights necessary to conduct the proposed activity. Other forms of documentation shall be accepted if they clearly demonstrate that the holder has control and interest in the riparian uplands adjacent to the project area and the Riparian Rights necessary to conduct the proposed activity.

(a)(p) "State Owned Submerged Lands" means those lands including but not limited to, tidal lands, sand bars, shallow banks, and lands waterward of the ordinary mean-low water line beneath navigable non-tidal streams ~~fresh water~~ or the mean high tide line beneath tidally-influenced waters, to which the State of Alabama acquired title on December 14, 1819, by virtue of statehood, or thereafter and which have not been heretofore conveyed or alienated.

(a)(q) "Water Dependent Activity" means an activity which can only be conducted on, in, over, or adjacent to water areas because the activity requires direct access to the water body or State Owned Submerged Lands for transportation, recreation, energy production or transmission, or source of water, and where the use of the water or State Owned Submerged Lands is an integral part of the activity.

(4) Management Policies, Standards and Criteria.

The following management policies, standards, and criteria shall be used in determining whether to approve, approve with conditions or modifications, or deny all requests for activities on State Owned Submerged Lands.

(a) General Proprietary.

1. For approval, all activities on State Owned Submerged Lands must be not be contrary to the public interest, ~~except for sales which must be for a public purpose and in the public interest.~~

2. All leases, Easements, permits, or other forms of approval for State Owned Submerged Land activities shall contain such terms, conditions, or restrictions as deemed necessary to protect and manage State Owned Submerged Lands.

3. When Satisfactory Evidence of Sufficient Upland Interest is not fee simple title, the term of the State Owned Submerged Lands authorization will in no case exceed the remaining term of the Sufficient Upland Interest unless the fee simple title holder agrees to become a co-holder of the State Owned Submerged Lands authorization.

4. Compensation shall be required to be paid to the State Lands Division for leases and Easements which generate revenues, monies or profits for the user or that limit or preempt general public use. Compensation shall also be required to be paid to the Division for Dredge Permits issued in relation to activities -severing materials from State Owned Submerged Lands whether subsequently placed below mean high tide line or above mean high tide line - State or other governmental agencies may be excepted from this requirement at the discretion of the Commissioner.

5. Activities on State Owned Submerged Lands shall be limited to Water Dependent activities only. Public projects which are primarily intended to

provide access to and use of the waterfront may be permitted to contain minor uses which are not water dependent if:

(i) Located in areas along seawalls or other nonnatural shorelines;

(ii) The nonwater dependent uses are incidental to the basic purpose of the project, and constitute only minor nearshore encroachments on State Owned Submerged Lands.

6. Boathouses with living quarters, or other such residential structures, shall be prohibited on State Owned Submerged Lands.

(b) Resource Management.

1. All State Owned Submerged Lands shall be subject to navigation priority and shall be managed primarily for the maintenance of essentially natural conditions, propagation of fish and wildlife, and traditional recreational uses such as fishing, boating, and swimming. Compatible secondary purposes and uses which will not detract from or interfere with the primary purpose may be allowed.

2. Activities which would result in significant adverse impacts to State Owned Submerged Lands and associated resources shall not be approved unless there is no reasonable alternative and adequate mitigation is proposed and accomplished.

3. ~~The Alabama Department of Conservation and Natural Resources~~ biological, marine safety and navigation assessments and any other assessments or reports by other agencies with related statutory, management, or regulatory authority may be considered in evaluating specific requests to use State Owned Submerged Lands. Any such reports sent to the Division in a timely manner shall be considered.

4. Activities shall be designed to minimize or eliminate any cutting, removal, or destruction of wetland vegetation on State Owned Submerged Lands.

5. Reclamation activities on State Owned Submerged Lands shall be approved only if Aavulsion or Aartificial Erosion is affirmatively demonstrated by the upland riparian property owner. In reviewing a request for approval of a proposed reclamation project, the Department may consider information including data and imagery from a period of five (5) years prior to submission of such a request by the upland riparian property owner. The placement of fill material below the ordinary low water line of non-tidal streams or the mean high tide line of tidal water not associated with an approved reclamation project or the implementation of a shoreline restoration project compliant with paragraph 7. below shall not be approved.

6. To the maximum extent possible, shoreline stabilization should be accomplished by the establishment of appropriate native wetland vegetation. Rip-rap

materials, pervious interlocking brick systems, filter mats, wave attenuation units and other similar stabilization methods should be utilized in lieu of vertical seawalls wherever feasible.

7. Shoreline restoration, including the use of "living shorelines" techniques for shoreline stabilization, may be permitted upon such terms and conditions as the Commissioner acting through the State Lands Division may require. Such techniques may include, but are not limited to, the planting of native vegetation, the placement of wave attenuation structures, the placement of fill materials, and/or other techniques. Fill material placed and/or sediments accreted below the ordinary low water line of non-tidal streams or the mean high tide line of tidal water through the implementation of shoreline restoration shall not be construed as reclamation nor cause a change in the title to State Owned Submerged Lands.

8. Severance of materials is any separation of material from State Owned Submerged Lands whether subsequently placed above mean high tide line (or ordinary low water line) or below mean high tide line (or ordinary low water line) and shall be approved only if the proposed dredging is the minimum amount necessary to accomplish the stated purpose and is designed to minimize the need for maintenance dredging.

9. Severance of materials for the primary purpose of providing upland fill shall not be approved unless the activity is determined by the Commissioner to be in the public interest.

10. Activities on State Owned Submerged Lands shall be designed to minimize or eliminate adverse impacts on fish and wildlife habitat. Special attention and consideration shall be given to endangered and threatened species habitat.

11. To the maximum extent feasible, all beach compatible dredge materials taken from the tidal coastal system shall be placed on beaches or within the nearshore sand system.

12. A minimum setback of 10 feet from the riparian lines of adjacent property owners shall be required except as otherwise provided herein. Division may require submission of a survey to ensure compliance with the provision. The costs of the survey will be the responsibility of the riparian owner.

13. Setbacks from other activities, channels, or structures, or natural resources shall may also be required to ensure safety, facilitate enforcement abilities or ensure resource management. Submission of a survey may be required to ensure compliance with this provision, as determined by Division. The costs of the survey will be the responsibility of the riparian owner.

14. Any area made the subject of a riparian Easement shall not be closer than 100 feet from a marked navigation channel.

15. The activity shall not be contrary to the public interest or, if within the boundary of a National Estuarine Research Reserve, that the activity must be consistent with Reserve guidelines established by the Commissioner.

16. Submission of a survey may be required to ensure compliance with this Rule, as determined by Division. The costs of the survey will be the responsibility of the riparian owner.

17. A binding determination of riparian boundaries can only be made by agreements of the affected parties or by a final adjudication of a court of competent jurisdiction. Accordingly, acceptance of a survey and/or issuance of a lease or Easement shall not in and of itself prevent the Department from requiring the removal or the relocation of any structure which may later be determined to encroach upon or interfere with adjacent upland owners' Riparian Rights or otherwise not be in compliance with this Rule.

(c) Riparian Rights and Setbacks.

1. None of the provisions of this rule shall be implemented in a manner that would unreasonably infringe upon the traditional, common law riparian rights of upland property owners adjacent to State Owned Submerged Lands.

2. Satisfactory Evidence of Sufficient Upland Interest is required for activities on State Owned Submerged Lands, riparian to uplands, unless otherwise specified in this chapter. ~~Satisfactory Evidence of Sufficient Upland Interest is not required for activities on State Owned Submerged Lands that are not riparian to uplands, or when a governmental entity conducts restoration and enhancement activities, provided that such activities do not unreasonably infringe on Riparian Rights.~~

3. All structures and other activities must be designed and conducted in a manner that will not unreasonably restrict or infringe upon the Riparian Rights of adjacent upland riparian owners. Submission of a survey may be required to ensure compliance with this Rule, as determined by Division. The costs of the survey will be the responsibility of the riparian owner.

4. Except as provided herein, all structures and improvements and activities ~~such as, including, mooring pilings, breakwaters, jetties and groins, and activities~~ must be set back a minimum of 10 feet inside the applicant's Riparian Rights lines. Exceptions to the setbacks ~~include: private residential Ownership Oriented Facilities or single-family residential Docks or piers where such structures are shared by two adjacent single-family parcels; utility lines; bulkheads, seawalls, riprap or similar- such additional structures as determined by the Division shoreline protection structures to be connected to located along the shoreline protection structures;~~ structures and activities previously authorized by the ~~Alabama Department of Conservation and Natural Resources;~~ structures and activities built or occurring prior to any requirement for ~~Alabama Department of Conservation and Natural Resources~~ authorization; when a letter of

concurrence is obtained from the affected adjacent upland riparian owner; or when the ~~Alabama Department of Conservation and Natural Resources~~ determines that locating any portion of the structure or activity within the setback area is necessary to avoid or minimize adverse impacts to natural resources.

(d) Standards and Criteria for ~~Decking Facilities~~ Placement of Structures or Improvements on State Owned Submerged Lands.

1. ~~All Multi-slip Decking facilities and Ownership oriented facilities with 10 or more wet slips~~ Structures or improvements placed upon State Owned Submerged Lands shall conform to the following specific guidelines, design standards and criteria:

(i) The area of State Owned Submerged Lands made subject to a riparian ~~Easement for the decking facility~~ shall not exceed the square footage amounting to 200 times the riparian waterfront footage along the affected waterbody of the applicant.

(ii) ~~Ownership Oriented Facilities which preempt an area less than or equal to ten square feet for every foot of riparian shoreline on the affected waterbody shall be exempt from the provisions of this regulation.~~

(iii) ~~Decks, mooring pilings or other such s~~ Structures or improvements shall extend no more than 25 percent of the width of the waterbody at that particular location.

(iv) ~~Decks, mooring pilings or other such s~~ Structures or improvements shall not extend within 100 feet of a federal navigation project channel.

(v) Within the standards set forth above, the design of structures or piers and ~~other improvements and quantity of wet slips~~ may be further restricted by the ~~Alabama Department of Conservation and Natural Resources~~ in recognition of obstructions to navigation, marine safety considerations, riparian setback constraints, local land use regulations, and natural resource considerations such as potential impacts to endangered species and shellfish resources.

(e) Procedures—Forms of Consent Approvals for Placement of Structures or Improvements on State Owned Submerged Lands.

1. Request to Impact State Owned Submerged Lands (RTI) application must be completed for any of the activities listed in paragraphs 2., 3., and 4. below. There is a \$100 application fee for RTI applications.

2. Consent of Use is may be granted onas to the following activities:

(i) A single residential dock, pier and/or boathouse serving a single residential parcel or similar structure serving two adjacent residential parcels. Docks, piers, boathouses, and/or improvements serving a single family residential parcel where

the Preempted Area is less than 5,000 sq. ft. or similar structure(s) shared by two adjacent single family residential parcels where the Preempted Area is less than 5,000 sq. ft.

(ii) Docks, piers, boathouses, and/or improvements serving an Ownership Oriented Facility where the Preempted Area is less than 5,000 sq. ft. or similar structure(s) shared by Ownership Oriented Facilities on two adjacent parcels where the Preempted Area is less than 5,000 sq. ft.

(iii) Marginal Docks and mooring pilings along an existing seawall, bulkhead or revetment.

(iv) Replacement of bulkheads or seawalls at or within two feet waterward of the mean high tidewater line for tidally-influenced waters or at the ordinary low water line for non-tidal streams. New construction of bulkheads or seawalls requires the location of the structure at or landward of the mean high tide line for tidal waters and at or landward of the ~~mean-ordinary~~ low water line for non-tidal streams or water bodies.

(v) Placement of riprap at or within ten feet waterward of the mean high tide line in tidally-influenced waters.

(vi) Reclamation projects as approved in writing by the Department. All final reclamation documents, including but not limited to a survey, are to be recorded in the applicable county by the riparian owner.

32. Riparian Easement —covering the Preempted Area is required for the following structures, improvements and/or activities:

(i) ~~Docks~~Structures, improvements or other such activities ~~which are larger than those which not are granted a Consent of Use~~ under these rules.

(ii) All revenue generating/income related activities.

4. Dredge Permit is required for the severance of materials from State Owned Submerged Lands as provided below.

5. A Shellfish Aquaculture Easement is required for the off-bottom cultivation and harvesting of shellfish as provided in Ala. Admin. r. 220-4-17.

6. To obtain one of the forms listed above, contact the Division at 251-621-1216 or via email at Submerged.Lands@dcnr.alabama.gov.

(5) Payments and Fees.

Fees for Riparian Easements relating to structures, improvements, and other activities not granted a Consent of Use ~~piers, docking facilities and other similar~~

improvements on State Owned Submerged Lands, and Fees for Dredge Permits, shall be as follows:

(a) Fee Formula

1. The annual fee for extended-term riparian Easements shall be either, six percent (6%) of the lease gross rental value of the Preempted Area of State Owned Submerged Lands on a per square foot basis as determined by the State Lands Division appraisal ("Preempted Area Fee"), of all wet slips located on State Owned Submerged Lands encompassed by the Easement, the base fee, or the minimum annual fee, whichever is greater.

2. For new riparian Easements, the initial annual fee shall be calculated on a prorated basis from the effective date of the new Easement to the last day of the following February. first annual lease fee shall be the base fee or the minimum fee whichever is greater.

3. The Easement grantee shall provide upon request by the Division at the time of application or thereafter any and all information in a certified form needed to calculate the Easement fee specified above, including, but not limited to, the total square footage of the Easement area, any structures proposed to be placed on the Easement area, and, if applicable, the total number, length and configuration of wet slips.

(b) Appraisal-Based Fees, Base Fees, Minimum Annual Fees and Other Payments

1. Appraisal-Based Fees.

(i) The Preempted Area Fee shall be calculated annually on a The base fee shall be computed at a rate of 12.5 cents per square foot basis according to the geographic Zone as reflected on the Zone Map and further designated by the of riparian Easement holder qualifying as a Commercial Facility or an Ownership Oriented Facility. The Preempted Area Fee effective as of July 15, 2022, is as follows: area per annum effective March 1, 2003 and shall be revised on March 1 of each year thereafter on the basis of fluctuations of the Consumer Price Index for All Urban Consumers (CPI-U), South Urban, as published by U.S. Department of Labor, Bureau of Labor Statistics.

Zone 1

Commercial Facility - \$0.42 per sq. ft.

Ownership Oriented Facility - \$0.28 per sq ft.

Zone 2

Commercial Facility - \$0.30 per sq. ft.

Ownership Oriented Facility - \$0.20 per sq. ft

Zone 3

Commercial Facility - \$0.17 per sq. ft.

Ownership Oriented Facility - \$0.11 per sq. ft.

Zone 4

Commercial Facility - \$0.13 sq. ft.

Ownership Oriented Facility - \$0.08 sq. ft.

To obtain a copy of the Zone Map, contact the Division at 251-621-1216 or via email at Submerged.Lands@dcnr.alabama.gov.

The Preempted Area Fee shall be revised on March 1 of each year thereafter on the basis of fluctuations of the Consumer Price Index for All Urban Consumers (CPI-U), South Urban, All Items, as published by U.S. Department of Labor, Bureau of Labor Statistics.

2. Minimum Annual Fees.

(i) There shall be a minimum annual fee of \$775500 effective as of July 15, 2022. The minimum annual fee shall be revised adjusted annually on March 1 as specified in (5)(b)1.(1a) above.

~~3-(c)~~ Late Payments. There shall be a late payment assessment for Easement fees or other charges due under this rule which are not paid within 30 days after the due date. This assessment shall be computed at the rate of ~~102~~ percent per annum, calculated on a daily basis for every day the payment is late.

(6) Dredge Permit Payments and Fees.

Fees for Dredge Permits relating to severance of materials from State Owned Submerged Lands shall be as follows:

(a) Fee Formula

1. The fee for Dredge Permits shall be either the valuation of the dredged materials as determined on a per cubic yard basis by Division appraisal ("Per Unit Fee"), or the minimum fee, whichever is greater.

(b) Fees and Other Payments

1. Payment of the Per Unit Fee or minimum fee, whichever is greater, shall be due prior to issuance of the Dredge Permit.

2. The Per Unit Fee shall be calculated according to the cubic yards of material to be severed and further designated by the placement of the severed materials.

The calculation will be delineated based on the volume of materials stored above the mean high tide line and/or below the mean high tide line. The Per Unit Fee effective as of July 15, 2022, is as follows.

First 10,000 cubic yards:

\$1.25 per cubic yard of material stored below the mean high tide line

\$2.25 per cubic yard of material stored above the mean high tide line

10,001 to 29,999 cubic yards:

\$0.75 per cubic yard of material stored below the mean high tide line

\$1.25 per cubic yard of material stored above the mean high tide line

30,000 cubic yards or more:

\$0.25 per cubic yard of material stored below the mean high tide line

\$0.75 per cubic yard of material stored above the mean high tide line

The Per Unit Fee shall be revised on March 1 of each year thereafter on the basis of fluctuations of the Consumer Price Index for All Urban Consumers (CPI-U), South Urban, All Items, as published by the U.S. Department of Labor, Bureau of Labor Statistics.

3. There shall be a minimum fee of \$500 effective as of July 15, 2022. The minimum fee shall be revised annually on March 1 as specified in (6)(b)2. above.

Author: Christopher M. Blankenship

Statutory Authority: § 9-2-12, Code of Alabama 1975

Penalty: As provided by law.

History: **New Rule:** August 3, 1998; effective September 8, 1998. **Repealed and New Rule:** Filed July 29, 2003; effective September 2, 2003. **Amended:** Filed April 15, 2014; effective May 20, 2014. **Amended:** Filed July 19, 2017; effective September 2, 2017. 3/21/2022

**ECONOMIC IMPACT
STATEMENT FOR APA RULE
(Section 41-22-23(f))**

Control No. 220 Department or Agency Conservation

Rule No: 220-4-.09

Rule Title: Placement and Configuration of Piers and Other Improvements on State Submerged Lands.

New Amend Repeal Adopt by Reference

This rule has no economic impact.

This rule has an economic impact, as explained below:

1. NEED/EXPECTED BENEFIT OF RULE:

The Commissioner of the Department of Conservation and Natural Resources, through its State Lands Division, is responsible for the administration, management, and control of State Owned Submerged Lands. State Owned Submerged Lands are those lands including but not limited to, tidal lands, sand bars, shallow banks, and lands waterward of the ordinary low water line beneath navigable non-tidal streams or the mean high tide line beneath tidally-influenced waters, to which the State of Alabama acquired title on December 14, 1819, by virtue of statehood, or thereafter and which have not been heretofore conveyed or alienated. The State Lands Division manages these State Owned Submerged Lands so that the public may continue to enjoy recreational opportunities, conservation, traditional uses and for fish, shellfish, and wildlife propagation. The State Lands Division seeks to ensure that all public and private activities on State Owned Submerged Lands which

generate revenues, exclude or preempt traditional public uses, and/or which sever materials from State Owned Submerged Lands provide just compensation for such privileges unless otherwise exempted by provisions of this Rule.

2. COSTS/BENEFITS OF RULE AND WHY RULE IS THE MOST EFFECTIVE, EFFICIENT, AND FEASIBLE MEANS FOR ALLOCATING RESOURCES AND ACHIEVING THE STATED PURPOSE:

Those wishing to obtain Consent of Use approvals, riparian Easements, and Dredge Permits will incur some cost. However, this is the most efficient, effective, and feasible way to ensure that all public and private activities on State Owned Submerged Lands which generate revenues, exclude or preempt traditional public uses, and/or which sever materials from State Owned Submerged Lands provide just compensation for such privileges.

3. EFFECT OF THIS RULE ON COMPETITION:

This rule should have no effect on competition.

4. EFFECT OF THIS RULE ON COST-OF-LIVING AND DOING BUSINESS IN THE GEOGRAPHICAL AREA WHERE THE RULE IS TO BE IMPLEMENTED:

The revisions to this rule should have a minimal impact on the cost of doing business. There should be no impact on the cost-of-living.

5. EFFECT OF THIS RULE ON EMPLOYMENT IN THE GEOGRAPHICAL AREA WHERE THE RULE IS TO BE IMPLEMENTED:

This rule should have no effect on employment in the geographical area.

6. SOURCE OF REVENUE TO BE USED FOR IMPLEMENTING AND ENFORCING THIS RULE:

The State Lands Division is already responsible for the administration, management, and control of State Owned Submerged Lands. Revenue for implementation of the Department's responsibilities will come from the Fees paid pursuant to this rule. Any additional cost incurred for implementation and enforcement will be paid for from Division Funds.

7. THE SHORT-TERM/LONG-TERM ECONOMIC IMPACT OF THIS RULE ON AFFECTED PERSONS, INCLUDING ANALYSIS OF PERSONS WHO WILL BEAR THE COSTS AND THOSE WHO WILL BENEFIT FROM THE RULE:

The short-term economic impact is that those wishing to obtain Consent of Use approvals, riparian Easements, or Dredge Permits will have to pay a fee. The long-term economic impact of this rule is off-set by the management of State Owned Submerged Lands benefiting the public as a whole for the purpose of providing ongoing enjoyment of recreational opportunities, conservation, traditional uses and for fish, shellfish, and wildlife propagation.

8. UNCERTAINTIES ASSOCIATED WITH THE ESTIMATED BENEFITS AND BURDENS OF THE RULE, INCLUDING QUALITATIVE/QUANTITATIVE BENEFITS AND BURDEN COMPARISON:

While the fees associated with Consent of Use approvals, riparian Easements, and Dredge Permits may inconvenience those who have to obtain them, the benefits of proper management of State Owned Submerged Lands is conclusive. This rule aids the Commissioner of the Department in fulfilling its duty and responsibility for the administration, management, and control of State Owned Submerged Lands.

9. THE EFFECT OF THIS RULE ON THE ENVIRONMENT AND PUBLIC HEALTH:

This rule is intended to protect riparian rights, the environment, and the public health by providing for a review of applications for compliance with the Rule to minimize potential encroachments and impacts to adjacent property owners and providing just compensation for all public and private activities on State Owned Submerged Lands which generate revenues, exclude or preempt traditional uses, and/or which sever materials from State Owned Submerged Lands. State Owned Submerged Lands are important for recreation, conservation, and the propagation and conservation of fish, shellfish, wildlife.

10. DETRIMENTAL EFFECT ON THE ENVIRONMENT AND PUBLIC HEALTH IF THE RULE IS NOT IMPLEMENTED:

Without this rule, there could be detrimental effects on the environment and public health. This rule manages State Owned Submerged Lands for the propagation of fish, shellfish, and wildlife as well as for traditional public uses such as public recreation, conservation, navigation, and fishing.