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State of North Dakota

Office of the State Engineer

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October 17, 2008

John Walstad
Code Revisor
North Dakota Legislative Council
State Capitol
600 East Boulevard, 2nd Floor
Bismarck, ND 58505

Dear Mr. Walstad:

The Notice of Intent to Adopt and Amend Administrative Rules and a copy of the proposed rules are enclosed as required by N.D.C.C. § 28-32-10.

Sincerely,

Dale L. Frink, P.E.
State Engineer

Enclosures

**NOTICE OF INTENT TO
ADOPT AND AMEND ADMINISTRATIVE RULES**

TAKE NOTICE that the North Dakota State Engineer will hold a public hearing to address proposed new rules and amendment of current rules to North Dakota Administrative Code Article 89-10, at 9:00 A.M., Thursday, November 20th, in the basement conference room at the State Office Building, 900 East Boulevard Ave., Bismarck, ND. The proposed rules changes are not expected to have an impact on the regulated community in excess of \$50,000.

The purpose and an explanation of the proposed rule changes regulating activities on sovereign lands of the State of North Dakota are as follows:

The titles of Article 89-10 and Chapter 89-10-01 are amended from "Islands and Beds of Navigable Waters" to "Sovereign Lands" for consistency throughout the chapter.

Section 89-10-01-01, Authority is amended to replace "the islands and beds of navigable waters" with "sovereign lands" for consistency throughout the chapter.

Section 89-10-01-02, Prohibition on Permanent Relinquishment is amended to provide that all structures permitted or otherwise allowed for private use are subordinate to public use and values on sovereign lands.

Section 89-10-01-03, Definitions is amended to add definitions for "boardwalk" and "structure" and to amend the definition of "project" by replacing "below the ordinary high watermark of navigable waters" with "on sovereign lands" for consistency throughout the chapter.

Section 89-10-04-04, Authorization is amended to delete reference to specific sections of this chapter and replace the reference with as "otherwise provided by these rules."

Section 89-10-01-10, Projects Not Requiring a Permit is amended to clarify that permits are not required if all of the listed criteria are met.

Subdivisions d and e of subsection 1 of section 89-10-01-10 are amended to clarify placement of a dock that does not require a permit.

Subdivision d of subsection 4 of section 89-10-01-10 is amended to replace "an island or any portion of the bed of a navigable stream or water" with "sovereign lands" for consistency throughout the chapter.

Section 89-10-01-10.1, Boat Docks, Boat Ramps, and Water Intakes is created to clarify that a permit from the state engineer is required if these structures do not meet the criteria in 89-10-01-10 and to provide that any person who violates this section is guilty of a noncriminal offense and shall pay a \$250 fee.

Section 89-10-01-11, Structures is amended to provide that, except as otherwise provided, construction or moorage of a structure on sovereign lands is prohibited and establishes the process by which the state engineer may remove the structure.

Section 89-10-01-12, Public Recreational Use is amended to replace “the islands and all land and water below the ordinary high watermark of navigable waters” with “sovereign lands” for consistency throughout the chapter, the term “nondestructive” is removed, and to provide that the state engineer may post signage prohibiting public recreational use. Several editing revisions are also made.

Section 89-10-01-13, Vehicular Access is amended to replace “land below the ordinary high watermark of navigable water bodies” and “sovereign land” with “sovereign lands” for consistency throughout the chapter, and to provide that any person who violates this section is guilty of a noncriminal offense and shall pay a \$100 fee. Several editing revisions are also made.

Section 89-10-04-14, Cancellation by the state engineer is amended to delete reference to specific sections of this chapter.

Section 89-10-01-17, Inspections is amended to replace “which lie below the ordinary high watermark” with “on sovereign lands” for consistency throughout the chapter.

Section 89-10-01-21, Organized Group Activities is amended to add “on sovereign lands” for consistency throughout the chapter and to provide that any person who violates this section is guilty of a noncriminal offense and shall pay a \$250 fee.

Section 89-10-01-22, Pets is amended to delete the specific reference to the Missouri River corridor and to provide that any person who violates this section is guilty of a noncriminal offense and shall pay a \$50 fee. Several editing revisions are also made.

Section 89-10-01-23, Camping is amended for editing revisions for consistency throughout the chapter and to provide that any person who violates this section is guilty of a noncriminal offense and shall pay a \$100 fee.

Section 89-10-01-24, Hunting, Fishing, and Trapping is amended for several editing revisions for consistency throughout the chapter and to provide that any person who violates this section is guilty of a noncriminal offense and shall pay a \$100 fee.

Section 89-10-01-25, Unattended Watercraft is amended to replace “land” with “lands” for consistency throughout the chapter and to provide that any person who violates this section is guilty of a noncriminal offense and shall pay a \$50 fee.

Section 89-10-01-26, Removal of Public Property is amended for several editing revisions for consistency throughout the chapter and to provide that any person who violates this section is guilty of a noncriminal offense and shall pay a \$250 fee.

Section 89-10-01-27, Cultural or Historical Resources is amended to replace “land” with “lands” for consistency throughout the chapter and to provide that any person who violates this section is guilty of a noncriminal offense and shall pay a \$250 fee.

Section 89-10-01-28, Disposal of Waste is amended to add “on sovereign lands” and to replace “land” with “lands” for consistency throughout the chapter and to provide that any person who violates this section is guilty of a noncriminal offense and shall pay a \$250 fee. The provisions for abandonment of vehicles or other personal property and glass containers are deleted from this section and added to new sections.

Section 89-10-01-29, Glass Containers is created to prohibit glass containers on sovereign lands and to provide that any person who violates this section is guilty of a noncriminal offense and shall pay a \$100 fee.

Section 89-10-01-30, Abandoned Property is created to prohibit abandoned vehicles or other personal property on sovereign lands.

Section 89-10-01-31, Firearms is created to prohibit reckless and indiscriminate use of firearms on sovereign lands and to provide that any person who violates this section is guilty of a noncriminal offense and shall pay a \$100 fee.

Section 89-10-01-32, Tree Stands is created to regulate the construction of tree stands on sovereign lands and to provide that any person who violates this section is guilty of a noncriminal offense and shall pay a \$100 fee.

Section 89-10-01-33, Baiting is created to regulate baiting of wildlife on sovereign lands and to provide that any person who violates this section is guilty of a noncriminal offense and shall pay a \$100 fee.

The proposed rules may be reviewed at the North Dakota State Engineer’s office, 900 East Boulevard Ave., Bismarck, ND 58505 or on the State Engineer’s website at www.swc.nd.gov. A copy of the proposed rules may be requested by writing the above address, calling 701-328-4941, or e-mailing rpetersen@nd.gov. Written or oral comments on the proposed rules sent to the above mailing or e-mail address, or telephone number and received by December 1, 2008, will be fully considered.

If you plan to attend the public hearing and will need special facilities or assistance relating to a disability, please contact the State Engineer's office at the above address or phone number at least seven days before the public hearing.

Dated this 17th day of October, 2008.

Dale Frink
North Dakota State Engineer