

## **Policy Criteria and General Construction Requirements**

*(Note: This draft includes only: Construction Season, General Construction Materials, Impervious Cover, Removal of Debris, and Burning sections. The remaining General Construction Requirement sections will be addressed in a subsequent draft)*

### 5-1 Policy Criteria for Issuance of a Permit

- (A) The proposed action shall not, during either its construction or its utilization:
- (1) materially diminish water quality,
  - (2) materially diminish habitat for fish or wildlife,
  - (3) interfere with navigation or other lawful recreation,
  - (4) create a public nuisance,
  - (5) create visual impact discordant with the background landscape or aesthetic values of the lakeshore, nor
  - (6) significantly alter the natural characteristics of the lakeshore.
- (B) The proposed action shall meet the following criteria in order to be in compliance with Montana's policy of non-degradation of existing high water quality as described in the water quality act, Section 75-5-303 MCA and water quality and non-degradation standards, ARM Title ~~1716~~, chapter ~~3020~~, subchapters ~~6, 7, 9, and 10~~:
- (1) the proposed action shall not cause, directly or indirectly, increased sedimentation in the lake during either its construction or utilization,
  - (2) the proposed action shall not cause, directly or indirectly, increased discharge or concentration of nutrients or toxic substances in the lake during either its construction or utilization, and
  - (3) the proposed action shall not cause, directly or indirectly, an increase in suspended sediments for a significant period of time during either its construction or utilization.
- (C) The proposed action shall meet the following criteria in order to be in compliance with the purpose of these regulations and the policies of Section 75-7-201 MCA:
- (1) the proposed action shall not materially infringe on the scenic view from neighboring properties and the lake and,
  - (2) the proposed project shall not alter water currents or transfer wave action in a way that increases lakeshore erosion.

5-2 General Construction Requirements Affecting All Permits

The following requirements are mandatory "Conditions of Approval" which expressly limit and affect any project for which a "Lakeshore Construction Permit" is issued. Any proposed project or action must be in compliance with these construction requirements in order for a permit to be issued, excepting cases in which a variance may be granted under special circumstance pursuant to and in accordance with Section ~~3-5(B)~~ of these regulations.

(A) Construction Season

(1) Policy

Lake levels fluctuate seasonally, exposing lakebed areas during certain times of the year. Negative construction impacts associated with projects at or waterward of the mean annual high water elevation can be reduced, mitigated or eliminated when work is done during low pool times and, most importantly, on dry land.

(2) Standards

(a) All work undertaken at or waterward of the mean annual high water elevation shall be done when the lake level is at low pool and the construction site is dry.

Flathead Lake and Lake Mary Ronan are typically at low pool from December to April. Swan Lake is typically at low pool from August to mid-December.

(b) Exceptions to (a) above may be granted as follows if proper precautions are followed including no vegetative removal, no fill or excavation is involved, and no construction debris or wheeled or tracked vehicles come in contact with the lake:

(i) The placement of pre-built structures such as boat lifts, deck surfaces, and floating docks, provided they can be placed using a barge or land-mounted crane or hand-placed.

(ii) The driving of pilings by barge, land-mounted machine or hand tools.

(iii) The assembly of pre-cut or pre-constructed items such as the decking of a dock or components of a boat lift.

(iv) Placement of buoys.

(B) General Construction Materials

(1) Policy

(a) Construction materials used on shorelines should not result in a degradation of water quality nor should the materials detract from the natural landscape.

- (b) Wood preservatives and stains can leach over time and can degrade water quality.
- (c) While metals are generally inert except for oxidation, surface application of some foreign materials (i.e. wet paint, grease, oil, etc.) can degrade water quality.
- (d) Building materials should be stable and free of silts, sands, fines, chemical preservatives, grease, oil or any surface application which could immediately or eventually contaminate water quality.

(2) Standards

(a) Wood

(i) ~~All wood piling and lumber used for construction within the lakeshore protection zone shall be untreated and left in its natural state. No preservatives including varnish, stain, paint, linseed oil, diesel fuel, creosote or any other surface or pressure treated preservatives are allowed. Structures built prior to \_\_\_\_\_ which are located landward of the mean annual high water elevation and which have been painted or stained on a routine basis in the past may continue to be painted or stained, provided the paint or stain is water-based, is not toxic to fish, and does not contain any substance which may cause contamination of the lake or lakeshore protection zone.~~

**Comment [ 1 ]:**  
Original wording from current regulations

**Comment [ 2 ]:**  
Flathead County's regulations specify structures prior to 1982. Need to determine specific date from old Lake County regulations

(ii) Only solid wood shall be used waterward of the mean annual high water elevation. Plywood, particle board, and chipboard are prohibited. Composite decking-type materials (including recycled plastic with wood fibers) are allowed.

(b) Metal

(i) Prior to installation, metal used in the lakeshore protection zone may be painted or coated with an inert metal sealant (i.e. paint, plastic, rubber, enamel, etc.) which has thoroughly dried/cured prior to its use.

(ii) No metal products used in the lakeshore protection zone may contain deposits or a surface application of:

(aa) grease or oil (except that minimal lubrication of critical metal components to allow movement is allowed).

(bb) any chemical or substance which will wash off or dissolve when in contact with water

(cc) any substance which may cause contamination of the lake or lakeshore protection zone.

(c) Foam flotation logs

(i) Styrofoam logs, as a method of flotation, are prohibited.

(ii) Extruded polystyrene (blue logs) or similar single cell foam is allowed if completely encased in metal or solid wood. Drain holes or 1/2 inch spacing between wood boards is allowed.

**Comment [ 3 ]:** Note: Planning staff received a recommendation to prohibit blue foam, instead allow flotation encasements/shells

(d) Asphalt

Asphalt of similar petroleum based products intended for use as a travel or walking surface are prohibited.

(e) Concrete

(i) Bare concrete shall be aesthetically shielded by the creative use of rock or wood. Concrete that is colored and/or textured to appear like wood or stone may be used.

(ii) Wet concrete shall not be poured into or allowed to come into contact with the lake water, unless poured within water tight forms approved by the permit process.

(iii) Broken concrete shall not be used as weighting materials on the lakebed or as riprap.

(f) Rock or Stone

(i) All rock or stone which will come into contact with the lake shall be free of silts, sands or fines.

(ii) Rock or stone from the immediate lakeshore protection zone may be used to repair existing riprap or replace rock that has come out of a crib structure, if its removal does not reduce the effectiveness of the existing lakebed armament or expose silts, sands, clays or fines.

(iii) The use of lakebed rock for new riprap or crib dock projects is prohibited.

**Comment [ 4 ]:** From Tribal Regulations

(C) Impervious Cover (Constructed Areas)

(1) Policy

(a) Excessive constructed areas over the water should be discouraged as they can detract from the aesthetic values of the lake and can impact the use of public space on public waterways.

(b) Excessive impervious cover on the land portion of the lakeshore protection zone should be discouraged as it may affect water quality due to increased stormwater runoff, detract from the aesthetic values of the shoreline and alter natural shoreline characteristics.

(c) Porous or permeable materials are preferred to impervious materials on the land portion of the lakeshore protection zone as they reduce the intensity and amount of runoff channeled to adjoining areas.

(2) Standards

(a) The total of all constructed areas over the body of water, at high water elevation, shall not exceed eight square feet (8 ft<sup>2</sup>) per linear front foot of

lakeshore. Constructed impervious surface areas over the water include, but are not limited to, docks, boat shelters and covered shore stations.

(b) The total of all constructed impervious surface areas over the land portion of the lakeshore protection zone shall not exceed five square feet (5 ft<sup>2</sup>) per linear front foot of lakeshore, and such impervious areas shall be designed and constructed to drain storm water runoff into the soil mantle, not the lake.

**Comment [ 5 ]:** Moved below (see 'd')

**Comment [ 6 ]:** From current regulations

(c) For commercial/public marinas, the amount of constructed impervious (constructed) surface areas over the land portion of the lakeshore protection zone per property shall not exceed ten square feet (10 ft<sup>2</sup>) for each per linear front foot of lakeshore frontage, and the amount of constructed impervious (constructed) surface areas located over the lake portion of the lakeshore protection zone shall not exceed twelve eight square feet (12-8 ft<sup>2</sup>) for each per linear front foot of lakeshore frontage.

**Comment [ 7 ]:** Moved from Marina Standards, modified numbers to reflect planning board recommendation during review of marina section

(d) Constructed impervious surface areas over the land portion of the lakeshore protection zone shall be designed and constructed to drain storm water runoff into the soil mantle, not the lake. Constructed surface areas shall be designed to disperse and infiltrate stormwater and avoid the channelization of stormwater.

**Comment [ 8 ]:** Modified from current regulations

(e) Impervious surfaces shall not be connected to paved areas outside the lakeshore protection zone.

(f) All road surfaces, including gravel road surfaces, within the lakeshore protection zone shall be included in the calculation of "Total Constructed Impervious Surface Area" allotted to each property.

(D) Removal of Debris

(1) Policy

Construction debris that remains in the lake or lakeshore protection zone may affect the quality of the water, cause safety problems or detract from the aesthetic value of the shoreline.

(2) Standards

(i) All construction debris (including excess backfill, cleared vegetation, concrete, old construction materials and waste materials from new construction) shall be disposed of outside the lakeshore protection zone in such a manner and in such a location so as to prevent its re-entry into the lake. These materials shall will not be stockpiled within the lakeshore protection zone.

**Comment [ 9 ]:** Moved below

(ii) Construction debris or cleared vegetation shall not be stockpiled within the lakeshore protection zone.

(E) Burning

(1) Policy

Burning of slash or, construction debris, and removal of vegetation in the lakeshore protection zone may have tremendous impacts on water quality by increasing turbidity and nutrient loads in the lake.

**Comment [ 10]:**  
Moved from Burning and Vegetation Removal Section in Design Standards

*Note: Flathead County's language: Burning of materials on the lakebed or lakeshore will cause a degradation of water quality, and may create safety hazards or detract from the aesthetic characteristics of the shoreline.*

(2) Standards

Burning of weeds, grass, shrubs, brush, trees, old construction materials, waste from new construction, or similar materials in the lakebed or lakeshore protection zone is prohibited except:

- (a) in extreme cases where downed material cannot be removed by any other means. These instances shall be reviewed on a case-by-case basis.
- (b) small "campfires" are permitted (three-foot by three-foot (3' x 3') or less) are permitted. ~~as provided in Section 5-3, J(2)(a). This regulation is not intended to prohibit small "campfires."~~

**Comment [ 11]:** Note: Flathead County prohibits campfires below high water, on exposed lakebed

*Note: These General Construction Requirements have been (or will be) moved/modified into individual sections above.*

- ~~(A) Any material which is excavated from the lakebed or lakeshore and not used as backfill shall be removed entirely from the lakeshore protection zone and deposited in such a manner and in such a location so as to prevent re-entry of the material into the lake. Alternatively, the excavated materials may be deposited behind a retaining wall which effectively prevents re-entry of the material into the lake. The finished elevation of any backfill area situated water ward of the mean annual high water elevation or water ward of a retaining wall shall closely approximate the natural contour of the lake bottom before disturbance. [moved to Section \_\_\_]~~
- ~~(B) Any materials used for fill shall be free of fine materials (i.e. clays, silts, and sands) unless the material is placed behind a retaining wall which will prevent introduction of the materials into the lake. Lakebed materials such as clays, silts, sands, or gravels shall not be excavated and utilized as fill material. Large cobble and boulders lying on the lake bottom and not part of the lakebed armament may be picked from the lakebed and used for rip~~

- rap along the mean annual high water elevation, or it may be used as fill material inside cribs or behind retaining walls, provided that such rock can be picked from the lakebed without excavating any fine lakebed materials and an armament of rock or gravel remains on the lakebed in the work area to mitigate impacts to water quality. *[moved to Section\_\_\_]*
- (C) ~~Any construction activity which will affect the lakeshore protection zone shall incorporate all necessary means to prevent pollution of the lake, including erosion, sedimentation and storm runoff controls. *[moved to Section\_\_\_]*~~
- (D) ~~The total of all constructed impervious surface areas over the body of water shall not exceed eight square feet (8 ft<sup>2</sup>) per linear front foot of lakeshore. *[moved to Section\_\_\_]*~~
- (E) ~~The total of all constructed impervious surface areas over the land portion of the lakeshore protection zone shall not exceed five square feet (5 ft<sup>2</sup>) per linear front foot of lakeshore, and such impervious areas shall be designed and constructed to drain storm water runoff into the soil mantle, not the lake. *[moved to Section\_\_\_]*~~
- (F) ~~All piling and lumber used for construction within the lakeshore protection zone shall be untreated and left in its natural state. *[moved to Section\_\_\_]*~~
- (G) ~~All construction debris (including excess backfill, cleared vegetation, concrete, old construction materials and waste materials from new construction) shall be disposed of outside the lakeshore protection zone in such a manner and in such a location so as to prevent its re-entry into the lake. These materials will not be stockpiled within the lakeshore protection zone. *[moved to Section\_\_\_]*~~
- (H) ~~Burning of weeds, grass, shrubs, brush, trees, old construction materials, waste from new construction, or similar materials on the lakebed or lakeshore is prohibited except as provided in Section 5-3, J(2)(a). This regulation is not intended to prohibit small "campfires." *[moved to Section\_\_\_]*~~
- (I) ~~All decks, boat ramps, boat shelters, wharves, docks, piers, aerial structures and boat service facilities shall abide by Section 5-3 of these regulations or otherwise required by the "Conditions of Approval" attached to any permit issued. Where common lake related facilities are to be constructed and shared by two or more property owners, set-back requirements from the common property line(s) may be waived provided that all affected parties sign the application, and the application clearly specifies that the facilities are to be used in common by the parties.~~

*[moved to Section\_\_\_]*

- ~~(J) Properties which lack adequate lake frontage to provide for minimum setbacks shall not be allowed improvements. *[moved to Section\_\_\_]*~~
- ~~(K) All proposed work within the lakeshore protection zone shall incorporate erosion controls and a re-vegetation plan which shall be incorporated into all project plans. *[moved to Section\_\_\_]*~~
- ~~(L) Vehicles, excavators, and other machinery shall not be placed into the waters of a lake at any time during the construction process. Operation of motorized vehicles on the lakebed shall be reviewed on a case-by-case basis. Under no circumstance shall motorized vehicles be skidded onto the lakebed. *[moved to Section\_\_\_]*~~
- ~~(M) Slopes of twenty-five percent (25%) or greater shall not be disturbed as a result of any activity in the lakeshore protection zone. *[moved to Section\_\_\_]*~~
- ~~(N) The applicant or his/her authorized agent shall notify the planning staff when an approved project is completed. The planning staff will then be able to initiate on-site evaluation of the project in order to assure that the project is compliant with approved plans, "Conditions of Approval", and "Lake County Lakeshore Protection Regulations." *[moved to Section\_\_\_]*~~