

**LAKESHORE CONSTRUCTION PERMIT REGULATIONS**  
**LINCOLN COUNTY, MONTANA**

**Subchapter 1 : General Provisions**

**76.10.101 TITLE** : These regulations shall be known and may be cited as “The Lakeshore Construction Permit Regulations of Lincoln County”.

**76.10.102 AUTHORITY** : Authorization for these regulations is contained in Title 75, Chapter 7 “Aquatic Ecosystem Protections”, Part 2 “Lakeshores”, Montana Code Annotated.

**76.10.103 PURPOSE** : The purpose of these regulations is to maintain:

- (1) Public health, safety, and general welfare.
- (2) High scenic and resource values of the natural lakes.
- (3) Conservation and protection to continue the value of lakeshore property.

**76.10.104 JURISDICTION** : The Montana legislature has declared that local governments should play the primary role in establishing policies to conserve and protect lakes and the state has conferred such powers to local governments through 75-7-201 M.C.A.

- (1) These regulations govern any work which would alter or diminish the course, current, or cross-sectional area of a lake, or its lakeshore, within the boundaries of Lincoln County, Montana.
- (2) These regulations supplement all other regulations, and where they are at variance with other laws, regulations, ordinances, or resolutions, the more restrictive requirements shall apply.

**76.10.105 SEVERABILITY** : Where any word, phrase, clause, sentence, paragraph, or other part of these regulations is held invalid by a court of competent jurisdiction, such judgment shall effect only that part held invalid.

**76.10.106 DEFINITIONS** : Whenever the following words or phrases appear in this text, they shall have the meaning assigned to them by this subchapter. When not consistent with the context: words used in the present tense shall include the future; the singular shall include the plural and the plural, the singular; the word “shall” is always mandatory; and the word “may” indicates the use of discretion in making decisions.

- (1) *Applicant*: the person submitting the application and requesting approval from the governing body for the lakeshore permit.

- (2) ***Governing Body***: the Board of County Commissioners of Lincoln County, Montana.
- (3) ***Lake***: a body of standing water and the area within it's lakeshore occurring naturally rather than by virtue of constructed impoundments (although a natural lake whose level is raised and whose are is increased by the construction of impoundments includes the additional level and area), having a water surface area of at least 160 acres for at least 6 months in a year of average precipitation as such averages are determined by the United States geological survey, not used exclusively for agricultural purposes, and navigable by canoes and small boats. (The governing body may by resolution change the minimum size in the definition of a lake, provided it is no smaller than 20 acres. 76-7-203 M.C.A.)
- (4) ***Lakeshore***: the perimeter of a lake when the lake is at mean annual high-water elevation, including the land within 20 horizontal feet from that high-water elevation.
- (5) ***Mean annual high-water elevation***: the mean average of the highest elevation of a lake in each of at least 5 consecutive years, excluding any high levels caused by erratic or unusual weather or hydrological conditions. A highest elevation caused by operation of a dam or other impoundment counts toward the establishment of the mean annual high-water elevation.
- (6) ***Permit***: a document issued by the governing body verifying compliance with the requirements and provisions of these regulations.
- (7) ***Person***: any individual, firm, corporation, partnership, institution, entity, or governmental department or political subdivision.
- (8) ***Planning Staff***: professional planners in the employ of Lincoln County.

## **Subchapter II : Administration Procedures**

### **76.10.201 General :**

- (1) No person shall proceed with any construction, alteration, or disturbance of the lake or it's lakeshore as delineated below until a permit is obtained from the governing body.
- (2) Any person who proposes to do any work which will alter or diminish the course, current, or cross-sectional area of a lake or it's lakeshore must first secure a permit for the work from the governing body. The person who is to do the actual physical work is responsible for assuring a proper permit has been issued for the work being proposed.

**(3) Without limitation, the following activities are, when conducted below the mean high-water elevation, examples of work for which a permit is required :**

- (a) construction of channels and ditches;**
- (b) dredging of lake bottom areas to remove muck, silt, weeds, etc.;**
- (c) lagooning, either by dredging or placing fill in the lake to create a lagoon;**
- (d) filling;**
- (e) construction of breakwaters of pilings or rock;**
- (f) construction of wharves and docks.**

**(4) Exemptions – the following projects are exempt from these regulations.**

- (a) reconstruction – permit shall not be required when either by annual maintenance or reconstruction of existing buildings, structures, or facilities when such maintenance and reconstruction projects do not increase, extend, or materially alter the design of the existing building, structure, or facility and are not a violation of the intent of these regulations.**
- (b) Construction of a floating dock which does not exceed eight (8) feet in width and twenty five (25) feet in length, and at no time shall said dock extend more than twenty five (25) feet beyond the current lakeshore water line.**

**76.10.202 PERMISSION TO ENTER :** The governing body, or their agents may conduct investigations, examinations, and site evaluations as they deem necessary to verify information supplied as a requirement of these regulations. Application for a permit is considered as implied permission by the owner of the land for which an application for a permit is filed, granting the governing body or it's agents permission to enter upon that land for these purposes.

**76.10.203 SUMMARY PROCEDURE :**

- (1) Any person who proposed any activity or work that falls within the work requiring a permit as delineated in 76.10.201 of these regulations shall submit an application for permit together with an application fee of twenty five dollars (\$25.00) and necessary site maps and project plans, to the Lincoln County Department of Environmental Planning.**

- (2) The Department of Environmental Planning's planning staff shall review the application to determine whether or not the proposed project will have a minimal or insignificant impact on the lake or its lakeshore. The findings of this review and planning staff recommendations shall be presented to the governing body within 14 days of application.
- (3) The governing body shall review the application and planning staff recommendations and determine whether the information presented indicates that the proposed project will have a minimal or insignificant impact on the lake or its lakeshore, they shall so state in the appropriate record, and shall issue a permit. If the governing body determines that a proposed project may have a significant impact on a lake or its lakeshore, they shall notify the applicant of such and deny the application.
- (4) The applicant who has an application denied may request a variance under 76.10.207 of these regulations.
- (5) Applications shall favor issuance if the proposed work will not during either its construction or its utilization:

  - a. Materially diminish water quality;
  - b. Materially diminish habitat for fish or wildlife;
  - c. Interfere with navigation or other lawful recreation;
  - d. Create a public nuisance; or
  - e. Create a visual impact discordant with natural scenic values, as determined by the governing body, where such values form the predominant landscape elements.
- (6) The governing body shall either grant approval, conditional approval, or denial of the application within 90 days of the acceptance of the submittal.

**76.10.204 LAKESHORE CONSTRUCTION PERMIT** : The permit issued under the authority of these regulations is valid for one (1) calendar year from the date of issuance. The permit may be renewed if the applicant requests from the governing body an extension of time before the original permit expires and the governing body agrees that for valid reasons the time should be extended.

**76.10.205 RESTORATION** : Any person who performs work in or near a lake that falls within the scope of these regulations after January 1, 1976 without a valid permit for that construction shall, if required by the governing body or the district court, restore the lake and its environs to their original condition prior to construction.

**76.10.206 PROPERTY RIGHTS** : Work or development authorized or approved under these regulations shall not create a vested property right in the permitted development, other than in the physical structure, if any, so developed.

**76.10.207 VARIANCES** : The governing body may grant a variance from these regulations only after preparing and distributing an environmental impact statement, at the expense of the applicant, which conforms to the requirements in subsection 1 and holds a public hearing according to subsection 2 delineated below.

(1) The Environmental Impact Statement shall contain the following information:

- (a) Description of the proposed project for which the permit application has been filed.
- (b) Description of the variance being considered by the governing body.
- (c) Description of any known environmental effects, probable environmental effects, and unavoidable adverse environmental effects.
- (d) Alternatives to, or modifications of, the proposed project.

(2) After the governing body has prepared and distributed the environmental impact statement, they shall hold a public hearing. Notice of the time and place of the public hearing shall be given by publication in a newspaper of general circulation in the county not less than fifteen (15) days prior to the date of the hearing. The applicant shall be notified by certified mail of the time and place of the public hearing not less than fifteen (15) days prior to the date of the hearing.

**76.10.208 JUDICIAL REVIEW AND ENFORCEMENT** : The district court may hear and decide the following cases arising under these regulations within Lincoln County:

- (1) A complaint and petition of a governing body or an interested person for an order to restore a lake or lakeshore to its previous condition or to enjoin further work in a lake or along a lakeshore.
- (2) A petition of an interested person for review of a final action of a governing body upon an application for a permit.
- (3) A petition of an interested person for review of an action of a governing body in adopting or amending regulations.

**76.10.209 AMENDMENT** : These regulations may be amended from time to time. Before the governing body amends these regulations it shall hold a public hearing and shall give public notice of its intent to amend these regulations and of the public hearing by publication of notice of the time and place of the hearing in a newspaper of general circulation in Lincoln County not less than fifteen (15) nor more than thirty (30) days prior to the date of the hearing.

### **Subchapter III : Requirements**

**76.10.301 PROJECT PLAN REQUIREMENTS :** Applications shall be accompanied by project plans that shall include the following information:

- (1) A vicinity map of the area in question showing the location of the proposed project. A U.S.G.S. 7 ½ minute topographic map may be used for this purpose.
- (2) A site plan, drawn to scale, preferably on a copy of the property survey or plat if the scale allows, showing details of the project.
- (3) A written description describing the proposed project, existing conditions, probable environmental effects of the project, the anticipated goal and timeline. Any measures taken to minimize potential or unavoidable adverse environmental effects should be identified and discussed.

**76.10.302 PROJECT CRITERIA :** The proposed action or project shall not, either during it's construction or it's utilization: (Projects that extend in excess of 50 feet into the lake from the normal shoreline, are deemed an interference to navigation, other lawful recreation, and a public nuisance)

- (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, or
- (5) Create a visual impact discordant with natural scenic values, as determined by the governing body, where such values form the predominant landscape elements.

**76.10.303 STATE CRITERIA :** The proposed action or project shall meet the following criteria in order to be in compliance with the State of Montana Department of Environmental Quality standards:

- (1) Any proposed action that will likely directly or indirectly cause increased sedimentation in the lake during either it's construction or utilization, requires a 3A Short Term Exemption from Water Quality Standards from the Montana Department of Environmental Quality prior to initiation of work.
- (2) The proposed action shall not directly or indirectly cause discharge of nutrients or toxicogenic substances into the lake during either construction or utilization.
- (3) The proposed action shall meet other necessary and reasonable requirements of the local governing body and the state of Montana as may be identified in the review process and specified as conditions for granting approval in order to protect and promote public health, safety, and welfare.

