

## **South Dakota Department of Game, Fish and Parks**

### **Guidelines for Alteration of Bottom Lands or Lake Shores**

#### ***Background***

Statutes and rules were enacted to allow the State's water related resources to be managed and utilized in a practical manner while protecting these resources for the benefit, welfare, and enjoyment of the citizens of this state and its visitors.

**SDCL 43-17-1** Ownership of land below the water of a navigable lake or stream is regulated by the laws of the state.

**SDCL 43-17-2** Navigable rivers and lakes are public highways within 50 feet landward from the water's nearest edge, provided that the outer boundary of such public highway may not expand beyond the ordinary high water mark and may not contract within the ordinary low water mark.

**SDCL 43-17-21** The Water Management Board shall establish the ordinary high water mark and may establish the ordinary low mark on public lakes which are used for public purposes including, but not limited to boating, fishing, swimming, hunting, skating, picnicking and similar recreational pursuits.

**SDCL 46-1-1** It is declared that the people of the state have a paramount interest in the use of all the water of the state and that the state shall determine what water of the state, surface and underground, can be converted to public use or controlled for public protection.

**SDCL 46-1-2** It is declared that the protection of the public interest in the development of the water resources of the state is of vital concern to the people of the state and that the state shall determine in what way the water of the state, both surface and underground, should be developed for the greatest public benefit.

**SDCL 46-1-3** It is declared that all water within the state is property of the people of the state, but the right to the use of water may be acquired by appropriation as provided by law.

**SDCL 46A-1-1** The general health, welfare and safety of the people of the state are dependent upon the conservation, development, management, and optimum use of all this state's water resources. To achieve this objective, it is essential that a coordinated, integrated, multiple use water resource policy be formulated and a plan developed to activate this policy as rapidly as possible. It is in the public interest that these functions be carried out through a coordination of all state agencies and resources.

**SDCL 41-2-18(5)** empowers the Game, Fish and Parks Commission to adopt rules for implementation of game, fish and conservation laws. This includes the management, use and improvement of all meandered lakes, sloughs, marshes and streams extending to and over dry or partially dry meandered lakes, sloughs, marshes and streams, including all lands to which

the state has acquired any right, title or interest for the purpose of water conservation or recreation.

**SDCL 41-13-1** states that it is a Class 1 misdemeanor for any person to empty or allow to be emptied, to place or allow to be placed, any sawdust, manure, refuse matter, sedimentary materials, pollutants or chemicals of any kind in the waters of this state containing fish, and wildlife, or to deposit the same within such distance that it may be carried into such waters by natural causes.

In addition, the Department of Game, Fish and Parks has adopted **Rule No. 41:04:03:05**, which states that no person may modify shore or bottom lands below the ordinary high-water mark of meandered waters or other waters to which the state has acquired a right, title, or interest without permission of the commission or its designated agent.

### *Getting Started*

No person shall proceed with any work on, or alteration or disturbance of a lake, lakebed, or lakeshore until he/she has obtained, and has possession of a valid "Permit to Alter Lakeshore or Bottom Lands" issued by the Game, Fish and Parks Commission or its designee.

The person who performs or authorizes such work and/or the property owner are responsible for assuring that a valid permit has been obtained from the Game, Fish and Parks Commission or its designee.

Activities regulated by the Department may include any of the following when conducted within the lake, lakebed or lakeshore and will result in an alteration of a lake's bed or shoreline. Example activities for which a permit will be required include, but are not limited to:

1. Construction of ditches or channels;
2. Dredging or excavation to remove muck, sediment, or rock;
3. Seawall installation or seawall refacing;
4. Construction of retaining walls and breakwaters;
5. Rip rap installation along the shoreline;
6. Construction of elevated structures, (ex. decks, overhangs, bridges), that may impair navigability and/or the installation of permanent in-water structures (piers, docks, etc);
7. Filling, including artificial beach creation;
8. Stockpiling brush, trees, vegetation, construction materials or debris in the lake or on shore;
9. Removal or clearing of aquatic vegetation; and

10. Any other activity, not herein mentioned, that may have an impact on the lake, lakebed or lakeshore.

Activities such as those listed will be viewed by the Department as a taking of the lakebed and are, therefore, contrary to the codified laws listed above. These laws collectively state that the public has a vested right in the preservation, protection, and enjoyment of all public waters and requires the State to hold and control the lakes in trust for the use of all citizens. It is the Department's position that projects of this nature cannot be approved unless the applicant can clearly demonstrate that a substantial public benefit will result due to the project's construction.

Any person that performs work in the lake, lakebed or lakeshore without a permit for that work shall restore the lake, lakebed or lakeshore to its original condition before he/she disturbed it.

### ***Project Evaluation Criteria***

In evaluating a proposed project, Department staff will assess both its singular and cumulative impact on the lake and its resources by looking at impacts to the natural resource, natural scenic beauty, and recreational purpose. These terms are defined as follows:

**"natural resources"** means the water, fish, plant life, and minerals in public waters.

**"natural scenic beauty"** means the natural condition as left by nature without manmade additions or alterations.

**"recreational purpose"** means fishing, boating, swimming, and the storage of water to maintain water levels.

The criteria evaluated during a project's assessment include whether or not the project will:

1. Result in a taking of the lake, lakebed or lakeshore;
2. Diminish water quality;
3. Diminish habitat for fish or wildlife;
4. Result in significant environmental harm to the lake;
5. Adversely impact navigation or other lawful recreation;
6. Create a public nuisance or public safety hazard; or
7. Alter the natural characteristics or the shoreline.

### ***Application Process***

Any person wishing to do work in a lake, lakebed or lakeshore shall submit a complete application to the Department of Game, Fish and Parks (Attention- Rhet Russell; East River Habitat & Access Biologist; SD Game, Fish and Parks, 400 West Kemp Ave; Watertown, SD

57201). The application should be accompanied by a vicinity map, photos, site plan, and project drawings. If needed, the applicant may be required to submit additional information to adequately evaluate the proposal.

1. Applicant contacts GFP for application form or, if situation arises, GFP contacts applicant and makes them aware that they need a permit to continue work. If necessary, issue cease and desist order so proper review can occur.
2. Upon receiving completed application, appropriate staff members review the application and determine whether additional information is needed before a decision can be reached as to either deny, modify, or grant the permit.
3. If necessary, GFP staff member appears before the Commission with the proposed project application and staff input regarding the decision that was made. Make permit applicant aware that his project will be discussed in front of the Commission and he is allowed to appear and offer information as well.
4. Based upon evidence presented, Commission either denies permit, grants permit, or grants permit with modification.
5. Correspond with applicant and state final outcome of application. Make applicant understand that, if the permit was granted, it was only granted through GFP. It does not eliminate the requirement that he/she obtain any other applicable Federal, state, tribal or local permits as required. Also advise him/her that evaluation and compliance with the issued permit will also be expected and any deviation from the issued permit may require further review and/or enforcement activity.

The permit will be valid for a period of one (1) year from the date of issuance unless otherwise stated. All construction should be completed prior to expiration of the permit. The permit may be renewed without submission of a new application or plans if the applicant needs more time to complete the already permitted activity. Any new or additional activity, however, will require a new permit.

***Note to Applicants: A permit for lakeshore alteration issued through the South Dakota Game, Fish and Parks does not eliminate the requirement that you obtain any other applicable Federal, state, tribal or local permits for your project. Specifically, if any work is occurring in waters of the United States, authorization in the form of a 404 permit will be needed from the US Army Corps of Engineers.***